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Zusammenstellender]

A Complete Collection Of State-Trials And Proceedings For High-Treason And Other Crimes and Misdemeanours Commencing With The Eleventh Year of the Reign of King Richard II. And Ending With The Sixteenth Year of the Reign of King George III. ; With Two Alphabetical Tables To The Whole
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A

Complete Collection

OF

STATE-TRIALS,

AND

PROCEEDINGS

FOR

HIGH-TREASON,

AND OTHER

CRIMES and MISDEMEANOURS;

THE FOURTH EDITION;

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE FIRST.

LONDON:
Printed by T. WRIGHT, Eſſex-Street, Strand;
For C. BATHURST, J. and F. RIVINGTON, L. DAVIS, T. LONGMAN, W. OWEN, T. CADELL, M. FOLINGSBY, T. LOWNDES, B. LAW, J. WILKIE, R. HORSEFIELD, M. HINGESTON, S. BLADON, T. CARNAN, H. GARDNER, W. OTRIDGE, and the reſt of the Proprietors:
And Sold by G. KEARSLY, No. 46, near Serjeant's-Inn, Fleet-Street.
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PREFACE

TO THE

PRESENT EDITION.

IT is become too frequent a practice to republiſh the moſt valuable works, with ſuch a perfect ſilence as to former editions and the variations from them, or at leaſt with ſuch a ſlight notice, that the reader is left in a profound ignorance of many particulars both uſeful and neceſſary to be known. This omiſſion may be very well excuſed in the inſtances of ordinary traſh, with which the preſs too much abounds; for it would be an intolerable waſte of time to deſcend into minute details about every inſignificant production, which happens to gratify the falſe taſte of the times, and runs through a number of editions. But works of genius of erudition or of ſcience, and all which furniſh important information or inſtruction, and are therefore worthy of being preſerved from oblivion, ought to be treated in a more formal and reſpectful manner; and a looſe and undiſtinguiſhing mode of newly editing ſuch books is not leſs inconvenient and diſſatisfactory to the reader, than diſcreditable to the publiſher. Nor ſhould this mark of diſtinction be confined to original works; compilations and collections, when they relate to very intereſting ſubjects, being alſo fully intitled to the ſame attention. This obſervation ſtrongly applies to a collection like that of the STATE-TRIALS. In the caſe of a work ſo connected with the juriſprudence and hiſtory of the country, it is of the utmoſt conſequence to fix the comparative value and authority of the ſeveral editions; which cannot be done effectually, without a knowledge of their dates, their principal differences in point of contents, and the names and characters of the reſpective editors. With a view therefore to ſupply that ſort of previous information, the want of which may be objected to ſo many other modern re-publications, we ſhall proceed to lay before the reader the beſt account we are able to give of the former editions of the STATE-TRIALS, and ſhall then explain the plan of the preſent edition.

The *firſt* edition of the STATE-TRIALS came out in the year 1719, and was comprized in four volumes folio. It began with the trial of *William Thorpe* for hereſy in the 8th of *Henry* the fourth, and ended with that of Doctor *Sacheverell* in the latter end of queen *Anne*'s reign. The name of the gentleman, who prepared this edition, is omitted; but in 1720 the ſame perſon publiſhed an abridgment of the work with ſome additional trials in 8 volumes octavo, under the title of *Trials for High Treaſon and other Crimes*; and in 1738 he publiſhed a *Critical Review of the State-Trials* in one volume folio, which, though it includes a kind of abridgement, is quite a different work from the former: and from the title to this laſt book it appears, that Mr. *Salmon* was the firſt editor of the STATE-TRIALS at large. As we have had occaſion to take notice of Mr. *Salmon's Critical Review*, and ſome readers may not be apprized of his character as an author, it may be of uſe to obſerve, that however indebted to him the publick may be for his induſtry in firſt forming a collection of STATE-TRIALS, and in afterwards abridging them, there is little obligation to him for *ſome* of his remarks upon them. In his political principles apparently an inveterate enemy to the revolution, he is frequently betrayed by an intemperate zeal into a falſe notion of characters and opinions, and too often diſguiſes both when the demon of party demands a ſacrifice. Thus, a work, which, if it had been executed by one with a mind too liberal to be governed by violent prejudices, and at the ſame time endowed with the requiſite knowledge and judgment, would be a ſource of the moſt important inſtruction, by being proſtituted to particular views loſes great part of its value, and in ſome meaſure becomes a vehicle for the poiſon of miſrepreſentation. To this cenſure of Mr. *Salmon*, candor and juſtice require us to add, that, notwithſtanding the faults which may be juſtly imputed to his *Critical Review*, it is in many reſpects a very uſeful work. Conſidered as a ſhort hiſtorical abridgment of the trials, it is not without a conſiderable ſhare of merit. Sometimes alſo he points out the ſources, from which various parts of the STATE-TRIALS are drawn, where the notes to the collection at large are not ſufficiently explicit. This kind of information, ſo very requiſite for aſcertaining the credit due to each trial, was ſuch as his ſituation as firſt editor of the STATE-TRIALS muſt have enabled him to furniſh more readily and accurately than almoſt any other perſon; and it is to be wiſhed, that he had enlarged further on this head, many explanations being ſtill wanting. Nor ſhould we wholly reject his remarks; for it muſt be confeſſed, that thoſe on trials, which were foreign to the biaſs of his political tenets, are frequently pertinent, and accompanied with ſuitable illuſtrations from the hiſtory of the times. Nay even ſome of the animadverſions, which he makes under the malignant influence of party-ſpirit, may be deemed not altogether without foundation; and therefore, though it is always neceſſary to receive them with diſtruſt and caution, yet they ought not to be wholly diſregarded, where it is poſſible to diſcriminate the ſhades of truth from the tinge of exaggeration with which they are diſguiſed.

The *firſt* edition of the STATE-TRIALS was ſucceeded in the ſame year by a ſeparate volume, which contained the famous *caſe of Ship-money* and *Harriſon*'s *trial* for falſely accuſing judge *Hutton* of high-treaſon on account of his opinion againſt the crown. In the preface to the collection, Mr. *Salmon* excuſes the omiſſion of the former caſe by obſerving, that it was to be found in *Ruſhworth*; but many of the ſpeeches and arguments are not in his work, and the true reaſon for the omiſſion appears to have been, that the publiſhers of the collection and the proprietors of the manuſcripts from which part of the ſeparate volume was printed, could not agree about the terms.

A *ſecond*

PREFACE TO THE PRESENT EDITION.

A *ſecond* edition of the State-Trials was publiſhed in 1730; and in conſequence of the great acceſſion of new matter, the work became ſwelled into *ſix* volumes folio. The firſt five volumes comprized the ſame period as the firſt edition, with the exception only of the proceedings in Parliament againſt Lord Chief Juſtice *Treſilian* and others, in the reign of *Richard* the ſecond, for high-treaſon, which are a few years earlier in date than the trial with which the firſt edition begins. But the differences in other reſpects were more conſiderable; for ſeveral trials were tranſpoſed in order to render the arrangement more conformable to the due order of time, ſome additions were made to the trials in the former collection, many trials not contained in that (particularly the *caſe of Ship-money* and *Harriſon*'s *trial* before-mentioned) were interſperſed, and the work was ſtill further augmented by a number of new notes and references. As to the ſixth volume, it conſiſted intirely of new matter; being a continuation of the trials from the death of queen *Anne* to the end of the reign of *George* the firſt, with an appendix of records relative to the whole work. Some few other particulars, in which the *ſecond* edition was improved, will be found ſtated at the end of the very ſenſible preface, with which it was introduced to the publick. In this preface, the editor, after expatiating on the great utility of the State-Trials, enters into a conſideration of the excellence of our criminal law; compares it with the laws of other European ſtates; and having evinced its ſuperiority by a ſelection of the moſt ſtriking inſtances, he proceeds to point out ſome of its principal faults and defects; ſeveral of which, ſuch as thoſe concerning the *peine fort & dure*, the ſummoning of juries, the uſe of Latin in our criminal proceedings, and the fees of gaolers, have been ſince corrected by the legiſlature, as the intelligent reader will eaſily recollect. This preface is much admired, and certainly deſerves great commendation, as well in reſpect of the learning diſplayed in it, as on account of the ſpirit and judgment of moſt of the remarks, which, in general, do equal credit to the author's humanity and underſtanding. However, the preface is not wholly without exceptionable paſſages. It diſtinguiſhes the *civil* from the *criminal* part of our law, in terms highly diſreſpectful to the former, and with a degree of prejudice unworthy of ſo good a writer for whilſt he is ſtudious to expoſe the faults of the *civil* branch of the *Engliſh* law, he appears quite forgetful of its excellencies. His treatment of our eccleſiaſtical courts is of the ſame kind. He points out ſome *particular* abuſes of their proceedings, and thence ſeems to infer a *general* imperfection in their juriſdiction. But this is an inadequate way of deciding upon the merit of any ſyſtem of laws, or of any ſpecies of judicature. The moſt excellent inſtitutions could not ſtand the teſt of ſuch a partial view; and ſhould it be applied, it would neceſſarily lead us to a condemnation of that *criminal* law, which the learned writer himſelf ſo highly and ſo properly extols. Theſe animadverſions on the preface to the *ſecond* edition of the State-Trials do not proceed from the leaſt wiſh to depreciate the merit of its author, being in truth extorted by the occaſion; for had they been ſuppreſſed, the generality of praiſe might be extended by ſome into a concurrence with opinions, from which in fact we cannot withhold our diſſent. To this account of the *ſecond* edition of the State-Trials, it ſhould be added, that though no name is prefixed either to the title of the work or the preface, the editor is known to have been Mr. *Emlyn*, the ſame gentleman, to whoſe labours the publick is ſo much obliged, for the care and accuracy with which he edited Sir *Matthew Hale*'s *Hiſtory of the Pleas of the Crown*, and for the valuable notes with which he enriched that great work.

The *ſecond* edition of the State-Trials was in 1735 followed with two ſupplemental volumes; to the firſt of which is prefixed a preface, fully explaining the reaſons of this addition, and the materials of which it is compoſed. In theſe two volumes there are many important caſes, particularly the caſe of monopolies between the *Eaſt-India* Company and Mr. *Sandys* in the latter end of the reign of *Charles* the ſecond, in which the chief queſtion was, as to the legality of the Company's patent for an excluſive trade to the *Eaſt-Indies*. The period of the two volumes is deſcribed in their title-pages to be from the reign of *Edward* the ſixth to the time in which they are publiſhed; but in fact, they do not contain any trial later than the tenth of *George* the firſt, and therefore ſhould be conſidered, not as a *continuation* of the Collection of Trials in the *ſecond* edition, but merely as ſupplying its omiſſions. It was not till two or three years after the coming out of the 7th and 8th volumes, that Mr. *Salmon* publiſhed his *Critical Review*, on which we have already obſerved ſo much; and conſequently they fall within the compaſs of his remarks. A *ſecond* edition of theſe two ſupplemental volumes was reprinted in 1766, but without any alteration.

In 1742 a *third* edition of the State-Trials was publiſhed in ſix volumes folio. The trials and caſes in the ſupplemental volumes to the *ſecond* edition are not comprized in this *third* edition; nor are we aware of any other difference between the two, than a very ſmall addition of notes, a new diſpoſition of Sir *Richard Spotiſwood*'s Trial the *Quo Warranto* caſe and perhaps a few other trials, and in the pages.

In 1766 appeared two other volumes of State-Trials, being the 9th and 10th. Theſe in point of time principally follow the former collection, and bring it down to the year 1760; though amongſt theſe trials there are ſome of an antecedent period. The firſt of the two volumes contains a preface, to which we refer the reader for a fuller account of their contents.

Having finiſhed our account of the former editions of the State-Trials, we ſhall now exhibit the outline of the plan of the preſent edition.

I. The whole work will conſiſt *nominally* of *eleven*, but will be ſo printed as to be fit for *binding* in *ſix* volumes folio. The firſt *ſix* will be printed exactly from the *third* edition, and the *four* next from the four ſupplemental volumes; with no other difference, than that *each* of the *two columns*, into which every page of the preſent edition will be divided, will comprize *one page* of the book from which it is printed, and will be numbered accordingly. By this mode of printing the publiſhers are enabled to conſult cheapneſs, without ſacrificing convenience; for in conſequence of it, there will be only one half of the number of ſheets, which would be otherwiſe neceſſary, and two volumes may be commodiouſly bound in one; and yet the references to the *third* will entirely correſpond with the *preſent* edition. It is to be wiſhed, that the pages of all the editions, ſo far as they reſpectively go, had been the ſame; but this attention to convenience having been hitherto neglected, the moſt eligible courſe ſeems to be to follow the *third* edition, that being the laſt; and all that can now be done to prevent diſappointment, when a reference happens not to anſwer, is to remind the Reader, that books publiſhed before 1730, ſuch as the firſt edition of *Hawkins*'s *Pleas of the Crown*, neceſſarily refer to the firſt edition of the STATE-TRIALS; thoſe publiſhed after 1730, ſuch as *Hale*'s *Hiſtory of the Pleas of the Crown*, uſually refer to the *ſecond* edition; and thoſe publiſhed after 1742, ſuch as Sir *William Blackſtone*'s *Commentaries*, to the *third* edition; with which laſt the preſent one will intirely agree. As to the *eleventh* volume, it is reſerved wholly for *additional* matter; the deſign being, that one part of it ſhall be occupied with a continuation of trials to the preſent time; and that the other part ſhall conſiſt of ſuch materials, as ſhall ſeem beſt calculated to ſupply any omiſſions in the former part of the collection.

II. In the preſent edition, the preface to the *firſt* edition, which was afterwards omitted, will be *reſtored*; together with that to the *caſe of Ship-money*; and the preface to the *ſecond* edition, as it was re-printed with the name of Mr. *Emyln* to it in the *third*, will be continued, as will alſo the prefaces to the ſupplemental volumes. The hiſtory of a publication is beſt preſerved by inſerting all the prefaces in their due order of time; though they are often omitted in modern editions of books, much to the diſſatisfaction of nice and accurate readers.

III. The two alphabetical tables to this edition, the one of the perſons tried of the times and places of their trial and of their crimes and puniſhments, and the other of the matter in general, will extend to all the eleven volumes. This will render a ſearch for any thing in the preſent edition leſs tedious and troubleſome, than it is in the *ſecond* and *third* editions and their ſupplemental volumes; to which, in conſequence of their being publiſhed at different times, there are not leſs than three diſtinct ſetts of tables inſtead of one.

From this view of the plan, on which it is determined to conduct the preſent edition, it is evident, that it muſt have very conſiderable advantages over the beſt of the former editions. It will be much leſs chargeable in the purchaſe; and yet equally commodious in the form, more various and valuable in the contents.

It only remains for the author of this preface to add a few lines concerning himſelf, leſt he ſhould be deemed further reſponſible than he means to be. The undertakers of the edition requeſted his aſſiſtance in ſuggeſting a plan for the conduct of the work, and in furniſhing a preface. With this requeſt he hath chearfully complied in the beſt manner he was able; and the reſult of his endeavours, he readily ſubmits to the correction of the candid reader. But as to the ſuperintendance reviſion and correction of the work in the printing, they are unavoidably devolved upon others; the writer of this preface having avocations, which would not leave him at liberty for ſuch a laborious office, even though he was inclined to undertake it. However, the ſame deſire of promoting an important and uſeful publication, which induced him to give his aid in its firſt commencement, will ſecure to the undertakers his advice in its progreſs and concluſion.

Inner-Temple, October 5, 1775.

FRANCIS HARGRAVE.

PREFACE

TO THE

FIRST EDITION.

SINCE 'tis obſervable that the Beſt and Braveſt of Mankind are far from being exempted from criminal Proſecutions, and that potent Malice, or prevailing Faction, have too often attempted the moſt conſummate Merit; that Learning which ſhews how Life, Honour, and Innocence are to be defended, when they ſhall happen to be injuriouſly attack'd, will not, 'tis preſum'd, be thought inferior to that, which inſtructs us how to defend our leſs important Rights.

And as the Common Law is nothing elſe but immemorial Cuſtom, and the Cuſtom and Methods of Tryal, and bringing Offenders to Puniſhment, is no inconſiderable Branch of that Law; and ſince theſe, as other Cuſtoms, are only to be collected from former Precedents, 'tis ſomething ſtrange, that amongſt the numerous Authors of Reports and Inſtitutes, not one has hitherto thought fit to make any conſiderable Collection of this kind, or thorowly to methodize or digeſt this ſort of Learning: nor can any probable Reaſon be aſſign'd for this Neglect, unleſs they have been deterr'd by the vaſt Trouble and Expence it muſt have been to any private Undertaker.

As to the Crown-Law already extant, 'tis ſo far from being a compleat Direction, even in the moſt ordinary Tryals, that it affords little more than ſome imperfect Hints of what the Authors intended. And as to the Doctrine of Impeachments, Tryals of Peers by Commiſſion, or in Parliament, Bills of Attainder, and the Cuſtoms and Uſage of Parliaments, in relation to theſe Matters: This is a Learning that remains entirely untouch'd, and is only to be collected from Precedents of this Nature.

The Undertakers of this Work therefore have ſpar'd no Pains or Expence to procure whatever is valuable of this kind: They have had Recourſe to every Library publick and private, where they had intimation there was any thing worth inſerting; and they have for ſome time ſince offer'd large Encouragement to thoſe who ſhould contribute either Manuſcripts or printed Tryals, towards rendering the Deſign compleat.

And having at length finiſh'd their Collection, they have added a Table to the whole, wherein all the various Learning the Work contains is reduc'd under proper Heads. And that which before lay diſpers'd in many Volumes, very difficult to be obtain'd, and ſeveral valuable Manuſcripts that have been perfectly buried in private Hands, are here brought to light; and ſo diſpos'd, that the ſtudious Reader may make himſelf Maſter of the Subject, with much leſs Labour and Expence than has hitherto been requiſite.

And as to the Manuſcripts, ſuch Care has been taken to avoid all Miſtakes, that the Judges and Counſel, who were concern'd in ſuch Tryals, and are ſtill living, have been attended with their reſpective Arguments, and have been pleaſed ſo far to encourage the Undertaking, as to correct whatever was amiſs.

Nor are the Publiſhers conſcious they have omitted one remarkable Tryal that could poſſibly be obtain'd, unleſs that of Mr. *Hampden* in the Caſe of Ship-Money, and that of my Lord *Strafford*; both which being to be found in Mr. *Ruſhworth*, are already in the hands of moſt Gentlemen, who are ſuppos'd to purchaſe theſe: and the inſerting them could be of no other uſe than to increaſe the Bulk, and enhance the Price of the Book. There is indeed another Account of my Lord *Strafford*'s Tryal, which differs in ſome Inſtances from Mr. *Ruſhworth*'s, and is more conciſe; and this it has been thought proper to inſert.

And as the Union of the two Kingdoms of *England* and *Scotland* is ſo near compleated, and there remains little elſe to diſtinguiſh us at preſent but the municipal Laws of the reſpective Kingdoms, it has been thought adviſable to add ſome remarkable *Scots* Tryals: In which (to do that Nation Right) are diſcover'd great Learning, Eloquence, and ſtrong Reaſoning. And indeed as the Civil Law prevails very much there, they have at leaſt as large a Field to exerciſe their Parts and Learning as our more *Southern* Orators, who are ſo unalterably attach'd to their Common Law; and it muſt be admitted, that the Party accus'd has in *Scotland* all the fair Play imaginable: He has what Counſel he thinks fit; he has a Copy of his Charge in his own Language, his Counſel are permitted to inſpect the very Depoſitions againſt him before he is brought to Tryal; and they are ſo little in haſte to diſpatch a State-Priſoner, that the Tryal often laſts ſome Months.

This Specimen of *Scotch* Tryals, as it will at preſent be acceptable to the Curious; ſo as we have one Senate, and one Legiſlature, it may hereafter give Birth to the introducing ſuch Methods of Tryal in each Kingdom, as in either ſhall appear to be founded on the greateſt Reaſon and Juſtice.

As to any Partiality in this Undertaking, it ſeems almoſt needleſs to diſclaim it; for the Reader has the Evidence and Arguments entire, without any Alteration or Diminution. It is true, as it falls out in Hiſtory, ſo it will do here; The farther we ſearch into Antiquity, and the higher we go, the leſs perfect will our Accounts be; the ſame Exactneſs cannot be expected there as in Tryals of a more modern Date: but thus much may be ſaid for the more antient Tryals, that they are the moſt perfect and compleat that could poſſibly be procur'd.

We ſhall detain the Reader no longer than to obſerve, that this Collection will not only be uſeful to the Learned in the Law, and to thoſe whoſe Misfortune it may be to fall under a criminal Proſecution, but in many Inſtances it corrects as well as illuſtrates our *Engliſh* Hiſtory: And there is ſcarce a controverted Point in Divinity or Politicks, but the Reader will find has been fully debated here by the greateſt Men our Nation has bred. And if Juſtneſs of Argument and true Eloquence have any Attraction, and theſe are Talents worth improving, here will be found the greateſt Collection of fine Speeches and Arguments, on the moſt important Subjects, that have hitherto been exhibited to the World.

PREFACE

TO THE

CASE OF SHIP-MONEY,

Which was printed in a ſeparate Volume, by Way of SUPPLEMENT to the FIRST EDITION.

THE Collection of STATE-TRYALS in Four Volumes in *Folio*, being a Work very uſeful and neceſſary, to make it more compleat, it was thought fitting (at the Deſire of Several Perſons of Eminency and Diſtinction in the Law) to add to it the Remarkable Tryal of Mr. *Hampden*, in the Great Caſe of SHIP-MONEY (between his Majeſty King *Charles* I. and that Gentleman). For that Reaſon therefore we cauſed it to be Printed of the ſame Size, and on the ſame Paper: Tho' it would have been inſerted in the Collection, could the Proprietors of this Copy have been prevailed upon to have parted with their Property to the Undertakers, on their Terms, which were very unreaſonable.

It is true, there are ſome of the Speeches in *Ruſhworth*, (a Book very ſcarce, and in few Hands) but then their Number is very ſmall, and without the Records and other material Proceſs herein contained, which are carefully Printed from ſuch Authentick Manuſcripts, that Envy itſelf cannot detract from their Intrinſick Worth and Value: And thoſe who would vainly endeavour to Impoſe on Mankind, That this TRYAL is in *Ruſhworth*, not only diſcover their Ignorance, but ſhew themſelves guilty of moſt Scandalous and Invidious Reflections.

We ſhall therefore ſay nothing of the Excellency of this Work, which is ſo uſeful for all *Engliſh* Gentlemen in general, as well as for thoſe of the Long Robe in particular; thoſe who will take the Pains to peruſe it, will be convinced of this Truth. The Twelve Judges, before whom this Caſe was Argued in the *Exchequer-Chamber*, and the Council on both Sides unanimouſly agreed, that no Caſe like this ever was Argued in any Court of Judicature; they all declared it to be a Matter of the higheſt Concern and Importance, and there was ſuch a Multitude of *Caſes*, *Precedents*, and *Records* (above 300) quoted on both Sides, and ſo many excellent Arguments made, of the greateſt Learning, that the whole would ſeem almoſt incredible, but to thoſe who will read them with Attention.

How this Great Caſe went is well known to every one who has the leaſt Acquaintance with Hiſtory: The Times were then troubleſome, and ſome People took hence occaſion to blow up the Coals of Diſſention, which at laſt broke out into that dreadful Conflagration, as ended in the Deſtruction of an Unfortunate Monarch, and compleated the Ruin of the beſt Conſtitution in the World.

All the Judges (long before this Caſe was Argued in the *Exchequer-Chamber*) gave their Opinions in Writing under their Hands for the KING; but whether, in this Affair, thoſe Sages in the Law acted like Faithful Counſellors, muſt be left to the Learned in that Profeſſion to determine. Every Man will think as he is inclined; however, moſt certainly, it is of the greateſt Concernment and Importance, for a Prince to have about him Faithful Counſellors; for after all, let him be never ſo Wiſe, Good, and Juſt, it is an undoubted Truth, that *Princes* See with others Eyes, and Hear with others Ears.

PREFACE
TO THE
SECOND EDITION.

THE favourable Reception which the Firſt Impreſſion of this Work has met with from the Public, is a ſufficient Recommendation of it in general; but perhaps it may not be unacceptable to the Reader to point out ſome of the particular Uſes and Advantages of it.

The Uſefulneſs of the Work to the Study of the Law

Collections are chiefly intended for the Preſervation of ſeparate Pieces, which by being ſcatter'd up and down, are often in length of Time either quite loſt, or hard to be come at: This, indeed, is a Care not worth beſtowing on thoſe which are of little or no Uſe; but the Pieces here preſerv'd are evidently ſuch, as a Collection of them muſt appear at firſt ſight very beneficial to all ſtudious Inquirers into the Laws of this Nation, eſpecially into that principal Branch of them, which concerns the Life and Liberty of the Subject: for ſince the Laws of *England* are in a great meaſure grounded upon immemorial Cuſtoms and Uſages, the Precedents and Examples of former Times muſt be ſingularly uſeful, if not abſolutely neceſſary to a right underſtanding of them. And tho' Criminal Caſes do very much depend upon *Statute Law*, either the Crimes themſelves, or the Puniſhments of them, being for the moſt part declar'd by Act of Parliament; yet the Method of Practice in the Trials of thoſe Crimes is in the main govern'd by *Common Law* Rules, and conſequently not to be known, but by the Uſage in former Caſes: and even in thoſe Inſtances, which fall under the Direction of the Statute Law, the beſt Expoſitor of thoſe Statutes is the conſtant received Practice, ever ſince they were made, *optima legum interpres conſuetudo (a)*.

Hiſtory,

The Profeſſors and Students of the Law will not be the only Perſons, who may receive Benefit from this Work: here will be Matter alſo of Inſtruction and Entertainment to all, who are delighted with Hiſtory, or inquiſitive after the Tranſactions of the former or preſent Times; many Parts of Hiſtory will here be illuſtrated and ſet in a true Light; the Reader may here ſee, as it were, with his own Eyes, not needing to truſt to the Repreſentations of others, which are often full of Partiality or Prejudice, according to the Party and Diſpoſition of the Hiſtorians. But the Nature of this Work admits not of ſuch Turns and Diſguiſes, as other general Accounts are but too juſtly chargeable with; the following Trials being plain Narrations of Sayings and Facts, for the moſt part publiſhed by Authority of the reſpective Courts, or by indifferent Hands; where it happens to be otherwiſe, the Reader is inform'd of it in the Title at the Head of the Trial.

And Eloquence.

Such as are taken with fluency of Style, or luxuriancy of Fancy, may here be entertain'd with a variety of eloquent Speeches and learned Arguments on many very important Subjects; tho' it muſt be own'd, intermixed with ſome others, which do not altogether deſerve that Character.

And ſince *Scotland* is now become a Part of this Kingdom, it has been thought proper to inſert ſome of the Proceedings in that Country, in which (to do that Nation Right) are diſcover'd great Learning and Eloquence: and it muſt be admitted, that very conſiderable Advantages are there allowed to the Priſoner, which we in *England* do not enjoy; he has what Counſel he thinks fit, and a Copy of the Charge in his own Language; his Counſel are permitted to inſpect the Depoſitions againſt him before he is brought to his Trial; and they are ſo little in haſte to diſpatch a State-Priſoner, that the Trial often laſts ſome Months.

To form a right Character of the Judges,

Another Uſe of this Work, will be the doing Juſtice to thoſe Judges and Counsel, who reſpectively preſided or practis'd at theſe Trials: the Names of ſuch as behav'd impartially on the Bench, without prejudicing the rightful Prerogatives of the Crown on the one hand, or betraying the legal Privileges of the Subject on the other; without bearing hard upon the Innocent, or ſhewing any unallowable Favour to the Guilty, will by this means be remember'd with Honour, and left upon Record to their laſting Praiſe and Commendation.

But it has not always been the good Fortune of *England* to have the Bench adorn'd with ſuch excellent Perſons; the Reader will in the Courſe of theſe Trials light upon certain Periods, wherein the Judges, who ought by the Duty of their Place to be the great Barrier *(b)*, and to act impartially between Prince and People, have notwithſtanding deliver'd Opinions in direct contradiction to the known fundamental Laws of the Nation, and as far as in them lay, ſacrificed the Conſtitution and Liberties of the Kingdom to the Pride and Ambition of an arbitrary Monarch. This generally ended in the Downfall of ſuch Judges, and the Miniſters, whoſe Tools they were; the Politics of thoſe Times not being arrived at that Height, to know how to influence the repreſentative Body of the Nation: for what need could Miniſters have to corrupt the *Interpreters* of the Law, if the *Makers* of it were intirely at their Devotion?

Others there have been, (as the Reader will have too frequent occaſion to remark) who, regardleſs of Right and Wrong, and all the ſolemn Oaths they had ſworn, have under Colour of Law, but yet in open Defiance of natural Juſtice, made no ſcruple to murder the Innocent, and by foul unwarrantable Practices to acquit the Guilty, juſt as they received their Directions from, or thought it would be beſt pleaſing to thoſe above them: to ſuch a monſtrous Pitch of bare-faced Iniquity were they arrived, that they ſtuck not to determine the ſame Point different ways at different times, making the Law a mere Noſe of Wax, but uſually turning it to the Deſtruction of the Perſon tried before them *(c)*. Theſe Volumes will impartially tranſmit their Memory to Poſterity, with that Reproach and Infamy, ſo deſervedly attendant upon Traitors and Murderers; and this not by general Characters, which are ſcarce to be rely'd on, being oft according to the Inclinations of the Writer, but by real Facts; their Behaviour will here appear juſt as it was, in its own true Colours: by which the Reader, without the help of Names, will eaſily diſtinguiſh the calm and ſedate Judge, willing to hear and receive right Information, and deſirous to determine according to Truth and Juſtice, from the hectoring Bully, who, without any regard to the decency of his Character, uſes his Authority to no other End, than to ſilence Reaſon and Truth, and by Bluſtering and Clamour to worry the Innocent to death.

And Counſel.

The like Diſtinction will readily occur with reſpect to thoſe, whoſe Office was at the Bar.

Some he will find, preſſing nothing illegal againſt the Priſoner, nothing hard and unreaſonable (however in ſtrictneſs legal) uſing no Artifices to deprive him of his juſt Defence, treating his Witneſſes with Decency and Candour; being not ſo intent upon convicting the Priſoner, as upon diſcovering Truth, and bringing real Offenders to Juſtice; looking upon themſelves, according to that famous Saying of Queen *Elizabeth*, not ſo much retained *pro Domina Regina*, as *pro Domina Veritate (d)*.

These will appear in a different Light from others, who with rude and boiſterous Language abuſe and revile the unfortunate Priſoner; who ſtick not to take all Advantages of him, however hard and unjuſt, which either his Ignorance, or the ſtrict Rigour of Law may give them; who by Force or Stratagem endeavour to diſable him from making his Defence; who brow-beat his Witneſſes as ſoon as they appear, tho' ever ſo willing to declare the whole Truth; and do all they can to put them out of countenance, and confound them in delivering their Evidence: as if it were the Duty of their Place to convict all who are brought to Trial, right or wrong, guilty or not guilty; and as if they, above all others, had a peculiar Diſpenſation from the Obligations of Truth and Juſtice. Such methods as theſe ſhould be below Men of Honour, not to ſay Men of Conſcience: yet in the Peruſal of this Work, ſuch Perſons will too often ariſe to view; and I could wiſh for the credit of the Law, that that great Oracle of it, the Lord Chief Juſtice *Coke (e)*, had given leſs reaſon to be number'd among this ſort.

The Gentlemen of that Profeſſion, whether imploy'd in criminal Proſecutions or civil Actions, are not to blame for doing their beſt in ſifting out the Truth, and making all juſt Obſervations in favour of their Clients; yet if after having done ſo, they ſhould at laſt find the Merits of the Cauſe to lie on the other ſide, I am ſure it would be no Diſparagement to them to deſiſt from attempting any thing to the prejudice of Truth and Juſtice: for how juſt and reaſonable ſoever it may be to undertake the Defence of a Cauſe while nothing appears but that it may be right, yet when in the Courſe of the Evidence it proves manifeſtly otherwiſe, it is then high time to deſert it; for they muſt needs think, that no Fees or Retainers will be a juſt Excuſe, either in this World or another, for being wilfully inſtrumental in promoting Injuſtice and Wrong: and tho' it be no part of their Province to determine either the Law or the Fact, the former of which belongs to the Court, and the latter generally to the Jury; yet if either the one or the other be miſled by the artful Turns and Inſinuations of the Pleader, or any material Truth ſuppreſs'd or miſunderſtood by his baffling of the Witneſſes, the Guilt will, and ought to lie at his door.

(a) 4 Co. Inſtit. 75. (b) *See Sir* Francis Winnington's *Speech. Trials*, Vol. III. p. 222. (c) *Sir* John Hawles's *Remarks. See Trials*, Vol. IV. p. 206. (d) 3 Co. Inſtit. 79. *Trials*, Vol. IV. p. 176. (e) *See the Trial of Sir* Walter Raleigh, No. 18. Vol. I. p. 213.

To ſhew the Excellency of the Engliſh *Laws. (Civil Suits.*

A FURTHER Advantage of this Collection is, that it will afford frequent Opportunities to the careful Reader of obſerving the Excellency of our Laws, and the Advantage an *Engliſhman* thereby enjoys above his Neighbours. When I meet with an Author extolling our Laws above thoſe of other Countries, and repreſenting us upon that, as well as other accounts, as the Envy of all around us, I preſume it is meant chiefly with regard to criminal Procedures; for as to CIVIL SUITS, when I conſider the Tedioufneſs and Delays of ſuch Suits, neceſſarily ariſing from our Methods and Forms of Law; the various Offices, and ſometimes Courts they muſt paſs thro', before they are finally decided; the exorbitant Fees to Counſel, whereto the Coſts recovered bear no proportion; the Duties ariſing to the Crown from many Incidents in every Cauſe; and above all, the Nicety of ſpecial Pleadings, whereby the juſteſt Cauſe in the World, after having with great Trouble and Expenſe been conducted almoſt to a Period, may thro' the miſtake of a Letter (often occaſion'd by an Attorney's Clerk) be irretrievably loſt, or at leaſt turn'd round to begin again, and that not without payment of Coſts to him, who has all the while been the unjuſt Invader and Detainer of another's Property: when theſe things, I ſay, are conſidered, it is hard to imagine, that any one can in good earneſt believe, we have in this reſpect any great matter to boaſt of.

Eccleſiaſtical Courts.)

NOR can I ſuppoſe they are our ECCLESIASTICAL COURTS, which make us the Envy of our Neighbours: the petty but chargeable Suits, which are there often inſtituted to the no ſmall Damage of both ſides, only to indulge the private Paſſions of thoſe who inſtitute them; the conſtant Practice of denouncing Excommunication for the minuteſt Contempts *(f)*, (a Puniſhment originally deſign'd only for ſuch flagrant Vices, as render'd a Man unfit for Chriſtian Communion, which formerly was greatly dreaded, but is now by theſe means ſlighted and deſpiſed;) and the pecuniary Commutations avowedly permitted for Penances *(g)*, are things, which will not allow me to make any ſuch Suppoſal.

As to Criminal Proſecutions.

THE Excellency therefore of our Laws above others, I take chiefly to conſiſt in that part of them, which regards CRIMINAL PROSECUTIONS: here indeed it may with great Truth and Juſtice be ſaid, That we have by far the better of our Neighbours, and are deſervedly their Admiration and Envy.

THIS might be made to appear in many particulars. In *other* Countries the Courts of Juſtice are held *in ſecret*; *with us publickly (h)* and in open view: *there* the Witneſſes are examin'd in private, and in the Priſoner's *Abſence*; *with us* they are produced face to face, and deliver their Evidence in open Court, the Priſoner himſelf being *preſent*, and at liberty to croſs-examine them: *there* the *Judges* determine both Law and Fact; *with us*, if the Fact be denied by the Priſoner, it muſt be tried by twelve Men of his own Rank and Condition, *(i)* who are *ſworn* to go according to Truth and Evidence, and are therefore call'd a *Jury*; to any of theſe the Priſoner may except for juſt Cauſe, and in capital Caſes to a large Number without Cauſe: and unleſs this Jury declare him guilty of the Charge, the Judges can proceed no further againſt him. If the Priſoner be a Peer of the Land, his Trial on all Indictments for Treaſon, Felony, or Miſpriſion of either, muſt be by other Peers not fewer than twelve. In *other* Countries, *Racks and Inſtruments of Torture* (*k*) are applied to force from the Priſoner a Confeſſion, ſometimes of more than is true; but this is a Practice which *Engliſhmen* are happily unacquainted with, enjoying the benefit of that juſt and reaſonable Maxim, *Nemo tenetur accuſare ſeipſum:* in *other* Countries the Criminals are often executed *in private*; *with us* always openly and *in public*, it being neceſſary to anſwer the end of Juſtice, that a public Example be made of Offenders in order to deter others from the like Crimes; but where the Trial and Execution are in private, it not only defeats the end of Juſtice, but affords an Opportunity of ſecretly deſtroying innocent Men, which muſt needs expoſe the Subject to a variety of Fears and Dangers inconſiſtent with the Liberties of a free People.

THESE are great and noble Privileges, which we may juſtly value ourſelves upon, and ſhould be very unworthy of, if we did not highly prize them.

Particularly in caſes of High Treaſon.

IN Caſes of HIGH-TREASON the *Engliſh* Subject has peculiar Advantages: This is a Charge of a general nature, and therefore more difficult to make a Defence to *(l)*; it ſubjects the Offender to a ſeverer Puniſhment, than other Crimes; the Crown is more nearly concerned, by reaſon whereof the Priſoner has a more powerful Adverſary to contend with: this is the fatal Engine ſo often imploy'd by corrupt and wicked Miniſters againſt the nobleſt and braveſt Patriots, whoſe laudable Oppoſition to their pernicious Schemes thoſe Miniſters are very ready to conſtrue into Treaſon and Rebellion againſt the Prince; thereby confounding their own and the Prince's Intereſt together, as if the one could not be oppos'd without the other. Our Anceſtors therefore thought this a Caſe, wherein the Subject needed more than ordinary Aſſiſtance; leſt therefore too great a Latitude ſhould be left to the arbitrary Determinations of a Judge, who is the Creature of the Crown, they took care to particularize the ſeveral Species of Treaſons by an expreſs Law *(m)*: and to guard againſt all forc'd Conſtructions and Innuendos, it was by the ſame Law farther provided, that all Treaſon ſhould be prov'd by ſome manifeſt plain Act or Deed; and that no innocent Perſon might be in danger of ſuffering thro' the Perjury of a ſingle Witneſs, it was afterwards provided *(n)*, that none ſhould be convicted without two poſitive Witneſſes.

NOR does our Law excel others only in defending the *Life* of the Subject againſt any injurious Attacks, but alſo in its care and concern for the *Liberty* and Freedom of his Perſon.

And in the Proviſions for the Liberty of the Subject

How abſolute ſoever the Sovereigns of other Nations may be, the King of *England* cannot take up or detain the meaneſt Subject at his mere will and pleaſure *(o)*: it is one of the Privileges confirm'd by *Magna Charta* *(p)*, that no Man ſhall be reſtrain'd of his Liberty, but by the Law of the Land; that is, ſays Lord *Coke* *(q)*, by Indictment or Preſentment of good and lawful Men, or by the King's Writs out of his ordinary Courts of Juſtice *(r)*, or by lawful Warrant. Now every lawful Warrant *(s)* muſt be grounded upon Oath; muſt plainly and ſpecially expreſs the cauſe of Commitment *(t)*; muſt be under the Hand and Seal of one, who is authorized to do it, expreſſing his Office, Place and Authority *(u)*, whereby he committeth, and muſt conclude, *until he be delivered by due courſe of Law*, and not *until further Order*, or with ſuch like Concluſions. Nor has the Law only preſcribed what ſhall be neceſſary to a legal Commitment, but it has alſo provided divers Remedies (x) in caſe any one ſhould be illegally committed, or detained; the Party injured may have an Action or Indictment founded on *Magna Charta*, an Action of falſe Impriſonment, a Writ *de homine replegiando*, and a Writ *de odio & atia (y)*.

(f) Cr. Car. 196, 199. Mo. Rep. 540. Latch. 174, 204. (g) 2 Co. Inſt. 489. 620. 2 Rol. rep. 384. *Godolph.* Abridg. p. 89. (h) 2 Co. Inſtit. 103. (i) Forteſcue de Laud. Leg. Angl. cap. 27 & 28. (k) Ibid. cap. 22. *This was the Practice of the antient Civil Law. See the Fragments of* Julius Paulus, lib. 5. Sentent. recept. Tit. 14. de quæſtionibus habendis: Si ſuſpicione aliqua reus urgeatur, adhibitis tormentis de ſociis & ſceleribus ſuis confiteri compellitur:—Reus evidentioribus argumentis oppreſſus repeti in quæſtionem poteſt, maximè, ſi in tormenta animum corpuſque duraverit. *See alſo a whole Title in the Digeſts* de quæſtionibus, Lib. 49. tit. 18. *See Inſtances of thoſe who endured theſe Tortures in* Valer. Max. *lib.* 3. *cap.* 3. & *lib.* 8. *cap.* 4. *But ſo abſurd and unreaſonable a Practice was this, that even the Antients, among whom it was in uſe, had no good opinion of it, as appears from l.* 1. § 23. *of the ſaid Title* de quæſtionibus: Res eſt fragilis, & periculoſa, & quæ veritatem fallit; nam plerique patientiâ, ſive duritiâ tormentorum ita tormentum contemnunt, ut exprimi eis veritas nullo modo poſſit; alii tantâ ſunt impatientiâ, ut in quovis mentiri, quam pati tormenta, velint; ita fit, ut etiam vario modo fateantur, ut non tantum ſe, verum etiam alios comminentur. Quintilian. declam. 18. Omnium quidem incertorum ſuſpiciones peſſimè ſemper a corporibus incipiunt; nec benè de cujuſquam moribus illam partem corporis interroges, quæ non animo, ſed dolore reſpondet. *See more to this purpoſe in* Montagne's *Eſſays, Book* 2. *cap.* 5. *and* Grotius's *Letters, Let.* 693. *wherein he approves the Omiſſion of this Practice in* England.

(l) Trials, Vol. IV. p. 177. *How great a Latitude was taken in this Matter may appear from the antient Law-Books, where the lying with the Nurſes of the King's Children, or the killing a Man ſent on an Errand by the King were adjudged Treaſon.* 1 Aſſiz. 22 Ed. 3. pl. 49. Briton. p. 43.

(m) 25 Edw. 3. Stat. 5. cap. 2. *That this was the Occaſion of this Law appears from the Petition of the Commons on which it was founded, wherein they complain the Juſtices did adjudge ſeveral to be Traytors, for Cauſes which they did not own to be Treaſon. This Petition is entered in the Parliament Rolls of that Year.* No. 171. (n) 5 & 6 Edw. 6. cap. 11. Deut. cap. 19. ver. 15. (o) 2 Co. Inſtit. 186. (p) Cap. 29. (q) 3 Inſtit. 46. 50. (r) 2 Co. Inſtit. 187. (s) 2 Co. Inſtit. 52. (t) 3 Car. 1. cap. 1. § 5. 2 Co. Inſt. 616. (u) 2 Co. Inſt. 591.

But ſo precious is the Liberty of a Man's Perſon in the eye of the Law, that none of theſe Remedies was thought ſufficient, not giving ſo ſpeedy a Relief as the urgency of the Caſe requires; another Remedy is therefore provided, *viz.* the Writ of *Habeas Corpus (z)*, which is called *feſtinum remedium (a)*. By this Writ the Gaoler is obliged immediately to bring the Body of his Priſoner before the Lord Chancellor, or one of the twelve Judges, and to certify by whom and for what Cauſe he ſtands committed; whereupon the Lord Chancellor or Judge is requir'd (unleſs he be legally committed for an Offence not bailable by Law) to diſcharge or bail him, except in caſe of Treaſon or Felony plainly and ſpecially expreſſed in the Warrant *(b)*; and even in thoſe Caſes, that the Innocent may not be worn and waſted with long Impriſonment *(c)*, the Priſoner muſt be brought to his Trial within a reaſonable time; for if he be not indicted the next Term or Seſſions after his Commitment, having duly enter'd his Prayer, he ſhall on the laſt Day of the Term or Seſſions be admitted to Bail, unleſs it appear to the Court upon Oath, that the Witneſſes for the King could not then be produced: and then, if he be not indicted and tried the ſecond Term or Seſſions after his Commitment, he ſhall be quite diſcharged *(d)*.

But becauſe all theſe Precautions in favour of Liberty may be rendered uſeleſs by ſending the Subject to remote or private Priſons (e), whereby he may loſe the Benefit of the King's Commiſſion of Goal Delivery *(f)*, and the King's Writs be rendered ineffectual for want of knowing whom to direct them to (g); to prevent this Inconvenience, the Law has further provided, that no Subject of *England* ſhall be ſent Priſoner into any Part beyond the Seas, either within or without the King's Dominions (h): nor ſhall any be compelled againſt his Will to ſerve the King out of the Realm, leſt under pretence of Service, as Ambaſſador or the like, he ſhould be ſent into real Baniſhment *(i)*: nor can any be regularly impriſoned within the Realm in any other Place than the common County Gaol or other public accuſtomed Gaol *(k)*; for which reaſon a Gaoler cannot be authorized by any Warrant to deliver his Priſoner into the Cuſtody of an unknown Perſon *(l)*: Nor can any new Gaol, according to the Opinion of Lord *Coke* (m), be erected, but by Act of Parliament; one Statute (n) ordains, that none ſhall be impriſoned by Juſtices of the Peace (ſome ſay this extends to all other Judges and Juſtices (o)) but in the common [County (p)] Gaol, ſaving to Lords and others, who have Gaols, their Franchiſes.

Some will be ready to object, if theſe Laws were in force, that a Subject ſhall not be compelled to ſerve the King out of the Realm, how comes it to paſs that divers Subjects [not only Mariners, but others] have been taken up by virtue of Preſs-Warrants (q), and by Force put aboard a Ship and carried beyond Sea? If it be not lawful to commit to any but antient accuſtomed Gaols, how comes it about that ſo many Perſons have been taken up by Meſſengers (r), who have impriſoned them in their own Houſes, detaining them there not for two or three days only, (the Time allowed by Law to take their Examinations (s)) but for Weeks and Months, thereby making Gaols of their Houſes, tho' they have neither the Grant of ſuch a Franchiſe, nor any Act of Parliament to make them ſo? Theſe are Queſtions to which I will not undertake to give a ſatisfactory Anſwer; but ſhall leave that to others, who are more nearly concern'd and better able to do it: I can only ſay, that whatever may in fact have been practiſed, I do not know that ſuch Practices have ever had the Sanction of one judicial Determination, and for my part muſt confeſs myſelf unable to reconcile them to the Laws of the Land.

It muſt be owned that the Guards and Fences of the Law have not always proved an effectual Security for the Subject; the Reader will in the Courſe of theſe Trials find many Inſtances, wherein they, who held the Sword of Juſtice, did not employ it, as they ought, to the Puniſhment of Evil-doers, but to the Oppreſſion and Deſtruction of Men more righteous than themſelves. Indeed it is ſcarce poſſible to frame a Body of Laws, which a tyrannical Prince, influenced by wicked Counſellors and corrupt Judges, may not be able to break thro'; they may ſometimes *check*, but will never be able to *ſtop* the Career of violent and furious Men. The Law itſelf is a dead Letter, Judges are the Interpreters of it, and if they prove Men of no Conſcience nor Integrity, will give what Senſe they will to it, however different from the true one; and when they are ſupported by ſuperior Authority, will for a while prevail, till by repeated Iniquities they grow intolerable, and throw the State into thoſe Convulſions, which may at laſt end in their own Ruin. This ſhews how valuable a Bleſſing an upright and learned Judge is, and of what great Concern it is to the Public, that none be prefer'd to that Office, but ſuch whoſe Ability and Integrity may be ſafely depended on: *Ignorantia judicis eſt calamitas innocentis* (t).

Further Proviſions in caſes of Treaſon.

However, amidſt all the Miſchiefs cauſed by the arbitrary Proceedings of theſe wicked and unjuſt Judges, there is one good Effect has follow'd from them; it is to them we owe thoſe additional Proviſions, which have been ſince made for the Security of the Subject: *Ex malis moribus bonæ oriuntur leges* (u); *Leges egregiæ apud bonos ex delictis aliorum gignuntur* (x). In all Caſes of Treaſon, wherein the Crown is more immediately intereſted, the Party accuſed may now demand a Copy of the whole Indictment (y), five days at leaſt, and of the Names of the Jurors (z) two days at leaſt before his Trial; he has a right to the aſſiſtance of Counſel (a), not only in matters of Law, but in matters of Fact; he may now have the benefit of the uſual Proceſs (b) to compel the Appearance of his Witneſſes; who, when produced, are to be examined on Oath (c), as well as thoſe on the part of the Crown (this laſt Privilege has been ſince (d) extended to all Treaſons and Felonies). Each Species of Treaſon muſt be prov'd by ſome Overt-act (e), and there muſt be at leaſt two Witneſſes to each Species (f). If the Accuſed be a Peer, not only *ſome* pick'd out of the whole Body, but *all* the Peers muſt be ſummoned to the Trial at leaſt twenty days before (g).

There are other Alterations (h) made in favour of the Subject, which the Legiſlature has not thought fit ſhould take place during the Life of the preſent Pretender.

After his Deceaſe no Attainder for Treaſon will work a Diſheriſon of the Heir, or affect any other Right, than only that of the Offender during his Life: the Priſoner will then be entitled to have a Liſt, not only of the Jury, but of the Witneſſes to be produced againſt him at the Trial, with the addition of their reſpective Profeſſions and Places of Abode, delivered to him along with the Copy of the Indictment, in the Preſence of two Witneſſes, ten days before his Trial.

The firſt of theſe Alterations being to mitigate the Puniſhment of thoſe, who ſhall by the Law be adjudged guilty, might be thought an unſeaſonable Relaxation, while there ſhould be any Apprehenſions of immediate Danger: But why the others ſhould be defer'd ſo long, which are intended only as the proper guards of Innocence againſt violent Proſecutions, I will not pretend to gueſs; for the heinouſneſs or miſchief of the Crime charged is ſo far from being a Reaſon, why the Priſoner ſhould want Aſſiſtances, that it is a very ſtrong Reaſon to the contrary; it being as eaſy a matter to impoſe a falſe Charge of a great, as of a ſmall Crime.

These are ſome of the Privileges of a *Britiſh* Subject, which no other Subject in the World can boaſt of. But after all, it muſt not be ſaid, that our Laws will admit of no Alterations for the better.

Obſervations on Juries.

1. Even in that darling and deſervedly eſteem'd Privilege of being tried by Juries, ſome Change might, I was going to ſay ought to be made: The Law requires, that the twelve Men, of which a Jury conſiſts, ſhall all agree before they give in a Verdict; if they don't, they muſt undergo a greater Puniſhment than the Criminal himſelf; they are to be confin'd in one Room without Meat, Drink, Fire or Candle, till they are ſtarv'd. It would be pretty hard to aſſign any tolerable Reaſon for this Uſage: If it has ſeldom or never happen'd, I'm afraid it has ſometimes been prevented only by the unjuſt Com-

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(x) 2 Co. Inſt. 55. (y) *This Writ is now quite diſuſed; what the nature of it was, ſee* 2 Co. Inſtit. 42. (z) 2 Co. Inſt. 55. (a) See *Trials, Vol.* IV. *p.* 561. (b) 31 Car. 2. cap. 2. § 2 & 3. (c) 2 Co. Inſt. 315. (d) 31 Car. 2. cap. 2. § 7. (e) *This was complained of by the Judges in the* 34 *of* Eliz. 1 Ander. Rep. 297. (f) 2 Co. Inſtit. 43. 315. Cro. Eliz. 830. (g) 2 Co. Inſtit. 53. (h) 31 Car. 2. cap. 2. § 12. (i) 2 Co. Inſtit. 47. (k) 9 Co. Rep. 119. b. (l) 2 Co. Inſtit. 53. *How a Priſoner may lawfully be removed, ſee* 31 Car. 2. cap. 2. § 9. (m) 2 Inſtit. 705. (n) 5 Hen. 4. cap. 10. (o) 2 Co. Inſtit. 43. (p) See *Trials, Vol.* IV. *p.* 561. (q) See 16 Car. 1. (r) See *Trials, Vol.* IV. *p.* 554. 5 Mod. Rep. 79. (s) Cro. Eliz. 830. (t) 2 Co. Inſtit. 30. (u) 2 Co. Inſtit. 161. (x) Tacit. Annal. Lib. 25. § 20. *Some Inſtances of this kind are there mentioned.* (y) 7 Gul. 3. cap. 3. § 1. (z) Ibid. § 7. (a) Ibid. §. 1. (b) Ibid. §. 7. (c) Ibid. §. 1. *Thus it ought always to have been.* See 3 Co. Inſtit. p. 79. *State Trials*, Vol. IV. p. 178. (d) 1 Ann. cap. 9. § 3. (e) 7 Gul. 3. cap. 3, §. 2. (f) Ibid. § 4. (g) Ibid. § 11. (h) 7 Ann. cap. 21.

pliance of ſome of the Jurors againſt their own Conſciences. For however plain ſome Caſes may be, others there are, wherein they cannot avoid differing in their Judgments; nor do they deſerve any Cenſure for ſo doing; many Men, many Minds; all can't ſee Things in the ſame Light. To what end therefore are they to be reſtrained in this manner? It may indeed force them to an outward ſeeming Agreement againſt the Dictates of their Conſciences; but can never be a Means of informing their Judgment, or convincing their Underſtanding. I have known, when a Juror being afterwards aſked, how he could join in ſuch an unjuſt Verdict, could give no better Reaſon for it, than that the others were of that Opinion; which, I fear, is the beſt Reaſon a great many are able to give.

IF it be ſaid, that otherwiſe one ſtubborn Fellow may ſtand it out againſt all the reſt, even contrary to the Convictions of his own Mind, it is very true he may do ſo; and if his Body be as ſtubborn as his Mind, ſtarve them out too. But why then is his Voice regarded? Why can't the others give a ſufficient Verdict without him? Or, if a Man muſt not be convicted without the Agreement of all, why then is not the Priſoner acquitted, when they can't all agree? But why muſt the Jurors be compell'd to an Agreement one way or other? After all, a forc'd Agreement (as all Agreements procur'd by Reſtraint are) is no better than none. If the Conſent of him, who ſtands it out againſt the reſt, be of any regard, it ought to be free; if of none, then why can't a Verdict be given without it? If twelve muſt agree, the better way would be to have twenty-three on a Jury, and the Verdict be given by the Majority; for ſure 'tis an odd way of deciding a Cauſe, that it ſhould be left to the Determination of him, who can faſt the longeſt. But ſuppoſe it ſhould be thought requiſite, that two-thirds ſhould be of a mind, and if ſo many could agree to find the Priſoner guilty, he ſhould be convicted; and if they did not, he ſhould be acquitted: Would not this be a ſufficient Security for Innocence? Sure it would be much better to make a Proviſion in caſe of Non-Agreement, than by forcible Methods to extort the Appearance of one; for it is the ſame thing to the Priſoner, whether he be convicted without the Concurrence of all, or by a Concurrence which is not ſincere, but forced.

On the Proceedings being in Latin.

2. ANOTHER thing not to be counted among the Excellencies of our Law is, the Indictments and other Proceedings being in the Latin Tongue. Every body knows, that not one Priſoner in a great many underſtands that Language; and tho' the Indictment is generally explained to him in the vulgar Tongue, yet it is to the Original he muſt take his Exceptions, and upon that the Arguments muſt be founded. In the days of *Oliver Cromwell* all Proceedings were in the vulgar Tongue; and tho' it has not been thought proper to continue a Practice introduced by an Uſurper, yet if the thing be really fit and right, it matters not, who introduced it: *fas eſt & ab hoſte doceri.* The ſame might be ſaid with reſpect to the Writing it in a peculiar hand, not generally underſtood.

It is a Maxim in Law, *Ignorantia juris non excuſat (i)*; ignorance of the Law is no good Plea; it is indeed neceſſary that it ſhould not, for if it were, the Laws would always be evaded by a pretended Ignorance; but then it muſt be very unreaſonable to uſe any Methods, which tend to conceal that Law, and keep the People in ignorance of it: *Miſera ſervitus eſt, ubi jus eſt vagum aut incognitum (k).* The Inconvenience of this will appear more plainly, if we conſider that every Indictment muſt be aſſented to by a Grand-Jury; and another Jury muſt afterwards declare whether the Charge therein contained be true or not. Now how can it be expected they ſhould declare their Conſent to what they cannot underſtand? So that I verily believe, the greater part may very ſafely return *Ignoramus* to every Bill that comes before them.

On the Form of Indictments.

3. HERE it may not be amiſs to take notice of one thing relating to the Form of our Indictments. It is very common to inſert Words, which are never intended to be proved: as for inſtance, the Words *vi & armis (l)* in Indictments for writing or publiſhing Libels, and in many other Caſes, where there is no pretence or colour of Truth in them: e. g. *Juratores præſentant, quod J. S.* VI ET ARMIS *falsò & malitioſè ſcripſit quendam libellum (m)*; which not only is an Abſurdity in the nature of the thing, but tends to inſnare the Conſciences of Jurymen; who in giving a general Verdict againſt the Defendant, do not always conſider whether that part of the Indictment be prov'd. When a Juryman gives a general Verdict againſt the Defendant, he does in effect declare upon Oath, that he believes the entire Charge as laid in the Indictment, to be true; how therefore can he find a Man guilty generally, when there is one part of the Charge, which he either believes to be falſe, or at leaſt has no reaſon to believe to be true? It is ſaid that theſe are Words of courſe; if they be, yet ſtill they have a natural and proper meaning (elſe why are they inſerted?); and if they are not true, I don't ſee how any one can upon Oath honeſtly declare they are, unleſs it can be thought an Excuſe for giving a raſh (not to ſay a falſe) Verdict, that it is a thing of courſe. The Words of courſe are generally the moſt material Words in an Indictment; *proditorie (n)* is a Word of courſe in an Indictment for Treaſon, *burglariter (o)* in Burglary, and *felonice (p)* in Felony; but if any of thoſe Words be omitted in their reſpective Caſes, the Indictment will be naught.

In blaſphemous

IT is greatly to be feared, that Jurymen do ſometimes overlook the moſt eſſential Words of an Indictment, under the notion of their being Words of courſe. Thus in the Caſe of a *blaſphemous Libel*, it is cuſtomary to inſert the Words *falsò & malitioſè ſcripſit*, &c. and indeed they are the very *Giſt* of the Indictment, and abſolutely neceſſary to conſtitute the Offence: for as no Words can be *Blaſphemy* (i. e. a reproachful Reflexion upon God or Religion) which are true, for Truth can be no Reflexion on the God of Truth; ſo no Opinions, however erroneous, can merit that Denomination, unleſs utter'd with a wicked malicious deſign of reviling God or Religion *(q)*. And yet how often have Perſons been found guilty upon theſe Indictments, without any Proof either of the Falſhood of the Poſitions, or of the Malice of him who wrote them? Nay ſometimes, when there is a great deal of reaſon to think they were publiſhed from no other Principle, but a ſincere love and regard for Truth? Theſe are things not always ſufficiently attended to by Juries; it often ſatisfies them, if the Defendant be prov'd to have done the Fact (*i. e.* wrote the Book) whether with the Circumſtances *falsò & malitioſè*, as charged in the Indictment, or not: and yet when the Defendant comes to move in Arreſt of Judgment, that what he has done cannot amount to *Blaſphemy*, becauſe it was not done with an evil Intent; he is then told, that that is found by the Verdict, and muſt be taken to be true; and ſo indeed it muſt: but then this ſhould be a Caution to Juries, how they find a Man guilty of an Indictment generally without due Proof of every part of it; ſince every thing, which was proper for their Conſideration, will after Verdict be ſuppos'd to have been conſider'd by them, whether in reality it was ſo or not.

And defamatory Libels.

THUS in the Caſe of *defamatory Libels*, or of *Scandalum Magnatum*, when the word *falsò* is inſerted, the Defendant ought not to be found guilty, if the Aſſertion be true. Whether it be neceſſary to inſert the word *falsò*, is another Queſtion, (tho' I believe it would be difficult to maintain an Indictment without it;) yet certainly where the Indictment charges a Man with *falſly* writing a Libel, he cannot juſtly be found guilty of that Indictment ſo laid, if the Words be *true.*

On Trials for Felony.

4. HITHERTO the Law allows not a Copy of the Indictment, nor of the Names of the Jurors, nor the Aſſiſtance of Counſel * as to matter of Fact on any Indictments for FELONY, yet it is the Opinion of many it would be never the worſe if it did; for it ſeems very ſtrange to allow a Man theſe Aſſiſtances in defence of his Property, and deny them to him, when his Life lies at ſtake. Perhaps it will be ſaid, that the Priſoner would by theſe means be enabled to make captious Exceptions to the Proceedings, whereby public Juſtice might be either protracted or evaded; but this Objection would be remov'd, if the Law did not allow of ſuch Exceptions: for either they relate to the Merits of the Cauſe, or they do not; if they do, they are not captious, but he ought to have the Benefit of them; if they do not, there will be no Wrong done in diſallowing them.

BUT ſtill there is one Reaſon why, as the Law now ſtands, the Priſoner ought not to be wholly deprived of the means of making even theſe captious Exceptions; and that is, becauſe otherwiſe he may be brought into jeopardy of his Life divers times for one and the ſame Offence, a thing very unreaſonable in itſelf, and contrary to the Maxims of Common Law †: for if he be found not guilty on a faulty Indictment, his Acquittal ſhall avail him nothing, but he may ſtill be indicted again for the ſame Fact. This is founded on a Suppoſition ‡, that his Life was in no danger on the firſt Indictment, becauſe of the Exceptions which might be taken to it; and yet it is apparent, that the generality of Priſoners, unleſs they may be inform'd by Counſel of ſuch Exceptions, and adviſed how to make them, are like to be but little the better for them.

(i) Digeſt. Lib. 22. tit. 6. De juris & facti ignorantia, l. 9. Plowd. Com. 343. (k) 4 Co. Inſtit. 246. 332. *This Grievance is ſince remedied by the* 4 Geo. 2. cap. 26. *by which it is enacted, That all Proceedings ſhall be in* Engliſh, *and wrote in a common legible Hand and Character, and in Words at length. See alſo* 6 Geo. 2. cap. 14. (l) *Theſe Words are not neceſſary in theſe Caſes. See* 37 H. 8. c. 8. *it is therefore the more inexcuſable to inſert them, when they are not true.* (m) *See the Indictments of* Francis Smith, *and of* Laurence Braddon, *in the Appendix.* 2 Lev. 221. (n) 3 Co. Inſtit. 15. H. P. C. 11. (o) 4 Co. 39 b. Cr. Eliz. 920. (p) 5 Co. 121 b. Cro. Eliz. 193. (q) *See* Reformat. leg. Eccleſiaſt. de Blaſphemia cap. 1. Blaſphemia contemptu contumelias in Deum projicit, & iracundia. *See alſo* Whitlock'*s Speech in behalf of* James Nayler, *Vol.* II. *p.* 273. *Blaſphemy is* crimen malitiæ.

* *See* Whitlock'*s Mem.* p. 433.

Le Peine fort & dure

5. THERE is one thing in our Laws which is very ſingular, and comes the neareſt of any thing to the Tortures uſed in other Countries, *viz.* LE PEINE FORT ET DURE, or, preſſing to death: 'Tis true, this is not uſed to force the Priſoner to confeſs, but to plead one way or other; but yet even this ſeems a needleſs piece of Severity. In High-Treaſon, if the Party refuſe to plead, the Charge is taken *pro confeſſo*; nor would it be any Inconvenience if it were ſo in other Caſes, or rather if it amounted to a Plea of *not guilty*, and the Court thereupon proceeded to hear the Proofs of the Fact; for it is as unreaſonable to preſs a Man to death without a Trial, as it would be to hang him without one: Nor can a plea extorted by ſuch Methods give any Credit to the Proceeding of the Court more than if they had proceeded without one, which yet would be no Injuſtice to the Priſoner, who will not plead, when he may: Nor, on the other hand, is it reaſonable, that the hardineſs of a Criminal, if he ſhould be able to endure ſuch a lingering Death, ſhould exempt him from the Forfeitures the Law has thought his Crime to deſerve: If this Advantage were taken away, the only Temptation of ſtanding mute would be taken away too.

On the Puniſhments of Crimes

6. IT has been eſteemed an Advantage of our Law, that it does not inflict various and cruel Deaths; that which is inflicted for Treaſon is the only one, which has any appearance of Severity; and even there in the Execution it is generally the ſame with other capital Caſes: but yet it muſt be alſo obſerved, that our Laws are very liberal of the Lives of Offenders (*r*), making no diſtinction between the moſt atrocious and heinous Felonies, and thoſe of a leſs degree. If a Man commit a ſingle *Robbery*, Hanging is the Puniſhment inflicted by Law; if he commit Robbery and Murder with never ſo many cruel Circumſtances, the Puniſhment is ſtill the ſame, and no more: So little regard is had in proportioning the Puniſhment to the Offence, that the Letter of the Law makes no difference between picking a Man's Pocket (*s*) and cutting his Throat; between ſtealing his Horſe (*t*), and firing his Houſe about his Ears.

How far this is either juſt or prudent, is left to every one's own Reaſon to determine; it is certainly a ſtrong Temptation to an Highway-man to add Murder to Robbery, when by that means he runs leſs danger of a Diſcovery, and no danger of a ſeverer Puniſhment.

Theft,

THE Law of God to the *Iſraelites* required, that a Perſon convicted of Theft ſhould reſtore two-fold (*u*), and in ſome Caſes four or five-fold (*x*); (thus it was alſo by the Civil Law (*y*)) and in Caſes where perſonal Violence was offered, the Puniſhment was Retaliation, *Eye for Eye, Tooth for Tooth, Hand for Hand, Foot for Foot, Burning for Burning, Wound for Wound, and Stripe for Stripe* (*z*): and tho' this Law may not in ſtrictneſs be binding on other Nations, yet undoubtedly where the Reaſon holds the ſame, it is the beſt Pattern for our Imitation (*a*).

Murder,

MURDER is indeed a Crime, which even by the Law of Retaliation calls for a capital Puniſhment; it is ſo peremptorily injoined by the Law given to *Noah*, (and therefore binding on all his Poſterity) *Whoſoever ſheds Man's Blood, by Man ſhall his Blood be ſhed* (*b*), that ſome have queſtioned (*c*), whether any Prince or Power on Earth can lawfully diſpenſe with it in any Caſe of a plain notorious Murder *: moſt certainly they ought not without ſome very important and peculiar Reaſons, and not merely for Favour or Intereſt. The Law of God forbids, *that any Satisfaction ſhall be taken for the Life of a Murderer, but he ſhall ſurely be put to death* (*d*).

As to other leſs Offenders, it would be a more equitable and effectual Puniſhment to confine them to hard (*e*) Labour at home; or, if they deſerve it, to ſell them to the *Moors* or *Spaniards* abroad: it is Idleneſs which is the Source of their Guilt, and generally draws them into the Commiſſion of their Crimes, and therefore nothing more proper to reclaim and deter them, than hard Work and Labour: however, they have by their Guilt incurr'd a Forfeiture of their natural Liberty, ſo that no Wrong will be done them in diſpoſing of them in that manner. I am ſure it is a much more lawful Method of making Slaves than the practice of kidnapping and ſtealing innocent Men from off the *African* Shore, and forcibly carrying them away from all their Friends and Relations into a miſerable Slavery in *America*, without any better Title, than what ariſes from the difference of Complexions.

HOWEVER, not to enter into a Diſcuſſion of the Lawfulneſs or Juſtice of taking away Life for every kind of Offence, a Conſideration which the learned *Spelman* obſerves has not had its due Weight in later Ages (*f*), yet methinks ſo long Experience might have taught us how ineffectual it is to anſwer the Purpoſes for which it is deſigned. Death is *ultimum ſupplicium*, and is therefore intended only for crimes of the higheſt Rank; but when it is indiſcriminately inflicted, it leaves no room to difference the puniſhments of Crimes widely different in their own Nature. The lower part of Mankind are apt in dubious Caſes to judge of the heinouſneſs of the Offence by the Severity of the Puniſhments; but yet, when they ſee the ſame Puniſhment annext, where the difference of Guilt is manifeſt and apparent, they ſoon loſe the Senſe of that extraordinary Guilt, and inſtead of conceiving worſe of the Crime, they only blame the Cruelty of the Law. Further, when ſuch Numbers are continually ordered for Execution, (as muſt be the Caſe where Death is made the common Puniſhment for ordinary Crimes) the frequency of the Example deſtroys the Terror of it, and makes it leſs dreaded than going to the Galleys or any Place of hard Labour. Beſides, when the Puniſhments are ſo very diſproportionate to the Offence, it defeats the End of them, foraſmuch as thoſe, who have any Tenderneſs or Humanity in their Temper, will much rather forbear wholly to proſecute, than be made the Inſtruments of putting ſuch ſevere Laws in execution; inſtead therefore of being a means of bringing the Offenders to Puniſhment, it is oftentimes the very reaſon, why they eſcape with Impunity.

and Adultery;

THIS Severity of our Law in inflicting capital Puniſhments upon the lighter Crimes of Pilfering and Thieving ſeems the more extraordinary, when one conſiders the great Indulgence ſhewn to one of the firſt Magnitude, and which is productive of much more miſchievous Conſequences; I mean ADULTERY, which it is holden (*g*), does not by our Law admit of any Proſecution in a criminal way; yet whether we conſider the Guilt of the Offender, or the Miſchief done to the injured Party, there is no Compariſon between the one and the other. What proportion is there between a private Theft, perhaps of ſome Trifle, which may ſoon be repaired, and the Invaſion of our Neighbour's Bed (*h*), irreparably robbing him of all the Satisfaction and Comfort of his Family, confounding Relations, and impoſing upon him the charge of maintaining a ſpurious Iſſue as his own? The one is often done only to allay the Violence of a preſſing Hunger, but the other always to gratify an irregular and ungovern'd Luſt. Nor can it with reaſon be pretended, that the one is a Crime of a *public*, the other of a *private* nature: if the Public be concern'd in the Preſervation of the Property of Goods, it cannot be leſs ſo in the Preſervation of the more valuable Rights, which affect the Peace and Quiet of Families. Is private ſtealing an Offence againſt the Community? The other is much more ſo, having a greater tendency to promote Frays and Quarrels, public Diſturbances and Breaches of the Peace, from whence Bloodſhed and Murders often enſue (*i*).

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† 4 Co. 40. a. 47. a.

‡ Ibid. 45. a.

(*r*) *See* Spelman's *Life of K.* Alfred, p. 101.

(*s*) 8 Eliz. cap. 4. § 2.

(*t*) 1 Edw. 6. cap. 12. § 10. 2 & 3 Edw. 6. cap. 33.

(*u*) Exod. cap. 22. ver. 4 & 7.

(*x*) Ibid. cap. 22. ver. 1.

(*y*) Inſtit. lib. 4. tit. 1. de obligation. quæ ex delicto, &c. § 5.

(*z*) Exod. cap. 21. ver. 24, 25. Levit. cap. 24. ver. 19. 20. Deut. cap. 19. ver. 21.

(*a*) Grot. de jur. bel. lib. 2. cap. 20 § 32.

(*b*) Gen. cap. 9. ver. 6. Grot. de jur. bel. lib. 1. cap. 2. § 5.

(*c*) *See this Queſtion diſcuſs'd in Biſhop* Barlow's *Caſes of Conſcience.*

* *By divers old Statutes no Charter of Pardon ought to be granted in caſe of Murder.* Dal. cap. 145.

(*d*) Numb. cap. 35. ver. 31.

(*e*) Puf. *Law of Nat.* lib. 8. cap. 3. § 26. Mori Utopia, lib. 1.

(*f*) Spelm. in verbo *Lanicinium. See alſo* Hales Hiſt. P. C. in notis p. 12.

(*g*) 2 Co. Inſtit. 488. 2 Salk. Rep. 552. Galizard & Rigault: *This is the general Opinion, tho' I muſt confeſs, I ſee not, but that Adultery is indictable by our Law.* Godolphin *in his* Repertorium, cap. 34. § 10. *admits it to be a temporal Offence againſt the Peace of the Realm, for which Sureties of the Peace may be required. And Lord* Coke *ſays, That in ancient Times it was puniſhable in the Turns or Leets by Fine or Impriſonment by the name of* Letherwite, 2 Inſt. 488. 3 Inſt. 206. *It is allowed on all hands that an Indictment lies for ſeducing a Servant away from his Maſter's Service; and that the ſame reaſon extends to the ſeducing a Wife away from her Huſband: of this there is a Precedent in* Tremain's *Entries*, p. 209. 213. & 214; *The King againſt* Mountague, 1 Jac. II. *and another in* Offic. Cler. Pac. p. 311. *Tho' theſe were Caſes where the Wife went away with the Adulterer, yet the reaſon holds proportionably, where ſhe is ſeduc'd to a breach of her Fidelity and Truſt, tho' it be without going away. If a Man debauch his Wife's Siſter, this has been held a* Miſdemeanor *puniſhable by Indictment or Information; this was the Caſe of* Ford *Lord* Grey, *for debauching the Earl of* Berkley's *Daughter; ſee* Trials, Vol. III. p. 519. N°. 112. *and of the King againſt* Heathcote, *for debauching Mr.* Holworthy's *Daughter*, Trin. 7 Geo. I. (1720.) B. R. Rot. 46. *Sure it is not leſs injurious to debauch another Man's Wife; but ſtill it is puniſhable only as a Miſdemeanor, and not with that Severity as the Guilt of the Offence requires, and the Laws of other Nations have thought it to deſerve: ſo that the injured Party is in a manner obliged to betake himſelf to a civil Action for Damages; tho' as Mr.* Wollaſton *ſays in the place cited below, the Offence is of ſuch a nature that no Satisfaction can be made for it, if the injured Man thinks ſo, as he generally does. If this be ſo, the Law ſhould be ſo framed, as rather to deter from committing the Crime, than to aim at making amends for it, after it is committed.*

(*h*) *See* Wollaſton's *Religion of Nature*, § 6. par. 19.

WHAT may be the reaſon why our Laws make ſo light of this enormous Crime, whether it be the Countenance it receives from great Examples and the Commonneſs of the Fault, or ſome other reaſon, I will not take upon me to ſay; but moſt certain it is, that the Laws of other Nations (*k*) had a different Senſe of it, and treated it in a ſeverer manner: By the *Moſaic* Law it was always puniſhed with Death (*l*); and long before that Law it was eſteemed *an Iniquity to be puniſhed by the Judges* (*m*).

BY an old Law of *Romulus* (*n*) the Adultereſs was to be put to death; *Adulterii convictam vir & cognati, uti volent, necanto:* and tho' afterwards the Civil Law (*Lex Julia de adulteriis*) puniſh'd it only [*per relegationem* (*o*)] with Baniſhment, or [*per deportationem* (*p*)] with Tranſportation into ſome remote Iſland; yet the Father of the Adultereſs was permitted to kill both his Daughter and the Adulterer (*q*), and in ſome Inſtances the Huſband had the ſame Power (*r*); and if he chanced to uſe that Power in a Caſe not allow'd, even then he was not to be puniſhed with Severity, but only to undergo a milder ſort of Puniſhment (*s*): But at length when the Empire became Chriſtian, under the Reign of *Conſtantine*, Adultery was made capital, *Sacrilegos nuptiarum gladio puniri oportet* (*t*), and ſo it continued to *Juſtinian*'s (*u*) Time and long after. Some are of opinion that it was ſo even while the Empire was Heathen, under the Reign of *Diocletian* and *Maximian*, it being enumerated in one of their Laws (*x*) among the capital Crimes.

Of ſmaller Crimes and Miſdemeanors.

As to ſmaller Crimes and Miſdemeanors, they are differenc'd with ſuch a variety of extenuating or aggravating Circumſtances, that the Law has not, nor indeed could affix to each a certain and determinate Penalty; this is left to the Diſcretion and Prudence of the Judge, who may puniſh it either with Fine or Impriſonment (*y*), Pillory or Whipping, as he ſhall think the nature of the Crime deſerves: but tho' he be intruſted with ſo great Power, yet he is not at liberty to do as he liſts, and inflict what arbitrary Puniſhments he pleaſes; due regard is to be had to the Quality and Degree, to the Eſtate and Circumſtances of the Offender, and to the greatneſs or ſmallneſs of the Offence; that Fine, which would be a mere Trifle to one Man, may be the utter Ruin and Undoing of another; and thoſe Marks of Ignominy and Diſgrace, which would be ſhocking and grievous to a Perſon of a liberal Education, would be ſlighted and deſpiſed by one of the vulgar ſort (*z*). A Judge therefore who uſes this diſcretionary Power to gratify a private Revenge, or the Rage of a Party, by inflicting indefinite and perpetual Impriſonment, exceſſive and exorbitant Fines, unuſual and cruel Puniſhments, is equally guilty of perverting Juſtice and acting againſt Law, as he, who in a Caſe, where the Law has aſcertained the Penalty, wilfully and knowingly varies from it. If no Meaſures were to be obſerved in theſe diſcretionary Puniſhments, a Man who

By Impriſonment, Fine,

is guilty of a Miſdemeanor might be in a worſe Condition than if he had committed a capital Crime; he might be expoſed to an indefinite (*a*) and perpetual Impriſonment, a Puniſhment not at all favour'd by Law, as being worſe than Death itſelf (*b*): nor does an extravagant Fine, which is beyond the Power of the Offender ever to pay or raiſe, differ much from it; for if his Impriſonment depend upon a Condition, which will never be in his power to perform, it is the ſame as if it were abſolute and unconditional; if the Offender be not able to pay ſuch a Fine as his Offence deſerves, he muſt then ſubmit to a corporal Puniſhment in lieu of it, according to the old Rule, *Qui non habet in crumena, luat in cute* (*c*). It is true, that Clauſe of *Magna Charta* (*d*), which requires the ſaving every Man's Contenement, (*viz.* his means of Livelihood) extends only to Amerciaments, which are aſcertained by a Jury, and not to Fines, which are impoſed by the Court; but nevertheleſs thoſe Fines ought to be moderate and within Bounds; where a Court has a Power of ſetting Fines, that muſt be underſtood of ſetting *reaſonable* Fines (*e*): *an exceſſive Fine*, ſays Lord *Coke* (*f*), is *againſt Law* (*g*), and ſo it is declared to be by the *Act* (*h*) *for declaring the Rights and Liberties of the Subject*, &c. The ſame Statute declares the Illegality of unuſual and cruel Puniſhments.

IT was the non-obſervance of theſe Rules, which occaſioned the diſſolution of the *Star Chamber* (*i*); a Court, which Lord *Coke* (*k*) calls the moſt honourable in the Chriſtian World, conſiſting of the chief Officers of the Kingdom, but as he obſerves (*l*) was of ſuch a nature as moſt of all needed to be kept within its proper Bounds; it might indeed have ſerved to very good Purpoſes, if rightly managed, being chiefly intended for the correction of ſcandalous Indecencies and Immoralities, which did not fall under the Cognizance of ordinary Juriſdictions (*m*), but when once its Authority was abus'd to wreak the Malice of particular Perſons, and proſtituted to the baſe Ends of a Court-Faction, when no Limits were obſerved in the Exerciſe of its Juriſdiction, nor Humanity in its Sentences, when the Judges thereof, however dignified by their Poſts, became a Diſgrace to human Nature by their barbarous and cruel butcherings, puniſhing pretended Libels not only with perpetual Impriſonments, but with brandings in the Face and mutilation of Members, when the Caſe was thus (as it appears to have been from ſome Inſtances (*n*) in this Collection) it was then high time to tear it up by the Roots, as a Grievance no longer to be borne with. A Judge therefore ought to be ſtrictly careful that he conform to the Rules of Law not only as to the nature of the Puniſhment, but likewiſe as to the degrees thereof.

IT is indeed no eaſy matter to ſettle the preciſe Limits, how far a Court of Juſtice may go; every Caſe muſt depend upon its own particular Circumſtances. But *ſome* Fines and *ſome* Puniſhments are ſo monſtrouſly extravagant, that no body can doubt their being ſo; ſuch were the Fines of Sir *Samuel Barnardiſton* (*o*) and Mr. *Hampden* (*p*), ſuch were the repeated Pilloryings and barbarous Whippings of *Oates* (*q*), *Dangerfield* (*r*), and *Johnſon* (*s*).

THESE Puniſhments may no doubt be properly inflicted, where they are in a moderate degree and proportioned to the Offence; only it were to be wiſh'd, that ſome better care were taken in the Execution of them. How unreaſonable is it

Whipping,

that a Criminal ſentenc'd to be *Whipt* ſhould lie at the Mercy of a vile Executioner, and that it ſhould be left in the Power of a common Hangman to make that Whipping as ſevere or as favourable as he pleaſes? In this reſpect it muſt be owned we are excell'd by foreign Countries, where the Magiſtrate, who is the beſt Judge of the Offender's Guilt, is preſent at the Execution of the Sentence, and gives the proper Directions about it.

And Pillory;

As to the *Pillory*, that is intended only to expoſe the Offender to Shame and Infamy, and to mark him out to the Public, as a Perſon not fit to be truſted, but to be ſhunn'd and avoided by all creditable and honeſt Men: never did the Law deſign that he ſhould be expoſed to the Peltings of a Mob, or the Aſſaults and Injuries of a furious Rabble, whereby the Priſoner is ſo diſguiſed as to defeat one main deſign of ſetting him there, which was, that he might be publickly known and obſerv'd.

IT is indeed a ſurprizing Neglect, that no effectual Care has hitherto been taken to ſuppreſs theſe Practices, eſpecially conſidering the fatal Conſequences which have ſometimes enſued from them, even to the loſs of the poor Man's Life. It is not ſufficient that whoever injures him in this manner may be puniſh'd for ſo doing; for how is it poſſible that a Man in his Condition ſhould obſerve who it is that does him the Injury, or ſecure him if he did? He is at that time in the hands of

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(*i*) See 1 H. 7. c. 6. (*k*) *See* Godolph. *Abridgm.* cap. 34. (*l*) Levit. cap. 20. ver. 10. Deuter. cap. 22. ver. 22. Ezek. cap. 18. ver. 11. Suſanna ver. 41. John cap. 8. ver. 5. (*m*) Job, cap. 31. ver. 11. (*n*) See *Bodinus* in methodo hiſtorica, cap. 4. (*o*) Digeſt. de divortiis & repudiis, lib. 24. tit. 2. l. 8. (*p*) Digeſt. de quæſtionibus, lib. 48. tit. 18. l. 5. (*q*) Digeſt. ad leg. Jul. de adulter. lib. 48. tit. 5. l. 20. (*r*) Ibid. l. 24. (*s*) Digeſt. ad leg. Cornel. de ſicariis, lib. 48. tit. 8. l. 1. § 5. Digeſt. ad leg. Jul. de adulter. l. 38. § 8. (*t*) Cod. ad. leg. Jul. de adulter. lib. 9. tit. 9. l. 30. § 1. (*u*) Inſtitut. de publicis judiciis, lib. 4. tit. 18. § 4. (*x*) Cod. de tranſact. lib. 2. tit. 6. l. 18. (*y*) 8 Co. Rep. fo. 59. b. (*z*) Wollaſt. Relig. of Nat. § 2. *Obſ.* 5. Puf. Law of Nat. B. 8. cap. 3. § 25. Grot. de jur. bel. Lib. II. c. 20. § 33. (*a*) Trials, Vol. II. p. 621, 750. (*b*) Vita pejor morte, Trials, Vol. II. p. 746. (*c*) 2 Co. Inſtit. 173. (*d*) Cap. 14. (*e*) 8 Co. Rep. fo. 38. b. (*f*) 11 Rep. 4. 44. a. (*g*) *See Sir* John Hawles's *Remarks*, Trials, Vol. IV. p. 165. (*h*) 1 Gul. & Mar. Seſſ. 2. cap. 2. § 1. (*i*) *This was a Court by common Law confirmed by* 3 Hen. 7. cap. 1. *and diſſolved by* 16 Car. 1. cap. 10. (*k*) 4 Inſtit. 65. (*l*) Ibid. 60. (*m*) Ibid. 61. 63. (*n*) *See Proceedings againſt* Prynn, N°. 34. Vol. I. p. 418. *and Proceedings againſt* Baſtwick, Burton, *and* Prynn, N°. 36. Vol. I. p. 481. (*o*) Trials, Vol. III. p. 942. (*p*) Trials, Vol. III. p. 855. (*q*) 1685. Trials, Vol. IV. p. 105. (*r*) 1685. *Burnet*'s Hiſt. own Times, p. 637. (*s*) 1686. *See Memoirs of his Life, prefixt to his Works.*

Juſtice, and Juſtice ought to protect him: when a Man is at liberty, he is in many Caſes able to defend himſelf; but when he is in the Cuſtody of the Law, and is thereby diſabled from being his own Defender, the Law ought to be his Security and Defence againſt any injurious Treatment.

It cannot be pretended that this is altogether impracticable; Experience ſhows us, how effectually it may be done, when the Officers find an Advantage by it; nor would there be any harm in it, if the Officers were obliged by proper Penalties to take the ſame care without Money, which they are ſo well able to do with it.

On Gaolers,

And their Fees.

7. Another thing in which our Law ſeems defective is the want of ſome further guard againſt the Packing of Juries, and the Oppreſſions and Extortions of Gaolers; but theſe are now under the Conſideration of the Legiſlature, who, it is hoped, will apply proper Remedies to theſe growing Evils *(t)*. As to the latter of theſe, I fear no Remedy will be effectual while they are ſuffer'd to buy and ſell their Places; for while that is permitted, they will be under ſtronger Temptations than Men of their Character and Function uſually reſiſt, to exact more than is their due; the thing itſelf has an appearance of Hardſhip, to force a Man into Gaol againſt his Will, and yet oblige him to pay for his Admiſſion into it: if he be guilty, the Puniſhment of the Law ſhould be deem'd ſufficient; but if innocent, the Hardſhip is ſtill the greater, eſpecially where it falls upon the Indigent and Neceſſitous. It is chiefly owing to this that our Gaols ſwarm with Multitudes of miſerable Objects, who lie there year after year without any hope of Redemption; ſo that when they have ſuffer'd the Penalty of the Law, they have a ſeverer Puniſhment ſtill to undergo for the Non-payment of Fees *(u)*, a Debt which is forc'd upon them againſt their Conſent, and is often out of their Power ever to diſcharge, whereby the poor Wretches are in effect condemned to perpetual Impriſonment; a thing very odious in the eye of the Law, even for great and heinous Crimes.

How much better would it be for the Public to allow the Gaoler a reaſonable Salary, inſtead of theſe Perquiſites, which ariſe from the Miſeries of the Unfortunate, who are thereby often neceſſitated to take diſhoneſt and unlawful Methods to enable themſelves to pay them?

By the common Law *(x)*, to avoid all Extortion and Grievance of the Subject, no Sheriff, Coroner, Gaoler or other of the King's Miniſters ought to take any Fee or Reward for any Matter touching their Offices, but of the King only. This extended to all whoſe Offices did any ways concern the Adminiſtration or Execution of Juſtice, or the common good of the Subject or the King's Service *(y)*.

FORTESCUE (z) relates it as part of the Sheriff's Oath upon entering into his Office, *That he ſhall receive or take* nothing of any *other Man than the King by colour or means of his Office.* Divers Acts of Parliament *(a)* have been made in affirmance of this, which Lord *Coke (b)* calls *a fundamental Maxim of the Common Law*; he adds further, that *while Officers could take no Fee at all for doing their Office, but of the King, then had they no Colour to exact any thing of the Subject, who knew that they ought to take nothing of them; but after this Rule of the Common Law was alter'd by ſome Acts of Parliament, which gave to the ſaid Miniſters of the King Fees in ſome particular Caſes to be taken of the Subject, it is not credible what Extortions and Oppreſſions have thereupon enſued; whereas before without any taking at all their Office was done, now no Office at all was done without taking, the Officers being fetter'd with golden Fees, as Fetters to the Suppreſſion or Subverſion of Juſtice (c).*

The true Deſign of Gaol-deliveries;

While Priſoners are thus long detained, the true Deſign of *Gaol-Deliveries* can never be anſwer'd: This is a Commiſſion, ſays Lord *Coke (d)*, inſtituted by the Law of the Land, *ne homines diu detineantur in priſona*, but that they might receive *plenam & celerem juſtitiam*: he adds, that Gaols ought to be delivered thrice a Year, or oftner, if need be. Of ſo much Conſequence does the Law eſteem it to be, that the Abbot of *St. Albans (e)*, who had a Grant of a Gaol and Gaol-delivery, was adjudged to have forfeited his Franchiſe for an unreaſonable Delay in making Delivery of his Gaol. But what are the Priſoners benefited by Gaol-deliveries, if after the Law has done with them, they may ſtill be detained for Fees, which they will never be able to pay?

Another Deſign of Gaol-deliveries was by clearing the Priſons to make room for new Comers; but the Diſcharge of the old Priſoners being by theſe means prevented, the continual addition of new ones renders the Croud ſo great, that the Place becomes too ſtrait for its Inhabitants: This, together with the Filth and Naſtineſs occaſion'd by their miſerable Poverty and want of Conveniencies, is the cauſe of thoſe contagious Diſtempers which are wont ſo violently to rage in many of our Priſons, not confining themſelves within the Priſon-Walls, but ſometimes ſpreading their Infection in the very Court where the Priſoners are brought to Trial, to the no ſmall hazard of Judges, Juries, Counſel, and all who attend there. A dreadful Inſtance of this is recorded in Hiſtory *(f)* to have happen'd in the twentieth Year of Queen *Elizabeth* at *Oxford* Aſſizes, when the Priſoners brought ſuch a Stench with them into Court, that the Lord Chief Baron *Bell*, the Sheriff, ſeveral Counſel, almoſt all the Jurors, and near three hundred others, died within the ſpace of forty Hours after it. I could wiſh our own Times had not furniſhed us with a freſher Inſtance of this kind.

The ill Conſequences of the common Management of Gaols.

A further Miſchief ariſing from this long Detention of Priſoners is, that it defeats the principal End of all Law and Juſtice. All Puniſhments below Capital are intended to reform the Criminal, and deter him from offending again: but as our Gaols are commonly managed, it is to be fear'd, they breed up and harden more Rogues, than the Law either reclaims or removes. The Priſoners are indulged ſo great a Liberty in Rioting and Debauchery, which the Keepers, who have the Advantage ariſing from the Sale of the Liquors, find their account in promoting; the young Novices are permitted to contract ſo intimate an Acquaintance and Familiarity with the old Offenders, that our Gaols are rather the Schools and Nurſeries of all manner of Roguery and Wickedneſs, than proper places for Correction and Amendment. It is generally obſerved, that they who enter in raw and unexperienc'd Offenders, with ſome ſenſe of Shame and Modeſty, ſoon grow to be impudent and harden'd Villains, entering themſelves Members of a Gang, wherein they are not only inſtructed in the Theory, but experienc'd in the Practice of their wicked Arts. This may ſeem ſtrange to ſome, who think they are reſtrained, (at leaſt while they are Priſoners,) from doing Miſchief without doors; yet it is not without reaſon apprehended by others, that they ſometimes find means to make Excurſions, which is hard to be accounted for without the Connivance or Permiſſion of their Keepers, who no doubt take care to be no Loſers by it: and though this may be a Favour not uſually ſhown to any but inferior Rogues, who are detained for ſmaller Crimes; yet I could mention an Inſtance (atteſted by a Perſon of undoubted Credit) of one who was committed to *Newgate* for breaking open an Houſe in the Night-time, and while he was in ſuppos'd Cuſtody for that Offence, was apprehended committing a Fact of the like kind in a remote part of the Town.

The Uſe of Chains and Fetters in Gaols.

Another matter of Complaint is, that intolerable and inhuman Practice of many Gaolers, who to extort from their unhappy Gueſts ſuch Sums as they ſhall think fit to exact, thruſt them, as ſoon as they arrive within their Dominions, into ſtinking Dungeons, loading them with Fetters and Irons till they can bring them to a Compliance with their unjuſt Demands *(g)*: the Pretence indeed is, that they are anſwerable for their Priſoners, and therefore ought to be allowed the uſe of *proper* means to ſecure them. That this is nothing but Pretence is ſufficiently plain, Money being generally able to procure a Releaſe from theſe Shackles, which do then become no longer neceſſary for the Safeguard of the Priſoner, having already anſwered their real Deſign.

Though Gaolers are indeed anſwerable for their Priſoners, yet neither the Law of *England* nor common Humanity eſteems ſuch Means as *proper* in ordinary Caſes; *Severos quidem facit juſtitia, inhumanos non facit (h)*: they may make their Priſons as ſtrong as they can, may ſet what Guards and Keepers they will to watch them, but muſt uſe no Force or

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(t) *Both theſe Grievances have been ſince remedied in ſome meaſure, the former by the* 3 Geo. 2. cap. 25. *and the latter by* 2 Geo. 2. cap. 22.

(u) Mirror of Juſtices, c. 5. § 1. n. 53. *ſays, it is an Abuſe that Priſoners, or any for them, ſhould pay any thing for their entrance into or coming out of Gaol.*

(x) *See* 2 Co. Inſtit. 74. *and the Authorities there cited.*

(y) 2 Co. Inſtit. 209.

(z) De laud. Leg. Angl. cap. 24.

(a) Mag. Chart. cap. 35. Weſt. 1. cap. 10. & cap. 26.

(b) 2 Inſtit. 210.

(c) 2 Inſtit. 74 & 176.

(d) 4 Inſtit. p. 168.

(e) 2 Co. Inſtit. 43.

(f) See *Baker's* Chronicle, p. 353.

(g) *See the Reports of the Committee of the Houſe of Commons appointed to inquire into the State of the Gaols* 1728-9, *relating to the Fleet and Marſhalſea Priſons.*

(h) 2 Co. Inſtit. 315.

Violence to their Perſons, no Tortures or Pains, while the Priſoners quietly ſubmit themſelves to the Proceſs of the Law; *Carcer ad continendos homines, non ad puniendos haberi debet* (*i*). Priſons are deſigned only for the Cuſtody of the Priſoners, not for their Puniſhment, unleſs when it becomes part of the Sentence; and even then it is no otherwiſe intended as a Puniſhment, than by way of Confinement to the Priſon, not as a Juſtification of any ill Uſage in it. *Cuſtodes gaolarum pœnam ſibi commiſſis non augeant, nec eos torqueant, vel redimant, ſed omni ſævitiâ remotâ pietateque adhibitâ judicia debitè exequantur* (*k*).

If a Priſoner is boiſterous and unruly, or makes any Attempt to eſcape, or perhaps if he only threatens to do ſo; in ſuch caſe it may be allowable to uſe a ſtricter Diſcipline.

Lord Chief Juſtice *Coke* ſays (*l*), *That Shackles about the Feet ought not to be, but for fear of Eſcape.* If theſe words have any meaning, they muſt import, that unleſs a Priſoner has given juſt Cauſe to apprehend an Eſcape, he ought not to be fetter'd: otherwiſe it may be pretended of all Priſoners, let them behave never ſo peaceably and civilly, who will by theſe means lie at the Mercy of Gaolers, whoſe very Mercies often are Cruelties (*m*). The ſame Author ſays in another place (*n*), *Where the Law requireth, that the Priſoner ſhould be kept* in ſalva & arcta cuſtodia, *yet that muſt be without Pain or Torment to the Priſoner*, which Chains and Fetters undoubtedly are. And again in his Comment (*o*) on the Statute of *Weſtm.* 2. cap. 11. by which Statute the Gaoler is permitted in a particular Caſe there mentioned to lay his Priſoner in Irons, he makes this Obſervation, *That by the Common Law it might not be done.* There is one great Abſurdity in this Practice, that by theſe means the Priſoner often ſuffers more before he is tried, than the Law inflicts on him when he is found guilty; but yet I know not how it comes to paſs, it is too generally and too notoriouſly practis'd to be either conceal'd or deny'd. This Method of Proceeding is reſembled by Lord *Coke* (*p*) to that of *Rhadamanthus* the Judge of Hell, who firſt puniſheth and then heareth; like as the chief Captain did by St. *Paul* (*q*), firſt ordering him to be bound with Chains, and then demanding of him who he was, and what he had done.

And on the Voluminouſneſs of the Laws. 8. There is one thing more which ought not to be wholly paſs'd over, and that is *the Multiplicity and Voluminouſneſs* of our Laws: If what lies ſcatter'd in ſo many various (ſome obſolete) Acts, were (ſo much of them as ſhould be judged fit to be continued) collected under their ſeveral Heads into ſo many diſtinct Acts, the Law would be much more plain and eaſy; whereas now, conſidering the variety of Subjects, which are often thrown together into one Act, and the various Acts relating to one and the ſame Subject, it is no eaſy matter to find out the whole relating to one particular Head; and when it is found, many Difficulties ariſe from the Claſhings and Inconſiſtencies of the ſeveral Acts, the old ones not being always ſufficiently conſulted when the new ones are made; ſo that it is to be wiſh'd we may never feel the Inconvenience which *Tacitus* (*r*) complains of in his time, *Antehac flagitiis laborabatur, nunc legibus.*

I thought theſe ſhort Obſervations upon the Laws of *England*, ſo far as they relate to public Crimes and the Incidents thereto, would not be altogether unſuitable to a Work, conſiſting chiefly of the Hiſtories of criminal Proſecutions.

The Concluſion naturally reſulting from the whole is, That as our Laws have many Excellencies and Advantages which we have juſt reaſon to value them for, ſo they have alſo their Defects and Blemiſhes: ſuch a blind veneration for them as will not allow this, does not only ſuppoſe a Perfection which all human Contrivances are incapable of, but is the greateſt Obſtruction to all Attempts for an Amendment: That ſome Things need to be mended, no experienc'd Lawyer can deny; and that they ſhould be ſo, every honeſt one will heartily deſire.

Whether the Particulars here mentioned be of that number, is ſubmitted to the Judgment of all true Lovers of their Country, who it is hoped will be ſo far from being offended hereat, that they will uſe their utmoſt Endeavours to promote the Amendment of whatever ſhall appear to need it. I pretend not to have taken notice of every Particular in our Crown Law which may deſerve it; my Deſign was only to give a few Hints, wherein I might evince the neceſſity of a Reformation; and if I can be any way inſtrumental in bringing it about by ſtirring up others of more Capacity and Influence to undertake the Taſk, I ſhall anſwer my End.

THE Reader will by this time expect ſome Account of the Improvements and Alterations in this Second Edition.

An Account of this Edition. When the firſt Edition was preparing for the Preſs, the Undertakers were at great Pains and Expence, and offer'd large Encouragements to procure whatever was proper and ſuitable to their Deſign; but as they were ſenſible there muſt needs be many Defects and Omiſſions in the firſt Attempt of a Work of this nature, ſo they have continued their Pains to ſupply thoſe Defects, and have offer'd the ſame Encouragements to any who ſhould furniſh them with ſuch material Trials as were then omitted.

How they have ſucceeded in their Endeavours may be ſeen from the large number of *Additional Trials*: Theſe, together with the Additions interſperſed thro' the other Trials, have ſwell'd the Work to five Volumes; to which there is added a Sixth, containing the moſt remarkable Trials from the Reign of Queen *Anne*, where the firſt Edition ended, to the end of the Reign of King *George* I.

The larger Trial of the Earl of *Strafford* is here purpoſely omitted, as being an entire Volume in *Ruſhworth*'s Collections, which is to be had by itſelf.

To make this Collection more generally acceptable, the Reader is informed at the end of each Trial, where the Priſoner was convicted of a capital Crime, whether he was executed or not; and (where it could be had) an Account alſo is added of his Behaviour and Speech at the Place of Execution.

And whereas in the former Edition ſome Trials were inſerted out of the Order of Time, and Parts of others tranſpos'd, they are here reduced to their proper Places; the names of the Judges, Attorney-General, &c. are here generally, if not always inſerted; ſeveral Notes are added to explain and illuſtrate the Text, and divers References made to the Books of Reports and Hiſtorians of the Times: and for the Eaſe and Conveniency of referring, each Trial is diſtinctly number'd; the ſeveral Titles are render'd uniform, containing the Date when, the Crime for which, and the Court before whom the Priſoner was try'd; all which are continued where there was room for them throughout the Running Title; the Omiſſion whereof in ſome Places 'tis hoped the candid Reader will excuſe, ſince in a Work of this nature, where ſuch a variety of Printers are employ'd, it can ſcarce be expected that all Parts of it ſhould be perform'd with equal Care and Exactneſs.

To render this Work the more uſeful, eſpecially to the Gentlemen of the Law, there is ſubjoin'd by way of *Appendix* a Collection of Records relating to the ſaid Trials. The Undertakers wiſh they could ſay they had had the ſame Succeſs in this part of the Work as in the other; but hope the Fault will not be imputed to them, who have inſerted all they could procure, and done their Endeavours to procure the reſt.

That the whole might be the better fitted for Uſe, there are added two *Alphabetical Tables*; the one containing the Names of the Perſons tried or proceeded againſt, together with the Times and Places of their Trial, and alſo their Crimes and Puniſhments; the other of the ſeveral Matters contained in all the Six Volumes.

March, 27.
1730.

S. Emlyn.

(*i*) Digeſt. lib. 48. tit. 19. de pœnis, l. 8. § 9. Bract. l. 3. fol. 105. a. 2 Co. Inſtit. 45. (*k*) Fleta, lib. 1. cap. 26. (*l*) 3 Inſtit. p. 34. *in the Margin.* (*m*) *'Tis on this preſumption of Gaolers ill-treating their Priſoners, that whenever any die in Priſon, the Law requires the Coroner ſhould ſit on their Bodies, to inquire into the manner of their Death before they can be buried.* Flet. lib. 1. cap. 26. (*n*) 3 Co. Inſtit. 35. (*o*) 2 Inſtit. p. 381. (*p*) 2 Inſtit. 55. (*q*) Acts, cap. 21. ver. 33. (*r*) Annal. lib. 3. § 25.

Abbreviations uſed in the Table, and the Running Titles.

H. L.——Houſe of Lords.
B. R.——The King's Bench.
Scacc.——Exchequer.
C. S.——The Star Chamber.
G. H.——Guild Hall.
O. B.——The Old Baily.
H. C. J.—High Court of Juſtice.
Mich.——Michaelmas Term.
Hil.——Hilary Term.
Paſch.——Eaſter Term.
Trin.——Trinity Term.

A COMPLETE COLLECTION OF TRIALS, &c.

I. Proceedings in PARLIAMENT againſt *Alexander Nevil* Archbiſhop of *York*, *Robert Vere* Duke of *Ireland*, *Michael de la Pole* Earl of *Suffolk*, *Robert Treſilian* Lord Chief Juſtice of *England*, and *Nicholas Brambre* ſometime Mayor of *London*, and others, for High-Treaſon, *Feb.* 3. 1388. 11th of *Rich.* II.

THESE Men being raiſed from mean Eſtates by the favour of the King, and advanced to the degree of Privy-Counſellors, were the Men who had the only Rule of the Common-wealth, which under the King they govern'd for ſome ſmall ſpace with careful Diligence, acquiring thereby deſerv'd Commendations: but not long did they thus ſteer the Ship of the Kingdom, for many of them being of inferior Rank by Birth, not having their Veins dignified with noble Blood, they were the ſooner enticed with the libidinous baits of Voluptuouſneſs, and infected with the inſatiable itch of Avarice; inſomuch that deſpiſing the Authority of the King, and neglecting the Commodity of the Realm, and only deſiring to keep up the Revenues of the Kingdom, they ſo wrought by their Policy, that the King is impoveriſh'd, and the Treaſury exhauſted: upon which the Commons murmur at the multiplicity of Tenths, Levies and Subſidies; the Peers repine to ſee themſelves diſgraced and their Inferiors honoured; and in a word, the whole Kingdom endures an univerſal Miſery.

The Nobility ſeeing the miſerable eſtate, wherein the whole Kingdom lay, bleeding as it were to death, urged the King to ſummon a Parliament, to the end the Grievances of the Nation might be inquir'd into and redreſs'd *. Accordingly a Parliament was ſhortly after held *Octob.* 1. 1386. in which among many other Acts, *John Fortham* Biſhop of *Durham* was diſcharg'd of his Office of Treaſurer, and *John Gilbert* Biſhop of *Hereford* appointed in his place; and *Michael de la Pole* † Earl of *Suffolk*, and Chancellor of *England*, was diſmiſs'd from his Chancellorſhip, and immediately after was impeached of high Crimes and Miſdemeanors by the Commons, as follows.

Rot. Par. 10 Rich. 2. N° 1, &c.

1. That the ſaid Earl being Chancellor, and ſworn to act for the juſt Profit of the King, hath purchaſed of our Lord the King, Lands, Tenements and Rents to a great Value, as appears by the Record in the Rolls of Chancery; and that againſt his Oath, not regarding the great Neceſſity of the King and Realm, being Chancellor at the time of ſuch Purchaſe made, did cauſe the ſaid Lands and Tenements to be ſet at a much ſmaller Value than really they were worth by the Year, in deceit of the King.

To this firſt Article the Earl anſwered to this Effect: That while he was Chancellor, he neither purchaſed any Lands of the King, nor did he give any to him, unleſs when he made him an Earl, he had four hundred Marks *per Ann.* from the King by way of Exchange, for ſo much as he had by Inheritance out of the Cuſtoms of *Kingſton* upon *Hull*, whereof ſome part was aſſigned to him by one *Tydeman* of *Limburgh* and others before he was Chancellor, and ſome part ſince that time; which exchange was for the King's annual Advantage: as alſo becauſe of the Sum of one thouſand Marks paid by the Earl upon that Conſideration. And he further endeavour'd to prove, that the Oath he had taken, when he was made Chancellor, had another intent than what they *(the Commons)* would put upon it; and yet notwithſtanding that Oath, he might lawfully take, or purchaſe from the King.

But the Commons not being ſatisfied with this Anſwer, reply'd thereto, and ſhewed the Lords the Copy of his *(the Chancellor*'s*)* Oath, when he took the Great Seal into his Cuſtody, being in manner following, *viz.*

> *You ſhall ſwear that you will well and truly ſerve our Lord the King and his People, in the Office of Chancellor, and will do Right to all Perſons both Poor and Rich, according to the Laws and Cuſtoms of the Realm, and ſhall faithfully adviſe the King, and conceal his Counſels; and you ſhall not know of, nor permit any Damage or Diſheriſon to the King, nor that the Rights of his Crown ſhall by any ways be deſtroyed, if you can hinder it; and if you cannot hinder it, you ſhall then clearly and expreſly make it known to the King, together with your faithful Advice and Counſel thereupon: and you ſhall always act for, and procure the Profit of the King, in all things where you may reaſonably do it. So help you God and the Holy Goſpels.*

Wherefore the Commons prayed, that this being read, and well underſtood, and the Circumſtances of his ſaid Anſwer conſider'd, to wit, that he had not denied to have receiv'd of the Gift of the King, ſince he was made an Earl, and being then in the Office of Chancellor, divers Lands and Tenements, as is contain'd in the Impeachment, and it is openly known that he had receiv'd from the King other Lands and Tenements, that are certain and ſure, to the Value of four hundred Marks *per Annum*, in exchange for four hundred Marks yearly, which he had upon the Cuſtoms of *Kingſton* upon *Hull*, that are caſual, and not ſo ſure, without informing the King of his Damage in that particular. And whereas he the ſaid Chancellor has alledged, that he received part of the ſaid Lands and Tenements ſo taken in Exchange before he was Chancellor; the Commons reply, that he was then ſworn of the King's Privy Council, and that afterwards at his being made Chancellor, was again obliged by oath; and that being in the ſaid Office, he had agreed to the Exchanges by him before deſired, and had received from the King the Remainder of the ſaid Lands and Tenements in full performance of the ſaid Exchanges; and therefore they demand Judgment of the Parliament upon his aforeſaid Anſwer: which being thought inſufficient by the Lords, the following Judgment was given, being to this Effect: That ſince the ſaid Earl had not alledg'd in his Anſwer, that he had obſerv'd his Oath, when he ſwore *that he would not know of, or ſuffer any Damage or Diſheriſon of the King, nor that the Right of his Crown ſhould any ways be deſtroy'd if he could hinder it*, with the reſt of the Clauſe in the ſaid Oath, as is above recited; yet that he being the principal Miniſter of the King, and knowing his Eſtate, and the neceſſity of the Realm, had taken ſuch Lands and Tenements as are laid in the ſaid Impeachment, and are recited in the firſt Article: and tho' he hath alledged in his Anſwer, that the Gifts ſo beſtowed upon him, were confirm'd in full Parliament; yet ſince he hath produced no ſuch Record enroll'd in Parliament, therefore it was adjudged, *That all Manors, Lands, Tenements, and their Appurtenances, ſo received by him from the King, ſhould be ſeized and taken into his hands, to have and to hold them to him, and his Heirs, as fully as ever they had been before the Gift ſo made of them to the ſaid Earl, with the Iſſues and meſne Profits of the ſame from the time of the ſaid Grant, and which were to be levied out of the reſt of the ſaid Earl's Lands elſewhere*; yet that it was not the Intention of the King, nor of the Lords, that this Judgment ſo given ſhould make him loſe the Title of *Earl*, nor yet the twenty Marks yearly, which he was to receive out of the Iſſues and Profits of the County of *Suffolk*, by reaſon of the ſaid Title.

2. *The ſecond Article is*, That whereas nine Lords were aſſign'd by the laſt Parliament to view and examine the State of the King and Realm, and to deliver their Advice how the ſame might be improved and amended, and put into better Order and Governance; and thereupon ſuch Examination to be deliver'd to the King, as well by word of Mouth as in Writing; and altho' the ſaid late Chancellor did ſay in full Parliament, that the ſaid Advice and Ordinances ſhould be put in due execution, yet it was not done, and that by the default of him who was the principal Officer or Miniſter. *The Earl's Anſwer to this being not very material, is omitted.*

3. *Item*, Whereas a Tax was granted by the Commons in the laſt Parliament, to be expended according to a certain Form demanded by the ſaid Commons, and aſſented to by the King and Lords, and not otherwiſe; yet the Monies thence ariſing were expended in another manner, ſo that the Sea was not guarded as it was order'd to have been; whence many Miſchiefs have already happen'd, and more are like to enſue to the Realm, and all this by the default of the ſaid Lord Chancellor. *This Article the Earl denied, and it does not appear that it was proved.*

4. *Item*, Whereas one *Tydeman* of *Limburgh* having had granted to him and his Heirs a Gift of fifty Pounds *per Annum* by the King's Grand-father, out of the Cuſtoms of *Kingſton* upon *Hull*, which the ſaid *Tydeman* had forfeited to the King, ſo that the Payment of the ſaid fifty Pounds *per Annum* was diſcontinued for five and thirty Years and upwards; yet the ſaid Chancellor knowing the Premiſes, purchaſed to him and his Heirs of the ſaid *Tydeman*, the ſaid fifty Pounds *per Annum*,

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* *Hol.* Chron. Vol. 3. p. 453, *&c. Grafton*, p. 377, *&c. Walſingh.* p. 334. *Tyrr.* Hiſt. of *Engl.* Vol. 3. Part. 2. p. 895, *&c. Brady*'s Introduct. p. 307.

† *He was Son to a Merchant in* London.

and prevail'd with the King to confirm the ſaid Purchaſe, whereas the King ought to have had the whole Profit.

For this Purchaſe the ſaid Earl was adjudged to make Fine and Ranſom, and the ſaid fifty Pounds were to go to the King, and his Heirs, with the Manor of *Floxfiete*, and ten Marks of Rent, which were exchanged for the fifty Pounds *per Annum* out of the Cuſtoms or Profits, with the Iſſues aforeſaid.

5. And whereas the Maſter of *St. Anthony* is a Schiſmatick, and for that Cauſe the King ought to have the Revenues (being to the value of four hundred Marks yearly) which appertain to him in *England*; the ſaid late Chancellor, who ought to advance and procure the Profit of the King, took to Farm the ſaid Profits at twenty Marks *per Annum*, and ſo got to his own uſe above three hundred Marks; and afterwards when the true Maſter nominated by the Pope, ought to have had the Poſſeſſion and Livery of the ſaid Profits, he could not obtain the ſame, till he and two Perſons with him became bound by Recognizance in Chancery of three thouſand Pounds to pay yearly to the ſaid Chancellor, and his Son *John*, one hundred Pounds *per Annum* for the Term of their two Lives.

As to this, it is adjudged, that the King ſhall have all the Profits belonging to the ſaid Maſter of *St. Anthony*'s at the time of the Purchaſe; and that for the Recognizance ſo made, the ſaid Earl ſhall be awarded to Priſon, and fined and ranſomed at the Pleaſure of the King.

6. *Item*, That in the time of the late Chancellor, there were granted and made divers Charters, and Patents of Pardon for Murders, Treaſons, Felonies, &c. againſt the Laws of the Land; and that before the Commencement of this preſent Parliament, there was made and ſealed a Charter of certain Franchiſes granted to the Caſtle of *Dover*, in diſheriſon of the Crown, and to the ſubverſion of the Pleas and Courts of the King, and of his Laws.

To this the Judgment was, the King awards that thoſe Charters be repealed.

7. *Item*, Whereas by an Ordinance made in the laſt Parliament, that ten thouſand Marks ſhould be raiſed for the Relief of the City of *Gaunt*, yet by the default of the ſaid late Chancellor, the ſaid City of *Gaunt* was loſt, and alſo a thouſand Marks of the ſaid Money *. The Sum of the Earl's Anſwers to the reſt of theſe Articles, were either by denying ſome of them, or confeſſing and excuſing others; but for all that he was ſoon after caſt into the Caſtle of *Windſor*, and all his Lands, which were of no ſmall Revenue, confiſcated.

Neither did the Parliament ſtop here, but to provide further for the whole State, they did by the unanimous Conſent of the King, Prelates, Barons, and Commons, conſtitute and give plenary and abſolute Power to certain Commiſſioners as well of the Spiritualty as of the Temporalty for the ordering and diſpoſing of the public Affairs, according as to them ſhould ſeem beſt and moſt neceſſary for the deſperate eſtate of the Commonwealth, to depreſs civil Diſſenſions, and to pacify and appeaſe the grudgings of the People.

Theſe † Commiſſioners were 13 in number, and were as follows;

Of the Spiritualty.

1. *William* Archbiſhop of *Canterbury*.
2. *Alexander Nevil* Archbiſhop of *York*.
3. *Thomas Arundel* Biſhop of Ely, lately made Chancellor of *England*.
4. *William Wickham* Biſhop of *Wincheſter*.
5. *John Gilbert* Biſhop of *Hereford*, Lord Treaſurer.
6. *Thomas* Biſhop of *Exeter*.
7. *Nicholas* Abbot of *Waltham*, Lord Keeper of the Privy Seal.

Of the Laity.

8. *Edmond Langley* Duke of *York*.
9. *Thomas* of *Woodſtock* Duke of *Gloceſter*.
10. *Richard* Earl of *Arundel*.
11. *John* Lord *Cobham*.
12. *Richard* Lord *Scrope*.
13. *John Devereux*, Knight.

Theſe, as Men eminent in Virtue, were choſen by the general Suffrage, and confirm'd by the King under the Great Seal; and ſworn to carry themſelves as dutiful and obedient Subjects in all their Actions: And it was farther enacted, "*That if any ſhould refuſe or diſobey the Ordinances ſo* "*made for the publick good, the Puniſhment for the firſt Offence ſhould be the* "*Confiſcation of all his Goods, and for the ſecond the Loſs of his Life.*"

20 Nov. 1386. Thus all Things being diſpos'd for the beſt, the Parliament was diſſolv'd, and every Man return'd to his own Home.

Soon after the ſaid *Michael de la Pole*, with others of his Confederates, 1387. being moved with implacable Fury againſt the late Statute, buzz'd into the King's Ears, that the Statutes lately enacted were very prejudicial to the Honour of his Crown, and derogatory to his princely Prerogative; that if they were in force he was no King, but rather reſembled the Shadow of one; and earneſtly moved the King againſt the other Lords, and to diſannul all that was done in the late Parliament. The King gave credit to theſe Tales, and therefore had the Lords in great jealouſy; but he releaſed *Michael de la Pole* Earl of *Suffolk* out of the Caſtle of *Windſor*, and ſuffer'd him to go at large: notwithſtanding which, the ſaid Earl of *Suffolk*, the Duke of *Ireland*, and *Robert Treſilian* Lord Chief Juſtice, doubtful of their own Safeguards, did what they could to move the King forward to the Deſtruction of the Duke of *Gloceſter*, the Earls of *Arundel*, *Warwick*, *Derby*, and *Nottingham*, with others of that Party; and accordingly they conſpir'd together with *Alexander* Archbiſhop of *York*, and Sir *Nicholas Brambre*, to deviſe means how they might diſpatch the ſaid Lords; and for that purpoſe wrote Letters to the King of *France* to aid and aſſiſt them in ſeizing on the ſaid Lords, and further prevail'd with the Judges to declare the ſaid Lords guilty of High-Treaſon for procuring the ſaid late Statutes.

But the ſaid Duke of *Gloceſter*, and the Earls of *Arundel* and *Warwick*, ſeeing the heap of Ills that daily did ariſe by the Practices of thoſe Conſpirators, ſet almoſt in every part of the Kingdom Intelligencers, who ſhould apprehend all Meſſengers, and intercept all Letters, which went under the King's Name, and ſend them to the Commiſſioners. And thus did they come to have Intelligence of the whole Plot of the Conſpirators, all their Letters being indors'd, *Glory be to God on High, on Earth Peace, and Good-will towards Men:* and by coming to the Knowledge of each Circumſtance they found that the Kingdom was at the point of Deſtruction, wherefore they ſought for a Remedy, for by the Law of Nature 'tis lawful to repel Violence by Violence; every Man according to his Ability levied a Power for the preſervation of the King and Kingdom; part of which Forces being committed to the Earl of *Arundel*, he march'd away by Night, and pitch'd his Tents near *London:* and in the mean time he uſed ſuch Diſcipline in his Camp, that he lacked nothing, but all things were ſold at reaſonable Rates as if it had been a Market.

On the other ſide, the Conſpirators intending to prevent their Purpoſes, cauſed it to be proclaim'd thro'out the City of *London*, "That none ſhould "upon pain of the Forfeiture of all their Goods, either ſell, give, or commu-"nicate any Neceſſaries to the Army of the Earl of *Arundel*, but ſhould "treat them as Rebels to the King and Country." Further, they counſell'd the King to abſent himſelf from the Parliament (which was to begin on *Candlemas* next, according as the King and Commiſſioners had appointed it) unleſs the Duke of *Gloceſter*, the Earls of *Arundel* and *Warwick*, and the reſt of the Commiſſioners would ſwear, "That neither they nor any in their "Name ſhould accuſe them, or urge any Accuſation againſt them." In the mean time the three Noblemen, *viz.* Duke of *Gloceſter*, and the Earls of *Arundel* and *Warwick*, having muſter'd their 1388. Troops on the 14th of *November* in the ſame Year at *Waltham-Croſs* in the County of *Hertford*, ſent for the Commiſſioners that were at *Weſtminſter* in Parliament, and ſent the Archbiſhop of *Canterbury*, the Lord *John Lovel*, Lord *Cobham*, and Sir *John Devereux*, with an Accuſation in Writing againſt the aforeſaid Conſpirators, *viz.* the Archbiſhop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*, *Robert Treſilian* and *Nicholas Brambre*, wherein they accus'd them of High-Treaſon; which their Appellation they did offer to maintain, and that they were willing to proſecute the ſame, and to prove it to be true: they cauſed alſo the reſt of the Commiſſioners to ſubſcribe as Parties to their Appellation. When theſe things came to the Ears of the King, he ſent unto them requiring to know what their Requeſt was, and what they wiſhed to have done: They return'd anſwer thus, "That "they did deſire, that the Traitors which were always about him filling his "Ears with falſe Reports, and daily committed inſufferable Crimes and "Injuries, might be rewarded with condign Puniſhment; for it were better "ſome few ſhould die for the People, than the whole Nation ſhould periſh." The King being adviſed by the Archbiſhop of *Canterbury*, and the Biſhop of *Ely* Lord Chancellor, ſent to them, willing them to come to him to *Weſtminſter* on the Sunday then next following; which the Lords would not agree to, till the Lord Chancellor with divers other Noblemen of good Credit had undertaken upon their Oaths on the King's behalf, that no Fraud, Deceit, Peril or evil Pretence ſhould be put in practice againſt them, whereby they might come to loſs of Life, Limbs, Goods, or otherwiſe, thro' the King's means.

When therefore the Lords were ready according to Covenant to come to *Weſtminſter*, they were ſecretly advertis'd that there was an Ambuſh laid in a place call'd the *Mews*, and ſo they ſtaid and came not at the appointed Hour: whereupon when the King demanded *how it fortun'd that the Lords kept not Promiſe*; the Biſhop of *Ely* made anſwer, *becauſe there is an Ambuſh of a thouſand armed Men or more laid in ſuch a place* (and named it) *contrary to Covenant*, and *therefore they neither come, nor hold you for faithful to your word.* The King hearing this was aſtoniſhed, and ſaid with an Oath, *that he knew of no ſuch thing*; and withal ſent to the Sheriffs of *London*, commanding them to go to the *Mews*, and if upon ſearch made they found any Force of Men there aſſembled, to take and kill all ſuch as they could lay hands on: but Sir * *Thomas Trivet* and Sir *Nicholas Brambre*, who had indeed aſſembled ſuch a number of Men, when they underſtood what Order the King had given therein, ſent their Men back to *London*.

* *He was afterwards kill'd by a fall from his Horſe.*

The Lords after this receiving a ſafe Conduct from the King, and perceiving all to be ſafe and clear, came to *Weſtminſter* with a gallant Troop of Gentlemen; and entering the Hall, as ſoon as they had ſight of the King (who was ſeated on a Throne apparel'd in his kingly Robes, with his Scepter in his Hand) made to him their humble Obeiſance, and went on till they came to the nether Steps going up to the King's Seat of State, where they made their ſecond Obeiſance, and then the King gave them Countenance to come nearer to him; and they ſo did, kneeling down before him: and forthwith he roſe from his place, and lovingly welcoming them, took each of them by the Hand, and then ſat him down again; when the aforeſaid Lords again appeal'd [*] the Archbiſhop, the Duke of *Ireland*, the Earl of *Suffolk*, *Robert Treſilian* that falſe Juſtice, and *Nicholas Brambre* that diſloyal Knight (for ſo they term'd them) of High-Treaſon, according as they had done before at *Waltham Croſs*; and to prove their Accuſations to be true, they threw down their Gloves, proteſting by their Oaths to proſecute it to Battle: *Nay*, ſaith the King, *not ſo, but in the next Parliament, which we do appoint beforehand to begin the morrow after the Purification of our Lady, both they and you appearing ſhall receive according to Law all that which Reaſon doth appoint.* And finally, it was concluded they ſhould all meet together at the next Parliament, and each one receive according to Juſtice; and in the mean time the King commanded them upon their Honours, not any Party to moleſt the other until the next Parliament [‖].

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* Walſingham *relates, that all theſe Articles abovemention'd were ſo fully prov'd, that the Earl could not deny them; inſomuch that when he ſtood upon his Defence, he had nothing to ſay for himſelf: Whereupon the King bluſhing for him, ſhook his Head and ſaid,* Alas, alas, *Michael*, ſee what thou haſt done.

† *The Commiſſion, which is among the Parliament Rolls* 10 Richard II. Part 1. M. 7. *mentions but eleven Commiſſioners, omitting the Biſhops of* Ely *and* Hereford, *and was in Subſtance as follows:*

That the King of his own Free-will, and at the Requeſt of his Lords and Commons, had chang'd the Great Officers of the Crown abovemention'd, for the good Government of the Kingdom, the good and due Execution of the Laws, and in relief of his own Eſtate, and eaſe of his People; and had appointed eleven Commiſſioners, viz. William *Archbiſhop of* Canterbury, Alexander *Archbiſhop of* York, Edmond *Duke of* York, *and* Thomas *Duke of* Glocester *(the King's Uncles)* William *Biſhop of* Wincheſter, Thomas *Biſhop of* Exeter, Nicholas *Abbot of* Waltham, Richard *Earl of* Arundel, John *Lord* Cobham, Richard Le Scrope *and* John Devereux, *to be his great and continual Council for one Year next coming, after the Date of theſe Letters Patent; by which he gave them Power to ſurvey and examine all his Officers, Courts, Houſhold, and the Government of the whole Kingdom, to receive all his Revenue, as alſo all Subſidies, Taxes, and other Payments; to do what they would in the Kingdom, and to amend all things according to their Diſcretions. And theſe Powers were given to any ſix of them, with his three great Officers, willing, that if any Difference in Opinion ſhould happen between his Counſellors and thoſe Officers, that the matter ſhould be determined by the major part of them; commanding and charging all Prelates, Dukes, Earls, Barons, the Steward, Treaſurer, and Comptroller of his Houſhold, the Juſtices of one Bench or the other, and other his Juſtices whatſoever, Barons and Chamberlains of the Exchequer, Sheriffs, Eſcheators, Mayors, Bayliffs, and all other his Officers, Miniſters, and Lieges whatſoever, that they ſhould be attending, obedient, counſelling and aſſiſting to the ſaid Counſellors and Officers, ſo often and in what manner they ſhould direct. Dated at* Weſtminſter *the* 19*th Day of* November. *Upon this Commiſſion a Statute was made, and the whole recited in it, which may be ſeen in the Statute Book* 10 Rich. II. Cap. 1.

In the mean time the Earl of *Suffolk* fled to *Calais*, and the Archbiſhop of [†] *York* fled along with the Biſhop of *Durham*, it was not known whither; and the Duke of *Ireland* going into *Cheſhire*, *Lancaſhire* and *Wales*, rais'd Forces to withſtand the Appellants, (to whom were now join'd the Earls of *Derby* and *Nottingham*) with which Forces he march'd towards *London*; but meeting with the Appellants Forces at *Ratcotebridge* near *Chipping-Norton* in *Oxfordſhire*, he was ſtopt in his march, and his Men revolting from him, was conſtrain'd to ſave himſelf by flight in ſwimming croſs the River *Thames* [‡].

On the other ſide, *Nicholas Brambre* in the King's Name cauſed all the Gates of the City of *London* to be ſhut againſt the Appellants, and to be guarded with a ſufficient Watch: nevertheleſs the Lords Appellants march'd towards *London* to confer with the King; but when they heard that *Nicholas Brambre* had cauſed the Gates of the City to be ſhut againſt them, they encamp'd themſelves on the 27th of *December* in *Clerkenwell*, and ſent two Knights and two Eſquires to the Mayor and Aldermen of *London* to deſire Entrance: then came the [1] Mayor of *London* and certain of the chief Citizens, and brought the Keys of the City with them, and ſubmitted themſelves to the Lords, and offer'd them entrance into their City with all their People at their pleaſures.

[1] *Sir* Nicholas Exton.

The next day there happen'd an Interview between the King and the Appellants ſo far, that they open'd their Minds one to another: but becauſe the King was loth to ſpeak to them before ſuch a rabble of Men, and on the other ſide refuſed to go out of the *Tower* to ſpeak with them, and the Appellants feared ſome Violence or Wrong to be offer'd them, they would not go into the *Tower* without a ſtrong Guard of valiant Warriors; therefore the moſt wiſe of the Appellants after divers Conſultations reſolv'd to go and confer with the King; but firſt they ſent a ſtrong Troop well arm'd to ſearch all the Corners and Caves of the *Tower*, and relation being made of the Safety of the place, with a ſelected band of valiant Cavaliers they entered the *Tower*, and ſeizing the Gates, and placing a Guard, they appear'd before the King, who was ſet in a Pavilion richly array'd; and after their humble Salutations done, they a third time appeal'd the aforeſaid Conſpirators in the ſame Sort and Form as afore: which Appellation being ended, the King ſwore that he would do Juſtice ſo far as the Rule of Law, Reaſon and Equity did require.

Theſe things being accompliſh'd, they departed from the *Tower* to their own Homes; and then it was publiſh'd in the Preſence of the King, and thro'out his Dominions, That on the morrow after *Candlemas*-Day, a [§] Parliament ſhould be held, and the aforeſaid Conſpirators ſhould perſonally appear there to anſwer the Appellation whereby they were charg'd with ſo many Treaſons.

In the mean while the King, by Conſent of the ſaid Commiſſioners and Appellants, iſſued out ſeveral [**] Orders for the apprehending and ſeizing all ſuſpected Folks, and for keeping them in ſafe Cuſtody till the Parliament ſhould aſſemble: accordingly divers Officers of the Houſhold were expell'd their Office, and together with ſeveral others apprehended and committed to Priſon, *viz.* Sir *Simon Burleigh*, Sir *William Elman*, Sir *John Beauchamp*, Sir *Thomas Trivet*, Sir *John Saliſbury*, and divers others; and there was alſo taken Sir *Nicholas Brambre*, but he found Surety for his forthcoming; but the Duke of *Ireland*, Archbiſhop of *York*, Earl of *Suffolk*, and *Robert Treſilian* were no where to be found.

Shortly after, that is to ſay, the morrow after *Candlemas*-Day, the Parliament began; and the firſt Day, by the joint Conſent of all the Commiſſioners, were arreſted ſitting in their places [|||], all the Juſtices (except Sir *William Skipworth*, who had been hinder'd by Sickneſs from being along with the other Judges when the Commiſſioners were declar'd guilty of High-Treaſon, and *Treſilian*, who was fled) who were all immediately diſplac'd from their Offices, and ſent Priſoners to the *Tower*, and there kept in ſeparate Places.

Feb. 3. All the Peers as well of the Spiritualty as the Temporalty being aſſembled in the great Hall at *Weſtminſter*, the King ſoon after came and ſat down on his Throne; and after him the five Noblemen Appellants (the fame of whoſe admired Worth echo'd thro' all the Land) entered the Houſe in their coſtly Robes, leading one another hand in hand, with an innumerable Company following them; and beholding where the King ſat, they all at once with ſubmiſſive Geſtures reverenced the King. The Hall was ſo full of Spectators, that the very Roofs were cover'd with them; but amongſt this infinite multitude there could not be found any of the Conſpirators; *Brambre*, who had attempted to flee away, had been taken a little before, and was caſt into *Glocester* Gaol.

The Clergy then placing themſelves on the Right-hand, and the Nobility on the Left-hand of the King, according to the ancient Cuſtom of the high Court of Parliament, the Lord Chancellor ſtanding with his Back towards the King, by the King's Command declar'd the Cauſe of their Summons to Parliament; which was to conſider by what means the Diſtraction of the Realm, thro' evil Management, might for the future be compoſed, the King better adviſed, the Nation better govern'd, Miſdemeanors more ſeverely puniſh'd, and good Men more incourag'd; how the Kingdom alſo might be beſt defended, the Sea beſt kept, the Marches of *Scotland* ſecurely guarded, *Guyenne* preſerv'd, and laſtly how the Charges of theſe things may moſt eaſily be borne; and then gave notice that whoever would complain in Parliament of ſuch things as could not well be redreſs'd by the common Law, might carry their Petitions to the Clerk in Chancery, there named and appointed to receive them. Which being ended, the aforeſaid five Appellants ariſing, declar'd their Appellation by the Mouth of *Robert Pleaſington*, their Speaker, who thus ſpoke:

Behold the Duke of *Gloceſter* comes to purge himſelf of Treaſons which are laid to his charge by the Conſpirators. To whom the Lord Chancellor by the King's Commandment anſwer'd: My Lord Duke, the King conceiveth ſo honourably of you, that he cannot be induced to believe that you, who are of Affinity to him in a collateral Line, ſhould attempt any Treaſon againſt his Majeſty.

The Duke, with his four Companions upon their Knees, humbly gave Thanks to the King for his gracious Opinion of their Fidelity.

The Lords Spiritual and Temporal there preſent then claim'd as their Liberty and Franchiſe, that all great Matters moved in that Parliament, and to be moved in other Parliaments in time to come, touching the Peers of the Land, ſhould be diſcuſs'd and judged by the Courſe of Parliament, and not by the Law civil, or by the common Law of the Land uſed in the inferior Courts of the Kingdom; which Claim, Liberty and Franchiſe, the King allow'd and granted in full Parliament.

Then after Silence proclaim'd, the Appellants aroſe, and accus'd the aforeſaid Conſpirators of High Treaſon, and deliver'd in certain Articles in writing, wherein were contain'd the Particularities of their Treaſons; which were as follow.

1. That as falſe Traitors and Enemies to the King and Kingdom, taking advantage of his tender Age, and the Innocency of his Perſon, they inform'd and put upon him for Truth divers falſe things of their own Invention, againſt all Loyalty and good Faith, and made him intirely their own; ſo that they had his Love, firm Faith and Credit, while he hated and ſuſpected his loyal Lords and Lieges, by whom he ought to have been govern'd: That theſe falſe Traitors had encroach'd to themſelves Royal Power, by enſlaving the King, blemiſhing his Sovereignty, and leſſening his Prerogative and Royalty; and made him ſo obedient to their Will, that he was ſworn to be govern'd, counſell'd and conducted by them: by virtue of which Oath they kept him in obedience to their falſe Imaginations and miſchievous Deeds contain'd in the following Articles.

2. Alſo whereas the King is not bound to take any Oath, but on the Day of his Coronation, or for the common Profit of himſelf and Kingdom, the aforeſaid *Alexander*, *Robert* and *Michael*, as falſe Traitors and Enemies to the King and Realm, made him to ſwear, and aſſure them, that he would maintain, ſupport, and live and die with them: and alſo whereas the King ought to be of more free Condition than any other of his Kingdom, they have put him more in Servitude than any one, againſt his Honour, Eſtate and Royalty, againſt their Ligeance, as Traitors to him.

3. Alſo the ſaid *Robert*, *Michael* and *Alexander*, by the Aſſent and Counſel of *Robert Treſilian* that falſe Juſtice, and *Nicholas Brambre* that falſe Knight of *London*, by their wicked contrivance would not permit the great Men of the Kingdom, nor good Counſellors to come near the King, nor would ſuffer him to ſpeak to them, unleſs in their Preſence and Hearing, encroaching to themſelves Royal Power, Lordſhip and Sovereignty over the Perſon of the King, to the great Diſhonour and Peril of the King, the Crown and his Realm.

4. Alſo the aforeſaid *Alexander*, *Robert de Vere*, *Michael de la Pole*, *Robert Treſilian*, and *Nicholas de Brambre*, by their falſe Wickedneſs evilly adviſ'd the King, ſo that his perſonal Preſence which he ought to make to the great Lords, and his Liege People, and the Favours and Rights to which they requeſted his Anſwer, were not to be obtain'd but at their Pleaſure and Allowance, in ſtaying the King from his Duty, and againſt his Oath, and turning the Hearts of the great Lords from him, with deſign to eſtrange his Heart from the Peers of the Land, to have amongſt them the ſole Government of the Kingdom.

5. Alſo by the ſaid Encroachment of *Robert de Vere*, Duke of *Ireland*, and *Michael de la Pole*, with the Advice and Counſel of *Alexander* Archbiſhop of *York*, they cauſed the King without Aſſent of the Kingdom, by their Abetments, without any Deſerts of the Perſons, to give divers Lordſhips, Caſtles, Towns and Manors, as well annexed to his Crown as others, as the whole Realm of *Ireland*, the Town of *Okeham*, and the Foreſt thereof, and the Lands which were the Lord *Audley*'s and other great Eſtates, to the ſaid *Robert de Vere*, and others, whereby they were mightily enrich'd, and the King became ſo poor, that he had not wherewith to ſupport and bear the Charges of the Kingdom, unleſs by Impoſitions, Taxes, and Tributes put upon his People, in diſheriſon of his Crown, and to the undoing of the Realm.

6. Alſo by the Encroachment of the ſaid *Alexander*, *Robert*, and *Michael*, by the Aſſent and Advice of the aforeſaid *Robert Treſilian* and *Nicholas Brambre*, they cauſed the King to give divers Lands, Manors, Tenements, Rents, Offices and Bailiwicks to People of their Kindred, and other Perſons of whom they receiv'd great Bribes; and alſo to make them of their Party, in their falſe Quarrels and Purpoſes, as in the Caſe of Sir *Robert Manſel* Clerk, *John Blake*, *Thomas Uſke*, and others, to the Deſtruction of the King and Kingdom.

7. Alſo *Robert de Vere*, *Michael de la Pole*, *Alexander* Archbiſhop of *York*, with the reſt of the Perſons above-named, by Aſſent and Counſel of

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[*] *All Appeals of Treaſon in Parliament are ſince taken away by* 1 H. 4. c. 14. *Bract.* 119. a. 3. *Co. Inſtit.* 132. *See Proceedings againſt E. of* Clarendon, Vol. II.

[‖] *See a Proclamation by the King to this purpoſe*, Holin. Vol. 3. *p.* 460.

[†] *He afterwards was tranſlated by Pope* Urban V. *to the See of* St. Andrews *in* Scotland; *but that Kingdom being under Obedience to the Anti-Pope, the Tranſlation was of no Service to him, ſo that he was conſtrain'd to be a Pariſh Prieſt at* Lovain, *where he continued three Years, till the time of his Death.*

[‡] *He afterwards got into* Holland, *from whence he went to* Lovain, *where in* 1393, *he was ſlain in hunting a wild Boar.*

[§] *See the King's Order to the Sheriff of* Kent *for proclaiming it, and ſummoning the Conſpirators to appear at it, dated* 4 Jan. 1388. Rym. Fœd. Tom. 7. p. 567. *The like Order to all the Sheriffs thro'out* England, *of the ſame Date.* Ibid.

[**] *See a Warrant directed to the Conſtable of* Gloceſter *Caſtle, for Taking into Cuſtody* Robert Treſilian *and* Nicholas Brambre, *dated* 4 Jan. 1388. Rym. Fœd. Tom. 7. *p.* 566. *See likewiſe another Warrant of the ſame Date, directed to the Conſtable of* Dover *Caſtle, and the Warden of the Cinque Ports, for keeping in Cuſtody and apart ſeveral others accuſed by the Lords.* Ibid.

[|||] *Sir* Roger Fulthorp, *Sir* Robert Belknap, *Sir* John Carey, *Sir* John Holt, *Sir* William Burleigh, *and* John Locton, *the King's Serjeant at Law.*

the ſaid *Nicholas Brambre*, &c. encroaching to themſelves Royal Power, cauſed the King to give very great Sums of Gold and Silver, as well of his own Goods and Jewels as the Treaſure of the Kingdom, beſides Tenths, Fifteenths, and other Taxes granted by divers Parliaments to be expended in defence and ſafeguard of the Kingdom, and otherwiſe, which amounted to the Sum of one hundred thouſand Marks and more, to the ſaid *Robert*, and others. And further, they cauſed many good Ordinances and Purpoſes made and ordained in Parliaments, as well for the Wars as Defence of the Kingdom, to be interrupted, to the great Injury of the King and Kingdom.

8. Alſo by the ſaid Encroachment and great Bribes taken by the ſaid *Robert*, *Michael*, and *Alexander*, divers not ſufficient nor fit had the Guard and Government of divers Lordſhips, Caſtles and Countries, as in *Guyenne* and elſewhere, as well on this ſide as beyond the Sea; whereby the People and Countries of thoſe Territories being loyal to the King, for the moſt part were deſtroy'd, and great Dominions of late render'd into the Hands and Poſſeſſion of the Enemy, without aſſent of the Realm, which were never in the hands of the Enemy ſince the Conqueſt of them; as alſo in the Marches of *Scotland*, and otherwhere, in diſheriſon of the Crown, and great Injury to the Realm; as in the Caſe of *Harpeden*, *Craddock*, and others.

9. Alſo by the Encroachment of the aforeſaid *Alexander*, *Robert*, *Michael*, *Robert* and *Nicholas*, divers People have been hinder'd of the Benefit of the common Law of *England*, and put to great Delays, Loſſes and Coſts; while Statutes and Judgments juſtly made upon neceſſary Cauſes in Parliament have been reverſed and annulled by the Procurement of the ſaid Miſdoers, and Traitors, and this by reaſon of the large Bribes by them extorted, to the great Prejudice of the Kingdom.

10. Alſo the five aforeſaid encroaching to themſelves Royal Power, as falſe Traitors to the King and Kingdom, caus'd and counſell'd the King to grant Charters of Pardon for horrible Felonies and Treaſons, as well againſt the State of the King, as of the Party, againſt the Law and Oath of the King.

11. Alſo, Whereas the great Lordſhip and Land of *Ireland* hath been beyond Memory parcel of the Crown of *England*, and the People thereof for all that time have been the King's Lieges without any Meſne Lord, to him and his Royal Progenitors, and our Lord and his noble Progenitors Kings of *England* have in all their Charters, Writs, Letters and Patents, and alſo under their Seals, in augmentation of their Names and Royalty, ſtyled themſelves Lords of *Ireland*; the aforeſaid *Robert*, Duke of *Ireland*, *Alexander* and *Michael*, &c. as falſe Traitors to the King by the ſaid Encroachment, gave Advice that the King, as much as was in him, had granted that *Robert de Vere* ſhould be King of *Ireland*; and to accompliſh this wicked Purpoſe, the aforeſaid Traitors counſell'd and excited the King to ſend Letters to the Pope to ratify and confirm their traitorous Intention, without the Knowledge and Aſſent of the Kingdom of *England*, or Land of *Ireland*, in parting the King's Ligeance in reſpect to both Nations, in decreaſe of the honourable Name of the KING, and in open Diſheriſon of his Crown of *England*, and full Deſtruction of his loyal Lieges and the Nation of *Ireland*.

12. Alſo, Whereas by the great Charter and other good Laws and Uſages of the Kingdom, no Man ought to be taken, put in Priſon, or to Death without due Proceſs of Law, the aforeſaid *Nicholas Brambre*, falſe Knight of *London*, took by Night certain Perſons out of the Priſon of *Newgate*, Chaplains, and others, to the Number of twenty-two; ſome Debtors and others accus'd of Felony, and ſome Approvers in the Caſe of Felony, and ſome taken and impriſon'd there upon ſuſpicion of Felony; and led them into *Kent* to a Place called the *Foul Oak*, and there encroaching to himſelf Royal Power, as a Traitor to the King, and without Warrant, or Proceſs of Law, cauſed all their Heads to be cut off but one, who was appealed of Felony by an Approver, and him he ſuffer'd to go at large at the ſame time.

13. Alſo, The aforeſaid *Alexander*, *Robert*, *Michael*, *Nicholas*, &c. Traitors to the King and Kingdom, took great Bribes in many Caſes in the Name of the King for maintenance of Quarrels, of Suits; and once took Bribes of both Sides or Parties.

14. Alſo, Theſe five cauſed ſome Lords and others, loyal Lieges, to be put out of the King's Council; ſo as they dar'd not to ſpeak in Parliament about the good Government of the King's Perſon or Kingdom.

15. Alſo, Whereas in the laſt Parliament all the Lords, Sages and Commons there aſſembled, ſeeing the imminent Ruin of the King and Kingdom by the Perils and Miſchiefs aforeſaid, and for that the King had forſaken the Council of the Kingdom, and holden himſelf altogether to the Council of the ſaid five Evil-doers and Traitors; and alſo for that the King of *France*, with his Royal Power, was then ſhipp'd ready to have landed in *England*, to have deſtroy'd the Kingdom and Language thereof, and there was no Ordinance then made, or Care taken for the Safety of the King and Kingdom; they knew no other Remedy than to ſhew the King fully how he was ill govern'd, led and counſell'd by the Traitors and ill Doers aforeſaid; requiring him moſt humbly, as his loyal Lieges, for the Safety of him and his whole Realm, and for avoiding the Perils aforeſaid, to remove from his Preſence the ſaid Evil-doers and Traitors, and not to do any thing after their Advice, but according to the Counſel of the loyal and diſcreet Sages of the Realm: And hereupon the ſaid Traitors and Evil-doers, ſeeing the good and honourable Opinion of the Parliament, to undo this good Purpoſe by their falſe Counſel, cauſed the King to command the Mayor of *London* to kill and put to death all the ſaid Lords and Commons, except ſuch as were of their Party; to the doing whereof, theſe great Traitors and Evil-doers ſhould have been Parties, and preſent, to the undoing of the King and the Kingdom.

16. Alſo, That thoſe five Traitors above-mention'd, when the Mayor and good People of *London* utterly refus'd in the Preſence of the King to murder the Lords and Commons; they by their ſaid traitorous Accroachment falſely counſell'd the King, and prevail'd with him to leave the Parliament for many Days, and cauſed him to certify that he would not come to the Parliament, nor treat with the Lords and Commons concerning the Buſineſs of the Kingdom, for any Peril, Ruin or Miſchief whatſoever that might happen any ways to him, or the Realm, if he were not firſt aſſur'd by the Lords and Commons, that they would not ſpeak nor do in that Parliament any thing againſt any of the Miſdoers, ſaving that they might proceed on in the Proceſs, which was then commenced againſt *Michael de la Pole*, to the great Ruin of the King and Kingdom, and againſt the antient Ordinances and Liberties of Parliaments.

17. Alſo, The ſaid Lords and Commons, after they underſtood that the King's Mind (thro' the wicked Excitation and Counſel of the ſaid five, *&c.* above-mention'd) was ſuch, that he would not ſuffer any thing to be commenced, purſued or done againſt the ſaid Evil-doers, ſo that they durſt not ſpeak or proceed againſt the King's Will; upon conſideration of the former Counſel and Advice of the Lords and Juſtices, with other Sages and Commons of Parliament, how the Eſtate of the King and his Royalty might be beſt ſaved againſt the Perils and Miſchiefs aforeſaid, knew not how to find out any other Remedy than to ordain, That * twelve loyal Lords of the Land ſhould be the King's Council for one Year, and that there ſhould be made ſuch a Commiſſion and Statute, by which they ſhould have full and ſufficient Power to ordain, *&c.* according to the Effect of the ſaid Commiſſion and Statute; by both which no Man was to adviſe the King againſt them, under Forfeiture, for the firſt Offence, of his Goods and Chattels; and for the ſecond Offence, of Life and Member: Which Ordinance, Statute, and Commiſſion being made by the Aſſent of the King, the Lords, Judges, and other Sages and Commons, aſſembled in the ſaid Parliament to preſerve to the King his Royalty and Realm, the ſaid Traitors and Miſdoers, by their evil, falſe and traitorous Informations, inſinuated to the King, that the ſaid Ordinance, Statute and Commiſſion were made to defeat his Royalty; and that all thoſe who procur'd and counſell'd the making of them, and thoſe who excited the King to conſent to them, were worthy to be put to death as Traitors to the King.

18. Alſo, after this, the aforeſaid five Miſdoers and Traitors cauſed the King to aſſemble a Council of certain Lords Juſtices and others, many times without the Aſſent and Preſence of the Lords of the ſaid great Council; and made divers Demands of them very ſuſpicious, concerning divers Matters, by which the King, Lords and common People were in great trouble, with the whole Realm.

19. Alſo, to accompliſh the ſaid High-Treaſon, the ſaid Miſdoers and Traitors, *Alexander*, *Robert*, *Michael*, &c. by the Aſſent and Counſel of *Robert Treſilian* and *Nicholas Brambre*, cauſed the King to ride thro' the Kingdom with ſome of them into *Wales*, and cauſed him to make come before him, the Lords, Knights, and Eſquires, and other good People of thoſe Parts, as well of Cities and Burghs, as other Places, and made ſome to enter into Bond; and obliged others by their Oaths to ſtand by him, againſt all People, and to effect his Purpoſe, which at that time was the Will and Purpoſe of the ſaid Miſdoers and Traitors, by their falſe Imaginations, Deceits and Accroachments above-ſaid; which Securities and Oaths were againſt the good Laws and Uſages of the Land, and againſt the Oath of the King, to the great Ruin and Diſhonour of the King and Kingdom.

20. Alſo, by force of ſuch Bonds and Oaths, all the Realm was put into great Trouble by the ſaid Evil-doers and Traitors; and in peril, to have ſuffer'd many intolerable Miſchiefs.

21. Alſo, to bring about their traitorous Purpoſes, the ſaid five cauſed the King to go into ſeveral other Parts of the Kingdom for ſome time; whereby the Lords aſſigned by the ſaid Ordinances, Statute and Commiſſion, could not adviſe with him about the Buſineſs of the Kingdom; ſo as the Purport and Effect of the Ordinances, Statute and Commiſſion were defeated, to the great Ruin of the King and Kingdom.

22. Alſo, the ſaid *Robert de Vere*, Duke of *Ireland*, by the Counſel and Abetment of the other four Traitors, accroaching to himſelf Royal Power, without the King's Commiſſion, or other ſufficient or uſual Warrant, made himſelf Chief Juſtice of *Cheſter*, and by himſelf and Deputies held all manner of Pleas, as well common as of the Crown, and gave Judgments upon them, and made Execution thereof; and alſo cauſed many original and judicial Writs to be ſealed with the Great Seal uſed in thoſe Parts; and alſo by ſuch Accroachment of Royal Power, he cauſed to riſe with him great part of the People of that Country; ſome by Threats, others by Impriſonments of their Bodies; ſome by ſeizing of their Lands, others by many diſhoneſt Ways, by colour of the ſaid Office; and all this to make War upon and deſtroy the loyal Lords and others the King's Liege Subjects, to the undoing of the King and the whole Realm.

23. Alſo, the ſaid Traitors, *Robert de Vere*, *Alexander*, *Michael*, &c. by the Counſel and Abetment of *Robert Treſilian* and *Nicholas Brambre*, accroaching to themſelves Royal Power, cauſed to be deliver'd *John de Blois*, Heir of *Bretagne*, who was Priſoner, and Security to the King and Kingdom, without aſſent of Parliament, or the King's Great Council, and without any due Warrant, to the great ſtrengthning the Adverſary of *France*, the ruin of the King and Realm, and againſt the Statutes and Ordinances aforeſaid made in the laſt Parliament.

24. Alſo, the ſaid five Traitors cauſed the King to have a great Retinue of late of divers People, to whom he gave Badges, which was not done in antient time by any King his Progenitor, that they might have Power to perform their falſe Treaſons aforeſaid.

25. Alſo, the aforeſaid five Miſdoers and Traitors, in full Accompliſhment of all their Treaſons aforeſaid, and to make the King give Credit to them and their Counſel, and hold them more loyal and greater Sages than others of the Kingdom; and the more to colour their falſe Treaſons, cauſed the King to make come before him to the Caſtle of *Nottingham*, divers Juſtices and Lawyers, on the Morrow after *St. Bartholomew's-Day* laſt paſt, and there † conſtrained the ſaid Juſtices to ſet their Hands to the Anſwers to certain Queſtions

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* *There were thirteen Commiſſioners, but only twelve of them were Peers.*

† *Divers of the Juſtices refuſed to ſubſcribe, but yet they were obliged to do as the reſt did; among whom was* Robert Belknap, *who utterly refuſed, till the Duke of* Ireland *and the Earl of* Suffolk *compelled him thereto; for if he had perſiſted in his Refuſal he had not eſcaped their Hands: and yet when he had ſet to his Seal, he burſt out into theſe Words:* Now here lacketh nothing but a Rope, that I may receive a Reward worthy my Deſert; and I know if I had not done this I ſhould not have eſcaped your Hands; ſo that for your Pleaſures and the King's I have done it, and thereby deſerve Death at the Hands of the Lords. *Holin.* Vol. 3. p. 456.

then propounded and delivered to them, that by means thereof thoſe Perſons who were about the King might have colour to put to death the Duke of *Gloceſter* and other Lords, who in the laſt Parliament were ordained to have the Governance of the Realm.

Which Queſtions and Anſwers were as follow:

(1.) *Firſt*, it was aſk'd of them, whether the new Statute, Ordinance and Commiſſion, made in the laſt Parliament held at *Weſtminſter*, be hurtful to the King's Prerogative?

Whereunto all of one mind anſwer'd, That they were hurtful, and eſpecially becauſe they be againſt the King's Will?

(2.) *Item*, It was inquir'd of them how they ought to be puniſh'd that procur'd the ſaid Statute, Ordinance and Commiſſion to be made?

Whereunto with one Aſſent they anſwer'd, That they deſerved Death, except the King of his Grace would pardon them.

(3.) *Item*, It was inquir'd how they ought to be puniſh'd which mov'd the King to conſent to the making of the ſaid Statute, Ordinance and Commiſſion? Whereunto they anſwer'd, That unleſs the King would give them his Pardon they ought to loſe their Lives.

(4.) *Item*, It was inquir'd of them what Puniſhment they deſerv'd that compell'd the King to the making of that Statute, Ordinance and Commiſſion? Whereunto they gave Anſwer, That they ought to ſuffer as Traitors.

(5.) *Item*, It was demanded of them how they ought to be puniſh'd that interrupted the King, ſo that he might not exerciſe thoſe Things that appertain'd to his Regality and Prerogative?

Whereunto Anſwer was made, that they ought to be puniſh'd as Traitors.

(6.) *Item*, It was enquir'd of them, whether, that after the Affairs of the Realm, and the Cauſe of the calling together of the States of the Parliament, were once by the King's Commandment declar'd and open'd, and other Articles on the King's behalf limited, upon which the Lords and Commons of the Realm ought to treat and proceed; if the Lords nevertheleſs would proceed upon other Articles, and not meddle with thoſe Articles which the King had limited, till the time the King had anſwer'd the Articles proponed by them, notwithſtanding the King injoined them to the contrary: Whether in this Caſe the King might rule the Parliament, and cauſe them to proceed upon the Articles by him limited before they proceeded any further?

To which Queſtion it was anſwer'd, That the King ſhould have in this Part the Rule for Order of all ſuch Articles to be proſecuted until the end of the Parliament; and if any preſum'd to go contrary to this Rule, he was to be puniſh'd as a Traitor.

(7.) *Item*, It was aſk'd, whether the King, whenſoever it pleaſed him, might not diſſolve the Parliament, and command the Lords and Commons to depart from thence, or not?

Whereunto it was anſwer'd, that he might.

(8.) *Item*, It was inquir'd, that for ſo much as it was in the King to remove ſuch Juſtices and Officers as offended, and to puniſh them for their Offences, whether the Lords and Commons might without the King's Will impeach the ſame Officers and Juſtices upon their Offences in Parliament, or not? To this anſwer was made, That they might not; and he that attempted contrary was to ſuffer as a Traitor.

(9.) *Item*, It was inquir'd how he is to be puniſh'd that mov'd in the Parliament, that the Statute wherein *Edward*, the Son of King *Edward*, Great Grandfather to the King that now is, was indicted in Parliament, might be ſent for; by Inſpection of which Statute, the ſaid new Statute, or Ordinance and Commiſſion, were conceived and deviſed in the Parliament?

To which Queſtion, with one accord, as in all the Reſidue, they anſwer'd, that as well he that ſo ſummon'd, as the other, which by force of the ſaid Motion brought the ſaid Statute into the Parliament Houſe, be as publick Offenders and Traitors to be puniſh'd.

(10.) *Item*, It was inquir'd of them, whether the Judgment given in the Parliament againſt *Michael de la Pole*, Earl of *Suffolk*, were erroneous, and revocable or not?

To which Queſtion likewiſe with one Aſſent they ſaid, that if the ſame Judgment were now to be given, the Juſtices and Serjeants aforeſaid would not give the ſame, becauſe it ſeemeth to them that the ſaid Judgment is erroneous and revocable in every Part. In witneſs of the Premiſſes, the Juſtices and Serjeant aforeſaid to theſe Preſents have ſet their Seals; theſe being Witneſſes, *Alexander* Archbiſhop of *York*, *Robert* Archbiſhop of *Dublin*, *John* Biſhop of *Durham*, *Thomas* Biſhop of *Cheſter*, *John* Biſhop of *Bangor*, *Robert* Duke of *Ireland*, *Michael* Earl of *Suffolk*, *John Rippon* Clerk, and *John Blake*.

26. Theſe five Evil-doers and Traitors are alſo farther accuſed, that they drew away the Heart and Good-will of the King from the ſaid Lords and others, who had agreed to make the ſaid Commiſſion and Ordinances in the laſt Parliament, and he thereupon accounted them Enemies and Traitors; and being ſure the ſaid Juſtices favour'd their Deſigns, contriv'd that thoſe Lords and others ſhould be arreſted, indicted, and attainted by falſe Inqueſts of Treaſon, and put to death, and they and their Iſſue diſherited: and theſe falſe Arreſts, Indictments, and Attainders were to be made in *London* or *Middleſex*; and for that purpoſe they had procured a falſe and wicked Perſon called *Thomas Huſk*, to be Under-Sheriff of *Middleſex*; who by their Aſſent, Procurement and Command, undertook the ſaid falſe Indictments and Attainders ſhould be made and accompliſh'd: And for the more complete effecting of their Treaſon, they cauſed the King to ſend his Letters of Credence by one *John Rippon*, a falſe Clerk, and one of their Crew, to the Mayor of *London* to arreſt the Duke of *Gloceſter*, and others therein named; and by force of thoſe Letters one *John Blake* carry'd to the Mayor a Bill of Information againſt them, by which they were to be indicted and attainted. The Effect of which Bill was, "That it ſeem'd for the better that certain of the Lords, Knights, and Commons of the laſt Parliament which were notoriouſly impeachable, ſhould be privately indicted in *London* and *Middleſex* of Conſpiracy and Confederacy, for that they at a certain Day mention'd, falſely and traitorouſly had conſpired and confederated between themſelves to make in the ſame Parliament a Statute and Commiſſion againſt the Royalty of our Lord the King, and in derogation of his Crown, and procur'd the ſame Statute there afterwards at a certain Day to be paſſed; and alſo had procur'd, nay conſtrain'd our Lord the King to aſſent againſt his Will to have it made; and they traitorouſly againſt their Allegiance hinder'd the King from uſing his Royalty, to the great Diſheriſon of him, and Derogation to his Crown, againſt their Allegiance, ſwearing to maintain each other in this Matter."

And further, The ſaid Evil-doers and Traitors ſet a Watch to give notice of the Duke of *Lancaſter*'s landing in *England*, that he might be arreſted upon his Arrival.

27. Alſo the above-named five Evil-doers and Traitors, after having inform'd the King that he ſhould believe that the ſaid Statute, Ordinance and Commiſſion were made in derogation of his Royalty and Prerogative, they ſtrongly poſſeſſed him that all thoſe who made, or cauſed to be made the ſaid Statute, Ordinance and Commiſſion, had thereby a Purpoſe to degrade, and finally to oppoſe him, and that they would not give over that Purpoſe until they had perfected it; for which Cauſe the King held them as Enemies and Traitors.

28. Alſo, after this falſe and traitorous Information, when the Five aforeſaid had procured the King to hold the loyal Lords as Enemies and Traitors; the ſaid Miſdoers and Traitors adviſed him by every way poſſible, as well by the Power of his own People, as by the Power of his Enemies of *France* and others, to deſtroy and put to death the ſaid Lords, and all others who aſſented to the making of the ſaid Statute, Ordinance and Commiſſion; and that it might be done ſo privately, as none might know of it till it was done.

29. Alſo, to accompliſh the High-Treaſon aforeſaid, *Alexander*, &c. *Robert de Vere*, &c. and *Michael*, &c. by their Advice, cauſed the King to ſend his Letters of Credence to his Adverſary the King of *France*; ſome by one *Nicholas Southwell*, a Groom of his Chamber, and others by other Perſons of ſmall Account, as well Strangers as *Engliſh*, requeſting and praying the King of *France* that he would with all his Power and Advice be aiding and aſſiſting him to deſtroy and put to death the ſaid Lords and other *Engliſh* which the King held to be his Enemies and Traitors as above, to the great Diſturbance and Diſſatisfaction of the whole Realm.

30. Alſo the three laſt named Perſons encroaching to themſelves Royal Power, cauſed the King to promiſe the King of *France*, by his Letters Patent and Meſſages, that for ſuch his Aid and Power to accompliſh the ſame, he would grant and ſurrender unto him the Town and Caſtle of *Calais*, and all other Caſtles and Fortreſſes in the Marches and Confines of *Picardy* and *Artois*, with the Caſtles and Towns of *Cherburgh* and *Breſt*; to the great Diſhonour, Trouble, and Ruin of the King and Kingdom.

31. Alſo, after the laſt named three were ſure of having Aid and Aſſiſtance from the King of *France*, by Inſtigation and Contrivance of the ſaid Traitors, a Conference was to have been in the Marches of *Calais* about a Truce for five Years between the two Nations; at which Conference both Kings were to be preſent, as likewiſe the *Engliſh* Lords whom the King then held to be his Traitors; and there *Thomas* Duke of *Gloceſter*, Conſtable of *England*, *Richard* Earl of *Arundel* and *Surrey*, and *Thomas* Earl of *Warwick*, and divers others, were to have been put to death by Treachery.

32. Alſo for performance of this High-Treaſon, the laſt named Three cauſed the King to ſend for Safe-Conducts to the King of *France*; ſome for himſelf and for the Duke of *Ireland*, and others for *John Saliſbury* and *John Lancaſter* Knights, with other People with them, who were to go into *France*, to put in execution this wicked Purpoſe and Treaſon; which Safe-Conducts were ready to be produc'd.

33. Alſo the aforeſaid *Nicholas Brambre*, falſe Knight of *London*, by the Aſſent and Advice of the ſaid *Alexander*, &c. *Robert de Vere*, &c. *Michael*, &c. and *Robert Treſilian* falſe Juſtice, encroaching to themſelves Royal Power (as before) ſome of them went perſonally into *London*, and without the Aſſent and Knowledge of the King, there openly in his Name made all the Crafts or Trades of that City to be ſworn, to hold and perform divers Matters not lawful, as is contained in the ſaid Oath upon record in Chancery: And amongſt other Things, that they ſhould keep and maintain the King's Will and Purpoſe to their power, againſt all ſuch as were, or ſhould be Rebels againſt the King's Perſon or his Royalty, and that they ſhould be ready to live and die with him in deſtruction of all ſuch who did or ſhould deſign Treaſon againſt the King in any manner; and that they ſhould be ready and come ſpeedily to their Mayor for the time being, or that afterwards ſhould be, when and at what Hour they ſhould be requir'd, to reſiſt, ſo long as they lived, all ſuch as did or ſhould deſign any thing againſt the King in any of the Points aboveſaid: at which time the King, by evil Information of the ſaid Miſdoers and Traitors, and by the falſe Anſwers of the Juſtices, firmly held the ſaid Lords and others who contrived the ſaid Statute, Ordinance and Commiſſion, to be Rebels, Enemies, and Traitors, which falſe Information was then unknown to the People of *London*; and alſo by obſcure Words contained in the ſaid Oath, the Intent of the Miſdoers and Traitors being to engage the People of *London* to raiſe their Power to deſtroy the ſaid loyal Lords and others.

34. Alſo the ſaid *Nicholas*, *Alexander*, *Robert de Vere*, and *Michael*, as Traitors to the King and Kingdom, encroaching to themſelves Royal Power, did of their own Authority, without Warrant from the King, or his great Council, cauſe to be proclaimed thro' the City of *London*, that none of the King's Lieges ſhould aid or comfort *Richard* Earl of *Arundel* and *Surrey*, a Peer of the Land, and one of the Lords of the King's Great Council during the Commiſſion; nor ſhould ſell him Armour, Victuals, or other things neceſſary, but ſhould avoid all of his Party as Rebels, upon pain of being proceeded againſt as Rebels, and on forfeiture of all they were worth; ſhewing Letters Patent from the King for making ſuch Proclamation, being to the Deſtruction of the King's Liege Subjects.

35. Alſo the ſaid *Nicholas Brambre*, by Aſſent and Counſel of the ſaid *Alexander*, *Robert de Vere*, and *Michael*, cauſed it to be proclaimed in the City of *London*, That no Perſon ſhould be ſo hardy as to preſume to ſpeak any Ill of the ſaid Miſdoers and Traitors, upon pain of forfeiting to the King whatever they were worth.

36. Alſo the ſaid five Traitors to the King and Kingdom cauſed the King to make certain Perſons to be Sheriffs thro' the Kingdom, named and recommended to him by the ſaid Evil-doers and Traitors, to the Intent that they might get ſuch Perſons as they ſhould name return'd for Knights of the Shire to ſerve in Parliament; to the undoing of the loyal Lords and Commons, and alſo the good Laws and Cuſtoms of the Kingdom.

37. Alſo the ſaid five Miſdoers and Traitors, during the time of Protection, to hinder the Appeal againſt them, falſely counſell'd and prevail'd with the King to command by his Letters divers Knights and Eſquires, Sheriffs, and other Miniſters of ſeveral Counties, to levy and aſſemble all the Power they could to join with the Duke of *Ireland* againſt the Lords Appellants, to make ſudden War upon and deſtroy them.

38. Alſo during the time of the ſaid Protection of the ſaid *Robert de Vere*, *Michael*, &c. *Alexander*, *Nicholas*, &c. they cauſed the King by his Letters, to ſignify to the Duke of *Ireland*, that they were all appealed of Treaſon by *Thomas* Duke of *Gloceſter*, Conſtable of *England*, *Richard* Earl of *Arundel* and *Surrey*, and *Thomas* Earl of *Warwick*, and how he had given them Day until the next Parliament, and how he had taken into his ſpecial Protection both Parties, with all their Goods and Chattels: And it was further contain'd in the King's Letters, That if the Duke of *Ireland* ſhould have ſufficient Power, he ſhould not ceaſe to march on with all his Force to come to him. And ſoon after they cauſed the King to write to the ſaid Duke that he ſhould take the Field with all the Force he could get together; and that he would meet him with all his Troops, and that he would adventure his Royal Perſon with him, and that he was in great danger, as alſo the whole Nation, if he was not relieved by him: and this the Duke ought to declare to all the People with him, and that the King would pay the Wages and Coſts of the ſaid Duke, and all the People aſſembled with him. By virtue of which Letters, and the wicked and traitorous Inſtigations, as well of the Duke and his Adherents, as of all the other Miſdoers and Traitors, he raiſed a great number of Men at Arms, and Archers, as well in the Counties of *Lancaſter* and *Cheſter*, as in *Wales* and other Places of the Kingdom, to deſtroy and put to death the ſaid loyal Lords, and all others who had aſſented to the making of the ſaid Statute, Ordinance and Commiſſion, in defence of the King and his Kingdom.

39. Alſo the ſaid *Robert de Vere*, Duke of *Ireland*, as a falſe Traitor to the King and Kingdom, aſſembled a great Power of Men at Arms and Archers in *Lancaſhire*, *Cheſhire*, *Wales*, and many other Places, to the Intent to have traitorouſly deſtroy'd with all his Power the ſaid Lords, *Thomas* Duke of *Gloceſter*, Conſtable of *England*, *Henry* Earl of *Derby*, *Richard* Earl of *Arundel* and *Surrey*, *Thomas* Earl of *Warwick*, and *Thomas* Earl Marſhal, with divers others the King's Lieges, to the undoing and ruin of the King and the whole Kingdom; and ſo rode and march'd with a great Force of Men at Arms, and Archers, from the County of *Cheſter* to *Ratcot Bridge*, accroaching to himſelf Royal Power, and diſplaying the King's Banner in his Army, againſt the State of the King and his Crown.

This Impeachment was exhibited on *Monday* the third of *February*, being the firſt Day of the Parliament; when the Lords Appellants alſo affirm'd they were ready to prove every Article of it as ſhould be awarded in Parliament, to the Honour of God, and the Advantage and Profit of the King and the whole Realm.

Whereupon all the Perſons appealed, were by command of the King and Lords ſolemnly ſummon'd in the great Hall at *Weſtminſter*, as alſo at the Gate of the ſaid Palace, to come and anſwer the ſaid Appellants; but upon their Non-appearance, the ſaid Duke and Lords Appellants pray'd, that their Default might be recorded. Then upon the ſaid Appellants alledging, that the Accuſed had full Notice of the ſaid Appeal, and the King and Lords being ſatisfy'd it was ſo, by reaſon they did not appear, their Default was recorded accordingly: Whereupon the ſaid Duke and Earls Appellants pray'd the King and Lords, that they might be adjudged and convicted of the Treaſons contained in the ſaid Appeal. Then the King and Lords took time to conſider and examine the Articles, after which they would give ſuch Judgment in this Caſe, as ſhould be to the Honour of God, the Advantage and Profit of the King and the whole Kingdom. Then the King commanded the ſaid Lords to examine the Articles ſeverally, which they did with great Labour and Diligence, until *Thurſday* the 13th of *February*.

During this Interval, the Juſtices, Serjeants, and other Sages of the Law, both of the Realm and Law Civil, were charg'd by the King to give their faithful Advice to the Lords of Parliament how they ought to proceed in the above-ſaid Appeal. Then the ſaid Juſtices, Serjeants, and Sages of both Laws having taken theſe Matters into their Deliberation, anſwer'd the ſaid Lords of Parliament, that they had ſeen and well underſtood the Tenor of the ſaid Appeal, and affirm'd that it was not made nor brought according as the one Law or other requir'd. Upon which the ſaid Lords of Parliament having taken Deliberation and Advice, it was by the Aſſent of the King with their common Accord declared, That in ſo high a Crime as is laid in this Appeal, and which touches the Perſon of the King and the Eſtates of this Realm, and is perpetrated by Perſons who are Peers thereof, together with others, the Cauſe cannot be try'd elſewhere but in Parliament, nor by any other Law or Court, except that of Parliament; and that it belongs to the Lords of Parliament, and to their free Choice and Liberty, by antient Cuſtom of Parliament, to be Judges in ſuch Caſes, and to judge of them by the Aſſent of the King; and thus it ſhall be done in this Caſe by Award of Parliament, becauſe the Realm of *England* is not, nor ever was (neither is it the Intent of the King and Lords of Parliament that it ſhall ever be) ruled and govern'd by the Civil Law; and therefore it is not their Intent otherwiſe to proceed in ſo high a Caſe as this Appeal, which cannot be try'd or determin'd any where elſe than in Parliament, ſince the Proceſs or Order uſed in inferior Courts is only as they are intruſted with the Execution of the ancient Laws and Cuſtoms of the Realm, and the Ordinances and Eſtabliſhments of Parliament: And it was the Judgment of the Lords of Parliament, by aſſent of the King, that this Appeal was well and duly brought, and the Proceſs upon the ſame was good and effectual, according to the Laws and Courſe of Parliament, and by which they will award and judge it. Upon this the Appellants again moved the King and Lords to record their Default; and that *Nicholas Brambre* (who was the only Perſon in Cuſtody) might be brought to anſwer.

Then the other Perſons appealed were again ſummon'd to come in and make Anſwer, but they did not appear; nevertheleſs the King and Lords took time to deliberate till the next Day, being the 5th of *February*; at which time the ſaid Appellants again prayed that the Default of the Appealed might be recorded, which was done accordingly. After which the Lord [*] Chancellor, in the Name of the Clergy, in open Parliament, made an Oration, ſhewing, *That they could not by any means be preſent at Proceedings where any Cenſure of Death is to be paſſed*; for the Confirmation whereof the Clergy deliver'd in a Proteſtation, which being read, they declar'd, "That neither in reſpect of any Favour, nor for fear of any Man's Hate, "nor in hope of any Reward, they did deſire to abſent themſelves; but "only that they were bound by the Canon not to be preſent at any Man's "Arraignment or Condemnation." They likewiſe ſent their Proteſtation to the Chapel of the Abbey where the Commons ſate, which was allow'd of.

And then, on the 13th of *February*, the King and Lords of Parliament being met again in the *Whitehall*, the ſaid Appellants pray'd that the laſt Default of the ſaid Archbiſhop, Duke, and Earl, and *Robert Treſilian*, ſhould be recorded. Then the Perſons accuſed being again ſummon'd *(the third time)* and not appearing, the Lords proceeded to Judgment, and declared, that divers of the Articles therein contain'd were Treaſon; as the *Firſt*, *Second*, *Eleventh*, *Twelfth*, *Fifteenth*, and *Seventeenth*, as alſo the *Eighteenth*, *Twenty-ninth*, *Thirtieth*, *Thirty-firſt*, *Thirty-ſecond*, *Thirty-ſeventh*; *Thirty-eighth*, and *Thirty-ninth* Articles: and then upon due Information of their Conſciences, they pronounced the ſaid Archbiſhop, Duke, and Earl, with *Robert Treſilian*, to be notoriouſly guilty of each of the ſaid Articles that concern'd them, and that they were alſo culpable of all the reſt of the Articles contain'd in the ſaid Appeal, not yet declar'd Treaſon.

Then in preſence of the King, and Lords aſſembled at the Day and Place aforeſaid the ſaid Duke and Earls Appellants pray'd the King, and the Lords there preſent, that the Perſons ſo appeal'd as aforeſaid ſhould be adjudged convicted of the High-Treaſons contained in the ſaid Appeals. Wherefore the ſaid Lords of Parliament there preſent, as Judges in Parliament in this Caſe, by aſſent of the King pronounced their Sentence; and did adjudge the ſaid Archbiſhop, Duke, and Earl, with *Robert Treſilian*, ſo appeal'd as aforeſaid, to be Guilty and convicted of Treaſon, and to be *drawn and hang'd as Traitors and Enemies to the King and Kingdom*; and that their Heirs ſhould be diſinherited for ever, and their Lands and Tenements, Goods and Chattels forfeited to the King, and that the Temporalities of the Archbiſhop of *York* ſhould be taken into the King's hands.

Feb. 17. On this Day Sir *Nicholas Brambre* was brought by the Conſtable of the *Tower* into Parliament; and being charged with the aforeſaid Articles of Treaſon, he deſired longer time, that he might adviſe with Counſel Learned in the Law, and might make a more full Anſwer to his Accuſation, but he was refus'd, in that he requir'd a thing not uſual, nor allowable by Law in a Caſe of this Nature; whereupon the Judges requir'd him then to anſwer ſeverally and diſtinctly to every Point in the Articles of Treaſon contain'd. Whereunto *Brambre* anſwer'd, "Whoſoever hath branded me with this ignominious Mark, "with him I am ready to fight in the Liſts to maintain my Innocency, "whenever the King ſhall appoint." And this he ſpake with ſuch a Fury, that his Eyes ſparkled with Rage, and he breath'd as if an *Ætna* lay hid in his Breaſt, chuſing rather to die gloriouſly in the Field, than diſgracefully on a Gibbet.

The Appellants hearing this courageous Challenge, with reſolute Countenance anſwer'd, that they would readily accept of the Combat, and thereupon flung down their Gages before the King; and on a ſudden the whole Company of Lords, Knights, Eſquires, and Commons flung down their Gages ſo thick, that they ſeem'd like Snow in a Winter's Day, crying out, "We alſo will accept of the Combat, and will prove theſe "Articles to be true to thy Head, moſt damnable Traitor." But the Lords reſolved that Battle [†] did not lie in that Caſe, and that they would examine the Articles touching the ſaid *Nicholas*, and take due Information by all true, neceſſary and convenient Ways, that their Conſciences might be truly directed what Judgment to give in this Caſe, to the honour of God, the advantage and profit of the King and his Kingdom, and as they would anſwer it before God, according to the Courſe and Law of Parliament.

Feb. 19. This Day, to aggravate the Appellation againſt the Conſpirators, there came divers Companies of the City of *London*, complaining of the manifold Injuries they had ſuffer'd from *Brambre*, and other Extortions and Exactions wherewith they had been daily charg'd; and yet they proteſted, that they did not accuſe him either for hate to his Perſon, or for love, fear or hope of Reward from his Enemies, but they charg'd him only with the Truth. Before they could proceed with his Trial, they were interrupted by unfortunate *Treſilian*, who being got upon the top of an Apothecary's Houſe adjoining to the Palace, and deſcended into a Gutter to look about him and obſerve who went into the Palace, was diſcover'd by certain of the Peers, who preſently ſent ſome of the Guard to apprehend him; who entering into the Houſe where he was, and having ſpent long time in vain in looking for him, at length one of the Guard ſtept to the Maſter of the Houſe, and taking him by the Shoulder with his Dagger drawn, ſaid thus, *Shew us where thou haſt hid* Treſilian, *or elſe reſolve thy Days are accompliſh'd.* The Maſter trembling, and ready to yield up the Ghoſt for fear, anſwer'd, *Yonder is the place where he lies*; and ſhow'd him a round Table cover'd with branches of Bays, under which *Treſilian* lay cloſe cover'd. When they had found him, they drew him out by the Heels, wondering to ſee him wear his Hair and

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[*] *The Biſhop of* Ely. Tyrrel *ſays, the Archbiſhop of* Canterbury.

[†] *In Appeals of Treaſon, Battle don't lie, if it can be proved by Witneſſes. (See* Proceedings againſt the Earl of *Clarendon*, No. 66. Vol. II. p. 553.

Beard overgrown, with old clouted Shoes and patch'd Hoſe, more like a miſerable poor Beggar than a Judge.

When this came to the Ears of the Peers, the five Appellants ſuddenly roſe up, and going to the Gate of the Hall, they met the Guard leading *Treſilian* bound, crying as they came, *We have him, we have him* *.

Treſilian being come into the Hall, was aſk'd what he could ſay for himſelf, why Execution ſhould not be done according to the Judgment paſs'd upon him for his Treaſons ſo often committed: but he became as one ſtruck dumb, he had nothing to ſay, and his Heart was harden'd to the very laſt, ſo that he would not confeſs himſelf Guilty of any thing. Whereupon he was without delay led to the *Tower*, that he might ſuffer the Sentence paſs'd againſt him: his Wife and his Children did with many Tears accompany him to the *Tower*; but his Wife was ſo overcome with Grief, that ſhe fell down in a ſwoon as if ſhe had been dead.

Immediately *Treſilian* is put upon an Hurdle, and drawn thro' the Streets of the City, with a wonderful Concourſe of People following him. At every Furlong's end he was ſuffer'd to ſtop, that he might reſt himſelf, and to ſee if he would confeſs or acknowledge any thing; but what he ſaid to the Frier his Confeſſor, is not known. When he came to the place of Execution, he would not climb the Ladder, until ſuch time as being ſoundly beaten with Bats and Staves, he was forc'd to go up; and when he was up, he ſaid, So long as I do wear any thing upon me, I ſhall not die; wherefore the Executioner ſtript him, and found certain Images painted like to the Signs of the Heavens, and the Head of a Devil painted, and the Names of many of the Devils wrote in Parchment; theſe being taken away, he was hang'd up naked, and after he had hang'd ſome time, that the Spectators ſhould be ſure he was dead, they cut his Throat, and becauſe the Night approached, they let him hang till the next Morning, and then his Wife having obtain'd a Licence of the King, took down his Body, and carried it to the *Gray-Friers*, where it was buried.

Feb. 20. On this Day *Brambre* was brought again before the Parliament; but not being able to make any Anſwer to the Articles wherewith he was charg'd, the like Sentence was pronounc'd againſt him, as had been before againſt the other Conſpirators. After which he was drawn upon an Hurdle from the *Tower* to *Tyburn*, thro' the City, when he ſhewed himſelf very penitent, humbly craving Mercy and Forgiveneſs at the hands of God and Men, whom he had ſo grievouſly offended, and ſo injuriouſly wrong'd in Times paſt, earneſtly deſiring all Perſons to pray for him: When the Rope was about his Neck, and he was ready to be turn'd off, a certain young Man, the Son of one *Northampton*, aſk'd him if he had done Juſtice to his Father or not [for *Northampton* was ſome [1] time Mayor of the City of *London*, more wealthy and ſubſtantial, than any elſe in the City; him did *Brambre* and *Treſilian* accuſe of Treaſon and Conſpiracy againſt the State, and condemn'd him to die, being deſpoil'd of his Eſtate, he himſelf at length hardly eſcap'd] To whom *Brambre* anſwer'd, and confeſs'd with bitter Tears, that what he did was moſt vile and wicked, and with an intent only to murder and overthrow the ſaid *Northampton*; for which craving Pardon of the young Man, he was ſuddenly turn'd off, and the Executioner cutting his Throat he died †.

[1] 1385.

Holin. Vol. 3. p. 446.

March 2. *Robert Belknap*, *John Holt*, *Roger Fulthorpe*, *William Burleigh*, *John Carey*, and *John Lockton*, being impeached by the Commons, were call'd to anſwer for their Conſpiracy againſt the Commiſſioners at *Nottingham*. They could not gainſay, but that the *Queſtions* were ſuch as were then aſk'd them, but denied *the Anſwers* to be ſo: and Sir *Robert Belknap* pleaded in particular, that the Archbiſhop of *York*, in his Chamber at *Windſor*, told him that he had deviſed and drawn up the Commiſſion and Statute, whereby the Government was wholly taken out of the King's Hands, and that he therefore hated him above all Men; and that if he found not ſome way to make void the ſaid Statute and Commiſſion, he ſhould be ſlain as a Traitor. He anſwer'd, that the Intention of the Lords, and ſuch as aſſiſted at the making of them, was, that they ſhould be for the Honour and good Government of the State of the King and Kingdom: that he twice parted from the King diſſatisfied, and was in doubt of his Life; and ſaid *theſe Anſwers* proceeded not from his Good-will, but were made againſt his Mind, and were the Effects of the Threats of the Archbiſhop of *York*, Duke of *Ireland*, and Earl of *Suffolk*; and that he was ſworn, and commanded in the Preſence of the King, upon pain of Death, to conceal this Matter, as the Counſel of the King; and prayed for the Love of God that he might have a gracious and merciful Judgment.

Sir *John Holt* alledged the ſame Matter of Excuſe, and made the ſame Prayer, ſo did Sir *William Burgh*, and Sir *John Cary*; who all made the ſame Excuſe, and made the ſame Requeſts, as did alſo Sir *Roger Fulthorpe*, and *John Locton* Serjeant at Law.

To all which the Commons anſwer'd, that they were taken and holden for Sages in the Law; and the King's Will was, that they ſhould have anſwer'd the Queſtion as the Law was, and not otherwiſe, as they did, with Deſign, and under Colour of Law, to murder and deſtroy the Lords, and Loyal Lieges, who were aiding and aſſiſting in making the Commiſſion and Statute in the laſt Parliament, for the good Government of the State of the King and Kingdom; and therefore the Commons pray'd they might be adjudg'd, convicted, and attainted as Traitors. Upon which the Lords Temporal took time by good Deliberation to examine the Matter and Circumſtances of it; and for that they were preſent at the making of the ſaid Statute and Commiſſion, which they knew were contrived for the Honour of God, and for the good Government of the State of the King and whole Kingdom, and that it was the King's Will, that they ſhould not have otherwiſe anſwered them, than according to Law, and had anſwered as before, they were by the Lords Temporal, by the Aſſent of the King, adjudg'd to be *Drawn and Hang'd as Traitors*, their Heirs diſherited, and their Lands and Tenements, Goods and Chattels to be forfeited to the King.

Whilſt the Peers were trying them, the Clergy were retir'd into the King's Chamber; but when word was brought to them of the Condemnation of the Judges, the Archbiſhop of *Canterbury*, the Biſhop of *Wincheſter*, the Chancellor, the Treaſurer, the Lord Keeper of the Privy-Seal, aroſe haſtily and went into the Parliament Houſe, pouring forth their Complaints before the King and Peers, humbly upon their Knees beſeeching them, that for the Love of God, the Virgin *Mary*, and all the Saints, even as they hoped to have Mercy at the Day of Judgment, they ſhould ſhew Favour, and not put to death the ſaid Judges then preſent.

The Duke of *Gloceſter* likewiſe, with the Earls of *Arundel*, *Warwick*, *Derby*, and *Nottingham*, whoſe Hearts began to be mollified, joined with them in their Petition. At length thro' their Interceſſion, the Execution upon their Perſons was ſpar'd, and their Lives granted them; but they were ſent back to the *Tower* to be kept cloſe Priſoners, and afterwards were ſent into *Ireland*, there to remain for Term of Life ‡.

On *Tueſday*, *March* 3. *John Blake* and *Thomas Uſke* were brought into Parliament: and firſt *John Blake* was impeached by the Commons, That being retained of Council for the King, he drew up the Queſtions, to which the Juſtices made Anſwer, and contrived with the Perſons appealed, that the Lords, and other the King's Loyal Lieges that cauſed the ſaid Commiſſion and Statute to be made in the laſt Parliament, ſhould be indicted in *London* and *Middleſex* for Treaſon, and that they ſhould be arreſted, and traitorouſly and wickedly murdered: and that he was aiding and adviſing in the Treaſons aforeſaid, with the appealed already executed.

Then *Thomas Uſke* was accuſed for procuring himſelf to be made Under-Sheriff of *Middleſex*, to the end to cauſe the ſaid Lords, and Loyal Lieges, to be arreſted and indicted, as had been ſaid before; and was aiding and counſelling the Appealed in the Treaſons aforeſaid.

John Blake anſwered, That he was retain'd of Council for the King, by his Command, and ſworn to keep ſecret his Advice, and whatever he did, it was by the King's' Command, whom he ought to obey. And *Thomas Uſke* gave the ſame Anſwer. Whereupon the Lords Temporal took

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* Froiſart's Chron. Part. 2. fol. 110. *relates the manner of his Diſcovery thus;* " *Underſtanding that the King's Uncles and the new Council at* England *would keep a ſecret Parliament at* Weſtminſter, *he* (Treſilian) *thought to go and lie there to learn what ſhould be done; and ſo he came and lodg'd at* Weſtminſter *the ſame Day their Council began, and lodg'd in an Ale-houſe right over-againſt the Palace-Gate, and there he was in a Chamber looking out at a Window down into the Court, and there he might ſee them that went in and out to the Council, but none knew him becauſe of his Apparel. At laſt on a Day, a Squire of the Duke of* Glocester'*s knew him, for he had oftentimes been in his Company; and aſſoon as Sir* Robert Treſilian *ſaw him, he knew him well, and withdrew himſelf out of the Window. The Squire had Suſpicion thereof, and ſaid to himſelf,* Methinks I ſee yonder Sir *Robert Treſilian; and to the intent to know the Truth, he enter'd into the Lodging and ſaid to the Wife,* Dame, who is that, that is above in the Chamber? is he alone or with Company? Sir, *quoth ſhe,* I cannot ſhew you, but he has been here a long ſpace. *Therewith the Squire went up the better to adviſe him, and ſaluted him, and ſaw well it was true; but he feigned himſelf, and turned his Tale and ſaid,* God ſave you, good Man, I pray you be not diſcontented, for I took you for a Farmer of mine in *Eſſex*, for you are like him. Sir, *quoth he,* I am of *Kent*, and a Farmer of Sir *John* of *Hollandes*, and there be Men of the Biſhop of *Canterbury*'s that would do me wrong; and I am come hither to complain to the Council. Well, *quoth the Squire,* if you come into the Palace, I will help to make your way, that you ſhall ſpeak with the Lords of the Council. Sir, I thank you, *quoth he,* and I ſhall not refuſe your Aid. *Then the Squire call'd for a Pot of Ale, and drank with him, and paid for it, and bad him farewel and departed; and never ceaſed till he came to the Council Chamber-door, and call'd the Uſher to open the Door. Then the Uſher demanded what he would, becauſe the Lords were in Council: he anſwer'd and ſaid,* I would ſpeak with my Lord and Maſter the Duke of *Gloceſter*, for a matter that right near toucheth him and all the Council. *Then the Uſher let him in, and when he came before his Maſter, he ſaid,* Sir, I have brought you great Tidings. What be they, *quoth the Duke?* Sir, *quoth the Squire,* I will ſpeak aloud, for it toucheth you and all my Lords here preſent. I have ſeen Sir *Robert Treſilian* diſguiſed in a Villain's Habit, in an Alehouſe here without the Gate. Treſilian! *quoth the Duke.* Yea truly, Sir, *quoth the Squire,* you ſhall have him ere you go to Dinner, if you pleaſe. I am content, *quoth the Duke,* and he ſhall ſhow us ſome News of his Maſter the Duke of *Ireland;* go thy way and fetch him, but look that thou be ſtrong enough ſo to do, that thou fail not. *The Squire went forth and took four Serjeants with him, and ſaid,* Sirs, follow me afar off; and as ſoon as I make to you a Sign, and that I lay my Hand on a Man, that I go for, take him and let him not eſcape. *Therewith the Squire enter'd into the Houſe where* Treſilian *was, and went up into the Chamber; and as ſoon as he ſaw him, he ſaid,* Treſilian, you are come into this Country for no Goodneſs; my Lord the Duke of *Gloceſter* commandeth, that you come and ſpeak with him. *The Knight would have excus'd himſelf, and ſaid,* I am not *Treſilian*, I am a Farmer of Sir *John* of *Hollands*. Nay, nay, *quoth the Squire,* your Body is *Treſilian*, but your Habit is not; *and therewith he made Tokens to the Serjeants, that they ſhould take him. Then they went up into the Chamber, and took him, and ſo brought him to the Palace."* *Of his taking, the Duke of* Gloceſter *was right joyful, and would ſee him, and when he was in his Preſence, the Duke ſaid,* Treſilian, what thing makes you here in this Country? where is the King? where left you him? Treſilian, *when he ſaw that he was ſo well known, and that none excuſation could avail him, ſaid,* Sir, the King ſent me hither to learn Tidings, and he is at *Briſtol*, and hunteth along the River *Severn*. What, *quoth the Duke,* you are not come like a wiſe Man, but rather like a Spy; if you would have come to have learnt Tidings, you ſhould have come in the State of a Knight. Sir, *quoth* Treſilian, if I have treſpaſſed, I aſk Pardon, for I was cauſed this to do. Well, Sir, *quoth the Duke,* and where is your Maſter the Duke of *Ireland?* Sir, *quoth he,* of a truth he is with the King. It is ſhewed us here, *quoth the Duke,* that he aſſembleth much People, and the King for him; whither will he lead that People? Sir, *quoth he,* it is to go into *Ireland*. Into *Ireland!* *quoth the Duke of* Gloceſter. Yea, Sir, truly, *quoth* Treſilian: *and then the Duke ſtudied a little, and ſaid,* Ah, *Treſilian! Treſilian!* your Buſineſs is neither fair nor good; you have done great Folly to come into this Country: for you are not beloved here, and that ſhall well be ſeen; you and ſuch other of your Affinity have done great Diſpleaſure to my Brother and me, and you have troubled to your Power, and with your Counſel, the King, and divers others, Nobles of the Realm; alſo you have moved certain good Towns againſt us. Now is the Day come, that you ſhall have your Payment; for he that doth well, by Reaſon ſhall find it. Think on your Buſineſs, for I will neither eat nor drink till you be dead. *That word greatly abaſh'd* Treſilian; *he would fain have excus'd himſelf with fair Language, in lowly humbling himſelf; but he could do nothing to appeaſe the Duke. So Sir* Robert Treſilian *was deliver'd to the Hangman, and ſo led out of* Weſtminſter, *and there beheaded, and after hanged on a Gibbet.*

† Grafton, p. 379. *and from him,* Holinſhed, Vol. 3. p. 463. *ſay, that in his Mayoralty he cauſed great and monſtrous Stocks to be made to impriſon Men in, as alſo a common Axe to ſtrike off the Heads of ſuch as ſhould reſiſt his Will and Pleaſure; and that he was ſentenc'd by the Parliament to be beheaded with his own Axe.* Froiſart's Chron. Part. 2. fol. 113. *But it appears by the Parliament-Rolls,* 11 Rich. II. Par. 3. No. 15. *that both he and* Treſilian *were drawn and hanged.*

‡ *They were thus diſtributed;* Robert Belknap *and* John Holt *in the Village of* Dromore *in* Ireland; *not to live as Juſtices, but as baniſh'd Offenders, nor to go out of Town above the ſpace of two Miles upon pain of Death. But the King out of his Bounty was pleaſed to give a yearly Annuity of* 40 *Pounds to* Robert Belknap, *and of* 20 *Marks to* John Holt, *during their Lives.*

Roger Fulthorpe, *and* William Burleigh, *in the City of* Dublin, *with the yearly Allowance of forty Pounds to each during Life, with the Liberty of going two Miles to* Burleigh, *and of three to* Fulthorpe, *for their Recreation.*

John Cary, *and* John Locton, *in* Waterford, *with the yearly Allowance of twenty Pounds to each during Life, with the like Liberty, and like Penalty.*

Deliberation till the morrow, being the 4th of *March*, when the ſaid *John* and *Thomas* were again brought into Parliament; and good Advice and Deliberation having been taken by the Lords, they pronounced them Guilty of the Things whereof they were accuſed. And whereas they alledged for their Excuſe the King's Command, it made the Crime the greater, for that they knew well the Perſons appealed and condemned, had encroached to themſelves Royal Power, as is ſaid before, and it was their Command, and not the King's. Then the Lords awarded, by aſſent of the King, that they ſhould both be *Hanged and Drawn as Traitors*, as open Enemies to the King and Kingdom, and their Heirs diſherited for ever, and their Lands and Tenements, Goods and Chattles forfeited to the King: and they were executed the ſame Day.

On the 6th of *March*, *Thomas* Biſhop of *Chicheſter* was impeached and accuſed by the Commons, that he was preſent at the Places and Times when the ſaid Queſtions were put to the Juſtices, *&c.* and the Anſwers made; and excited them by Threats to anſwer as they did, and knew the falſe Purpoſes and Treaſons deſign'd by the Traitors adjudged, and aided and aſſiſted them, and would not make Diſcovery to any of the Lords, that cauſed the ſaid Commiſſion to be made laſt Parliament, whereby Remedy might have been had for the Safety of the King and Kingdom. To which the Biſhop anſwer'd, That of his own Freewill, he had not excited them to do or ſay any thing; and further ſaid, they were not excited or charged to ſay any thing but what the Law was: and touching the Concealment of the Treaſon, he had made ſuch Aſſurance as he could not diſcover: and ſaid further, that the Traitors were about the King, and had ſuch Power over him before, that he had not ſo great Intereſt in the King as to prevent thoſe Miſchiefs, that now came upon him. The Commons reply'd, He had upon the Matter confeſs'd himſelf Guilty, and pray'd he might be attainted. Upon this Anſwer of the Biſhop, the Replication of the Commons, and all Circumſtances of the Accuſation, the Lords took time to give ſuch Judgment, as might be for the Honour of God, and Profit of the King and Kingdom.

March 12.

Simon de Burleigh, *John de Beauchamp*, *James Baroverſe*, and *John Salisbury*, were brought into the Parliament Houſe, where they were impeach'd at the Inſtance of the Commons. The Articles exhibited againſt them were ſixteen; the firſt Article was the firſt Article in the former Impeachment; in the ſecond Article they were accuſed as Traitors and Enemies of the Kingdom, for that they knew of all the treaſons in the Appeal mentioned, and that they were aiding, aſſiſting, counſelling and aſſenting to all the Traitors attainted; and that *Simon Burleigh*, and *John Beauchamp* were principal Actors in all the ſaid Treaſons. In the eighth Article they were accuſed for conſpiring and deſigning with the five Perſons appealed, to deſtroy and put to death thoſe who were aſſenting to the making of the ſaid Commiſſion and Statute in the laſt Parliament. Another Article was, That the ſaid *Simon Burleigh* being King's Chamberlain, and being obliged to counſel the King for the beſt, to the Advantage of him and his Realm, he the ſaid *Simon* by his wicked Contrivance and Procurement, adviſed the King to entertain in his Houſehold great Numbers of Aliens, *Bohemians* and others, and to give them large Gifts out of the Revenues and Profits of the Realm, whereby the King was greatly impoveriſh'd, and the People otherwiſe oppreſs'd. The other Articles are of leſs moment, but all relating to the Articles of the Appeal, to which they all pleaded *Not Guilty*.

The Commons replied they were Guilty, and the Lords took time to examine and conſider the Impeachment. Upon this and the Biſhop of *Chicheſter*'s Impeachment, the Lords adjourn'd until the 20th of *March*, on which Day the whole Parliament was adjourn'd until the 13th of *April*, on which Day the Lords further adjourned till the 5th of *May*; the time between was taken up with the Affair of Sir *Simon Burleigh*: for three Appellants, *viz.* the Duke of *Gloceſter*, the Earls of *Arundel* and *Warwick*, with the whole Houſe of Commons, urg'd that Execution ſhould be perform'd according to the Law: On the other ſide the King and Queen, the Earls of *Derby* and *Nottingham*, and the Prior of St. *John* his Uncle, with the major part of the Houſe of Lords, did labour to have him ſav'd.

There was alſo ſome muttering among the common People, and it was reported to the Parliament, that the Commons did riſe in divers parts of the Realm, but eſpecially about *Kent*, in favour of Sir *Simon Burleigh*; which when they heard, thoſe that before ſpake and ſtood for him, now clean left him.

May 5.

By joint Conſent of the King and the Lords, Sentence was pronounc'd againſt the ſaid Sir *Simon Burleigh*, That he ſhould be drawn from the *Tower* to *Tyburn*, and there be hang'd till he be dead, and then have his Head ſtruck from his Body: but becauſe he was a Knight of the Garter, a gallant Courtier, powerful, and once a [*] Favourite of the King's, and much reſpected of all the Court, the King was pleas'd to mitigate his Doom, that he ſhould only be led to *Tower-Hill*, and there be beheaded.

May 12.

John Beauchamp, Steward of the Houſhold to the King, *James Baroverſe*, and *John Salisbury*, Knights, Gentlemen of the Privy-Chamber, were in like manner condemn'd; the two firſt were beheaded on *Tower-Hill*, but *John Salisbury* was drawn from *Tower-Hill* to *Tyburn*, and there hang'd. On the ſame Day alſo was condemn'd the Biſhop of *Chicheſter*, the King's Confeſſor; but becauſe of his great Dignity he was pardon'd, but was baniſh'd to *Cork* in *Ireland* [†].

II. *The Trial and Examination of Maſter* WILLIAM THORPE [*], *Preſte, for* HERESYE, *before* Thomas Arundel, *Archebiſhop of* Canterbury, *the 3d of* July, 1407. *the 8th of* Henry IV. *Written by himſelf.*

KNOWEN be yt to all Men that rede or heare thys Writyng benethe, That on the Sondaye next after the Feſte of Seynt *Peter*, that we call Lammeſſe, in the yeare of our Lord a M.CCCC. and vii. yeare, I *William Thorpe*, being in Preſon in the Caſtell of *Saltwoode*, was brought before *Thomas Arundell* Archebyſhope of *Canterbury*, and Chauncellor than of *Ingland*: And when that I came to hym, he ſtoode in a great Chamber, and moch People aboute hym; and when that he ſawe me, he went faſte into a Cloſett, bydding all ſeculer Men that folowed him to go forth from hym ſone; ſo that no Man was left than in that Cloſet but the Archebyſhop hymſelfe, and a Phyſician that was callyd *Malueren*, Perſon of Seynt *Dunſtanys* in *London*, and other two Perſonys unknowen to me, whych ware Minyſterys of the Lawe. And I ſtandyng before them, by-and-by the Archebyſhop ſeyd to me, *William*, I know well that thou haſt thys twenty Wynter and more trauelyd about beſyly in the *North* Contre, and in other diverſe Contres of *Ingland*, ſowyng about falſe Doctrine, hauying great Buſyneſſe yf thou myght wyth thyne untrew Teachyng, and ſhrewyd Will for to infecte and poyſon all this Lande: But through the Grace of God thou art now wythſtonded and brought in to my Warde, ſo that I ſhall now ſequeſter the from thyne euill purpoſe, and lett the to enuenyme the Shepe of my Provynce. Never the leſſe Seynt *Paul* ſeythe, *Yf it may be as ferre as in us is, we owe to have Peace wyth all Men:* Therefore *William*, yf thou wyll now mekely, and of good Harte, without onye feynyng, knele downe and leye thy Hande upon a Booke and kyſſe yt, promyſying feythfully, as I ſhall here charge the, that thou wilt ſubmyt the to my Correccyon, and ſtande to myne Ordinance, and fulfyll yt dewly by all thy Connyng and Power, thou ſhall yet fynde me gracyouſe unto the. Then ſeyd I to the Archebyſhop, Syr, ſyns ye deme me an Heretyke out of Beleue, wyll ye gyue me here Audience to tell my Beleue; and he ſeyd, ye tell on. And I ſeyd, I beleue that there is not but one God Almyghty, and in thys Godhede, and of thys Godhede ar thre Perſones; that is, the Fader, the Sonne, and the ſothe faſte Holy Goſte: And I beleue that all thes thre Perſones ar euen in Power, and in Connyng, and in Myght, full of Grace and of all Goodneſſe; for whatſoever that the Father dothe, or can, or wyll, that thyng alſo the Sonne dothe, and can, and wyll; and in all their Power, Connyng and Wyll, the Holy Goſte is equall to the Father and to the Sonne. Ouer thys I beleue, that through Counſell of thys moſte bleſſyd Trinitie, in a moſte conuenient tyme before ordenyd for the Salvacyon of Man kynde, the ſeconde Peerſon of thys Trinite was ordeynd to take the Fourme of Man, that is the kynde of Man. And I beleue that thys ſeconde Perſon, our Lorde Jeſu Chriſte, was conceiuyd thorough the Holy Goſte into the Wombe of the moſt bleſſyd Virgyn *Marye*, wythout Manys Seede: And I beleue that after nyne monthys Chriſte was borne of thys moſte bleſſyd Vergyn, without one Peyne, or brekyng of the Cloſter of hyr Wombe, and wythout Fylthe of hyr Virginite: And I beleue that Chriſte our Sauyour was circuncisyd in the eyghte daye after hys Byrthe in fulfillyng of the Lawe, and hys Name was callyd *Jeſu*, which was callyd of the Angell before that he was conceiuyd in the Wombe of *Marie* hys Moder: And I beleue that Chriſte, as he was about thyrty yeare old, was baptyzed in the Fludde of *Jordane* of *John Baptiſt*; and, in lykeneſs of a Dove, the Holy Goſte deſcendyd there upon hym, and a Voyce was herde from Heuen, ſeying, *Thou art my welbelouyd Sonne, in the I am full pleaſyd.* And I beleue that Chriſte was moeuyd than by the Holy Goſte for to go into Deſert, and there he faſtyd fourty dayes and fourty nyghtes without bodely Meate and Drynk: And I beleue that by and by, after hys Faſtyng, when the Manhode of Chriſte hongeryd, the Feende came to hym and temptyd hym in Glotony, in veyn Glory, and in Couetyſe; but in all thoes Temptacyons Chriſte concludyd the Fende, and withſtoode hym; and than wythout tariyng, Jeſu began to preache and to ſeye unto the People, *Doe ye Penaunce, for the Relme of Heven ys now at hande.* And I beleue that Chriſt, in all hys tyme here, lyued moſte holyly, and taught the Wyll of hys Fader moſte trewly; and I beleue that he ſufferyd therefore moſte wrongfully greatyſt Repreuys and Deſpyſynges. And after thys whan Chriſte wolde make an ende here of hys temporall Lyfe, I beleue that in the daye next before that he wolde ſuffer Paſſyon in the Morne, in fourme of Brede and of Wyne he ordenyd the Sacramente of hys Fleſh and his Blood, that ys, hys owne precyous Body, and gave it to hys Apoſtles for to eate, commaundying them, and by them all their Aftercomers, that they ſholde doo it in thys fourme that he ſhewyd to them, uſe them ſelf, and teache and commone forthe to other Men and Woomen thys moſte worſhypful holieſt Sacrament, in myndefulneſſe of hys holyeſt Lyuyng, and of hys moſte trew Teachyng, and of hys wilfull and pacient Sufferyng of the moſte peynful Paſſion: And I beleue that thus Chriſte our Savyour, after that he had ordenid thys moſt woorthy Sacrament of hys owne precioufe Body, he went forthe wyllfully agenſt hys Enemyes, and he ſufferyd them moſt paciently to ley their Handys moſte violently uppon hym, and to bynde hym, and to leade hym forthe as a Thefe, and to ſkorne hym, and buffet, and all to blow or fyle him with their Spittinges. Over this I beleue that Chriſte ſuffered moſt mekely and paciently his Enemies for to dinge out with ſharpe Scourges the Bloude that was betwene his Skyn and his Fleſh; yee without grudginge Chriſte ſuffered the cruell *Jewes* to crown him with moſt ſharp Thornes, and to ſtrike him with a Rede: And after Chriſte ſuffered wicked *Jewes* to draw him out upon the Croſſe, and for to nayle hym there upon Fote and Hande; and ſo, thorow this pitiefull Naylinge, Chriſte ſhed out wilfully for Man's Lyfe the Bloude that was in his Vaynes: And then Chriſte gave wilfully his Spirite in to the Handes or Power of his Father, and ſo as he wolde, and when he wold, Chriſt deid wilfully for Man's ſake upon the Croſſe. And notwithſtandinge that Chriſte was wilfully, paynfully, and moſt ſhamefully put to deeth as to the Worlde, there was left Bloude and Water in his Herte, as he before ordened, that he wolde ſhede out this Bloude and this Water for Man's Saluacion: And therefore he ſuffered the *Jowes* to make a blinde Knight to thruſt him in to the Herte with a Spere, and this the Bloude and Water that was in his Herte Chriſte wolde ſhede out for Man's Love. And after this I beleue that Chriſte was taken downe from the Croſſe, and buried; and I beleue that on the third daye, by power of his Godheed, Chriſt roſe again from Deth to Life; and the xlth day ther after, I beleue that Chriſte aſcended up into Heven, and that he there ſitteth on the right Hande of God the Father Almyghty; and the tenth daye after this up goinge, he ſente to his Apoſtles the Holy Gooſt that he had promyſed them before; and I beleue that Chriſte ſhall come and judge all Mankinde, ſome to euerlaſtinge Peace, and ſome to euerlaſtinge Paynes. And as I beleue in the Father and in the Sonne, that they are one God Almyghty; ſo I beleue in the Holy Gooſt, that is alſo with them the ſame God Almyghty. And I beleue an holy Chirche, that is, all thei that haue byn, and that now are, and alwayes to the end of the Worlde ſhal be a People, the which ſhall endeuer them to knowe and to kepe the Commaundments of God, dredinge over all thynge to offende God, and lovynge and ſekynge moſt to pleaſe hym. And I beleue that all they that haue had, and yet haue, and all they that yet ſhall haue the foreſayde vertuous ſurely ſtandynge in the Beleſe of God, hopying ſtedfaſtly in hys mercifull Doynges, continuynge to their ende in perfect Charitie, wilfully, paciently, and gladly ſoferynge Perſecutions, by the example of Chriſt chiefly and his Apoſtles, all theſe haue their Names wrytten in the Boke of Life: Therefore I beleue that the gaderynge together of this People, lyuynge now here in this Lyfe, ys the holye Chyrche of God, feyghtynge here on Erth agaynſt the Fende, the Proſperyte of the Worlde, and their fleſhely Luſtes. Wherfore ſeyng that all the gadering together of this Church before ſaid, and euery parte therof, nother coueteth, nor willeth, nor loveth, nor ſeketh any thinge but to eſchew the Offence of God, and to do his pleaſing Will; mekely, gladly, and wilfully of all myne Herte I ſubmitt my ſelfe unto thys holye Church of Chriſte, to be ever buxom and obedient to the Ordinaunce of it, and of euery Member thereof, after my Knowlege and Power by the helpe of God. Therefore I knowlege now and euermore ſhall, if God will, that of all my Harte, and of all my Might, I will ſubmyt me only to the Rule and Gouernaunce of them whome after my Knowlege, I may perceave, by the havynge and uſynge of the beforeſayd Vertues, to be Membres of the holy Churche. Wherfore theſe Articles of Beleſe, and all other bothe of the olde Lawe and of the newe, which after the Commaundement of God any Man oughte to beleue, I beleue verely in my Soule, as ſynnefull deedly Wretche, of my Cunnynge and Power oughte to beleue, prayenge the Lorde God, for his holye Name, for to encreaſe my Beleſe, and help my Unbeleſe.

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[*] *See a particular account of his Advancement and Greatneſs*, Holin. Vol. 3. p. 464.

[†] *The Judgments were afterwards revers'd in the Parliament held the* 21 Ric. 2. *but that Parliament is declar'd to be held by Force in the Parliament Rolls*, 1 Hen. 4. No. 21, 22. *and* No. 48. *and is therefore entirely repeal'd by* 1 Hen. 4. *cap.* 3. *and the Parliament of* 11 Ric. 2. *confirm'd and approv'd of, as for the honour and profit of the Realm*, 1 Hen. 4. *cap.* 4.

[*] Fox, Acts & Mon. Vol. 1. p. 602. Coll. Eccl. Hiſt. 625.

And forbycauſe to the prayſynge of Goddes Name, I deſyre above all thynge to be a faythfull Membre of holy Churche, I make this Proteſtacyon before you all foure that are now here preſente, covetynge that all Men and Women that now abſente knewe the ſame, that what thynge ſoever before this tyme I have ſayde or done, or what thynge here I ſhall doo or ſaye at any tyme here after; I beleue that all the olde Lawe and the newe Lawe, geuen and ordened by the Councell of theſe thre Perſones of the Trynite, were geuen and wrytten to the Saluacyon of Mankynde: And I beleue that theſe Lawes are ſufficient for Man's Saluacyon: And I beleue every Article of theſe Lawes, to the entente that theſe Articles were ordened and commaunded of theſe thre Perſones of the moſte bleſſed Trynyte to be beleued. And therfore to the Rule and the Ordynaunce of theſe Goddes Lawes, mekely, gladly, and wilfully I ſubmytte me with all myne Harte, that who ever can or wyll by auctoryte of Goddes Lawe, or by open Reaſon, tell me that I haue erred, or now erre or any tyme here after ſhall erre in any Article of Beleſe (fro whyche Inconvenience God kepe me for his Goodneſſe) I ſubmytte me to be reconcyled, and to be buxom and obedyente unto theſe Lawes of God, and to every Article of them. For by Auctorite, ſpecyally of theſe Lawes, I will, thorowe the Grace of God, be vnyed charytably unto theſe Lawes. Yee, Syr, and ouer thys I beleue and admytte all the Sentences, Auctorites, and Reaſons of the Saynctes and Doctoures, accordynge unto Holy Scripture, and declarynge it truely.

I ſubmytte me wylfully and mekely to be ever obediente after my connynge and power to all theſe Saynctes and Doctoures, as they are obedyente in Worke and in Worde to God and to his Lawe, and forther not to my Knowlege, not for any erthly Power, Dignity or State, thorowe the help of God. But Syr, I praye you tell me if after youre biddying I ſhall laye my Hande upon the Boke to the entente to ſwere thereby?

And the Archebiſhope ſaid to me, ye, wherfore els? And I ſayde to him, Syr, a Boke is nothyng els but a thyng coupled together of dyuerſe Creatures, and to ſwere by any Creature both Gods Lawe and Mans Lawe is agaynſt.

But Syr, this thinge I ſaye here to you before theſe your Clerckes, with my forſayd Proteſtacion, that how, where, when and to whom Men are bounden to ſwere or to obey in ony wyſe after Gods Lawe, and Sayntes and trewe Doctours according with Gods Lawe: I will thorow Gods Grace be ever redy thereto with all my conning and power. But I pray you Syr, for the Charity of God, that ye will before I ſwere as I have here reherſed to you, tell me how or whereto that I ſhall ſubmytt me; and ſhewe me whereof that ye will correct me, and what is the Ordinaunce that ye will thus oblige me to fulfyll.

And the Archebiſhop ſeid unto me, I will ſhortely that nowe thou ſwere here to me that thou ſhalt forſake all the Opinions which the Secte of *Lollards* holde, and is ſlaundred with; ſo that after this tyme nother pryuely nor apertly thou holde any Opinion which I ſhall after that thou haſte ſworne reherſe to the here. Nor thou ſhalt fauer no Man nor Woman, young nor old, that holdeth any of thes foreſeid Opinions; but after thi Knowledge and Power thou ſhalt enforſe the to withſtand all ſoche diſtroblers of Holye Chyrche in euery Dioceſe that thou comeſt in: and them that will not leaue their falſe and dampnable Opinions, thou ſhalt put them up, publeſhyng them and their Names, and make them knowen to the Biſhop of the Dioceſe that they are in, or to the Biſhopes Miniſtres. And ouer this I will that thou preach no more unto the tyme that I know by good Witneſſe and trewe, that thy Conuerſacion be ſoch that thy Hart and thy Mouth accorde treuly in one contrariyng all the leude Learnying that thou haſt taught here before.

And I hearying thes Wordes, thought in my Harte, that this was an vnlefull aſking; and I demyed myſelf curſed of God, yf I conſented hereto, and I thought howe *Suſan* ſeid, *Anguyſſch is to me on euery ſyde.* And in that I ſtode ſtill, and ſpake not, the Archebiſhop ſeid to me, Anſwere one wyſe or a nother: and I ſeid, Syr, if I conſented to you thus, as ye haue here reherſed to me, I ſhould become an Appealer, or euery Biſhopis eſpye, ſomonour of all *Englonde*. For, and I ſholde thus put up, and publeſhe the Names of Men and Women, I ſholde herein deceiue full many Perſons; ye Syr, as it is likely by the dome of my Conſcience I ſholde herein, becauſe of the dethe of both Men and Women, ye both bodely and goſtely. For many Men and Women that ſtand now in the Treuthe, and are in the waye of Salvation; yf I ſholde for the Learnying and Reding of their Beleve publeſhe them, and put them therfor up to Biſhopes, or to their unpituouſe Miniſters, I know ſome dele by Experience, that they ſholde be ſo diſtrobled and diſeaſed with Perſecution or otherwiſe, that many of them (I thinke) would rather choſe to forſake the waye of Treuthe, than to be traveled, ſkorned and ſlaundred, or puniſhed as Biſhopes and their Miniſters now uſe for to conſtreyne Men and Women to conſent to them. But I fynde in no place in Holy Scripture, that this Office that ye wolde now enfeſſe me with accordith to ony Priſte of Chriſtes Secte, nor to any other Chriſten Man. And therefore to do thus wer to me a full'noycous bonde to be bounden with, and over grevouſe Charge. For I ſuppoſe, that yf I thus dede many Men and Women would, ye Syr, might juſtly unto my Confuſion ſey to me, that I wer a Traitur to God and to them; ſyns (as I thinke in myne Hert) many Men and Women truſte ſo mekle in me in this caſe, that I wold not for ſavyng of my Lyfe do thus to them. For yf I thus ſholde do, full many Men and Women wolde (as they might full truly ſey) that I hadde falſly and cowerdly forſaken the Truthe, and ſlaundred ſhamefully the Word of God. For yf I conſented to you to do hereafter your Will for bon chefe or miſchef that may befall to me in this Lyfe, I deme in my Conſcience that I were worthy herefore to be curſed of God, and alſo of all his Seyntes, fro which inconuenience kepe me, and all Chriſten People Almighti God now and ever for his Holy Name. And than the Archebiſhop ſaid unto me, O thine Hart is full hard endured as was the Herte of *Pharao*, and the Deuell hath ouercomen the and perverted the; and he hath ſo blynded the in all thy Wittes, that thou haſt no Grace to know the Treuthe, nor the meſure of Mercy thot I have profered to the. Therefor, as I perceyue now by thy foliſh Anſwere, thou haſt no will to leaue thyne olde Errours. But I ſey to the leude Loſell, other thou quickly conſente to myne Ordinaunce, and ſubmit the to ſtand to my Decrees, or by Seynt *Thomas* thou ſhalt be diſgraded, and followe thy Felowe in *Smithfelde*. And at this ſeying I ſtode ſtyll and ſpake not, but I thought in myne Harte that God did to me a greate Grace, if he wolde of his great Mercy bringe me to ſoch an ende. And in myne Harte I was nothing frayde with this menaſing of the Archebiſhop. And I conſidered there two things in him: one, that he was not yet ſorowfull for that he had made *William Soutre* wrongfully to be burnt; and as I conſydered that the Archebiſhop thyrſted yet after more ſheding out of innocent Bloode. And faſt therefore I was moved in all my Wittes, for to hold the Archebiſhop nother for Prelate nor for Preiſt of God; and for that myne inward Man was thus altogether departed from the Archebiſhop, methought I ſhould not haue ony dread of him. But I was right heuy and ſorouful, for that ther was none Audience of Seculer Men by: but in myne Hart I praid the Lord God for to comforte me and ſtrengith me ageinſt them that there ware agaynſte the ſothefaſteneſſe. And I purpoſed to ſpeak no more to the Archebiſhop and his Clerckes than me nede behoved: and all thus I praid God for his Goodneſſe to geue me than and alwaye Grace to ſpeake with a meke and an eaſy Spyrit; and whatſoeuer thinge that I ſhulde ſpeke, that I might haue true Authorities of Scripture, or open Reaſon. And for that I ſtode thus ſtill, and nothing ſpake, one of the Archebiſhopes Clerkes ſeid vnto me,

What thing muſiſte thou? Do thou as my Lord hath now commanded to the here.

And yet I ſtode ſtill, and anſwered him not; and than ſone after the Archebiſhope ſeid to me, Art thou not yet bethought, whether thou wilt do, as I haue here ſeid to the? And I ſeid then to hym;

Syr, my Father and my Mother, on whoſe Souls God haue Mercy (if it be his will) ſpent mekyll Money in diuerſe Places about my Learning, for the entent to haue made me a Prieſte to God: but when I came to Yeares of Diſcretion I had no will to be Prieſte, and therefore my Friends were right heuy to me: and than me thought their grudging agenſt me was ſo peynfull to me, that I purpoſed therfor to haue left their Company: and when they perceiued this in me, they ſpake ſome tyme full feire and pleaſaunt Wordes to me; but for that they might not make me to conſent of good Harte to be a Prieſte, thei ſpake to me full ofte tymes very grevous Wordes, and manaſſed me in diuerſe manners, ſhewing to me full heuy chere. And thus one while in feire manner, a nother while in greuous they were long tyme as me thought full beſy about me, or I conſented to them to be a Prieſte: but at the laſte, whan in this matter they wold no longer ſuffer myne Excuſacions, but other I ſhould conſent to them, or I ſholde ever bear their Indignation, ye, their Curſe, (as they ſeide) than I ſeing this, praid them that they wold gyue me licence for to go to them that wer named wyſe Prieſtis and of vertuous Conuerſacion, to haue their Counſell, and to know of them the Office and the Charge of Prieſthode. And hereto my Father and my Mother conſented full gladly, and gaue me their Bliſſing and goode leaue to go, and alſo Money to ſpende in this Journey. And ſo than I went to tho Prieſts, whom I herde to be of beſte Name, and of moſte holy lyving, and beſte learnid, and moſte wyſe of heauenly Wiſdom; and ſo I communed with them vnto the tyme that I perceiuyd by their verteuous and continuall Occupacions that their honeſte and charitable werks paſſed their fame wich I herde before of them. Wherefore, Syr, by the example of the Doctrine of them, and ſpecially for the godly and innocent Workis wich I perceiued than of them and in them; after my Conning and Power I have exerciſed me than and in this tyme to knowe perfectly Goddis Lawe, hauing a will and a deſyre to lyve ther after, willing that all Men and Women exerciſed them ſelf feithfully theraboute. Yf than, Syr, other for Pleaſure or Diſpleaſure of them that ar nother ſo wiſe, nor of ſo verteuouſe Conuerſation to my Knowledge; nor by comone Fame to ony other Mannis Knowledge in this Land, as thes Men wer of whome I toke my Counſell and Information; I ſholde now forſake thus ſodenly and ſhortely, and unwarnid, all the Learning that I exerciſed my ſelf in this thirty Winter and more; my Conſcience ſhulde ever be herewith out of meſure vnquieted: and as, Syr, I knowe well that many Men and Women ſhould be therthrowe greatly troublid and ſclaunderid, and as I ſaid Syr to you before, for myne untrewthe and falſe Cowardneſs many a one ſholde be put into full great repreſe: ye Syr I drede, that many a one, as thei might then iuſtely, wolde curſe me full bitterly, and Syr I feare not but the Curſe of God, which I ſholde deſerve herein, wolde bring me to a full euyll end, yf I continewid thus. And if thorow remorſe of Conſcience I repentid me any tyme retourning into the way, which you doo your diligence to conſtreine me now to forſake ye Syr, all the Biſhopis of this Lande with full many other Prieſtis wolde defame, and purſew me as a Relapſe, and thei that now have (though I be unworthy) ſome Confidence in me, hereafter wolde neuer truſte to me though I cowlde teache and liue neuer ſo verteuouſly more than I can or may. For if after your Counſell I lefte vtterly all my Learning, I ſholde hereby firſte wounde and defyle myne owne ſoule; and alſo I ſholde here through geue occaſion to many Men and Women of full ſore hurting: ye Syr, as it is likely to me, if I conſented to your will I ſholde herein by myne euil Example in it, as ferre as in me wer, ſlee many Folke ghoſtely, that I ſholde neuer deſerue for to haue Grace of God to the edifying of his Chirche nother of my ſelf, nor of none other Mannes Lyfe, and undone bothe before God and Man. But Syr, by Example chefely of ſome whos Names I will not now reherſe, *H.* of *J. P.* and *B.* and alſo by the preſent doyng of *Philip* of *Rampenton* that is now becomen Biſhop of *Lincoln*, I am now learnid, as many more hereafter thorow Goddis Grace ſhall be learned, to hate and to fle all ſoche ſclander, that thes foreſaid Men chefely hathe defyled principally themſelves with. And in it that in them is they have enuenemid all the Chirche of God for that ſclanderous reuoking at the Croſſe of *Paulis* of *H. P.* and of *B.* and how now *Philip Rampenton* perſewith Criſtis People. And that feining, that thes Men diſſemble by worldly Prudence keping them cowerdly in their Preaching and Communing within the Bondis and Termis (wich without blame may be ſpokyn and ſhewid out to the moſte worldly lyuers) will not be unponiſhid of God. For to the point of Trewthe that thes Men ſhewid out ſome tyme, they will not now ſtreche forth their Lyues. But by Example eche one of them, as their Wordis and their Works ſhewe, they beſy them thorow their feinyng, for to ſclaunder and to perſewe Chriſte in his Members, rather than they will be perſewed.

And the Archebiſhop ſeid to me, Thes Men the which thou ſpekiſt of now wer Foolis and Heretiques, whan they were countid wyſe Men of the and other ſoche loſelles. But now they ar wyſe Men, though thou and ſoche other deme them vnwyſe. Neuertheleſſe I wiſte neuer none, that right ſeide, that any while were enuenymed with your contagiouſneſſe, that is, contaminate and ſpottid Doctrine.

And I ſeid to the Archebiſhop, Syr, I think well that thes Men and ſuch other ar now wyſe as to this Worlde; but as their Wordis ſoundid ſometyme, and their Workis ſhewid outwardly, it was likely to move me that they had earneſte of the Wiſdome of God; and that they ſholde haue deſerued mickell Grace of God to have ſauyd their own Soules, and meny other Mennis, if they had continewid feithfully in wilfull pouerte, and in other ſymple verteuous lyving; and ſpecially if they hadde with thes foreſeid vertues continewid in their beſy fruteful ſowing of Goddis Word: as to many Mennys Knowledge they occupied them a Seaſon in all their Wittes full beſyly to know the pleaſaunt Will of God, trauelyng all their Membres full beſily for to doo therafter, purely and chefely to the praiſing of the moſt Holy Name of God, and for Grace of Edification and Saluacion of Chriſten People; but wo worthe falſe Couetiſe, and euill Counſell, and Tyranny, by wiche they and many Men and Women are ledde bliyndely into an evill ende.

Than the Archebiſhop ſeide to me, Thou and ſoche other loſellis of thy Secte wolde ſhaue your Headis full nere for to have a Benefice. For by Jeſu I know none more couetouſe ſhrewis than ye ar, when that ye haue a Benefice. For lo I gave to *John Puruay* a Benefice but a Myle out of this Caſtell, and I herde more Compleintis aboute his Covetouſneſſe for Tythes and other Myſdoyngys, than I didde of all Men that wer auancid within my Dioceſſe.

And I ſeid to the Archebiſhop, Syr, *Puruay* is nother with you now for the Benefice that ye gaue him, nor he holdith feithfully with the Learnying that he tawght and writ before tyme, and thus he ſheweth hymſelf nother to be hote nor cold; and therefore he and his Felaws may ſore drede, that if they torne not haſtely to the waye that they have forſaken, perauenture they be put out of the nombre of Criſtis choſyn People.

And the Archebiſhop ſaid, Though *Puruay* be now a falſe Harlot, I quyte me to him; but come he more for ſoche Cauſe before me or we depart, I ſhall knowe with whom he holdith. But I ſey to the, Whiche are thes holy Men and Wyſe of whom thou haſte takyn thyne Informacion?

And I ſeid, Sir, Maſter *John Wicliff* was holden of full many Men the greatiſte Clerke that they knewe than lyvyng; and therwith he was namid a paſſing ruely Man, and an ynnocent in his lyuynge, and herefore greate Men commonyd ofte with him, and they louyd ſo his Learnying that they writ it, and beſily enforſid them to rule themſelf there after. Therefore Syr, this foreſeid Learnying of Maſter *John Wicliff* is yet holden of full many Men and Women, the moſt agreeable Learning unto the lyuing and teachyng of Criſte and of his Apoſtles, and moſte openly ſhewing and declaring how the Chirche of Chriſte hathe ben, and yet ſhulde be rewlid and gouern'd. Therefore ſo many Men and Women couet this Learnying, and purpoſe through Goddis Grace to conforme their lyuying Life to this Learnying of *Wicliff*. Maſter *John Aiſton* tawght and writ accordingly, and full beſily wher and whan, and to whome that he might; and he vſid it hymſelf right perfitly unto his Lifes ende. And alſo *Philip* of *Rampenton* while he was a Chanone of *Laceſter*, *Nicholas Herforde*, *Dauy Gotray* of *Pakring*, Monk of *Bylande*, and a Maſter of Diuinitie, and *John Puruay* and many other wich wer holden right wiſe Men and prudent, tawcht and writ beſily this foreſaid Learnyng, and conformid them thereto. And with all thes Men I was ofte right homely, and communyd with them long tyme and ofte; and ſo before all other Men I choes wilfully to be informid of them and by them, and ſpecially of *Wicliff* himſelf, as of the moſt verteuous and godly wiſe Men that I herde of or knewe. And therefore of him ſpecially, and of thes Men, I tooke the Learning that I haue taucht, and purpoſe to liue there after (if God will) to my Liues end. For though ſome of thes Men be contrary to the Learning that they taucht, before I wote well that their Learning was trewe which they taught; and therefore with the helpe of Gode I purpoſe to holde and to uſe the Learning which I harde of them, while they ſat on *Moſes* Chaire, and ſpecially while they ſat on the Chaire of Criſte. But after the Werkis that they now do, I will not doo with Goddis helpe. For they feine and hide, and contrary the Trewthe wich before they taucht out plenily and trewly. For as I know well when ſome of thes Men hath been blamid for their ſclaunderous doing, they graunte not that they have tauchte a miſſe, or erryd before time; but that they were conſtreined by peine to leave to tell out the ſothe, and thus they choeſe now rather to blaſpheme God than to ſuffer a while here Perſecution bodely for ſothefaſtneſſe that Chriſte ſhed out his Harte Bloode for.

And the Archebiſhop ſeid, that Learning that thou calliſt Trewthe and Sothefaſtneſſe, is open ſclaunder to Holy Chirche, as it is prouid of Holy Chirche. For all be it, that *Wicliff*, your Autour was a great Clerke, and though that many Men held him a perfite liuer, yet his Doctrine is not approuid of Holy Chirche, but many Sentences of his Learning are dampnid as they well woorthy ar. But as touching *Philip* of *Rampenton* that was firſt Chanone, and after Abbot of *Laceſter*, which is now Biſhop of *Lincoln*; I tell the that the Day is comen for which he faſtid the euene. For nother he holdeth now, nor will hold the Learning that he thought when he was a Chanon of *Laceſter*: For no Biſhop of this Land perſeweth now more ſharply them that holde thy way than he doeth.

And I ſaid, Syr, full many Men and Women wonderith upon him, and ſpeakith him mekill Shame, and holdeth him for a curſid Enemy of the Trewthe.

And the Archebiſhop ſeid to me, Wherefore tarieſt thou me thus here with ſoche Fables, wilt thou ſhortely (as I have ſeid to the) ſubmit the to me or no?

And I ſeid, Syr, I tell you at one word, I dare not for the drede of God ſubmit me to you, after the Tenour and Sentence that ye have aboue reherſed to me.

And than as if he hadde been wrothe he ſeid to one of his Clerkis, fetch hider quikely the Certification that came to me fro *Shrewisbury* under the Bailiues Seal, witniſſing the Errours and Hereſies which this loſell hath venemouſly ſowen there.

Then haſtely the Clerke tooke out, and leid forth on a Cupborde diverſe Rollis and Writings, among which there was a little one, which the Clerke delivered to the Archebiſhop. And by and by the Archebiſhop redde this Rolle, conteining this Sentence.

¶ The thirde *Sonday* after *Eaſter*, the Yere of our Lorde M.CCCC. and Seuen, *William Thorpe* came vnto the Towne of *Shrewisbury*, and thorow leaue graunted unto him to preache:

He ſaid openly in Synt *Chaddis* Chirche in his Sermone, that the Sacrament of the Altare after the Conſecration was material Brede.

And that Ymages ſhulde in no wiſe be worſhipped.

And that Men ſhulde not go on Pilgremages.

And that Prieſtes have no Titles to Tythes.

And that it is not lefull for to ſwere in any wiſe.

And when the Archebiſhop had red thus this Rolle, he rolled it up agein, and ſeid to me, Ys this holeſome Learninge to be among the People?

And I ſaid to him, Syr, I am both aſhamed on their behalfe, and right ſoroufull for them that have certified you thes things thus vntrewly: for I preached never nor taught thus priuely nor apertly.

And the Archebiſhop ſaid to me, I will give Credence to thes worſhipfull Men which haue written to me, and witneſſed vnder their Sealis there among them. Though thou now denieſt this, weniſt thou that I will give Credence to the? Thou loſell haſte trobled the worſhipful Cominalte of *Shrewisbury*; ſo that the Bailives and Cominalte of that Town haue written to me, prayinge me that am Archbiſhop of *Canterbury*, Primate and Chaunceler of *Englond*, that I will vouchſafe to graunte them, that if thou ſhalt be made (as thou art worthy) to ſuffer open Jouresſe for thine Hereſys, that thou maye haue thi youreſſe openly ther among them: ſo that all they whome thou and ſoche other loſelles haue ther peruerted, may thorow feare of thy Dede be reconſyled ageyn to the vnite of Holy Chirche. And alſo they that ſtand in true Faithe of Holy Chirche may thorowe thy Dede be more ſtabliſhed therein. And as yf thys aſkyng hadde pleaſed the Archebiſhop, he ſaid, By my thriſte this hartye Prayoure and feruente Requeſte ſhall be thought on.

But certeynly nother the Prayer of the Men of *Shrewiſbury*, nor the manaſſynge of the Archebiſhop made me any thing a frayde. But in reherſyng of this malice, and in the hearynge of it, my herte greatly rejoyſed and yet dothe. I thanke God for the Grace that I than thought and yet thinke ſhall come to all the Chirche of God here thorowe, by the ſpeciall mercifull doynge of the Lord. And as hauynge no dreade of the Malice of Tyrauntes, by truſtynge ſtedfaſtly in the helpe of the Lorde with full purpoſe for to knowlege the ſothefaſteneſſe, and to ſtande thereby after my connyng and power, I ſaid to the Archebiſhop; Syr, yf the Truthe of Gods Worde might now be accepted as it ſholde be, I doute not to proue by lykely evidence, that they that are famed to be out of the Faythe of Holy Chirche in *Shrewiſbury*, and in other Places alſo, are in the true Faithe of Holy Chirche. For as their Wordes ſounde, and their Workes ſhewe to Mannis Judgment, dreading and louing faithfully God, their Will, their Deſyre, their Loue, and their Beſineſſe are moſte ſett to dreade to offend God, and to loue for to pleaſe him in true and faithfull keping of his Commandments. And agene, they that are ſaid to be in the Faithe of Holy Chirche in *Shrewiſbury* and in other places, by open euidence of their proude, enuiouſe, maliciouſe, couetouſe, lecherouſe and other foule Wordes and Workes, nother knowe nor haue will to knowe, nor to occupye their Wittes truly and effectuouſly in the right Faith of Holy Chirche. Wherefore all theſe, nor none that followe their maners, ſhall ony time come verely in the Faith of Holy Chirche, except they enforce them more truelye to come in the waye whiche nowe they deſpiſe. For theſe Men and Women that are now called feithfull and holden juſte, nother knowe nor will exerciſe themſelfe to know of Faithfulneſſe one Commaundement of God. And thus full many Men and Wómen now, and eſpecially Men that are named to be principall Lymmes of Holy Chirche, ſtiere God to greate Wrathe, and deſerue his Curſe, for that they call or holde them unjuſte Men, which are full vnjuſte, as their viciouſe Wordes, their great cuſtomable Sweringe, and their ſlaunderouſe and ſhamefull Workes ſhew openly and witneſſe. And herefore ſoche viciouſe Men and unjuſte in their owne Confuſion call them unjuſte Men and Women, which after their power and conning beſy them ſelf to liue juſtely after the Commaundment of God. And where Syr ye ſay, that I haue diſtrobled the Cominaltie of *Shrewiſbury*, and many other Men and Women with my teaching, if it thus be, it is not to be wondred of wiſe Men, ſins all the Cominalte of the Cite of *Jeruſalem* was deſtrobled of Chriſtes awne Perſon that was very God and Man, and moſt prudent Precher that ever was or ſhall be. And alſo all the Synagogue of *Nazareth* was moued againſte Chriſte, and ſo fulfilled with ire towardes him for his preaching, that the Men of the Synagogue roſe up and caſt Chriſte out of their Cyte, and ledde him vppe to the top of a Mountaine for to caſt him doune ther hedeling. Alſo accordingly hereto the Lord witneſſyth by *Moſes*, that he ſhall put Diſſention betwixt his People and the People that contrarieth and perſewith his People. Who, Syr, is he that ſhall preche the Treuthe of Goddes Worde to the vnfeithful People, and ſhall lett the ſothefaſteneſſe of the Goſpell, and the Prophecye of God Almightie to be fulfilled?

And the Archebiſhop ſaid to me, It foloweth of thes thy Words, that thou and ſoche other thinkeſt that ye do right well for to preach and teach as ye do without Authoritie of any Biſhop. For ye preſume, that the Lord hath choſen you only for to preache as faithful Diſciples and ſpeciall Folowars of Chriſte.

And I ſaid, Syr, by Authoritie of Gods Lawe, and alſo of Seintes and Doctours, I am learned to deme, that it is euery Prieſts Office and Dutie for to preache beſily frely and truely the Worde of God. For no doute euery Prieſt ſhould purpoſe firſt in his Soule, and couett to take the Order of Prieſthode chefly for to make knowen to the People the Worde of God after his conning and power, approuing his Wordes euer to be true by his vertuous Workes: and for this entent we ſuppoſe that Biſhopes and other Prelates of Holy Chirch ſhold chefely take and uſe ther Prelacie. And for the ſame cauſe Biſhopes ſholde giue to Prieſtes their Orders. For Biſhopes ſholde accept no Man to Prieſthode, except that he had good Will and full purpoſe, and were well diſpoſed, and well learned to preache. Wherefore, Syr, by the bidding of Chriſt, and by Example of his moſte holy liuing, and alſo by the witneſſing of his holy Apoſtles and Prophets, we are bounde under full great Peine to exerciſe vs after our conning and power (as euery Prieſte is likewiſe charged of God) to fulfill dewly the Office of Prieſthode. We preſume not here of oure ſelves for to be eſtemed (nother in our owne Reputacion, nor in none other Mannes) feithful Diſciples, and ſpeciall Folowers of Chriſte: but Syr, as I ſaid to you before, we deme this by Authoritie chefely of Goddes Worde, that it is the chefe deutie of euery Prieſte to beſy them feithfully to make the Law of God knowen to his People, and ſo to comune the Commaundment of God charitably, howe that we may beſte, where, whan, and to whom that euer we may, is our very deutie. And for the will and buſineſſe that we owe of our dewe dette to do juſtely our Office thorow the ſteiring and ſpecial helpe (as we truſte) of God, hoping ſtedfaſtly in his mercie, we deſire to be the feithfull Diſciples of Chriſte; and we pray this gracious Lorde for his holy Name, that he make us able ſo to pleaſe him with deuout Prayers, and charitable Prieſtly workes, that we may obteine of him to folowe him thankfully.

And the Archebiſhop ſaid to me, Lewde Loſell, whereto makiſt thou ſoche veyne Reaſons to me? Aſketh not Seynt *Paul*, *Howe sholde Prieſtes preche, except they be ſent?* but I ſent the neuer to preche; for thy venemous Doctryne is ſo knowen thorow out *Englond*, that no Biſhop will admitt the for to prech by witneſſyng of their Letters. Why than, lewde Ydiot, willeſt thou preſume to preach, ſyns thou art not ſent, nor licenſed of thy Souereyn to preach? Saith not Seynt *Paule*, *That Subjectes owe to obey their Souereyns*, and not only good and vertuous, but alſo Tyrauntis that are vicious?

And I ſaid to the Archebiſhop, Syr, As touching your Letter of Licence or other Biſhopes, which ye ſay we ſholde haue to witneſſe that we wer able to be ſent for to preache; we knowe well that nother you, Syr, nor ony other Biſhop of this Lande will graunte to us ony ſoche Letters of Licence, but we ſholde oblige us to you and to other Biſhopes, by unlefull Oathes, for to paſſe not the Bondes and Termes which ye, Syr, or other Biſhopes will limyt to us. And ſins in this Matter your Term is to be ſome to large, and ſome to ſtreite, we dare not oblige vs thus to be bounden to you for to kepe the Termes, which you will lymitt to us, as ye do to Friere and ſoch other Prechers: and therfor though we haue not your Letter, Sir, nor Letters of other Biſhops written with Ynke upon Perchement, we dare not herefor leaue the Office of Preching; to which Preching all Prieſtes, after there Connying and Power, are bounde by diuerſe Teſtimonies of God's Lawe, and of great Doctours, without ony mencion making of Biſhopes Letters. For as mekell as we haue taken upon vs the Office of Prieſthode (though we are vnworthy thereto) we come and purpoſe to fulfyll it with the helpe of God, by Authoritie of his owne Lawe, and by witneſſe of great Doctours and Seintes accordingly, hereto truſting ſtedfaſtly in the mercye of God: For that he commaundeth vs to do the Office of Prieſthode, he will be our ſufficient Letters and Witneſſe, if we by example of his holy lyuing and teaching ſpecially occupye vs feithfully to do our Office juſtly, ye the People to whom we preache, be they feithfull or unfeithfull, ſhall be our Letters, that is, our Witneſſeberers; for the Treuthe, where it is ſowen, maye not be unwitneſſed: For all that are conuerted and ſaued by learninge of Goddes Worde, and by working therafter, are Witneſſeberers, that the Trewith and Sothfaſtneſſe which they harde and dyd after, is cauſe of their Saluacion. And ageyn, all unfeythfull Men and Women, which herde the Treuthe, tolde out to them, and wolde not do there after; alſo all they that might haue herde the Truthe, and wolde not heare it becauſe that they wolde not do thereafter: all thes ſhall beare witneſſe againſt themſelfes, and the Treuth which they wóld not heare, or elſe harden and deſpiſed to do thereafter thorow their Unfeythfulneſſe, is and ſhall be cauſe of their Dampnacion. Therfore, Syr, ſyns this forſeide witneſſing of God, and of diverſe Seintes and Doctours, and of all the People good and evyll, ſufficeth to all true Preachers; we thinke that we do not the Office of Preſthode, if that we leaue our Preaching, becauſe that we haue not, or maye not, haue dewly Biſhopes Letters to witneſſe that we are ſent of them to preache. This Sentence approueth Seynt *Paul*, wher he ſpeaketh of himſelfe, and of feithfull Apoſtles and Diſciples, ſaing thus: *We neede no Letters of Commendacion, as ſome other Preachers do, whiche preache for Couetouſneſs of temporal Goodes, and for Mennes praiſing.* And where ye ſay, Syr, that *Paul* biddeth Subjectes obey their Souereyns; this is ſoth, and may not be denied: But ther is ij. maner of Souereyns, vertuous Sufferenys, and vicious Tyrauntes; therefore to thes laſt Souereyns nother Men nor Women that be ſubjecte owe to obey in ij. manners. To vertuous Suffereins and charitable, Subjectes owe to obey wilfully and gladly, in hearing of their good Counſell, in conſenting to their charitable Biddinges, and in werkynge after their frutefull Works. This Sentence *Paul* approueth, wher he ſaith thus to Subjectis: *Be ye mindfull of your Souereyns that ſpeke to you the Worde of God, and folow you the Feithe of them whos Conuerſacion you know to be vertuous.* For as *Paul* ſaith after, *Thes Souereyns, to whome Subjectis owe to obeye in following of their Maners, worke beſily in holy ſtudying, how they may withſtande and deſtroy Vices firſte in themſelf, and after in all their Subjectis, and how they may beſte plante in them Vertues.* Alſo thes Souereyns make deuoute and feruent Prayers for to purchaſe Grace of God, that they and their Subjectis may ouer all things dreade to offende him, and to loue for to pleaſe hym. Alſo theſe Souereyns to whom *Paul* biddeth vs obey, as it is ſeid before, lyue ſo vertuouſly, that all they that will lyue well may take of them goode Example to knowe and to kepe the Commaundmentis of God. But in this foreſaid wyſe, Subjectis owe not to obey, nor to be obedient to Tyrauntis, while they ar vicious Tyrauntis; ſyns their Will, their Counſell, their Biddings, and their Workis ar ſo vicious, that they owe to be hatid and lefte. And though ſoche Tyrauntis be maſterfull and cruell in Boſtyng, and manaſing in Oppreſſions and diverſe Punyſhyngis; Seynt *Peter* biddeth the Seruauntis of ſoche Tyrauntis to obey mekely to ſoche Tyrauntis, ſuffering paciently their malicious Cruelnes: But *Peter* counſellith not ony Seruant or Subjecte to obey to ony Lorde, or Prince, or Souereyn in ony thyng that is not pleaſing to God.

And the Archebiſhop ſaid vnto me, Yf a Souereyn bidde his Subject doo that thing that is vicious, this Soueryn herein is to blame; but the Subjecte for his Obedience deſerueth mede of God, for Obedience pleaſith more to God than ony Sacrifice.

And I ſaid, *Samuel* the Prophete ſaid to *Saul* the wycked King, *That God was more pleaſed with the Obedience of his Commaundment, than with ony Sacrifice of Beſtis:* But *Dauid* ſaith, and Seynt *Paul*, and Seynt *Gregory* accordingly to gither, *That not onely they that do Euyll is worthy of Dethe and Dampnacion, but alſo all they that conſente to euyll Doers.* And, Syr, the Law of holy Chirche teacheth in the Decrees, That no Seruant to his Lorde, nor Childe to the Father or Mother, nor Wyfe to hyr Huſbond, nor Monke to his Abot, ought to obey except in lefull thingis and lawfull.

And the Archebiſhop ſaid to me, All theſe Allegingis that thou bringeſt forth ar not els but proude Preſumptuouſneſs; for hereby thou enforciſt the to prove, that thou and ſoche other ar ſo juſte, that ye owe not to obeye to Prelatis. And thus agenſt the Learning of Seynt *Paul*, that teachith you not to preache but if ye wer ſent, of your own Authorite ye will go forthe, and preache, and doo what ye liſte.

And I ſaid, Sir, preſentith not every Prieſte the Office of the Apoſtles, or the Office of the Diſciples of Chriſte? And the Archebiſhop ſaid ye. ¶ And I ſaid, Syr, as the tenthe Chaptre of *Matthew*, and the laſte Chaptre of *Marke* witneſſeth, Chriſte ſent his Apoſtles for to preache: And the tenthe Chaptre of *Luke* witneſſeth, that Chriſte ſent his two and ſeuentie Diſciples for to preache in every place that Chriſte was to come to. And Seynt *Gregory* in the common Lawe ſaith, That every Man that goth to Prieſthode, takith upon hym the Office of Preaching; for as he ſaith, that Prieſte ſteirith God to great Wrathe, of whos Mouthe is not herde the Voice of Preaching. And as other more gloſes upon *Ezechiel* witneſſe, that the Prieſte that prechith not beſily to the People, ſhall be Partetaker of their Dampnacion that periſhe thorow his Defaute; and though the People be ſauyd by other ſpeciall Grace of God than by the Prieſtis Preachyng, yet the Prieſtis, in that they ar ordenyd to preache and preache not, as before God they ar Manſlears, for as ferre as in them is; ſoche Prieſtes as preache not beſily and trewly ſleeth all the People goſtely, in that they withhold from them the Worde of God, that is Lyfe and Suſtenaunce of Menes Soules. And Seynt *Iſidore* ſaith, Prieſtis ſhall be dampnid for Wickedneſſe of the People, if they teache not them that ar ignorant, or blame not them that are Synners: For all the Worke or Beſineſſe of Prieſtis ſtandith in preaching and teaching, that they edifye all Men as well by Connyng of Feithe, as by Diſcipline of Workes, that is vertuous teaching. And as the Goſpell witneſſith, Chriſte ſaid in his teaching, *I am borne and comen into this Worlde to beare witneſſe to the Trewthe, and he that is of the Trewthe hearith my Voice.* ¶ Than, Syr, ſyns by the Word of Chriſte ſpecially, that is, his Voice, Prieſtis ar commaundid to preache, whatſoeuer Prieſte that it be that hathe not Good-will and full Purpoſe to doo thus, and ableth not hymſelf, after his Conning and Power, to doo his Office by the Example of Chriſte and of his Apoſtles, whatſoeuer other thing that he dothe diſpleaſith God. For lo Seynt *Gregory* ſaith, that thing lefte that a Man is bounde chefely to doo, whatſoeuer other thing that a Man dothe, it is unthankefull to the Holy Goſte: And therfore ſaithe *Lincoln*, That Prieſte that preachith not the Worde of God, though he be ſiene to have none other Defaute, he is Antichriſte and Sathanas, a Night-thefe and a Day-thefe, a Slear of Soules, and an Angell of Light tournid into Derkeneſſe. Wherfore, Syr, thes Authorites and other well conſidered, I deme my ſelf dampnable if I, other for Pleeſure or Diſpleaſure of ony Creature, applye me not diligently to preache the Worde of God. And in the ſame Dampnacion I deme all thoſe Prieſtis, which of goode Purpoſe and Will enforſe them not beſily to doo thus; and alſo all them that have Purpoſe or Will to lett ony Prieſte of this Buſineſſe.

And the Archebiſhop ſaid to thoſe three Clerkis that ſtoode before hym, Lo, Syrs, this is the Manner and Buſineſſe of this Loſell and ſoche other, to pike out ſoche ſharp Sentencis of holy Scripture, and of Doctoris, to mainteine their Secte and Lore againſte the Ordinaunce of Holy Chirche. And therefore, Loſell, it is that thou couetiſt to have ageyn the Pſalter that I made to be takyn from the at *Canterbury*, to recorde ſharpe Verſys ageinſt vs; but thou ſhalt neuer haue that Pſalter, nor none other Boke, tyll that I know that thy Harte and thy Mouthe accorde fully to be gouernid by holy Chirche.

And I ſaid, Syr, all my Will and Power is and euer ſhall be (I truſte to God) to be gouernyd by holy Chirche.

And the Archebiſhop aſked me, What was holy Chirche?

And I ſaid, Sir, I tolde you before what was holy Chirche; but ſyns ye aſke me this Demaunde, I call Chriſte and his Seyntes holy Chirche.

And the Archebiſhop ſaid unto me, I wote well that Chriſte and his Seyntes ar holy Chirche in Heuene; but what is holy Chirche in Erthe?

And I ſaid, Syr, though holy Chirche be euery one in Charite, yet it hath two Partis: The firſte and principall Parte hath ouercomen perfitely all the Wretchedneſſe of this Lyfe, and reigneth joyfully in Heuene with Chriſte; and the tother Parte is here yet in Erth, beſily and continually fighting day and night ageinſt Temptacions of the Fende, forſakyng and hatyng the Proſperite of this Worlde, deſpiſing and withſtonding their fleſſchely Luſtis; which only ar the Pilgrimes of Chriſte, wandering toward Heuene by ſtedfaſt Feith, and grounded Hope, and by perfite Charite: For thes heuenly Pilgremis may not, nor will not be lettid of their goode purpos, by the reaſon of eny Doctours diſcording fro holy Scripture, nor by the Fluddis of any Tribulacion temporall, nor by the winde of any Pride of Boſte, or of manaſing of ony Creature; for they ar all faſte grounded upon the ſuer Stone Chriſte, hearing his Worde, and louing it, exerciſing them feithfully, and continually in all their Wittes to doo thereafter.

And the Archebiſhop ſaid to his Clerkis, Se ye not how his Harte is endured, and how he is traueled with the Deuill, occupying him thus beſely to allege ſoche Sentencis to mainteyne hys Errours and Hereſies? Certeyn thus he wold occupie vs here all day, if we wold ſuffer hym.

One of the Clerkes anſwered; Syr, he ſaid right now, that this Certificacion that came to you fro *Shrewisbery* is untrewly forged againſt hym; therfore, Syr, appoſe you hym now here in all the Pointis which ar certified ageinſt hym, and ſo we ſhall heare of his owne Mouthe his Anſwers, and witneſſe them.

And the Archebiſhop tooke the Certificacion in his Honde, and looked theron a while, and than he ſaid to me:

Lo here it is certified ageinſt the by worthy Men and feithfull of *Shrewisbury*, that thou preachedſt there openly in Seynt *Chaddis* Chirche, that the Sacramente of the Altare was materiall Brede after the Conſecracion: What ſaiſt thou? Was this trewly preached?

And I ſaid, Syr, I tell you trewly that I touchid nothing there of the Sacrament of the Altare, but in this wyſe, as I will with Goddis Grace tell you here. As I ſtood ther in the Pulpet, beſiyng me to teache the Commaundement of God, ther knylled a ſacring Bell, and therfore mekill People toornid awaye haſtely, and with great noyſe ran fro towardis me. And I ſeing this, ſaid to them thus: Goode Men, ye wer better to ſtand here ſtill, and to heare Goddis Worde; for certis the Vertue and the Mede of the moſte holy Sacrament of the Altare ſtandith mekill more in the Beleue thereof that ye ought to haue in your Soule, than it dothe in the outward Sighte thereof. And therfor ye were better to ſtande ſtill quietely to hear Goddis Worde, becauſe that thorow the hearing thereof Men come to very trewe Beleſe. And otherwyſe, Syr, I am certein I ſpake not there of the woorthy Sacrament of the Altare.

And the Archebiſhop ſaid to me, I beleue the not what ſo euer thou ſaiſt, ſyns ſo worſhipfull Men haue witneſſed thus ageinſt the; but ſyns thou denyeſt that thou ſaidiſt thus there, what ſaiſt thou now? Reſtith there, after the Conſecration, in the oſte materiall Brede or no?

And I ſaid, Sir, I knowe in no place in holy Scripture where this Terme materiall Brede is writen; and therefore, Sir, when I ſpeake of this matter, I vſe not to ſpeake of materiall Brede.

Than the Archebiſhop ſaid to me, How teacheſt thou Men to beleue in this Sacrament?

And I ſaid, Sir, as I beleue myſelf, ſo I teache other Men.

He ſaid, Tell out pleinly thy Beleue hereof.

And I ſaid with my Proteſtacion, Sir, I beleue that the Nyght before that Chriſte Jeſu wold ſuffer wilfully Paſſion for Mankynde on the Morne after, he toke Breade in his holy and moſte worſhipfull Handis, lifting vp his Eyes, and gyuyng Thankis to God his Father, bleſſed this Breade and brake it, and gaue it to his Diſciples, ſaying to them, *Take and eate of this all you, this is my Body*; and tho this is and ought to be all Mennis Beleſe, *Mathew*, *Mark*, *Luke*, and *Paul* witneſſith: other Beleue, Sir, haue I none, nor will have none elſe; for I beleue that this ſufficeth in this matter: For in this Beleue, with Goddis Grace, I purpoſe to lyue and dye, knoleging as I beleue and teache other Men to beleue, that the worſhipfull Sacrament of the Altare ys the Sacramente of Chriſtis Fleſche and his Bloode, in fourme of Breade and of Wine.

And the Archebiſhop ſaid to me, It is ſothe that this Sacrament is very Chriſtis Body in fourme of Breade; but thou and thy Secte techiſt it to be Subſtaunce of Brede: Thynke you this true Teachinge?

And I ſaid, Nother I nor ony other of the Secte that ye dampne, teach ony other wyſe than I haue told you, nor beleue otherwiſe to my knowynge. Neuertheleſſe, Syr, I aske of you for Charyte, that ye will tell me here pleynly, how ye ſhall vnderſtonde this Text of Saynt *Paule*, wher he ſayth thus: *This thinge feale you in youre ſelf, that is in Chriſte Jeſu, while he was in the fourme of God.* Sir, calleth not *Paule* here the Fourme of God, the Subſtaunce or Kynde of God? Alſo, Sir, ſaith not the Chirche in the houres of the moſt bleſſed Virgine accordingly hereto, where it is written thus: *Thou Auctour of Healthe remembre, that ſometyme thou toke of the undefyled Vyrgyne the Fourme of oure Bodye?* Tell me for Charyte therefore, whether the Fourme of our Bodye be called here the Kynde of our Body or no?

And the Archebiſhop ſaid to me, Wouldeſt thou make me to declare this Texte after thy Purpoſe, ſyns the Chirche hathe nowe determyned, that there abideth no Subſtance of Breade after the Conſecracion in the Sacrament of the Altare? Beleueſt thou not on this Ordinaunce of the Churche?

And I ſaid, Syr, What ſoeuer Prelates haue ordened in the Churche, our beleue ſtandith euer hooll. I haue not herde that the Ordinaunce of Men under Beleue ſhulde be putt in to Beleue. And the Archebiſhop ſaide to me, Yf thou haſt not learned this before, learne now to knowe that thou art out of Beleue, if in this matter and other thou beleueſt not as holy Chirche beleueth. What ſaye Doctours treatinge of this Sacrament?

And I ſaid, Syr, Seint *Paule* that was a greate Doctour of holy Chirche, ſpeakynge to the People, and teaching them the right Beleue of this moſte holy Sacrament, calleth it Breade that we breake. And alſo in the Canon of the Maſſe after the Conſecration, this moſt worthy Sacrament is called holy Breade; and euery Prieſte in this Lande, after that he hathe receyued this Sacrament, ſaythe in thys wyſe: That thynge that we haue taken with oure Mouthe, we praye God that we may take it with a pure and clene Mynde; that is, as I underſtonde, we praye God that we may receyue, thorowe very Beleue, this holy Sacrament worthely. And, Syr, Seynt *Auguſtine* ſaith, That thing that is ſene is Breade; but that Menneys Feithe asketh to be informed of, is verye Chriſtes Body. And alſo *Fulgence*, an ententyſe Doctour, ſaith, As it were an Errour to ſaye that Chriſte was but a Subſtaunce, that is, very Man, and not very God, or to ſay, that Chriſte was very God, and not very Man; ſo is it (this Doctour ſayth) an Errour to ſay, that the Sacrament of the Altar is but a Subſtaunce. And alſo, Syr, accordingly hereto in the Secrete of the middle Maſſe on *Chriſtmaſſe* Day, it is written thus: *Idem refulſit Deus, ſic terrena ſubſtantia nobis conferat quod divinum eſt*; which Sentence, Syr, with the Secrete of the forthe ferye, *quatuor temporum Septembris*; I pray you, Syr, declare here openly in Engliſh.

And the Archebiſhop ſeid to me, I perceiue well ynough wher about thou art, and how the Deuell blyndeth the, that thou may not underſtond the Ordinaunce of holy Churche, nor conſent thereto: But I commaunde the now anſwere me ſhortly; Beleueſt thou that, after the Conſecracion of this forſaid Sacrament, there abideth Subſtaunce of Breade or not?

And I ſaid, Sir, as I vnderſtond, it is all one to graunte or to beleue, that there dwelleth Subſtaunce of Brede, and to graunte and to beleue that this moſt worthy Sacrament of Chriſtes owne Body is one Accident withoute Subjecte. But, Syr, for as mekell as your asking paſſeth myne Underſtonding, I dare nother denye it nor graunte it; for it is Skole-Mater aboute which I beſyed me neuer for to know it: and therefore I commit this Terme, *Accidens ſine Subjecto*, to thoſe Clerkes which delyte them ſo in curiouſe and ſuttill Sophiſtrie, becauſe they determine oft ſo difficulte and ſtraunge Maters, and wade and wander ſo in them, from Argument to Argument with *pro & contra*, till that they wote not where they are, nor underſtonde not themſelfe: But the Shame that thes proude Sophiſtrers haue to yelde them to Men and before Men, maketh them ofte Foolis, and to be concluded ſhamefully before God.

And the Archebiſhop ſaid to me, I purpoſe not to oblige the to the ſuttyll Argumentes of Clerkes, ſyns thou art vnable therto; but I purpoſe to make the obeye to the Determinacion of holy Chirche.

And I ſaid, Syr, by open Evidence and great Witneſſe a thouſand yeare after the Incarnation of Chriſte, the Determinacion which I haue here before you rehearſed was accepte of holy Church, as ſufficient to the Saluacion of all them that wolde beleue it faithfully, and worke therafter charitably. But, Syr, the Determinacion of this Mater, which was brought in ſyns the Fende was loſed by Frier *Thomas* agayn, eſpecially calling the moſt worſhipfull Sacrament of Chriſtes owne Body an Accident without Subjecte, which Terme ſyns I knowe not that Goddes Lawe approueth it in this mater, I dare not graunte; but vtterly I denye to make this Frier's Sentence or ony ſoche other my Beleue, do with me God what thou wilt.

And the Archebiſhop ſaide to me, Well, well, thou ſhalt ſay otherwiſe or that I leaue the.

But what ſaiſt thou to this ſeconde Poynte that is recorded ageinſt the by woorthy Men of *Shrewisbury*, ſaing, that thou preacheſt openly there, that Ymages oughte not to be worſhipped in ony wiſe?

And I ſaid, Sir, I preached neuer thus, nor thorow Gods Grace I will not any tyme conſent to thinke nor to ſay thus nother pryuely nor apertly: For, lo! the Lorde witneſſeth by *Moſes*, that the thinges which he made were righte good, and ſo then they were, and yet they are and ſhall be good, and worſhipfull in their kynde; and therefore to the ende that God made them to, they are all preiſable and worſhipfull, and ſpecially Man, that was made after the Ymage and Likeneſſe of God, is full worſhipfull in his kynde: ye this holy Ymage, that is Man, God worſhippeth; and herefore euery Man ſhuld worſhippe other in kynde, and alſo for heuenly Vertues that Men uſe charitably. Alſo I ſaye, Woode, Tynne, Gold, Syluer, or any other Mater that Ymages are made of, all theſe Creatures are worſhipfull in their kynde, and to the ende that God made them for; but the keruyng, caſtyng, nor peyntyng of ony Ymagery made with Mannes Hande, all behit that this doing be accepte of Man of hyeſt State and Dignitie, and ordened of them to be a Kalendar to leude Men, that nother can nor will be learned to know God in his Worde, nother by his Creatures, nor by hys wonderfull and diuerſe Workinges; yet this Ymagery ought not to be worſhipped in the Forme nor in the Likeneſſe of Mannes Crafte; neuertheleſs that euery Matter that Peinters peynte with, ſyns it is Gods Creature, ought to be worſhipped in the kynde, and to the ende that God made and ordened it to ſerue Man.

Than the Archebiſhop ſaid to me, I graunte well that no body oweth to do worſhippe to any ſoche Ymages for them ſelfe; but a Crucifyxe ought to be worſhipped for the Paſſion of Chriſte that is peynted therein, and ſo brought ther thorow to Mannes Mynde: And thus the Ymages of the bleſſed Trinitie, and of Virgin *Mary*, Chriſtes Mother, and other Ymages of Sayntes ought to be worſhipped. For lo earthely Kynges and Lordes, which uſe to ſend their Letters enſealid with their Armes, or with their preuy Signet, to Men that are with them, are worſhipped of thes Men: For whan thes Men receiue their Lordes Letters, in whiche they ſe and knowe the Willes and Biddings of their Lordes, in worſhippe of their Lordes they do offer their Cappes to thes Lettres. Why not than, ſins in Ymages made with Mannes Hande, we may rede and knowe many diuerſe thinges of God, and of his Sayntes, ſhall we not worſhippe their Ymages?

And I ſayde with my foreſaid Proteſtacyon, I ſay that theſe worldly Viſages of temporal Lordes that he ſpeake now of, maye be done in caſe without Synne; but thys is no Similitude to worſhip Ymages made by Mannes Hande, ſyns that *Moſes*, *Dauid*, *Solomon*, *Baruch*, and other Seyntes in the Bible, forbidde ſo pleynly the worſhipyng of all ſoche Ymages.

Than the Archebiſhop ſaid to me, Lewde Loſell, in the olde Lawe, before that Chriſte toke Mankind, was no Likeneſſe of any Perſone of the Trinitie, nother ſhewed to Man nor knowen of Man; but nowe ſyns Chriſte became Man, it is lefull to haue Ymages to ſhewe his Manhode: ye though many Men, which are right greate Clerkes, and other alſo helde it an Errour to peynte the Trinitie, I ſay it is well done to make and to peynte the Trinitie in Ymages: For it is great mouing of Deuocion to Men, to haue and to behold the Trinitie and other Ymages of Seyntes caruyd, caſte, and peynted; for beyonde the Sea are the beſte Peynters that euer I ſaw. And, Syrs, I tell you this is their Maner, and it is a goode Maner. Whan that an Ymagemaker ſhall kerue, caſte in Moulde, or peynte ony Images, he ſhall go to a Prieſte, and ſhryue him as clene as if he ſholde than dye and take Penaunce, and make ſome certeyn Vowe of Faſtyng or of Praiynge, or of Pilgrimages doinge, praiyng the Prieſte ſpecially to praye for hym, that he may haue Grace to make a faire and deuoute Ymage.

And I ſaid, Syr, I doute not yf thes Peynters that ye ſpeake of, or ony other Peynters, vnderſtode truely the Texte of *Moſes*, of *Dauid*, of the wiſe Man, of *Baruch*, and of other Seyntes and Doctours, theſe Peynters ſhould be moued to ſhryue them to God wyth full inwarde Sorowe of Harte, takynge vpon them to doo right ſharpe Penaunce for the ſynfull and vayne Crafte of Peyntinge, Karuynge or Caſtinge that they had vſed, promiſing God feithfully neuer to do ſo after, knowleging openly before all Men theyr reprouable Earning. And alſo, Syr, thes Prieſtes that ſhriue (as ye do ſay) Peinters, and injoine them to do Penaunce, and praye for theire ſpede, promyſyng to them helpe of their Prayers for to be curious in their ſynfull Craftes, ſynne herein more greuouſly than the Peynters: For thes Prieſtes do comforte and gyue them Counſell to do that thynge, which of great Peyne, ye under the Peyne of Goddes Curſe, they ſholde vtterly forbydde them. For certis, Syr, yf the wonderfull werking of God, and the holy lyuynge and teachynge of Chriſte, and of his Apoſtles and Prophetes, were made knowen to the People by holy lyuynge, and true and beſy teachynge of Prieſtes; theſe thynges (Syr) were ſufficient Bokes and Kalendares to knowe God by and his Sayntes, without ony Ymages made with Mannes Hond: but certis the vicious lyuynge of Prieſtes, and their Couetouſneſſe, are cheſe Cauſe of this Errour, and all other Viciouſneſſe that reigneth among the People.

Than the Archebiſhop ſaid unto me, I holde the a vicious Prieſt and acurſte, and all them that are of thy Secte; for all Prieſtes of holy Chirche, and all Ymages that moue Men to Deuocion, thou and ſoche other go about to deſtroy. Loſell, ware it a feire thing to come in to a Chirch, and ſee therein none Ymage?

And I ſaid, Syr, they that come to the Chyrch for to pray deuoutly to the Lorde God, may in their inwarde Wittes be the more feruent, that all their outwarde Wittes be cloſed fro all outwarde ſeynge and hearing, and fro all Diſtroblaunce and Lettingis. And ſyns Chriſte bleſſed them that ſaw hym not bodely, and haue beleuyd feithfully in hym; it ſufficeth than to all Men, thorow hearing and knowing of Goddis Worde, and to doo there after, for to beleue in God, though they ſee neuer Ymagis made with Mannis Hande, after ony Perſon of the Trinite, or of ony other Seynte.

And the Archebiſhop ſaid to me with a feruent Spyrite, I ſay to the, Loſell, that it is right well done to make and to haue an Ymage of the Trinite, ye what ſaiſt thou? Ys it not a ſtiering thinge to beholde ſoche an Ymage?

And I ſaid, Sir, ye ſaid right now, that in the olde Lawe, or Chriſte toke Mankynde, no Likeneſſe of ony Perſon of the Trinite was ſhewid to Men: wherefore, Sir, ye ſaid it was not than lefull to haue Ymagis; but now ye ſay, ſyns Chriſte is becomen Man, it is lefull to make and to haue an Ymage of the Trinite, and alſo of other Seyntis. But, Syr, this thing wolde I learne of you, Syns the Father of Heuen, ye and euery Perſon of the Trinite was without beginnyng God Almighty, and many holy Prophetis that wer dedely Men wer martireſed violently in the olde Lawe, and alſo many Men and Women than died holy Confeſſours: why was it not than as lefull and neceſſarie as now to have made an Ymage of the Father of Heuen, and to haue made and hadde other Ymagis of Marties, Prophetis, and holy Confeſſours, to haue ben Kalendaris to aduiſe Men, and move them to Deuocion, as ye ſay that Ymagis now doo?

And the Archebiſhop ſaid, The Sinagogue of Jues hadde not Authorite to approue thes thingis, as the Chirche of Chriſte hathe nowe.

And I ſaid, Sir, Seint *Gregory* was a great Man in the newe Lawe, and of great Dignite: and as the comon Lawe witneſſith, he commendid greatly a Biſhop, in that he forbadde vtterly the Ymagis made with Mannis Hande ſholde be worſhipped.

And the Archebiſhop ſaid, Vngracious Loſell, thou faueriſt no more Trewthe than an Hounde, ſyns at the Roode at the Northe Dore at *London*, at our Lady at *Walſingham*, and many other diuerſe Places in *England*, ar many great and preiſable Miracles done; ſhulde not the Ymagis of ſoche holy Seyntis and Placis, at the Reuerence of God and our Lady, and other Seyntis, be more worſhippid than other Placis and Ymages wher no ſoche Miracles ar done?

And I ſaid, Sir, ther is no ſoche Vertue in ony Ymagery, that ony Ymagis ſholde herefore be worſhipped; wherefore I am certein, that ther is no Miracle done of God in ony Place in Erthe, becauſe that ony Ymagis made with Mannis Hande ſholde be worſhippid. And herefore, Sir, as I preached openly at *Shrewisbury* and other Placis, I ſay now here before you, that no body ſholde truſte that ther war ony Vertue in Ymagery made with Mannis Hande, and herefor no body ſholde vowe to them, nor ſeake them, nor knele to them, nor bow to them, nor pray to them, nor offer any thinge to them, nor kyſſe them, nor encenſe them: For lo the moſt worthy of ſoche Ymagis, the braſen Serpente by *Moyſes* made at Goddis bidding, the goode Kyng *Ezechie* deſtroied worthily and thankefully, forbycauſe it wes encenſed. Therefore, Sir, yf Men take goode hede to the writing and to the lerning of Seynt *Auguſtine*, of Seynt *Gregory*, and of Seynt *John Chriſoſtome*, and of other Seyntis and Doctours, how they ſpeake and write of Miracles that ſhall be done now in the laſte ende of the Worlde, it is to dreade, that for the Vnfeithfulneſſe of Men and Women, the Fende hath great power for to worke many of the Miracles that now ar done in ſoche Placis: For bothe Men and Women delyte now more for to heare and knowe Miracles, than they do to knowe Goddis Worde, or to hear it effectuouſly. Wherfore to the great Confuſion of all them that thus doo, Chriſte ſaith, *The Gnacion of Adulterers requireth Tokyns, Miracles and Wonders.* Neuertheleſſe as diuerſe Seyntis ſay, now whan the Feithe of God is publiſhed in *Chriſtendome*, the Worde of God ſufficeth to Mannis Saluacion without ſoche Miracles; and thus alſo the Worde of God ſufficeth to all feithfull Men and Women, without ony ſoche Ymagis. But, goode Sir, ſyns the Father of Heuen that is God in his Godhead, is the moſte unknowen thing that may be, and the moſte wonderfull Spyrit, hauying in it no Shape or Likeneſſe of ony Members of ony dedely Creature; in what Likeneſſe or what Ymage may God the Father be ſhewid or peintyd?

And the Archebiſhop ſaid, As holy Chirche hath ſufferid and yet ſufferith the Ymagis of all the Trinite, and other Ymagis to be peyntid and ſhewid, ſufficeth to them that ar Membres of holy Chirche; but ſyns thou art a rotten Membre, cutt away from holy Chirche, thou faucreſt not the Ordinaunce therof. But ſyns the Daye paſſith, leaue we this Mater.

And than he ſaid to me: What ſaiſt thou to the thirde Poynte that is certified againſt the, preching openly in *Shrewisbury*, that Pilgrimage is not lefull? And ouer this thou ſaidiſt, that thoſe Men and Women that go on Pilgrimagis to *Canturbery*, to *Beuerley*, to *Karlington*, to *Walſinghame*, and to ony ſoche other Placis, ar accurſed, and made fooliſch, ſpending their Goodes in waſte.

And I ſaid, Sir, by this Certificacion I am accuſed to you, that I ſholde teache that no Pilgrimage is lefull. But I ſaid neuer thus: For I knowe that ther be trew Pilgrimagis, and lefull and full pleſaunt to God; and therfore, Sir, how ſo euer myne Enemies haue certified you of me, I tolde at *Shrewisbury* of two maner of Pilgrimagis.

And the Archebiſhop ſaid to me, whom calleſt thou trewe Pilgrimes?

And I ſaid, Sir, with my Proteſtacion I call them trewe Pilgremis trauelyn toward the bliſſe of Heuen, which in the ſtate, degree, or ordre that God calleth them, doo beſy them feithfully for to occupie all their Wittes bodely and goſtely, to knowe trewly and to keape feithfully the biddinges of God, hatyng and fleyng all the ſeuen dedely ſynnes, and euery braunche of them, reulyng them verteuouſly (as it is ſaid before) with all their Wittes, doyng diſcretely, wilfully and gladly all the Werkis of mercy bodely and goſtely after their connyng and power, ablying them to the gyftes of the Holy Goſte, diſpoſing them to receyue in their Soules, and to holde therin the right Bleſſinges of Chriſte, beſeying them to knowe and to kepe the ſeuene principall Vertues; and ſo than they ſhall obteyne here thorow grace for to uſe thankfully to God all the Condicions of Charitie, and than they ſhall be moouyd with the good Spirite of God for to examyne ofte and diligently their Conſcience, that nother wilfully nor wittingly they erre in ony Article of Beleue, hauyng continually (as frailte will ſuffer) all their beſineſſe to drede and to flee the Offence of God, and to looue ouer all thing, and to ſeke euer to doo his pleaſaunt Will. Of theſe Pilgremis I ſaid, what ſo euer goode thought that they ony tyme thinke, what verteuous Worde that they ſpeake, and what fruitefull worke that they worke, euery ſoche Thoughte, Worde and Werke is a ſteppe noumbered of God toward hym into Heuene. Thes forſaid Pilgremis of God delyte ſore whan they heare of Seyntis or of verteuous Men and Women, how they forſoke wilfully the Proſperity of this Lyfe, how they withſtode the Suggeſtion of the Fende, how they reſtreined their fleſchly Luſtes; how diſcrete they wer in their Penaunce doyng; how patient they wer in all their Adverſites, how prudent they wer in counceling of Men and Women, moouyng them to hate all ſynne, and to flye them, and to ſhame euer greatly thereof, and to love all Vertues, and to draw to them, ymaginyng how Chriſte and his Folowers by example of hym, ſuffered Skornis and Sclaunders, and how paciently they abode and toke the wrongfull manaſyng of Tyrauntis, how homely they wer and ſeruiſable to poore Men, to relieue and comforte them bodely and goſtely after their power and connyng, and how deuote they wer in Praiers, how feruent they wer in heuenly Deſyres, and how they abſented them fro ſpectacles of veyne ſeyngis and hearingis, and how ſtable they were to lett and to deſtroye all Vices, and how laborious and joifull they wer to ſowe and to plante Vertues. Thes heuenly condicions and ſoche other haue the Pilgremis, or endeuer them for to haue, whoſe Pilgrimagie God acceptith. And ageyne I ſaide, as their Werkis ſhew the moſte part of Men and Women that go now on Pilgrimagis have not thes foreſaid Conditions, nor loueth to beſy them feithfully for to have. For as I well know, ſyns I have full ofte aſſaide, examyne whoſoever will twentie of thes Pilgrimis, and he ſhall not fynde thre Men or Women that knowe ſurely a Commaundment of God, nor can ſay their *Pater-noſter* and *Ave-maria*, nor their *Credo* redely in ony maner of Language. And as I have learnid and alſo know ſomewhat by Experience of thes ſame Pilgrimis, tellyng the Cauſe why that many Men and Women go hither and thither now on Pilgrimages, it is more for the helthe of their Bodies than of their Soules, more for to haue Richeſſe and Proſperitie of thys Worlde, than for to be enryched with vertues in their Souls, more to have here worldely and fleſchely Friendſhip, than for to have Friendſhip of God and of his Seintes in Heuen. For whatſoeuer thing Man or Woman dothe, the Friendſhip of God, nor of ony other Seynte, cannot be hadde without keaping of Goddis Commaundementis. Forther with my Proteſtacion I ſay now as I ſaid in *Shrewiſbury*, though they that haue fleſchely willes trauell fer their Bodies, and ſpende mekill Money to ſeake and to viſite the Bonys or Ymagis (as they ſay they do) of this Seynte or of that; ſoche Pilgrimage goyng is nother praiſable nor thankefull to God nor to ony Seinte of God: Syns in effect all ſoche Pilgrimes deſpiſe God and all his Commaundmentis and Seyntis. For the Commaundmentis of God they will nother knowe nor keape, nor conſorme them to lyue verteuouſly by Example of Chriſte and of his Seyntis. Wherefore Syr, I haue prechid and taucht openly, and ſo I purpoſe all my Lyfe time to do with Gods helpe, ſaying that ſoche fond People waſt blamefully Gods Goods in ther veyne Pilgrimagis, ſpending their Goodes upon vicious Hoſtelers, which ar ofte vnclene Women of their Bodies; and at the leſte thoſe Goodes with the which thei ſhoulde doo Werkis of Mercie after Goddis bidding to poore nedy Men and Women. ¶ Thes poor Mennis Goodes and their lyuelode thes runners about offer to riche Prieſtis, which have mekill more lyuelode than they neade: and thus thoſe Goodes they waſte wilfully, and ſpend them vnjuſtely ageinſt Goddis bidding upon Straungers, with which they ſholde helpe and releue after Goddis will their poor nedy Neighbours at home: ye and ouer this foly, ofte tymes diuerſe Men and Women of thes Runners thus madly hither and thither in to Pilgrimage borowe hereto other Mennis Goodes, ye and ſometyme they ſtele Mennis Goodes hereto, and they pay them neuer agein. Alſo Sir, I know well that whan diuerſe Men and Women will go thus after their own Willes, and fynding out one Pilgrimage, they will orden with them before to haue with them both Men and Women that can well ſynge wanton Songes, and ſome other Pilgremis will haue with them Bagge Pipes; ſo that euery Towne they come throwe, what with the Noyſe of their Synging, and with the ſounde of their Piping, and with the Jangelyng of their *Canterbury* Bellis, and with the Barkyng out of Doggis after them, that they make more Noiſe than if the Kyng came there awaye with all his Clarions, and many other Menſtrelles. And if thes Men and Women be a Moneth in their Pilgrimage, many of them ſhall be an half year after great Jangelers, Tale-Tellers and Lyers.

And the Archebiſhop ſaid to me, Leude loſell, thou ſeeſt not ferre ynough in this mater, for thou conſidereſt not the great Trauell of Pilgremys, therſore thou blameſt that thing that is praiſable. I ſay to the that it is right well done, that Pilgremys haue with them both Syngers, and alſo Pipers, that whan one of them that goeth barfote ſtriketh his Too upon a Stone and hurteth hym ſore, and maketh hym to blede; it is well done that he or his Felow begyn than a Songe, or elſe take out of his Boſome a Bagge-pype for to driue away with ſoche Myrthe the hurte of his Felow. For with ſoche ſolace the Trauell and Werineſſe off Pylgremes is lightely and merily broughte forthe.

And I ſaid, Sir, Seynte *Paule* teacheth Men to wepe with them that wepe.

And the Archebiſhoppe ſaid, What jangliſt thou ageinſt Mennis Deuocion? what ſoeuer thov or ſoch other ſay, I ſay that the Pilgrimage that now is uſed, is to them that doo it a prayſable and a good meane to come the rather to Grace. But I holde the unable to know this Grace; for thou enforſeſt the to lett the Deuocion of the People: ſyns by Authoritie of Holy Scripture Men maye lefully have and uſe ſoche ſolace as thou reproueſt. For *Dauid* in his laſte Pſalme teacheth me to haue diuerſe Inſtrumentes of Muſick for to praiſe therwith God.

And I ſaide, Sir, by the Sentence of diuerſe Doctours expounding the Pſalmes of *Dauid*, the Muſike and Menſtrelcy that *Dauid* and other Seyntes of the olde Lawe ſpake of, owe now nother to be taken nor uſed by the Letter, but thes Inſtruments with their Muſike ought to be interpreted goſtely: for all thoſe Figures are called Vertues and Graces, with which Vertues Men ſholde pleaſe God and praiſe his Name. For Saynt *Paul* ſaith, All ſoch thynges befell to them in figure. Therefore Sir, I underſtaund that the Letter of this Pſalme of *Dauid*, and of ſoche other Pſalmes and Sentences, dothe ſlee them that take them now letterally. This Sentence I underſtond Syr, Chriſt approueth himſelf, putting out the Menſtrelles, or that he wolde quycken the deade Damſell.

And the Archebiſhop ſaid to me, Leude loſell, is it not lefull to us to haue Organes in the Chirche for to worſhip therwithall God? And I ſaid,

Ye, Syr, by Mannis Ordynaunce, but by the Ordinaunce of God, a goode Sermonne to the Peoples underſtondyng were mekill more pleſaunt to God.

And the Archebiſhoppe ſayde, that Organes and good delectable Songe quykened and ſharpened more Mennys Witts than ſholde ony Sermonne.

But I ſaid, Sir, luſty Men and worldly louers delyte and couete, and trauell to haue all their Witts quickened and ſharpened with diuerſe ſenſible ſolace: but all the feithful Louers and Folowers of Chriſte haue all their delyte to heare Goddis Worde, and to vnderſtond it truely, and to worke therafter faithfully and continually. For no doute to dreade to offende God, and to loue to pleaſe him in all thing, quyckeneth and ſharpeneth all the Wittes of Chriſtes choſen People: and ableth them ſo to grace, that they joye greatly to withdrawe their Eares, and all their Wittes and Membres frome all worldly delyte, and from all fleſchly ſolace: For Seynte *Jerome* (as I thinke) ſaith, No body may joye with this Worlde, and reigne with Chriſte.

And the Archebiſhop (as yf he had been diſpleaſed with myne anſwere) ſaid to his Clerkes, What geſſe ye this ydiote will ſpeake there, wher he hath none dreade, ſyns he ſpeaketh thus nowe here in my Preſence? Well, well, by God thou ſhalt be ordened for. And than he ſpake to me all angerly.

What ſaiſt thou to this forthe Pointe, that is certified againſt the, preching openly and boldely in *Shrewisbury*, that Prieſtes haue no Title to Tythes?

And I ſaid, Sir, I named ther no Worde of Tithes in my preaching. But, more than a Moneth after that I was arreaſted there in Pryſone, a Man came to me in to the Pryſon aſkynge me what I ſayde of Tythes. And I ſaide to him, Sir, in this Towne are many Clerkes and Prieſtes, of which ſome are called Religious Men, though many of them be Seculers, therefore aſke ye of them this Queſtion. And this Man ſaide to me, Sir, our Prelates ſay, that we ar alſo obliged to pay our Tythes of all things that renewe to us; and that they ar acurſed, that withdrawe ony part wittingly fro them of their Tythes. And I ſaid, Sir, to that Man, as with my Proteſtacyon I ſay now here before you, that I hadde wonder that ony Prieſte dare ſay, Men to be acurſed without grounde of Goddis Worde. And the Man ſaid, Sir, our Prieſtes ſay that they curſe Men thus by Authoritie of Goddes Law. And I ſayde, Sir, I know not wher this Sentence of curſing is authorized now in the Bible. And therfore, Syr, I pray you that ye will aſke the moſte conning Clerke of this Towne, that ye may knowe where this Sentence curſyng them that tythe not now is written in Goddes Lawe: for yf it were written there, I wolde right gladly be learned where. But ſhortely this Man wolde not go from me, to aſke this Queſtion of another body; but required me there, as I wolde anſwere before God, if in this caſe the curſing of Prieſtes wer lauful and approued of God. And ſhortely herewith came to my Mynde the Learnyng of Seynt *Peter*, teaching Prieſtes eſpecially to halow the Lord Chriſt in their Hartes: beinge euermore redye (as ferre as in them is) to anſwere thorowe Faith and Hope to them that aſke of them a reaſon. And this Leſſon *Peter* teacheth Men to uſe with a meke Spyrit, and with dreade of the Lord. Wherefore, Syr, I ſaid to this Man in this wiſe: In the old Lawe which endyd not fully till the tyme that Chriſte roſe up ageyn fro Dethe to Lyfe, God commaunded Tythes to be gunen to the *Leuites*, for the great Beſyneſſe dayly Trauell that pertayned to their Office. But Prieſtes, becauſe their trauell was mekyll more eaſy and light, than was the Office of the *Leuites*, God ordeyned that Prieſtes ſhould take for their lifelode to do their Office, the tenth part of tho Tythes that wer giuen to the *Leuites*. But naw (I ſaid) in the newe Lawe nother Chriſte, nor ony of his Apoſtles tooke Tythes of the People, nor commaunded the People to pay Tythes nother to Prieſtes, nor to Deacons. But Chriſte taught the People to do Almeſſe, that is Werkes of Mercy, to poor nedy Men, of Surpluſe, that is ſuperfluouſe of their Temporal Goodes, which they hadde more than them nedid reaſonably to their neceſſary lyuelode. And thus (I ſaid) not of Tythes, but of pure Almeſſe of the People Chriſte lyued and his Apoſtles, whan they were ſo beſye in teachynge off the Worde of God to the People, that they might not trauell other wyſe for to gett their lyuelode. But after Chriſtes aſcenſion, and whan the Apoſtles had receyued the Holy Goſte, they traueled with their Handes for to get their lyuelode, whan that they myght thus doo for beſye preachynge. Therefore by example of hymſelfe Seynt *Paule* teacheth all the Prieſtes of Chriſte for to trauell with theire Hande, whan for beſye teaching of the People they myght thus do. And thus all theſe Prieſts whoſe Prieſtehode God accepteth nowe, or will accepte or dyd in the Apoſtles tyme, and after their Deceaſe, will do to the Worldes ende. But (as *Ciſtercienſis* telleth) in the thouſande Year of oure Lorde Jeſu Chriſte, two hundreth and a leuenth Yere, one Pope the tenth *Gregory* ordened new Tythes firſt to be gyuen to Prieſtes now in the newe Lawe. But Seynt *Paule* in his tyme, whoſe trace or example all Prieſtes of God enforce them to folow, ſeyng the couetouſneſſe that was among the People, deſyrynge to deſtroye this foule Synne thorow the Grace of God and the true vertuouſe lyuynge an Example of himſelfe, wrotte and taught all Prieſtes for to folowe him as he folowed Chriſte paciently, willingly, and gladly in hys Pouerte. Wherfore *Paule* ſaithe thus, the Lorde hath ordened that they that preache the Goſpell ſhall lyue of the Goſpell. But we (ſaith *Paul*) that couet and beſy us to be feithfull Folowers of

Chriſt, v ſe not this Power. For lo (as *Paul* witneſſeth afterwarde) whan he was full pore and nedy preaching among the People, he was not chargeous vnto them, but with his handes he traueled not only to get his owne lyuynge, but alſo the lyuyng of other poore and nedy Creatures. And ſyns the People was never ſo couetouſe nor ſo auaroſe (I geſſe) as thei are now, it were good Counſell, that all Prieſtes toke good hede to this heuenly Learnyng of *Paul*, folowing him here, in wilfull Pouerte, nothing charging the People for their bodely lyuelode. But becauſe that many Prieſtes do contrary to *Paule* in this forſayde Doctrine; *Paul* biddeth the People take hede to thoſe Preyſtes that folow him as he had geuen them example. As if *Paul* wolde ſay thus to the People, Accept ye none other Prieſtes than thei that lyue after the fourme that I haue tauchte you. For certeyn in whatſoeuer Dignite or Ordre that ony Prieſte is in, yf he conforme him not to folowe Chriſte and his Apoſtles in wilful Pouerte, and in other heuenly Vertues, and ſpecially in true preachynge of Goddes Worde; though ſoche a one be named a Prieſte, yet he is no more but a Prieſte in name, for the worke of a very Prieſte ſoch a one wanteth. This Sentence approueth *Auguſtine*, *Gregory*, *Chryſoſtome*, and *Lincoln* plainly.

And the Archebiſhop ſaid to me, Thinkeſt thou this holſome Learninge for to ſowe openly, or yet priuely among the People? Certeyn this Doctryne contrarieth playnly the Ordinaunce of holy Fathers, which haue ordened, graunted and licenſed Prieſtes to be in diuerſe Degres, and to lyue by Tythes and Offringes of the People, and by other Deuties.

And I ſaid, Syr, if Prieſtes were now in meſurable meſure and numbre, and lyued vertuouſly, and taucht beſyly and truely the Word of God by example of Chriſt, and of his Apoſtles, withouten Tythes, Offerynges, and other Dewties that Prieſtes now chalenge and take, the People wolde gyue them freely ſufficient lyuelode.

And a Clerke ſaid to me, How wilt thou make this good that the People will gyue frely to Prieſtes their lyuelode, ſyns that now by the Lawe euery Prieſte can ſcarcely conſtrayne the People to gyue them their lyuelode?

And I ſaid, Sir, it is now no wonder, though the People grudge to gyue Prieſtes the Lyuelode that they aſke; for mekill People knowe now how that Prieſtes ſhulde lyue, and how that they lyue contrary to Chriſte and to his Apoſtles: And therefore the People is full heuy to paye (as they do) their temporall Goodes to Perſones, and to other Vicares and Prieſtes, which ſholde be feithfull Diſpenſatours of the Pareſhes Goodes, taking to themſelves no more but a ſcarce Lyuing of Tythes nor of Offrynges by the Ordinaunce of the comon Lawe. For whatſoeuer Prieſtes take of the People, be it Tythe or Offering, or ony other Deutie or Seruyce, the Prieſtes ought not to haue thereof no more but a bare Lyuing, and to parte the Reſidew to the poore Men and Women ſpecially of the Pariſhe, of whom they take this temporal Lyuynge. But the moſt dele of Prieſtes nowe waſteth their Pareſhes Goodes, and ſpendeth them at their owne Will after the Worlde in their veyne Luſtes, ſo that in few places poore Men haue dewly (as they ſholde haue) their owne Suſtenaunce, nother of Tythes nor of Offerynges, nor of other large Wages and Foundations that Prieſtes take of the People in diuerſe maners aboue it, that they nede for nedeful Suſtenaunce of Meat and Clothinge. But the poore nedy People ar forſaken, and left of Prieſtis to be ſuſteinyd of the Paroſhenis, as if the Prieſtis toke nothing of the Paroſhenis, for to help the poor People with. And thus, Syr, into ouer great Chargis of the Paroſhenis they pay their Temporal Goods twiſe, wher ones myght ſuffice, if Prieſtis wer trew Diſpenſatours. Alſo Sir, the Paroſhenis that pay their temporal Goodes (be they Tythes or Offeringes) to Prieſtis that doo not their Office among them juſtely, are parteners of euery Synne of thoſe Prieſtis; becauſe that they ſuſteyne thoſe Prieſtis ſoly in their Synne with their temporall Goods. Yf thes things be well conſiderid, what wonder is it than, Syr, if the Paroſhenis grudge ageinſt thes Diſpenſatours?

Than the Archebiſhop ſaid to me, Thou that ſholdeſt be judged and reulyd by holy Chirche, preſumptuouſly thou demeſt holy Chirche to haue erryd in the Ordinaunce of Tythes and other Dewties to be payd to Priſtis. It ſhall be long or thou thryue Loſell, that thou deſpiceſt thy goſtely Mother, how dariſt thou ſpeake this Loſell among the People? Ar not Tythes geuyn to Priſtis for to lyue by?

And I ſaid, Sir, Seynt *Paul* ſaith that Tythes wer gyuen in the old Lawe to *Leuites* and to Prieſtis, that came of the Lynage of *Leui*; but our Prieſt he ſaith came not of the Lynage of *Leui*, but of the Lynage of *Juda*; to which *Juda* no Tythes were promiſed to be geuyn. And therfore *Paul* ſaith, ſyns the Prieſthode is chaunged from the Generacion of *Leui* to the Generacion of *Juda*, it is neceſſary that chaungyng alſo be made of the Lawe. So that Prieſtis lyue now without Tythes and other Dewties that they now claime, folowinge Chriſte and his Apoſtles in wilfull Pouertie, as they haue geuyn them example. For ſyns Chriſte lyued all the tyme of his preaching by pure almes of the People, and by example of hym his Apoſtles lyued all the ſame wyſe, or els by the trauell of their Handis, as it is ſaid aboue, euery Prieſte whoſe Prieſthode Chriſte approuyth knowith well, and confeſſith in Worde and in Werke, that a Diſciple owith not to be aboue his Maſter; but it ſufficeth to a Diſciple to be as his Maſter, ſymple and pure, meke and patient; and by example ſpecially of his Maſter Chriſte, euery Prieſt ſhould reule hym in all his lyuynge, and ſo after his connyng and power a Prieſte ſholde beſy hym to enfourme, and to reule whome ſoeuer he myght charitably.

And the Archebiſhop ſaid to me with a great Spirite, Goddis curſe haue thou and myne for this teaching; for thou woldiſt hereby make the olde Law more fre and perfect than the new Lawe. For thou ſaiſt that it is lefull to *Leuites* and to Prieſtis to take Tythes in the old Lawe, and ſo to enjoye their Priuilegies; but to us Prieſtis in the new Lawe thou ſaiſt it is not lefull to take Tythes: and thus thou geuieſt *Leuites* of the olde Lawe more fredome than to Prieſtis of the new Lawe.

And I ſaid, Sir, I mervell that ye vnderſtonde this playne Text of *Paul* thus. Ye wote well, that the *Leuites* and Prieſts in the olde Lawe that tooke Tythes, wer not ſo fre nor ſo perfite as Chriſte and his Apoſtles that tooke no Tythes. And Sir, there is a Doctour (I thinke that it is Seynt *Jerome*) that ſaith thus, The Prieſtis that chalenge now in the new Lawe Tythes, ſay in effecte, that Chriſte is not becomen Man, nor that he hath yet ſuffered dethe for Mannis loue. Wherfore this Doctour ſaith thys Sentence, Syns Tythes were the Hyres and Wagis limyted to *Leuites* and to Prieſtes of the olde Lawe for bearing about of the Tabernacle, and for ſleayng and fleayng of Beaſtis, and for burning of Sacrifice, and for keeping of the Temple, and for tromping of Battell before the oſte of *Iſrael*, and other diuerſe Obſeruauncis that perteinyd to their Office; thoſe Prieſtis that will chalenge or take Tythes, denye that Chriſte is comen in Fleſhe, and doo the Prieſtis Office of the old Lawe for whome Tythes were graunted; for els (as this Doctour ſaith) Prieſtis take now Tythes wrongfully.

And the Archebiſhop ſaid to his Clerkes, Herde ye euer loſell ſpeake thus? Certeyn this is the Learnyng of them all, that wher ſo ever they come, and they may be ſuffered, they enforce them to expunge the freedome of Holy Chirche.

And I ſaid, Sir, why call you the takyng of Tythes, and of ſoche other Dewties that Prieſtes chalenge now wrongfully, the fredome of holy Chirche? ſyns nother Chriſte nor his Apoſtles chalengid nor tooke ſoche Dewties. Herefore thes takyngis of Prieſtis now ar not callyd juſtely the fredome of Holy Chirche; but all ſoche geuyng and takyng ought to be called and holden the ſclaunderous couetouſneſſe of Men of the Holy Chirche.

And the Archebiſhop ſaid to me, Why Loſell wilt not thou and other that ar confedered with the, ſeake out of holy Scripture, and of the Sentence of Doctours, all ſharp Authorities ageinſt Lordis, and Knyghtis, and Squyeris, and ageinſt other Seculer Men, as thou doeſte ageinſt Prieſtes?

And I ſaid, Sir, what ſo euer Men or Women, Lordis or Ladies, or ony other that ar preſent in our preaching ſpecially, or in our communyng, after our connyng we tell out to them their Office and their Charges; but Syr, ſyns *Chriſoſtome* ſaith, that Prieſtis ar the Stomake of the People, it is needfull in preaching and alſo in communyng, to be moſt beſy about this Prieſthode, ſyns by the viciouſnes of Prieſtis both Lordis and Commons ar moſte ſynfully infected and ledde into the worſte: And becauſe that the couetouſneſs of Prieſtis, and Pride and the boſte that they haue and make of their Dignity and Power, deſtroieth not only the Vertues of Prieſthode in Prieſtis themſelfe, but alſo ouer this, it ſtiereth God to take greate Vengeaunce both upon Lordis and upon Comons, which ſuffer thes Prieſtes charitably.

And the Archebiſhop ſaid to me, Thou judgeſt euery Prieſte proude that will not go arayed as thou doſte. By God I deme hym to be more meke that goeth euery day in a ſcarlet Gowne, than thou in that threde bard blew Gowne. Whereby knoweſt thou a proude Man?

And I ſaid, Sir, a proude Prieſte may be knowen when he denyeth to folow Chriſte and his Apoſtles in wilfull Pouerte and other Vertues, and couetith worldly Worſhip, and taketh it gladly, and gatherith to gither with pletyng, manaſyng, or with flattering, or with Simony ony worldly Goodis: and moſte if a Prieſte beſy hym not cheſely in himſelf, and after in all other Men and Women, after his connyng and power to withſtond Synne.

And the Archebiſhop ſaid to me, Though thou kneweſt a Prieſte to haue all thes Vices, and though ſaweſt a Prieſte louely lye now by a Woman, knowing hir fleſchly; woldeſt thou herfore deme this Prieſte dampnable? I ſay to the, that in the tournying about of thy Hande ſoche a Synner may be verily repented.

And I ſaid, Sir, I will not dampne any Man for any Synne that I know done or may be done, ſo that the Synner leueth his Synne. But by Authoritie of holy Scripture, he that ſynneth thus openly as ye ſhew here, is dampnable for doying of ſoche a Synne, and moſt eſpecially a Prieſte that ſholde be example to all other for to hate and flie ſynne; and in how ſhort tyme that euer ye ſay that ſoche a ſynner may be repented, he oweth not of hym that knoweth not his ſynnyng to be judged verily repentaunt, without open euidence of greate ſhame and harty ſorow for his Synne. For whoſoeuer, and ſpecially a Prieſte that vſeth Pride, Enuy, Couetouſnes, Lechery, Simony, or ony other Vices; and ſhewith not as opyn euidence of Repentaunce as he hath gyuen euyll example and occaſion of ſynning, if he contynew in ony ſoche Synne as long as he may, it is likely that Synne leaueth hym, and he not Synne; and as I vnderſtonde, ſoche a one ſynneth unto Dethe, for whome no body oweth to pray, as Seynt *John* ſaith.

And a Clerke ſaid than to the Archebiſhop, Sir, the lenger that ye appoſe him, the worſe he is; and the more that ye beſy you to amende him, the waiwarder he is: for he is of ſo ſhrewde a kynde, that he ſhamyth not onely to be hymſelf a foule neſte, but without Shame he beſieth him to make his Neſte fouler.

And the Archebiſhop ſaid to his Clerke, Suffer a while, for I am at an ende with him: for there is one other poynte certified ageynſt hym, and I will heare what he ſaith thereto.

And ſo than he ſaid to me, Lo it is here certified ageinſt the, that thou preachidſt openly at *Shrewisbury*, that it is not lefull to ſweare in ony caſe.

And I ſaid, Sir, I preached neuer ſo openly, nor I haue not tauchte in this wiſe in ony place. But Sir, as I preachid in *Shrewisbury*, with my Proteſtacion I ſay to you now here; that by the Authoritie of the Goſpel and of Seynt *James*, and by witneſſe of diuerſe Seyntis and Doctours, I haue preachid openly in one place or other, that it is not lefull in ony caſe to ſweare by ony Creature. And ouer this, Sir, I haue alſo preachid and tauchte by the forſaid Authorities, that no body ſholde ſweare in ony caſe; if that without Othe in ony wyſe he that is charged to ſweare myght excuſe hym to them that haue power to compell hym to ſweare in lefull thyng and laufull. But if a Man may not excuſe hym without Othe to them that haue power to compell hym to ſweare, than he owght to ſweare only by God, takyng him onely that is ſothefaſteneſſe, for to witneſſe the ſothefaſteneſſe.

And than a Clerke aſked me yf it wer not lefull to a Subjecte at the bidding of his Prelate for to knele down and towche the holy Goſpell Booke and kyſſe it, ſaying, So helpe me God and this holy Dome; for he ſholde after his connyng and power do all thyng that his Prelate commaundeth hym.

¶ And I ſaid to them, Sirs, ye ſpeke here full generally or largely: What if a Prelate commaunded his Subjecte to doo an unlauful thyng, ſhould he obey thereto?

And the Archebiſhop ſaid to me, a Subjecte ought not to ſuppoſe that this Prelate will bidde him doo an unlaufull thing; for a Subject ought to thinke, that his Prelate will bidde hym doo nothing but that he will anſwere for before God that it is lefull; and than though the bidding of the Prelate be unleful, the Subject hath no parell to fulfill it, ſyns that he thinketh and judgeth that what ſo euer thing his Prelate biddeth him doo, that it is lefull to hym for to doo it.

And I ſaid, Sir, I truſte not hereto. But to our firſte purpoſe, Sir, I tell you that I was onys in a gentill Mannis Houſe, and there war than two Clerkes there, a Maſter of Diuinite, and a Man of Lawe, which Man of Lawe was alſo communing in Diuinite; and among other thinges thes Men ſpake of Othes, and the Man of Lawe ſaid, At the bidding of his Soucreign which hadde Power to charge hym to ſweare, he wold lay his Hand upon a Booke, and heare his Charge; and if his Charge to his underſtondinge were unlefull he wolde haſtely withdrawe his Hande from the Booke: and if he perceiued his Charge to be lefull, he wolde holde ſtill his Hande upon the Booke, takyng there only God to witneſſe, that he wolde fulfill that lefull Charge after his power. And the Maſter of Diuinitie ſaid than to hym thus, Certeyn he that leyeth his Hande upon a Booke in this wyſe, and makyth there a Promeſſe to doo that thing that he is commaunded, is obliged there by Booke Othe than to fulfill his Charge. For no doute he that chargeth hym to lay his Hande thus upon a Booke towching the Booke and ſwearing by it, and kyſſing it, promiſying in this fourme to doo this thyng or that, will ſay and witneſſe that he that towcheth thus a Booke and kyſſeth it, hath ſworne upon that Booke: and all other Men that ſee that Man thus doo, and alſo all tho that heare hereof in the ſame wyſe, will ſaye and witneſſe, that thys Man hath ſworne upon a Boke: wherfore the Maſter of Diuinite ſayde, it was not lefull nother to gyue nor to take ony ſoche charge upon a Boke, for euery Boke is nothing els but diuerſe Creatures of whiche it is made of. Therefore to ſweare upon a Boke, is to ſweare by Creatures, and this ſwearinge is euer unlefull. This Sentence witneſſeth *Chriſoſtome*, plainly blaming them greatly that bring forthe a Boke for to ſweare upon, charginge Clerkes that in no wiſe they conſtrayne ony body to ſweare, whether they think a Man to ſweare true or falſe.

And the Archebiſhop and his Clerkes ſcorned me, and blamyd me greatly for this ſaiyng. And the Archebiſhop manaſſed me with great Puniſhement and ſharpe, except I lefte this Opinion of ſwearinge.

And I ſaide, Sir, this is not myne Opinion, but it is the Opinion of Chriſte our Sauyour, and of Seynt *Jamis* and of *Chriſoſtome*, and other diuerſe Seyntes and Doctours.

Than the Archebiſhop badde a Clercke rede the Homely of *Chriſoſtome*, which Homely thys Clerke helde in his Hande written in a Roll, which Rolle the Archebiſhope cauſed to be taken fro my Felow at *Canterbury*; and ſo than this Clerke redde this Roll till he came to a Clauſe, wher *Chriſoſtome* ſaithe, that it is ſynne to ſweare well.

And than a Clerke (*Malueren*, as I geſſe) ſaid to the Archebiſhop, Sir, I pray you wete of him, how that he vnderſtondeth *Chriſoſtome* here, ſaing it to be ſynne to ſwere well.

And ſo the Archebiſhop aſked me how I vnderſtode here *Chriſoſtome*.

And certeyne I was ſomewhat afraide to anſwere hereto, for I had not beſyed me to ſtudy about the Senſe thereof; but lyfting up my Mynde to God, I prayed him of Grace. And as faſte as I thought how Chriſte ſaid to his Apoſtles, *Whan for my Name ye ſhall be brought before Judges, I ſhall gyue into your Mouth Wiſdome, that your Aduerſearyes ſhall not ageynſt ſaye*; and truſting feithfully in the Worde of Gode, I ſaid, Sir, I know well that many Men and Women haue now ſwearing ſo in Cuſtome, that thei know not nor will not knowe that they do euell for to ſweare as they do; but they thinke and ſay that they do well for to ſweare as they do, though they know well that they ſweare vntruely. For they ſaye, they may by their ſwearing (though it be falſe) voide blame or temporall harme, which they ſholde haue yf they ſweare not thus. And, Sir, many Men and Women maynteyne ſtrongly that they ſweare well, whan that thing is ſothe that they ſweare for. Alſo full many Men and Women now ſay, that it is well done to ſwear by Creatures, whan they may not (as they ſaye) otherwiſe be beleued. And alſo full many Men and Women now ſay, that it is well done to ſweare by God, and by our Ladye, and by other Seyntes, for to haue them in Mynde. But ſyns all theſe Saiynges are but Excuſations and Synne, me thinketh, Sir, that this Sentence of *Chriſoſtome* may be alleged welle ageinſte all ſoch Swerers, witneſſing that all thes ſynne greuouſly, though they thinke themſelf for to ſwear in this forſaid wyſe well. For it is euyll done and great ſynne for to ſweare trewthe, whan in ony manner a Man may excuſe him without Othe.

And the Archebiſhop ſaid, that *Chriſoſtome* might be thus vnderſtonde.

And than a Clerke ſaid to me, Wilt thou tarye my Lorde no lenger, but ſubmit the here mekely to the Ordinaunce of Holy Chirche, and laye thyne Hande upon a Booke touching the Holy Goſpell of God, promyſinge not onely with thy Mouth, but alſo with thyne Harte to ſtande to my Lordes Ordinaunce?

And I ſaid, Sir, haue I not told you here, how that I herde a Maſter of Diuinitie ſay that in ſoche a caſe it is all one to touche a Boke, and to ſweare by a Boke?

And the Archebiſhop ſaid, There is no Maſter of Diuinitie in *Englond* ſo great, that yf he hold this Opinion before me, but I ſhall puniſhe him as I ſhall do the, except thou ſwear as I ſhall charge the.

And I ſaid, Sir, is not *Chriſoſtome* an ententyfe Doctour?

And the Archebiſhop ſaid Ye.

And I ſayde, Yf *Chriſoſtome* proueth hym woorthy great blame that bryngeth forthe a Boke to ſwere upon, it muſte nedes folowe that he is more to blame that ſweareth on that Boke.

And the Archebiſhop ſaid, Yf *Chriſoſtome* ment accordingly to the Ordinaunce of Holy Chirche, we will accepte him.

And than ſaid a Clerke to me, Ys not the Worde of God and God himſelf equipollent, that is, of one Authorite?

And I ſaide, Ye.

Than he ſaid to me, Why wilt thou not ſwere than by the Goſpell of God, that is Gods worde, ſyns it is all one to ſweare by the Worde of God, and by God himſelfe?

And I ſaid, Sir, ſyns I may not nowe other wyſe be beleued but by ſwearynge, I perceyue (as *Auguſtine* ſaithe) that it is not ſpedefull that ye that ſhold be my Brothern ſholde not beleue me: therefore I am redy by the Worde of God (as the Lorde commaunded me by his Worde) to ſweare.

Than the Clerke ſaid to me, Laye than thyne Hande upon the Boke, touching the Holy Goſpell of God, and take thy Charge.

And I ſaid, Sir, I vnderſtonde that the holy Goſpell of God may not be touched with Mannes Hande.

And the Clerke ſaide, I fonded, and that I ſayde not trewthe.

And I aſked this Clerke, whether it wer more to reade the Goſpell, or to touche the Goſpell.

And he ſaid, it was more to reade the Goſpell.

Than I ſaid, Sir, by Authorite of Seynt *Jerome*, the Goſpell is not the Goſpell for reding of the Letter; but for the beleue that Men haue in the Worde of God, that it is the Goſpell that we beleue, and not the Letter that we rede: for becauſe the Letter that is touched with Mannes Hande is not the Goſpell, but the Sentence that is verely beleued in Mannis Hart is the Goſpell. For ſo Seynt *Jerome* ſaith, the Goſpell that is the vertue of Goddes Worde is not the Leauys of the Boke, but it is in the Root of Reaſon. Nother the Goſpell (he ſaith) is in the Writing aboue of the Letters; but the Goſpell is in the marking of the Sentence of Scriptures. This Sentence approueth Seynt *Paule*, ſaiynge thus, The Kingdome of God is not in Worde, but in Vertue. And *Dauid* ſaith, the Voice of the Lorde, that is his Worde, is in Vertue. And after *Dauid* ſaith, Thorow the Worde of God, the Heauens were fourmed, and in the Spirite of his Mouth is all the Vertue of them. And I pray you, Syr, underſtonde ye well how *Dauid* ſaith, that in the Spirite of the Mouthe of the Lorde is all the Vertue of Angells and of Men?

And the Clerke ſaid to me, Thou woldeſt make us to fonde with the: Saye we not that the Goſpellis are written in the Maſſe-Boke?

And I ſayde, Syr, though Men uſe to ſaye thus, yet it is unperfyte Speche. For the principall parte of a thinge is properlye the hooll thynge: for lo, Mannes Soule, that may not now be ſene here, nor touched with ony ſenſible thing, is properly Man. And all the Vertue of a Tree is in the Roote thereof, that maye not be ſene; for do awaye the Roote, and the Tree is deſtroyed. And, Syr, as ye ſayde to me right nowe, God and hys Worde are of one Authoritie; and, Syr, Seynte *Jerome* witneſſeth that Chriſte, very Godde and very Man, is hidde in the Letter of his Lawe: thus alſo, Syr, the Goſpell is hidde in the Letter. For, Syr, as it is full likely many diuerſe Men and Women here in the Erthe touched Chriſte, and ſawe hym and knewe his bodeley Perſone, which nother touched nor ſawe, nor knewe ghoſtely his Godhede; right thus, Syr, many Men now touche and ſee, and write and rede the Scriptures of Goddis Lawe, whiche nother touche, ſee nor rede effectuallye the Goſpell. For as the Godhede of Chriſte, that is the Vertue of God, is knowen by the Vertue of thorowe Beleſe, ſo is the Goſpell, that is Chriſtes Worde.

And a Clerke ſaid to me, Thes be full myſtic Matters, and unſauery, that thou ſheweſt here to vs.

And I ſaid, Sir, if ye that ar Maſters know not playnly this Sentence, ye may ſore drede that the Kingdome of Heuene be taken fro you, as it was fro the Princes of Prieſtes, and fro the Elders of the Jewes.

And than a Clerke (as I geſſe *Malueren*) ſayde to me, Thou knoweſt not thyne Equiuocacyons, for the Kyngdome of Heuene hathe diuerſe vnderſtondinges. What calleſt thou the Kingdome of Heauene, in this Sentence that thou ſheweſt here?

And I ſaid, Sir, by good Reaſon and Sentence of Doctours, the Realme of Heuene is called here the vnderſtonding of Godes Worde.

And a Clerke ſaid to me. Frome whome thinkeſt thou that this vnderſtondinge is taken awaye?

And I ſaid, Sir, by Authorite of Chriſte himſelfe, the effectuall vnderſtondinge of Chriſtes Worde is taken awaye from all them chefely, whiche are greate lettered Men, and preſume to vnderſtonde high thynges: and will be holden wiſe Men, and deſyre Maſterſhippe and hye State and Dignite; but they will not conforme them to the lyuyng and teaching of Chriſte and of his Apoſtles.

Than the Archebiſhop ſaid, Well, well, thou wilt judge thy Souereyns. By God the Kyng doeth not his Deutie, but he ſuffer the to be condempned.

And than another Clerke ſaid to me, Why on *Friday* that laſt was, counſeldeſt thou a Man of my Lordes, that he ſholde not ſhriue him to Man, but only to God?

And with this asking I was abaſſhed, and than by and by I knewe that I was ſuttely betrayed of a Man that came to me in Preſone on the *Friday* before, comunynge with me in thys matter of Confeſſyon; and certayn by his Wordes (I thoughte) that this Man came than to me of full feruent and charitable Will: But nowe I knowe he came to tempt me, and to accuſe me (God forgyve him, yf it be his will). And with all myne Harte whan I hadde thoughte thus, I ſaid to this Clerke, Sir, I pray you that ye wolde fetche this Man hither; and all the Wordes as nere as I can repete them, which that I ſpake to hym on *Fridaye* in the Pryſon, I will reherſe nowe here before you all, and before hym.

And (as I geſſe) the Archebiſhop ſaid than to me, They that are nowe here ſuffyſe to repete them: How ſaideſt thou to him?

And I ſaid, Sir, that Man came and asked me of diuerſe thinges; and after his askynge I anſwered hym (as I vnderſtoode) that goode was: and as he ſhewed to me by his Wordes, he was ſory of his lyuynge in Courte, and right heuy for his owne vicious lyuynge; and alſo for the Viciouſneſſe of other Men, and ſpeciallye of Prieſtes euyll lyuynge: and herefore he ſayde to me with a ſorrowfull Harte (as I geſſed) that he purpoſed fully within ſhorte tyme for to leaue the Court, and beſy him to know Gods Lawe, and to conforme all his Lyfe thereafter. And whan he hadde ſaid to me thes Wordis and mo other, which I woulde reherſe and he wer preſent, he praid me to heare his Confeſſion. And I ſaid to hym, Sir, wherfore come ye to me to be confeſſed of me? ye wote well that the Archebiſhop puttith and holdeth me here as one unworthy, other to gyue or to take any Sacrament of Holy Chirche.

And he ſaid to me, Brother I wote well, and ſo wote many mo other, that you and ſoche other ar wrongfully vexed, and herefore I will comon with you the more gladly. And I ſaid to hym, Certeyn I wote well that many Men of this Court, and ſpecially the Prieſtis of this Houſholde, wolde be full euyll a payde, both with you and with me, if they wiſte that ye wer confeſſed of me. And he ſaid that he cared not therefore, for he hadde full litle Affection in them: and (as me thought) he ſpake thes Wordis, and many other, of ſo goode Will, and of ſo hye Deſire, for to haue knowen and done the pleaſant will of God. And I ſaid than to hym, as with my foreſaid Proteſtacion I ſay to you now here; Sir, I counſell you for to abſente you frome all euyll Company, and to drawe you to them that looue and beſy them to knowe and to keape the Preceptis of God: and than the good Spirite of God will mooue you for to occupie beſily all your Wittes, in gathering to gither of all your Synnes, as far as ye can bethinke you, ſhamynge greatly of them and ſorrowyng hartely for them: ye, Sir, the Holy Goſte will than put in your Harte a good will, and a feruent Deſyre for to take and to holde a good purpoſe to hate euer, and to flie (after your connyng and power) all occaſion of Synne: and ſo than Wyſdome ſhall come to you frome aboue, lightenyng with diuerſe Beamis of Grace, and of heuenly deſyre, all your Wittes, enfourmyng you how ye ſhall truſte ſtedfaſtely in the Mercie of the Lorde, knouledgyng to him onely all your vicious Lyuyng, praying to him euer deuoutely of charitable Counſell and Continuance, hoping without doute, that yf ye contynew thus beſiyng you feithfully to knowe and to kepe his biddingis, that he will (for he only may) forgyue you all your Synnes. And this Man ſaid than to me, Though God forgyue Men their Synnes, yet it behoueth Men to be aſſoyled of Prieſtis, and to doo the Penaunce that they enjoyne them. And I ſaid to him, Sir, it is all one to aſſoyle Men of their Synnes, and to forgyue Men their Synnes: Wherefore ſyns it perteinyth onely to God to forgive Synne, yt ſuffiſith in this caſe to counſell Men and Women for to leave their Synne, and to comforte them that beſye them thus to doo, for to hope ſteadfaſtely in the Mercie of God. And ageynward, Prieſtis owght to tell ſharpely to cuſtomable Synners, that if they will not make an ende of their Synne, but contynew in diuerſe Synnes while that they may ſynne, all ſoche deſerue Peyn without any ende. And herfore Prieſtis ſhoulde euer beſy them to liue well and holily, and to teache the People beſely and trewly the Worde of God, ſhewing to all folke in open preaching, and in preuy counſelyng, that the Lorde God onely forgeuyth Synne. And therfore thoſe Prieſtis that take upon them to aſſoyle Men of their Synnes, blaſpheme God: ſyns that it perteinyth only to the Lorde to aſſoyle Men of all their Synnes. For no doubte a thouſande Yeare after that Chriſte was Man, no Prieſte of Chriſte durſte take upon hym to teache the People nother priuely nor apertely, that they behoouyd nedis to come to be aſſoilid of them, as Prieſtis now doo. But by Authoritie of Chriſtis Worde, Prieſtis bound indured cuſtomable Sinners to euerlaſting Peyns, which in no tyme of their lyuyng wolde beſy them feithfully to know the biddinges of God, nor to keape them. And ageyn, all they that would occupie all their Wittes, to hate and to flie occaſion of Synne, dreding over all things to offend God, and loouyng for to pleaſe him continually, to thes Men and Women, Prieſtis ſhewid how the Lorde aſſoileth them of all their Synnes. And thus Chriſte promyſed to conferme in Heuen all the binding and looſyng, that Prieſtis by Authorite of his Worde bynde Men in Synne that ar indured therein, or looſe them out of Synne here upon Erthe that ar verely repentaunt. And this Man hearing thes Wordis ſaid, that he myght well in Conſcience conſent to this Sentence; but he ſaid, Is it not needful to the Lay People that cannot thus doo, to go ſhriue them to Prieſtis? And I ſaid, yf a Man feale himſelf ſo diſtrobled with ony Sinne that he cannot by his owne Witte auoide this Synne without Counſell of them that ar herein wyſer than he, in ſoche a caſe the Counſell of a goode Prieſte is full neceſſarie. And if a good Prieſte faile, as they do now commonly, in ſoche a caſe Seynt *Auguſtine* ſaith that a Man may lefully comon and take Counſell of a verteuous Seculer Man; but certeyn that a Man or Woman is ouer laden and to beſtely, which cannot brynge their owne Synnes into their Mynde, beſiyng them Night and Day for to hate and to forſake all their Synnes, doyng a ſighe for them after their connyng and power. And, Sir, full accordingly to this Sentence, upon Midlenton *Sonday* two Yeare (as I geſſe) now agone, I harde a Monke of *Feuerſham*, that Men called *Moredon*, preache at *Canterbury* at the Croſſe within *Chriſte-Church* Abbey, ſaiyng thus of Confeſſion: As thorow the Suggeſtion of the Fende, without counſell of any other body, that of themſelf many Men and Women can ymagine, and fynde meanys and wayes inough to come to Pride, to Thefte, to Lechere, and to other diuerſe Vyces: In contrarie wyſe this Monke ſaid, Syns the Lorde God is more redy to forgyue Synne than the Fende is or may be of power to mooue ony body to Synne, than who ſo euer will ſhame and ſorow hartely for their Synnes, knouledging them feithfully to God, amending them after their power and connyng, without counſell of ony other body than of God and hymſelf, thorow the Grace of God, all ſoche Men and Women may fynde ſufficient meanys to come to Goddis Mercie, and ſo to be cleane aſſoilid of all their Synnes. This Sentence I ſaid, Sir, to this Man of yours, and the ſelfe Wordis as nere as I can geſſe.

And the Archebiſhop ſaid, Holy Chirche approueth not this Learnyng.

And I ſaid, Sir, Holy Chirche of which Chriſte is hed in Heuen and Erthe, muſt nedys approue this Sentence. For lo hereby all Men and Women may, if they will, be ſufficiently tauchte to know and to kepe the Commaundementis of God, and to hate and to flie continewally all occaſion of Synne, and to looue and to ſeke Vertues beſely, and to beleue in God ſtably, and to truſte in his mercy ſtedfaſtly, and ſo to come to perfite Charite, and contynew therein perſeuerently. And more the Lorde askith not of ony Man here now in this Lyfe; and certeyn, ſyns Jeſu Chriſte dyed upon the Croſſe wilfully to make Men fre, Men of the Chirche ar to bolde and to beſy to make Men thrall, bynding them under the peyne of endleſſe Curſe (as they ſay) to doo many Obſervaunces and Ordinauncis, which nother the lyuyng nor teaching of Chriſte, nor of his Apoſtles approueth.

And a Clerke ſaid than to me, Thou ſhewiſt playnely here thy Diſceite which thou haſte learnyd of them that trauell to ſowe Popill among Wheate. But I counſell the to go away clene frome this Learning, and ſubmyt the lowly to my Lorde, and thou ſhalt fynde hym yet to be gracious to the.

And as faſte than another Clerke ſaid to me, How waſt thou ſo bolde at *Paulis* Croſſe in *London*, to ſtonde there harde with thi Tippet bounden about thyne Hedde, and to repreue in his Sermonne the woorthy Clerke *Alkerton*, drawyng away all that thou myghtiſt; ye and the ſame Day, at afternone thou metyng that woorthy Doctour in *Watlyng-ſtrete*, callidſt hym falſe Flaterer and Ypocrite.

And I ſaid, Sir, I thynk certainly that there was no Man nor Wooman that hated verely Synne, and loouyd Vertues, hearing the Sermonne of the Clerke of *Oxforde*, and alſo *Alkerton*'s Sermonne; but they ſayd or might juſtely ſay, that *Alkerton* reproouyd the Clerke untrewly, and ſclaundered hym wrongfully and uncharitably. For no doute if the lyuyng and teaching of Chriſte chefely, and of his Apoſtles be trewe, no body that looueth God and his Lawe, will blame any Sentence that the Clerke than preachid there, ſyns by Authorite of Goddis Worde, and by approued Seyntis and Doctours, and by open Reaſon, this Clerke approued all thingis clerly that he preached there.

And a Clerke of the Archebiſhops ſaid to me, His Sermonne was falſe, and that he ſhewith openly, ſyns he dare not ſtande forthe, and defende his preaching that he then preached there.

And I ſaid, Sir, I thinke that he purpoſith to ſtande ſtedfaſtely thereby, or els he ſclaundereth foully hym ſelf, and alſo many other that haue great Truſte, that he will ſtande by the trewith of the Goſpell. For I wote well his Sermonne is written both in *Latyne* and in *Englyſch*, and many Men haue it, and they ſett great pryſe thereby. And Sir, if ye wer preſent with the Archebiſhop at *Lambeth* when his Clerke apered, and was at his Anſwer before the Archebiſhop, ye wote well that this Clerke denyed not there his Sermonne; but two Days he maynteinyd it before the Archebiſhop and his Clerkis.

And than the Archebiſhop, or one of his Clerkis ſaid, I wote not which of them, that Harlot ſhall be met with for that Sermonne. For no Man but he and thou, and ſoche other falſe Harlotis praiſith ony ſoche preaching.

And than the Archebiſhop ſaid, Your curſed Secte is beſy, and it joiethe right greately to contrarie, and to deſtroye the Priuilege and Fredome of Holy Chirche.

§ And I ſaid, Sir, I knowe no Man that trauell ſo beſely as this Secte dothe (which you repreue) to make Reſt and Peace in holy Chirche. For Pride, Couetouſneſſe and Simony which diſtrooble moſte Holy Chirche, this Secte hatith and fliethe, and trauellith beſely to mooue all other Men in lyke maner unto Meakneſſe; and wilfull Pouerte and Charite, and fre miniſtryng of the Sacramentis, this Secte louyth and vſith, and is full beſy to mooue all other Folkis thus to doo. For thes Vertues owe all Membres of Holy Chirche to their hedde Chriſte.

Than a Clerke ſaid to the Archebiſhop, Sir, it is ferre Daies, and ye haue ferre to ryde to Nyght; therefore make an ende with him, for he will none make. But the more, Sir, that ye beſy you for to drawe hym toward you, the more contumax he is made, and the ferder from you.

And than *Malueren* ſaid to me, *William* knele downe and praye my Lorde of Grace, and leaue all thy Fantaſies, and become a Childe of Holy Chirche.

And I ſaid, Sir, I have praied the Archebiſhop ofte, and yet I pray hym for the looue of Chriſte, that he will leaue his Indignacion that he hathe ageinſt me; and that he will ſuffer me after my connyng and power, for to doo myne Office of Prieſtehode, as I am chargid of God to do it. For I couete nought els but to ſerue my God to his pleaſing, in the ſtate that I ſtande in, and haue taken me to.

And the Archebiſhop ſaid to me, Yf of good Harte thou wilt ſubmyt the now here mekely to be reulid fro this tyme forthe by my counſell, obeiyng meekly and wilfully to myne Ordinaunce, thou ſhalt fynde it moſte profitable and beſt to the for to doo thus. Therefore tary thou me no lenger, graunte to doo this that I haue ſaid to the now here ſhortly, or deny it utterly.

And I ſaid to the Archebiſhop, Sir, owe we to beleue that Jeſu Chriſte was, and is very God and very Man?

And the Archebiſhop ſaid, Ye.

And I ſaid, Sir, owe we to beleue, that all Chriſtis lyuyng and his teaching is trewe in euery poynte?

And he ſaid, Ye.

And I ſaid, Sir, owe we to beleue, that the lyuyng of the Apoſtles, and the teaching of Chriſte, and of all the Prophetes, are true, which are written in the Bible for the Health and Saluacion of Goddes People?

And he ſaid, Ye.

And I ſaid, Syr, owe all chriſten Men and Women after their connyng and power for to conforme all their lyuyng to the teaching ſpecially of Chriſte, and alſo to the teaching and lyuynge of his Apoſtles, and of Prophetes, in all thinges that are pleſaunt to God, and edification to his Churche?

And he ſaid, Ye.

And I ſaid, Sir, ought the Doctrine, the bidding or the councell of ony body to be accepted or obeid unto, excepte this Doctrine, thes biddinges or this counſell may be graunted and affermed by Chriſtes lyuying and his teaching ſpecially, or by the lyuyng and teaching of his Apoſtles and Prophetes?

And the Archebiſhop ſaid to me, Other Doctrine ought not to be accepted, nor we owe not to obey to any Mannes bidding or councell, except we can perceyue that this bidding or counſell accordeth with the bidding and teaching of Chriſte, and of his Apoſtles and Prophets.

And I ſaid, Sir, is not all the learninge and biddinges and counſellis of Holy Chirche meanes and healfull remedies to know and to withſtond the preuy Suggeſtions, and the aperte Temptacions of the Fende; and alſo wayes and healfull remedies to flee Pride, and all other dedely Synnes, and the

Braunches of them, and ſouereyn meanes to purcheſe Grace, for to withſtonde and ouercome all the fleſchly Luſtes and Mouynges?

And the Archebiſhop ſaid, Ye.

And I ſaid, Sir, whatſoeuer thing ye or ony other body bid or counſell me to do, accordingly to this forſaid Learning, after my connynge and power throwe the helpe of God I will mekely with all myne harte obey thereto.

And the Archebiſhop ſayde to me, Submitt the than now here mekely and wilfully to the Ordinaunce of Holy Churche, which I ſhall ſhewe to the.

And I ſaid, Sir, accordingly as I haue here nowe before you reherſed, I will now be redy to obey full gladly to Chriſte the hede of all Holy Churche, and to the learnynge and biddynges and counſelles of euery pleaſynge Membre of hym.

Than the Archebiſhop ſtriking with his Honde ferſeylye upon a Cupborde, ſpake to me with a greate Spyrite, ſaying, By Jeſu, but yf thou leaue ſoche Addicions obliging the now here, without ony excepcion to myne Ordinaunce, or that I go out of this place, I ſhall make the as ſure as ony Theſe that is in the Pryſon of *Lantern*. Aduyſe the now what thou wilt do: and than as if he had ben angered, he went fro the Cupborde where he ſtode to a Wyndowe.

And than *Malueren* and another Clerke came nerer me, and they ſpake to me many Wordes full pleſently: and another while they manaſed me, and counſelled full beſily to ſubmyt me, or els they ſayde, I ſhoulde not eſcape poniſhing ouer meſure; for they ſaide I ſhoulde be degraded, curſed and burned, and ſo than dampned. But now they ſaid, thou maiſte eſchewe all theſe Miſcheues, yf thou wilt ſubmit the wilfully and mekely to thys worthy Prelate that hath cure of the Soule. And for the pytie of Chriſte (ſaid they) bethinke the, howe great Clerkes the Biſhop of *Lincoln*, *Herford*, and *Purney*, wer and yet are, and alſo *B.* that is a well vnderſtondinge Man, which alſo haue forſaken and reuoked all the Learnynge and Opinions, that thou and ſoche other holde. Wherefore ſyns eche of them is mekill wyſer than thou arte, we councell the for the beſte, that by the example of thes four Clerkes thou folowe them, ſubmyttynge the as they did.

And one of the Biſhopes Clerkes ſaid than there, that he herde *Nicoll Herforde* ſay, that ſyns he forſoke and reuoked all the Learning and Lolardes Opinions, he hathe had mekill greater Favour, and more delyte to holde ageinſt them, than euer he hadde to holde with them while he helde with them.

And therefore *Malueren* ſaid to me, I vnderſtonde and thou wilt take the to a Prieſt, and ſhryue the clene; forſake all ſoch Opinions, and take thy Penaunce of my Lord here, for the holding and teaching of them, with in ſhorte tyme thou ſhalt be greatly conforted in this doing.

And I ſaid to the Clerkes that thus beſyly counſelled me to folow theſe forſaide Men, Sirs, if thes Men, of whome ye counſell me to take example, had forſaken Benefyces of Temporall Profyte, and of worldly Worſhippe, ſo that they had abſented them and eſchewed frome all Occaſyons of Couetouſneſſe, and of fleſchely Luſtes, and had taken them to ſymple lyuynge, and wilfull Pouerte, they hadde herein geuen goode example to me, and to many other to haue folowed them. But now, ſyns all thes foure Men haue ſlaunderovſly and ſhamefully done the contrarye, conſentyng to receyue and to haue and to holde Temporall Benefyces, lyuynge now more worldly and more fleſchely than they did before, conformyng them to the Maners of this Worlde; I forſake them herein, and in all their forſaid ſlaunderous doynge. For I purpoſe with the help of God into Remiſſion of all my Synnes and of my foule curſed lyuyng, to hate and to flye prively and apertly, to folow thes Men, teaching and counſellyng whomeſoeuer that I may for to flye and eſchewe the waye that they haue choſen to go in, whiche will lede them to the worſte ende, if in conuenient tyme they repente them not, verely forſakynge and reuokynge openly the Slaunder that they haue put and euery Daye yet put to Chriſtes Churche. For certeyn ſo open Blaſphemye and Slaunder as they have ſpoken and done in their reuokyng and forſakyng of the treuthe, ought not, nor maye not priuely be amended dewly. Wherefore, Sirs, I praye you that ye beſye you not for to mooue me to folowe theſe Men in reuokynge and forſakynge of the trewthe and ſothefaſteneſſe as they haue done and yet doo, wherein by open euydence they ſteire God to greate wrothe, and not onely ageynſt them ſelfe but alſo ageynſte all them that fauoure them or conſente to them herein, or that comoneth with them, except it be for their amendement. For whereas thes Men firſte were perſued of Enemyes, now they haue obliged them by Othe for to ſlaunder and perſue Chriſte in his Membres. Wherfor as I truſte ſtedfaſtely in the Goodnes of God, the worldly Couetouſneſſe, and the luſtie lyuyng, and the ſlyding fro the treuth of theſe Runagates, ſhall be to me and to many other Men and Women an example, and an euidence to ſtonde the more ſtifly by the trewith of Chriſte. For certeyn, right many Men and Women doo marke and abhorre the foulneſſe and cowardneſſe of theſe forſaide untrewe Men, howe that they are ouercome and ſtopped with Benefyces, and withdrawen fro the treuth of Goddes Worde, forſaking vtterly to ſuffer therfore bodely Perſecucyon. For by this vnfeithfull doynge and Apoſtaſie of them, ſpecially that ar great lettered Men and haue knowledged openly the treuth, and now other for Pleaſure or Diſpleaſure of Tyrantes haue taken Hyer and temporal Wages to forſake the Trewthe, and to holde ageinſt it, ſlaundering and perſewing them that couete to folowe Chriſt in the waye of Righteouſneſſe, many Men and Women therfore are nowe moued: But many mo, thorow the Grace of God, ſhall be moued hereby for to learne the Treuth of God, and to doo thereafter, and to ſtond boldely thereby.

Than the Archebiſhoppe ſayde to his Clerkes, Beſy you no lenger aboute hym; for he and other ſoche as he is are confedered ſo to gither, that they will not ſweare to be obedient, and to ſubmytte them to Prelates of holy Chirche. For nowe ſyns I ſtode here, his Felowe ſent me worde that he will not ſweare, and that he counſelled hym that he ſholde not ſweare to me. And, Loſell, in that thynge that in the is, thou haſte beſyed the to looſe thys yonge Man; but bleſſed be God, thou ſhalt not haue thy purpoſe of hym: For he hath forſaken all thy Learnynge, ſubmyttyng him to be buxum and obedient to the Ordinaunce of holy Churche, and wepeth full bitterly, and curſeth the full hartely for the venemous Teachynge whiche thou haſte ſhewed to hym, counſellying him to doo thereafter. And for thy falſe counſellynge of many other and hym, thou haſte greate Cauſe to be righte ſory. For long tyme thou haſte beſied the to peruert whom ſo euer thou mighteſt; therfore as many Deathes thou arte worthy of, as thou haſt geuen euell Councelles: And therefore by Jeſu thou ſhalt go thyther, where *Nicoll Harforde* and *Tom Purnay* were herbered. And I vndertake, or thys daye eighte dayes thou ſhalt be righte gladde for to doo what thynge that euer I bydde the doo. And, Loſell, I ſhall aſſaye if I can make the there as ſoroufull (as it was tolde me) thou waſte gladde of my laſte going out of *England*; by Seynt *Thomas* I ſhall tourne thy Joye into Sorowe.

And I ſayde, Sir, there can no Body preue laufully that I ioyed euer of the manner of youre goynge out of this Lande. But, Sir, to ſaye the ſothe, I was joyfull whan ye were gone; for the Biſhop of *London*, in whos Pryſon ye lefte me, founde in me no Cauſe for to holde me lenger in hys Pryſon, but at the requeſte of my Frendes, he delivered me to them, aſking of me no manner of ſubmittyng.

Than the Archebiſhoppe ſaid to me, Wherfore that I yede out of *Englond* is vnknowen to the; but be this thinge well knowen to the, that God (as I wote well) hath called me ageyne, and broughte me into this Lande for to deſtroye the and the falſe Secte that thou arte of, as by God I ſhall perſue you ſo naroulye, that I ſhall not leave a ſteppe of you in thys Lande.

And I ſaid to the Archebiſhop, Sir, the holy Prophete *Jeremy* ſaid to the falſe Prophete *Anany*, *Whan the Worde that is the Prophecye of a Prophete is knowen or fulfilled, than it ſhall be knowen that the Lorde ſent the Prophete in treuthe.*

And the Archebiſhop, as if he hadde not been pleaſid with my Saiynge, turned hym awaye warde hyther and thyther, and ſayde, By God I ſhall ſette upon thy Shynnes a pair of Perlis, that thou ſhalt be gladde to chaunge thy Voice.

Thes and many mo wonderous and convicious wordes were ſpoken to me, manaſſing me and all other of the ſame Secte for to be puniſhed and deſtroyed vnto the vttermoſte.

And the Archebiſhop called than to hym a Clerke, and rowned with him; and that Clerke went forthe, and ſone he brought in the Conſtable of *Saltwode Caſtell*, and the Archebiſhop rowned a good while with hym, and than the Conſtable went forthe, and than cam in diuerſe Seculers, and they ſcorned me on euery ſyde, and manaſſed me greatly; and ſome counſelled the Archebiſhop to burne me by and by, and ſome other counſelled hym to drounde me in the Sea, for it is near hande there.

And a Clerke ſtandyng beſyde me there, knelede downe to the Archebiſhoppe, praiyng hym that he wolde delyuer me to hym for to ſaye Matenes with hym, and he wolde vndertake that within thre dayes I ſholde not reſiſte any thynge that were commaunded me to doo of my Prelate.

And the Archebiſhop ſaid, that he would ordeine for me himſelfe.

And than after came in ageyn the Conſtable, and ſpake priuely to the Archebiſhop.

And than the Archebiſhop commaunded the Conſtable to lede me forthe thens with hym, and ſo he did; and whan we wer gone forthe thens, we wer ſent after ageyn. And whan I came in ageyne before the Archebiſhop, a Clerke badde me knele downe, and aſke Grace, and ſubmit me lowly, and I ſholde fynde it for the beſte.

And I ſaid than to the Archebiſhop, Sir, as I haue ſaid to you diuerſe tymes to day, I will wilfully and lowly obey and ſubmit me to be ordenid euer after my Connyng and Power to God, and to his Lawe, and to euery Membre of holy Chirche, as ferre forth as I can perceyue that thes Membres accorde with their Hedde Chriſte, and will teach me, reule me, or chaſtyſe me by Authorite ſpecially of Goddis Lawe.

And the Archebiſhop ſaid, I wiſte well he wolde not without ſoche Addicions ſubmit hym.

And than I was rebukyd, ſcornyd, and manaſyd on euery ſyde; and yet after this diuerſe Perſones cried vpon me to knele down and ſubmit me, but I ſtood ſtill and ſpake no worde: and than there was ſpokyn of me, and to me many greate Wordis: and I ſtoode and herde them manaſe, curſe, and ſcorne me; but I ſaid nothing.

Than a while after the Archebiſhop ſaid to me, Wilt thou not ſubmit the to the Ordinance of holy Chirche?

And I ſaid, Sir, I will full gladly ſubmit me, as I haue ſhewid you before.

And than the Archebiſhop badde the Conſtable to haue me forthe thens in haſte; and ſo then I was led forth, and brought into a foul unhoneſt Priſon, where I came never before.

After this it is not known what became of him; but moſt probably he died in Priſon.

III. *The Trial and Examination of Sir* JOHN OLDCASTLE*, *Lord* COBHAM, *for* HERESY, *before the Archbiſhop of* Canterbury, September 23, &c. 1413, *the 1ſt of* Henry V. *Collected by* John Bale.

AFTER that the true Seruante of Jeſus Chryſt, *Johan Wycleue*, a Man of very excellent Lyfe and Learning, had for the ſpace of more than xxvi. yeares mooſte valeauntly battelled with the great Antichriſt of *Europa*, or Pope of *Rome*, and his diuerſly diſgyſed Hoſt of anoynted Hypocrites, to reſtore the Church again to the pure Eſtate that Chryſt left her in at hys Aſcenſyon, he departed hens moſt chriſtely into the handes of God, the yeare of our Lord 1387, and was buried in his owne Parriſh-Church at *Lutterworth* in *Leceſterſhere.* No ſmall Nombre of godly Dyſciples left that good Man behynd hym to defend the Lowlyneſſe of the Goſpell againſt the exceading Pryde, Ambition, Symony, Auarice, Ipocryſye, Whoredom, Sacrylege, Tyrannye, ydolatrouſe Worſhipinges, and other fylthy Frutes of thoſe ſtifnecked Pharyſes. Agaynſt whome *Thomas Arundel*, than Archebiſhop of *Caunterbury*, ſo ferce as ever was *Pharao*, *Antiochus*, *Herodes*, or *Cayphas*, collected in *Pauls* Church at *London* an unyuerſall Synode of all the Papiſticall Clergye of *England*, in the yere of our Lord a M.CCCC. and xiii. as he had done diuerſe other afore, to withſtand their mooſt godly Enterpryſe. And thys was the fyrſt Yere of King *Henry* the Fifth, whom they had than made fit for theyr hande.

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* Holin. Chron. 544. *a.* 1. Hall's Chron. 24. *b.* Stow's Annals, 344. *a.* *See alſo* Hale's H. P. C. *Vol.* 1. p. 141. & ſeq.

As theſe hygh Prelates with their Pharyſees and Scribes were thus gathered in thys peſtilent Councell againſt the Lord and his Woorde, fyrſt there reſorted vnto them the xii Inquiſitours of Hereſyes (whom they had appointed at *Oxford* the yere afore, to ſerche out Heretikes with all *Wicleues* Bookes) and they brought two hundreth and lxvi. faithfull Concluſyons, whome they had collected as Hereſyes of the ſeyd Bokes. The Names of the ſeid Inquiſitours were theſe; *Johan Witnam* a Maſter in the *New-College*, *Johan Languedon* Monke of *Chry-Churche* in *Conterbury*, *Wilyam Ufforde* Regent of the *Carmelytes*, *Thomas Claxton* Regent of the *Dominikes*, *Robert Gylbert*, *Rycharde Earthyſdale*, *John Lucke*, *Rycharde Snediſham*, *Richarde Flemming*, *Thomas Rottborne*, *Robert Rondbery*, and *Richard Grafdale*. In the meane ſeaſon cauſed they their hyred Seruantes to blowe it forth abroade throughout all the hole Realme, that they were there congregated for an wholſome Unite and Reformacion of the Church of *Ingland*, to ſtoppe ſo the Mouthes of the comen People. Such is always the comen Practiſe of theſe ſubtile Sorcerers, whyls they are in doing Miſchief, to blere the Eyes of the vnlearned Multytude, with one falſe Craft or other.

After a certain Communication they concluded among themſelves, that it was not poſſible for them to make whole Chriſtes Cote without Seme (meaning thereby their patched Popyſh Synagoge) onleſſe certeyn great Men were brought out of the way, which ſemed to be the chefe Mainteners of the ſeyd Diſciples of *Wicleue*: Among whome the moſt noble Knight Sir *Johan Oldcaſtell*, the * Lord *Cobham*, was complained of by the generall Proctours, yea rather Betrayers of Chriſt in his faithful Membres, to be the chefe Principal. Him they accuſed firſt for a mighty Maintener of ſuſpected Preachers in the Dioceſes of *London*, *Rocheſter*, and *Hereforde*, contrary to the Mindes of their Ordynaries: Not only they affirmed him to have ſent thyder the ſeid Preachers, but alſo to haue aſſiſted them ther by force of Armes, notwithſtanding their ſinodall Conſtitucion made afore to the contrarye. Laſt of all, they accuſed him, that he was farre other wiſe in Beleue of the Sacrament of the Altre, of Penaunce, of Pilgrymage, of Ymage-worſhipping, and of the Eccleſiaſtycall Power, than the holy Churche of *Rome* had taught many years afore.

In the ende it was concluded among them, that wythoute anye farther Delaye, Proceſſe ſhulde oute agaynſt hym, as agaynſt a mooſt pernycyous Heretike.

Som of that Felloufhyp, whyche were of more craftye Experyence than the other, wold in no caſe haue that matter ſo raſhlye handeled, but thought thys waye moche better. Conſydering the ſeid Lord *Cobham* was a Man of great Byrth, and in fauer at that tyme with the King, theyr Counſell was to know firſt the Kinges Mynde, to ſaue all thynges right vp. This Counſell was well accepted, and ther vpon the Archbiſhop *Thomas Arundell*, wythe his other Byſhoppes, and a great part of the Clergy, went ſtrayght wayes vnto the Kyng, as than remayninge at *Kenynton*; and there layed forth moſt greuous Complayntes againſt the ſaied Lord *Cobham*, to his great Infamy and Blemyſh, being a Man moſt godly. The King gentilly harde thoſe bloud thurſty Rauenours; and farre otherwiſe than became his Princelye Dignite, he inſtauntly deſyred them, that in reſpect of his noble Stock and Knighthode, they ſhuld yet fauourably deale with him; and that they wold, if it were poſſible, without all rigour or extreme handeling, reduce him again to the Churches Unite. He promiſed them alſo, that in caſe they were not contented to take ſome Deliberacion, his ſelfe wold ſerouſly common the matter with him.

Anon after the Kyng ſent for the ſeyd Lord *Cobham*; and as he was come, he called him ſecretly, admoniſhing him betwixt him and him, to ſubmit him ſelf to hys Mother the holy Church, and as an obedient Chyld to acknowledge him ſelfe culpable. Vnto whom the Chriſten Knight made this Anſwere, You moſt worthy Prince, ſaith he, am I always prompt and wylling to obeye, for ſo moche as I knowe you a Chriſten Kinge, and the appointed Miniſter of God, bearing the Sworde to the Puniſhment of Yll-doers, and for the Sauegarde of them that be vertuous. Unto you next my æternal God, owe I my whole Obedience, and ſubmit my thervnto, as I haue done euer, all that I have eyther of Fortune or Nature, redy at all times to fulfill what ſo euer ye ſhall in that lorde commaund me; But as touching the Pope and hys Spiritualty, truly I owe them neyther Sute nor Seruice; for ſo moch as I knowe hym by the Scriptures to be the great Antichryſte, the Sonne of Perdicyon, the open Adverſary of God, and the Abominacyon ſtanding in the holy place. Whan the King had hearde this, with ſochelyke Sentences more, he wolde talkè no longer with him, but lefte hym ſo vtterly.

And as the Archebiſhop reſorted again vnto him for an Anſwere, he gaue him his full Auctorite to cyte hym, examine hym, and punyſſhe him according to the deueliſhe Decrees, whiche they call the Lawes of holy Church. Than the ſeid Archebiſhop, by the Counſell of hys other Biſhoppes and Clergy, appointed to call before him Syr *John Oldcaſtell*, the Lord *Cobham*, and to cauſe him perſonally to appeare to anſwere to ſuche ſuſpect Articles as they ſhuld lay againſt him. So ſent he forth his chefe Sommener, with a very ſharp Citacion, vnto the Caſtell of *Cowling*, where as he at that tyme dwelt for his Solace. And as the ſeyd Sommener was thether comen, he durſte in no caſe entre the Gates of ſo noble a Man without his Lycens; and therefore he returned home agayne, hys Meſſage not done. Than called the Archebiſhop one *John Butler* unto him, whych was than the Dorekeper of the Kynges Prive Chamber, and with him he covenaunted through Promiſes and Rewards to haue this matter craftely brought to paſſe vnder the King's Name. Whervppon the ſeyd *John Butler* toke the Archebyſhops Sommener with hym, and went vnto the ſayd Lord *Cobham*, ſhewing him that it was the Kings Pleaſure that he ſhuld obeye that Citacyon, and ſo cyted him fraudulently. Than ſaid he vnto them in few woordes, that in no caſe wold he conſent to thoſe mooſt deueliſh Practiſes of the Prieſtes. As they had informed the Archebiſhop of the Anſwere, and that it was mete for no Man priuately to cyte him after that without parell of Lyfe, he decreed by and by to haue him cyted by publike Proceſſe or open Commaundment. And in al the haſt poſſible, uppon the Wednyſday before the Natiuite of oure Ladye in *September*, he commaunded Letters Citatory to be ſet vpon the great Gates of the Cathedral Church of *Rocheſter*, (which was but iij. *Engliſh* myles from thens) charging him to apere perſonally before him at *Ledys*, in the xi. daye of the ſame moneth and yeare, all Excuſes to the contrary ſet apart. Thoſe Letters were taken downe anon after, by ſuch as bare fauer vnto the Lorde *Cobham*, and ſo conueyed aſyde. After that cauſed the Archebiſhoppe newe Letters to be ſet vpon the Natiuitie day of our Ladye, which alſo were rent downe and vtterly conſumed.

Than for ſo moche as he did not apeare at the day appoynted at *Ledys* (where as he ſate in Conſiſtory, as cruell as ever was *Cayphas*, with his Court of Hipocrites aboute him) he judged hym, denounced him, and condemned him of moſt depe Contumacy: after that whan he had bene falſely infourmed by his hierd Spyes, and other gloſing Glauerers, that the ſayd Lord *Cobham* had lawghed him to ſcorne, diſdayned all his Doings, mainteined his old Opinions, contemned the Churches power, the Dignitie of a Biſhop, and the Ordre of Preſthode (for all theſe was he than accuſed) in hys mody Madnes, without juſt profe, dyd he openly excommunicate him. Yet was he not for all this ferce Tiranny qualifyed, but commaunded him to be cited a freſh, to apere afore him the Saturday before the Feaſt of Saint *Mathew* the Apoſtle, with theſe cruell Threatinges added therunto; That if he did not obey at that day, he wold more extremely handle him: and to make him ſelfe more ſtrong towardes the perfourmance thereof, he compelled the Lay-Power, by moſt terrible Menacinges of Curſes and Interdictions, to aſſyſt him againſt that cedicious Apoſtate Schiſmatike, that Heretike, that Troubler of the publycke Peace, that Enemye of the Realme, and greate Adverſarye of all holy Churche; for all theſe hateful Names dyd he giue him.

This moſt conſtaunt Seruant of the Lord and worthy Knight Sir *Johan Oldecaſtell*, the Lord *Cobham*, beholding the vnpacable Fury of Antichriſt this kindeled againſt him, perceiuing him ſelf alſo compaſed on every ſide with deadly Daungers, he toke Paper and Penne in hand, and ſo wrote a Chriſten Confeſſion or Rekening of his Faith (which foloweth here after) and both ſigned and ſealed it with his own hande: Wherein he alſo anſwereth to the iiij. chefeſt Articles that the Archebiſhop layed againſt him. That doone, he toke the Copye with him, and wente therwith to the Kyng, truſtinge to fynd Mercy and Fauer at his hande. None other was that Confeſſion of his, than the common Beleue or Somme of the Churches Faith, called the Apoſtles Crede, of all Chriſten Men than vſed. As thus;

The Chriſten Beleue of the Lord Cobham.

I Beleue in God the Father Almighty, Maker of Heuen and Earth; and in Jeſu Chriſt his only Sonne our Lord, which was conceyued by the Holy Goſt, borne of the Virgin *Mary*, ſuffred vnder *Ponte Pilate*, crucified, dead, and buried, went doun to Helle, the third daye roſe againe from Death, aſcended vp to Heuen, ſitteth on the right hand of God the Father Almightye, and from thens ſhall come agayne to judge the Quicke and the Dead. I beleue in the Holy Goſt, the vniverſall holy Churche, the Communion of Sainctes, the Forgeuenes of Sinnes, the Vpriſing of the Fleſh, and everlaſting Life. *Amen.*

And for a more large Declaracion (ſaith he) of this my Faith in the Catholick Church, I ſtedfaſtly beleue that there is but one God Almighty, in and of whoſe Godhead are theſe iii. Parſonnes, the Father, the Sonne, and the Holy Goſt, and that thoſe iij. Parſonnes are the ſame ſelfe God Almyghtyes. I beleue alſo that the ſeconde Parſonne of this moſt bleſſed Trinite, in moſt conuenient tyme appointed thereunto afore, toke Fleſh and Bloud of the moſt bleſſed Virgyn *Mary*, for the Sauegard and Redempcion of the vniuerſall kynd of Man, which was afore loſt in *Adam*'s Offence. Moreouer, I beleue that the ſame Jeſus Chriſt our Lord, thus being both God and Man, is the onely Head of the whole Chriſten Churche, and that all thoſe that hath bene, or ſhal be ſaued, be Membres of this moſt holy Church: And this holy Church I think to be diuided into iii. ſortes or Companyes.

Wherof the firſt ſort be now in Heauen, and they are the Saynctes from hens departed. Theſe, as they were here conuerſaunt, conformed alwayes theyre Lyues to the moſt holye Lawes and pure Examples of Chryſte, renouncyng Sathan, the Worlde, and the Fleſh, wythe all their Concupicences and Euels. The ſecond ſort are in Purgatory (yf any ſuch be by the Scriptures) abydyng the Mercy of God, and a full Delyuerance of Payne. The thyrde ſorte are here uppon the Earth, and be called the Churche Mylytaunt. For Daye and Nyght they contend agaynſt the crafty Aſſaultes of the Deuel, the flattering Proſperities of thys Worlde, and the rebellyouſe fylthynes of the Fleſhe.

Thys latter Congregation by the juſte Ordinaunce of God is alſo ſeuered into three diuerſe Eſtates, that is to ſay into Prieſthode, Knighthode, and the Comens. Amonge whom the Wyll of God is, that the one ſhuld ayde the other, but not deſtroye the other. The Prieſtes fyrſt of all ſecluded from all Worldlyneſſe ſhuld conforme theyr Lyues vtterly to the Examples of Chryſt and his Apoſtles. Euermore ſhulde they be occupied in preaching and teaching the Scriptures purely, and in geuing wholſom Counſels of good liuing to the other two Degrees of Men. More modeſt alſo, more louing, gentyll, and lowlye in Spirite ſhuld they be than any other ſortes of People.

In Knighthode are all they whych beare Sword by Lawe of Office. Theſe ſhuld defende Gods Lawes, and ſee that the Goſpell were purely taught, conforming their Lyues to the ſame, and ſecludynge all falſe Preachers: yea theſe ought rather to haſard their Lyues than to ſuffer ſuch wycked Decrees as eyther blemiſheth the eternal

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* *So called in right of his Wife, who was Grandaughter and Heir of Lord* Cobham.

Teſtament of God, or yet letteth the fre Paſſage therof, wherby Hereſies and Schiſmes might ſpring in the Church. For of none other ryſe they as I ſuppoſe, than of erronyous Conſtitucions, craftely fyrſt creping in under Hypocrites lyes for auauntage. They ought alſo to preſerue Gods Peple from Oppreſſors, Tirauntes, and Theues, and to ſe the Clergy ſupported ſo long as they teache purely, pray rightly, and miniſter the Sacraments frely. And if they ſe them do otherwiſe, they are bound by Law of Office to compell them to chaunge their doinges, and to ſe all thinges performed according to Gods Preſcript or Ordinaunce.

The latter Fellouſhip of this Church are the common People, whoſe Dewtye is to beare their good Mindes and true Obedience to the aforeſeyd Miniſters of God, their Kinges, Cyuile Gouernours and Prieſtes. The right Office of theſe is juſtly to occupy euery Man in his Faculte, be it Merchaundiſe, Handy-craft, or the Tilthe of the Grounde. And ſo one of them to be as an helper to another, followynge all wayes in theyr ſortes the juſt Commaundementes of theyr Lord God.

Ouer and beſydes all thys, I mooſt faithfully beleue that the Sacramentes of Chryſtes Church are neceſſary to all Chryſten Beleuers, thys always ſene to, that they be truly miniſtred according to Chriſtes fyrſt Inſtitucion and Ordinaunce. And for ſo moch as I am malyciouſly and moſt falſely accuſed of a miſbeleue in the Sacrament of the Aulter, to the hurtfull Slaundre of many; I ſignifye here unto al Men, that this is my Fayth concerning that. I beleue in that Sacrament to be contayned very Chriſtes Body and Bloude under the Similytudes of Breade and Wyne, yea, the ſame Body that was conceyued of the Holy Goſt, born of *Mary* the Virgin, done on the Croſſe, dyed, that was buried, aroſe the thyrd Day from the Death, and is now glorified in Heauen. I alſo beleue the vniuerſal Lawe of God to be mooſt true and perfight, and they which do not ſo followe it in theyr Fayth and Workes at one time or other, can neuer be ſaued. Where as he that ſeketh it in Faith, accepteth it, learneth it, delyghteth therein, and perſourmeth it in Loue, ſhall taſt for it the felicity of euerlaſting Innocency.

Finally this is my Faith alſo, that God wyll axe no more of a Chriſten Beleuer in this Lyfe, but only to obey the Preceptes of that moſt bleſſed Law. If any Prelates of the Churche require more, or elſſe anye other kynd of Obedience, than thys to be vſed, he contemneth Chriſt, exalting himſelf aboue God, and ſo becometh an open Anti-Chriſte. All theſe Premiſſes I belieue particularlye, and generally all that God hath left in his Holy Scryptures that I ſhuld beleue: Inſtauntly deſiring you, my Lyege Lord and moſt worthy King, that thys Confeſſion of mine may be juſtly examined by the moſt godly, wiſe, and learned Men of your Realme. And if it be found in all Pointes agreyng to the Verite, than let it be ſo allowed, and I thervppon holden for none other than a true Chriſtiane. If it be proued otherwiſe, than let it be vtterly condemned: prouided alwaies, that I be taught a better Beleue by the Word of God, and I ſhall moſt reuerently at al times obey therunto.

Thys breſe Confeſſyon of hys Fayth, the Lorde *Cobham* wrote (as is mencyoned afore) and ſo toke it wyth hym to the Court, offeryng it wyth all Mekeneſſe vnto the Kyng to rede it ouer. The Kyng wold in no caſe receiue it, but commaunded yt to be delyuered unto them that ſhuld be his Judges. Than deſyred he in the Kinges Preſens, that an hondred Knights and Eſquiers might be ſuffered to come in vpon hys Purgacyon, which he knewe wolde clere him of all Hereſyes. Moreouer he offred hym ſelf after the Law of Armes, to fyght for Lyfe or Death with any Man lyuing, Chriſten or Heythen, in the Quarrell of his Faith, the King and the Lordes of his Counſell excepted. Fynally with all gentileneſſe he proteſted before all that were preſent, that he wold refuſe no manner of Correction that ſhuld after the Lawes of God be miniſtred vnto him; but that he wold at all times with all Mekenes obey it. Notwithſtandyng all thys, the Kyng ſuffered him to be ſummoned perſonally in his own Preuy Chambre. Than ſayed the Lord *Cobham* to the Kyng, that he had appealed from the Archbyſhop to the Pope of *Rome*, and therefore he ought, he ſayd, in no caſe to be his Judge. And hauyng hys appeale there at hande redye written, he ſhewed yt wyth all Reuerence to the Kyng. Wherwith the Kyng was than moche more diſpleaſed than afore, and ſayd angerlye unto him, that he ſhuld not purſue his Appeal: but rather he ſhuld tarry in hold, tyll ſuch time as it were of the Pope allowed. And than, wold he or nyld he, the Archebiſhop ſhuld be his Judge. Thus was there nothing allowed that the good Lorde *Cobham* had lawfully afore required. But for ſo moch as he wold not be ſworn in all things to ſubmit himſelfe to the Church, and ſo to take what Penaunce the Archbiſhoppe would enjoyne him, he was areſted againe at the Kinges Commaundment, and ſo led forth to the Tower of *London*, to kepe his Day (ſo was it than ſpoken) that the Archbyſhop had appoynted him afore in the Kinges Chambre.

Than cauſed he the aforeſayd Confeſſion of his Faith to be coppyed againe, and the Anſwere alſo (which he had made to the iiij. Articles proponed agaynſt him) to be wryten in maner of an Indenture in two Shetes of Paper; that whan he ſhuld come to his Anſwere, he might geue the one Copy vnto the Archebiſhop, and reſerue the other to himſelfe. As the Day of Examinacion was comen, whyche was the xxiij. Day of *Septembre*, the Saturday before the Feaſt of Saint *Mathewe*, *Thomas Arundell* the Archebyſhop, ſytting in *Cayphas* Roume, in the Chapterhouſe of *Paules*, wyth *Richard Clyfforde* Biſſhop of *London*, and *Henry Bolingbroke* Biſſhop of *Wincheſter*, Sir *Robert Morley* Knight and Lefetenaunt of the *Towr*, brought perſonally before him the ſeid Lord *Cobham*, and there left hym for the time, vnto whom the Archebiſhop ſayd theſe wordes.

The fyrſt Examination of the Lord Cobham, September 23.

SIR *John*, in the laſt general Conuocation of the Clergye of thys our Prouynce, ye were detected of certain Hereſyes, and by ſufficient Witneſſes founde culpable; whervppon ye were by fourme of ſpirituall Lawe cyted, and wolde in no caſe appeare: In concluſion, vppon your rebellyous Contumacie, ye were both priuatelye and openlye excommunicated. Notwythſtanding we neuer yet ſhewed oure ſelfe unreadye to haue geuen you youre Abſolucion (nor yet do not to thys houre) wolde ye haue mekely axed it. Unto this the Lord *Cobham* ſhewed as though he had giuen none eare, hauing his Mynde otherwiſe occupied, and ſo deſyred none Abſolucion: But he ſayd, he wold gladly before him and his Brethren make Reherſall of that Fayth, which he helde and entended always to ſtande to, yf it wolde pleaſe them to lycens him therunto; and than he toke out of hys Boſome a certein Writing endented, concerning the Articles whereof he was accuſed, and ſo openly redde it before them, geuing it vnto the Archebyſhop, as he had made thereof an ende; whereof thys is the Copy.

I *Johan Oldecaſtell* Knight and Lord *Cobham*, wyll all Chryſten Men to vnderſtand, That *Thomas Arundell*, Archbyſhop of *Canterbury* hath not onely laid it to my Charge malityouſly, but alſo very vntruly by hys Letter and Seale, written againſt me in moſt ſlanderouſe wyſe, that I ſhuld otherwyſe fele and teach of the Sacramentes of the Church (aſſigning ſpecyally the Sacrament of the Aulter, the Sacrament of Penaunce, the worſhipping of Ymages, and the going of Pilgrimage vnto them) far other wiſe than either beleueth or teacheth the vniuerſall holye Churche. I take Almyghte God vnto wytneſſe, that yt hath bene and nowe is, and euermore wyth the helpe of God yt ſhall be my full Intent and Wyll, to beleue faythfully and wholy all the Sacramentes that ever God ordeined, to be minyſtred in the holy Church; and morouer, for to declare me in theſe iiij. Points afore reherſed.

I beleue that in the mooſt worſhypfull Sacrament of the Alter, is Chriſts very Body in forme of Bread, the ſame Body that was borne of the bleſſed Virgin *Mary*, done on the Croſſe, dead and buried, and that the thyrd day aroſe from Death to Lyfe, the which Body is nowe glorified wyth the Father in Heaven. And as for the Sacrament of Penaunce, I beleue that it is nedefull to all them that ſhall be ſaued, to forſake theyr Sinne, and to do Penaunce for it wyth true Contricion to God, Confeſſion of their Fautes, and dewe Satisfactyon in Chryſte, lyke as Gods Laws limiteth and teacheth, els can they haue no Saluation; This Penaunce I deſyre all Men to do. And as for Images, I vnderſtand that they perteyn nothing to our Chriſten Beleue, but were permitted long ſins the Faith was geuen vs of Chriſt, by ſufferance of the Churche, for to be as Kalendars vnto Laymen, to repreſent or bring to mind the Paſſion of our Lorde Jeſus Chriſt, with the Martirdom and good liuing of the Saintes.

I think alſo, that whatſoeuer he which doth that worſhip to dead Ymages, that is duely belonging vnto God, or that putteth his Faith, Hope, or Confidence in the helpe of them, as he ſhuld do only in his eternal lyuing God, or that hath Affection in one more than in an other, he perpetrateth in ſo doing the abhominable Sine of Idolatry. Moreouer in this am I fully perſwaded, that everye Man dwellynge on thys Ærth is a Pilgrim, eyther towardes Bleſſe, or els towardes Payne.

And that he which knoweth not, nor wyll not knowe, nor yet kepe the holy Commaundementes of God in hys lyuyng here (all be it that he goth on Pylgrymage into all quarters of the Worlde) yf he departeth ſo, he ſhall ſurely be dampned. Agayne, he that knoweth the holy Commaundementes of God, and ſo performeth them to the ende of his Life to his power, ſhal without fayle be ſaued in Chriſt, though he neuer in his Lyfe go on Pylgrimage as Men vſe now a dayes, to *Caunterbury*, *Walſingham*, *Compoſtell*, and *Rome*, or to any other Places.

Thys Anſwere to his Articles thus ended and redde, he delyuered it to the Byſſhopes, as is ſayde afore. Than counceled the Archbiſſhop wythe the other two Byſhoppes, and with dyuerſe of the Doctours, what was to be done in thys matter, commaunding him for the time to ſtand aſide. In concluſion, by theyr Aſſent and Informacion, he ſayd thus vnto him: Come hyder Sir *Johan*; In this your Writing are many good thinges conteyned, and ryght Catholyck alſo, we deny yt not; but ye muſt conſyder that thys daye was appoynted you to anſwere to other Poynts concerning thoſe Articles, whereof as yet no mencion is made in this your Byll: And therefore ye muſt yet declare vs your Mind more plainly; as thus, Whether that ye holde, affirme, and beleue, that in the Sacrament of the Alter, after the Conſecracion rightly done by a Pryeſt, remaineth materall Breade or not? Moreouer, whether ye do hold, affirme, and beleue, that as concerning the Sacrament of Penance (wher as a competent nombre of Prieſts are) everye Chryſten Manne is neceſſarely bound to be confeſſed of hys Synnes to a Prieſt ordayned by the Church or not?

After certein other Communication thys was the Anſwere of the good Lord *Cobham*, That none otherwiſe wold he declare his Minde, nor yet anſwere vnto hys Articles, than was expreſſelye in hys Wrytinge there conteyned. Than ſayd the Archbiſhop againe vnto him, Syr *Johan* bewar what ye do; for if ye anſwere not clerely to thoſe thinges that are here objected againſt you, ſpecially at the time appointed you only for that purpoſe, the Lawe of holy Church is, that compelled ones by a Judge, we may openly proclayme ye an Heretike. Unto whom he gaue this Anſwere, Do as ye ſhall thinke it beſte, for I am at a point. Whatſoeuer he or the other Byſſhoppes did aſke him after that, he bad them reſort to his Byll, for therby wold he ſtande to the verye Death; other Anſwere wold he not geue that day: wherwith the Biſſhops and Prelates were in a maner amaſed and wonderfully diſquyeted. At the laſt the Archbiſhop counſelled again with his other Biſhops and Doctours, and in the end therof declared vnto him what the holy Church of *Rome*, folowing the Sayinges of Saint *Auſtyn*, Saint *Hierom*, Saint *Ambroſe*, and of other holy Doctours, had determined in theſe matters, no manner of mencion ones made of Chriſt; which Determinacion (ſayth he) ought all Chryſten Menne bothe to beleue and to folowe.

Than ſaid the Lord *Cobham* vnto him, That he wold gladlye bothe beleue and obſerue whatſoeuer the holy Church of Chriſtes Inſtytucion had determined, or yet whatſoeuer God had willed him eyther to beleue or to do; but that the Pope of *Rome* with his Cardinals, Archbyſhopes, Biſhopes, and other Prelates of that Church, had laufull power to determyne ſuche matters as ſtode not with his Word throughly, that wolde he not (he ſayd) at that tyme affyrme. Wyth thys the Archbyſhoppe bad hym to take good Aduyſement tyll the Mondaye nexte followinge (which was the xxv. daye of *September*) and then juſtlye to anſwere ſpecyallye vnto thys Pointe, Whether there remayned ed materyal Breade in the Sacrament of the Aulter, after the Wordes of Conſecration, or not? He promyſed him alſo to ſende vnto him in wryting thoſe matters clerely determined, that he myght than be the more perfyght in hys Anſwere making; and all this was not els but to blynde the multitude with ſomwhat. The next day following (according to his Promes) the Archbiſhop ſent unto him into the Towr this folyſh and blaſphemouſe Writting, made by him and by his vnlearned Clergye.

The Determination of the Archbiſhop and Clergye.

THE Faith and Determinacion of the holy Church touching the bleſful Sacrament of the Aulter, is this, That after the ſacramentall Wordes be ones ſpoken by a Prieſt in his Maſſe, the materiall Bread, that was before Bread, is turned into Chriſtes very Body; and the materyall Wyne, that was before Wyne, is turned into Chryſtes very Bloud; and ſo there remayneth in the Sacrament of the Aulter, from thens forth, no materyall Breade, nor materiall Wyne, which were there before the ſacramentall Wordes were ſpoken. How beleue ye this Article? Holy Churche hath determined, that euery Chryſten Man lyuing here bodyly vppon Earth, ought to be ſhriuen to a Prieſt ordeyned by the Church, if he may come to him: How fele ye thys Article?

Chriſt ordeyned Sainct *Peter* the Apoſtle to be his Vicar here in Earth, whoſe See is the holy Church of *Rome*; and he graunted that the ſame power which he gaue vnto *Peter*, ſhuld ſuccede to al *Peters* Succeſſours, which we call now Popes of *Rome*; by whoſe ſpeciall power in Churches particular, be ordeyned Prelates, as Archbiſhops, Byſhops, Parſons, Curates, and other Degrees more, unto whom Chriſten Men ought to obeye after the Lawes of the Churche of *Rome*. Thys is the Determinacion of holy Church: how fele ye this Article? Holy Church hath determined, that it is meritoryous to a Chriſten Man to go on Pilgrymage to holy Places, and there ſpecially to worſhip holy Relyques and Ymages of Saintes, Apoſtles, Martirs, Confeſſours, and all other Saintes beſydes, approued by the Church of *Rome*; howe fele ye thys Artycle?

And as the good Lord *Cobham* had red ouer thys mooſt wretched Writyng, he maruelled greatly of their madde Ignoraunce; but that he conſydered agayne, that God had geuen them ouer for theyr Unbeleues ſake, into mooſt depe Errours and Blindneſſe of Soule. Agayne, he perſeyued therby, that theyr vttermooſt Malyce was purpoſed againſt him, howſoeuer he ſhulde anſwere; and therfore he put his Lyfe into the handes of God, deſyring his onely Spyrit to aſſiſt him in his next Anſwere. Whan the ſeyd xxv. day of *Septembre* was come (which was alſo the Monday afore *Myghelmaſſe*) in the ſayd yeare of our Lorde, M.CCCC. and xiij. *Thomas Arundell*, the Archbiſhop of *Caunterbury*, commaunded his judiciall Seate to be remoued from that Chapterhouſe of *Pauls*, to the Dominike Fryers wythin *Ludgate* at *London*; and as he was there ſet with *Rychard* the Biſhop of *London*, *Henry* the Biſhop of *Wincheſter*, and *Benet* the Biſhop of *Bangor*, he called in vnto him his Counſell and his Officers, with diuerſe other Doctours and Friers; of whom theſe are the Names here followynge.

Maſter *Henry Ware*, the Officyall of *Caunterbury*; *Philip Morgan*, Doctor of both Lawes; *Howell Kiffin*, Doctor of the Canon Lawe; *Johan Kempe*, Doctour of the Canon Lawe; *Willyam Carleton*, Doctour of the Canon Lawe; *Johan Witnam*, of the *New College* in *Oxford*; *Johan Whighthead*, a Doctour of *Oxforde* alſo; *Robert Wonbewell*, Vicar of Saint *Laurence* in the *Jewry*; *Thomas Palmer*, the Warden of the *Mynors*; *Robert Chamberlaine*, Prior of the Dominickes; *Rychard Dodington*, Prior of the Auguſtines; *Thomas Walden*, Prior of the Carmelites, all Doctours of Diuinitie; *Johan Steuens* alſo, and *James Cole*, both Notaries, appointed there purpouſly to write all that ſhuld be eyther ſaid or done: All theſe, with a great ſort more of Pryeſtes, Monks, Channons, Friers, Pariſh-Clarkes, Belringers, and Pardoners, diſdained him with innumerable Mockes and Scornes, rekening him to be an horrible Heretik, and a Man acurſed afore God.

Anon the Archbyſhoppe called for a Maſſeboke, and cauſed all thoſe Prelates and Doctoures to ſweare there vpon, that everye Man ſhulde faythfullye doo hys Offyce and Dewtye that daye; and that neyther for Fauer nor Feare, Loue nor Hate of the one Partye nor the other, any thing ſhuld ther be witneſſed, ſpoken, or done, but according to the Trueth, as they wold anſwere before God and all the World at the day of Dome. Than were the two forſeyd Notaries ſworne alſo to wryt and to witnes the Wordes and Proceſſe that ther ſhuld be vttered on both Parties, and to ſaye their mindes (if they otherwiſe knewe it) before they ſhuld regeſter it; and all thys Diſſimulation was but to colour their Miſcheues before the Ignoraunt Multytude.

Conſydre herin (gentyll Reader) what this wicked Generacion is, and how farre wyde from the juſt Feare of God; for as they were than, ſo are they yet to this daye.

After that cam forth before them Sir *Robert Morley* Knight, and Lefetenaunte of the *Tower*, and he brought with him the good Lord *Cobham*, there leauing him among them, as a Lambe among Wolues, to his Examinacion and Anſwere.

The latter Examinacion of the Lord Cobham, September 25*th*.

THAN ſayd the Archbyſhoppe vnto hym, Lord *Cobham*, ye be aduyſed (I am ſure) of the Woordes and Proceſſe which we had vnto you vppon Saturdaye laſt paſt in the Chapter-houſe of *Paules*, which Proces were now to long to be rehearſed agayne: I ſayd vnto you than, that ye were acurſed for your Contumacy and Diſobedience to holy Church, thinking that ye ſhulde with Mekenes haue deſired your Abſolucion.

Than ſpake the Lorde *Cobham* with a moſt cherefull Contenaunce, and ſayd, God ſayth by his holye Prophet, *Maledicam benedictionibus veſtris*, which is as much as to ſay, I ſhall curſe, wher as you bleſſe.

The Archbiſshop made than as though he had continued forthe hys Tale, and not heard him, ſaying, Sir, at that tyme I gentilly proferd to haue aſſoyled you if ye wold haue aſked it; and yet I do the ſame, if ye will humblye deſyre it in due Forme and Maner, as holy Church hath ordeined.

Than ſayd the Lord *Cobham*, Naye, forſoth, wyll I not, for I neuer yet treſpaſed againſt you, and therefore I will not do it; and with that he kneled downe on the Pauement, holding vp hys handes towards Heauen, and ſayed, I ſhryue me here vnto the my eternall lyuynge God, that in my frayle Youth I offended the (Lorde) moſt greuouſly in Pryde, Wrath, and Glottony, in Couetouſnes and in Lechery. Many Men haue I hurt in mine Anger, and done manye other horryble Synnes, good Lord I aſke the Mercy: and therwith wepingly he ſtode up againe, and ſayd with a mighty Voice, Lo, good People, lo, for the breaking of God's Lawe, and his great Commaundements, they never yet curſed me; but for theyr owne Lawes and Tradicions moſt cruelly do they handle both me and other Men: and therfore both they and theyr Lawes, by the Promes of God, ſhall vtterly be deſtroied.

At this the Archbiſhop and hys Companye were not a lytle blemyſhed; notwithſtanding he toke Stomack vnto him agayn, after certain wordes had in excuſe of theyr Tyrannye, and examined the Lorde *Cobham* of his Chriſten Beleue.

Whereunto the Lorde *Cobham* made thys godly Anſwere. I beleue (ſaith he) fullye and faythfullye the vnyuerſall Lawes of God; I beleue that all is true which is conteyned in the holy ſacred Scriptures of the Byble; finally, I beleue all that my Lorde God wolde I ſhulde beleve.

Than demaunded the Archbiſhop an Anſwere of the Byll which he and the Clergy had ſent him into the *Tower* the day afore, in maner of a Determynacion of the Church concerning the iiij. Articles whereof he was accuſed, ſpecially for the Sacrament of the Alter, how he beleued therin?

Wherunto the Lord *Cobham* ſaid, That with that Byll he had nothing to do; but this was his Beleue (he ſaid) concerning the Sacrament, That his Lord and Sauer Jeſus Chriſt, ſytting at hys laſt Supper with his moſt dere Diſciples, the Night before he ſhuld ſuffer, toke Bread in his hand, and geuing Thankes to his eternall Father, bleſſed it, brake it, and ſo gaue vnto them, ſaying, *Take it vnto ye, and eate therof all*; *this is my Body which ſhall be betraid for you, do this here after in my remembraunce.* This do I thoroughly beleue (ſaith he) for this Faith am I taught of the Goſpell in *Mathew*, in *Marke*, and in *Luke*, and alſo in the firſt Epiſtle of Saint *Paul* to the *Corinthians*.

Than aſked the Archbyſhoppe, If he beleued that it were Breade after the Conſecracion or ſacramentall Wordes ſpoken ouer it.

The Lord *Cobham* ſayd, I beleve that in the Sacrament of the Aulter is Chriſts very Body in fourme of Breade, the ſame that was born of the Virgin *Mary*, done on the Croſſe, dead, and buried, and that the third day aroſe from Death to Lyfe, whych nowe is glorified in Heauen.

Than ſayd one of the Doctors of Lawe, After the ſacramentall Wordes be vttered, there remaineth no Breade but the onely Body of Chriſt.

The Lorde *Cobham* ſayd than to one Maſter *Johan Wighthead*, You ſaid ones unto me in the Caſtell of *Coulynge*, that the ſacred Hoſt was not Chryſtes Body; but I helde than againſt you, and proued that herein was his Body, though the Seculars and Friers could not therin agree, but helde yche one againſt other in that Opinyon: theſe were my Woordes than if ye remembre it.

Than ſhouted a ſort of them together, and cryed with great noyſe, We ſay all that it is Gods Body.

And dyuerſe of them aſked hym in great Anger, Whether it were materiall Breade after the Conſecratyon or not?

Than loked the Lord *Cobham* ærneſtly vppon the Archbiſhop, and ſayde, I beleue ſurely that it is Chryſtes Body in fourme of Breade; Sir, beleue not you thus?

And the Archbiſhoppe ſayd, Yes mary do I.

Than aſked him the Doctours, Whether it were onely Chriſtes Body after the Conſecration of a Prieſt, and no Bread or not?

And he ſayd vnto them, It is both Chriſts Body and Bread. I ſhall proue it as thus: For lyke as Chryſt dwelling here vppon the Earth, had in him both Godhede and Manhead, and had the inuiſible Godhead couered under that Manhead, which was only viſible and ſeane in him: ſo in the Sacrament of the Aulter is Chriſtes very Body and very Bread alſo, as I beleue the Breade is the thyng that we ſee with our Eyes, the Bodye of Chriſt (whiche is his Fleſh and his Blood) is there vnder hydde, and not ſeane, but in Fayth.

Than ſmyled they yche one vppon other, that the People ſhulde judge hym taken in a greate Hereſye; and wyth a great bragge diuerſe of them ſayde, It is a foule Hereſy.

Than aſked the Archbiſhop, What Breade it was? And the Doctours alſo inquired of hym, whether it were materyall or not?

The Lord *Cobham* ſayd unto them, the Scriptures maketh no mencion of this woorde materyall; and therefore my Faith hath nothing to do therwith: But thys I ſay and beleue it, that it is Chriſtes Bodye and Breade; for Chryſt ſayde in the Syxt of *Johans* Goſpell, *Ego ſum panis vivus, qui de Cœlo deſcendi*; I which came downe from Heauen am the lyuing, and not the dead Bread: therefore I ſay now again, like as I ſaid afore, as our Lord Jeſus Chryſt is very God and very Man, ſo in the moſt bleſſed Sacrament of the Aulter, is Chryſtes very Body and Breade.

Than ſeyd they all with one Voyce, It is an Hereſye.

One of the Byſhoppes ſtode vp by and by, and ſaid, What, it is an Hereſye manyfeſt, to ſaye that it is Breade after the ſacramentall Wordes be ones ſpoken, but Chryſtes Body onely.

The Lord *Cobham* ſaid, Sainct *Paule* the Apoſtle was (I am ſure) as wyſe as you be nowe, and more godlye learned. And he called yt Breade, wryting to the *Corinthians*, *The Breade that we breake*, ſayth he, *is it not the partaking of the Body of Chriſt?* Lo, he calleth it Bread and not Chriſtes Body, but a meane whereby we receyve Chriſtes Body.

Than ſayd they agayne, *Paule* muſt be otherwiſe vnderſtanded. For it is ſurely an Hereſye to ſaye that it is Breade after the Conſecration, but onely Chryſtes Body.

The Lord *Cobham* aſked, howe they coulde make good that Sentence of theirs?

They anſwered him thus, For it is againſt the Determination of holy Churche.

Than ſayde the Archbiſhop vnto him, Sir *Johan* we ſent you a Wryting concerning the Faith of thys Bleſſed Sacrament clerely determined by the Church of *Rome*, our Mother, and by the Holy Doctours.

Than ſayd he again unto him, I knowe none holyer than is Chriſt and his Apoſtles. And as for that Determinacion, I wote it is none of theyrs, for it ſtandeth not with the Scriptures, but manifeſtly againſt them. If it be the Churches, as ye ſaye it is, it hath bene hers onely ſins ſhe receiued the greate Poyſon of worldly Poſſeſſions, and not afore.

Than aſked they hym, to ſtoppe hys Mouth therwith, if he beleued not in the Determinacion of the Church?

And he ſaid vnto them, No forſooth, for it is no God. In all oure Crede is in but thryſe mencioned concerning Beleue; in God the Father, in God the Sonne, in God the Holy Gooſt. The Byrthe, the Death, the Buriall, the Reſurrection and Aſcenſyon of Chriſte hath none in, for beleue but in hym. Neyther yet hath the Churche, the Sacramentes, the Forgyuenes of Synne, the latter Reſurrection, nor yet the Lyfe Everlaſting, any other in, than in the Holy Gooſt.

Than ſayd one of the Lawiers, Tuſh, that was but a Worde of Office. But what is your Beleue concerning Holy Church?

The Lord *Cobham* anſwered, My Beleue is (as I ſayde afore) that all the Scriptures of the Sacred Bible are true. All that is grounded vppon them, I beleue throughly. For, I know, it is God's pleaſure that I ſhuld ſo do. But in youre lordly Lawes and ydell Determinations haue I no beleue. For ye be no part of Chriſtis holy Churche, as your open Dedes doth ſhew; but ye are very Antichriſts, obſtinately ſet againſt his holy Law and Will. The Lawes that ye haue made are nothing to his Glorye; but onely for your vayne Glory and abhominable Couuetouſneſs.

This they ſaid, was an exceading Heriſy (and that in a great fume) not to beleue the Determination of Holy Church.

Than the Archbiſhop aſked him, what he thought holy Church?

He ſaid vnto him: My Beleue is, that holy Church is the nombre of them which ſhall be ſaued, of whom Chriſt is the Head. Of this Church one part is in Heauen with Chriſt, an other in Purgatory (you ſay) and the third is here in Ærth. This later part ſtandeth in thre degrees, in Knighthode, Prieſthode, and the Comunalte, as I ſaide afore plainly in the Confeſſyon of my Beleue.

Than ſaide the Archbiſhop vnto him, Can ye tell me who is of this Church?

The Lord *Cobham* anſwered, Yea truly can I.

Than ſaid Doctour *Walden* the Prior of the Carmelites, It is doubte vnto you who is thereof. For Chriſt ſayth in *Math. Nolite judicare*, Preſume to judge no Man. If ye here be forbidden the Judgment of your Neighbour or Brother, moche more the Judgment of your Superior.

The Lord *Cobham* made him thys Anſwer, Chryſt ſayth alſo in the ſame ſelfe Chapter of *Math. That lyke as the yll Tree is knowne by his yll fruit, ſo is a falſe Prophet by his Works, appeare they neuer ſo glorious.* But that ye left behind ye. And in *Johan* he hath this Text, *Operibus credite*, Beleue you the outward doings. And in another Place of *Johan*, *Juſtum judicium judicate*, Whan we knowe the thing to be true, we may ſo judge it, and not offende. For *Dauid* ſayth alſo, *Recte judicate filii hominum*, Judge rightly always ye Children of Men. And as for your Superiorite, were ye of Chriſt, ye ſhould be meke Miniſters, and no proud Superiours.

Then ſaid Doctour *Walden* unto him, Ye make here no difference of Judgements: Ye put no diuerſite betwene the yll Judgements, which Chryſt hath forbidden, and the good Judgements, which he hath commaunded us to haue. Raſh Judgement and right Judgement, al is one with you. So is Judgement preſumed, and Judgement of Office. So ſwift Judges always are the learned Scolers of *Wickleue*. Unto whome the Lord *Cobham* thus anſwered, It is well ſophiſtried of you forſoth; prepoſterouſe are your Judgements euer more. For as the Prophet *Eſay* ſaith, *Ye judge yll good, and good yll.* And therefore the ſame Prophet concludeth, *That your wayes are not Gods ways, nor Gods wayes your wayes.* And as for that vertuouſe Man *Wickleue*, whoſe Judgment ye ſo highly diſdayne; I ſhall ſaye here for my part both before God and Man, that before I knew that diſpiſed Doctrine of his, I neuer abſteyned from Synne. But ſyns I learned therein to feare my Lord God, it hath otherwiſe, I truſt, been with me: ſo much Grace could I neuer finde in all your glorriouſe Inſtructions.

Than ſayde Doctour *Walden* again yet unto hym, It were not well wyth me, ſo meny vertuous Men lyuyng, and ſo many learned Men teaching, the Scriptures being alſo ſo open, and the Examples of Fathers ſo plenteouſe, if I than had no Grace to amende my Life till I hearde the Deuell preache. Saint *Hierom* ſaith, that he whych ſeketh ſuche ſuſpected Maſters, ſhall not fynde the mydday Lyght, but the midday Deuell.

The Lord *Cobham* ſaid, Your Fathers the olde Phariſees aſcrybed Chryſtes Miracles to *Belzebub*, and hys Doctrine to the Deuell. And you as their naturall Children haue ſtill the ſame ſelf Judgment, concerning his faithful Followers. They that rebuke your viciouſly lyuyng, muſt nedes be Heretykes; and that muſt your Doctours proue, whan ye haue no Scriptures to do it. Than ſaid he to them all, To judge you as ye be, we nede no farther go than your owne propre Actes. Where do ye fynd in all Gods Lawe, that ye ſhuld thus ſyt in Judgment of any Chriſten Men, or yet ſentens anye other Man vnto Death, as ye do here daily? No ground haue ye in all the Scriptures ſo lordely to take it vppon ye; but in *Annas* and in *Cayphas*, whiche ſate thus vppon Chryſt, and vppon his Apoſtles after his Aſcencyon, of them onely haue ye taken it to judge Chriſtes Membres as ye do, and neyther of *Peter* nor *Johan*.

Than ſayde ſome of the Lawyers, Yes forſoth, Sir, for Chriſt judged *Judas*.

The Lord *Cobham* ſayd, No, Chriſt judged him not, but he judged himſelfe; and therupon went forth, and ſo did hang himſelfe. But indede Chriſt ſayd, wo vnto him for that couetous Act of his, as he doth yet ſtyll unto many of you. For ſens the Venime was ſhed into the Church, ye never folowed Chriſt: neither yet have ye ſtand in the Perfection of Gods Lawe.

Than aſked him the Archbyſhoppe, What he meant by that Venim?

The Lord *Cobham* ſayd, your Poſſeſſyons and Lordſhippes. For than cryed an Aungell in the Ayre (as your owne Chronycles mencioneth) Wo, wo, wo, this Day is Venime ſhedde into the Church of God. Before that tyme all the Byſhopes of *Rome* were Martirs in a maner. And ſens that time we rede of very few: but in dede ſens that ſame time one hath put down an other, one hath poyſoned an other, one hath curſed an other, one hath ſlayne an other, and done much more Miſchefe beſides, as all the Chronicles telleth. And let all Men conſydre well thys, That Chriſt was meke and mercifull; The Pope is proud and a Tiraunt. Chriſt was pore and forgaue; the Pope is riche, and a moſt cruell manſlayer, as his dayly Actes doth prove him. *Rome* is the very Neſt of Antichryſt, and out of the Neſt cometh all his Diſciples; of whome Prelates, Prieſtes and Monkes are the Body, and theſe pylde Friers are the Tayle, whyche coueteth his mooſt fylthy part.

Than ſayed the Pryor of the Fryre *Auguſtines*, Alac, Syr, why do ye ſay ſo? That is uncharitably ſpoken.

And the Lord *Cobham* ſaid, not only is it my Saying; but alſo the Prophet *Eſayes* long afore my tyme. The Prophet, ſayth he, which preacheth Lyes, is the Tayle behind. As you Fryers and Monkes be lyke Phariſees diuided in your outward Apparell and Vſages, ſo make ye diuyſyon among the Peple. And thus, you with ſuch other are the very naturall Membres of Antychryſt.

Than ſaid he vnto them all, Chriſt ſaith in his Goſpell, *Wo to you Scribes and Phariſees, Ypocrites, for ye cloſe up the Kingdom of Heauen before Men. Neyther entre ye in your ſelves, nor yet ſuffre any other that would entre into it. But ye ſtop up the wayes thereunto with your owne Tradicions, and therefore are ye the Houſhold of Antichriſt; ye will not permit Gods veryte to haue Paſſage, nor yet to be taught of his true Miniſters, fearing to haue your Wickedneſs reproued. But by ſuch vayne Flatterers as vpholde you in your Miſcheues, ye ſuffer the common People moſt miſerably to be ſeduced.*

Than ſaide the Archbiſhop, By oure Lady, Sir, there ſhall no ſuche preache within my Dioceſe, (and God will) nor yet in my Juriſdiction, (yf I may knowe yt) as either maketh Diuiſion, or yet Diſſenſion amonge the poore Commons.

The Lord *Cobham* ſayd, Both Chryſt and his Apoſtles were accuſed of Sedicion making, yet were they moſt peaceable Men. Both *Daniel* and Chriſt prophecyed, that ſuch a troublous tyme ſhulde come, as hath not been yet ſens the Worldes beginning. And this Prophecye is partly fulfylled in your Daies and Doinges. For many haue ye ſlaine already, and more wyl ye ſlee hereafter, if God fulfil not his Promes. Chryſt ſaith alſo, if thoſe Days of yours were not ſhortened, ſcarſly ſhuld any Fleſh be ſaued. Therefore loke for it juſtly, for God wyll ſhorten your Dayes. Moreouer, though Prieſtes and Deacons for preaching of God's Word, and for miniſtring the Sacraments, with Prouiſion for the Pore, be grounded in God's Lawe, yet haue theſe other Sectes no maner of ground thereof, ſo far as I haue red.

Than a Doctour of Lawe, called Maſter *Johan Kempe*, plucked out of his Boſome a Copye of that Byll which they had afore ſent him into the *Tower*, by the Archbiſhops Council, thinking thereby to make ſhorter worke with him. For they were ſo amaſed with his Anſweres (not al vnlike to them which diſputed with *Steven*) that they knew not well howe to occupye the tyme, there Wyttes and Sophiſtry (as God wolde) ſo fayled them that Day.

My Lord *Cobham* (ſayth this Doctor) we muſt brefely know your Mynde concerning theſe iiii. Poyntes here following. The fyrſt of them is thys. And then he redde vpon the Byll. The Fayth and the Determinacion of holy Church, touching the Bleſſed Sacrament of the Alter is this, That after the Sacramentall Wordes be ones ſpoken by a Pryeſt in hys Maſſe, the materyall Bread that was before Bread, is turned into Chriſtes very Bodye. And the materiall Wyne that was before Wyne, is turned into Chriſtes very Bloude. And ſo there remaineth in the Sacrament of the Aulter from thens forth no materyall Bread nor materyall Wyne, which were there before the Sacramentall Wordes were ſpoken: Sir, beleue ye not this?

The Lord *Cobham* ſayed, This is not my Beleue; but my Faith is (as I ſayd to you afore) that in the worſhypfull Sacrament of the Aulter, is very Chriſtes Body in fourme of Breade.

Than ſaid the Archbiſhop, Sir *Johan*, ye muſt ſay otherwiſe.

The Lord *Cobham* ſaide, Nay, that I ſhall not, if God be vppon my ſyde (as I truſt he is) but that there is Chriſtes Body in fourme of Breade, as the comen Beleue is.

Than redde the Doctor againe.

The ſecond Point is this, Holy Churche hath determined that euery Chriſten Man lyuing here bodely vppon Earth, ought to be ſhryuen to a Prieſt ordeined by the Church, if he may come to him: Sir, what ſay ye to this?

The Lord *Cobham* anſwered and ſaid, A diſeaſed or ſore wounded Man had nede to haue a ſure wyſe Chyrurgion, and a true; knowing both the ground and the danger of the ſame. Mooſt neceſſary were it therefore, to be fyrſt ſhryuen vnto God, which only knoweth our Diſeaſes, and can helpe us. I deny not in this the going to a Prieſt, if he be a Man of good Lyfe and Learning: For the Lawes of God are to be required of the Prieſt, which is godly learned. But if he be an Ydiote, or a Man of viciouſe lyuyng, that is my Curate, I ought rather to flee from him, than to ſeke unto him. For ſooner might I catch yll of him that is nought, than any Goodneſſe towardes my Soule Helth.

Than redde the Doctour againe.

The third Pointe is this, Chriſte ordeined Sainct *Peter* the Apoſtle to be his Vicar here in Ærth, whoſe See is the Church of *Rome*. And he graunted, that the ſame Power which he gaue vnto *Peter*, ſhulde ſucceede to all *Peter*'s Succeſſors, which we call now Popes of *Rome*. By whoſe ſpeciall Power in Churches partycular he ordeined Prelates, as Archbiſhops, Parſons, Curates, and other Degrees more; vnto whom Chriſten Men ought to obeye after the Lawes of the Church of *Rome*. This is the Determination of holy Church: Sir, beleve ye not this?

To this he anſwered and ſaid, He that foloweth *Peter* mooſt nigheſt in pure Lyuing, is next vnto him in Succeſſion; but your lordely Ordre eſtemeth not greatly the lowly Behauer of pore *Peter*, what ſoeuer ye prate of him; neither care you greatlye for the humble Maners of them that ſucceded him tyll the time of *Silveſtre*, which for the more part were Martirs, as I tolde ye afore. Ye can lett all their good Condicions go by you, and not hurt your ſelues with them at all; all the Worlde knoweth thys well inough by you, and yet ye can make boaſt of *Peter*.

With that one of the other Doctours axed him, Than what do ye ſay of the Pope?

The Lord *Cobham* anſwered, As I ſaid before, he and you together maketh whole the great Antichriſt, of whom he is the great Heade; yow Byſhops, Prieſtes, Prelates and Monkes, are the Body, and the begging Friers are the Taile, for they couuer the Filthineſſe of you both with their ſubtyle Sophiſtrye: Neuer will I in Conſcience obey any of you all, tyll I ſee you with *Peter* follow Chryſt in Conuerſation.

Than redde the Doctour againe: The fourth Pointe is this, Holy Church hath determined, that it is meritoriouſe to a Chryſten Manne to go on Pilgrimage to holy Places, and there ſpecially to worſhip holy Relikes and Ymages of Saintes, Apoſtles, Martirs, Confeſſours, and all other Saintes beſydes, approued by the Church of *Rome*: Sir, what ſay ye to this?

Whereunto he anſwered, I owe them no Seruice by any Commaundment of God, and therefore I minde not to ſeke them for your Covetouſnes: It were beſt ye ſwept them fayre from Copwebs and Duſte, and ſo layed them up for catching of Scathe; or els to bury them faire in the Ground, as ye do other aged Peple which are Gods Ymages. It is a wonderfull thing, that Saintes now being dead, ſhuld become ſo covetous and nedye, and therevppon ſo bitterly begge, which al their Lyfe time hated all Covetouſneſſe and Begginge. But this I ſaye vnto you, and I wold all the World ſhuld marke it, That with your Shrines and Idolles, your fayned Abſolutions and Pardons, ye drawe vnto you the Subſtaunce, Welthe, and cheſe Pleaſures of all Chriſten Realmes.

Why, Syr (ſaid one of the Clerkes) will ye not worſhip good Ymages?

What Worſhip ſhuld I geue vnto them? ſayd the Lord *Cobham*.

Than ſayde Fryer *Palmyr* vnto him, Sir, ye well worſhyp the Croſſe of Chriſt that he died vppon.

Where is it? ſaid the Lord *Cobham*.

The Fryer ſayd, I put ye the Caſe, Sir, that it were here euen now before you?

The Lord *Cobham* anſwered, This is a great wyſe Manne, to put me an ærneſt Queſtion of a thing, and yet he his ſelfe knoweth not where the thing it ſelfe is: yet ones again aske I you, what Worſhyp I ſhuld do unto it?

A Clerke ſaid unto him, Such Worſhip as *Paul* ſpeaketh of, and that is this, *God forbidde that I ſhuld joye but onely in the Croſſe of Jeſu Chriſt.*

Than ſayd the Lord *Cobham*, and ſpreade his Armes abroade, This is a very Croſſe, yea and ſo moche better than your Croſſe of Woode, in that it was created of God; yet will not I leke to haue it worſhipped.

Than ſaid the Biſhop of *London*, Sir, ye wote wel that he died on a material Croſſe.

The Lorde *Cobham* ſayd, Yea, and I wote alſo that our Saluacion came not in by that materyall Croſſe, but alone by him which dyed thervppon. And well I wote that holy Saint *Paull* rejoyſed in none other Croſſe, but in Chriſtes Paſſion and Death onely, and in his own Sufferings of like Perſecution with him, for the ſame ſelfe Verite that he had ſuffered for afore.

And other Clerke yet asked him, Wyll ye than do none Honour to the holy Croſſe?

He anſwered him, Yes, if he were myne, I wolde lay him vp honeſtlye, and ſee vnto him that he ſhuld take no more Scathes abroade, nor be robbed of his Goodes as he is now a dayes.

Than ſayd the Archbiſhop vnto him, Sir *Johan*, ye haue ſpoken here many wonderfull Wordes, to the ſlaundrous Rebuk of the whole Spiritualte, geuing a great yll Example vnto the common ſort here, to haue vs in the more diſdayne. Moche time haue we ſpent here abought you, and al in vaine ſo farre as I can ſee. Well, we muſt be now at this ſhort Point with you, for the day paſſeth away; ye muſte eyther ſubmit your ſelfe to the Ordinaunce of holy Church, or elſe throwe your ſelf (no remedy) into mooſt depe Daunger; ſe to it in time, for anon it will be els to late.

The Lorde *Cobham* ſaid, I knowe not to what purpoſe I ſhuld otherwiſe ſubmitte me; moch more haue you offended me, than euer I offended you, in thus troubling me before thys Multitude.

Than ſayd the Archbiſhop againe vnto him, We ones again require you to remembre your ſelfe wel, and to haue none other Opinion in theſe maters, than the univerſall Fayth and Beleue of the holy Church of *Rome* is: and ſo lyke an obedient Child to return again to the Vnite of your Mother. Se to it, I ſay in time, for yet ye may have Remedy, where as anon it will be to late.

The Lord *Cobham* ſayd expreſſely before them all, I will none otherwiſe beleue in theſe Pointes than I haue tolde ye here afore, do with me what ye will.

Finally, than the Archbiſhop ſayd, Wel, than I ſee none other but we muſt needs do the Lawe, we muſt procede forth to the Sentence diffinitiue, and both judge ye and condempne ye for an Heretike.

And with that the Archbyſhoppe ſtode vp, and redde there a Byll of his Condemnacion, all the Clergye and Layte avaylyng their Bonnettes; and thys was thereof the Tenour:

The diffinitiue Sentence of his Condempnacion.

IN *Dei Nomine, Amen. Nos Thomas, permiſſione diuina, Cantuarienſis Eccleſiæ Archiepiſcopus, Metropolitanus totius Anglie primas, & Apoſtolicæ ſedis Legatus*, and ſo forth in barberous *Latin*, which we haue here tranſlated into *Ingliſh*, for a more playne Vnderſtanding to the Reader.

In the Name of God, ſo be it. We *Thomas*, by the Sufferaunce of God, Archbiſhop of *Caunterbury*, Metropolitane and Primate of all *Ingland*, and Legate from the Apoſtolyke Seate of *Rome*, willeth this to be knowen vnto all Men. In a certein Cauſe of Hereſy, and vppon diuerſe Articles, where vppon Sir *John Oldcaſtle* Knight, and Lord *Cobham*, after a diligent Inquiſition made for the ſame, was detected, accuſed, and preſented before vs in our laſt Conuocation of all our Province of *Canterbury*, holden in the Cathedrall Churche of *Paules* at *London*; at the laufull Denouncement and Requeſt of our univerſall Clergy in the ſeyd Conuocation, we proceded againſt him according to the Lawe (God to witnes) with al the Fauer poſſible. And folowing Chriſtes Example in all that we might, which willeth not the Death of a Synner, but rather that he be conuerted and lyue, we took vpon vs to correct him, and ſought all other ways poſſible to bring him againe to the Churches Vnite, declaringe vnto hym what the holye and vniverſall Church of *Rome* hath ſayd, holden, determined, and taught in that behalfe. And though we found him in the Catholike Faith farre wyde and ſo ſtifnecked, that he wold not confeſſe his Erroure, nor purge him ſelfe, nor yet repent him thereof; we yet pyteing hym of fatherly Compaſſion, and intierlye deſyrynge the Helthe of his Sowle, appoynted him a competent tyme of Delyberacion, to ſe if he wold repent and ſeke to be reformed: and ſens we haue found him worſe and worſe. Conſidering therefore that he is incorrygible, we are driuen to the very Extremite of the Lawe, and with great Heuynes of Hart, we now procede to the Publicacyon of the Sentence diffinityue agaynſt him.

Than brought he forth an other Byll, conteyning the ſayd Sentence, and that he redde alſo in his bauger *Latyne*; *Chriſti nomine inuocato, ipſumque ſolum pre oculis habentes, quia per acta mactitata*, and ſo forth; which I haue alſo tranſlated into *Ingliſh*, that Men may underſtand it.

Chriſt we take unto witnes, that nothing els we ſeke in this our whole Enterpryſe, but his only Glory. For as much as we haue found by dyuerſe Actes done, brought forth and exhibited by ſondry Evidences, Sygnes, and Tokens, and alſo by many moſt manifeſt Proues, the ſaid Sir *Johan Oldcaſtell* Knight, and Lord *Cobham*, not only an evident Heretyke in hys own Parſone, but alſo a mighty Mainteyner of other Heretikes, againſt the Faith and Relygion of the holy and vniuerſal Church of *Rome*, namely, about the two Sacramentes of the Alter, and of Penaunce, beſides the Popes Power and Pilgrimages: And that he, as the Chyld of Iniquite and Darkenes, hath ſo hardened his Hart, that he will in no caſe attend vnto the Voice of hys Paſtour: neyther wyll he be alured by ſtrayght Admoniſhments, nor yet be brought in by fauourable Wordes. The Worthenes of the Cauſe firſt wayde on the one ſide, and his Vnworthynes again conſidered on the other ſyde, his Fautes alſo aggrauated, or made double through his damnable Obſtinacy. We being loth that he which is nought ſhuld be worſe, and ſo with hie Contagiouſnes infect the Multitude; by the ſage Councell and Aſſent of the very diſcret Fathers, our honorable Brethren and Lordes Biſhopes here preſent, *Richard* of *London*, *Henry* of *Wyncheſter*, and *Benit* of *Bangor*, and of other great, learned, and wyſe Men here, both Doctours of Diuinite and of the Lawes, Canon and Ciuyle, Seculars and Religious, with dyuerſe other expert Men aſſiſting vs, we ſentencyally and dyffinitiuely, by thys preſent Writeing, judge, declare, and condemne the ſeid Sir *Johan Oldcaſtell* Knyght, and Lord *Cobham*, for a moſt pernicious and deteſtable Heretyke, convycted vpon the ſame, and refuſing vtterly to obey the Churche agayne, committyng hym here from hens forth as a condempned Heretik to the ſecular Juriſdiction, Power, and Judgment, to do him ther vpon to death. Furthermore, we excommunicate and denounce acurſed not only this Heretike here preſent, but ſo many els beſydes as ſhall here after, in fauer of his Errour, eyther receive him or defend him, counſell him or helpe him, or any other way maintein him, as very Fauters, Receiuers, Defenders, Councelers, Ayders, and Maynteyners of condemned Heretiks.

And that theſe Premyſſes maye be the better knowen to all faythfull Chryſten Men, we commit yt here vnto your Charges, and gaue you ſtrayghte Commaundement thervpon by thys Wrytyng alſo, that ye cauſe this Condemnacion and diffinityue Sentence of Excommunycacyon, concerning both thys Heretyke and his Fawters, to be publyſhed through oute all Dyoceſes in Cytyes, Townes, and Vyllages, by your Curates and Paryſh Prieſtes, ſuch time as they ſhall have moſt recourſe of People, and ſe that it be done after this ſort. As the People are thus gathered deuoutlye together, lett the Curate euery where go into the Pulpet, and there open, declare, and expounde thys Proceſſ in the Mother Tonge, in an audyble and intelligible Voyce, that it maye well be perſeiued of all Men; and that vppon the feare of this Declaracion alſo, the People maye fall from their yll Opinions conceiued now of late by ſedicioufe Preachers. More ouer, we will that after we haue deliuered vnto yche one of you Biſhoppes (which are here preſent) a Coppye hereof, that ye cauſe the ſame to be written out again into dyuers Coppies, and ſo to be ſent vnto the other Biſhopps and Prelates of our whole Prouince, that they may alſo ſee the Contents thereof ſolempnely publiſhed within their Dioceſes and Cures. Finally we wyll that both you and they ſignifye again vnto vs ſeriouſly and diſtinctly by your Wrytinges, as the matter is without fayned Colour in euery Point perfourmed, the Daye wheruppon ye receyued thys Proceſſe, the tyme whan it was of you executed; and after what ſort it was done in euerye Condicion, according to the Tenour hereof, that we may knowe it to be juſtly the ſame.

A Coppye of thys Wrytinge ſent *Thomas Arundel* the Archbiſhop of *Caunterbury*, afterward from *Maydeſton* the x. Daye of *October*, within the ſame Yeare of oure Lorde M.CCCC. and xiii. unto *Richard Clifford* the Biſhop of *London*, which thus beginneth, *Thomas Permiſſione Diuina*, &c.

See this p. 50.

The ſayde *Richard Clifford* ſent an other Coppye thereof, encloſed within hys owne Letters, unto *Robert Maſcall*, a Carmelite Fryer, which was than Biſhop of *Herford* in *Walis*, writen from *Hadham* the xxiii. Day of *Octobre*, in the ſame Yere; and the beginning thereof is this, *Reuerende in Chriſto Pater*, &c.

The ſaid *Robert Maſcall* directed an other Copy thereof from *London* the xxvii. Day of *November* in the ſame Yere, encloſed in his owne Commiſſion alſo, vnto his Archdeacons and Deanes in *Herford* and *Shrewisbury*. And this is thereof the beginning, *Venerabilibus & diſcretis viris*, &c.

In like maner did the other Biſhopes within their Dioceſes.

After that the Archebiſhop had thus red the Byll of his Condempnation, with moſt Extremite, before the whole Multitude; the Lord *Cobham* ſayd with a moſt cherefull Countenaunce, Though ye judge my Body, which is but a wretched thing, yet am I certein and ſure, that ye can do no harme to my Soule, no more than could Sathan uppon the Soule of *Job*. He that created that, will of his infinite Mercy and Promeſs ſave it, I haue therein no manner of doubt. And as concerning theſe Articles before reherſed, I will ſtande to them, euen to the very Death, by the Grace of my eternall God.

An

And therwith he turned him vnto the People, caſting hys Handes abroade, and ſaying with a very loude Voice, Good Chriſten People, for Gods loue be well ware of theſe Men: for they will els begyle you, and leade you blindelyng into Hell with themſelues. For Chriſt ſaith plainly vnto you, *If one blind Man leadeth another, they are lyke both to fall into the Dytche.*

After thys he fell downe there vppon his Knees, and thus before them all prayed for his Enemies, holding vp both his Handes and his Eyes towards Heauen and ſaying, Lord God eternal, I beſeche the for thy great Mercies ſake to forgeue my purſuers, if it be thy bleſſed will. And than he was delyuered to Syr *Robert Morleye*, and ſo ledde forth againe to the *Tower* of *London*. And thus was there an ende of that Dayes worke.

Whyle the Lord *Cobham* was thus in the *Tower*, he ſent out priuily vnto his Friends; and they at his deſire wrote this lytle Bill here following, cauſing it to be ſet up in diuerſe Quarters of *London*, that the Peple ſhulde not beleve the Slaundres and Lyes that his Ennemies the Biſhops Seruaunts and Prieſtes had made on him abroade. And this was the Letter.

For as much as Sir John Oldecaſtell *Knight and Lord* Cobham, *is vntruly conuicted and impriſoned, falſely reported, and ſlaundred among the comen People by his Aduerſaries, that he ſhuld otherwiſe both fele, and ſpeake of the Sacraments of the Church, and ſpecially of the Bleſſed Sacrament of the Aulter, than was written in the Confeſſion of his Belieue, which was indinted and taken to the Clergy, and ſo ſet up in diuerſe open places in the Cite of* London, *Knowen be it here to all the World, that he neuer ſens varyed in any Poynt therfro; but this is plainly his Beleue, that all the Sacraments of the Church be proffytable and expedient alſo to all them that ſhal be ſaued, taking them after the intent that Chriſt and his true Church hath ordayned. Further more he beleued that in the Bleſſed Sacrament of the Aulter is verely and truly Chriſtes Body, in fourme of Bread.*

After thys the Byſhops and Pryeſtes were in moche Obloquie, both of the Nobilite and Comens, partly for that they had ſo cruelly handled the good Lord *Cobham*; and partlye againe, bycauſe hys Opinion (as they thought at that tyme) was perfyght concerning the Sacrament. As they feared thys to grow to further inconuenience towardes them both wayes, they drew their Heads together, and at the laſt conſented to uſe an other Practiſe, ſomewhat contrary to that they had done afore.

They cauſed it by and by to be blowne abroade by their feed Seruants, Fryendes and babeling Sir *Johnes*, that the ſayde Lord *Cobham* was becomen a good Man, and had lawlye ſubmitted him ſelfe in all things vnto Holy Church, vtterly chaunging his Opinion concerning the Sacrament. And thervppon they contrefayted an Abjuration in his Name, that the Peple ſhuld take no hold of that Opinion by any thing they had hearde of him before, and to ſtande ſo in the more Awe of them, conſidering hym ſo great a Man, and by them ſubdued.

This is the Abjuration (ſay they) of Syr *Johan Oldecaſtell* Knight, ſometime the Lord *Cobham*.

An Abjuration counterfayted of the Biſhoppes.

IN *Dei nomine, Amen.* I *Johan Oldecaſtell* denounced, detected and conuycted of and vppon diuerſe Articles ſauering both hereſy and Errour, before the Reuerend Father in Chriſt, and my good Lord *Thomas*, by the Permiſſion of God, Lord Archebiſhop of *Caunterburye*, and my lauful and rightful Judge in that behalfe, expreſſely graunt and confeſſe, That as concerning the Yſtate and Power of the mooſt Holy Father the Pope of *Rome*, of his Archbiſhops, his Biſhops, and his other Prelates, the Degrees of the Church, and the Holy Sacramentes of the ſame, ſpecyally of the Sacramentes of the Aulter, and of Penaunce, and other Obſeruaunces beſides of our Mother Holy Church, as Pilgrimages and Pardons; I affyrme (I ſay) before the ſaid Reuerend Father Archbiſhop, and els where, that I being yl ſeduced by diuerſe ſediciouſe Preachers, haue greuouſly erred and heritically perſiſted, blaſphemouſly anſwered, and obſtinately rebelled. And therefore I am by the ſayd Reuerend Father, before the Reuerend Fathers in Chriſt alſo the Biſhops of *London*, *Wincheſtre* and *Bangor*, lawfullye condempned for an Heretyke.

Neuertheleſs yet, I now remembring myſelfe, and coueting by this meane to auoide that temporal Payne, which I am worthy to ſuffer as an Heretike, at the Aſſignacion of my moſt excellent Chriſten Prince and Liege Lord King *Henry* the Fift, nowe by the Grace of God moſt worthy Kyng of both *Englande* and of *France*; minding alſo to preferre the wholſom Determinacyon, Sentence and Doctryne of the Holy and Uniuerſal Church of *Rome*, before the vnholſom Opinions of my ſelf, my Teachers, and my Followers: I frely, willyngly, deliberately, and throughly confeſſe, graunt, and affyrme the moſte Holye Fathers in Chriſt, Sainct *Peter* the Apoſtle, and his Succeſſours Biſhoppes of *Rome*, ſpecially now at thys tyme my mooſt bleſſed Lorde Pope *Johan*, by the Permyſſyon of God the xxiii. Pope of that Name, which now holdeth *Peter*'s Seate (and each of them in their Succeſſion) in full Strength and Power, to be Chryſtes Vycar in Ærth, and the Head of the Church Milytaunt. And that by the Strength of hys Office (what thogh he be a great Sinner, and afore knowen of God to be damned) he hath full Auctorite and Power to rule and gouerne, bind and loſe, ſaue and deſtroy, accurſe and aſſoyle, al other Chriſten Men.

And agreably ſtyl unto this, I confeſs, graunt, and affyrme all other Archbiſhoppes, Biſhoppes, and Prelates, in their Prouinces, Dyoceſſes, and Pariſhes (appointed by the ſeid Pope of *Rome*, to aſſyſt him in his Doinges or Buſineſs) by his Decrees, Canons, or Vertue of his Office, to haue had in tymes paſt, to haue now at this tyme, and that they ought to haue in tyme to come, Auctorite and Power to rule and to gouerne, binde and loſe, acurſe and aſſoyle the Subjectes or Peoples of their aforeſeid Prouinces, Dyoceſes, and Pariſhes; and that theyr ſaid Subjectes or Peoples ought of right in all things to obey them. Furthermore I confeſſe, graunt and affyrme, that the ſayde Spyrytuall Fathers, as our mooſt Holy Father the Pope, Archbiſhops, Byſhops and Prelates, haue had, haue now and ought to haue hereafter, Auctorite and Power for the Eſtate, Order and Gouuernaunce of theyr Subjectes or Peoples, to make Lawes, Decrees, Statutes and Conſtitucions; yea, and to publyſh, commaunde and compell theyr ſaid Subjectes and Peples to the Obſeruation of them.

Moreouer, I confeſſe, graunt and affyrme that all theſe forſayd Lawes, Decrees, Statutes and Conſtitucions, made, publyſhed and commaunded accordynge to the fourme of Spirituall Lawe, all Chriſten Peple and euery Man in him ſelfe is ſtraightly bound to obſerue, and mekelye to obeye, accordyng to the diuerſite of the forſayde powers. As the Lawes, Statutes, Canons and Conſtitucions of our moſt Holy Father the Pope, incorporated in his Decrees, Decretals, Clementynes, Codes, Chartes, Reſcriptes, Sextiles and Extrauagauntes the World over all; and as the Prouinciel Statutes of Archebiſhops in their Prouinces, the Sinodall Actes of Byſhoppes in theyr Dioceſes, and the commendable Rules and Cuſtomes of Prelates in their Colleges, and Curates in their Pariſhes, all Chriſten People are both bound to obſerve, and alſo mooſt mekely to obeye. Ouer and beſides all this, I *Johan Oldecaſtell*, vtterly forſakinge and renouncynge all the aforeſayd Errours and Hereſyes, and all other Errours and Hereſyes lyke vnto them, lay my Hande here vppon this Boke, of Holy Euangelye of God, and ſwear, that I ſhall neuermore from hens forth hold theſe forſaid Hereſyes, nor yet any other lyke vnto them wetingly. Neyther ſhall I geue counſell, ayde, helpe nor fauer at any tyme to them that ſhall holde, teache, affyrme or mainteine the ſame, as God ſhall helpe me and theſe Holy Euangelyes.

And that I ſhall from hens forth faithfully obeye, and inuiolably obſerue all the Holy Lawes, Statutes, Canons, and Conſtitucions of all the Popes of *Rome*, Archbiſhopes, Biſhops, and Prelates, as are contayned and determined in theyr Holye Decrees, Decretals, Clementines, Codes, Chartes, Reſcryptes, Sextyles, Summes Papall, Extrauagantes, Statutes Prouincyall, Actes Synodal, and other ordinary Rules and Cuſtomes conſtituted by them, or that ſhall chaunce hereafter dyrectly to be determined or made. To theſe and all ſuch other, wyll I my ſelfe with al Powr poſſible apply. Beſydes all this, the Penaunce which it ſhal pleaſe my ſaid Reuerend Father, the Lorde Archbiſhop of *Caunterbury*, hereafter to enjoyne me for my Sinnes, I will mekely obeye and faithfully fulfyll. Finally, all my Seducers and falſe Teachers, and all other beſydes, whom I ſhall hereafter knowe ſuſpected of Hereſye or Errours, I ſhall effectuallye preſent, or cauſe to be preſented, vnto my ſayd Reuerend Father Lord Archbiſhop, or to them which hath his Auctorite, ſo ſone as I can conueniently do it, and ſee that they be corrected to my vttermooſt Power. *Amen.*

The cruell Complaint of the Clergy, and Tyrannouſe Acte thervppon made.

NEuer came this Abjuracyon to the Handes of the Lord *Cobham*, neyther was it compyled of them for that purpoſe; but onely therwyth to bleare the Eyes of the unlearned Multitude. And whan they perceyued that Polycye wolde not helpe, but made more and more againſt them, than ſought they out an other falſe Practyſe. They went vnto the King with a moſt greuouſe Complaint, lyke as they did afore in his Fathers tyme, that in euery Quarter of the Realme, by reaſon of *Wickleues* Opinions, and the ſaid Lord *Cobham*, were wonderful Contentions, Rumours, Tumultes, Vprours, Confederations, Diſſencions, Diuiſions, Differences, Diſcordes, Harmes, Slaunders, Sciſmes, Sectes, Sedicions, Perturbacions, Parels, vnlawfull Aſſemblyes, Variaunce, Strifes, Fyghtinges, rebelliouſe Ruffelinges and dayly Inſurrections. The Church (they ſaid) was hated; the Dioceſanes were not obeyed; the Ordinaries were not regarded; the Spirituall Offycers, as Suffraganes, Archdeacons, Chauncelers, Doctours, Commiſſaries, Offycials, Deanes, Lawyers, Scribes and Sommeners were euery where deſpyſed; the Lawes and Liberties of Holy Church were troden vndre fote; the Chryſten Fayth was ruynouſlye decayed; Gods Seruice was laught to Scorne; the Spiritual Juriſdictyon, Auctorite, Honour, Power, Polycy, Lawes, Rytes, Ceremonies, Curſes, Keyes, Cenſures and Canonical Sanctions of the Church were had in an vttre Contempt.

So that all in a maner was come to nought.

And the cauſe of this was, that the Heretikes and Lollards of *Wicleues* Opinion, were ſuffered to preach abrode, ſo boldly to gether Conuenticles vnto them, to kepe Scoles in Mens Houſes, to make Bokes, compyle Treatiſes, and wryte Ballets, to teach priuately in Angles and Corners, as in Wodes, Feldes, Medowes, Paſtours, Groues, and in Caues of the Ground. This wolde be (they ſayd) a Deſtruction to the Commonwelth, a Subuercion to the Land, and an utter Decay of the Kinges Eſtate Ryall, if remedy were not ſought in tyme. And this was their Policy, to couple the Kinges Auctorite wyth that they had done in theyr former Councell of Craft, and ſo to make it thereby the ſtronger. For they perceiued themſelves very farre to weake els to follow againſt their Ennemies, that they had ſo largely enterpriſed. Upon this Complaint, the King immediately called a Parliament at *Leicheſtre*; it might not in thoſe Daies be holden at *Weſtminſtre*, for the great fauer that the Lord *Cobham* had both in *London*, and abought the Cyte. Yet were they deceiued; that they doubted moſt, lyghted there ſoneſt upon them.

A Byll was put in there again by the Commons, againſt their continuall waſting of the Temporalities, lyke as it had bene twiſe afore by procurement of the ſeid Lord *Cobham*, both in the Daies of *Richard* the Second, *Anno* 1365. and alſo of King *Henry* the iiii. *Anno Domini* 1410. whervpon was growne all this Malice afore ſpecified; but this was than workemanly defeated by an other proper practiſe of theyrs.

They put the King in remembraunce to claime his Right in *Fraunce*, and graunted him therevnto a Dime, with other great Subſidy of Mony. Thus were Chriſtes People betrayed euery way, and their Liues bought and ſold by theſe moſt cruell Theues. For in the ſaid Parlament, the King made this moſt blaſphemouſe and cruell Acte, to be as a Law for euer, That whatſoeuer they were that ſhould rede the Scriptures in the Mother Tong (which was than called *Wicleue*'s Lerning) they ſhuld forfet Land, Catel, Body, Lif and Godes from theyr Heyres for euer, and ſo be condempned for Heretykes to God, Ennemies to the Crowne, and moſt errant Trayters to the Lande.

Beſides this, it was inacted that neuer a Sanctuary, nor priuileged Ground within the Realme, ſhulde holde them, though they were ſtill permitted both to Theues and Murtherers. And if in caſe they wold not gyue ouer, or were after their Pardon relapſed, they ſhulde ſuffer Death in two manner of kindes; That is, they ſhulde firſt be hanged for Treaſon againſt the King, and then be burned for Hereſy againſt God, and yet neither of both committed.

The beginning of that Act is this, *Pro eo quod magni rumores, &c.* Anon after was it proclaymed throughout the Reame, and than had the Biſshops, Prieſts, Monkes and Fryers, a Worlde ſomewhat to theyr Mindes. For than were many taken in diuerſe Quarters, and ſuffered moſt cruel Death. And many fled out of the Lande into *Germany*, *Bohem*, *Fraunce*, *Spain*, *Portingale*, and into the Weld of *Scotland*, *Wales* and *Yreland*, working ther many Maruels againſt their falſe Kingdom, to long to wryte. In the *Chriſtmas* followinge was Syr *Roger Acton* Knyght, Maſter *Johan Browne* Eſquire, Sir *Johan Beuerlaye*, a learned Preacher, and dyuerſe other more attached for quarrelling with certeine Prieſtes, and ſo impriſoned. For all Men at that time coud not paciently ſuffre theyr blaſphemouſe Bragges.

The Complaint was made vnto the King of them, that they had made a greate Aſemble in Sainct *Gyles* Felde at *London*, purpoſing the Deſtruction of the Land, and the Subuercyon of the Comonwelth. As the King was thus infourmed, he erected a Banner (ſaith *Walden*) with a Croſſe thereupon, as the Pope doth comonly by his Legate, whan he pretendeth to warre againſt the *Turke*; and with a great nombre of Men entered the ſame Felde, where as he found no ſuch Company, yet was the Complaint judged true, becauſe the Byſhoppes had ſpoken it at the Informacion of their Prieſtes. All this hath *Thomas Walden* in diuerſe of his Workes, which was at the ſame tyme a Whight or Carmelite Frire, and the King's Confeſſour; and partly it is touched both by *Robert Fabian*, and by *Polidorus Virgilius* in their *Engliſh* Chronicles: but not in all pointes rightly. In the meane * ſeaſon Sir *John Oldecaſtell* the Lord *Cobham*, eſcaped out of the Towr of *London* in the Night, and ſo fledde into *Wales*, whereas he continued more than iiii. Years after †.

Some Wryters haue thought this eſcape to come by the ſaid Syr *Roger Acton*, and other Gentlemen, in diſpleaſure of the Prieſtes, and that to be the chefe occaſion of their Deathes, which might well be; but *Walden* doth not ſo vtter it, which reigned the ſelfe ſame time. In *January* next following was the aforenamed Syr *Roger Acton*, Maſter *Johan Browne*, Syr *Johan Beuerlaye* and xxxvi. more (of whom the more part were Gentylmen of Byrthe) conuicted of Hereſy by the Byſhops, and condempned of Treaſon by the Temporalte, and according to the Acte, were fyrſte hanged and than brent in the ſayd Saint *Gyles* ‖ Feld. In the ſame Yeare alſo was one *Johan Claydon* a Skinner, and one *Richard Turmin* a Baker, both hanged and brent in *Smytfilde* by that vertuous Act; beſides that was done in al other Quarters of *Ingland*, which was no ſmall number, if it were now throughly knowen.

Holin. Vol. 3. p. 560. [In the mean while the Lord *Cobham*, who ſhifted from Place to Place to eſcape the Hands of them who he knew would be glad to lay hold on him, had convey'd himſelf in ſecret wiſe into an Huſbandman's Houſe not far from *St. Albans*, within the Precinct of a Lordſhip belonging to the *Abbot* of that Town: the *Abbot*'s Servants getting Knowledge hereof, came thither by Night, but they miſſed their Purpoſe, for he was gone; but they caught divers of his Men, whom they carried ſtreight to Priſon. The Lord *Cobham* herewith was ſore diſmay'd for that ſome of them, who were taken, were ſuch as he truſted moſt, being of Counſel in all his Devices.

In the ſame Place were found Books written in *Engliſh*, and ſome of thoſe Books in time paſt had been trimly gilt, limned and beautified with Images, the Heads whereof had been ſcrap'd off; and in the Litany they had blotted out the Name of our Lady and other Saints, till they came to the Verſe *Parce nobis Domine*. Divers Writings were found there alſo in derogation of ſuch Honour as then was thought due to our Lady.

The Abbot of *St. Albans* ſent the Book ſo disfigur'd with Scrapings and Blottings out, with other ſuch Writings as there were found, unto the King; who ſent the Book again unto the Archbiſhop, to ſhow the ſame in his Sermons at *Paul*'s-*Croſs* in *London*, to the end that the Citizens and other People of the Realm might underſtand the Purpoſes of thoſe that were called *Lollards*, to bring them farther into diſcredit with the People.]

The latter Enpriſoning and Death of the Lord Cobham.

IN the Yeare of oure Lorde a M.CCCC. and xv dyed *Thomas Arundell*, which had bene Archbiſhop of *Caunterbury* more than xxxii. Yeares, to the great Deſtruction of Chryſten Beleue. Yet died not his prodigiouſe Tyrannye with hym; but ſucceeded with his Office in *Henry Chichely*, and in a great ſort more of the ſpyghtful Spiritualtie. For their Malice was not yet ſated ageinſt the good Lord *Cobham*. But they confedered with the Lord *Powys* (which was at that time a great Gouernour in *Wales*) feeding him with lordly Giftes and Promiſes, to acomplyſh their Deſyre. He at the laſt, thus monied with *Judas*, and outwardly pretending him great Amity and Fauer, mooſt cowardlye and wretchedly toke hym, and in concluſion ſo ſent him up to *London*, whereas he remayned a Moneth or two impryſoned again in the *Tower*. Upon the 14 *Dec.* he was brought before the Parliament, and after long Proceſſe they condempned him againe of Hereſy and Treaſon by force of the afore named Act ‡. He rendering Thanks unto God that he had ſo appointed him to ſuffre for his Names ſake.

And upon the Day appointed he was brought out of the *Tower*, with his Armes bound behynd him, hauing a very 25. *Dec.* cherful Countenaunce. Than was he layd vpon an Hurdle, as though he had been a mooſt haynouſe Traitoure to the Crowne, and ſo drawn forth into Sainct *Gyles Felde*, where as they had ſet vp a newe paire of Galowes. As he was comen to the Place of Execution, and was taken from the Hardle, he fell down deuoughtly upon his Knees, deſyringe Almightye God to forgeue his Ennemies. Than ſtode he up and beheld the Multitude, exhorting them in moſt godly maner to folow the Laws of God, written in the Scriptures; and in any wyſe to beware of ſuch Teachers as they ſe contrary to Chriſt in their Conuerſacion and Liuing, with many other ſpecial Councels §. [When at his laſt Hours he was urg'd to confeſs himſelf to a Prieſt, whoſe Service was offer'd for that Purpoſe, he not only with a noble Scorn rejected him, but openly proteſted, *That if the Apoſtles* Peter *and* Paul *were there, he would not confeſs to them, ſince one infinitely greater, God himſelf, was preſent; and as from him only he implor'd and hoped for Pardon, ſo to him alone he would make Confeſſion of his Sins.* The cruel Preparations of his Torments could make no Impreſſion of Terror upon him, nor ſhock his illuſtrious Conſtancy: but in him were ſeen united the fearleſs Spirit of a Soldier, and the holy Reſignation of a true Chriſtian.] Than he was hanged vp ther by the middle in Chaynes of Yron, and ſo conſumed alyue in the Fyre, praiſing the Name of God, ſo long as his Life laſted. In the ende, he commended his Sowle into the Handes of God, and ſo departed hens moſt Chriſtenly, his Body reſolued to Aſhes.

And this was done in the Yeare of our Lord M.CCCC. and xviii. which was the ſixt Yere of the Reygne of King *Henry* the Fift, the People ther preſent ſhewyng great Dolour. How the Prieſtes that time fared, blaſphemed, and curſed, requiring the People not to pray for hym, but to judge him dampned in Hell, for that he departed not in the Obedience of their Pope; it were too long to wryte.

Archiepiſcopus Cantuarienſis contra Dominum Oldcaſtle, 1 Hen. 5. A. D. 1413.

[*Extracted from the Records at* Lambeth, *and may be found in* Rymers's Fœdera, Tom. 9. p. 61.]

' THOMAS, Permiſſione Divina *Cantuarienſis Archiepiſcopus*, totius
' Angliæ Primas & Apoſtolicæ Sedis Legatus, venerabili Fratri
' noſtro, Domino *Richardo*, Dei Gratia, *Londinenſi* Epiſcopo, ſalutem &
' fraternam in Domino Charitatem.

' Nuper coram Nobis, in Convocatione Prælatorum & Cleri noſtræ
' Cantuarienſis Provinciæ in Eccleſia noſtra Sancti Pauli ultimo celebrata
' cum iiſdem Prælatis & Clero, ſuper Unione & Reformatione Eccleſiæ
' Anglicanæ tractantibus, inter cetera, per nos, & eoſdem Prælatos &
' Clerum concluſum extitit, quaſi pro impoſſibili, ſciſſuram Tunicæ
' Domini inconſutilis reformare, niſi prius certi magnates Regni, Autores,
' Fautores, Protectores, Defenſores, & Receptores horum Hæreticorum
' qui dicuntur Lollardi, eſſent rigide reprehenſi, ac, ſi opus fuerit, per
' Cenſuras Eccleſiæ, una cum invocatione Brachii Secularis, a ſuis
' Deviis revocati:

' Et facta ſubſequenter, in eadem Convocatione, inter Procuratores
' Cleri & alios, qui, de ſingulis Dioceſibus ejuſdem noſtræ Provinciæ,
' ibidem in magno numero interfuerunt, inquiſitione diligenti, repertum
' fuit inter eoſdem, ac nobis detectum & delatum, quod Dominus
' *Johannes Oldcaſtellus* Miles, fuerat & eſt principalis Receptator, Fautor,
' Protector & Defenſor eorundem.

' Ac quod præſentium in Dioceſibus *Londinenſi*, *Roffenſi*, & *Herfordenſi*,
' ipſos Lollardos, ab Ordinariis ſive Dioceſanis locorum minime licen-
' tiatos, contra Conſtitutionem Provincialem inde factam, ad prædican-
' dum tranſmiſit, ac eorum prædicationibus nefariis interfuit, & Con-
' tradictores, ſi quos repererat, Minis & Terroribus, ac Gladii Secularis
' potentia, compeſcuit:

' Aſſerens & affirmans, inter cætera, quod nos, & Confratres noſtri, Suffra-

The Archbiſhop of Canterbury *againſt the Lord* Oldcaſtle, 1 Hen. 5. *in the Year* 1413.

THOMAS, by Divine Permiſſion, Archbiſhop of *Canterbury*, Primate of all *England*, and Legate of the Apoſtolick See, to our venerable Brother *Richard*, by the Grace of God, Biſhop of *London*, Health and brotherly Love in the Lord.

Whereas in our late Conſultation, concerning the Unity and Reformation of the Church of *England*, in Convocation of the Prelates and Clergy of our Province of *Canterbury*, laſt held in our Church of St. *Paul*'s, with the ſaid Prelates and Clergy; among other things it was concluded by us, and the ſaid Prelates and Clergy, next to impoſſible, to repair the rending of our Lord's ſeamleſs Coat, unleſs firſt of all certain great Men of the Kingdom, the Authors, Abettors, Protectors, Defenders and Entertainers of thoſe Hereticks, who are called Lollards, were ſeverely reprehended, and reclaim'd from their Errors, if other means fail'd, by the Cenſure of the Church, aſſiſted by the Secular Arm:

And accordingly, upon the moſt diligent Enquiry in the ſaid Convocation, by the Proxies of the Clergy, and others there aſſembled in great Numbers from each Dioceſs of our ſaid Province, it was found by them, and made known and preſented to us, that Sir *John Oldcaſtle* Knight, was and is the principal Receiver, Abettor, Patron and Defender of the ſame.

And that he ſent the Lollards to preach about in the Dioceſſes of *London*, *Rocheſter*, and *Hereford*, without any Licences from the Ordinaries or Dioceſans of the Places, contrary to the Synodical Conſtitution made for that purpoſe; and that he was preſent at the wicked Preachings of the ſame, and ſilenced all Oppoſers he met with, with Threatnings and Terrors, and the power of the Secular Sword:

Aſſerting and affirming, amongſt other things, that we and our Brethren

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* *On the Feaſt of St.* Simon *and* Jude.

† *See the King's Proclamation, with a Promiſe of Reward for apprehending him,* 11 Jan. 1414. Rym. Fœd. *Vol.* 9. *p.* 89.

‖ *From hence, as ſome ſuppoſe, call'd* Ty-burn.

‡ *It is pretended by ſome Hiſtorians, that he had been indicted and out-law'd for High Treaſon, and was executed upon that Out-lawry: The Indictment it ſelf is extant* [*See the* Appendix] *but it appears by many Marks to be a Forgery* [*for which ſee* Fox's Acts *and* Mon. *Vol.* 1. *p.* 655.] *the Sentence it ſelf plainly ſhewing he was executed in purſuance of the late Act.*

§ Stow's Annals, 355 *b.* 3 Holin. Chro. 561 *b.* 1 Hall's Chro. 58 *b.*

Suffraganei noſtræ Provinciæ, non habuimus nec habemus Poteſtatem aliquam hujuſmodi Conſtitutionem faciendi.

‘ Aliterque ſenſit & ſentit, ac dogmatizat & docet de Sacramentis Altaris & Pœnitentiæ, Peregrinationibus, & Adorationibus Imaginum, & Clavibus, quam Romana & Univerſalis Eccleſia docet & affirmat.

‘ Quare, ex parte eorundem Prælatorum & Cleri, tunc fuimus requiſiti, ut de & ſupra Præmiſſis, contra eundem Dominum *Oldcaſtellum* procedere dignaremur.

‘ Nos tamen, ob reverentiam Domini noſtri Regis (cujus & tunc idem Dominus *Johannes* Familiaris extiterat) ac ob honorem nihilominus Ordinis Militaris, una cum omnibus Confratribus & Suffraganeis noſtris dictæ noſtræ Provinciæ, tunc præſentibus, & magnâ parte Cleri ejuſdem noſtræ Provinciæ, ad præſentiam dicti Domini noſtri Regis, tunc in Manerio ſuo de *Kenyngton* exiſtentis, perſonaliter accidentis, contraque eundem Dominum *Johannem* querelam deponentes, defectus ejuſdem Domini *Johannis* partim recitavimus.

‘ Sed ad Rogatum ipſius Domini noſtri Regis, ipſum Dominum *Johannem* ſine dedecore ad unitatem Eccleſiæ reducere cupientes, omnem Executionem præmiſſorum ad tempus magnum diſtulimus.

‘ Sed demum quia præfatus Dominus noſter Rex circa Reductionem ejuſdem, poſt magnos labores, non profecit, prout idem Dominus noſter Rex nobis, tam verbo, quam in ſcriptis, referre dignabatur; nos ſubſequenter eundem Dominum *Johannem*, de & ſuper Præmiſſis perſonaliter reſponſurum coram nobis, ad certum terminum effluxum, decrevimus evocandum, ac Nuncium noſtrum cum his noſtris Citatoriis ad dictum Dominum *Johannem* tranſmiſimus, tunc in Caſtro ſuo de *Couulyng* degentem.

‘ Cui nuncio noſtro dedimus in mandatis, ut Caſtrum dicti Domini *Johannis* nullo modo ingrederetur niſi licentiatus, ſed per medium cujuſdam *Johannis Botteleri*, Oſtiarii Cameræ dicti Domini noſtri Regis, ipſum Dominum *Johannem* requireret quatenus aut daret dicto Nuncio noſtro Licentiam ingrediendi ut citaret eundem, aut ſaltem extra Caſtrum ſuum prædictum faceret ſui Copiam, ut ſic Citatione poſſet apprehendi.

‘ Qui tamen Dominus *Johannes* dicto *Johanni Bottelero*, ex parte Domini noſtri Regis ſibi Præmiſſa exponenti publice reſpondit, quod nullo modo citari voluit, nec Citationem ipſius aliqualiter tolerare.

‘ Noſque præterea, de præmiſſis nobis facta fide, ulterius legitime procedentes, facta nobis primitus fideli Relatione quod idem Dominus *Johannes* perſonali Citatione apprehendi non potuit, decrevimus eundem citandum per Edictum, in valvis Eccleſiæ Cathedralis *Roffenſis*, ſibi vicinæ, & non niſi modicum ultra tria Miliaria *Anglicana* a dicto Caſtro de *Couulyng* diſtantis, publice affingendum; prout eum ſic citari fecimus, & hujuſmodi Edictum noſtrum in valvis dictæ Eccleſiæ publice & patenter affigi, ad comparendum coram nobis ſecundo Die *Septembris* jam præteriti de & ſuper præmiſſis, atque nihilominus certis aliis Hæreticam pravitatem concernentibus, perſonaliter reſponſurum.

‘ Quo Die adveniente, nobis, in Capella majori, infra Caſtrum de Ledys, noſtræ Dioceſis, quod tunc inhabitabamus, & ubi tunc reſidebamus cum Curia noſtra, pro Tribunali ſedentibus, facta fide quæ requiritur, in præmiſſis, ac audita per nos & recepta relatione, juxta aſſertionem, & prout communiter prædicatur in partibus ubi dictus Dominus *Johannes* ſe incaſtellat & fortificat in Caſtro ſuo prædicto, ac Opiniones ſuas defendit, Claves Eccleſiæ ac Poteſtatem Archiepiſcopalem multipliciter contemnendo:

‘ Nos eundem Dominum *Johannem*, ſicut præmittitur, citatum publice & alta Voce præconizari fecimus, ac ſic præconizatum, diutius expectatum, & nullo modo comparentem, reputavimus, prout erat, meritò contumacem, & in pœnam contumaciæ ſuæ hujuſmodi ipſum in Scriptis excommunicavimus tunc ibidem.

‘ Et quia ex ſerie Præmiſſorum, & aliis perſpicuis Indiciis, & factorum Evidentiis, concepimus quod idem Dominus *Johannes* in defenſionem hujuſmodi Erroris ſui, contra Claves Eccleſiæ ſe fortificat & incaſtellat, ut præmittitur (quorum prætextu vehemens ſuſpicio Hæreſis atque Schiſmatis inſurgit) contra eundem decrevimus ipſum Dominum *Johannem* iteratò perſonaliter, ſi apprehendi poterit, alioquin per Edictum, ut prius, citandum, ut compareat coram nobis Die Sabbati, proximo poſt Feſtum Sancti Matthæi Apoſtoli & Evangeliſtæ, proxime futuro, cauſam rationabilem, ſi quam habeat, quare contra eundem ad graviora procedi non debeat tanquam publicum Hæreticum, Schiſmaticum, ac Hoſtem univerſalis Eccleſiæ, quare etiam pro tali pronunciari non debeat, ac auxilium Brachii Secularis contra eundem ſolemniter invocari; perſonaliter propoſiturum, ulteriuſque reſponſurum, facturum, & recepturum, circa omnia & ſingula Præmiſſa, quod Juſtitia ſuadebit.

‘ Quo termino (videlicet, Die Sabbati proximo poſt Feſtum Sancti Matthæi, prædicto 23. die ejuſdem Septembris adveniente) coram nobis, in Domo Capitulari Eccleſiæ Sancti Pauli Londinenſis, pro Tribunali ſedentibus, aſſidentibuſque nobis univerſalibus Confratribus noſtris, Dominis *Ricardo Londinenſi*, & *Henrico Wintonienſi*, Dei gratia Epiſcopis, comparuit perſonaliter Dominus *Robertus de Morley* Miles, Cuſtos Turris Londinenſis, ſecumque præfatum Dominum *Johannem Oldcaſtellum* Militem adduxit, & coram nobis collocavit:

‘ Nam parum ante per Regios Miniſtros comprehenſus eſt, & in Turri clauſus.

‘ Cui quidem Domino *Johanni Oldcaſtello* ſic perſonaliter præſenti, nos totam ſeriem facti, prout in Actis diei præcedentis continetur, bonis & modeſtis terminis, ac modo multum ſuavi recitavimus; videlicet,

‘ Quomodo idem Dominus *Johannes*, de et ſuper Articulis ſuperius recitatis, in Convocatione Prælatorum & Cleri dictæ noſtræ Provinciæ, ut præmittitur, detectus & delatus extiterat.

‘ Quomodoque citatus & propter ſuam contumaciam excommunicatus.

‘ Et, poſtquam ad hoc deventum fuerat, nos obtulimus paratos ad abſolvendum eundem.

‘ Ipſe tamen Dominus *Johannes*, ad hujuſmodi oblationem non advertens, dixit quod libenter recitaret nobis & dictis Confratribus meis, Fidem ſuam quam tenet & affirmat.

‘ Sicque, Licentia petita & obtenta, extraxit de Sinu ſuo quandam

‘ Schedulam

threnthe Suffragans of our Province, never had, nor have Authority to make any Conſtitution of this kind.

And concerning the Sacraments of the Altar and Penance, Pilgrimages, Adorations of Images, and the Power of the Keys, he has believed, and does believe, and dogmatizes and teaches otherwiſe than the *Roman* and Univerſal Church holds and affirms.

Wherefore the ſaid Prelates and Clergy then beſought us, that we would be pleaſed to proceed againſt the ſaid Sir *John Oldcaſtle*, for and upon the Premiſes.

But in reverence to our Lord the King, (with whom the ſaid Sir *John* was a great Favourite) and as much out of reſpect to the Order of Knighthood, with all our Brethren and Suffragans of our ſaid Province, and a great part of the Clergy of our ſaid Province, we waited on our ſaid Lord the King, at his Palace at *Kennyngton*; and making complaint againſt the ſaid Sir *John*, we in ſome meaſure repreſented the Errors of the ſaid Sir *John*.

But at the Inſtance of our Lord the King, and our own Deſire to reduce the ſaid Sir *John* to the Unity of the Church, without bringing him to open Shame, we deferr'd for a long time all execution of the Premiſes.

But foraſmuch as we had it from the King's own Mouth, and under his Hand, that all his pains to reclaim this Man had proved vain and ineffectual; we thereupon decreed to ſummon the ſaid Sir *John* to appear before us at a certain time now paſt, to anſwer for and concerning the Premiſes; and we ſent our Officer with theſe our Citations to the ſaid Sir *John*, then dwelling at his Caſtle of *Cowling*.

To which our Officer we gave in Command, that he ſhould not in any wiſe enter the Caſtle of the ſaid Sir *John* without leave; but by the Mediation of one *John Buttler*, Door-Keeper to the Privy-Chamber of our Lord the King, he ſhou'd apply to Sir *John* himſelf, for his leave to enter his Caſtle, in order to give him a Citation; or at leaſt that he wou'd appear without the Caſtle, and ſuffer the Citation to be ſerv'd upon him.

But Sir *John* publickly anſwered the ſaid *John Buttler*, tho' in the Premiſes he had made uſe of the King's Name, that he wou'd by no means be cited, nor ſuffer any manner of way ſuch Citation to be ſerved upon him.

Upon this faithful Account given us, that it was impoſſible to ſerve the ſaid Sir *John* perſonally with a Citation; and we being fully perſuaded thereof, decreed that he ſhould be cited by an Edict, which ſhould be publickly fix'd on the great Doors of the Cathedral Church in *Rocheſter*, which is but three *Engliſh* Miles from his ſaid Caſtle of *Cowling*. Accordingly we caus'd him to be cited, and our Edict to be fix'd in publick and open View on the great Doors of the ſaid Church, charging him to appear before us on the ſecond Day of *September* now paſt, perſonally to anſwer to and for the Premiſes, and other Allegations of Heretical Pravity againſt him.

On the Day appointed we held a Court in the greater Chapel in our Caſtle of *Leedes*, in our Dioceſs, in which we then lived and reſided with our Court; and after the neceſſary proof of the Premiſes, and we had heard and receiv'd the Relation, as it is commonly reported in the Parts where the ſaid Sir *John* immures and fortifies himſelf in his ſaid Caſtle, and defends his Opinions, by contemning the Keys of the Church, and impugning the Archiepiſcopal Authority:

We cauſed Proclamation aloud and in open Court, to be made for the ſaid Sir *John* to appear; and after Proclamation made, and we had long waited, and he not appearing, we juſtly pronounced him, as he was, Contumacious; and then and there return'd him excommunicated, in Puniſhment for ſo high a Contumacy.

And becauſe from the Series of the Premiſes, and other plain Demonſtrations and Evidences of Fact, we apprehend that the ſaid Sir *John* ſtrengthens and fortifies himſelf in defence of his Errours againſt the Authority of the Church, as is premiſed, (which gives great handle to ſuſpect him of Hereſy and Schiſm) we decreed againſt the ſaid Sir *John*, that he ſhou'd be a ſecond time cited perſonally, if he could be found; if not, by Edict, as before, to appear before us on the Saturday next after the Feaſt of the Apoſtle and Evangeliſt St. *Matthew* next enſuing, to ſhew, if he has reaſonable Cauſe, why he ought not to be proceeded againſt as a publick Heretick, Schiſmatick, and an Enemy of the Catholick Church, and why he ought not to be adjudg'd as ſuch, and the Aſſiſtance of the Secular Arm be ſolemnly call'd for againſt him; perſonally to propound, and further to anſwer, do, and receive concerning all and ſingular the Premiſes, what in Juſtice is meet.

At which time (namely, the Saturday next after the Feaſt of St. *Matthew*, being the 23d day of *September*) as we held our Court in the Chapter-houſe of St. *Pauls* in *London*, with our Brethren, *Richard* Lord Biſhop of *London*, and *Henry* of *Wincheſter* in Seſſions with us, Sir *Robert Morley* Knight and Lieutenant of the *Tower* of *London*, appear'd in Court with the ſaid Sir *John Oldcaſtle* Knight, and deliver'd him to us:

For he had been arreſted a little before by the King's Order, and confin'd to the *Tower*.

To the ſaid Sir *John Oldcaſtle* thus perſonally appearing, we repeated, in ſoft and moderate Terms, and in a manner very courteous and obliging, all our Proceedings againſt him, as they ſtand upon the Journal of the former Day; namely,

How he the ſaid Sir *John* ſtood preſented and charg'd by and upon the Articles above mention'd, in Convocation of the Prelates and Clergy of our ſaid Province.

And how he had been cited and excommunicated for his Contumacy.

And, tho' by his Default it was come to this, we notwithſtanding ſhew'd our ſelves ready and willing to abſolve him.

But he the ſaid Sir *John* taking no notice of this our Overture, anſwer'd, He would gladly make Profeſſion, before us and my ſaid Brethren, of the Faith which he believ'd and maintain'd.

For which we giving leave, as he deſir'd, he drew out of his Boſom an

indented

‘ Schedulam indentatam, & contenta in eadem publice ibidem perlegit, eandemque Schedulam nobis realiter tradidit & Articulorum, ſuper quibus extitit examinatus quæ eſt talis.

‘ *Ego* Johannes Oldcaſtellus, *Miles, Dominus de* Cobham, *cupio omnibus innoteſcere Chriſtianis, teſtemque adhiberi Deum, nunquam me aliter induxiſſe Animum, nec inducturum, ducente Domino, quam ut firma indubitataque fide omnia illius Sacramenta amplectar, quæcumque ab ipſo ad uſum ſuæ Eccleſiæ ſunt tradita:*

‘ *Præterea, ut in quatuor his Generibus Fidei meæ apertius exponam Sententiam,*

‘ *Principio, Credo reverendum hoc Altaris Sacramentum Chriſti exiſtere Corpus ſub Panis ſpecie, id ipſum inquam quod a Maria natum Matre, pro nobis crucifixum, mortuum ac ſepultum, ſit demum poſt triduanam mortem redivivum, ac ſubductum ad dextram immortalis Patris, nunc cum ipſo triumphat ſempiternæ Gloriæ particeps.*

‘ *Tum de Pœnitentiæ Sacramento ita habet Fides mea, ut credam apprime neceſſariam quibuſcunque ad ſalutem anhelantibus, peccatricis Vitæ correctionem, talemque ſubeundam prioris Vitæ Pœnitudinem, ex vera Confeſſione, indiſſimulata Contritione, legitimaque Satisfactione, qualem divinæ nobis præſcribunt Literæ alioqui nullam futuram ſalutis ſpem.*

‘ *Tertio de Imaginibus hunc in modum ſentio, ut non meræ Fidei eſſe illas exiſtimem, ſed, poſt Chriſti in Orbem invectam fidem, permittente Eccleſia, in uſum irrepſiſſe ut Laicis ac Ignaris ſubſerviant pro Calendario, quarum admonitu tum Chriſti tum Sanctorum aliorum Martyria ac pia exempla facilius in memoriæ Oculos traducantur: Cæterum, ſiquis hac Repræſentatione ſecus abutatur, ut his ipſis Sanctorum Simulacris cultum eum præſtet qui debetur iis quos repræſentant, imo huic potius cui Divi ipſi univerſum honorem debeant, hanc in eis collocantes fiduciam quæ in Deum unice ſit transferenda, ſive ita erga mutas has Imagines affecti, ut his aliqua parte ſint affixi, aut huic quam illi addictiores, mea Sententia nihil abſcedant ab Idololatria, criminaliter peccantes in Deum omnis honoris autorem.*

‘ *Poſtremo, ſic mihi perſuadeo, nullum in terris inquilinum eſſe, quin ſive ad vitam ſive ad ſupplicium peregrinetur: Quiſquis ita vitam inſtituerit ut in Præcepta Dei, quæ aut neſcit aut doceri non vult, impingat, huic fruſtra ſalutem expectari, etiamſi Orbis omnes angulos expatietur; contraque, qui illius obſervat Præcepta juſta, haud poſſe interire, quamvis nuſquam ille in toto vita perambulet Peregrinationis ergo, neque Romam, neque Cantuariam, neque Compoſtellam, ſive quocunque perambulare ſolet vulgus hominum.*

‘ Qua Schedula, cum iſtis Articulis contentis, in eadem, ut præfertur, per dictum Dominum *Johannem* perlecta, nos cum Confratribus noſtris prædictis, aliiſque pluribus Doctoribus & Peritis, ſuper his communicavimus, ac demum, de conſilio & aſſenſu eorundem, præfato Domino *Johanni Oldcaſtello* duximus tunc ibidem.

‘ Ecce Domine *Johannes!* in hac Schedula plura bona continentur & ſatis Catholica; ſed vos habetis terminum iſtum ad reſpondendum ſuper aliis, Errores & Hæreſes ſapientibus, quibus per contenta in hac Schedula non eſt plene reſponſum, & propterea vos oportet ad eadem & fidem veſtram, atque aſſertiones, in eadem Schedula expreſſas, circa eadem plenius declarare, (videlicet)

‘ An teneatis, credatis, & affirmetis quod in Sacramento Altaris, poſt Conſecrationem rite factam, remaneat Panis materialis vel non?

‘ Item, an teneatis, credatis, & affirmetis, quod in Sacramento Pœnitentiæ, neceſſarium fuerit, quod habens copiam Sacerdotis, confiteatur de peccatis ſuis Preſbytero, per Eccleſiam ordinato?

‘ Quibus ſic datis, inter multa & varia, per dictum *Johannem Oldcaſtellum* dicta, reſpondit expreſſe,

‘ *Se nolle prædicta aliter declarare, nec aliter quam in dicta Schedula continetur, aliqualiter ad eadem reſpondere.*

‘ Unde nos ipſi Domino *Johanni* compatientes benigno & affabili modo diximus tunc ibidem: Caveatis, Domine *Johannes!* quia ſi ad hæc, vobis objecta, clare non reſpondeatis in termino legitimo, vobis jam dato per Judicem, poterimus vos pronunciare & declarare Hæreticum.

‘ Ipſe tamen Dominus *Johannes* ſe tenuit ut prius, & noluit aliter reſpondere.

‘ Conſequenter tamen nos cum dictis Confratribus noſtris & aliis de Concilio noſtro conſuluimus, & de communicato Conſilio eorundem declaravimus eidem Domino *Johanni Oldcaſtello*, quid ſancta Romana Eccleſia, in hac materia ſequens dicta beatorum *Auguſtini*, *Hieronomi*, & *Ambroſii*, ac aliorum Sanctorum, determinavit; quas determinationes oportet quoſcunque Catholicos obſervare.

‘ Ad quæ idem Dominus *Johannes* reſpondit,

‘ *Quod bene voluit credere & obſervare quicquid ſancta Eccleſia determinavit, ac quicquid Deus voluit ſe credere & obſervare; ſed quod Dominus noſter Papa, Cardinales, Archiepiſcopi, & Epiſcopi, cæterique Prælati Eccleſiæ haberent poteſtatem talia determinandi, noluit ad tunc aliqualiter affirmare.*

‘ Unde nos, adhuc ſibi compatientes, ſub ſpe melioris deliberationis, promiſimus eidem Domino *Johanni* quod certas Determinationes, in materia antedicta, ac ſuper quibus idem Dominus *Johannes* debuit clarius reſpondere, ſibi ederemus in Scriptis, terminis Latinis, pro leviori intellectu ejuſdem, in Anglicum tranſlatis.

‘ Super quibus jubebamus eundem ac cordialiter rogavimus, ut in Die Lunæ, proximo tunc ſequente, plene & clare ſuum daret Reſponſum.

‘ Quas quidem Determinationes eodem die transferri fecimus, ac eidem Die Dominica proxima ſequenti, realiter liberari; quarum Determinationum tenor ſequitur & eſt talis:

‘ *Fides ac Determinatio Sanctæ Eccleſiæ Catholicæ de ſacroſancto Sacramento Altaris eſt hæc, quod poſt Conſecrationem in Miſſa à Sacerdote factam, materialis Panis commutetur in materiale Corpus Chriſti,*

‘ *Vinumque*

indented Writing; and there openly read the Contents of it, and afterwards with his own hand preſented to us the ſaid Writing, touching the Articles whereof he was accus'd; of which this is the Copy.

I *John Oldcaſtle* Knight, and Lord *Cobham*, deſire it may be known to all Chriſtians, and I call God to witneſs, that I never have entertain'd, and, by the help of God, never will entertain any Perſuaſion, which is not conſiſtent with a firm and undoubting belief of all the Sacraments, which were ordain'd and appointed by Chriſt himſelf for the uſe of his Church.

Moreover, that my Faith, as to the four Points alledg'd againſt me, might be more clearly underſtood, I declare,

Firſt of all, That I believe that in the adorable Sacrament of the Altar, the very Body of Chriſt does exiſt, under the Species of Bread: the ſame Body, I mean, that was born of his Mother *Mary*, that was crucify'd for us, that dy'd and was bury'd, and roſe again the third day from the Dead, and was exalted to the right hand of his eternal Father, where he now ſits Partaker with him in his Glory.

Then for the Sacrament of Penance, I believe it is chiefly neceſſary for all that deſire to be ſav'd, to amend their wicked Lives, and undergo ſuch a Penance for the ſinful Part of them, as by a true Confeſſion, an undiſſembled Contrition, and lawful Satisfaction, manifeſts it ſelf to be agreeable to the Holy Scriptures, without which none can hope for Salvation.

Thirdly, With reſpect to Images, I hold that they are no Ingredient in the Chriſtian Belief, but, long after the Publication of the Faith of Chriſt, were introduc'd into the World, by the permiſſion of the Church, to be as a Calendar to the Laity and the Ignorant, that by viſible Repreſentations of the Sufferings of Chriſt, and of the pious Lives and Martyrdoms of the Saints, the remembrance of thoſe things might the more eaſily be impreſs'd on their Minds: but if one ſo abuſes this Repreſentation, as to give that Worſhip to theſe Images of the Saints, which is due to the Saints themſelves, or rather to him to whom the Saints themſelves owe all Honour and Adoration, and putteth his Confidence in them, which is only to be plac'd in God, or is ſo affected towards theſe ſenfleſs Images, as to be more devoted to them than God, in my Opinion he is guilty of Idolatry, and wickedly ſins againſt God, the only Object of Worſhip.

Laſtly, I am fully perſuaded, that there is no abiding place upon Earth, but that we are all Pilgrims either on the way to Happineſs, or tending to Miſery: He that either knows not, or will not be inſtructed in, nor live in the Practice of the Commandments of God, it is in vain for him to expect Salvation, tho' he went on Pilgrimage into all Quarters of the World: And on the other ſide, he that lives in Obedience to the Holy Commandments of God, will undoubtedly be ſav'd, tho' he never went a ſtep on Pilgrimage in his Life, either to *Rome*, or *Canterbury*, or *Compoſtell*, or to any other Places.

Sir *John* having thus read his Writing, we with our Brethren the Biſhops abovemention'd, and divers other Doctors and learned Men, held a Conſultation about the Contents of it: and by the Advice and Agreement of the ſame, we thus apply'd to the ſaid Sir *John Oldcaſtle*, at the ſame Time and Place.

Look you, Sir *John!* in this Writing of yours, it muſt be confeſs'd there are contain'd many good things and right Catholick; but this day was appointed you to anſwer to other Points, which ſavour of Error and Hereſy, which your Declaration has not fully anſwer'd; and therefore you ought to explain yourſelf more clearly as to thoſe Points, and more particularly declare your Faith and Aſſertions expreſs'd in the ſaid Writing, *viz.*

Whether you hold, believe, and affirm, that in the Sacrament of the Altar, after Conſecration by the Prieſt, there remaineth material Bread or not?

Alſo, whether you hold, believe and affirm, that in the Sacrament of Penance, it is neceſſary, where a Prieſt can be had, to confeſs your Sins to the Prieſt, ordain'd by the Church?

To which State of the Queſtions, amongſt many other things ſaid by the ſaid Sir *John*, he anſwer'd expreſly,

That he would not declare himſelf otherways, nor return any other Anſwer, than in his ſaid Writing.

Upon this we reply'd to the ſaid Sir *John*, with much Patience, and in a courteous and affectionate manner; Sir *John*, it behoves you to conſider well of this matter, becauſe if you don't return a clear Anſwer to the Articles exhibited againſt you, within the time aſſign'd by the Judge, we may proceed to pronounce and declare you an Heretick.

But Sir *John* would abide by his former Anſwer, and afford us no other.

We therefore advis'd with our Brethren the Biſhops above-mention'd, and others of our Council, and by their Advice we declar'd to the ſaid Sir *John Oldcaſtle*, what the holy *Roman* Church, following the Doctrines of St. *Auſtin*, St. *Jerom*, and St. *Ambroſe*, and other Fathers, in theſe Points, had determin'd; which Determinations all Catholicks were oblig'd to ſubmit to.

To which the ſaid Sir *John* gave for Anſwer,

That he would readily aſſent to and obſerve the Determinations and Deciſions of holy Church, and all that God requir'd him to believe and obſerve; but that our Lord the Pope, the Cardinals, the Archbiſhops, and Biſhops, and other Prelates of the Church, had power to determine ſuch things, he would by no means affirm.

We, ſtill patiently bearing with him, in hopes he might be better inform'd by mature Deliberation, promis'd the ſaid Sir *John*, That certain Determinations, relating to the Points above-mention'd, and to which he ought to give a clearer Anſwer, ſhould be tranſlated from the *Latin* into *Engliſh*, that he might the more eaſily underſtand them, and they be publiſh'd for his Uſe.

And we commended and affectionately entreated him to prepare and deliver in a full and clear Anſwer to the ſame, on Monday next following.

And we caus'd theſe Determinations to be tranſlated the ſame Day, and to be deliver'd into his own hands the next Sunday, the Tenor of which Determinations is as follows:

The Faith and Determination of the holy Catholick Church, concerning the Sacrament of the Altar, is this, That after Conſecration by a Prieſt at Maſs, the Subſtance of the Bread is chang'd

into

‘ *Vinumque materiale in materialem Sanguinem Chriſti ; itaque jam nec Panis nec Vini poſt Conſecrationem ulla manet ſubſtantia quæ prius aderat.*

‘ Quid huic reſpondes Articulo ?

‘ *Item, Sancta Eccleſia determinavit quod quemlibet oportet Chriſtianum, in Terris degentem, peccata Sacerdoti, per Eccleſiam ordinato, confiteri ſi liceat accedere.*

‘ Ut hunc ſentis Articulum ?

‘ *Chriſtus ordinavit Sanctum* Petrum *ſuum Vicarium in Terris, cujus Sedes eſt Eccleſia Romana, concedens ac permittens eandem Autoritatem, quam tribuit* Petro, *& omnibus* Petri *Succeſſoribus, qui nunc dicuntur Papæ Romani ; quorum Poteſtate in Eccleſiis particularibus ordinantur ac conſtituuntur Prælati, utpote Archiepiſcopi, Epiſcopi, Curati, ceterique Gradus Eccleſiaſtici ; quibus Chriſtianus Populus debet Obedientiam, juxta Traditiones Romanæ Eccleſiæ.*

‘ Hæc eſt Determinatio ſanctæ Eccleſiæ.

‘ Ut ſentis hunc Articulum ?

‘ *Ad hæc, ſacroſancta Eccleſia determinavit quod ſit neceſſarium cuivis Chriſtiano peregrinari ad ſancta loca, ibique maxime adorare ſanctas reliquias Apoſtolorum, Martyrorum, ac Confeſſorum, omniumque Sanctorum quoſcunque approbavit Romana Eccleſia.*

‘ Ut hunc ſentis Articulum ?

‘ Quo Die Lunæ (videlicet) 25. Die dicti Menſis Septembris, coram nobis ac Confratribus noſtris prædictis, adjunctoque venerabili Fratre noſtro, *Benedicto*, Dei gratia, *Bangorenſi* Epiſcopo, juſſu & mandato noſtro.

‘ Conſiliarii & Miniſtri noſtri (videlicet) Magiſter *Henricus Ware*, Curiæ noſtræ Cantuarienſis Officialis ; *Philippus Morgan*, utriuſque Juris Doctor ; *Howellus Kyffen*, Decretorum ; *Johannes Kemp* & *Willielmus Karleton*, Legum Doctores ; ac *Johannes Witnam*, *Thomas Palmer*, *Robertus Womberwel*, *Johannes Withead*, *Robertus Chamberlayne*, *Richardus Dodyngtone* & *Thomas Walden*, ſacræ Paginæ Profeſſores ; necnon *Jacobus Cole* & *Johannes Stevyns*, Notarii noſtri, in hac parte aſſumpti ; jurati erant omnes & ſinguli ad ſancta Dei Evangelia, tacto Libro, quod de & ſuper materia prædicta, ac in tota Cauſa hujuſmodi ſuum fidele Conſilium & Miniſterium præberent, atque toto mundo.

‘ Conſequenterque comparuit dictus Dominus *Robertus de Morlay* Miles, Cuſtos Turris Londoniæ, ad Dominum *Johannem Oldcaſtellum* ſecum adduxit, & coram nobis ſtatuit.

‘ Cui nos affabiliter & ſuaviter recitavimus Acta prioris Diei, ac, ut prius, recitavimus quomodo excommunicatus fuerat & eſt idem Dominus *Johannes*, ac rogavimus & requiſivimus eundem quatenus peteret & admitteret in forma debita Eccleſiæ Abſolutionem.

‘ Cui idem Dominus *Johannes* expreſſe reſpondit tunc ibidem :

‘ *Quod nullam Abſolutionem in hac parte peterit nobis, ſed a ſolo Deo.*

‘ Conſequenter nos ſuavi & modeſto modo rogavimus & requiſivimus eundem Dominum *Johannem* quatenus, de & ſuper Articulis ſibi oppoſitis, ſuum clarum daret reſponſum.

‘ Et primo circa Sacramentum Euchariſtiæ ; ad quem Articulum, inter cætera, dixit & reſpondit,

‘ *Quod ſicut Chriſtus, hic in Terra degens, habuit in ſe Divinitatem & Humanitatem, Divinitatem tamen velatam & inviſibilem ſub Humanitate, quæ in eo aperta & viſibilis fuerat ; ſic in Sacramento Altaris, & verum Corpus & verus Panis (videlicet) quem videmus, & Corpus Chriſti, ſub eodem velatum, quod non videmus.*

‘ *Ac Fidem circa Sacramentum hujuſmodi, in Schedula prædicta, ſibi per nos tranſmiſſa, per ſanctam Romanam Eccleſiam & Doctores ſanctos determinatam, expreſſe negavit, Determinationem Eccleſiæ, fore aut eſſe ; ſed ſi eſt Determinatio Eccleſiæ, dixit quod eſt facta contra ſacram Scripturam, & poſtquam Eccleſia fuit dotata, & venenum effuſum in Eccleſia, & non ante.*

‘ Quo etiam ad ſacrum Pœnitentiæ & Confeſſionis dixit & aſſeruit expreſſe tunc ibidem ;

‘ *Quod, ſi quis, in aliquo gravi Peccato conſtitutus, a quo ipſe ſurgere neſcivit, expediret & bonum eſſet ſibi adire aliquem ſanctum & diſcretum Sacerdotem pro Conſilio ab eo habendo ; ſed quod confiteretur Peccatum ſuum proprio ſeu alteri Presbytero, etiamſi haberet Copiam ejuſdem, non eſt neceſſarium ad ſalutem, quia ſola Contritione Peccatum hujuſmodi deleri poſſet, & ipſe Peccator purgari.*

‘ Circa Adorationem ſanctæ Crucis dixit & aſſerit tunc ibidem,—*Quod ſolum Corpus Chriſti, quod pendebat in Cruce, debuit adorari, quia illud Corpus ſolum fuit & eſt Crux adoranda.*

‘ Et interrogatus, quem honorem faceret imagini ipſius Crucis ? Reſpondit verbis expreſſis,

‘ *Quod illum ſolum honorem faceret ſibi, quod bene mundaret eam, & poneret in bona cuſtodia.*

‘ Quoad poteſtatem Clavium, Dominum noſtrum Papam, Archiepiſcopos, Epiſcopos, & alios Prælatos dixit,

‘ *Quod Papa eſt verus Antichriſtus, hoc eſt Caput ejuſdem, Archiepiſcopi, Epiſcopi, necnon alii Prælati, Membra, & Fratres Cauda illius ; quibus Papæ, Archiepiſcopis, & Prælatis non eſt obediendum, niſi quatenus fuerint imitatores Chriſti & Petri, in vita, moribus, & converſatione : & quod ipſe eſt Succeſſor Petri, qui eſt in vita melior, & moribus purior, & nullus alius.*

‘ Ulterius dixit idem Dominus *Johannes* alta voce, manibus expanſis, alloquendo circumſtantes :

‘ *Iſti qui judicant & volunt damnare me, ſeducent vos omnes & ſeipſos, & vos ducent ad Infernum, ideo caveatis ab eis.*

‘ Quibus ſic per eum dictis, nos iterum ac ſæpius, flebili vultu, dictum Dominum *Johannem* alloquebamur eundem, verbis, quibus potuimus, exhortando ut ad Unitatem Eccleſiæ rediret, crederet & teneret quod Eccleſia Romana credit & tenet, qui reſpondebat expreſſe :

into the material Body of Chriſt, and the Subſtance of the Wine into the material Blood of Chriſt ; therefore after Conſecration, there remaineth not any of the Subſtance of Bread and Wine, which were in both before it.

What Anſwer do you give to this Article ?

Alſo Holy Church hath determin'd, that it is the Duty of every Chriſtian living in the World, to confeſs his Sins to a Prieſt, ordain'd by the Church, if he has the Opportunity of ſuch an one.

What are your Sentiments of this Article ?

Chriſt ordain'd St. *Peter* to be his Vicar on Earth, whoſe See is the Church of *Rome* ; and that all the Succeſſors of *Peter*, who are now call'd the Popes of *Rome*, ſhould ſucceed in the ſame Power and Authority with which Chriſt inveſted him ; by whoſe ſpecial Power are conſtituted and ordain'd Prelates in particular Churches, as Archbiſhops, Biſhops, Curates, and the reſt of the Eccleſiaſtical Order ; to which all Chriſtians owe Obedience, according to the Traditions of the *Roman* Church.

This is the Determination of Holy Church, and what is your Opinion of this Article ?

Beſides theſe, the Holy Church hath ordain'd, that it is the indiſpenſible Duty of every Chriſtian Man to go on Pilgrimage to holy Places, and there to adore the ſacred Relicks of the Apoſtles, Martyrs, and Confeſſors, and of all the Saints in the Calendar of the *Roman* Church.

How do you hold this Article ?

On Monday the 25th of the ſaid Month of *September*, we aſſembled with our Brethren the Biſhops above-mention'd, with the Addition, by our Order and Command, of our venerable Brother *Benedict*, by the Grace of God Biſhop of *Bangor*.

And our Counſellors and Officers, namely, Mr. *Henry Ware*, Official of *Canterbury* ; *Philip Morgan*, Doctor of both Laws ; *Howel Kyffen*, *John Kemp* and *William Carleton*, Doctors of the Canon Law ; and *John Witnam*, *Thomas Palmer*, *Robert Wombervel*, *John Withead*, *Robert Chamberlain*, *Richard Doddington*, and *Thomas Walden*, Doctors in Divinity ; alſo *James Cole* and *John Stevens*, our Notaries, both called to aſſiſt, and take the Examinations, in the Trial, were all and every of them ſworn upon the holy Evangeliſts, as they would anſwer it to God and the World, faithfully to diſcharge their Duty that day, in the Matter and Cauſe abovemention'd.

After this *Robert Morley* Knight, and Lieutenant of the *Tower* of *London*, brought Sir *John Oldcaſtle* into Court, and ſet him before us :

To whom we affably and courteouſly repeated the Proceedings of the former Day, and, as before, told him, How he had been, and ſtill ſtood, excommunicated ; and we intreated and beſought him to deſire and accept of Abſolution, in the uſual Form of the Church.

To which Sir *John* then anſwered in theſe words :

That he deſired no Abſolution from us, but only from God.

Upon this we pray'd the ſaid Sir *John*, with an Air of Kindneſs and Concern, to give his full Anſwer to the Articles exhibited againſt him.

And firſt we demanded what he had to ſay about the Sacrament of the Euchariſt ? To which Article, among other things he anſwer'd and ſaid,

That as Chriſt, when he liv'd upon Earth, had the Divine and Human Nature united together in him, and the Divine was veil'd and cover'd under the Human, and only the Human viſible and outward ; ſo in the Sacrament of the Altar, there is the very Body of Chriſt, and real Bread too ; the Bread is the thing we ſee with our Eyes, and the Body of Chriſt, which is hidden under it, we do not ſee.

And the Faith about this Sacrament of the Altar, expreſs'd in the Writing which we ſent to him, as determin'd by the holy *Roman* Church and the Fathers, he expreſly deny'd to be the Determination of the Church ; or if it was the Determination of the Church, he aſſerted ſuch Determination to be made contrary to the Holy Scriptures, and after the Church was aggrandiz'd and corrupted, and not before.

To the Articles about Penance and Confeſſion, he anſwer'd in theſe Words :

That if any one is ſo entangled in the Snares of Sin, that he knows not how to extricate himſelf, it is adviſable and expedient for him to apply to ſome pious and diſcreet Miniſter for Ghoſtly Counſel : but that he ſhould confeſs his Sin to his own or any other Prieſt, tho' he had never ſo good an Opportunity, is not at all neceſſary to Salvation, becauſe ſuch a Sin can be forgiven only upon Contrition, and on that alone can the Sinner be clear'd.

Concerning the Adoration of the holy Croſs, he then declared and aſſerted,—That the Body of Chriſt, which hung upon the Croſs, ought only to be worſhipp'd, becauſe that Body was and is the only adorable Croſs.

And being aſk'd what Honour he allow'd to the Image of the Croſs ? he anſwer'd in theſe expreſs words ;

That to keep it clean and in his Cloſet, was the only Honour he vouchſafed it.

As to the Power of the Keys, our Lord the Pope, Archbiſhops, Biſhops, and other Prelates, he ſaid,

The Pope and we together made up the true Antichriſt : the Pope was the Head, the Archbiſhops, Biſhops, and other Prelates the Body and Limbs, and the Friars the Tail of Antichriſt : To which Pope, Archbiſhops, and Prelates there was no Obedience due, any further than they imitated Chriſt, and *Peter*, in their Lives, Manners, and Converſation ; and that he is the Succeſſor of *Peter*, who follows him in the Purity of his Life and Converſation, and no other.

The ſaid Sir *John* added, addreſſing himſelf with a loud Voice, and extended Hands, to the People that were preſent :

Thoſe who ſit in Judgment upon me, and are deſirous to condemn me, will ſeduce you all, and themſelves, and lead ye to Hell ; take therefore good heed of them.

Upon his ſaying this, we apply'd to the ſaid Sir *John*, and beſought him, with Tears in our Eyes, and exhorted him in the moſt compaſſionate manner we could, to return to the Unity of the Church, to believe and embrace the Faith and Doctrine of holy Church. To which he return'd this peremptory Anſwer :

‘ *Se aliter non credere nec tenere quam ſuperius expreſſit.*

‘ Videntes ergo quod in eo, prout apparuit, proficere non potuimus, tandem, cum cordis amaritudine, proceſſimus ad Sententiæ diffinitivæ prolationem in hunc modum.

‘ In Dei nomine, Amen. Nos *Thomas*, permiſſione Divina, ſanctæ *Cantuarienſis* Eccleſiæ Archiepiſcopus, & Miniſter humilis, totius Angliæ Primas, & Apoſtolicæ ſedis Legatus.

‘ In quadam Cauſa ſive Negotio Hæreticæ Pravitatis, de & ſuper diverſis Articulis, ſuper quibus Dominus *Joannes Oldcaſtellus* Miles, Dominus de *Cobham*, coram nobis, in ultima Convocatione Cleri noſtræ Cantuarienſis Provinciæ, in Eccleſia Sancti Pauli Londini celebrata, poſt Inquiſitionem diligentem ibidem inde factam, detectus & delatus extiterat, & per noſtram Cantuarienſem Provinciam notorie & publice diffamatus, ad Denunciationem & Requiſitionem totius Cleri prædicti in eadem Convocatione, inde nobis factam, favore poſſibili, Deo teſte, quo potuimus, legitime procedentes contra eundem, ac Chriſti veſtigiis inhærendo, *qui non vult mortem Peccatoris, ſed magis ut convertatur & vivat*; nitebamur eundem corrigere, ac viis & modis, quibus potuimus atque ſcivimus, reducere ad Eccleſiæ Unitatem, declarantes eidem quod in hac parte ſancta Romana, & univerſalis Eccleſia docet, tenet, determinavit, & prædicat.

‘ Et quamvis eundem, in Fide Catholica devium invenerimus adeo duræ cervicis, quod Errorem ſuum noluit confiteri, aut ſe purgare de eodem, nec etiam deteſtari; eidem paterno nichilominus compatientes affectu, ac ipſius ſalutem cordialiter affectantes, præfiximus eidem certum terminum competentem ad deliberandum, &, ſi voluiſſet, pœnitendum & reformandum ſeipſum.

‘ Ac demum, eo quod eundem conſideravimus incorrigibilem, ſervatis primitus quæ in hac parte de Jure requiruntur, cum dolore & amaritudine Cordis, ad diffinitivæ Sententiæ prolationem procedimus in hunc modum.

‘ *Chriſti Nomine invocato, ipſumque ſolum habentes præ oculis, quia, per Acta inactitata, producta, exhibita, Signa, Evidentias, & Indicia, diverſa inſuper probationum genera, reperimus eundem Dominum* Joannem *Militem fore & eſſe Hæreticum, Hæreticiſque credentem, in fide & obſervantia ſacroſanctæ Romanæ & univerſalis Eccleſiæ, & præſertim circa Sacramenta Euchariſtiæ & Pœnitentiæ, quod, tanquam Iniquitatis & Tenebrarum Filius, in tantum obduravit Cor ſuum, ut non intelligat vocem ſui Paſtoris, nec velit Monitionibus allici, nec reduci Blanditiis, inveſtigatis primitus, rimatis, & diligenter penſatis meritis Cauſæ antedictæ, ipſiuſque Domini* Joannis *demeritis Culpis per ipſius damnabilem pertinaciam aggravatis:*

‘ *Nolentes quod is, qui nequam eſt, fiat nequior, & alios inficiat ſua Labe, de Conſilio & Aſſenſu, magnæ Diſcretionis & Sapientiæ Virorum, venerabilium Fratrum noſtrorum, Dominorum,* Ricardi Londonienſis, Henrici Wintonienſis, & Benedicti Bangorenſis, *Epiſcoporum, & aliorum nonnullorum, in ſacra Theologia, Decretis, & Jure Civili Doctorum, aliarumque religioſarum & peritarum Perſonarum, nobis aſſiſtentium, præfatum Dominum* Joannem Oldcaſtellum *Militem, Dominum de* Cobham, *de & ſuper hujuſmodi deteſtabili reatu convictum, & ad Eccleſiæ Unitatem pœnitentialiter redire nolentem, Hæreticum, ac in his quæ tenet, docet, determinavit, & prædicat ſacroſancta Romana & univerſalis Eccleſia, & præſertim in Articulis ſupraſcriptis, errantem judicavimus, declaravimus, & condemnavimus ſententialiter & diffinitive in his Scriptis, relinquentes eundem exnunc, tanquam Hæreticum, Judicio ſeculari.*

‘ *Ipſumque nihilominus Hæreticum, omneſque alios & ſingulos, qui eundem de cætero, in ſui favorem Erroris, receptaverit vel receptaverint, defenſaverit ſeu defenſaverint, ſibi Conſilium, Auxilium, ſeu Favorem in hac parte præbuit vel præbuerint, tanquam Fautores, Receptatores, & Defenſatores Hæreticorum, excommunicavimus, & excommunicatos denunciamus etiam in his Scriptis.*

‘ Et ut iſta Præmiſſa omnibus in Chriſto credentibus, innoteſcant, veſtræ Fraternitati committimus & commendamus, quatenus prefatum Dominum *Johannem Oldcaſtellum*, ſicut præmittitur, per nos fuiſſe & eſſe damnatum, Hæreticum, Schiſmaticum, & in Articulis ſupraſcriptis errantem, omneſque alios & ſingulos, qui eundem Dominum *Johannem* de cætero, in ſui favorem Erroris, receptaverit vel receptaverint, defenſaverit vel defenſaverint, aut ſibi Auxilium, Conſilium, vel Favorem in hac parte præbuerit vel præbuerint, tanquam Receptatores, Fautores, & Defenſatores Hæreticorum, per dictam noſtram Sententiam diffinitivam, excommunicatos in Eccleſia veſtra, per veſtras Civitates & Diœceſes, per ſingulos Subditos veſtros & Curatos earundem, in Eccleſiis ſuis, cum major in eiſdem affuerit Populi Multitudo, alta & intelligibili Voce & in Lingua materna, prout ſupra ſerioſius continetur in hoc proceſſu, declarent, publicent, & exponent, ut ſic Opiniones erroneæ Populi, qui aliter concepit forte in hac materia quemadmodum ſe habet rei veritas, hac Declaratione publica reſcindantur.

‘ Quod idem per vos ſingulis Confratribus noſtris, noſtræ Cantuarienſis Provinciæ Suffraganeis, de verbo ad verbum, reſcribi & innoteſci volumus & mandamus, ut ipſi omnes & ſinguli, per ſuas Civitates & Diœceſes, modum & formam hujus noſtri proceſſus, dictam etiam per nos latam Sententiam, & cætera omnia & ſingula contenta in iiſdem, publicent, intiment, & declarent, & conſimiliter per Subditos ſuos & Curatos faciant publicari.

‘ De Die vero Receptionis præſentium, & quid feceritis in Præmiſſis, & quomodo hoc noſtrum Mandatum fueritis & fuerint executi, debite & diſtincte certificetis & certificent, dicto Negotio expedito, Litteris veſtris & ſuis Patentibus, habentibus hunc tenorem.

‘ Datum in Manerio de *Maydeſton*, x. die Menſis Octobris, Anno 1413, & noſtræ Tranſlationis Anno 18.

That he would not believe nor maintain otherwiſe than he had before declar'd.

Seeing therefore he was ſo harden'd in his Errors, that we had no hopes of working on him to renounce them, we proceeded with regret and bitterneſs of Heart, to pronounce the following definitive Sentence.

In the Name of God, *Amen.* We *Thomas*, by Divine Permiſſion, Archbiſhop and humble Miniſter of the holy Church of *Canterbury*, Primate of all *England*, and Legate of the Apoſtolick See.

Whereas in our laſt Convocation of the Clergy of our Province of *Canterbury*, holden in the Cathedral Church of St. *Paul*, *London*, after Conſultation upon ſeveral heretical Tenets, and ſtrict Inquiry made who were the Authors and Abettors of the ſame, Sir *John Oldcaſtle* Knight, and Lord *Cobham*, was detected and preſented of and for the ſaid Hereſies, as having given great Scandal throughout our Province of *Canterbury*, by openly and avowedly profeſſing the ſame; upon the Addreſs and Repreſentation of all the Clergy in the ſaid Convocation for a Proceſs, we proceeded according to Law againſt the ſaid Sir *John*, and (as God knows) with all the Equity and Favour that could poſſibly be ſhew'd: and following the ſteps of Chriſt, *who would not the Death of a Sinner, but rather that he ſhould be converted and live*, we endeavour'd to reclaim the ſaid Sir *John*, and try'd all ways and means that we could deviſe to reduce him to the Unity of the Church, declaring unto him the Doctrines, Tenets, and Determinations of the Holy *Roman* and Univerſal Church, relating to thoſe Points.

And tho' we found he had apoſtatiz'd from the Catholick Faith, and was ſo confirm'd in his Error, that he would not confeſs it, nor clear himſelf of it, nor diſavow it; yet forbearing him in paternal Love, and out of a ſincere Deſire of his Salvation, we allow'd him a competent time for Deliberation, and wherein he might repent and reform himſelf.

But foraſmuch as we have experienc'd the ſaid Sir *John* to be incorrigible and irreclaimable, we at laſt with Grief and Heavineſs of Heart, in obedience to what the Law requires, proceed to give Sentence definitive againſt him.

In the Name of Chriſt, and having his Honour only in view; foraſmuch as we have found by divers Acts done, produc'd, and exhibited by Indications, Preſumptions and Proofs, and many other kinds of Evidence, that Sir *John Oldcaſtle* Knight is really and truly an Heretick, and a Follower of Hereticks, againſt the Faith and Religion of the holy *Roman* and Catholick Church, and particularly with reſpect to the Sacraments of the Euchariſt and Penance; that, as a Child of Darkneſs and Iniquity, he has hardened his Heart to that degree, that he refuſes to hear the Voice of his Paſtor, and will not be prevailed upon by gentle Monitions, nor reduc'd by ſoft Perſuaſions, tho' the Merits of our Cauſe, and the Demerits of his own, he had diligently canvaſs'd and weigh'd, and ſo aggravated the Wickedneſs of his Error by his damnable Obſtinacy:

We unwilling that he ſhould contract further Degrees of Guilt, by infecting others with the Contagion of Hereſy, by the Advice and Conſent of Men famous for Diſcretion and Wiſdom, our venerable Brothers, the Lords, *Richard* Biſhop of *London*, *Henry* Biſhop of *Wincheſter*, and *Benedict* Biſhop of *Bangor*, and ſome other Doctors of Divinity, and of Canon and Civil Law, and other religious and learned Perſons, call'd to our Aſſiſtance; we do peremptorily and definitively, by this preſent Writing, judge, declare, and condemn the ſaid Sir *John Oldcaſtle* for an Heretick, convicted of the deteſtable Crime of Hereſy, and utterly refuſing to be reconcil'd to the Church by Repentance, and an Apoſtate from thoſe Doctrines, in the above-mention'd Articles eſpecially, which the holy *Roman* and Catholick Church holds, teaches, and hath determin'd; and we leave him from henceforth as an Heretick, to the ſecular Judgment.

And furthermore, we have excommunicated, and by theſe Preſents do denounce excommunicated, the ſaid Heretick, and all others, who ſhall hereafter, in favour of his Error, countenance, defend, or afford him any Counſel, Aid, or Comfort; deeming ſuch Perſon or Perſons as Abettors, Encouragers, and Defenders of Hereticks.

And that theſe Premiſes might be promulg'd and known to all Chriſtians, we charge and enjoin you, foraſmuch as the ſaid Sir *John Oldcaſtle* was and is condemn'd by us for an Heretick, a Schiſmatick. and as erroneous in the above-mention'd Articles, and alſo all other Perſons, who out of Favour or Affection to his Error, ſhall hereafter countenance, defend, or afford him any Counſel, Aid, or Comfort, are excommunicated, as deem'd Abettors, Encouragers, and Patrons of Hereticks, according to our ſaid definitive Sentence, to give Orders and Directions to your Prieſts and Curates of your reſpective Cities and Dioceſes, in their reſpective Churches, when there is the greateſt Congregation of People, to declare, publiſh, and expoſe with loud and audible Voice, and in our Mother Tongue, the ſaid Heretick, and Hereticks, according to our ſaid definitive Sentence, and the Order obſerv'd in this Proceſs; to the end that any wrong Notions, which poſſibly the People may have given into concerning theſe Matters, and our Proceedings upon them, might be rectify'd by this publick Declaration.

Moreover, we will and command you the Biſhops here preſent, to take Copies hereof word for word, and ſend one to each Biſhop of our Province of *Canterbury*, that ſo all and every of them may publiſh, intimate, and declare, and cauſe by their reſpective Prieſts and Curates to be publiſh'd, in their ſeveral Cities and Dioceſes, the Manner and Form of this our Proceeding, and alſo the ſaid Sentence pronounc'd by us, and all and ſingular Contents of the ſame.

And, laſtly, we require of you and them, that this Buſineſs be diſpatch'd with all convenient Expedition; and that you and they do duly and punctually adviſe and certify us of the time of receiving theſe Preſents, and how this our Command has been executed, by your and their Letters Patent, according to the Tenor hereof.

Given at our Palace at *Maydſtone*, on the 10th day of *October*, in the year of our Lord 1413, and of our Tranſlation the 18th.

IV. *The Trial of Sir* THOMAS MORE *Knight, Lord Chancellor of* England, *for* High-Treaſon *in denying the King's Supremacy,* May 7. 1535. *the 26th of* Henry VIII.

A Bill being preferred in Parliament, *November* 1534 to attaint *Elizabeth Barton*, and ſeveral others of High-Treaſon, Biſhop *Fiſher* and Sir *Thomas More* were alſo brought into it for Miſpriſion of Treaſon for the refuſing of the Oath of Succeſſion—ſays my Lord *Herbert*. The ſame Author avows the Bill did ſo paſs; but Sir *Thomas*'s Great-Grandſon, in his Life, ſhews the contrary, and that notwithſtanding the Archbiſhop of *Canterbury*, the Lord Chancellor, Duke of *Norfolk*, and Secretary *Cromwell*, by the King's Command, went to him and preſſed him to a Compliance; yet the Chancellor influenc'd the King ſo far, that the matter of Miſpriſion was dropt.

Sir *Thomas* was alſo examin'd at other times by the Lord Chancellor, Dukes of *Norfolk* and *Suffolk*, Mr. Secretary, and others of the Privy-Council, who preſs'd him, with all the Arguments they could think of, to own the King's Supremacy in direct and open Terms, or plainly to deny it; but he being loth to aggravate the King's Diſpleaſure, would ſay no more than that the Statute was like a two-edged Sword, for if he ſpoke againſt it, he ſhould be the Cauſe of the Death of his Body; and if he aſſented to it, he ſhould purchaſe the Death of his Soul. Thoſe Examinations being over, *Richard Rich*, newly made Sollicitor General, and afterwards Lord *Rich*, with Sir *Richard Southwell*, and Mr. *Palmer*, Secretary *Cromwell*'s Man, were ſent by the King to take away his Books. *Rich* pretending Friendſhip to him, and proteſting he had no Commiſſion to talk with him about the former Affair of the Supremacy, he put a Caſe to him thus: If it were enacted by Parliament that *Richard Rich* ſhould be King, and that it ſhould be Treaſon in any body to deny it, what Offence it were to contravene that Act? Sir *Thomas More* anſwer'd, that he ſhould offend if he ſaid ſo, becauſe he was bound by the Act; but that this was *caſus levis*. Whereupon Sir *Thomas* ſaid, he would propoſe a higher Caſe: Suppoſe it were enacted by Parliament, *Quod Deus non ſit Deus*, and that it were Treaſon to contravene, whether it were not an Offence to ſay it, according to the ſaid Act? *Rich* reply'd, yea; but ſaid withal, I will propoſe a middle Caſe, becauſe this is too high: The King, you know, is conſtituted ſupreme Head of the Church upon Earth; why ſhould not you, Maſter *More*, accept him for ſuch? as you would me, if I were made King by the aforeſaid Suppoſition. *More* anſwered, the Caſe was not the ſame, becauſe, ſaid he, a Parliament can make a King, and depoſe him; and that every Parliament-Man may give his Conſent thereunto, but that a Subject cannot be bound ſo in the Caſe of Supremacy. *Quia conſenſum ab eo ad Parliamentum præbere non poteſt* (ſo ſays my Lord *Herbert* it is in my Copy if it be not miſtaken,) *& quanquam Rex ſic acceptus ſit in* Anglia, *plurimæ tamen Partes exteræ idem non affirmant.*

Sir *Thomas* having continued a Priſoner in the *Tower* ſomewhat more than a Twelvemonth, for he was committed about the middle of *April* 1534, and was brought to his Trial on the 7th of *May* 1535. he went into the Court leaning on his Staff, becauſe he was much weakened by his Impriſonment, but appeared with a cheerful and compoſed Countenance. The Perſons conſtituted to try him, were,

Sir *Thomas Audley*, Lord Chancellor,
Thomas Duke of *Norfolk*,
Sir *John Fitz-James*, Lord Chief Juſtice,
Sir *John Baldwin*,
Sir *Richard Leiceſter*,
Sir *John Port*,
Sir *John Spelman*,
Sir *Walter Luke*,
Sir *Anthony Fitz-Herbert*.

The Indictment was very long, but where to procure a Copy of it, I could never learn; 'tis ſaid in general, it contain'd all the Crimes that could be laid to the charge of any notorious Malefactor; and Sir *Thomas* profeſſed it was ſo long, that he could ſcarce remember the third part of what was objected therein againſt him. It was read aloud by the Attorney-General; and Sir *Thomas*'s mortal Sin ſeem'd plainly to be his refuſing the Oath of Succeſſion, already mention'd.

To prove this, his double Examination in the *Tower* was alledged againſt him, the firſt before Secretary *Cromwell*, *Thomas Beade*, *John Tregonnel*, *&c.* to whom he profeſſed he had given over all Thoughts of Titles either to Popes or Princes, tho' the whole World ſhould be given him, he being fully determined only to ſerve God. The ſecond time before the Lord Chancellor, the Duke of *Suffolk*, Earl of *Wiltſhire*, and others, before whom he compared that Oath to a two-edged Sword, as before obſerved.

Preſently after the Indictment was read, the Lord Chancellor and the Duke of *Norfolk* ſpoke to him to this effect: *You ſee now how grievouſly you have offended his Majeſty; yet he is ſo very merciful, that if you will lay aſide your Obſtinacy, and change your Opinion, we hope you may obtain Pardon and Favour in his ſight.* But Sir *Thomas* ſtoutly reply'd, Moſt noble Lords, I have great reaſon to return thanks to your Honours for this your great Civility, but I beſeech Almighty God, that I may continue in the Mind I am in, thro' his Grace, unto Death.

Then having Intimation given that he might ſay what he thought fit in his own Defence, he began thus: When I conſider the length of my Accuſation, and what heinous Matters are laid to my charge, I am ſtruck with Fear, leſt my Memory and Underſtanding, which are both impaired, together with my bodily Health, thro' a long Indiſpoſition contracted by my Impriſonment, ſhould now fail me ſo far, as to make me incapable of making ſuch ready Anſwers in my Defence, as otherwiſe I might have done.

The Court being ſenſible of his Weakneſs, ordered a Chair to be brought in, wherein he might ſeat himſelf, which he did accordingly, and then went on thus. This my Indictment, if I miſtake not, conſiſts of four principal Heads, each of which I purpoſe, God willing, to anſwer in order. As to the firſt Crime objected againſt me, that I have been an Enemy out of ſtubbornneſs of Mind to the King's ſecond Marriage; I confeſs, I always told his Majeſty my Opinion of it, according to the Dictates of my Conſcience, which I neither ever would, nor ought to have concealed: for which I am ſo far from thinking my ſelf guilty of High-Treaſon, that on the contrary, being required to give my Opinion by ſo great a Prince in an Affair of ſo much importance, upon which the Peace of the Kingdom depended; I ſhould have baſely flatter'd him, and my own Conſcience, had not I ſpoke the Truth as I thought: Then indeed I might juſtly have been eſteemed a moſt wicked Subject, and a perfidious Traitor to God. If I have offended the King herein; if it can be an Offence to tell one's Mind freely when his Sovereign puts the Queſtion to him; I ſuppoſe I have been ſufficiently puniſh'd already for the Fault, by the great Afflictions I have endured, by the loſs of my Eſtate, and my tedious Impriſonment, which has continued already near fifteen Months.

The ſecond Charge againſt me is, That I have violated the Act made in the laſt Parliament: that is, being a Priſoner, and twice examined, I would not, out of a malignant, perfidious, obſtinate and traitorous Mind, tell them my Opinion, whether the King was Supreme Head of the Church or not; but confeſſed then, that I had nothing to do with that Act, as to the Juſtice or Injuſtice of it, becauſe I had no Benefice in the Church: yet then I proteſted, that I had never ſaid nor done any thing againſt it; neither can any one Word or Action of mine be alledged, or produced, to make me culpable. Nay, this I own was then my Anſwer to their Honours, that I would think of nothing elſe hereafter, but of the bitter Paſſion of our Bleſſed Saviour, and of my Exit out of this miſerable World. I wiſh no body any harm, and if this does not keep me alive, I deſire not to live; by all which I know, I would not tranſgreſs any Law, or become guilty of any treaſonable Crime: for this Statute, nor no other Law in the World can puniſh any Man for his Silence, ſeeing they can do no more than puniſh Words or Deeds; 'tis God only that is the Judge of the Secrets of our Hearts.

* *Attorney*. Sir *Thomas*, tho' we have not one Word or Deed of yours to object againſt you, yet we have your Silence, which is an evident ſign of the Malice of your Heart: becauſe no dutiful Subject, being lawfully aſk'd this Queſtion, will refuſe to anſwer it.

* *Chriſtopher Hales.*

Sir *Thomas More*. Sir, my Silence is no ſign of any Malice in my Heart, which the King himſelf muſt own by my Conduct upon divers Occaſions; neither doth it convince any Man of the Breach of the Law: for it is a Maxim amongſt the Civilians and Canoniſts, *Qui tacet conſentire videtur*, he that holds his peace, ſeems to give his Conſent. And as to what you ſay, that no good Subject will refuſe to give a direct Anſwer; I do really think it to be the Duty of every good Subject, except he be ſuch a Subject as will be a bad Chriſtian, rather to obey God than Man; to be more cautious to offend his Conſcience, than of any thing elſe in the whole World; eſpecially if his Conſcience be not the Occaſion of ſome Sedition and great Injury to his Prince and Country: for I do here ſincerely proteſt, that I never revealed it to any Man alive.

I come now to the third principal Article in my Indictment, by which I am accuſed of malicious Attempts, traitorous Endeavours, and perfidious Practices againſt that Statute, as the Words therein do alledge, becauſe I wrote, while in the *Tower*, divers Packets of Letters to Biſhop *Fiſher*; whereby I exhorted him to violate the ſame Law, and encouraged him in the like Obſtinacy. I do inſiſt that theſe Letters be produced and read in Court, by which I may be either acquitted or convinced of a Lye; but becauſe you ſay the Biſhop burnt them all, I will here tell you the whole truth of the matter. Some of my Letters related only to our private Affairs, as about our old Friendſhip and Acquaintance: One of them was in anſwer to his, wherein he deſired me to let him know what Anſwers I made upon my Examinations concerning the Oath of Supremacy; and what I wrote to him upon it was this, That I had already ſettled my Conſcience, and let him ſatisfy his according to his own Mind. God is my Witneſs, and as I hope he will ſave my Soul, I gave him no other Anſwer; and this I preſume is no Breach of the Laws.

As to the principal Crime objected againſt me, that I ſhould ſay upon my Examination in the *Tower*, That this Law was like a two-edged Sword; for in conſenting to it, I ſhould endanger my Soul, and in rejecting it ſhould loſe my Life: 'tis evidently concluded, as you ſay, from this Anſwer, becauſe *Fiſher* made the like, that he was in the ſame Conſpiracy. To this I reply, That my Anſwer there was conditional, if there were both danger either in allowing or diſallowing that Act; and therefore, like a two-edged Sword, it ſeem'd a hard thing it ſhould be put upon me, who had never hitherto contradicted it either in Word or Deed. Theſe were my Words; what the Biſhop anſwered, I know not: if his Anſwer was like mine, it did not proceed from any Conſpiracy of ours, but from the Similitude of our Learning and Underſtanding. To conclude, I do ſincerely avouch, that I never ſpoke a Word againſt this Law to any Man living, tho' perhaps the King's Majeſty has been told the contrary.

There was little or no reply made to this full Anſwer, by Mr. Attorney, or any body elſe; the word Malice was what was principally inſiſted on, and in the mouths of the whole Court, tho' for proof of it no body could produce either Words or Actions: nevertheleſs, to ſet the beſt gloſs that could be upon the matter, Mr. *Rich* was called to give Evidence in open Court upon Oath, which he immediately did, affirming what we have already related concerning a Conference between him and Sir *Thomas* in the *Tower*. To which Sir *Thomas* made anſwer, If I were a Man, my Lords, that had no regard to my Oath, I had had no occaſion to be here at this time, as is well known to every body, as a Criminal; and if this Oath, Mr. *Rich*, which you have taken be true, then I pray I may never ſee God's Face, which, were it otherwiſe, is an Imprecation I would not be guilty of to gain the whole World.

More having recited in the Face of the Court all the Diſcourſe they had together in the *Tower*, as it truly and ſincerely was, he added: In good Faith, Mr. *Rich*, I am more concerned for your Perjury, than my own Danger; and I muſt tell you, that neither my ſelf, nor any body elſe to my knowledge, ever took you to be a Man of ſuch Reputation, that I or any other would have any thing to do with you in a Matter of Importance. You know that I have been acquainted with your manner of Life and Converſation a long time, even from your Youth to the preſent Juncture, for we lived in the ſame Pariſh; and you very well know, I am ſorry I am forced to ſpeak it, you always lay under the Odium of a very lying Tongue, of a great Gameſter, and of no good Name and Character either there or in the *Temple*, where you was educated. Can it therefore ſeem likely to your Lordſhips, that I ſhould in ſo weighty an Affair as this, act ſo unadviſedly, as to truſt Mr. *Rich*, a Man I had always ſo mean an Opinion of, in reference to his Truth and Honeſty, ſo very much before my Sovereign Lord the King, to whom I am ſo deeply indebted for his manifold Favours, or any of his noble and grave Counſellors, that I ſhould only impart to Mr. *Rich* the Secrets of my Conſcience in reſpect to the King's Supremacy, the particular Subject, and only point about which I have been ſo long preſſed to explain myſelf? which I never did, nor never would reveal, when the Act was once made, either to the King himſelf, or any of his Privy-Counſellors, as is well known to your Honours, who have been ſent upon no other account at ſeveral times by his Majeſty to me in the *Tower*. I refer it to your Judgments, my Lords, whether this can ſeem credible to any of your Lordſhips.

But ſuppoſing what Mr. *Rich* has ſwore ſhould be true, ſeeing the Words were ſpoke in familiar and private Converſation, and that there was nothing at all aſſerted, but only Caſes put without any offenſive Circumſtances; it cannot in juſtice be ſaid, that they were ſpoke maliciouſly, and where there is no Malice, there is no Offence. Beſides, my Lords, I cannot think ſo many reverend Biſhops, ſo many honourable Perſonages, and ſo many virtuous and learned Men, of whom the Parliament conſiſted in the enacting of that Law, ever meant to have any Man puniſh'd with Death, in whom no Malice could be found, taking the Word *Malitia* for *Malevolentia*; for if *Malitia* be taken in a general Signification for any Crime, there is no Man can be free: Wherefore this word *Maliciouſly* is ſo far ſignificant in this Statute, as the word *Forcible* is in that of *Forcible Entry*; for in that Caſe if any enter peaceably, and puts his Adverſary out forcibly, it is no Offence; but if he enters forcibly, he ſhall be puniſhed by that Statute.

Beſides, all the unſpeakable Goodneſs of his Majeſty towards me, who has been ſo many ways my ſingular good and gracious Lord, who has ſo dearly loved and truſted me, even from my firſt Entrance into his Royal Service, vouchſafing to honour me with the Dignity of being one of his Privy-Council, and has moſt generouſly promoted me to Offices of great Reputation and Honour, and laſtly to that of Lord High-Chancellor, which Honour he never did to any Lay-man before, the ſame being the higheſt Dignity in this famous Kingdom, and next to the King's Royal Perſon, ſo far beyond my Merits and Qualifications; honouring and exalting me by his incomparable Benignity, for theſe twenty Years and upwards, heaping continual Favours upon me; and now at laſt, at my own humble Requeſt, giving me liberty to dedicate the Remainder of my Life to the Service of God for the better ſaving of my Soul, has been pleaſed to diſcharge and free me from that weighty Dignity; before which he had ſtill heaped more and more Honours upon me: I ſay, all this his Majeſty's Bounty, ſo long and ſo plentifully conferred upon me, is enough, in my opinion, to invalidate the ſcandalous Accuſation ſo injuriouſly ſurmized and urged by this Man againſt me.

This touched the Reputation of Mr. *Rich* to the very quick, and was a Slur that could not be effaced, without the utmoſt difficulty; and the only way to do it, was, if poſſible, to produce ſubſtantial and creditable Witneſſes to atteſt the contrary: and therefore he cauſed Sir *Richard Southwell*, and Mr. *Palmer*, who were in the ſame Room with Sir *Thomas* and Mr. *Rich* when they conferred together, to be ſworn as to the Words that paſſed between them. Whereupon Mr. *Palmer* depoſed, *That he was ſo buſy in thruſting Sir* Thomas'*s Books into a Sack, that he took no notice of their Talk.* And Sir *R. Southwell* likewiſe ſwore, *That becauſe his Buſineſs was only to take care of conveying his Books away, he gave no ear to their Diſcourſe.*

Sir *Thomas* having urged other Reaſons in his own Defence, to the diſcrediting of Mr. *Rich*'s Evidence; the Judge proceeded to give the Charge to the Jury. Whether Sir *Thomas* had challenged any of the Pannel, when they were returned to ſerve, does not appear; but the twelve Perſons on whoſe Verdict his Life now depended, were theſe:

Sir *Thomas Palmer*, Knt.
Sir *Thomas Peirt*, Knt.
George Lovell, Eſq;
Thomas Burbage, Eſq;
Geoffry Chamber, Gent.
Edward Stockmore, Gent.

Jaſper Leake, Gent.
William Browne, Gent.
Thomas Billington, Gent.
John Parnel, Gent.
Richard Bellame, Gent.
George Stoakes, Gent.

Now the Jury having withdrawn, ſcarce were out a quarter of an Hour before they return'd with their Verdict, by which they found the Priſoner guilty; upon which the Lord Chancellor, as chief in the Commiſſion for this Trial, immediately began to proceed to Judgment: which Sir *Thomas* obſerving, he ſaid to him, My Lord, when I was concern'd in the Law, the Practice in ſuch Caſes was to aſk the Priſoner before Sentence, whether he had any thing to offer why Judgment ſhould not be pronounced againſt him. The Lord Chancellor hereupon ſtopping his Sentence, wherein he had already proceeded in part, aſked Sir *Thomas*, *What he was able to ſay to the contrary?* who preſently made anſwer in theſe Words: For as much as, my Lords, this Indictment is grounded upon an Act of Parliament, directly repugnant to the Laws of God and his Holy Church, the Supreme Government of which, or of any part thereof, no Temporal Perſon may by any Law preſume to take upon him, being what of right belongs to the See of *Rome*, which by ſpecial Prerogative was granted by the Mouth of our Saviour Chriſt himſelf to St. *Peter*, and the Biſhops of *Rome* his Succeſſors only, whilſt he lived, and was perſonally preſent here on Earth: it is therefore, amongſt Catholick Chriſtians, inſufficient in Law, to charge any Chriſtian to obey it. And in order to the Proof of his Aſſertion, he declared among other things, That whereas this Kingdom alone being but one Member, and a ſmall part of the Church, was not to make a particular Law diſagreeing with the general Law of Chriſt's univerſal Catholick Church, no more than the City of *London*, being but one Member in reſpect to the whole Kingdom, might enact a Law againſt an Act of Parliament, to be binding to the whole Realm: ſo he ſhewed farther, That Law was even contrary to the Laws and Statutes of the Kingdom, yet unrepealed, as might evidently be ſeen by *Magna Charta*, wherein are theſe Words; *Eccleſia Anglicana libera ſit, & habet omnia jura integra, & libertates ſuas illæſas:* And it is contrary alſo to that ſacred Oath which the King's Majeſty himſelf, and every other Chriſtian Prince, always take with great Solemnity, at their Coronations. So great was Sir *Thomas*'s Zeal, that he further alledg'd, that it was worſe in the Kingdom of *England* to refuſe Obedience to the See of *Rome*, than for any Child to do to his natural Parent: for, as St. *Paul* ſaid to the *Corinthians*, *I have regenerated you, my Children, in Chriſt*; ſo might that worthy Pope of *Rome*, St. *Gregory the Great*, ſay of us *Engliſhmen*, *Ye are my Children, becauſe I have given you everlaſting Salvation:* for by St. *Auguſtine* and his Followers, his immediate Meſſengers, *England* firſt received the Chriſtian Faith, which is a far higher and better Inheritance than any carnal Father can leave to his Children; for a Son is only by Generation, we are by Regeneration made the ſpiritual Children of Chriſt and the Pope.

Here the Lord Chancellor took him up, and ſaid; That ſeeing all the Biſhops, Univerſities, and the moſt learned Men in the Kingdom had agreed to that Act, it was much wondered that he alone ſhould ſo ſtiffly ſtickle, and ſo vehemently argue there againſt it.

His Anſwer was, That if the Number of Biſhops and Univerſities were ſo material as his Lordſhip ſeem'd to make it; then, my Lord, I ſee no reaſon why that thing ſhould make any Change in my Conſcience: for I doubt not, but of the learned and virtuous Men now alive, I do not ſpeak only of this Realm, but of all Chriſtendom, there are ten to one of my mind in this matter; but if I ſhould take notice of thoſe learned Doctors and virtuous Fathers that are already dead, many of whom are Saints in Heaven, I am ſure there are far more, who all the while they lived thought in this Caſe as I do now. And therefore, my Lord, I do not think my ſelf bound to conform my Conſcience to the Counſel of one Kingdom, againſt the general Conſent of all Chriſtendom.

Here it ſeems the Lord Chancellor, not willing to take the whole Load of his Condemnation upon himſelf, aſked in open Court the Advice of Sir *John Fitz-James*, the Lord Chief Juſtice of *England*, Whether the Indictment was valid, or no? who wiſely anſwered thus: *My Lords all, By St.* Gillian (for that was always his Oath) *I muſt needs confeſs, That if the Act of Parliament be not unlawful, then the Indictment is not in my Conſcience invalid.* Some have wrote, That the Lord Chancellor ſhould hereupon ſay, *Quid adhuc deſideramus teſtimonium, reus eſt mortis*, and then preſently proceeded to give Sentence to this effect:

That he ſhould be carried back to the Tower of London, *by the Help of* William Kingſton, *Sheriff, and from thence drawn on a Hurdle through the City of* London *to* Tyburn, *there to be hanged till he ſhould be half dead; that then he ſhould be cut down alive, his Privy Parts cut off, his Belly ripped, his Bowels burnt, his four Quarters ſet up over four Gates of the City, and his Head upon* London-Bridge.

This was the Judgment pronounc'd upon this great Man, who had deſerv'd ſo well both of the King and Kingdom, and for which *Paulus Jovius* calls King *Henry* VIII. another *Phalaris*.

This ſevere Sentence was afterwards, by the King's Pardon, chang'd to beheading, becauſe he had borne the greateſt Office in the Kingdom; of which Mercy of the King's, word being brought to Sir *Thomas*, he merrily ſaid, God forbid the King ſhould uſe any more ſuch Mercy to any of my Friends, and God bleſs all my Poſterity from ſuch Pardons.

When he had receiv'd Sentence of Death, he ſpake thus with a reſolute and ſedate Aſpect: Well, ſeeing I am condemn'd, God knows how juſtly, I will freely ſpeak for the diſburdening my Conſcience, what I think of this Law. When I perceiv'd it was the King's Pleaſure to ſift out from whence the Pope's Authority was deriv'd; I confeſs I ſtudy'd ſeven years together to find out the truth of it, and I could not meet with the Works of any one Doctor, approv'd by the Church, that avouch a Layman was, or ever could be the Head of the Church.

Chancellor. Would you be eſteem'd wiſer, or to have a ſincerer Conſcience than all the Biſhops, learned Doctors, Nobility and Commons of this Realm?

More. I am able to produce againſt one Biſhop which you can produce on your ſide, a hundred Holy and Catholick Biſhops for my Opinion; and againſt one Realm, the Conſent of *Chriſtendom* for a thouſand years.

Norfolk. Sir *Thomas*, you ſhew your obſtinate and malicious Mind.

More. Noble Sir, 'tis no Malice or Obſtinacy that makes me ſay this, but the juſt Neceſſity of the Cauſe obliges me to it for the Diſcharge of my Conſcience; and I call God to witneſs, that nothing but this has excited me to it.

After this the Judges kindly offering him their favourable Audience if he had any thing elſe to ſay; he anſwer'd moſt mildly and charitably, I have no more to ſay, but that as the bleſſed Apoſtle St. *Paul*, as we read in the *Acts* of the Apoſtles, was preſent, and conſenting to the Protomartyr *Stephen*, keeping their Clothes that ſtoned him to death, and yet they are both now holy Saints in Heaven, and there ſhall continue Friends to Eternity; ſo I verily truſt, and ſhall therefore heartily pray, that albeit your Lordſhips have been on Earth my Judges to Condemnation, yet that we may hereafter meet joyfully together in Heaven to our everlaſting Salvation: and God preſerve you, eſpecially my Sovereign Lord the King, and grant him faithful Counſellors.

Sir *Thomas*, after his Condemnation, was conducted from the Bar to the *Tower*, an Axe being carry'd before him, with the Edge towards him.

SIR *Thomas More* having remain'd a Priſoner in the *Tower* about a Week after his Sentence, on the 6th of *July* early in the Morning, his old

Friend Sir *Thomas Pope* came to him with a Meſſage from the King and Council, to acquaint him, That his Execution was appointed to be before Nine that Morning. Whereupon Sir *Thomas* ſaid, He thank'd him heartily for his good News. *I have been*, ſays he, *much obliged to his Majeſty for the Benefits and Honours he has moſt bountifully confer'd upon me*; *yet I am more bound to his Grace*, *I do aſſure you*, *for confining me in this Place*, *where I have had convenient Place and Opportunity to put me in mind of my laſt End. I am moſt of all bound to him*, *that his Majeſty is pleaſed to rid me out of the Miſeries of this wretched World.* Then Sir *Thomas Pope* acquainted him, it was the King's Pleaſure he ſhou'd not uſe many Words at the Place of Execution. *Sir*, ſaid he, *you do well to acquaint me with the King's Pleaſure*; *for I had otherwiſe deſign'd to have made a Speech to the People*; *but it matters not*, *and I am ready to conform myſelf to his Highneſs's Pleaſure. And I beſeech you*, *Sir*, *you wou'd become a Suitor to his Majeſty*, *that my Daughter* Margaret *may attend my Funeral.* To which *Pope* reply'd, That the King was willing his Wife and Children, and other Friends ſhould be preſent. Sir *Thomas Pope* being about to take his Leave, cou'd not refrain from Tears. Whereupon Sir *Thomas More* ſaid, *Let not your Spirits be caſt down*, *for I hope we ſhall ſee one another in a better Place*, *where we ſhall be free to live and love in Eternal Bliſs.* And to divert *Pope*'s Grief, he took up his Urinal and ſhook it, ſaying merrily, *I ſee no Danger but that this Man may live longer*, *if the King pleaſes.*

About Nine he was brought out of the *Tower*; his Beard was long, his Face pale and thin, and carrying a Red Croſs in his Hand, he often lift up his Eyes to Heaven; a Woman meeting him with a Cup of Wine, he refus'd it, ſaying, *Chriſt at his Paſſion drank no Wine*, *but Gall and Vinegar.* Another Woman came crying, and demanded ſome Papers ſhe ſaid ſhe had left in his Hands, when he was Lord Chancellor, to whom he ſaid, *Good Woman*, *have Patience but for an Hour*, *and the King will rid me of the Care I have for thoſe Papers*, *and every thing elſe.* Another Woman followed him, crying, he had done her much Wrong when he was Lord Chancellor, to whom he ſaid, *I very well remember the Cauſe*, *and if I were to decide it now*, *I ſhou'd make the ſame Decree.*

When he came to the Scaffold, it ſeem'd ready to fall; whereupon he ſaid merrily to the Lieutenant, *Pray*, *Sir*, *ſee me ſafe up*; *and as to my coming down*, *let me ſhift for myſelf.* Being about to ſpeak to the People, he was interrupted by the Sheriff, and thereupon he only deſired the People to pray for him, and bear witneſs he died in the Faith of the Catholic Church, a faithful Servant both to God and the King. Then kneeling, he repeated the *Miſerere Pſalm* with much Devotion; and riſing up, the Executioner aſked him forgiveneſs. He kiſs'd him, and ſaid, *Pluck up thy Spirits*, *Man*, *and be not afraid to do thine Office*; *my Neck is very ſhort*, *take heed therefore thou ſtrike not awry for ſaving thine Honeſty.* Laying his Head upon the Block, he bid the Executioner ſtay till he had put his Beard aſide, for that had committed no Treaſon. Thus he ſuffered with much Chearfulneſs; his Head was taken off at one Blow, and was placed upon *London-Bridge*, where having continued for ſome Months, and being about to be thrown into the *Thames* to make room for others, his Daughter *Margaret* bought it, inclos'd it in a Leaden Box, and kept it for a Relique. *Hall*'s *Chron. Vol.* 2. *f.* 2.

V. *The Trial of Sir* NICHOLAS THROCKMORTON * *Knight*, *in the* Guildhall *of* London, *for* High-Treaſon, *the* 17*th of* April, 1554. *the* 1*ſt of* Mary.

The Commiſſioners appointed to try him were,

SIR *Thomas White* Knight, Lord Mayor of *London*;
The Earle of *Shreweſbury*;
The Earle of *Derby*;
Sir *Thomas Bromley* Knyght, Lorde Chief Juſtice of *Englande*;
Sir *Nicholas Hare* Knyght, Mayſter of the *Rolles*;
Sir *Frauncis Engleſielde* Knight, Maiſter of the Courte of Wardes and Liberties;
Sir *Richard Southwell* Knight, one of the Privy-Council;
Sir *Edward Walgrave* Knight, one of the Privy-Council;
Sir *Roger Cholmeley* Knight;
Sir *Wyllyam Porteman* Knyght, one of the Juſtices of the King's Benche;
Sir *Edwarde Saunders* Knyght, one of the Juſtices of the Common Place;
Maiſter *Stanford*, } Sergeants;
Maiſter *Dyer*, }
Maiſter *Edward Griffin*, Attourney-General;
Maiſter *Sendall*, } Clerkes of the Crowne.
Peter Tichbourne, }

Firſte, after Proclamation made, and the Commiſſion read, the Lieutenant of the *Tower*, Maſter *Tho. Bridges*, brought the Priſoner to the Barre; then Silence was commaunded, and *Sendall* ſaid to the Priſoner as followeth:

Sendall. *Nicholas Throckmorton* Knighte, hold up thy hande, Thou art before this time indited of High-Treaſon, &c. that thou then and there didſt falſly and traiterouſly, &c. conſpire and imagine the Death of the Queenes Majeſtie, &c. and falſly and traiterouſly didſt leuie Warr againſte the Queen within hir Realm, &c. and alſo thou waſt adherente to the Queenes Enimies within hir Realm, giuing to them Ayde and Comfort, &c. and alſo falſly and trayterouſly didſt conſpire and intend to depoſe and deprive the Queen of hir Royal Eſtate, and ſo finally deſtroy hir, &c. and alſo thou didſt falſly and traiterouſly deuiſe and conclude to take violently the *Tower* of *London*, &c. Of al which Treaſons and euery of them in Manner and Forme, &c. art thou giltie or not giltie?

Throckmorton. May it pleaſe you my Lords and Maiſters, which be authoriſed by the Queenes Commiſſion to be Judges this day, to giue me leaue to ſpeake a fewe words, which doth both concerne you and me, before I aunſwere to the Enditement, and not altogithers impertinente to the Matter, and then pleade to the Enditemente.

Bromley. No, the Order is not ſo, you muſt firſt pleade whether you be giltie or no.

Throckmorton. If that be your Order and Law, judge accordingly to it.

Hare. You muſt firſte aunſwer to the Matter wherwith you are charged, and then you may talke at your pleaſure.

Throckmorton. But things ſpoken out of place wer as good not ſpoken.

Bromley. Theſe bee but delays to ſpende time, therfore anſwer as the Law willeth you.

Throckmorton. My Lords, I pray you make not too much haſte with me, neither thinke not long for your Diner, for my Caſe requireth leyſure, and you haue well dined when you haue done Juſtice truely. Chriſt ſaid, *Bleſſed are they that hunger and thirſte for Righteouſneſſe.*

Bromley. I can forbeare my Dinner as well as you, and care as little as you peraduenture.

Shrewſbury. Come you hither to checke us, *Throckmorton?* we will not be ſo uſed, no, no, I for my part haue forborne my Breakfaſt, Dinner and Supper, to ſerve the Queene.

Throckmorton. Yea, my good Lord, I know it right well; I meant not to touche your Lordſhip, for youre Service and Paines is euidently knowen to all Men.

Southwell. M. *Throckmorton*, this Talke neede not, we know what we haue to do, and you would teach us our Duties; you hurt your Mater, go to! go to!

Throckmorton. M. *Southwell*, you miſtake me, I meant not to teach you, nor none of you, but to remember you of that I truſt you all be well inſtructed in, and ſo I ſatisfie my ſelfe, ſince I ſhall not ſpeake, thinking you all know what you haue to doe, or oughte to know, ſo I will aunſwer to the Inditement, and do pleade not giltie to the whole, and to euery part thereof.

Sendall. How wilt thou be tried?

Throckmorton. Shall I be tried as I would, or as I ſhuld?

Bromley. You ſhall be tried as the Law will, and therefore you muſt ſay by God and by the Countrey.

Throckmorton. Is that your Law for me? it is not as I wold; but ſince you wil have it ſo, I am pleaſed with it, and do deſire to be tried by faithful juſt Men, which more fear God than the World.

The Names of the Jurours.

Lucas.	*Beſwike.*	*Lowe.*	*Bankes.*
Yong.	*Baſcafeeld.*	*Whetſton.*	*Calthrop.*
Martyn.	*Kightley.*	*Pointer.*	*Cater.*

What time the Atturney went forthwith to Mr. *Cholmley*, and ſhewed him the Sheriffs Returne, who being acquainted with the Citizens, knowing the Corruptions and Dexterities of them in ſuch Caſes, noted certaine to be chalenged for the Q. (a rare caſe) and the ſame Men being knowen to be ſufficient and indifferent, that no Exceptions were to be taken to them, but only for their upright Honeſties, notwithſtanding the Attorney prompting Sergeant *Dier*; the ſaid Sergeant chalenged one *Bacon*, and another Citizen peremptorily for the Queen. Then the Priſoner demanded the cauſe of the Chalenge: the Sergeante aunſwered, we neede not ſhew you the cauſe of the Chalenge for the Queen. Then the Inqueſt was furniſhed with other honeſt Men, that is to ſay, *Whetſtone* and *Lucas*, ſo the Priſoner vſed theſe Words.

Throckmorton. I truſt you have not provided for me this Day, as in times paſt I knew another Gentleman occupying this woful place was prouided for. It chanced one of the Juſtices upon Jealouſie of the Priſoner's acquitall, for the goodneſſe of his Cauſe, ſaid to another of his Companions a Juſtice, when the Jury did appeare, I like not this Jury for our purpoſe, they ſeeme to be too pitiful and too charitable to condemne the Priſoner. No, no, ſaid the other Judge (*viz. Cholmley*) I warrant you, they be picked Fellowes for the nonce, he ſhall drink of the ſame Cup his Fellowes haue done. I was then a loker on of the Pageant as others be now here, but now wo is me, I am a Player in that woful Tragedie. Well, for theſe and ſuch other like the black Oxe hath of late troden on ſome of their Feet, but my truſt is, I ſhall not be ſo uſed. Whyleſt this Talke was, *Cholmeley* conſulted with the Atturney aboute the Jury, which the Priſoner eſpied, and then ſayde as heere enſueth, Ah, ah Maiſter *Cholmely*, will this foule packing neuer be left?

Cholmeley. Why what do I, I pray you, M. *Throckmorton?* I did nothing, I am ſure you do picke Quarrels to me.

Throckmorton. Well Maiſter *Cholmely*, if you do well, it is better for you, God help you.

The Jury then was ſworne, and Proclamation made, that whoſoeuer woulde giue Euidence againſte Sir *Nicholas Throckmorton* Knight, ſhoulde come in and be heard, for the Priſoner ſtood upon his Deliuerance: whereupon Sergeant *Stanford* preſented hymſelf to ſpeake.

Throckmorton. And it may pleaſe you Maiſter Sergeante, and the others my Maſters of the Quenes learned Counſel, like as I was minded to haue ſaid a fewe Words to the Commiſſioners, if I mighte haue had leaue, for their better remembrance of their Dueties in this place of Juſtice, and concerning direct indifferency to be uſed towards me this Day; ſo by your Patience I do thinke good to ſay ſomewhat to you, and to the reſt of the Quenes learned Counſell, appointed to giue Euidence againſte mee. And albeit you and the reſt by Order be appointed to gyue euidence againſte mee, and enterteyned to ſette forth the Depoſitions and Matter againſt me, yet I pray you remember I am not alienate from you, but that I am your Chriſtian Brother; neither you ſo charged, but you ought to conſider Equitie, nor yet ſo priuiledged, but that you haue a Duetie of God appoynted you how you ſhal do youre Office, whiche if you exceede, wil be greuouſly required at youre hands. It is lawfull for you to vſe your Gifts, which I know God hathe largely giuen you, as youre Learning, Arte and Eloquence, ſo as thereby you do not ſeduce the Minds of the ſimple and unlearned Jury, to credite Matters otherwiſe than they be. For Maiſter Sergeant, I knowe howe by Perſwaſions, Enforcements, Preſumptions, applying, implying, inferring, conjecturing, deducing of Arguments, wreſting and exceeding the Law, the Circumſtances, the Depoſitions and Confeſſions, that unlearned Men maye bee inchanted to thinke and judge thoſe that bee things indifferente, or at the worſt but ouerſights, to be great Treaſons; ſuch power Orators haue, and ſuch Ignorance the Unlearned haue. Almighty God by the Mouth of his Prophete, doth conclude ſuch Advocates bee curſed, ſpeaking theſe Words, Curſed bee hee that doth his Office craftily, corruptly, and maliciouſly. And conſider alſo, that my Bloud ſhall be required at your hands, and puniſhed in you and yours, to the third and fourth Generation. Notwithſtanding you and the Juſtices excuſe always ſuch erronious doings, when they be after called in queſtion by the Verdict of the twelve Men; but I aſſure you, the Purgation ſerueth you as it did *Pilate*, and you waſhe your Handes of the Bloudſhed, as *Pilate* did of Chriſts. And now to your matter.

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* Holinſh. Vol. 3. f. 1104.

Stanford. And it pleaſe you, my Lords, I doubt not to proue evidently and manifeſtly, that *Throckmorton* is worthely and rightly indicted and araigned of theſe Treaſons, and that he was a principall deuiſer, procurer and contriver of the late Rebellion, and that *Wyat* was but his Miniſter. How ſay you, *Throckmorton*, dyd not you ſend *Winter* to *Wyat* into *Kent*, and did deuiſe that the Tower of *London* ſhoulde be taken, with other Inſtructions concernyng *Wyat*'s Sturre and Rebellion?

Throckmorton. May it pleaſe you that I ſhall aunſwer particularly to the matters objected againſt me, in as muche as my Memorie is not good, and the ſame much decayed ſince my greeuous Empriſonment, with want of Sleep, and other Diſquietneſſe: I confeſſe I did ſay to *Winter*, that *Wyat* was deſirous to ſpeake with him, as I underſtoode.

Stanford. Yea Sir, and you deuiſed togither of the taking of the Tower of *London*, and of the other great Treaſons.

Throckmorton. Noe, I did not ſo; proue it.

Stanford. Yes Sir, you met with *Winter* ſundry times, as ſhall appeare, and in ſundry Places.

Throckmorton. That graunted, proveth no ſuch matter as is ſuppoſed in the Inditement.

Stanford red *Winter*'s Confeſſion, whyche was of this effect; That *Throckmorton* mette with *Winter* one Day in *Tower-ſtreet*, and told him, that Sir *Thomas Wyat* was deſirous to ſpeak with him, and *Winter* demanded where *Wyat* was: *Throckmorton* aunſwered, at his Houſe in *Kente*, not farre from *Gillingham*, as I heard ſay, where the Shyps lye. Then they parted at that time, and ſhortly after *Throckmorton* met with *Winter*, vnto whome *Winter* ſayd, Maiſter *Wyat* dothe much miſlike the comming of the *Spanyardes* into this Realme, and feareth their ſhort arriuall here in as much as dayly he heareth thereof; dothe ſee daily diuers of them arrive heere, ſcattered like Soldyers; and therefore he thinketh good the *Tower* of *London* ſhould be taken by a ſleighte, before the Prince came, leaſt that peece be deliuered to the *Spanyardes*. How ſay you *Throckmorton* to it? *Throckmorton* aunſwered, I miſlike it for diuers reſpects; euen ſo do I, ſayde *Winter*. At another tyme *Throckmorton* mette me the ſayd *Winter* in *Poules*, when hee had ſent one to my Houſe to ſeeke me before; and he ſaid to me, you are Admiral of the Fleet that now goeth into *Spaine*. I aunſwered yea. *Throckmorton* ſaide, when will your Shippes be ready? I ſaide, within tenne Dayes. *Throckmorton* ſayde, I vnderſtand you are appointed to conduct and carrie the Lord Priuie Seale into *Spayne*; and conſidring the Daunger of the *Frenchmen*, which you ſay arme them to the Sea apace, me thinke it well done, you put my ſayde Lorde and his Traine on Lande in the Weſt Country to avoyde all Daunger. *Throckmorton* ſaide alſo, that *Wyat* changed his purpoſe, for taking the Tower of *London*: I ſaid I was glad of it; and as for the *Frenchmen*, I care not much for them, I will ſo handle the matter, that the Queenes ſhippes ſhall bee I warrante you in ſafegard. Another time I met with M. *Throckmorton* when I came from the Emperours Ambaſſadors, vnto whome I declared, that the Emperour had ſent me a fayre Cheyne, and ſhewed it unto *Throckmorton*, who ſaid, for this Cheyne you haue ſold your Country. I ſaide, it is neyther *French* King nor Emperoure that can make me ſell my Country, but I will be a true *Engliſhman*: then they parted. This is the ſumme of the Talke betwixt *Throckmorton* and *Winter*.

Stanford. Now my Maſters of the Jury, you haue heard my ſayings confirmed with *Winter*'s Confeſſion: how ſay you *Throckmorton*, can you denie it? if you will, you ſhall haue *Winter* juſtifie it to your Face.

Throckmorton. My Lords, ſhall it pleaſe you that I ſhal anſwer?

Bromley. Yea, ſay your mind.

Throckmorton. I may truly denye ſome part of this Confeſſion; but bycauſe there is nothing material greatly, I ſuppoſe the whole to be true, and what is herein depoſed, ſufficiente to bring me within the compas of the Enditement.

Stanford. It appeareth that you were of Counſel with *Wyat*, in as much as you ſente *Winter* downe to him, who uttered unto him diuers traitorous Deuiſes.

Throckmorton. This is but conjectural; yet ſithence you will conſtrue ſo maliciouſly, I will recompte how I ſent *Winter* to *Wyat*: and then I pray you of the Jury, judge better than Maiſter Sergeante doth. I met by chance a Seruant of Maiſter *Wyat*'s, who demanded of me for *Winter*, and ſhewed mee, that his Maiſter woulde gladly ſpeake with him; and ſo without any further Declaration, deſired me, if I met *Winter*, to tel him Maiſter *Wyat*'s mind, and where he was. Thus much for the ſending downe of *Winter*.

Attourney. Yea, Sir, but how ſay you to the taking of the Tower of *London*, which is Treaſon?

Throckmorton. I aunſwere, though *Wyat* thought meete to attempt ſo daungerous an Enterpriſe, and that *Winter* enformed me of it, you cannot extende *Wyat*'s Deuiſes to be mine, and to bring me within the compaſs of Treaſon; for what maner of reaſoning or proofe is this, *Wyat* woulde haue taken the Tower, *ergo Throckmorton* is a Traitor? *Winter* doth make my Purgation in his owne Confeſſion, euen now redde as it was by Maiſter Sergeante, though I ſay nothing; for *Winter* doth auowe there, that I did much miſlike it. And becauſe you ſhall the better underſtand that I did alwayes not alow theſe Maſter *Wyat*'s Deuiſes, I had theſe Words to *Winter*, when he enformed me of it; I think M. *Wyat* would no *Engliſhman* hurt, and this Enterpriſe cannot be done without the hurt and ſlaughter of both Parties; for I know him that hath the Charge of the Peece, and his Brother, both Men of good Seruice; the one had in charge a piece of great Importance, *Bolloyne* I meane, which was ſtoutly aſſayled, and notwithſtanding he made a goode accompt of it for his time, that like I am ſure he will do by this his Charge. Moreouer, to accompte the taking of the *Tower* is uery dangerous by the Law. Theſe were my Wordes to *Winter*. And beſides, it is very unlike, that I of all Men woulde confederate in ſuch a matter againſt the Lieutenant of the *Tower*, whoſe Daughter my Brother hath married, and his Houſe and mine alyed together by Mariage ſundry times within theſe few Yeres.

Hare. But how ſay you to this, that *Wyat* and you had Conference togither ſundry times at *Warner*'s Houſe, and in other places?

Throckmorton. This is a very general Charge, to haue Conference; but why was it not as lawful for me to confer with *Wyat*, as with you, or any other Man? I then knew no more by *Wyat*, than by any other; and to proue to talke with *Wyat* was lawful and indifferent, the laſt Day I did talke with *Wyat*, I ſawe my Lord of *Arondel*, with other noble Men and Gentlemen, talke with him familiarly in the Chamber of Preſence.

Hare. But they did not conſpire nor talke of any ſtur againſt the *Spanyards* as you did pretend, and meant it againſt the Queen; for you, *Croftes*, *Rogers* and *Warner*, did oftentimes deuiſe in *Warner*'s Houſe aboute youre traiterous purpoſes, or elſe what did you ſo often there?

Throckmorton. I confeſs I did miſlike the Queenes Mariage with *Spain*, and alſo the comming of the *Spanyards* hither; and then me thought I had reaſon to do ſo, for I did learne the Reaſons of my miſliking of you M. *Hare*, M. *Southwell*, and others in the Parliament Houſe; there I did ſee the whole Conſent of the Realm againſt it; and I a Hearer, but no Speaker, did learne my miſliking of thoſe Matters, confirmed by many ſundry Reaſons amongſt you: but as concerning any ſturre or vprore againſte the *Spanyards*, I neuer made any, neyther procured any to be made; and for my much reſort to M. *Warner*'s Houſe, it was not to conferre with M. *Wyat*, but to ſhew my Friendſhip to my very good Lord the Marques of *Northampton*, who was lodged there when he was enlarged.

Stanford. Did not you, *Throckmorton*, tell *Winter* that *Wyat* had changed his Mind for the taking of the *Tower*; whereby it appeared euidently that you knew of his doings?

Throckmorton. Truly I did not tell him ſo, but I care not greatly to giue you that Weapon to play you withal: now let us ſee what you can make of it?

Stanford. Yea, Sir, that proueth that you were priuie to *Wyat*'s Mind in all his Deuiſes and Treaſons, and that there was ſending betwixt you and *Wyat* from time to time.

Throckmorton. What M. Sergeant, doth this proue againſt me, that I knew *Wyat* did repent him of an euil deuiſed Enterpriſe? Is it to know *Wyat*'s Repentance, Sinne? No, it is but a Venial Sinne; if it be any, it is not deadly. But where is the Meſſenger or Meſſage that *Wyat* ſent to me touching his Alteration? and yet it was lawful ynough for me to heare from *Wyat* at that time, as from any other Man, for any acte that I knew he had done.

Dyer. And it may pleaſe you my Lordes, and you my Maiſters of the Jurie, to prove that *Throckmorton* is a principal doer in this Rebellion, there is yet many other things to be declared: amongſt other, there is *Croftes* Confeſſion, who ſayeth, that he and you and your Accomplices, did manye times deuiſe aboute the whole Matters, and hee made you priuie to all his Determinations, and you ſhewed him that you woulde go into the Weſt Countrey with the Earle of *Deuon*, to Sir *Peter Caroe*, accompanyed with others.

Throckmorton. M. *Croftes* is yet liuing, and is here this day; how hapneth it he is not brought Face to Face to juſtifie this matter, neither hathe bin of all this time? Will you knowe the Trueth? either he ſayd not ſo, or he wil not abide by it, but honeſtly hath reformed himſelf. And as for knowing his Deuiſes, I was ſo well acquainted with them, that I can name none of them, nor you neyther, as matter knowen to mee.

Attourney. But why did you aduiſe *Winter* to land my Lord Priuie Seale in the Weſt Countrey?

Throckmorton. He that told you that my mind was to land him there, doth partly tel you a reaſon why I ſaid ſo, if you would remember as well the one as the other; but becauſe you are ſo forgetful, I will recite wherefore: In communication betwixt *Winter* and me, as he declared to me that the *Spanyards* provided to bring their Prince hither, ſo the *Frenchmen* prepared to interrupt his Arrival, for they began to arme to the Sea, and had already certain Shippes on the Weſt Coſt, (as he heard) unto whom I ſaide, that peraduenture not onely the Queenes Shippes under his Charge might be in jeopardy, but alſo my Lorde Priuie Seale, and all his Trayne, the *Frenchmen* beeing wel prepared to meete with them; and therefore for all Euents it were good you ſhould put my ſaid Lord in the Weſt Countrey, in caſe you eſpie any jeoperdie. But what doth this proue to the Treaſons, if I were not able to giue conuenient Reaſons to my talke?

Stanford. Mary Sir, now commeth the Proofes of youre Treaſons: you ſhal heare what *Cutbert Vaughan* ſayth againſt you.

Then Sergeant *Stanford* did reade *Vaughan*'s Confeſſion tending to this effect, That *Vaughan* comming out of *Kent*, met with *Throckmorton* at M. *Warner*'s Houſe, who after he had don Commendations from *Wyat* to him, deſired to know where *Crofts* was; *Throckmorton* anſwered, either at *Arundel* Houſe where he lodgeth, or in *Poules*. Then *Vaughan* deſired to know howe thyngs went at *London* ſaying, M. *Wyat* and we of *Kent* do much miſlike the Mariage with *Spaine*, and the comming of the *Spanyardes* for diuers reſpectes; howbeit, if other Countries miſlike them as *Kent* doth, they ſhall be but hardly welcome: and ſo they parted. Shortly after *Throckmorton* met with *Vaughan* in *Poules*, unto whom *Throckmorton* declared with ſundry Circumſtances, that the Weſtern

Men were in readineſſe to come forwards; and that Sir *Peter Caroe* had ſent unto him euen now, and that he had in order a good Band of Horſemen, and an other of Footemen. Then *Vaughan* demanded what the Erle of *Devon* would do; *Throckmorton* anſwered he will marre all, for he will not go hence; and yet Sir *Peter Caroe* wold mete him with a Band both of Horſemen and Footemen, by the way of *Andeuer*, for his Safeguard; and alſo he ſhould haue bin well accompanyed from hence with other Gentlemen, yet all this wyl not moue him to departe hence. Moreouer, the ſaid Erle hath, as is ſaid, diſcovered al the whole matter to the Chancellor, or elſe it is comen out by his Taylor, aboute the trimming of a Shirte of Mayle, and the making of a Cloke. At another time, *Vaughan* ſaith, *Throckmorton* ſhewed him, that he had ſent a Poſte to Sir *Peter Caroe* to come forwarde with as much ſpeede as might be, and to bring his force with him. And alſo *Throckmorton* adviſed *Vaughan* to will M. *Wyat* come forward with his Power, for nowe was the time, in as much as the *Londoners* would take his part, if the matter were preſented unto them. *Vaughan* ſaid alſo, that *Throckmorton* and *Warner* ſhould haue ridden with the ſaid Erle Weſtward. Moreouer, the ſaid *Vaughan* depoſed, that *Throckmorton* ſhewed him in talke of the Erle of *Pembroke*, that the ſaid Earle woulde not fight againſt them, though hee woulde not take their partes. Alſo *Vaughan* ſaid, That *Throckmorton* ſhewed hym that he would ride downe to *Barkeſhire* to Sir *Francis Englefield*'s Houſe, there to meete his eldeſt Brother, to moue him to take his part. And this was the Summe of *Cutbert Vaughan*'s Confeſſion:

Stanford. How ſay you, doth not heere appeare euident matter to proue you a Principal, who not onely gave order to Sir *Peter Caroe* and his Adherents, for their rebellious actes in the Weſt Countrey; but alſo procured *Wyat* to make his Rebellion, appointing him and the others alſo, when they ſhould attempt their Enterpriſe, and how they ſhould order their doings from time to time? Beſides all this euident Matter, you were ſpecially appointed to go away with the Earle of *Devon*, as one that would direct all things, and give order to all Men; and therefore *Throckmorton*, ſince this matter is ſo manifeſt, and the euidence ſo apparent, I would aduiſe you to confeſſe your fault, and ſubmit your ſelfe to the Queenes Mercy.

Bromley. Howe ſay you, will you confeſſe the matter? and it will be beſt for you.

Throckmorton. No, I will neuer accuſe my ſelfe unjuſtly; but in as muche as I am come hither to bee tried, I pray you let me haue the Law favourably.

Attourney. It is apparent that you lay at *London* as a Factor, to giue Intelligence as well to them in the Weſt, as to *Wyat* in *Kent*.

Throckmorton. How proue you that, or who doth accuſe me but this condemned Man?

Attourney. Why, will you denie this matter? you ſhall haue *Vaughan* juſtifie his whole Confeſſion here before your Face.

Throckmorton. It ſhal not neede, I know his unſhamefaſtnes, he hath aduowed ſome of this vntrue talk before this tyme to my Face; and it is not otherwiſe like, conſidering the price, but he wil do the ſame again.

Attourney. My Lords and Maiſters, you ſhall haue *Vaughan* to juſtifie this heere before you all, and confirm it with a Booke Oth.

Throckmorton. He that hath ſaid and lyed, will not, being in this caſe, ſticke to ſweare and lye.

Then was Cutbert Vaughan *brought into the open Court.*

Sendall. How ſay you, *Cutbert Vaughan*, is this your own Confeſſion, and wil you abide by all that is here written?

Vaughan. Let me ſee it, and I will tell you.

Then his Confeſſion was ſhewed him.

Attourney. Bycauſe you of the Jury the better may credite him, I pray you my Lords let *Vaughan* be ſworn.

Then was Vaughan *ſworne on a Booke to ſay nothing but the Truth.*

Vaughan. It may pleaſe you my Lords and Maiſters, I could haue bin well content to haue choſe ſeauen Yeres Impriſonment, though I had bin a free Man in the Law, rather than I would this Day haue gyuen Euidence againſt Sir *Nicholas Throckmorton*, vnto whome I bear no diſpleaſure; but ſithence I muſt needes confeſſe my Knowledge, I muſt confeſſe all that is there written is true. How ſay you M. *Throckmorton*, was there any diſpleaſure betwene you and me, to moue me to ſay aught againſt you?

Throckmorton. Not, that I know: how ſay you *Vaughan*, what Acquaintance was there between you and me, and what Letters of Credit, or Token did you bring me from *Wyat*, or any other to moue me to truſt you?

Vaughan. As for Acquaintance, I knew you as I did other Gentlemen; and as for Letters, I brought you none other but Commendations from M. *Wyat*, as I did to diuers other of his Acquaintance at *London*.

Throckmorton. You might as well forge the Commendations as the reſt; but if you haue done with *Vaughan*, my Lords, I pray you giue me leaue to aunſwere.

Bromley. Speak, and be ſhort.

Throckmorton. I ſpeak generally to all that be heere preſent, but eſpecially to you of my Jury, touching the Credit of *Vaughan*'s Depoſitions againſt me, a condemned Man; and after to the Matter: and note I pray you the Circumſtances, the better to induce ſomewhat material. Firſt I pray you remember the ſmall Familiaritie betwixt *Vaughan* and me, as he hathe auowed before you. And moreouer, to procure Credite at my hand, he brought neither Letter nor Token from *Wyat*, nor from any other to me, which he alſo hath confeſſed here, and I will ſuppoſe *Vaughan* to be in as good Condition as any other Man here, that is to ſay, an uncondemn'd Man; yet I referre it to your good Judgment, whether it were lyke that I knowing onely *Vaughan*'s Perſon from another Man, and having none other Acquaintance with him, would ſo frankly diſcouer my mind to him in ſo dangerous a matter. How like, I ſay, is this, when diuers of theſe Gentlemen now in Captiuitie, being my very Familiars, coulde not depoſe any ſuch matter againſt me, and neuertheleſs vpon their Examinations haue ſaid what they could? And thogh I be no wiſe Man, I am not ſo raſh to vtter to an unknowen Man (for ſo may I call him in compariſon) a matter ſo dangerous for me to ſpeake, and him to heare; but bycauſe my Trueth and his Falſehood ſhall the better appear unto you, I will declare his Inconſtancy in vttering this his Euidence; and for my better Credite, it may pleaſe you, Mr. *Southwell*, I take you to witnes, when *Vaughan* firſt juſtified this his unjuſt Accuſation againſt me before the L. *Paget*, the L. Chamberlaine, you M. *Southwell*, and others, he referred the Confirmation of this ſurmiſed matter to a Letter ſent from him to Sir *Thomas Wyat*; which Letter doth neither appeare, nor any Teſtimony of the ſaid M. *Wyat* againſt mee touching the matter: for I doubte not Sir *Thomas Wyat* hath bin examin'd of me, and hathe ſayde what he could directly or indirectly. Alſo *Vaughan* ſaith, that yong *Edward Wyat* coulde confirme this matter, as one that knew this pretended Diſcourſe betwixt *Vaughan* and me; and thereupon I made ſute that *Edward Wyat* might either be brought face to face to me, or otherwiſe be examined.

Southwell. M. *Throckmorton*, you miſtake your matter, for *Vaughan* ſaid, that *Edward Wyat* did know ſome part of the matter, and alſo was priuie to the Letter that *Vaughan* ſent to Sir *Thomas Wyat*.

Throckmorton. Yea, Sir, that was *Vaughan*'s laſt ſhift, when I charged him before the Maſter of the Horſe, and you, with his former Allegations touching his witnes; whom when hee eſpyed, woulde not do ſo lewdly as hee thought, then he vſed this Alteration: but where is *Edward Wyat*'s Depoſitions of any thing againſt me, now it appeareth neither his firſte nor his laſt Tale to be true? For you knowe, M. *Bridges*, and ſo doth my Lord your Brother, that I deſired twice or thrice *Edward Wyat* ſhuld be examined; and I am ſure, and moſt aſſured, he hathe bin willed to ſay what he could, and here is nothing depoſed by him againſt me, eyther touching any Letter or other Conference; or where is *Vaughan*'s Letter ſent by Sir *Thomas Wyat* concerning my Talke?

But now I will ſpeake of *Vaughan*'s preſent Eſtate, in that he is a condemned Man, whoſe Teſtimonie is nothing worthe by any Lawe; and bycauſe falſe Witnes be mentioned in the Goſpel, treating of Accuſation, hearke I pray you what S. *Jerome* ſayeth, expounding the place: it is demanded why Chriſtes accuſers be called falſe Witneſſes, which did report Chriſt's Words not as he ſpake them; they be falſe witneſſes, ſaith S. *Jerome*, which do ad, alter, wreſt, double, or do ſpeake for hope to auoid Death, or for malice to procure another Man's Death; for all Men may eaſily gather he cannot ſpeake truely of me, or in the caſe of another Man's Life, where he hath hope of his owne by Accuſation. Thus much ſpeaketh S. *Jerome* of falſe Witnes. By the ciuil Law there be many Exceptions to be taken agaynſt ſuch Teſtimonies; but bycauſe we be not gouerned by that Law, neither I haue my Trial by it, it ſhal be ſuperfluous to trouble you therewith, and therefore you ſhall heare what your owne Lawe doth ſay. There was a Statute made in my late Soueraigne Lord and Maiſter his time, touching Accuſation, and theſe be the Words:

Be it enacted, That no Perſon or Perſons, *&c.* ſhall be indited, araigned, condemned, or conuicted for any Offence of Treaſon, Petit Treaſon, Miſpriſion of Treaſon, for which the ſame Offendor ſhal ſuffer any Paynes of Death, Impriſonment, Loſſe or Forfeyture of his Goodes, Lands, *&c.* vnleſſe the ſame Offendor be accuſed by two ſufficient and lawful Witneſſes, or ſhall willingly without Violence confeſſe the ſame. And alſo in the ſixth Yere of his Raigne, it is thus ratified as enſueth:

That no Perſon nor Perſons ſhall bee indited, araigned, condemned, conuicted or attainted of the Treaſons or Offences aforeſaide, or for anye other Treaſons that now bee, or hereafter ſhall be, unleſſe the ſame Offendor or Offendors be thereof accuſed by two lawfull and ſufficient Accuſers; whiche at the time of Araignement of the Parties ſo accuſed (if they be then liuing), ſhall be brought in Perſon before the ſaid Partie accuſed, and auowe and mainteine that they haue to ſay againſte the ſaide Partie, to proue him giltie of the Treaſons or Offence conteined in the Byll of Inditement layd againſt the Partie araigned, vnleſſe the ſayd Partie araigned ſhall be willing without Violence to confeſſe the ſame.

Here note I pray you, that our Lawe dothe require two lawfull and ſufficient Accuſers to be brought face to face, and *Vaughan* is but one, and the ſame moſt vnlawfull and inſufficient; for who can be more unlawful and inſufficient than a condemned Man, and ſuche one as knoweth to accuſe me is the meane to ſaue his owne Lyfe? Remember, I pray you, howe long and how many times *Vaughan*'s Execution hathe bin reſpited, and how often hee hathe bin conjured to accuſe, (whych by Goddes Grace hee withſtoode vntill the laſt Houre) what time perceyuing there was no way to liue, but to ſpeake againſte mee or ſome other (his former Grace beeyng taken away) did redeeme his Lyfe moſt unjuſtly and ſhamefully, as you ſee.

Hare. Why ſhoulde he accuſe you more than any other, ſeeyng there was no diſpleaſure betwixte you, if the matter had not bin true?

Throckmorton. Bycauſe he muſt eyther ſpeake of ſome Man, or ſuffer Deathe; and then he did rather chooſe to hurte him he did leaſt know, and ſo loued leaſt, than any other well knowen to him, whome he loued moſt. But to you of my Jury I ſpeake eſpecially, and therefore I pray you note what I ſay: In a matter of leſſe weight than Trial of Life and Lande, a Man may by the Law take Exceptions to ſuche as be impaneld, to trie the Controuerſies betwixt the Parties: as for example, a Man may chalenge that the Sheriffe is hys Enemie, and therefore hathe made a parciall Returne, or bycauſe one of the Jury is the Sheriffe my Aduerſaries Seruante; and alſo in caſe my Aduerſaries Villaine or Bondman be empanelled, I may lawfully chalenge him, bycauſe the Aduerſarie parte hathe power ouer hys Villayne's Landes and Goodes, and hathe the vſe of hys Bodye for ſeruile Office: muche more I may of right take exception to *Vaughan*'s Teſtimonie, my Lyfe and all that I haue depending thereupon; and the ſame *Vaughan* beeyng more bounde to the Queenes Highneſſe, my Aduerſarie (that wo is me therefore, but ſo the Lawe dothe here ſo tearme hyr Majeſtie) than anye Villayne is to hys Lord; for hir Hyghneſſe hath not onely Power ouer hys Bodye, Lands, and Goodes, but ouer his Lyfe alſo.

Stanford. Yea, the Exceptions are to be taken agaynſte the Jury in that caſe; but not agaynſt the Witnes or Accuſor, and therefore youre Argument ſerueth little for you.

Throckmorton. That is not ſo, for the vſe of the Jurie, and the Witnes, and the Effect of their doings doth ſerue me to my purpoſe, as the Law ſhall diſcuſſe. And thus I make my Compariſon: By the Ciuil Law the Judge doth giue Sentence upon the Depoſitions of the Witnes, and by your Law the Judge doth giue Judgement upon the Verdict of the Jury, ſo as the effect is both one to finiſh the matter, Trial in Law, as well by the Depoſitions of the Witnes, as by the Juries Verdict, though they varie in Forme and Circumſtance; and ſo *Vaughan*'s Teſtimonie being credited, may be the material Cauſe of my Condemnation, as the Jury may be induced by his Depoſitions to ſpeak their Verdict, and ſo finally therevpon the Judge to giue Sentence. Therefore I may uſe the ſame Exceptions againſt the Jury, or any of them, as the principal mean, that ſhall occaſion my Condemnation.

Bromley. Why, do you denie, that euery part of *Vaughan*'s Tale is untrue?

Attourney. You may ſee he will denie all, and ſay there was no ſuch Communication betwixt them.

Throckmorton. I confeſſe ſome part of *Vaughan*'s Confeſſion to be true, as the Name, the Places, the Time, and ſome part of the Matter.

Attourney. So you of the Jury may perceiue the Priſoner doth confeſſe ſomething to be true.

Throckmorton. As touching my ſending to Sir *Peter Caroe*, or his ſending to me, or concerning my Aduice to M. *Wyat* to ſturre, or to repaire hither, or touchyng the Earl of *Deuon* parting hence, and my going with him, and alſo concerning the matter of the Earle of *Pembroke*, I do aduow and ſay that *Vaughan* hath ſaid untruely.

Southwell. As for my Lord of *Pembroke*, you neede not excuſe the matter, for he hath ſhewed himſelfe cleere in theſe matters like a Nobleman, and that we all know.

Hare. Why what was the talke betwixt *Vaughan* and you ſo long in *Poules*, if theſe were not ſo, and what meant your oft Meetings?

Throckmorton. As for our often Meetings, they were of no ſet purpoſe, but by chance, and yet no oftner than twice; but ſithence you would know what Communication paſſed betwixt us in *Poules* Church, I will declare. We talked of the Incommodities of the Marriage of the Queene with the Prince of *Spayne*, and how grieuous the *Spanyards* would be to vs here. *Vaughan* ſaid, that it ſhould be very dangerous for any Man that truly profeſſed the Goſpel to liue here, ſuch was the *Spanyards* Crueltie, and eſpecially againſt Chriſtian Men. Whereunto I anſwered, it was the Plague of God come juſtly vpon us; and now Almighty God dealt with us, as he did with the *Iſraelites*, taking from them for their vnthankefulnes their Godly Kings, and did ſend Tirants to raign over them; even ſo he handled us *Engliſhmen*, whiche hadde a moſt godly and vertuous Prince to raigne ouer vs, my late Soueraigne Lord and Maiſter King *Edwarde*, vnder whome we might both ſafely and lawfully profeſſe Gods Word; which with our lewd doyngs, demeanour, and liuing, we handled ſo irreverently, that to whip vs for our Faultes, he woulde ſend vs Straungers, yea ſuch very Tyrants to exerciſe great Tyrannie ouer vs, and did take away the vertuous and faithfull King from amongſt us; for euery Man of euery Eſtate did colour his naughty Affections with a pretence of Religion, and made the Goſpell a ſtaulking Horſe to bring their euil deſires to effect. This was the ſumme of our talke in *Poules*, ſomewhat more dilated.

Stanford. That it may appeare yet more euidently howe *Throckmorton* was a principal Doer and Counſellor in this matter, you ſhall heare his owne Confeſſion of his own hand writing. The Clerke did begin to reade; *Throckmorton* deſired M. *Stanford* to read it, and the Jury well to marke it. Then M. *Stanford* did read the Priſoner's own Confeſſion to this effect, that *Throckmorton* had Conference with *Wyat*, *Caroe*, *Croftes*, *Rogers*, and *Warner*, as well of the Queenes Mariage with the Prince of *Spayne*, as alſo of Religion, and did particularly confer with euery the forenamed of the matters aforeſaid. Moreouer, with Sir *Thomas Wyat*, the Priſoner talked of the bruite, that the Weſtern Men ſhould much miſlike the comming of the *Spanyards* into this Realme, beeing reported alſo that they intended to interrupt theyr arriual here. And alſo that it was ſaid, that they wer in conſultation about the ſame at *Exeter*. *Wyat* alſo did ſay, that Sir *Peter Caroe* could not bring the ſame matter to good effect, nor was there any Man ſo mete to bring it to good effect, as the Erle of *Devon*; and eſpecially in the Weſt Country, in as much as they did not draw al by one line. Then *Throckmorton* aſk'd how the *Kentiſhmen* were affected to the *Spanyards*? *Wyat* ſaid, the People like them euill ynough, and that appeared now at the comming of the Count *Egmont*, for they were ready to ſturre againſt him and his Traine, ſuppoſing it had bin the Prince; but ſaid *Wyat*, Sir *Robert Southwell*, M. *Baker*, and M. *Moyle*, and their Affinitie, which bee in good Credite in ſome places of the Shire, wil for other malicious Reſpects hinder the Libertie of their Country. Then *Throckmorton* ſhould ſay, though I know ther hath bin an vnkindneſſe betwixt M. *Southwell* and you for a Money matter, wherein I trauelled to make you Friends, I doubt not, but in ſo honeſt a matter as this is, he will for the ſafeguard of his Country joyne with you, and ſo you may be ſure of the Lord *Burgainey* and his Force. Then *Wyat* ſaid, it is for another matter than for Money that we diſagree, wherein he hath handled me and others very doubly and vnneighbourly; howbeit, he can do no other, neither to me, nor to anye other Man, and therefore I forgiue him. *Item*, with Sir *Peter Caroe*, *Throckmorton* had Conference touching the Impeachment of the landing of the ſaid Prince, and touchyng Prouiſion of Armour and Munition, as enſueth; that is to ſay, that Sir *Peter Caroe* told *Throckmorton*, that he truſted his Countrymen would be true *Engliſhmen*, and would not agree to let the *Spanyards* to gouerne them. *Item*, the ſaid Sir *Peter Caroe* ſayd, the matter importing the *French* King as it did, he thought the *French* King would work to hinder the *Spanyards* coming hither, with whome the ſaid Sir *Peter* dyd thinke good to practiſe for Armour, Municions and Money. Then *Throckmorton* did adviſe him to beware that he brought any *Frenchmen* into the Realme forceably, in as much as he could as euill abyde the *Frenchmen* after that ſort as the *Spanyards*. And alſo *Throckmorton* thought the *French* King vnable to give aide to us, by meanes of the great Conſumption in their own Warres. M. *Caroe* ſaid, as touching the bringing in of *Frenchmen*, he meant it not, for he loued neither Partie, but to ſerue his own Countrey, and to help his Countrey from Bondage; declaring further to *Throckmorton*, that he had a ſmall Barke of his owne to worke his practiſe by; and ſo he ſaid, that ſhortly he intended to depart to his own Countrey to vnderſtand the Deuotion of his Countrymen. *Item*, *Throckmorton* did ſay, he would for his part hinder the comming in of the *Spaniards* as much as he could by Perſwaſion. *Item*, to Sir *Edward Warner*, he had and did bemone his owne Eſtate, and the Tyrannie of the tyme extended upon dyuers honeſt Perſons for Religion, and wiſhed it were lawfull for all of each Religion to liue ſafely according to their Conſcience; for the Law *(Ex officio)* will be intolerable, and the Cleargies diſcipline now may rather be reſembled to the *Turks* Tyrannie, than to the teaching of Chriſtian Religion. This was the Summe of the matter, whiche was red in the foreſaid Confeſſion, as matters moſt grieuous againſt the Priſoner. Then *Throckmorton* ſaid, ſithence M. Sergeante you haue red and gathered the place as you think, that maketh moſt againſt me, I pray you take the Paynes, and reade further, that hereafter whatſoeuer become of me, my Words be not peruerted and abuſed to the hurt of ſom others, and eſpecially againſt the great Perſonages, of whome I have bin ſundry times (as appeareth by my Anſwers) examined; for I perceiue the Net was not caſt only for little Fiſhes, but for the great ones, *juxta adagium*.

Stanford. It ſhall be but loſſe of tyme, and we haue other things to charge you withall, and this that you deſire doth make nothing for you.

Dyer. And for the better Confirmation of al the Treaſons objected againſt the Priſoner, and therein to proue him giltie, you of the Jury ſhall heare the Duke of *Suffolkes* Depoſitions againſt him, who was a Principal, and hath ſuffered accordingly. Then the ſaid Sergeant red the Dukes Confeſſion touching the Priſoner, amounting to this effect; That the Lord *Thomas Grey* did informe the ſaid Duke, that Sir *Nicholas Throckmorton* was privie to the whole Deuiſes againſte the *Spanyardes*, and was one that ſhoulde goe into the *Weſt-Country* with the Earle of *Deuonſhire*.

Throckmorton. But what doth the principall Author of thys matter ſay againſte me, I mean the Lord *Thomas Gray*, who is yet liuing? Why is not his Depoſition brought againſt me, for ſo it ought to bee, if he can ſay any thing? Will you know the Trueth? Neyther the Lord *Thomas Grey* hath ſayd, can ſay, or will ſay any thing againſt me, notwithſtanding the Duke his Brothers Confeſſion and Accuſation, who hathe affirmed manye other things beſides the Trueth. I ſpeake not without certaine knowledge: for the Lord *Thomas Grey*, being my Priſon-Fellow for a ſmall time, informed me, that the Duke his Brother had miſreported him in many things, amongſt others in matters touching me, which he had declared to you Mr. *Southwell*, and other the Examinors not long ago. I am ſure if the Lord *Thomas* could or would haue ſaid any thing, it ſhould haue bin here now: And as to the Dukes Confeſſion, it is not material, for he doth referre the matter to the Lord *Thomas*'s Report, who hath made my Purgation.

Attorney. And it pleaſe you my Lordes, and you my Maiſters of the Jury, beſides theſe matters touching *Wyats* Rebellion, Sir *Peter Caroes* Treaſons, and confederating with the Duke of *Suffolke*; and beſides the Priſoners Conſpiracie with the Earle of *Deuon*, with *Crofts*, *Rogers*, *Warner*, and ſundry others in ſundrye Places, it ſhall manifeſtly appeare vnto you, that *Throckmorton* did conſpire the Queenes Majeſties Death with *William Thomas*, Sir *Nicholas Arnold*, and other Traitors intending the ſame; which is the greateſt matter of all others, and moſt to be abhorred; and for the Proofe hereof you ſhall heare what *Arnold* ſayth. Then was Sir *Nicholas Arnold*'s Confeſſion redde, affirming that *Throckmorton* ſhewed vnto him, riding betwixt *Hinam* and *Croſſe Laund* in *Gloceſterſhire*, that *John Fitz-williams* was verye much diſpleaſed with *William Thomas*.

Attorney. *William Thomas* deviſed, that *John Fitzwilliams* ſhould kyll the Quene; and *Throckmorton* knew of it, as appeareth by *Arnold*'s Confeſſion.

Throckmorton. Firſt I denie that I ſaide anye ſuche thing to Mr. *Arnold*; and though he be an honeſt Man, he may either forget himſelf, or deuiſe meanes how to vnburthen himſelfe of ſo weightie a matter as this is; for he is charged with the matter as principal, which I did perceiue when he charged mee with his Tale; and therefore I do blame him the leſſe, that he ſeeketh how to diſcharge himſelf, vſing me as a witnes, if he could ſo transferre the Deuice to *William Thomas*. But truely, I neuer ſpake anye ſuche wordes vnto him; and for my better Declaration, I did ſee *John Fitzwilliams* here euen now, who can teſtifie, that he neuer ſhewed me of any Diſpleaſure betwixt them: and as I know nothing of the Diſpleaſure betwixt them, ſo I know nothing of the Cauſe. I pray you, my Lordes, let him bee called to depoſe in thys matter what hee can. Then *John Fitzwilliams* drew to the Barre, and preſented himſelfe to depoſe his knowledg in the mater in open Court.

Attorney. I pray you, my Lordes, ſuffer him not to be ſworne, neither to ſpeake; we have nothing to do with him.

Throckmorton. Why ſhulde hee not bee ſuffered to tell Truthe? And why bee yee not ſo well contented to heare Troth for mee, as Untroth againſt me?

Hare. Who called you hither *Fitzwilliams*, or commaunded you to ſpeake? you are a verye buſie Officer.

Throckmorton. I called him, and do humbly deſire that he may ſpeake and be heard as well as *Vaughan*, or elſe I am not indifferently uſed; ſpecially ſeeing Maiſter Atturny doth ſo preſſe this matter againſt me.

Southwell. Goe youre wayes *Fitzwilliams*, the Courte hath nothing to doe with you; peraduenture you woulde not bee ſo readie in a good Cauſe.

Then *John Fitzwilliams* departed the Court, and was not ſuffered to ſpeake.

Throckmorton. Since this Gentlemans Declaration maye not bee admitted, I truſt you of the Jurie can perceyue, it was not for anye thinge hee had to ſay againſt me; but contrariwiſe, that it was feared he would ſpeake for mee. And nowe to Maiſter *Arnoldes* Depoſitions againſt me, I ſay I did not tell him anye ſuch wordes; ſo as if it were material, there is but his yea and my nay. But becauſe the wordes be not ſore ſtrayned againſt me, I praye you, Maiſter Atturney, why might not I haue tolde Maiſter *Arnolde*, that *John Fitzwilliams* was angrie with *William Thomas*, and yet knowe no cauſe of the Anger? it might be vnderſtande, to diſagree oftentimes. Who doth confeſſe that I knowe any thing of *William Thomas*

Deuiſe touching the Quenes Death? I will aunſwere, no Man: For Maiſter *Arnolde* doth mention no worde of that matter, but of the Diſpleaſures betwixte them; and to ſpeake that, dothe neyther proove Treaſon, nor knowledge of Treaſon. Is here all the Euidence againſte me that you haue to bring mee within the compaſſe of the Inditement?

Stanford. Methinke the Matters confeſſed by others againſt you, together with your owne Confeſſion, will weye ſhrewdlye. But howe ſaye you to the Riſing in *Kent*, and to *Wiats* Attempte againſte the Queenes Royal Perſon at hir Palace?

Bromley. Whye do you not reade *Wiat*'s Accuſation to him, whiche dothe make him Partener to his Treaſons?

Southwell. *Wiat* hath grieuouſlye accuſed you, and in manye thinges that others haue confirmed.

Throckmorton. Whatſoeuer *Wiat* hath ſaide of me in hope of his Life, he vnſayde it at his Death. For ſince I came into this Hall, I hearde one ſaye (but I knowe him not) that *Wiat*, upon the Scaffolde, didde not onelye purge my Ladie *Elizabeth* hir Grace, and the Earle of *Deuonſhire*, but alſo all the Gentlemen in the *Tower*, ſaying, they were all ignoraunt of the Sturre and Commotion; in whiche number I take my ſelfe.

Hare. Notwithſtanding he ſaide, all that he had written and confeſſed to the Counſayle, was true.

Throckmorton. Nay, Sir, by your patience, Maiſter *Wiat* ſayde not ſo, that was Maiſter Doctors Addicion.

Southwell. It appeareth you haue added good Intelligence.

Throckmorton. Almightie God prouided that Reuelation for mee this Daye ſince I came hither: for I haue bene in cloſe Priſon theſe lviii. Dayes, where I hearde nothing but what the Birdes tolde mee, which did flie ouer my heade. And now to you of my Jurie I ſpeake eſpeciallye, whome I deſire to marke attentively, what ſhall be ſayde: I haue been indited, as it appeareth, and now am arreigned of compaſſing the Queenes Majeſties Death, of levying Warre againſte the Queene, of taking the Tower of *London*, of depoſing and depriuing the Queene of hir Royall Eſtate, and finally to deſtroy hir, and of adherence to the Queenes Enimies. Of all whiche Treaſons, to proue mee guiltie, the Queenes learned Counſayle hath giuen in Euidence theſe Pointes materiall: that is to ſaye, for the compaſſing or imagining the Queenes Death, and the Deſtruction of hir Royal Perſon, Sir *Nicholas Arnoldes* Depoſitions; whiche is, that I ſhoulde ſaye to the ſaid Sir *Nicholas* in *Gloceſterſhire*, that Maiſter *John Fitzwilliams* was angrie with *William Thomas*. Whereunto I haue aunſwered, as you haue hearde, bothe denying the matter; and for the proofe on my ſide, doe take Exception, bicauſe there is no Witneſſe but one. And neuertheleſſe, though it were graunted, the Depoſitions proue nothing concerning the Queenes Death. For leuying of Warre againſte the Queene, there is alledged my Conference with Sir *Thomas Wiat*, Sir *James Crofts*, Sir *Edwarde Rogers*, Sir *Edwarde Warner*, againſte the Marriage with *Spaine*, and the comming of the *Spaniardes* hither; which talke I do not denie in ſorte as I ſpake it, and ment it; and notwithſtanding the maliciovs gathering this Day of my Conference, proueth yet no levying of Warre. There is alſo alledged for proofe of the ſame Article, Sir *James Croft*'s Confeſſion, which as you remember, implieth no ſuch thing, but generall talk againſte the Mariage with *Spaine*, and of my departing Weſtwarde with the Earl of *Devon*, which the ſayde *James* doth not auowe, and therefore I praye you conſider it as not ſpoken. There is alſo for proofe of the ſayde Article, the Duke of *Suffolkes* Confeſſion, with whom I neuer had Conference; and therefore he advouched the tale of his Brother's Mouth, who hath made my Purgation in thoſe Matters, and yet if the matter were proued, they be not greatly materiall in Lawe. There is alſo alledged for the further proofe of the ſame Article, and for depoſing and depriuing the Queene of hir Royall Eſtate, and for my adhering to the Queenes Enimies, *Cutbert Vaughan*'s Confeſſion, whoſe Teſtimonie I have ſufficiently diſproued by ſundrie Authorities and Circumſtances, and principally by your owne Lawe, which dothe require two lawfull and ſufficient Witneſſes to be brought face to face. Alſo for the taking of the Tower of *London*, there is alledged *Winter*'s Depoſitions, which vttereth my miſliking, when he vttered vnto mee Sir *Thomas Wiat*'s Reſolution and Deuiſe for attempting of the ſayde peece. And laſt of all, to enforce theſe matters, mine owne Confeſſion is engrieued greatly againſt me, wherein there doth appeare neyther Treaſon, neyther concelement of Treaſon, neyther whiſpering of Treaſon, nor procurement of Treaſon. And for as much as I am come hither to be tried by the Lawe, though my Innocencie of all theſe Pointes materiall objected, be apparent to acquite mee, wherevnto I doe principallye cleaue; yet I will for your better Credit and Satisfactions ſhewe you euidentlye, that if you woulde beleeue all the Depoſitions layde againſt me, which I truſt you will not doe, I ought not to be attainted of the Treaſon compriſed within my Inditement, conſidering the Statute of Repeale the laſt Parliament, of all Treaſons, other than ſuche as be declared in the xxv. Yeare of King *Edwarde* the Thirde; both which Statutes I pray you my Lords my be redde here to the Enqueſt.

Bromley. No, for there ſhall be no Bookes brought at your deſire; we know the Law ſufficiently withoute Booke.

Throckmorton. Do you bring me hither to trie mee by the Lawe, and will not ſhewe me the Lawe? What is your Knowledge of the Lawe to theſe Mens Satisfactions, which haue my Triall in hande? I pray you, my Lordes, and my Lordes all, let the Statutes bee redde, as well for the Queene, as for mee.

Stanford. My Lord Chief Juſtice can ſhew the Lawe, and will, if the Jurie doe doubt of any Poynt.

Throckmorton. You knowe it were indifferent that I ſhould knowe and heare the Law whereby I am adjudged; and foraſmuch as the Statute is in *Engliſhe*, Men of meaner Learning than the Juſtices, can vnderſtande it, or elſe how ſhoulde we know when we offend?

Hare. You knowe not what belongeth to youre caſe, and therefore we muſt teach you: it appertaineth not to vs to provide Bookes for you, neyther ſit wee here to be taught of you; you ſhould haue taken better hede to the Law before you had come hither.

Throckmorton. Bicauſe I am ignoraunt, I woulde learne, and therefore I haue more neede to ſee the Law, and partlye as well for the Inſtructions of the Jurie, as for my owne Satisfaction, which mee thinke, were for the Honor of this Preſence. And now if it pleaſe you my Lorde Chiefe Juſtice, I do direct my Speach ſpecially to you. What time it pleaſed the Queenes Majeſtie, to call you to this Honourable Office, I did learne of a great Perſonage of hir Highneſſe Priuie Counſayle, that amongſt other good Inſtructions, hir Majeſtie charged and enjoyned you to miniſter the Law and Juſtice indifferently without reſpect of Perſons. And notwithſtanding the old Error amongſt you, whiche did not admit any Witneſſe to ſpeake, or any other matter to be hearde in the favor of the Aduerſarie, hir Majeſtie being partie, hir Highnes pleaſure was, that whatſoeuer could be brought in the fauor of the Subject, ſhoulde be admitted to be hearde. And moreouer, that you ſpecially, and likewiſe all other Juſtices, ſhoulde not perſuade themſelues to ſit in Judgment otherwiſe for hir Highneſſe, than for hir Subject. Therefore this maner of indifferent proceeding being principally enjoined by God's Commandement, which I had thought partly to haue remembred you and others here in Commiſſion in the beginning, if I might haue had leaue; and the ſame alſo being commanded you by the Queenes owne Mouth, me think you ought of right to ſuffer me to haue the Statutes red openly, and alſo to reject nothing that coulde be ſpoken in my Defence: and in thus doing you ſhal ſhew your ſelves worthy Miniſters, and fit for ſo worthie a Miſtreſſe.

Bromley. You miſtake the matter, the Queene ſpake thoſe Wordes to maiſter *Morgan* Chiefe Juſtice of the Common Place; but you haue no cauſe to complaine, for you haue been ſuffered to talke at your pleaſure.

Hare. What woulde you doe with the Statute-Booke? the Jury doth not require it, they haue hearde the Euidence, and they muſt vppon their Conſcience trie whether you bee guiltie or no, ſo as the Booke needeth not: if they will not credite the Euidence ſo apparent, then they know what they haue to doe.

Cholmley. You ought not to haue any Bookes red here at your Appointment, for where doth aryſe any doubte in the Law, the Judges ſitte here to informe the Court; and now you doe but ſpende time.

Attourney. I pray you my Lorde Chiefe Juſtice repeate the Euidence for the Queene, and giue the Jurie their Charge, for the Priſoner will keepe you here all day.

Bromley. How ſaye you, haue you any more to ſaye for your ſelfe?

Throckmorton. You ſeeme to giue and offer mee the Lawe, but in very dede I haue only the Forme and Image of the Lawe; neuertheleſſe, ſince I cannot be ſuffred to haue the Statutes red openly in the Booke, I will by your Pacience geſſe at them, as I may, and I pray you to help me if I miſtake, for it is long ſince I did ſee them. The Statute of Repeale made the laſt Parliament hath theſe Wordes, Be it enacted by the Queene, that from henceforth none Acte, Deede, or Offence, being by Acte of Parliament or Statute made Treaſon, Petit Treaſon, or Miſpriſion of Treaſon, by Wordes, Writing, Printing, Ciphering, Deedes, or otherwiſe whatſoeuer, ſhall be taken, had, deemed, or adjudged Treaſon, Petit Treaſon, but only ſuch as be declared, or expreſſed to be Treaſon, in or by an Acte of Parliament made in the xxv. Yeare of *Edward* III. touching and concerning Treaſons, and the Declaration of Treaſons, and none other. Here may you ſee this Statute doth referre all the Offences aforeſayde, to the Statute of the xxv. of *Edward* III. which Statute hath theſe Wordes touching and concerning the Treaſons that I am indited and arraigned of; that is to ſaye, Whoſoeuer doth compaſſe or imagine the Death of the King, or leuie War againſt the King in his Realm, or being adherent to the Kings Enimies within this Realme, or elſewhere, and bee thereof probably attainted by open Deede by People of their Condicion, ſhall be adjudged a Traytor. Now I praye you of my Jurie which haue my Lyfe in Triall, note well what things at this daye bee Treaſons, and howe theſe Treaſons muſt be tried and decerned, that is to ſaye, by open Deede, which the Lawes doth at ſome time terme *ouert acte*. And now I aſke, notwithſtanding my Inditement, which is but matter alledged, where doth appeare the open Deede of any compaſſing or imagining the Queenes Death; or where doth appeare any open Deede of being adherent to the Queenes Enimies, giving to them ayde and comfort; or where doth appeare any open Deede of taking the Tower of *London*?

Bromley. Why doe not you of the Queenes learned Counſell aunſwere him? Me thinke, *Throckmorton*, you neede not to haue the Statutes, for you haue them meetely perfectly.

Stanford. You are deceyued, to conclude all Treaſons be by the Statute of the xxv. Year of *Edwarde* the Thirde; for that Statute is but a Declaration of certaine Treaſons, whiche were Treaſons before at the Common Lawe. Euen ſo there doth remayne diuers other Treaſons at this day at the Common Lawe, which be not expreſſed by that Statute, as the Judges can declare. Neuertheleſſe, there is matter ſufficient alledged and proued againſt you to bringe you within the compaſſe of the ſame Statute.

Throckmorton. I praye you expreſſe thoſe Matters that bring me within the compaſſe of the Statute of *Edwarde* the Third; for the Wordes be theſe, And be thereof attainted by open Deede by People of like Condicion.

Bromley. *Throckmorton*, you deceyue your ſelfe, and miſtake theſe Wordes, by People of their Condicion; for thereby the Lawe doth vnderſtande the diſcouering of your Treaſons. As for example, *Wiat* and the other Rebelles, attainted for their great Treaſons, already declare you to be his and their adherent, in as much as diuerſe and ſundrie times you had Conference with him and them aboute the Treaſon; ſo as *Wiat* is now one of your Condicion, who as the Worlde knoweth, hath committed an open trayterous Fact.

Throckmorton. By your leaue, my Lorde, this is a very ſtraunge and ſingular Underſtanding. For I ſuppoſe the meaning of the Lawe-makers did vnderſtande theſe Wordes, By People of their Condicion, of the State and Condition of thoſe Perſons whiche ſhoulde bee on the Inqueſt to trie the Partie arreygned, guiltie or not guiltie, and nothing to the bewraying of the Offence by another Man's act, as you ſay; for what haue I to doe with *Wiat*'s actes, that was not nigh him by one hundred Myles?

Attourney.

Attorney. Will you take vppon you to ſkill better of the Lawe than the Judges? I doubt not but you of the Jurie will credit as it becommeth you.

Cholmley. Concerning the true vnderſtanding of theſe Words, By People of their Condicion, my Lord Chief Juſtice here hath declared the Truth; for *Wiat* was one of your Condicion, that is to ſay, of your Conſpiracie.

Hare. You doe not denie, *Throckmorton*, but that there hath bene Conference, and ſending betweene *Wiat* and you, and he and *Winter* doth confeſſe the ſame, with others; ſo as it is playne, *Wiat* may well be called one of your Condicion.

Throckmorton. Well, ſeeing you my Judges rule the vnderſtanding of theſe Wordes in the Statute, By People of your Condicion, thus ſtraungelye againſt mee, I will not ſtande longer vppon them. But where dothe appeare in mee an open Deede, wherevnto the Treaſon is ſpeciallye referred?

Bromley. If thre or foure do talke, deuiſe, and conſpire togither of a trayterous Acte to be done, and afterwards one of them doth commit Treaſon, as *Wiat* did; then the Lawe doth repute them, and euerye of them as their Actes; ſo as *Wiat*'s Actes do implie and argue your open Deede, and ſo the Lawe doth terme it and take it.

Throckmorton. Theſe be marueylous Expoſitions, and wonderfull Implications, that another Man's acte, whereof I was not privy, ſhould be accounted myne; for *Wiat* did purge me that I knew nothing of his ſtirre.

Hare. Yea, Sir, but you were a principal Procurer and Contriuer of *Wiat*'s Rebellion, though you were not with him when he made the ſtirre. And as my Lord here hath ſayd, the Law always doth adjudge him a Traytor, which was priuie and doth procure Treaſon, or any other Man to committe Treaſon, or a trayterous acte, as you did *Wiat*, and others; for ſo the Ouert Acte, of thoſe whiche did it by your Procurement, ſhall in this caſe be accounted your open Deede. We have a common caſe in the Lawe, if one by Procurement ſhoulde diſſeyſe you of your Lande, the Lawe holdeth vs both wrong doers, and giueth remedie as well againſt the one as the other.

Throckmorton. For God's ſake applie not ſuch Conſtructions againſt me; and though my preſent Eſtate doth not moue you, yet it were well you ſhoulde conſider your Office, and think what meaſure you giue to others, you your ſelues I ſay ſhall aſſuredly receyue the ſame agayne. The ſtate of mortall Life is ſuch, that Men know full little what hangeth ouer them. I put on within this xii. Moneths ſuch a Mind, that I moſte wofull Wight, was as unlike to ſtande here, as ſome of you that ſit there. As to your caſe laſt recited, whereby you woulde conclude, I haue remembred and learned of you Maſter *Hare*, and you Maſter *Stanforde* in the Parliament Houſe, where you did ſit to make Lawes, to expounde and explaine the Ambiguities and Doubtes of Lawe ſincerely, and that without Affections: There, I ſay, I learned of you, and others my Maiſters of the Lawe, this difference betwixt ſuch Caſes as you remembred one euen nowe, and the Statute whereby I am to be tried. There is a Maxime or Principle in the Lawe, which ought not to be violated, That no penal Statute may, ought, or ſhoulde be conſtrued, expounded, extended, or wreſted, otherwiſe than the ſimple Wordes and nude Letter of the ſame Statute doth warrant and ſignifie. And amongſt diuers good and notable Reaſons by you there in the Parliament Houſe debated, Maiſter Sergeant *Stanforde*, I noted this one, why the ſaid Maxime ought to be inuiolable: you ſaid, conſidering the priuate Affections many tymes both of Princes and Miniſters within this Realme, for that they were Men, and woulde and coulde erre, it ſhoulde be no Securitie, but very daungerous to the Subject, to referre the Conſtruction, and extending of Penall Statutes to anye Judges Equitie, as you termed it, which might eyther by feare of the higher Powers be ſeduced, or by Ignoraunce and Follye abuſed. And that is an aunſwere by procurement.

Bromley. Notwithſtanding the principle, as you alledge it, and the preciſeneſſe of your ſticking to the bare wordes of the Statute, it doth appeare and remaine of recorde in our Learning, that diuerſe Caſes haue bene adjudged Treaſon, without the expreſs wordes of the Statute, as the Quenes learned Counſell there can declare.

Attourney. It doth appeare, the Priſoner did not only intiſe or procure *Wiat*, *Caroe*, *Rogers*, and others, to commite their trayterous Actes, and there doth his open factes appear, whiche *Vaughan*'s Confeſſion doth witneſſe; but alſo he did mynde ſhortlye after to aſſociate himſelfe with thoſe Traytours; for he minded to haue departed with the Earle of *Deuonſhire* Weſtwardes.

Throckmorton. My Innocencie concerning theſe matters, I truſt, ſufficiently appeareth by my former Aunſwers, notwithſtanding the condempned Man's unjuſt Accuſation. But becauſe the true underſtanding of the Statute is in queſtion; I ſaye, procurement, and ſpecially by words onely, is without the compaſſe of it: and that I doe learne and proue by the principle which I learned of Maiſter *Stanforde*.

Stanforde. Maiſter *Throckmorton*, you and I maye not agree this Day in the underſtanding of the Lawe, for I am for the Queene, and you ſpeake for your ſelfe: the Judges muſt determine the matter.

Bromley. He that doth procure another Man to commit a Felony or a Murther, I am ſure you know well ynough, the Law doth adjudge the Procurer there, a Felon or a Murtherer; and in caſe of Treaſon, it hath bene alwayes ſo taken and reputed.

Throckmorton. I doe and muſt cleaue to my Innocencie, for I procured no Man to committe Treaſon; but yet for my Learning I deſire to heare ſome caſe ſo ruled, when the Lawe was as it is nowe. I do confeſſe it, that at ſuche time there were Statutes prouided for the procurer, counſaylour, ayder, abetter, and ſuche like, as there were in King *Henrie* the VIIIth's tyme, you might lawfullye make this cruell Conſtruction, and bring the procurer within the compaſſe of the Lawe. But theſe Statutes being repealed, you ought not nowe ſo to doe; and as to the principal procurer in Fellonie and Murther, it is not lyke as in Treaſon, for the Principal and Acceſſaries in Felonie and Murther be triable and puniſhable by the common Law; and ſo in thoſe caſes the Judges may uſe their Equitie, extending the determinacion of the fault as they thinke good: but in Treaſon it is otherwiſe, the ſame being limited by Statute Law, which I ſay and aduow is reſtreyned from any Judges Conſtruction by the Maxime that I recited.

Stanforde. Your Lordſhips do know a caſe in *R.* 3. time, where the Procurer to counterfeyt falſe Money, was judged a Traytor, and the Law was as it is now.

Hare. Maiſter Sergeaunt doth remember you *Throckmorton*, of an Experience before our time, that the Lawe hath bene ſo taken, and yet the procurer was not expreſſed in the Statute, but the Lawe hath ben always ſo taken.

Throckmorton. I neuer ſtudied the Law, wherof I do much repent mee; yet I remember, whyleſt Penall Statutes were talked of in the Parliament-Houſe, you the learned Men of the Houſe remembred ſome Caſes contrarie to this laſt ſpoken of. And if I miſreport them, I pray you helpe me. In the like caſe you ſpeake of concerning the Procurer to counterfeyte falſe Money, at one time the Procurer was judged a Fellon, and at another time neither Fellon nor Traytor; ſo as ſome of your Predeceſſours adjudged the Procurer no Traytour in the ſame caſe, but leaned to their principle, though ſome other extende their Conſtructions too large. And here is two caſes with me, for one againſt me.

Bromley. Bicauſe you replie ſo ſore upon the principle, I will remember, where one taking the Great Seale of *Englande* from one Writing, and putting it to another, was adjudged a Traytour in *Henry* the IVth's tyme, and yet his act was not within the expreſſe words of the Statute of *Edwarde* the Third. There be diuerſe other ſuch like caſes that maye be alledged and need were.

Throckmorton. I pray you my Lord Chief Juſtice, call to your good Remembraunce, that in the ſelfe ſame caſe of the Seale, * Juſtice *Spilman*, a graue and well learned Man, ſince that time, woulde not condemn the Offender, but did reproue that former Judgment by you laſt remembred, as erronious.

Stanforde. If I had thought you had bene ſo well furniſhed with Booke Caſes, I woulde haue bene better prouided for you.

Throckmorton. I haue nothing but I lerned of you ſpecially M. Sergeant, and of others my Maſters of the Law in the Parliament Houſe; and therefore I may ſay with the Prophet, *Salutem ex inimicis noſtris.*

Southwell. You have a very good Memorie.

Attorney. If the Priſoner may auoyde his Treaſons after this maner, the Queenes Suretie ſhall bee in great jeoperdy. For *Jack Cade*, the Blackſmith, and diuerſe other Traytors, ſometime alledging the Law for them, ſometime they ment no harm to the King, but againſt his Counſell; as *Wiat*, the Duke of *Suffolke*, and theſe did againſt the *Spanyardes*, when there was no *Spanyardes* within the Realme. The Duke and his Brethren did miſtake the Lawe, as you doe, yet at length did confeſſe their Ignorance, and ſubmitted themſelves. And ſo were you beſt to doe.

Throckmorton. As to *Cade* and the Blackſmith, I am not ſo well acquainted with their Treaſons as you bee; but I haue red in the Chronicle, they were in the Fielde with a force againſt the Prince, whereby a manifeſt acte did appeare. As to the Duke of *Suffolke*'s doings, they appertaine not to mee. And tho you woulde compare my ſpeache and talke againſt the *Spanyardes*, to the Duke's actes, who aſſembled a force in Armes, it is euident they differ much: I am ſorie to engreue any other Mans doings; but it ſerueth me for a piece of my Defence, and therefore I wiſh that no Man ſhould gather euil of it, God forbid that words and acts be thus confounded.

Attorney. Sir *William Stanley* uſed this ſhifte that the Priſoner uſeth now, he ſayde he did not leuie War againſt King *Henry* the VII. but ſayde to the Duke of *Buckingham*, that in a good Quarrell he wold aid him with 500 Men; and neuertheleſſe *Stanley* was for thoſe Words attainted, who, as all the Worlde knoweth, had before that time ſerued the King very faithfully and truly.

Throckmorton. I pray you Maiſter Attorney do not conclude me by blinde contraries. Whether you alledge *Stanleyes* caſe trulye or no, I knowe not. But admitte it be as you ſaye, what dothe this proue againſt me? I promiſed no ayde to Maiſter *Wiat*, nor to anye other. The Duke of *Buckingham* leuied Warre againſt the King, with whom *Stanley* was confederate ſo to doe, as you ſaye.

Attorney. I pray you, my Lords, that be the Queenes Commiſſioners, ſuffer not the Priſoner to vſe the Queenes learned Counſell thus; I was neuer interrupted thus in my Life, nor I neuer knewe any thus ſuffered to talke, as this Priſoner is ſuffered: ſome of us will come no more at the Barre, and we be thus handled.

Bromley. *Throckmorton*, you muſt ſuffer the Queenes learned Counſell to ſpeake, or elſe we muſt take order with you; you haue had leaue to talke at your pleaſure.

Hare. It is proued that you did talke with *Wiat* againſt the coming of the *Spanyardes*, and deuiſed to interrupt their arrivall, and you promiſed to doe what you coulde againſte them; wherevpon *Wiat* being encouraged by you, did levie a force, and attempted Warre againſt the Queenes Royal Perſon.

Throckmorton. It was no Treaſon, nor no procurement of Treaſon, to talke againſte the comming hither of the *Spanyardes*, neyther it was Treaſon for me to ſaye, I woulde hynder their commyng hither as muche as I coulde, vnderſtanding me rightly as I meant it; yea though you would extend it to the worſte, it was but Words, it was not Treaſon at this Day as the Law ſtandeth: and as for *Wiat*'s doings, they touche me nothing, for at his Death, when it was no tyme to report untruly, he purged me.

Bromley. By ſundry Caſes remembred here by the Queenes learned Counſell, as you have hearde, that procurement which did appear no otherwyſe but by Words, and thoſe you would make nothing, hath bin of long tyme, and by ſundry well learned Men in the Lawes adjudged Treaſon. And therefore your procurement being ſo euident as it is, we may lawfully ſay it was Treaſon, bycauſe *Wiat* perfourmed a trayterous acte.

Throckmorton. As to the ſaid alledged ſore Precedents againſt me, I haue recited as many for me, and I would you my Lord Chief Juſtice ſhuld incline your Judgments rather after the example of your honourable Predeceſſors, Juſtice *Markham*, and others, which did eſchewe corrupte Judgements, judging directly and ſincerely after the Law, and the Principles in the ſame, than after ſuch Men, as ſwaruing from the Truth, the Maxime, and the Law, did judge corruptely, maliciouſly, and affectionately.

Bromley. Juſtice *Markham* had reaſon to warrant his doings; for it did appeare, a Merchant of *London* was arraigned and ſlanderouſly accuſed of

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* See *Leak*'s Caſe, Kel. Rep.

Treaſon for compaſſing and imagining the King's Death, he did ſay he would make his Sonne Heire of the Crown, and the Merchant meant it of a Houſe in *Cheapſide* at the Signe of the *Crowne*; but your Caſe is not ſo.

Throckmorton. My Caſe doth differ, I graunt, but ſpecially bicauſe I haue not ſuche a Judge: yet there is another cauſe to reſtraine theſe your ſtrange and extraordinarie Conſtructions; that is to ſay, a Prouiſo in the latter ende of the Statute of *Edwarde* the Thirde, hauyng theſe Wordes: Provided always, if any other Caſe of ſuppoſed Treaſon ſhall chaunce hereafter to come in Queſtion or Trial before any Juſtice, other than is in the ſaid Statute expreſſed, that then the Juſtice ſhall forbear to adjudge the ſayd caſe, untill it be ſhewed to the Parliament to trie, whether it ſhould be Treaſon or Felonie. Here you are reſtrained by expreſſe Words to adjudge any caſe that is not manifeſtly mentioned before, and untill it be ſhewed to the Parliament.

Portman. That Prouiſo I underſtand of caſes, that may come in trial, which hath bin in vre, but the Law hath always taken the Procurer to be a principal Offender.

Sanders. The Law alwayes in caſes of Treaſon dothe accompte all Principalles, and no Acceſſaries as in other Offences; and therefore a Man offending in Treaſon, either by couert acte or procurement, whereupon an open Deede hath enſued, as in this caſe, is adjudged by the Lawe a principal Traytoure.

Throckmorton. You adjudge (mee thinke) Procurement very hardly, beſydes the Principall, and beſides the good Example of your beſt and moſt godly learned Predeceſſors, the Judges of the Realme, as I haue partly declared; and notwithſtanding thys grieuous racking and extending of this worde Procurement, I am not in the daunger of it, for it doth appear by no Depoſition, that I procured neyther one or other to attempt any Acte.

Stanforde. The Jurie haue to trye, whether it bee ſo or no, let it weygh as it will.

Hare. I knowe no Meane ſo apparent to try Procurement as by Words, and that Meane is probable ynoughe agaynſt you, as well by youre owne Confeſſion, as by other Mennes Depoſitions.

Throckmorton. To talke of the Queenes Maryage with the Prince of *Spayne*, and alſo the commyng hyther of the *Spanyardes*, is not to procure Treaſon to be done; for then the whole Parliament-houſe, I meane the common Houſe, didde procure Treaſon: but ſince you wyll make no Difference betwixte Wordes and Actes, I praye you remember an Eſtatute made in my late Soueraigne Lorde and Maiſters tyme, Kyng *Edward* the Sixth, whiche apparently expreſſeth the Difference; theſe bee the woordes: Who ſo euer dothe compaſſe, or imagine to depoſe the Kyng of his Royall Eſtate by open Preaching, expreſſe Wordes or Sayings, ſhall for the firſt Offence loſe and forfayte to the King all his and their Goodes and Cattailes, and alſo ſhal ſuffer Impriſonmente of their Bodyes at the King's Will and Pleaſure. Whoſoeuer, &c. for the ſecond Offence ſhall loſe and forfayte to the Kyng the whole Iſſues and Profytes of all his or their Landes, Tenementes, and other Hereditaments, Benefices, Prebendes, and other ſpiritual Promotions. Whoſoeuer, &c. for the thirde Offence, ſhall for Term of Lyfe or Lyues of ſuche Offendour or Offendors, &c. and ſhall alſo forfeite to the Kynges Majeſtie all his or their Goodes and Cattailes, and ſuffer during his or their Liues perpetuall Impriſonement of his or their Bodies. But whoſoeuer, &c. by Writing, Ciphering, or Acte, ſhall for the firſte Offence be adjudged a Traitour, and ſuffer the Paines of Deathe. Here you may perceiue howe the whole Realme and all your Judgementes hathe beefore this vnderſtande Wordes and Actes, diuerſlye and apparantlye; and therefore the Judgementes of the Parliamente did aſſigne Diuerſitie of Puniſhmentes, becauſe they woulde not confounde the true Vnderſtanding of Wordes and Deedes, appointing for compaſſing and imagining by Worde, Impriſonment; and for compaſſing and imagining by open Deede, Paines of Death.

Bromley. It is agreed by the whole Bench, that the Procurer and the Adherent be deemed alwayes Traytors, when as a trayterous Acte was committed by anye one of the ſame Conſpiracie; and there is apparent Proofe of youre adhering to *Wiat*, both by your owne Confeſſion and other wayes.

Throckmorton. Adhering and procuring bee not all one; for the Statute of *Edwarde* the Thirde doth ſpeake of adhering, but not of procuring, and yet adhering ought not be further extended, than to the Quenes Enimies within her Realme, for ſo the Statute doth limit the Vnderſtanding. And *Wiat* was not the Queenes Enimie, for hee was not ſo reputed, when I talked with him laſt; and our Speach implyed no Enmitie, neyther tended to anye Treaſon, or procuring of Treaſon: and therefore I praye you of the Jurie note, thoughe I argue the Lawe, I alledge my Innocencie, as the beſt part of my Defence.

Hare. Your adhering to the Queenes Enimies within the Realme is euidently proued: for *Wiat* was the Queenes Enimie wythin the Realme, as the whole Realme knoweth it, and he hath confeſſed it, both at his Arrainement and at his Death.

Throckmorton. By your leaue, neither *Wiat* at his Arreignment, nor at his Death, did confeſſe, that he was the Queenes Enimie, when I talked laſt with him, neyther he was reputed nor taken in xiiij. dayes after, vntill he aſſembled a Force in Armes, what time I was at your Houſe, Maſter *Inglefielde*, where I learned the firſt Intelligence of *Wiats* Stirre. And I aſke you, who doth depoſe that there paſſed anye maner of Aduertiſement betwixt *Wiat* and mee, after he had diſcouered his Doings, and ſhewed himſelfe an Enemie? If I had bene ſo diſpoſed, who did let mee, that I did not repaire to *Wiat*, or to ſende to him, or to the Duke of *Suffolke* eyther, who was in myne owne Countrey? and thither I might haue gone and conueyed my ſelfe with him, vnſuſpected for my departing homewards.

Inglefielde. It is true that you were there at my Houſe, accompanied with others your Brethren, and, to my knowledg, ignorant of theſe Matters.

Bromley. *Throckmorton*, you confeſſed you talked with *Wiat* and others againſt the comming of the *Spanyardes*, and of the taking of the *Tower* of *London*; wherevpon *Wiat* levied a Force of Men againſt the *Spanyardes* he ſayde, and ſo you ſaye all, but in Deede it was againſt the Queene, which he confeſſed at length: therefore *Wiats* Actes doe proue you Counſayler and Procurer, howſoeuer you woulde auoyde the matter.

Throckmorton. Me think you would conclude me with a miſhapen Argument in Logicke, and you will giue mee leaue, I will make another.

Stanforde. The Judges ſit not here to make Diſputations, but to declare the Law, which hath bene ſufficiently done, if you woulde conſider it.

Hare. You haue hearde Reaſon and the Lawe, if you will conceyue it.

Throckmorton. Oh mercifull God! Oh eternall Father, which ſeeſt all things, what maner of Proceedings are theſe? To what purpoſe ſerueth the Statute of Repeale the laſt Parliament, where I hearde ſome of you here preſent, and diuerſe other of the Queenes learned Counſayle, grieuouſlye inuey againſt the cruell and bloudie Lawes of King *Henrie* the Eyght, and againſt ſome Lawes made in my late Sovereigne Lorde and Maiſters time, King *Edwarde* the ſixth? ſome termed them *Draco's Lawes*, whiche were written in Bloude: Some ſayde they were more intolerable than any Lawes, that *Dionyſius* or any other Tyraunt made. In concluſion, as many Men, ſo manye bitter Termes and Names thoſe Lawes had. And moreouer, the Preface of the ſame Eſtatute doth recite, that for Wordes onely, many great Perſonages, and others of good Behauiour, hath bene moſt cruelly caſt awaye by theſe foremer ſanguinolent thirſtie Lawes, with many other Suggeſtions for the Repeale of the ſame. And now let vs put on indifferent Eyes, and throughly conſider with our ſelues, as you the Judges handle the Conſtructions of the Statute of *Edwarde* the Thirde, with your Equitie and Extenſions, whether we be not in much wors Caſe now than we were when thoſe cruel Lawes yoked vs. Theſe Lawes albeit they were grieuous and captious, yet they had the verie Propertie of a Lawe after S. *Paules* Deſcription: For thoſe Lawes did admoniſh us, and diſcover our Sinnes plainly vnto vs; and when a Man is warned, hee is halfe armed. Theſe Lawes, as they bee handled, be very Baytes to catche us, and onely prepared for the ſame, and no Lawes; for at the firſt ſight they aſcertaine vs we be deliuered from our olde Bondage, and by the late Repeale the laſt Parliament we liue in more Securitie. But when it pleaſeth the higher Powers to call any Mannes Lyfe and Sayings in queſtion, then there be Conſtructions, Interpretations, and Extenſions reſerued to the Juſtices and Judges Equitie, that the Partie triable, as I am nowe, ſhall finde himſelfe in much worſe caſe, than before when thoſe cruell Lawes ſtoode in force. Thus our Amendement is from God's Bleſſing into the warme Sunne; but I require you honeſt Men, whiche are to trie my Life, conſider theſe Opinions of my Life: Judges be rather agreeable to the Time, than to the Truth; for their Judgments be repugnant to their owne Principle, repugnant to their godly and beſt learned Predeceſſors Opinions, repugnant, I ſay, to the Prouiſo in the Statute of Repeale made in the laſt Parliament.

Attorney. Maiſter *Throckmorton*, quiet your ſelfe, and it ſhall be the better for you.

Throckmorton. Maiſter *Attorney*, I am not ſo vnquiet as you be, and yet our Caſes are not alike; but bicauſe I am ſo tedious to you, and haue long troubled this Preſence, it may pleaſe my Lorde Chief Juſtice to repeate the Euidence, wherewith I am charged, and my Aunſwers to all the Objections, if there be no other matter to laye againſt me.

Then the Chief Juſtice *Bromley* remembred particularly all the Depoſitions and Euidences giuen againſt the Priſoner, and eyther for wante of good Memorie, or good Will, the Priſoners Aunſweres were in part not recited: wherevppon the Priſoner craued Indifferencie, and did helpe the Judges olde Memorie with his owne Recital.

Sendall. My Maiſters of the Jurie, you haue to inquire, whether Sir *Nicholas Throckmorton* Knight, here Priſoner at the Barre, be guiltie of theſe Treaſons, or any of them, whereof he hath bene indited and this daye arreigned, yea or no: And if you finde him guiltie, you ſhall enquire what Landes, Tenements, Goodes, and Cattelles he had at the Day of his Treaſons committed, or at anye time ſince; and whether he fledde for the Treaſons or no, if you finde him not guiltie.

Throckmorton. Haue you ſayde what is to be ſayd?

Sendall. Yea, for this time.

Throckmorton. Then I pray you giue me leaue to ſpeake a fewe Words to the Jurie: The Weyght and Grauitie of my Cauſe hath greatly occaſioned me to trouble you here long, and therefore I minde not to entertain you here long with any prolixe Oration: You perceyue notwithſtanding this daye great Contention betwixt the Judges and the Queenes learned Counſayle on the one partie, and mee the poore and wofull Priſoner on the other partie. The Triall of our whole Controuerſie, the Triall of my Innocencie, the Triall of my Lyfe, Landes, and Goodes, and the Deſtruction of my Poſteritie for euer, doth reſt in your good Judgements. And albeit many this daye haue greatly inveyghed againſt me, the final Determination thereof is transferred onely to you: howe grieuous and horrible the ſhedding of Innocents Bloude is in the ſighte of Almightie God, I truſt you do remember. Therefore take heede, I ſaye, for Chriſtes ſake, do not defile your Conſciences with ſuch heynous and notable Crimes; they bee grieuouſlye and terriblye puniſhed, as in this Worlde and Vale of Miſerie vpon the Childrens Children to the thirde and fourth Generation, and in the worlde to come with euerlaſting Fire and Damnation. Lift up your Minds to God, and care not too muche for the Worlde; looke not backe to the Fleſhpots of *Egypte*, whiche will allure you from heauenly Reſpectes to worldlye Securitie, and can thereof neyther make you anye Suretie. Beleeve I pray you, the Queene and hir Magiſtrates be more delighted with favourable Equitie, than with raſhe Crueltie; and in that you be al Citizens, I will take my leaue of you with S. *Paules* farewell to the *Epheſians*, Citizens alſo you be, whome he tooke to recorde that he was pure from ſhedding any Bloude; a ſpecial Token, a Doctrine left for your Inſtruction, that euerye of you may waſhe his Handes of Innocents Bloudeſhedde, when you ſhall take your leaue of this wretched Worlde; the Holy Ghoſt be amongſt you.

Sendall. Come hither, Sergeaunt, take the Jurye with you, and ſuffer no Man to come at them, but to be ordered as the Lawe appointeth, vntill they be agreed vpon their Verdit.

Throckmorton. It may pleaſe you my Lordes and Maiſters which be Commiſſioners, to give order, that no Perſon haue Acceſs or Conference with the Jurie, neither that any of the Queenes learned Counſayle be ſuffered to repayre to them, or to talke with any of them, vntil they preſent themſelues here in open Court, to publiſh their Verdit.

Upon the Priſoners Suite on this behalfe, the Benche gaue Order, that two Sergeauntes were ſworne to ſuffer no Man to repaire to the Jurie, vntill they were agreed.

Then the Priſoner was by Commandement of the Benche withdrawne from the Barre, and the Court adjourned vntill three of the Clocke at Afternoone; at whiche houre the Commiſſioners returned to the *Guildehall*, and there did tarrie vntill the Jurie were agreed vpon the Verdit. And aboute five of the Clocke, their Agreement being aduertiſed to the Commiſſioners, the ſayde Priſoner, Sir *Nicholas Throckmorton*, was again brought to the Barre, where alſo the Jurie did repaire; and being demaunded whether they were agreed vpon their Verdit, aunſwered vniuerſally with one Voyce, Yea. Then it was aſked, who ſhoulde ſpeake for them; they aunſwered, *Whetſton* the Foreman.

Sendall. *Nicholas Throckmorton* Knight, holde vp thy Hande.

Then the Priſoner did ſo vppon the Summons.

Sendall. You that bee of the Jurie, looke vppon the Priſoner.

The Jurie did as they were enjoyned.

Sendall. Howe ſaye you, is Maiſter *Throckmorton* Knight, there Priſoner at the Barre, guiltie of the Treaſons whereof he hathe bin indicted and arraigned in manner and forme, yea or no?

Whetſton. No.

Sendall. How ſay you, did he flie upon them?

Whetſton. No, we finde no ſuch thing.

Throckmorton. I hadde forgot to aunſwere that Queſtion before; but you haue founde according to Truth: And for the better Warrantie of your Dooings, vnderſtande that I came to *London*, and ſo to the Queenes Counſell vnbroughte, when I vnderſtoode they demaunded for me; and yet I was almoſte an hundred miles hence, where if I had not preſumed vppon my Truthe, I coulde haue withdrawen my ſelfe from catching.

Bromley. How ſaye you the reſte of ye, is *Whetſton*'s Verdict all your Verdicts?

The whole Inqueſt anſwered yea.

Bromley. Remember youre ſelues better, haue you conſidered ſubſtantially the whole Euidence in ſorte as it was declared and recited? the Matter dothe touche the Queenes Highneſſe, and your ſelves alſo, take good heede what you doe.

Whetſton. My Lorde, wee haue throughly conſidered the Euidence laide agaynſte the Priſoner, and his Aunſweres to all theſe Matters, and accordingly wee haue founde him not guiltie, agreeable to all our Conſciences.

Bromley. If you haue done well, it is the better for you.

Throckmorton. It is better to be tried, than to liue ſuſpected: *Bleſſed be the Lord God of* Iſraell, *for he hath viſited and redeemed his People, and hathe raiſed up a mightie Saluation for vs in the Houſe of his Seruaunte* Dauid. And it maye pleaſe you my Lorde Chiefe Juſtice, foraſmuche as I haue ben indited and arraigned of ſundry Treaſons, and haue according to the Lawe put my Triall to God and my Countrey, that is to ſay, to theſe honeſt Men whiche haue founde me not giltie; I humbly beſeeche you to giue me ſuch Benefite, Acquitall, and Judgement, as the Lawe in this Caſe doth appointe.

When the Priſoner had ſaide theſe wordes, the Commiſſioners conſulted togither.

Throckmorton. Maye it pleaſe you my Lorde Chiefe Juſtice, to pronounce Sentence for my Diſcharge.

Bromley. Where as you doe aſke the Benefite that the Lawe in ſuche Caſe dothe appointe, I will giue it you, *viz.* That where you haue bene indited of ſundrye highe Treaſons, and haue bene here this Daye before the Queenes Commiſſioners and Juſtices arreigned of the ſaide Treaſons, wherevnto you haue pleaded not guiltye, and haue for Triall therein putte youre ſelfe on God and youre Countrey, and they haue founde you not guiltie, the Courte dothe award that you be clerly diſcharged paying your Fees. Notwithſtandyng, Mayſter Lieutenant, take hym with you agayne, for there are other Matters to charge hym with.

Throckmorton. It may pleaſe you my Lords and Maiſters of the Queenes Highnes Priuie Counſel, to be on my behalfe humble Sutors to hir Majeſtie, that like as the Lawe this daye (God be praiſed) hathe purged mee of the Treaſons wherewith I was moſt dangerouſly charged, ſo it might pleaſe hir Excellent Majeſtie to purge me in hir priuate Judgemente, and both forgyue and forgette my ouer raſhe Boldeneſſe, that I vſed in Talke of hir Highneſſe Marriage with the Prince of *Spaine*, Matters too farre aboue my Capacitie, and I very vnable to conſider the Gravitie therof; a Matter impertinent for me a private Perſon to talke of, which did appertain to hir Highneſſe Privy Counſel to haue in Deliberation: and if it ſhall pleaſe hir Highneſſe of hir bountifull Liberalite, to remitte my former Ouerſightes, I ſhall thinke my ſelfe happye for Triall of the Daunger that I haue this daye eſcaped, and may thereby admoniſhe mee to eſchewe thinges aboue my reache, and alſo to inſtructe mee to deale with matters agreeable to my Vocation; and God ſaue the Queenes Majeſtie, and graunte the ſame long to raigne ouer us, and the ſame Lorde bee praiſed for you the Magiſtrates, before whom I haue hadde my Triall this daye indifferentlye by the Lawe, and you haue proceeded with me accordinglye, and the Grace of God bee amongſt you now and euer.

There was no Aunſwere made by any of the Benche to the Priſoners Sute, but the *Attorney* did ſpeake theſe wordes:

Attorney. And it pleaſe you, my Lordes, foraſmuche as it ſeemeth theſe Men of the Jurie which haue ſtraungely acquitte the Priſoner of his Treaſons whereof hee was indited, will forthwith departe the Courte; I praye you for the Queene, that they, and euery of them, maye bee bounde in a Recognizance of fiue hundrethe Pounde apeece, to aunſwere to ſuche Matters as they ſhall be charged with in the Queenes behalfe, whenſoeuer they ſhall be charged or called.

Whetſton. I praye you, my Lordes, be good vnto vs, and let us not be moleſted for diſchargyng our Conſciences truelye; we bee poore Marchant-men, and haue great Chardge vpon our hands, and our Lyuynges doe depende vppon our Trauailes; therefore it maye pleaſe you to appoynte vs a certaine Daye for our Appearance, bycauſe perhappes elſe ſome of vs maye bee in forreigne Partes aboute our Buſineſſe. The Court being diſſatisfy'd with the Verdict, committed the Jury to Priſon.

Proceedings againſt Sir Nicholas Throckmorton'*s Jury* *.

ON *Friday* the 26th of *October*, thoſe Men who had been of *Throckmorton*'s Inqueſt, being in number eight (for the other four were delivered out of Priſon, for that they ſubmitted themſelves, and ſaid they had offended) whereof *Emanuel Lucar* and *Whetſton* were chief, were call'd before the Council in the Star-Chamber, where they affirmed, that they had done all things in that matter according to their Knowledge, and with good Conſciences, even as they ſhould anſwer before God at the Day of Judgment; and *Lucar* ſaid openly before all the Lords, that they had done in the matter like honeſt Men, and true and faithful Subjects; and therefore they humbly beſought the Lord Chancellor and the other Lords to be means to the King's and Queen's Majeſties, that they might be diſcharg'd and ſet at liberty, and ſaid, that they were all contented to ſubmit themſelves to their Majeſties, ſaving and reſerving their Truth, Conſciences and Honeſties. The Lords taking their Words in evil part, judged them worthy to pay exceſſive Fines; ſome ſaid they were worthy to pay a thouſand Pounds apiece, others that *Lucar* and *Whetſton* were worthy to pay a *thouſand Marks* apiece, and the reſt *five hundred Pounds* apiece. In concluſion, Sentence was given by the Lord Chancellor, that they ſhould pay a *thouſand Marks* apiece the leaſt, and that they ſhould go to Priſon again, and there remain, 'till further Order were taken for their Puniſhment.

Upon *Saturday* the 10th of *November*, the Sheriffs of *London* had commandment to take an Inventory of each one of their Goods, and to ſeal up their Doors, which was done the ſame Day.

Whetſton, *Lucar* and *Kightlie* were adjudged to pay *two thouſand Pounds* apiece, and the reſt a *thouſand Marks* apiece, to be paid within one Fortnight after. From this Payment were exempted thoſe four, who had confeſſed their Fault, and ſubmitted themſelves, *viz. Loe*, *Pointer*, *Beſwicke*, and *Cater*.

Upon *Wedneſday* the 12th of *December* five of the eight Jurors, who lay in the Fleet, were diſcharg'd and ſet at Liberty upon paying their Fines, which were *two hundred and twenty Pounds* apiece. The other three put up a Supplication, therein declaring their Goods did not amount to the Sum of that, which they were appointed to pay; and ſo upon that Declaration, paying *threeſcore Pounds* apiece, they were deliver'd out of Priſon on St. *Thomas*'s Day, being the 21ſt of *December*.

VI. *The Trial of* JAMES *Earl* BOTHWELL, *for the* Murder *of* Henry *Lord* Darnley, *Husband to* Mary *Queen of* Scots, *at the Senate-Houſe of* Edinburgh, April 12. 1567. *the 9th of* Eliz †.

AT the Juſtice Court of our Sovereign Lady the Queen, held and begun in the Senate-Houſe of *Edinburgh*, the 12th Day of *April*, 1567. by the noble and potent Lord *Archibald* Earl of *Argyle*, Lord *Campbel*, and Lord Juſtice General for our Sovereign Lady, in all the Parts of her Realm, where there's a Convention and lawful Aſſembly of Judges.

In this Court appear'd perſonally in Judgment Mr. *John Spence* of *Conde*, and *Robert Crichton* of *Choc*, Advocates for our Sovereign Lady, and in her Name; and there the ſaid Mr. *John Spence* produc'd Letters from our ſaid Sovereign Lady, executed and indors'd with the Summons: the Tenor of which Letters, Endorſements, and Summons hereafter follows.

The Commiſſion of Mary *Queen of* Scots, *to try* James *Earl* Bothwell, *for the Murder of her Husband* Henry *Lord* Darnley.

MARY, by the Grace of God, Queen of *Scotland*. To our beloved Maſters *William Purves*, *William Lawſon*, *Gawin Ramſey* Meſſengers, our Sheriffs in that part conjunctly and ſeverally conſtitute, Greeting. Whereas it has been moſt humbly remonſtrated to us by our beloved and faithful Counſellors, Mr. *John Spence* of *Conde*, and *Robert Crichton* of *Choc*, our Advocates, that they are inform'd that our well-beloved Couſin and Counſellor *Matthew* Earl of *Lennox*, father of our moſt dear Spouſe, has aſſerted, That *James* Earl *Bothwell*, Lord *Hallis* and *Creygchton*, &c. and ſome others, were the Contrivers of the traitorous, cruel, deteſtable, and abominable Murder of his Highneſs, committed the 9th day of *February* laſt paſt, in the dead of the Night, in his Palace, for the time being, in our City of *Edinburgh*, near the Church in the Fields, wilfully and with premeditated Felony; and haue declar'd their Suſpicion of the ſaid Earl and others, as having committed the ſaid cruel and horrid Murder. And having therefore reſolv'd that the Truth of it ſhould be try'd, in a Courſe of Juſtice, with all poſſible Diligence and Brevity, we haue, by Advice of the Lords of our Privy-Council, and alſo at the humble Requeſt and Petition of the ſaid Earl *Bothwell* made to us, and in our Preſence, offering to ſubmit himſelf to a fair Trial of what he is charg'd with, according to the Laws of the Land, order'd a Court of Juſtice to meet in the Senate-Houſe of *Edinburgh* on the 12th of *April* next inſuing, in order to do Juſtice upon the ſaid Earl and others for committing the ſaid cruel and abominable Crime and Offence, as is more at large ſet forth in an Act inſerted in the Regiſters of our ſaid Privy-Council. Therefore it is our Pleaſure, and we enjoin and command you moſt expreſly, that, incontinent theſe our Letters ſeen, you proceed, and, in our Name and Authority, ſummon the ſaid *Matthew* Earl of *Lennox*, at his own Houſe, to appear together with all others of our Subjects, having and pretending to have Intereſt in this Cauſe, by publick Proclamation made at the Mercat Croſſes of our Towns of *Edinburgh*, *Dumbarton*, *Glaſcow*, *Lanerk*, and other Places neceſſary, to the end that they may appear before our Judges, or their Deputies, in our Senate-Houſe at *Edinburgh*, on the ſaid 12th day of *April* next enſuing, and join with us in the Proſecution of this Cauſe, by giving them a Summons. And in caſe that they don't appear, we order that our Judges, or their Deputies, ſhall proceed and give Sentence the ſame day, according to the Laws and Cuſtoms of our Realm, without any farther Delay or Prolongation; and that you ſummon every one of them to appear the ſame day, under the Penalty of a Fine of 40*l.* Sterling, for which they ſhall anſwer before us as for their own Act and Deed. And for this end, we give to every one of you conjunctly and ſeverally our full Power, by theſe our Letters, to the intent that you may deliver and execute them duly, and indorſe them to him who ſhall be the Bearer thereof. Given under our Seal at *Edinburgh* the 27th day of *March*, and of our Reign the 25th, in the year 1567. Sign'd accordingly by Advice of the Queen's Council,

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* Holin. Vol. 3. p. 1121, 1126.

† Buchan. Hiſt. *of* Scotl. Book 18. *Appendix to* Buchan. Hiſt. p. 30.

MARY.

What was indors'd on the back of the ſaid Commiſſion.

The 19th day of *March*, 1567. I *William Purves*, Meſſenger and Sheriff conſtitute for that part, according to the Command of the Letters of our Sovereign Lady, and in her Name and Authority, have ſummon'd *Matthew* Earl of *Lennox*, and all others of her Majeſty's Subjects, having and pretending to have Intereſt in what is within ſpecify'd, by publick Proclamation, made at the Mercat Croſs of the City of *Edinburgh*, in order to appear before the Judges or their Deputies, in the Senate-Houſe at *Edinburgh*, the 12th day of *April* next enſuing, and to proſecute and join with our ſaid Sovereign Lady, in the Cauſe herein ſet forth, with the Summons as it is mention'd in the ſaid Commiſſion; a Copy of which I have affix'd to the Croſs of the ſaid Mercat, in preſence of *John Anderſoun* and *David Land*, and many others. And in further Teſtimony of this my Execution and Indorſement, I have hereunto ſet my Seal. Signed *William Purves.*

Another Summons.

The laſt day of *March* but one, the firſt and ſecond days of *April*, in the year above-mention'd, I *Gawin Ramſey* Meſſenger, and one of the Sheriffs conſtitute for that part, went according to the Command contain'd in the Letters of our Sovereign Lady, and in her Nameand Authority ſummon'd the ſaid *Matthew* Earl of *Lennox*, particularly at his Houſes in *Glaſcow* and *Dumbarton*. And whereas I ſought him, but could not find him in Perſon, nor her Majeſty's other Subjects, pretending to have Intereſt in the Proſecution of the Cauſe herein ſet forth, I made a Proclamation at the Mercat Croſſes of the Towns of *Glaſcow*, *Dumbarton*, and *Lanerk*, in order to make them appear before the Judge or his Deputy, at the ſaid Senate-Houſe of *Edinburgh*, on the ſaid 12th day of *April* next enſuing, and to join in the Proſecution with the Queen our ſaid Sovereign Lady, in the Action within-mention'd, with the Summons, as it is there declar'd, and according to the Form and Tenour of her Letters, of which I have ſet up a Copy on each of the ſaid Croſſes in thoſe Markets. I have done and executed the above before the Witneſſes that follow, *viz. George Herbeſoun*, *Nicholas Andrew*, *Robert Letteric* Meſſenger; *William Smollet*, *John Hamilton*, *Jam. Bannatine*, *Robert Hamilton*, and many others. And in further Teſtimony hereof, I haue ſign'd theſe Preſents with my Sign Manual. *Gawin Ramſey*, Meſſenger.

Another Summons.

The firſt day of *April*, 1567. I *William Lawſon*, Meſſenger, and Sheriff conſtitute for that part, went according to the Command ſignify'd in the Commiſſion of our Sovereign Lady to the Mercat Croſs of *Perth*, and there, by publick Proclamation made according to Law, I ſummon'd *Matthew* Earl of *Lennox*, and all other Subjects of our ſaid Sovereign Lady, having and pretending to have Intereſts, in order to proſecute *James* Earl *Bothwell*, Lord of *Hallis* and *Creygchton*, &c. and others, for the cruel Murder committed on the King; and have affix'd a Copy on the ſaid Croſs, according to the Form and Tenour of theſe Preſents. And this in Preſence of the Witneſſes hereafter named, *viz. James Mareſchal*, *Alexander Borthwith*, and *John Anderſon* Meſſengers, and many others. And in further Teſtimony of this my Execution and Indorſement, I haue ſign'd theſe Preſents with my Sign Manual. Signed accordingly, *William Lawſon*, Meſſenger, with my own hand.

The Indictment.

You *James* Earl *Bothwell*, Lord of *Hallis*, *Creygchton*, &c. are indicted on account of the cruel and horrid Murder of the moſt Excellent, moſt High and moſt Mighty Prince the King, the late moſt dear Spouſe of the Queen's Majeſty, our Sovereign Lady, committed in the Dead of the Night, at his Houſe near the Church of the Fields in this City, as he was taking his Reſt, by treaſonably ſetting fire to a great quantity of Gunpowder in the ſaid Houſe, by the violence whereof the whole Houſe was blown up into the Air, and the King himſelf by you kill'd traitorouſly and cruelly, wilfully, and by premeditated Felony. And this you did the 9th day of *February* laſt paſt, in the Dead of the Night as aforeſaid, as is notorious, and you cannot deny.

Upon the producing of which Letters, ſo executed, indors'd, and publiſh'd, the ſaid Advocate demanded an Act and Inſtrument in the Court, and requir'd that the Judge ſhould proceed according to the Form of them.

Theſe Letters being read in Judgment with the Indorſements, the Judge, by virtue thereof, order'd the ſaid *James* Earl *Bothwell* to be call'd as Defendant of the one part, and *Matthew* Earl of *Lennox*, and all other Subjects of our ſaid Sovereign Lady, pretending to proſecute this Matter, as Plaintiffs on the other part; that they might appear in Court, and exhibit their Complaints and Defences, according to the Laws of the Realm.

And immediately appear'd in Judgment the ſaid *James* Earl *Bothwell*, and enter'd the Court in Perſon; after which he choſe Maſter *David Bothwick* of *Lutchill*, and Mr. *Edmund Hay* for his Advocates, who appearing alſo in Judgment, were admitted by the Judge for that effect.

Appear'd alſo Mr. *Henry Kinloch*, calling himſelf Proctor for his Maſter *Andrew* Lord *Errol*, Conſtable of *Scotland*, and alledg'd, that the Conſtable of the Realm had at all times been own'd to be the only Judge Competent of Men of that Quality, when accus'd of having committed Murder and Bloodſhed near the Prince's Chamber, and four Miles round; and therefore his ſaid Maſter being at preſent Conſtable of this Realm, ought to be Judge to *James* Earl *Bothwell*, and others his Accomplices, ſummoned to appear this day, and to be charg'd with the above-mention'd Act of the cruel Murder of *Henry* King of *Scotland*. And in caſe that *Archibald* Earl of *Argyle*, as Juſtice-General of this Realm, proceed and take cognizance of this Fact, the ſaid Mr. *Henry*, Proctor above-mention'd, proteſted ſolemnly that this Trial ſhould not be prejudicial to the ſaid Conſtable, his Office, Right, Title, Profit, Juriſdiction, and Poſſeſſion, in any manner whatever; but that he might exerciſe his ſaid Juriſdiction in all ſuch Cauſes for time to come, according to the Seiſin of his Office, and take cognizance of them, as his Predeceſſors had been us'd to do in the like caſe. This he would make appear, by the poſſeſſion which his Predeceſſors had of it at all times and otherwiſe; and he requir'd that this Proteſtation ſhould be regiſter'd in the Acts, and affirm'd that the Juriſdiction of the preſent Judge ought not to be allow'd in this Caſe.

The Judge having no regard to this Proteſtation, did, by Advice of his Aſſeſſor, decree, that he would take cognizance of the Fact notwithſtanding, ſince nothing had been produc'd by the ſaid Mr. *Henry*, to verify the Contents of what he had alledg'd and proteſted: Of all which the Earl *Bothwell* demanded an Act and Inſtrument.

The ſaid *Matthew* Earl of *Lennox*, and other Subjects of our Sovereign Lady, having and pretending to have Intereſt in this Proſecution, being called ſeveral times to appear, and to join with the ſaid Advocates in proſecuting the ſaid Action, there appear'd *Robert Cunningham*, who called himſelf Servant to the ſaid *Matthew* Earl of *Lennox*, and exhibited a Writing, ſign'd with his own hand in full Court, as being authoriz'd thereunto, and made a Proteſtation and Requiſition of the whole, agreeable to the ſaid Writing; of which the Tenor follows.

The Proteſtation of the Earl of Lennox.

My Lords, I am come hither, being ſent by my Maſter my Lord of *Lennox*, to declare the Cauſe why he is this day abſent, having full Power from him for that effect, as the Truth is. The Cauſe then of his Abſence is the ſhortneſs of the Time allowed him, and that he is hinder'd to have his Friends and Servants, who ought to accompany him for his Honour, and the Safety of his Perſon, conſidering the Strength of the oppoſite Party, and that he has no Aſſiſtance from any of his Friends, but muſt ſtand by himſelf: Therefore his Lordſhip has commanded me to require another competent Day, according to the Importance of this Cauſe, that he may be here preſent; but if you will proceed now, I proteſt, that I may, without Offence to any Perſon, make uſe of the Authority committed to me by my ſaid Lord and Maſter, of which I demand an Act.

Item, I proteſt, that if thoſe who aſſiſt in this Judgment and Inqueſt upon the Perſons accus'd, do undertake to acquit them of the King's Murder, that it ſhall be held as a voluntary Error, and not of Ignorance; ſince 'tis notoriouſly known who they are that have murder'd the King, as my ſaid Lord and Maſter affirms; of which Proteſtation I require an Act thus ſign'd, *Robert Cunningham*: of the Production of which Writing and Proteſtation the ſaid *Robert* demanded an Act and Inſtrument.

The Judge conſidering the Writing and Proteſtation produced by the ſaid *Robert Cunningham*, and having regard to the Letters ſent to our Sovereign Lady, by *Matthew* Earl of *Lennox*, alſo produc'd and read in Judgment, the Tenor of which is hereafter inſerted; by which Letters and Writing the ſaid Earl of *Lennox* requires, that a brief and ſummary Trial may be made of this Cauſe: And having alſo regard to the Act, and the Order thereupon taken by the Lords of the Privy-Council, and other ſuch things; and to what the Advocates inſiſt upon as to the ſame Fact, requiring that Juſtice may be done to the ſaid Earl *Bothwell*; and taking notice likewiſe of the Requeſt and Demand which he has made, that the whole may be thorowly examin'd; the Judge, by the Advice of the Lords and Barons his Aſſiſtants, found that they ought to proceed to the Deciſion of the ſaid Cauſe the ſame Day, according to the Laws of the Realm, notwithſtanding the Writing and Proteſtation produc'd by the ſaid *Robert Cunningham*, and that in the mean time he ſhall be admitted to join with and aſſiſt the ſaid Advocates, for the final Trial of the ſaid Cauſe, if he thinks good.

Copies of the Letters ſent to the Queen by the Earl of Lennox.

Madam, I return moſt humble Thanks to your Majeſty for the gracious and conſolatory Letters which I receiv'd the 24th of this preſent Month; by which I perceive that 'tis your Majeſty's Pleaſure to put off the Trial of this late execrable Fact, till the Parliament meets. May it pleaſe your Majeſty to conſider, that tho' I be aſſur'd that your Highneſs muſt needs think the time long till the Truth of this Fact be found out, and the Authors of it puniſh'd according to their Demerits; yet I moſt humbly beg pardon of your Majeſty for troubling and importuning you ſo often as I am forc'd to do, the Affair being ſuch as touches me ſo near; and therefore moſt humbly requeſt, that your Majeſty would take in good part my Advice as follows: It is, that it is too long to wait for the meeting of the Parliament; beſides, this is not an Affair of that ſort, which uſes to be treated of in Parliament, but being ſuch, and of ſo great Importance, it is evident to every one, it ought rather to be inquir'd into with all Diligence, that the Authors may ſuffer an exemplary Puniſhment. I know that your Majeſty is much more able to judge of it than I; but being inform'd that certain Placarts or Writings have been affix'd to the Gate of the Senate-Houſe of *Edinburgh*, which anſwer'd to your Majeſty's firſt and ſecond Proclamation, and nam'd ſome Perſons as Authors of the ſaid cruel Murder, I moſt humbly requeſt of your Majeſty, for the Honour of God, and for that of yout Majeſty and your Realm, and for the Welfare and Peace of it, that you would be pleaſed not only to cauſe thoſe who are named in the ſaid Placarts to be apprehended and put in ſafe Cuſtody, but likewiſe to aſſemble your Nobility with all poſſible Diligence, and then to ſummon by Proclamation the Authors of the ſaid Placarts to appear for the Ends therein mentioned; and if they appear not, your Majeſty may, by the Advice of your Nobility and Council, ſet at liberty thoſe who are therein named. Your Majeſty will do an honourable Act in bringing this matter to this Iſſue, that according as the matter ſhall appear to your Majeſty, you may puniſh and chaſtiſe the Authors of this cruel Fact; or if the ſaid Placarts ſhall be found falſe and of no validity, thoſe who are charged may be acquitted and ſet at liberty, according to your Majeſty's good Pleaſure. Madam, I pray God Almighty to take your Majeſty into his Protection and Safeguard, and to preſerve you in Health and happy Proſperity. From *Howſtoun* the 26th of *February*.

A ſecond Letter from the Earl of Lennox.

Madam, I beſeech your Majeſty to attend to what follows: Your Highneſs in your laſt Letters acquainted me, that if there were any Names in the Placarts, which were ſet up at the Door of the Senate-Houſe of *Edinburgh*, of ſuch Perſons as I thought worthy of Condemnation, for the Murder of the King your Majeſty's Huſband, you would, according to my Advice, make it your Buſineſs to bring them to Trial, according to the Laws of this Realm, and as the Nature of the Crime required. May it therefore pleaſe your Majeſty to know, that from the time I received your ſaid Letters, I always expected that ſome of thoſe bloody Murderers would be made openly known to you; but ſince I perceive they are not, I cannot find in my heart to conceal them from you any longer. Your Majeſty therefore has here the Names of thoſe whom I greatly ſuſpect, *viz.* The Earl of *Bothwell*, Sir *James Balfour*, and *Gilbert Balfour* his Brother; Maiſter *David Chamers*; Black Maiſter *John Spence*; the Sieur *Franciſcus Baſtian*, *John de Bourdeaux*, and *Joſeph*, the Brother of *Davy Rizio:* Whom I moſt humbly beſeech your Majeſty, according to my former Petition, not only to cauſe to be apprehended and committed to ſafe Cuſtody, but alſo with all Diligence to aſſemble your Nobility and Council, and then to take ſuch Advice about the Fact of the Perſons above-mentioned, as they may be duly examined. And as I hope, ſo I make no doubt, but that by proceeding in this manner, the Spirit of God will aſſiſt toward bringing it to a good Concluſion. Herein your Majeſty will do an Act holy and honourable for your ſelf, who are a Party, and highly ſatisfy thoſe who ſtand in any Relation to the Deceaſed, whom you loved ſo dearly. And not doubting that your Majeſty will give proper Orders for the whole, according to the importance of the Matter (as I moſt humbly beſeech you to do) I ſhall pray to Almighty God to take you into his Protection, and to give you long Life and Health with Grace, that your Reign may be both long and proſperous. *Howſtoun, March* 17.

The Names of the Judges or Jury deputed for the Abſolution of the Earl of Bothwell.

Andrew Earl of *Rothes*, *George* Earl of *Caithneſs*, *Gilbert* Earl of *Caſſils*, Lord *John Hamilton*, Commendator of *Arbroth*, Son to the Duke, *James* Lord *Roſſe*, *Robert* Lord *Semple*, *John Maxwell* Lord *Harris*, *Lawrence* Lord *Oliphant*, *John* Maſter of *Forbes*, *John Gourdon* of *Lochinvar*, *Robert* Lord *Boyde*, *James Cockburn* of *Lanton*, *John Sommerville* of *Cumbuſnethan*, *Moubray* of *Barnbougal*, and *Ogilbye* of *Boyne*.

The above-named being choſen, admitted, and ſworn to give Sentence according to Cuſtom, and the Earl of *Bothwell* being accuſed by Indictment of the Crime above declared, and ſubmitting and referring himſelf to the Sentence of the ſaid Judges, they went out of the Senate-Houſe to another Place; and after having long diſputed together upon all the Articles of the ſaid Accuſation, they did each of them, one after another, declare the ſaid *James* Earl of *Bothwell* quit and abſolved of the whole, and every part of the Murder of the King, and in general of whatever depended on the ſaid Accuſation.

Afterwards the ſaid *George* Earl of *Caithneſs*, Chancellor or Preſident at the ſaid Trial (*i. e.* Foreman of the Jury) as well in his own Name as that of the other Judges, demanded an Act, to the end that as well the Advocates, as the ſaid *Robert Cunningham*, having a proxy from the Earl of *Lennox*, and all others whomſoever, might be debarred hereafter from producing any other Writing or Proofs whatſoever, in order to ſupport the ſaid Indictment, and that the Judges might not be induced to give any other Opinion than they had done before; the rather becauſe no body had proved the Truth of the Accuſation, nor ſo much as any part of it, and that no Accuſer appeared but the above-mentioned, who were preſented in order to carry on the Trial: and therefore the Judges having regard to the ſame, declared him free as far as they could have any knowledge of the Fact, with a Proteſtation, that this might not be afterwards imputed to them as a Fault. Which Act and Proteſtation, when the ſaid Earl of *Caithneſs* Preſident and ſome of the Judges above-mentioned, returned to the Court in the Senate-Houſe, and before the pronouncing of the aforeſaid Sentence, was, at the requeſt of the ſaid Earl of *Caithneſs*, read publickly, and in full Court, and he demanded an Act and Inſtrument of it, proteſting as above.

Extracted from the Regiſters of the Acts of our Sovereign Lady's Court of Juſtice, by me *John Bellenden* of *Auchnoule* Knight, and Clerk General of the ſaid Court, under my Sign Manual.

Signed, *John Bellenden*, Clerk of the Court.

Note, That at the ſame time Proteſtation was made by *George* Earl of *Caithneſs*, Chancellor of the ſaid Aſſize, that the ſaid Dictate or Indictment was not in this Point true, *viz.* alledging the Murder to be committed the 9th day of *February*, for that indeed the Murder was committed the next day, being the 10th day in the Morning, at two hours after Midnight, which in Law was and ought to be truly accounted the 10th day; and ſo the Acquittal that way, but cavillingly defended.

The Proclamations and Placarts, in anſwer to them mentioned in the Trial, and others that happened after, were as follows.

Incontinent after the Murder of the King, the 10th of *February*, 1566. a Proclamation was iſſued, ſetting forth, that whoever would diſcover the Murderers ſhould have 2000*l.* Sterling. This Proclamation was anſwer'd by a Placart, fix'd on the door of the Senate-houſe of *Edinburgh*, on the 16th day of *February*, in form as follows:

Whereas publick Notice has been given, that whoſoever will diſcover the Murderers of the King, ſhould have 2000*l.* Sterling; I who have made Enquiry by thoſe who committed the Act it ſelf, affirm, that the Authors of the ſaid Murder are the Earl of *Bothwell*, Sir *James Balfour*, the Curate *Fliſk*, Maſter *David Chambers*, and black Maſter *John Spens*, who above all was the principal Author of this Murder; and the Queen, who conſented to it at the Perſuaſion of the ſaid Earl of *Bothwell*, by the Witchcraft of the Lady *Buccleugh*.

Upon this, another Proclamation was iſſued the ſame day, requiring the Perſon who had ſet up the Placart to appear, own, and ſubſcribe it in Perſon, that he might have the Sum promis'd by the former Proclamation, and more if he deſerv'd it, as the Queen and her Council ſhould think fit.

To this the following Anſwer was given and ſet up at the ſame Place the day following.

Foraſmuch as a Proclamation has been iſſued ſince I ſet up my former, requiring that I ſhould come to ſubſcribe and own it; for Anſwer I do likewiſe require, that the Money may be conſign'd into the hands of ſome Man of Subſtance, and I will appear next Sunday, and four others with me, and then I will ſubſcribe and maintain what I have ſaid. Moreover, I require that the Sieur *Francis Baſtein*, and *Joſeph* the Queen's Goldſmith, may be apprehended; and I will declare what each of them and their Accomplices did in particular.

To this no Anſwer was return'd.

Tho' the Earl of *Bothwell* was acquitted as above-mentioned, yet knowing that the World did ſtill eſteem him guilty, he did, in order to clear himſelf further, ſet up a Paper in the Market-place, bearing, that albeit he had been acquitted by Law, yet to make his Innocence the more manifeſt, he was ready to try the ſame by ſingle Combat, with any Man of honourable Birth and Reputation, who would accuſe him of the King's Murder.

To which Anſwer was made by another Placart, ſet up immediately after in the ſame Place, That foraſmuch as the ſaid Earl of *Bothwell* had caus'd a Placart to be ſet up, ſign'd with his own Hand, whereby he challeng'd any Man of Quality, and of a fair Reputation, who would and dar'd to ſay that he was guilty of the Death of the King; adding, that he who ſaid it, or went about to ſupport that Charge, ſhould be forc'd to eat his Words: A Gentleman of Honour and good Renown accepted his Offer, and ſaid, he would prove by the Law of Arms that he was the principal Author of that horrid Murder, of which the Judges had raſhly acquitted him for fear of Death, after ſo much Inquiry had been made into it. And whereas the King of *France* and the Queen of *England* requir'd, by their Ambaſſadors, that the ſaid Murder might be puniſhed, he alſo intreats their Majeſties to inſiſt with the Queen, his Sovereign Lady, that by her Conſent a Time and Place may be appointed in their Countries to combat the Earl, according to the Law of Arms, in their Preſence, or in that of their Deputies; at which Time and Place he promiſes and ſwears, on the word of a Gentleman, to be preſent and do his Duty, provided their Majeſties will, by Proclamation, grant Safe-conduct to him and his Company, to paſs and repaſs thro' their Dominions without any moleſtation. He refers it to the Judgment of the Readers and Hearers what juſt Cauſe he has to deſire this of the King of *France* and the Queen of *England*, and by this he advertiſes the reſt of the Murderers to prepare themſelves; for he will give each of them the like Challenge, and publiſh their Names in Writing, that they may be known to every body.

To this *Bothwell* made no Reply *.

Some time afterwards, *Bothwell* was conſtrain'd to fly the Kingdom, and went firſt to the *Orcades*, and then to the Iſles of *Schetland*, where being reduc'd to extreme want, he turn'd *Pirate:* But being in danger of being taken, he went to *Denmark*; where, not being able to give a good Account of himſelf, he was taken into Cuſtody; and afterwards being known by ſome Merchants, he was clapt up cloſe Priſoner; and after a loathſome Impriſonment for ten Years, that and other Miſeries made him diſtracted; and thus he came to a moſt ignominious Death, ſuitable to his vile and wicked Courſe of Life.

VII. *The Trial of* THOMAS HOWARD *Duke of* Norfolk, *before the Lords at* Weſtminſter, *for* High-Treaſon, January 16. 1571. 14 Eliz.

FIRST of all, there was prepar'd in *Weſtminſter-Hall* a large Scaffold, about a Foot diſtant from the *Chancery-Court*; and to the ſame Scaffold a long Paſſage, about ſix foot broad, and high built all the way as far as to the *Common-Pleas* Bar. In the middle, on the South-ſide of the Scaffold, was erected a Chair, ſomewhat higher than the reſt, with a Cloth of State for the Lord High Steward of *England*, who for that day was *George* Earl of *Shrewsbury*. On both ſides of the Lord High Steward, ſat the Lords in this Order:

On the right Hand of the Lord High Steward.	On the left Hand.
Reynold Earl of *Kent*,	Earl of *Worceſter*,
Thomas Earl of *Suſſex*,	Earl of *Huntingdon*,
Ambroſe Earl of *Warwick*,	*Francis* Earl of *Bedford*,
—— Earl of *Pembroke*,	*Edward* Earl of *Hertford*,

On the right Hand of the Lord High Steward.	On the left Hand.
Robert Earl of *Leiceſter*,	Viſcount *Hereford*,
Lord *Clinton*, Lord High Admiral of *England*,	*William* Lord *Howard* of *Effingham*.
William Lord *Burleigh*,	Lord *Grey* of *Wilton*,
James Lord *Mountjoy*,	Lord *Sandes*,
Lord *Wentworth*,	Lord *Burgh*,
Lewis Lord *Mordant*,	Lord *St. John*,
Lord *Chandois*,	Lord *Rich*,
Oliver Lord *St. John* of *Bletſhoe*.	Lord *North*,
	Thomas Lord *Buckhurſt*,
	Lord *De La Ware*.

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* See *State-Trials*. Vol. VIII. p. 323.

On both ſides of the Lord High Steward, on a lower Form, at the Lords Feet, ſat the Judges, *viz.* on the right hand;

Sir *Robert Catlin*, Lord Chief Juſtice of *England*;
Sir *James Dyer*, Lord Chief Juſtice of the *Common Pleas*;
Sir *Edward Saunders*, Lord Chief Baron of the *Exchequer*.

On the left hand, the reſt of the Judges ſat according to their Order.

At the feet of the Lord High Steward, directly before him, in a hollow Place cut in the Scaffold for that purpoſe, ſat Mr. *Miles Sands* Clerk of the Crown with his Secondary. Next, beneath the Juſtices in the ſame Row, ſat at the right Hand, *viz.* on the Eaſt-ſide, Sir *Francis Knowles*, with three of the Queen's Houſhold, and Sir *Walter Mildmay* Chancellor of the *Exchequer*, with ſeveral others of the Queen's Privy-Council. On the left ſide, on the Weſt part of the ſaid Scaffold in the ſame Degree, ſat next the Judges, Dr. *Wilſon*, Maſter of the Requeſts, and ſeveral other Perſons of Note.

On the North part of the Scaffold, directly before the Bar where the Priſoner came, ſat Mr. *Nicholas Barram* the Queen's Serjeant, Mr. *Gilbert Gerard* the Queen's Attorney-General, Mr. *Thomas Bromley* Sollicitor-General, and Mr. *Thomas Wilbraham* the Queen's Attorney of the Court of Wards. On the right hand, by Permiſſion, ſat Mr. *William Fleetwood* Recorder of *London*; and on their left hands were Mr. *Thomas Norton*, who wrote down this Trial upon the Scaffold, as alſo *Garter* King at Arms, two Gentlemen Uſhers, and two Serjeants at Arms.

The Lord High Steward being ſet in his Chair, and all the Lords and others ſet in their Places, with a great Number of People in the Hall, the Hall being kept by the Knight Marſhal, and the Warden of the Fleet and their Servants with Tipſtaves; about half an hour paſt eight in the Morning the Lord High Steward ſtood up at his Chair bare-headed, and Mr. *Norris* the Gentleman-Uſher holding the white Rod before him, *Littleton* the Serjeant at Arms made Proclamation as follows:

My Lord's Grace, the Queen's Majeſty's Commiſſioner, High-Steward of England, *commandeth every Man to keep ſilence on pain of Impriſonment, and to hear the Queen's Majeſty's Commiſſion read..* Which then was read by the Clerk of the Crown.

Then the ſaid Lord High Steward ſat down again in his Chair, and the Gentleman-Uſher delivered him the white Rod, which he held in his hand a great while; and after the Indictment read, re-deliver'd it to the Gentleman-Uſher, who held it up before him all the time of the Arraignment. Then *Littleton* the Serjeant again made Oyer, and proclaim'd thus: *Thomas Edwards, Serjeant at Arms, return thy Precept*; which being put in immediately, he deliver'd to the Clerk of the Crown the Names of the Peers ſummon'd for the Trial.

Then *Littleton* the Serjeant again made Oyer, and proclaim'd thus: *All Earls, Viſcounts, and Barons, ſummon'd to appear this day, every one anſwer to your Names on pain of future Peril.* Then were all the Lords call'd in order by their Names of Baptiſm, and Surnames of Dignity, beginning at the antienteſt; and every one ſeverally, as he was called, ſtood and ſignify'd their Appearance.

Their Order of Ancientry, as they were call'd, was thus:

Reynold Earl of *Kent*,
William E. of *Worceſter*,
Thomas Earl of *Suſſex*,
Henry E. of *Huntingdon*,
Ambroſe E. of *Warwick*,
Francis E. of *Bedford*,
—— E. of *Pembroke*,
Edward E. of *Hertford*,
Robert E. of *Leiceſter*,
Walter Viſc. *Hereford*,
—— Lord *Clinton*,
William Lord *Howard* of *Effingham*,
William Lord *Burleigh*,
Lord *Grey* of *Wilton*,
James Lord *Mountjoy*,
Lord *Sandes*,
Lord *Wentworth*,
Lord *Burgh*,
Lewis Lord *Mordant*,
Lord *St. John*,
Robert Lord *Rich*,
Lord *North*,
Lord *Chandois*,
Oliver Lord *St. John* of *Bletſhoe*,
Thomas Lord *Buckhurſt*,
Lord *De La Ware*.

Then the Serjeant again made Oyer, and proclaim'd thus: Robert Catlin *Knight, Chief Juſtice of* England, *return thy* Certiorari *and thy Precept*; which was immediately deliver'd to the Clerk of the Crown, and read. The Serjeant again made Oyer, and proclaim'd thus: *Lieutenant of the* Tower *of* London, *return thy* Habeas Corpus, *and bring forth thy Priſoner* Thomas *Duke of* Norfolk.

Then was the Duke brought upon the long half Pace to the Bar, Sir *Owen Hopton* Lieutenant of the *Tower* leading him by the right hand, and Sir *Peter Garowe* by the left, and ſo he was placed at the Bar, they ſtill holding him by the Arms; the Chamberlain of the *Tower*, with the Axe of the *Tower* ſtanding with the Edge towards Sir *Peter*: while behind the Duke ſtood Mr. *Henry Skipwith*, who after the Duke's Impriſonment, was appointed to attend on him in the *Tower*.

Then the Duke with a haughty Look, and oft biting his Lip, ſurvey'd the Lords on each ſide him. In the mean time the Lieutenant of the *Tower* deliver'd in his Return; then the Serjeant made Oyer and Proclamation of Silence, while the Clerk of the Crown ſaid to the Duke thus: Thomas *Duke of* Norfolk, *late of* Remming-hall *in the County of* Norfolk, *hold up thy Hand:* Which the Duke did very luſtily. Then the Clerk of the Crown read the Indictment *, the Tenour whereof is thus:

Middleſex.

THE Jury preſent and ſay, in behalf of our Lady the Queen, That *Thomas* Duke of *Norfolk*, late of *Remming-hall* in the County of *Norfolk*, as a falſe Traitor againſt the moſt Illuſtrious and Chriſtian Princeſs *Elizabeth*, Queen of *England*, *France*, and *Ireland*, Defender of the Faith, *&c.* and his Sovereign Lady, not having the Fear of God in his Heart, nor weighing his due Allegiance, but ſeduc'd by the Inſtigation of the Devil, contrary to that cordial Affection and bounden Duty that true and faithful Subjects of our ſaid Lady the Queen do bear, and of right ought to bear towards our ſaid Lady the Queen; and intending to cut off and deſtroy the ſaid Queen *Elizabeth*, the 22d day of *September*, in the 11th year of the Reign of our ſaid Sovereign Lady Queen *Elizabeth*, and divers other Days and Times before and after, at the *Charter-Houſe* in the County of *Middleſex*, hath falſely, maliciouſly, and traitorouſly conſpired, imagin'd and gone about, not only to deprive, depoſe, and caſt out the ſaid Queen, his Sovereign Lady, from her Royal Dignity, Title, Power, and Government of her Kingdom of *England*; but, alſo to bring about and compaſs the Death and final Deſtruction of our ſaid Sovereign Lady the Queen, and to make and raiſe Sedition in the ſaid Kingdom of *England*, and to ſpread a miſerable Civil War amongſt the Subjects of our ſaid Lady the Queen, and to procure and make an Inſurrection and Rebellion againſt our ſaid Lady the Queen, his ſupreme and natural Lady; and ſo to make public War within the Realm of *England*, contrary to our ſaid Lady the Queen, and the Government of her ſaid Kingdom, and to endeavour a Change and Alteration of the ſincere Worſhip of God, well and religiouſly eſtabliſh'd in the ſaid Kingdom; and alſo totally to ſubvert and deſtroy the whole Conſtitution of the ſaid State, ſo happily inſtituted and ordain'd in all its Parts; with divers Aliens and Foreigners, not the Subjects of our ſaid Lady the Queen, hoſtilely to invade the ſaid Kingdom of *England*, and to make cruel War againſt our ſaid Lady the Queen and her Dominions.

And for the compaſſing and bringing to paſs all the ſaid wicked and notorious Treaſons, Imaginations, and Intentions propos'd as aforeſaid, he the ſaid *Thomas* Duke of *Norfolk*, well and truly knew and underſtood, that *Mary* late Queen of *Scots* had laid Claim, and pretended a Title and Intereſt to the preſent Poſſeſſion and Dignity of the Imperial Crown of this Kingdom of *England*; well and truly knowing and underſtanding, that the aforeſaid *Mary*, late Queen of *Scots*, had falſely, wickedly, and unjuſtly ſaid and affirmed, That our aforeſaid Lady, Queen *Elizabeth*, had no Right and Title to the Crown of this Realm of *England:* And alſo well and truly knowing and underſtanding, that the aforeſaid *Mary*, late Queen of *Scots*, had falſely, wickedly, and unjuſtly uſurp'd the Stile, Title, and Regal Name of this Kingdom of *England*; and that ſhe, the aforeſaid *Mary*, late Queen of *Scots*, had impaled and joined the Arms of the Kingdom of *England* with the Arms of the Kingdom of *Scotland*, as well in her Seals and Plate, as other things, without any Difference and Diſtinction. And furthermore, well and truly knowing and underſtanding, that the ſaid *Mary*, late Queen of *Scots*, had not revok'd or renounc'd her wicked and unjuſt Claims and Uſurpations aforeſaid, the 23d day of *September*, in the 11th Year of our ſaid Lady, now Queen of *England*, and divers other Days and Places before and after the ſaid time, at the *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, ſubtlely and traitorouſly ſought and endeavour'd, without the Aſſent, Conſent, or Agreement of the aforeſaid our Lady Queen *Elizabeth*, his Supreme and Sovereign Lady, to be join'd in Marriage with the aforeſaid *Mary*, late Queen of *Scots*. And for this Reaſon and Cauſe, he the ſaid Duke aforeſaid, the 23d day of *September* in the 11th Year aforeſaid, and divers other Days and Places before and after, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, ſubtlely and traitorouſly writ divers Letters to the aforeſaid *Mary*, late Queen of *Scots*; and as well as Letters, ſent ſeveral Pledges or Tokens to the aforeſaid *Mary*, late Queen of *Scots*, the 23d day of *September* aforeſaid, in the year aforeſaid, and divers other Days and Times before and after. And alſo on the ſaid 23d day of *September*, in the 11th Year of the Reign of the ſaid Queen *Elizabeth*, and divers other Days and Places before and after, at *Charter-houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, ſubtlely, and traitorouſly gave to, and accommodated the ſaid *Mary*, late Queen of *Scots*, with divers Sums of Money; which the ſaid *Mary*, late Queen of *Scots*, falſely and traitorouſly had and receiv'd of him the ſaid *Thomas* Duke of *Norfolk*, the 23d day of *September* aforeſaid, in the Year aforeſaid, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid; notwithſtanding the aforeſaid Duke had been diſtinctly and eſpecially forbid and prohibited by the aforeſaid Lady Queen *Elizabeth*, upon his Allegiance, that he ſhould upon no account whatſoever hold Correſpondence, or treat with the aforeſaid *Mary* late Queen of *Scots*, concerning Marriage with her the ſaid *Mary* late Queen of *Scots*; and notwithſtanding the aforeſaid Duke, by divers Letters and Inſtruments writ with his own hand to the ſaid Lady Queen *Elizabeth*, his ſupreme Sovereign Lady, publickly deny'd and renounced the aforeſaid Marriage, proteſting that he the ſaid Duke was never engag'd, or had proceeded in the ſaid Marriage.

And alſo the ſaid Jurors, upon their corporal Oaths, further preſent and ſay, That *Thomas* Earl of *Northumberland*, late of *Topcliffe* in the County of *York*, and *Anne* his Wife; *Charles* Earl of *Weſtmoreland*, late of *Branſpeth* in the County of *Durham*; *Richard Norton*, late of *Norton Comers* in the County of *York*; *Thomas Markenfield*, late of *Markenfield* in the ſaid County, Eſqrs; together with ſeveral other falſe Traitors, Rebels, and publick Enemies of our ſaid Lady Queen *Elizabeth*, not having the fear of God before their Eyes, nor conſidering their due Allegiance, but ſeduced by the Inſtigation of the Devil, imagined, deviſed, and conſpired to deprive and depoſe the ſaid Lady Queen *Elizabeth* from her Royal Dignity, Title, and Power of her Kingdom of *England*; and alſo to bring about and compaſs the Death and final Deſtruction of the ſaid Lady Queen *Elizabeth*, with the Intention and Deſign to complete and fulfil all their traitorous Conſpiracies and Devices, on the 16th Day of *November*, in the 11th Year of the Reign of the ſaid Queen, at *Rippon* in the ſaid County of *York*; by their own Conſent and Appointment, they did falſely and traitorouſly meet and aſſemble themſelves together, with a great Multitude of People, to the Number of four thouſand Men and more, ready arm'd and prepar'd for open War againſt their ſaid Queen *Elizabeth*, their Supreme and Sovereign Lady, at *Rippon* aforeſaid, the 16th Day of *November* aforeſaid, in the Year aforeſaid, falſely and traitorouſly they were ready prepar'd and arm'd to execute all and ſingular the Treaſons and Conſpiracies aforeſaid, of the ſaid *Thomas* E. of *Northumberland* and *Anne* his Wife, *Charles* E. of *Weſtmoreland*, *Richard Norton*, and *Thomas Markenfield*, with many others of the ſaid falſe Traitors and Rebels aforeſaid, by due Form of Law legally indicted, and afterwards upon that legally outlaw'd and attainted, as they now ſtand upon Record in her ſaid Majeſty's Court of *Queen's-Bench*.

And after the Perpetration and Commiſſion of the aforeſaid wicked Treaſons, in manner aforeſaid by them committed, the aforeſaid *Thomas* Earl of *Northumberland*, and *Anne* his Wife; *Charles* Earl of *Weſtmoreland*, *Richard Norton*, and *Thomas Markenfield*; with many other falſe Traitors and Rebels aforeſaid, the 20th Day of *December*, in the 12th Year of the Reign of our ſaid Sovereign Lady the Queen, for thoſe Treaſons fled out of this Kingdom into the Kingdom of *Scotland*; and there reſided, and were receiv'd, aided and aſſiſted by ſeveral Noblemen, and other great Men of the ſaid Kingdom of *Scotand*, viz. by *James* Duke of *Chaſtelleroy*, the Earl of *Huntley*,

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* *See State-Trials*, Vol. VIII. p. 331.

Mr. *Harris*, Mr. *Hume*, and Mr. *Firmherſt*, and other *Scots*, then Subjects of the ſaid Kingdom of *Scotland*, detain'd from our ſaid Lady Queen *Elizabeth*: in and towards which Noblemen, and other great Men of the aforeſaid Kingdom of *Scotland*, the ſaid Lady Queen *Elizabeth* afterwards proclaim'd, and caus'd War to be made upon the ſaid Rebels, as publick Enemies to her Kingdom of *England*, by *Thomas* Earl of *Suſſex*, her Majeſty's Lord Lieutenant, and Lieutenant-General of the *North*, with a powerful and ſtrong Army to oppoſe the Enemy. Upon which account, *Charles* Earl of *Weſtmoreland*, *Anne* Wife of *Thomas* Earl of *Northumberland*, *Richard Norton*, and *Thomas Markenfield*, fled from the aforeſaid Kingdom of *Scotland*, and tranſported themſelves to *Antwerp* in *Brabant*, where they reſided. And there the ſame *Charles* Earl of *Weſtmoreland*, *Anne* Wife of the ſaid *Thomas* Earl of *Northumberland*, *Richard Norton*, and *Thomas Markenfield*, contrary to their due Allegiance, ſtaid in manifeſt contempt of the ſaid Queen and her Laws. Yet the aforeſaid *Thomas* Duke of *Norfolk*, not ignorant of the Premiſes, but well and truly knowing all and ſingular the Tranſactions in manner and form aforeſaid, the 6th Day of *Auguſt*, in the 12th Year of the Reign of the ſaid Queen *Elizabeth*, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, and divers other Days and Places afore and after, falſely and traitorouſly took care, and cauſed to be ſent, deliver'd and diſtributed, ſeveral Sums of Money, to aid, aſſiſt, and ſupport the aforeſaid *Charles* Earl of *Weſtmoreland*, and *Anne* Wife of *Thomas* Earl of *Northumberland*.

And further, That the ſaid *Thomas* Duke of *Norfolk*, the 16th Day of *July*, in the 13th Year of the Reign of the ſaid Lady *Elizabeth*, Queen of *England*, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, and divers other Days and Places afore and after, falſely and traitorouſly adhered to, aided and aſſiſted *James* Duke of *Chaſtelleroy*, Earl of *Huntley*, Mr. *Harris*, Mr. *Hume*, Mr. *Burleigh*, and Mr. *Firmherſt*, publick Enemies to our ſaid Lady *Elizabeth*, then Queen of *England*.

And further, the Jurors aforeſaid, upon their Oaths, preſent and ſay, That whereas *Pius Quintus*, ſometime Biſhop of *Rome*, was and is known to be a deadly and publick Enemy to our ſaid Lady Queen *Elizabeth*, and her Kingdom of *England*; that the ſaid *Thomas* Duke of *Norfolk* well and truly knowing and underſtanding this, the 10th Day of *March*, in the 13th Year of the Reign of the ſaid Lady Queen *Elizabeth*, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, and divers other Days and Places afore and after, with intention to produce the ſaid traitorous Effects, falſely, ſubtilly, and traitorouſly conſented, conſulted, adviſed, and procured one *Robert Ridolph*, a foreign Merchant beyond the Seas, and out of the Kingdom of *England*, to ſend to the aforeſaid Biſhop of *Rome*, to *Philip* King of *Spain*, and to the Duke of *Alva*, to obtain of the aforeſaid Biſhop of *Rome* certain Sums of Money, towards the raiſing and maintaining of an Army to invade this Kingdom of *England*, and to make war in the ſaid Kingdom, againſt the aforeſaid Lady *Elizabeth*, Queen of *England*, &c. And that the ſaid King of *Spain*, by the Mediation of the ſaid Duke of *Alva*, did ſend into this Kingdom of *England* a certain Army of *Germans* to invade and make open and cruel War againſt the ſaid Lady Queen *Elizabeth*.

And alſo that the ſame *Thomas* Duke of *Norfolk*, the ſame 10th Day of *March*, in the ſaid 13th Year of the Reign of the ſaid Lady Queen *Elizabeth* aforeſaid, and divers other Days and Places afore and after, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, wickedly, and traitorouſly conſpired, conſented, and agreed with the aforeſaid *Robert Ridolph*, to advance, ſtir up, and raiſe within this Kingdom of *England*, all the Forces and Power that he the aforeſaid *Thomas* Duke of *Norfolk* and his Confederates were by any means capable of raiſing, or engaging others to raiſe within this Kingdom of *England*, to join with the aforeſaid Army, and with other Subjects of this Kingdom of *England*, whom the ſame Duke of *Norfolk* could gather together and join with the ſaid Army by the ſaid King of *Spain*, in order to make open War againſt our ſaid Lady Queen *Elizabeth*, within this her Kingdom of *England*; and to take away and free *Mary*, late Queen of *Scots*, out of the cuſtody and poſſeſſion of our ſaid Lady *Elizabeth* Queen of *England*; and at the ſame time to deprive, depoſe, and eject the moſt Illuſtrious and Chriſtian Princeſs Queen *Elizabeth*, from her Royal Dignity, Title, Power, Preheminence, and Government of this Kingdom of *England*: and at the ſame time, him the ſaid *Thomas* Duke of *Norfolk*, to join himſelf in Marriage with the aforeſaid *Mary*, late Queen of *Scots*.

And further, the Jurors upon their Oaths preſent and ſay, That the aforeſaid *Robert Ridolph* had writ and compos'd three diſtinct and ſeparate Letters of Credit, in the name of the aforeſaid *Thomas* Duke of *Norfolk*, for him the ſaid *Robert Ridolph*, in his falſe, wicked, and treaſonous Meſſages aforeſaid; *viz.* One of thoſe Letters to the aforeſaid Duke of *Alva*, another to the aforeſaid Biſhop of *Rome*, and a third to the aforeſaid *Philip* King of *Spain*. That afterwards the ſame *Thomas* Duke of *Norfolk* falſely and traitorouſly intending, willing, and deſiring Succeſs and Effect from the aforeſaid falſe and traitorous Meſſages, by the aforeſaid *Robert Ridolph*, as appeareth by his ſending one *William Baker* Gent. one of the Servants of the ſaid *Thomas* Duke of *Norfolk*, the 20th Day of *March*, in the 13th Year of the Reign of the Queen, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely and traitorouſly ſent to *Guerrawe Deſpeis*, Embaſſador of the ſaid *Philip* King of *Spain*, to declare, ſhew, and affirm to the aforeſaid Embaſſador of the aforeſaid *Philip* King of *Spain*, that he the ſaid *Thomas* Duke of *Norfolk* had affirm'd and would affirm the aforeſaid Credential Letters to the aforeſaid Duke of *Alva*, the Biſhop of *Rome*, and *Philip* King of *Spain*, compoſed and writ in his Name, were as valid to all intents and purpoſes, as if he the ſaid *Thomas* Duke of *Norfolk* had writ them with his own Hand.

And further, the ſaid Jurors upon their Oaths preſent and ſay, That the aforeſaid *Robert Ridolph*, the 24th Day of *March*, in the 13th Year of the Reign of the ſaid Lady *Elizabeth* Queen of *England* aforeſaid, at *Dover*, in the County of *Kent*, took his Journey to ſeveral Parts beyond the Seas, in order to execute, perfect, and complete the ſaid treaſonable Meſſages, with the Conſent and Agreement of the aforeſaid *Thomas* Duke of *Norfolk*. And afterwards the aforeſaid *Robert Ridolph* convey'd, declar'd, and communicated the ſaid wicked and traitorous Meſſages in foreign Countries and Parts beyond the Sea, as well to the aforeſaid Duke of *Alva* as to the aforeſaid Biſhop of *Rome*. And that the aforeſaid *Robert Ridolph*, amongſt his many other falſe and traitorous Meſſages, convey'd one Letter in unuſual Characters called Cyphers, which the aforeſaid Duke of *Alva* cauſed to be writ and ſent to *Thomas* Duke of *Norfolk*; which very Letter, as declared to be writ and ſent, he the ſaid Duke of *Norfolk*, the eighteenth Day of *April*, in the thirteenth Year of the Reign of the ſaid Queen *Elizabeth* aforeſaid, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely and traitorouſly received and had; and then and there gave and delivered to the aforeſaid *William Baker* his Servant ſeveral written Pages in known Letters, commonly to be decipher'd: And the ſaid Papers in common and known Ciphers or Characters he the ſaid Duke afterwards, on the 25th Day of *April*, in the 13th Year of the Reign of the ſaid Queen *Elizabeth*, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely and traitorouſly received, inſpected, and read over the ſaid Papers, and then and there falſely and traitorouſly retained and kept them. By which Letters of the ſaid *Robert Ridolph* to him the ſaid *Thomas* Duke of *Norfolk*, amongſt other things, are ſignify'd, and he makes known what a kind Audience and Reception he the ſaid *Robert* met with from the aforeſaid Duke of *Alva*, in his wicked and traitorous Meſſages aforeſaid. And that the ſaid Duke of *Alva* required and willed the Friends and Abettors of the ſaid Confederacy to be ready, whenſoever a foreign Power ſhould be ſent into this Kingdom of *England*.

And furthermore, the ſame Jurors upon their Oaths preſent and ſay, That the ſaid *Thomas* Duke of *Norfolk*, the 16th Day of *June*, in the 13th Year of the Reign of the ſaid Lady Queen *Elizabeth*, at *Charter-Houſe* aforeſaid, in the County of *Middleſex* aforeſaid, falſely and traitorouſly receiv'd a Letter directed to him the ſaid Duke, from *Pius Quintus* Biſhop of *Rome*; by which the ſaid Biſhop of *Rome* promiſed to the ſaid Duke of *Norfolk*, Aid, Help, and Aſſiſtance towards executing the ſaid wicked and traitorous Deſigns of the aforeſaid *Mary*, late Queen of *Scots*, contrary to their due Allegiance, and the Peace of our Sovereign Lady *Elizabeth*, now Queen of *England*, her Crown and Dignity, and in manifeſt Contempt of the Laws of this Kingdom, as well as the worſt and moſt pernicious Example of all other Delinquents in the like caſe, and contrary to the Form of ſeveral Statutes in this caſe made and provided.

After the reading of the Indictment, the Clerk of the Crown ſaid to the Duke; How ſay'ſt thou, *Thomas* Duke of *Norfolk*, art thou guilty of theſe Treaſons whereof thou art indicted, in manner and form as thou art thereof indicted, Yea or No?

Thereupon the Duke began, and ſaid to this effect:

May it pleaſe your Grace, and you the reſt of my Lords here, The hearing of this Indictment giveth me occaſion to enter into the making of a Suit, which I meant not to have done before my coming hither: I beſeech you, if the Law will permit it, that I may have Counſel allow'd me for the anſwering of this Indictment.

The Lord Chief Juſtice anſwer'd, That in caſe of High-Treaſon he cannot have Counſel allow'd: And that he was to anſwer to his own Fact only, which himſelf beſt knew, and might without Counſel ſufficiently anſwer.

Duke. That you may underſtand that I ſpeak it not without ſome ground, theſe be the Cauſes that move me to make this Suit: I was told before I came here, that I was indicted upon the Statute of the 25th of *Edward* III. I have had very ſhort warning to provide to anſwer ſo great a matter; I have not had fourteen Hours in all, both day and night, and now I neither hear the ſame Statute alledged, and yet I am put at once to the whole Herd of Laws, not knowing which Particularity to anſwer unto. The Indictment containeth ſundry Points and Matters to touch me by Circumſtance, and ſo to draw me into matter of Treaſon, which are not Treaſons themſelves: Therefore with Reverence and humble Submiſſion I am led to think I may have Counſel. And this I ſhew, that you may think I move not this Suit without any ground. I am hardly handled, I have had ſhort warning, and no Books; neither Book of Statutes, nor ſo much as the Breviate of Statutes. I am brought to fight without a Weapon: yet I remember one Caſe in Law, I think it is in the Firſt Year of King *Henry* VII. It is the Caſe of one *Humphrey Stafford*, which was indicted of High-Treaſon, and had Counſel allowed him: If the Precedent in his Caſe be ſuch, as it may extend to me, I require it at your hands, that I may have it allow'd: I ſhew you my ground why I crave it, I refer me to your Opinions therein.

Then Sir *James Dyer*, Lord Chief Juſtice of the Common-Pleas, ſaid; My Lord, That Caſe of *Humphrey Stafford* in *primo* of *Henry* VII. was about pleading of Sanctuary, for that he was taken out of Sanctuary at *Culneham*, which belong'd to the Abbot of *Abingdon*: So the Queſtion was, whether he ſhould be allowed Sanctuary in that Caſe, and with that Form of Pleading, which was matter of Law: In which Caſe he had Counſel, and not upon the Point or Fact of High-Treaſon; but only for the Allowance of Sanctuary, and whether it might be allowed, being claimed by Preſcription, and without ſhewing any former Allowances in *Eier*, and ſuch like Matters; but all our Books do forbid allowing of Counſel in the Point of Treaſon; but only it is to be anſwered Guilty, or not Guilty.

Duke. Humphrey Stafford's Caſe was High-Treaſon, and he had Counſel. I muſt ſubmit my ſelf to your Opinions: I beſeech you, weigh what Caſe I ſtand in. I ſtand here before you for my Life, Lands and Goods, my Children and my Poſterity, and that which I eſteem moſt of all, for my Honeſty; I forbear to ſpeak of my Honour. I am unlearn'd: if I aſk any thing, and not in ſuch Words as I ought, I beſeech you bear with me, and let me have that Favour that the Law allows me. If the Law do not allow me Counſel, I muſt ſubmit me to your Opinions. I beſeech you, conſider of me; my Blood will aſk Vengeance, if I be unjuſtly condemn'd: I honour your Learnings and your Gravities: I beſeech you, have Conſideration of me, and grant me what the Law will permit me. I am now to make another Suit to you, my Lords the Judges: I beſeech you, tell me, if my Indictment be perfect and ſufficient in Law; and whether in Whole, or in the Parts, and in which Parts, that I may know to what I ſhould anſwer.

Lord Chief Juſtice *Catlin.* The Lord Ch. Juſtice ſaid, For the Sufficiency of your Indictment, it hath been well debated and conſider'd by us all; and we have all, with one Aſſent, reſolv'd, and ſo do certify you, that if the Cauſes in the Indictment expreſſed, be true in Fact, the Indictment is wholly and in every Part ſufficient.

Duke. Be all the Points Treaſons?

L. Ch. Juſt. *Catlin.* All be Treaſons, if the Truth of the Caſe be ſo in Fact.

Duke. I will tell you what moveth me to aſk you this: I have heard of the Caſe of the Lord *Scroope*; it was in the time of *Henry* the IVth (*the Judges ſaid* Henry *the* Vth) he confeſs'd the Indictment, and yet travers'd that the Points thereof were no Treaſons.

L. Ch. Juſt. *Catlin.* My Lord, he had his Judgment for Treaſon upon that Indictment, and was executed.

Then the Clerk of the Crown ſaid again, How ſayeſt thou, *Thomas* Duke of *Norfolk*, art thou guilty of the Treaſons whereof thou art here indicted, in Manner and Form as thou art indicted, Yea, or No?

The Duke anſwer'd, Not Guilty.

The Clerk ſaid, By whom wilt thou be try'd?

The Duke ſaid, By God and my Peers.

Then the Duke ſpake to the Lords, and ſaid thus: Now I am not to uſe a ſhort Speech, which I meant before to have uſed, but that the reading of the Indictment hath driven me to other Occaſions. Altho' theſe heinous Treaſons and outrageous Faults objected againſt me, do much abaſh me; yet I conceive no ſmall Comfort, to think under how gracious a Queen and Sovereign Lady I live, which well appeareth by her moſt gracious Proceeding with me according to the Courſe of Law. Her Majeſty ſeeketh not my Blood, but giveth me the Trial which the Laws admit, and in the moſt favourable manner that I can require; for which I am moſt bounden to her Majeſty. Now I am to make two Suits: the one to your Grace, my Lord High Steward, That as your Place requireth to do juſtice, ſo it may pleaſe you to extend to me your lawful Favour, that I may have Juſtice, and that I may not be overlaid in Speeches: My Memory was never good, it is now much worſe than it was; ſore Troubles, ſore Cares, Cloſeneſs in Priſon, evil Reſt, have much decay'd my Memory; ſo as I pray God, that this day it fail me not, and another time I will forgive it: I beſeech this of you, my Lord High Steward. The ſecond Requeſt, I thought to make to you, my Lords, my Peers: I think myſelf happy to have my Trial in ſuch a Company. A much greater Matter, if I could have greater, I durſt put it into your hands, and (a very few excepted) even into every one of your hands ſingly; that Opinion I have of you. I know Religion beareth a ſtroke among you, which, I hope, ſo ruleth your Conſciences, that for no Reſpect you will ſwerve from Juſtice; you will not bring a Worm into your own Conſciences; you will not burden your Souls with condemning me wrongfully; you will not do what God's Law and Right alloweth not: This above all things comforteth me, next unto her Majeſty's moſt gracious Favour of my lawful Trial. If I had not made a full Account to have this for the way of my lawful Purgation, I needed not to have been here at this time, neither for Matters paſs'd two Years ago, nor for that whereof I am charg'd at this preſent. I have choſen, my Peers, I have choſen rather to come here to be try'd by you, than with needleſs and cowardly running away, to have left a Gap open for my Enemies ſlanderouſly to lay to my charge in my abſence what they could maliciouſly invent. I have this day (tho' I am ſorry for any Cauſe to come in this Caſe before you) even the day that I could wiſh to be tried by ſuch Peers. I will not enter into Particularities, and diſcourſe my whole Cauſe at large, but anſwer from Point to Point, as I ſhall be charged; for my Memory was never good, and it is now worſe than ever it was. Yet one Requeſt more I beſeech of you, my Peers, which I with Favour may aſk, and you with Juſtice may grant: Unhappy Man that I am, tho' I have to this Indictment pleaded Not Guilty of the Treaſons therein objected againſt me, nor of no Treaſons; yet I confeſs, as I have with all Humility, and with Tears confeſs'd, and as ſome of you, my Lords, here preſent can witneſs, that I have neglected my Duty to the Queen's moſt Excellent Majeſty, in Caſes inferiour to Treaſon, and that be no Parts of Treaſon: I have laid them at her Majeſty's feet, and pour'd them forth before her in Confeſſion, ſo far as my Conſcience will ſuffer me to declare. Let, I beſeech you, neither my Confeſſion already made of inferiour Faults, that be not in compaſs of Treaſon; nor, if I ſhall now in mine Anſwers confeſs them again, if they be objected againſt me; lead you to judge the worſe of me in the greater Caſe. Let each Fault have his own Pine; I beſeech you, remember the Differences and Degrees of Offences, and not to mix my ſmaller Faults with this great Cauſe: let theſe mean Crimes reſt at her Majeſty's Feet, where I with all humility have laid them. Thus I beſeech you all, have conſideration of me.

Then ſpake the Queen's Serjeant, Mr. *Barrham*, and ſaid to this effect: It hath appear'd to your Grace and your Lordſhips all, that the Duke of *Norfolk* is by this Indictment charged with three principal Points of High Treaſon: the firſt is, That forgetting his Allegiance and Duty to his Sovereign Lady the Queen, he hath traitorouſly imagin'd, devis'd and practis'd, to deprive and depoſe the Queen's Majeſty of and from the Crown of this Realm, and her Royal Style, Name and Dignity, and to bring her to Death and Deſtruction; and ſo to alter the whole State of Government of this Realm. The ſecond Point is, That he hath traitorouſly reliev'd and comforted the *Engliſh* Rebels that levy'd War againſt her Majeſty within her Realm, and which ſince fled into *Scotland*, and from thence beyond the Sea. The third Point is, That he hath traitorouſly given Relief and Maintenance to the Duke of *Chaſtelleroy*, the Earl of *Huntley*, the Lord *Harris*, the Lord *Hume*, and other *Scots*, the Queen's Majeſty's publick Enemies, Succourers and Detainers of the ſaid Rebels. To prove theſe great Treaſons, there is in this Indictment ſet forth unto you good and ſufficient Matter; firſt, to prove that the Duke of *Norfolk* ſought, imagin'd, compaſs'd and practis'd to deprive and depoſe the Queen's Majeſty of her Royal Crown, Eſtate and Dignity; and conſequently to bring her to Death and Deſtruction, are alledg'd two matters: The firſt is, That the Duke knowing the *Scotiſh* Queen falſely and unjuſtly to claim and pretend Title, to have and enjoy the preſent poſſeſſion of the Crown of *England*; and that ſhe untruly uſurp'd the Name and Style of this Realm; and that ſhe gave and quarter'd the Arms of *England* without Difference; and that ſhe continued in that Fact, and uſurp'd Claim without Renunciation thereof, and without acknowledging her Error unto the Queen's Majeſty, tho' ſhe hath been thereto requir'd: He, I ſay, knowing all this, yet without the Queen's Majeſty's Aſſent, againſt her Majeſty's ſpecial and expreſs Commandment upon his Allegiance, and againſt his own Promiſe and Proteſtation upon his Faith, hath nevertheleſs ſecretly ſought and practis'd to join himſelf with the ſaid *Scotiſh* Queen in Marriage, and to advance and maintain her ſaid falſe and pretended Title to the preſent Poſſeſſion of the Crown of this Realm; which cannot be without purpoſe to depoſe and deprive the Queen's Majeſty, and conſequently to bring her to Death and Deſtruction. The ſecond is, that the Duke of *Norfolk* hath conſpired and practiſed to procure Strangers to enter into this Realm, and invade the ſame, and to make open War againſt her Majeſty, within her own Realm; and ſo forcibly to work her Depoſing, Deprivation, Death and Deſtruction. Hereupon the ſaid Duke hath pleaded Not Guilty, and for his Trial hath put himſelf upon his Peers; yours therefore is the Trial. And now for Evidence to prove him guilty of the Treaſons contain'd in the ſaid Indictment, it may pleaſe your Lordſhips to hear ſuch a Matter as I ſhall for the Queen bring forth againſt him.

Duke. I am occaſion'd, by the Speech of Mr. *Serjeant*, to gather what I ſhall find in the reſt of them; a Meaning with Circumſtance to draw me into Treaſon, with Eloquence to overlay me, and to exaſperate Matters extremely againſt me, and to enforce things that be not Treaſons indeed. I beſeech you, my Maſters, for God's ſake do your Duty, remember Equity, conſider Conſcience, and what I am: I am no Stranger, I am a Chriſtian Man, and an *Engliſh* Man. You may do your Duties to the Queen ſufficiently, and yet deal conſcionably with me, and heap not, unconſcionably, Circumſtances to cloy my Memory. Go directly to the Indictment: It is no Praiſe nor Glory for you to overlay me. I am unlearned, unable to ſpeak, and worſt of all to ſpeak for myſelf; I have neither good Utterance, as the World well knoweth, nor Underſtanding: For God's ſake do not overlay me with ſuperfluous Matter. One thing I had forgotten: I know a Man ſuſpected is half condemn'd. Now as it happen'd in my laſt Trouble, ſo at this time there want not to put abroad to the World, and heap up things which I never thought; a great number of ſuch there be, as I ſee many here at this preſent. They have publiſh'd, that I took an Oath of things which afterwards prov'd contrary; blame me not that I miſtruſt the worſe, becauſe I have found the worſt. But to take away ſcruple from you, true it is, that I took an Oath, but not generally, but to ſpecial Points. And now when I take an Oath to Points, to draw me to the Whole, and to take *Pars pro Toto*, is great Injury. To prove that I took that Oath to Parts, and not to the Whole, I refus'd to ſet my Hand without expreſſing of the Point; for my Hand, my Oath, and my Heart ſhall go all together. And for further Proof that my Oath was but to ſpecial Points, I can name good Witneſſes to whom I did preſently, within three hours after my Oath taken, ſpecially report the three Points that I made mine Oath unto. This, I ſay, to take from you the Scruple of ſuch Matter as I have been charg'd with, and which perhaps you have heard of me to my diſcredit.

Then ſaid Mr. Serjeant *Barrham*, I have yet given no Evidence, and for that Oath you are not once yet charged withal. I have done nothing yet, but recited the Matters contain'd in the Indictment: now will I bring forth Matter for the Queen in Evidence, and will prove the things in the Indictment to be true. There are alledg'd three great Treaſons, as I have before ſaid; the firſt only I will deal with, that is, to prove that the Duke of *Norfolk* imagin'd, compaſs'd and conſpir'd, to deprive and depoſe the Queen's Majeſty, our Sovereign Lady, of her Crown and Royal Eſtate and Dignity: and I will uſe the ſecond Matter but for Inducement of the firſt, by ſhewing how the *Scotiſh* Queen falſely and unjuſtly claim'd the preſent Poſſeſſion of the Crown of this Realm; and that he knowing that the *Scotiſh* Queen ſo unjuſtly claim'd the ſaid Crown, that ſhe quarter'd the Arms of *England*, that ſhe uſurp'd the Style and Royal Name; that ſhe hath not acknowledged her Error, nor renounc'd her untrue and unjuſt Claim and Uſurpation, tho' ſhe hath been requir'd thereunto; and whereto himſelf hath been privy, and hath dealt in Treaty, as a chief Commiſſioner for the Queen's Majeſty for that purpoſe: This Matter, I ſay, I will ſet out; how he knowing all this, yet without the Aſſent of the Queen's Majeſty, againſt her Highneſs's expreſs Commandment upon his Allegiance, againſt his own Faith and Promiſe to the contrary, practis'd to join himſelf in Marriage with the ſaid Queen of *Scots*: and I mean to join thereto an Intent of his, to advance and maintain that unjuſt Title of the *Scotiſh* Queen. If then this attempting to join himſelf in Marriage with the *Scotiſh* Queen ſhall be prov'd unto you, and that he knew of her unjuſt Claim and Pretence of Title, and that thereby he join'd himſelf to advance and maintain the ſaid Title, this muſt needs tend to a Purpoſe and imagining to depoſe and deprive the Queen's Majeſty, and thereupon conſequently to bring her to Death and Deſtruction, which is High Treaſon within the Compaſs of the Statute of 25 of King *Edward* III. For whoſo ſhall imagine and go about to maintain a Title to the preſent Poſſeſſion of the Queen's Crown, and to join himſelf in Marriage with her that ſo claimeth, without doubt he meaneth to aſpire to the Crown himſelf; and ſo meaning, it plainly followeth, that he cannot ſuffer her Majeſty to reign, and his Jealouſy cannot ſuffer her to live where he deſireth to reign. Now will I ſhow you the manner of his procuring to match himſelf in Marriage with the *Scotiſh* Queen, and firſt the beginning thereof: Firſt of all, to prove how ſecretly he dealt to that end, by Suits and Means, before he was a Commiſſioner, to examine Cauſes between the *Scotiſh* Queen, and the young King her Son, and other the Lords of *Scotland*. Before that time there were ſecret Suits and Practices between them by Motions, by Meſſages, by Letters and Tokens, and pleaded ſo far forth, as that the *Scotiſh* Queen took it, that ſhe was aſſur'd of his Good-Will. For when Commiſſion was directed to him, and to the Earl of *Suſſex*, and to Sir *Ralph Sadler*, Counſellors of the Dutchy of *Lancaſter*, the *Scotiſh* Queen had repos'd full Affiance in the Duke of *Norfolk*, to have at his Hands favourable hearing; and ſo ſhe reported, and ſo indeed it follow'd. And where you ſpeak of an Oath, and ſeem ſo loth to be diſprov'd, and would ſo feign have it taken, that your Oath, Hand, and Heart go all together; there was an Oath ſpecially appointed for the Commiſſioners, that they ſhould deal in that matter between the *Scotiſh* Queen and her Son and Nobility, directly, ſincerely, and uprightly, and to weigh all things that ſhould be objected or anſwer'd on either part indifferently without all Partiality. Then after this Oath taken, the Duke being the firſt nam'd Commiſſioner, this Oath notwithſtanding, dealt indirectly, deceiv'd the Queen's Majeſty's Truſt, and demean'd him partially againſt his ſaid Oath, wherein he committed wilful Perjury: Beſides that, without regard of his Oath of a ſworn Counſellor to the Queen's Majeſty of her Privy Council, he diſcloſed her Majeſty's Secrets, and fell to practiſing for matching himſelf with the *Scotiſh* Queen in Marriage. Now ſhall I prove his knowledge at the ſame time, that the *Scotiſh* Queen pretended Title to the preſent Poſſeſſion of the Crown of this Realm.

Duke. Then the Duke aſk'd, if all the Treaſons contain'd in his Indictment were upon the Statute of King *Edward* III. and it was anſwered by Mr. *Serjeant* and Mr. *Attorney-General*, that they were grounded upon the ſame Statute only. Then the Duke began thus:

Here the Matters that Mr. *Serjeant* hath prov'd againſt me ſtand in two Points; by which he chargeth me with imagining the Deprivation and Death of the Queen's Majeſty, and with indirect and untrue Dealing in the *Scotiſh* Queen's Cauſe; and therein he burdeneth me with Perjury. The *Scotiſh* Cauſe hath divers Pleas, and therefore bear with me, I pray you, if I caſt back again to rehearſe my Doing therein, for my Memory is not good: As for my Dealing therein, God is my Witneſs, that I have done uprightly.

Serj. Then Mr. *Serjeant* urged him to confeſs if he had knowledge that the *Scotiſh* Queen pretended Title to the preſent Poſſeſſion of the Crown of *England*; offering, if the Duke would deny it, to make proof of it.

Duke. The Duke ſaid, I will make mine own Confeſſion; I pray you to teach me not how to anſwer or confeſs, becauſe it is the firſt ground that you build upon againſt me: and becauſe I know not whether my Peers do all know it or no, I will make a ſhort Declaration of my Doings in that Matter with the *Scotiſh* Queen.

Serj. Firſt we pray your Grace (ſpeaking to the Lord High Steward) that he may directly anſwer, whether he knew that the *Scotiſh* Queen ſo claim'd or no; if he ſay no, we will prove it.

Duke. Then being ruled over by the Lord High Steward, that he ſhould anſwer directly to that Queſtion, he anſwer'd, that indeed he knew that ſhe had ſo claim'd, but with Circumſtance.

Serj. Say plainly, Did you know it or no? for if you ſay nay, we can prove it.

Duke. You handle me hardly, you would ſo trap me by Circumſtance, and infer upon me that ſhe was the Queen's Enemy, and ſo make me a Traitor. I will anſwer directly to the whole Matter of my Dealing with her.

Serj. Anſwer to the parts as they fall out. Did you know that ſhe claim'd the preſent Poſſeſſion of the Crown? That ſhe uſurp'd the Arms and Royal Style of this Realm? and that ſhe made no Renunciation of that uſurp'd Pretence? If you ſay you knew it not, we will prove every part of it.

Duke. I did not know it in ſuch ſort as is alledg'd; I know that Renunciation of that Claim was offer'd, and upon certain Cauſes reſpited.

Serj. It is well known, and yourſelf then knew it, That the *Scotiſh* Queen claim'd the preſent Poſſeſſion of the Crown of *England*, quarter'd the Arms of *England* with the Arms of *Scotland*, and uſurp'd the Style of this Realm; and that there was a *French* Power ſent to proſecute it by invading this Land by the way of *Scotland*: your ſelf was made the Queen's Majeſty's Lieutenant, and levy'd an Army to expulſe them. Afterward the Queen's Majeſty ſent her Embaſſadors, which met with the *French* Lords and *Scotiſh* Queen's Commiſſioners at *Edinburgh*, and agreed upon a Treaty of Peace; in which one ſpecial Article was, that the *Scotiſh* Queen ſhould acknowledge her Error, and ſhould renounce her pretended Claim to the preſent Poſſeſſion of the Crown of this Realm. It was not done, nor yet is done. My Lord of *Norfolk* was at this Treaty; and when this laſt Commiſſion went out, when the Commiſſioners ſat at *York* about the Matter between the *Scotiſh* Queen, her Son, and the Nobility of *Scotland*, wherein were Commiſſioners the Duke of *Norfolk*, the Earl of *Suſſex*, and Mr. *Chancellor* of the Dutchy; one ſpecial Inſtruction was for the *Scotiſh* Queen's Recognition of her unjuſt Claim, and to require that ſhe ſhould ratify the former Treaty of Peace. The Duke knoweth well it was not done.

Duke. What is this to me? I need not enter to defend her Doings, I like them not. It is not my Caſe, but that you make it my Caſe; elſe I would not meddle with it, anſwer it who would for me. Indeed I have heard, that being Covert-Baron then, marry'd to the *French* King, in her Huſband's Life ſhe made Claim to the Crown of *England*, and quarter'd the Arms of *England* with the Arms of *Scotland*. I have heard alſo, That Sir *Nicholas Throckmorton* made complaint thereof, and mov'd for Redreſs, and thereupon it was laid down. I have heard that ſhe hath been requeſted to make Renunciation of that Claim when the Peace was concluded, when *Montmorancy* came over, and time was taken for it. After this there grew Amity between the Queen's Majeſty and the *Scotiſh* Queen; the Queen took her for her Friend, ſent Embaſſadors unto her, and chriſtened her Child; all this excluded Enmity. And when my Lord of *Bedford* was there, and mov'd her for ratifying of the Treaty, and for the Renunciation, ſhe refus'd not; but ſaid, ſhe would ſend to ſhew Cauſes why ſhe did it not preſently. And then it was refuſed not abſolutely, but upon certain Words, and the treating thereof committed to my Lord *Burleigh* and Mr. *Wotton*. As for our Commiſſion at *York*, it took no end; the Matter was brought up hither, and here was ſat upon at *Weſtminſter* in the Parliament-Chamber. And this is my underſtanding, that ſhe claim'd the Crown, and I have not otherwiſe known it.

Serj. Thus have you confeſs'd far enough, That you knew that ſhe did pretend Title to the preſent Poſſeſſion of the Crown; That ſhe quarter'd the Arms, and uſurp'd the Royal Style of this Realm.

Duke. It was in her Huſband's time, when ſhe was Covert-Baron.

Serj. You knew alſo, how ſince her Huſband's Time, ſhe hath not renounced that Claim; and you had, in ſpecial, Inſtruction to require it when you were Commiſſioner.

Duke. A full Renunciation was offer'd when the Lord *Burleigh* was with her, and our Commiſſion was ended, and the Matter brought up hither.

Serj. But what was the Cauſe why it took no end by your Commiſſion? Your ſelf was the Cauſe that the Commiſſion broke up, becauſe you dealt indirectly; you ſet out your own Affection and Partiality, and behav'd your ſelf partially, without regard to the Queen's Majeſty's ſpecial Commandment, without regard of your Oath, then ſpecially taken for that Commiſſion, or of your Oath as a Counſellor: you utter'd your Partiality, you diſclos'd to the other ſide aforehand the Queen's Secrets: you deviſ'd with the one ſide, and gave them Counſel how to deal for ſtay of the Matter: you did prevaricate the Queen's Intention; and when you were by your Commiſſion to examine the *Scotiſh* Queen's Adulteries, and her Murdering of her Huſband, you practis'd with thoſe that were Dealers for the *Scotiſh* Queen, and you told them, by way of Advice, That if theſe Matters went forwards to Hearing, the Earl *Murray*, and his Side, would diſcloſe all the foul Matter that they could, both by her Letters and other Evidences, to her Diſhonour; and that the Queen's Majeſty had ſome ſuch Counſellors about her, as if theſe things were once produc'd, ſhe would cauſe them to be publiſh'd, that all foreign Princes ſhould underſtand them, to the *Scotiſh* Queen's great Infamy, and to move foreign Princes to proceed no further ſuing for her. And this was the Cauſe of the Breach and Diſſolution of your Commiſſion.

Duke. You ſaid you would prove that I knew of the *Scotiſh* Queen's claiming the preſent Poſſeſſion of the Crown.

Serj. Your ſelf have confeſſed it; for you know there was yet no Renunciation made, and you were ſpecial Commiſſioner for that purpoſe; and tho' your Commiſſion took no effect, yet by that, that the requiring of the Renunciation was matter of your Inſtructions, and the ſame not done, it is plain that you knew ſufficiently of her former unjuſt claiming of the preſent Poſſeſſion of the Crown: And now will we by good Evidence prove your partial and indirect dealing in that Commiſſion. Here I will produce Matter of your own Conference at *York* with *Ledington* and the Biſhop of *Roſſe*, and how your ſelf told them, that you underſtood at *Lyth*, that rigorous Matter would be ſet out by the Earl *Murray* and the reſt of that Side, againſt the *Scotiſh* Queen, touching her Whoredom and the Murder of her Huſband. You gave Advice to ſtay the Earl of *Murray* from ſo doing; you told the *Scotiſh* Queen's Miniſters, how the Queen of *England* had ſome Counſellors that could cauſe her to publiſh all thoſe Matters to the *Scotiſh* Queen's Infamy; you practis'd with them to deviſe to qualify the Matter; you told the Way that you thought beſt to do it; you adviſ'd them to deal with the Earl of *Murray*, that the Matter might be compounded, or elſe ſo to handle it, that it might take no end.

Duke. Here the Duke took advantage of that Mr. Serjeant had ſaid, That the Duke underſtood at *Lyth*; for the Duke then proteſted, that at that time he had never been at *Lyth*. Whereupon the Lord *Burleigh* diſſolv'd that Knot, and ſaid on the Duke's Behalf to Mr. Serjeant:

Burleigh. You were beſt proceed with your Evidence; you may miſtake: my Lord *Norfolk* had not then been at *Lyth*, otherwiſe than he and I were there once ſecretly in a Morning. The Cauſe of this Error roſe thus: In one *Scotiſh* Paper produc'd for that Matter, was contain'd, how the Duke underſtood at *Lyth*, which in *Scotch* is as much as at *length*; which Mr. Serjeant, in peruſing the Matters for Evidence deliver'd unto him, took for *Lyth*, as the Clerk of the Crown alſo afterwards did in reading the ſame Paper.

Then was produc'd an Examination of the Biſhop of *Roſſe*, taken at the *Tower*, *Nov.* 5. 1571. as followeth:

The *Scotiſh* Queen told the Biſhop of *Roſſe*, that the Conference at *York* was to make the Earl of *Murray*, and other her diſobedient Subjects, to anſwer before the Queen's Majeſty of *England*'s Commiſſioners, for their unnatural and unjuſt Proceedings againſt her; and that after their Offences acknowledg'd for the Queen of *England*'s Pleaſure, they ſhould be remitted, and receiv'd into Favour again, and ſo all Matters compounded.

The Biſhop's Anſwer to this was, That he was ſorry ſhe had agreed to any Conference wherein they ſhould be accus'd; for he was aſſur'd in that Caſe, they would utter all that they could for their Defences, altho' it were for her Diſhonour, and of the whole Realm: for they would be loth to confeſs openly that they were evil Subjects, and ſhe a good Princeſs; and therefore he wiſh'd that the Matter might be treated by way of Concord, before any entry to Accuſations: And to that end he counſelled her to travel with her Friends at Court to *York*. To this ſhe reply'd, that there was no ſuch Danger in the matter as I ſuppos'd; for ſhe truſted I would find the Judges favourable, principally the Duke of *Norfolk*, who was firſt in Commiſſion; and doubted not but the Earl of *Suſſex* would be ruled by him as his tender Friend, and Sir *Ralph Sadler* would not gainſtand their Advice; and that *Liggons* had been at *Bolton*, by whoſe Meſſage, told by him to the Lord *Scroope*, he underſtood of the Duke's good Will towards her, and the Bruite was alſo ſpread abroad of a Marriage between the Duke and her; and beſides, that ſhe had many good Friends in the Country that did favour her, and ſeek to her, ſuch as the Earl of *Northumberland* and his Lady, by whom ſhe had many Intelligences and Meſſages; the *Nortons*, *Markenfield* and others, who would all be with the Duke at *York*, and would perſuade him to favour her Caſe. In the mean time, before our Paſſage to *York*, *Robert Melvin* came to *Bolton* with Letters, ſent by *Ledington* from *Fauly Caſtle* to the Queen my Miſtreſs, to advertiſe her, that the Earl of *Murray* was wholly bent to utter all that he could againſt her, and to that effect had carried with him all the Letters which he had to produce againſt her, for proof of the Murder, whereof he had recover'd the Copies, and had caus'd his Wife to write them, which he ſent to the Queen; and that he had not come into *England* in the Earl of *Murray*'s Company, unleſs it had been to do her Service, and to travel for migitation of thoſe Rigors intended; deſiring to be certified by *Robert Melvin*, that ſhe wiſh'd to ſtay thoſe rigorous Accuſations: and becauſe he was well acquainted with the Duke of *Norfolk*, deſired him to travel with the Duke in his favour, and that he would confer with the Biſhop of *Roſſe*, by whom he ſhould underſtand his whole Mind particularly from time to time. After this, *Robert Melvin* at *York* did bring me to *Ledington*'s Lodging, where we talk'd almoſt a whole Night; where he told, That he had conferr'd with the Duke, who ſeem'd to bear great Good-will to the Queen my Miſtreſs, and had willed him to counſel the Earl of *Murray*, and others, to abſtain from uttering any diſhoneſt Matter againſt the Queen, but to grant to ſome Compoſitions amongſt themſelves: ſo that *Ledington* ſaid, it appear'd to him, that the Duke had ſome Intention to marry with the Queen, as the Bruite was; and that he did verily believe, that if it were follow'd, the Marriage would take effect, which would be moſt of all other things for the Queen's Honour and

Weal: and will'd me to ſpeak with the Duke ſecretly alone, without the Commiſſioners, and *Ledington* ſhould advertiſe the Duke to appoint the time convenient, as he did one day in the Morning by ſeven of the Clock, before the meeting of the Commiſſioners. I talk'd with the Duke alone in a Gallery, where he utter'd to me, That he bore good Will to the Queen my Miſtreſs, and that he had talk'd with the Earl *Murray* at * *length*, and had ſeen the Letters which they had to produce againſt the Queen my Miſtreſs, and other Defences, whereby there would ſuch Matter be proved againſt her, that would diſhonour her for ever; and if it were once publiſhed, the Queen's Majeſty of *England* would get Counſel by ſuch as lov'd not the Queen my Miſtreſs, to publiſh the ſame to the World, and to ſend Embaſſadors to all other Princes, to make the ſame known to them; ſo that they would make no further Suit for her Delivery, and perhaps greater Rigour might enſue to her Perſon: Therefore he adviſ'd me to confer with *Ledington*; and that betwixt him and me, we might find ſome means to ſtay the Rigour intended; and promiſed all that he could do to that effect, by *Ledington*'s Advertiſement, he would do. I reply'd, that *Ledington* would have her to ratify the Dimiſſion made at *Lochlevin* for a time, for he had aſſur'd her it could hurt her no more, being kept Priſoner in *England*, than that which was done in *Lochlevin*: for ſo ſhould ſhe ſtay the uttering of any matter againſt her, and within ſix Months ſhe ſhould be reſtor'd to her Country with Honour; and ſo might revoke all done by her.

* *This was written in* Scottiſh, Lyth; *which occaſioned the Error before.*

To this the Duke: What if that were done, to be quit of the preſent Infamy and Slander, and let him work out the reſt? I told him, we were come to that Conference for to make an Agreement, and not to anſwer to Accuſations: and therefore wiſh'd him to further the Agreement amongſt us. He anſwer'd, That their Commiſſion was only to hear the Differences amongſt us; and if I would propound any thing, he would like well of it, and ſhould advertiſe the Queen's Majeſty, his Miſtreſs, thereof, and get her Anſwer. In this Conference, the Duke did oftentimes inſinuate the good Will that he did bear to the Queen my Miſtreſs, but ſpoke nothing to me particularly of the Marriage at that time; but referr'd all to *Ledington*. Upon this I did confer with *Ledington* divers times, by whoſe Advice I rode to *Bolton*, to ſpeak with my Miſtreſs, in the time of my Conference; and during my remaining there, the Conference was broken up, and the whole Commiſſioners for our part, came to *Bolton*. And ſo my Lord *Harris* and I were ſent to *London*. In the mean time, *Robert Melvin* came to *Bolton* to the Queen, with Meſſages of *Ledington*'s, of ſuch Conference as he had with the Duke at the Hunting in the Fields, where I believe *Ledington* did well encourage the Duke to attempt the Marriage, as he told me afterwards; declaring her Properties, and the Honour and Commodities that might enſue to them both thereby; and that the Duke did give good Ear thereto, wiſhing to the Queen to follow that Courſe. In the mean time, the Duke had *Liggons*, and others, going between them and the Lady *Scroope*, who did entertain the Matter betwixt them. After this, the Duke coming to *Hampton-Court*, *Ledington* made the mean with the Duke, to cauſe him to ſend *Liggons* to deal with me upon this behalf, and to give me ſome favourable Advertiſement of the Weal for our Cauſe. And likewiſe the Duke cauſed the Lord *Lumley* ſometimes to ſpeak with me, to adviſe me what was beſt to be done, and eſpecially when the *Spaniſh* Embaſſador had ſpoken to me of the Marriage of one of the Houſe of *Auſtria*; the Duke, by my Lord *Lumley*, counſelled me to open the matter to the Queen's Majeſty, by my Lord of *Arundel*, which might be an occaſion to move her to like better of the Match with him, than with any Foreigner. And then he ſent me word by *Liggons*, that the Queen's Majeſty was inform'd of ſuch a like Bruite, of his Marriage with the Queen of *Scots*; but he had ſatisfy'd her well enough, and ſo ſtill did follow the Matter, and did treat thereupon with the Earl of *Murray* and *Ledington* at *Hampton-Court*: by whoſe Advice *Robert Melvin* was ſent to the Queen, my Miſtreſs, at *Rippon*, to move the Matter upon the Earl of *Murray*'s behalf, with a full Determination, that the Earl of *Murray* liked of it: Which Meſſage I heard afterward that *Murray* alledg'd he did ſend it, for fear of ſome Enterprize againſt him at *Northallerton*, in his Return to *Scotland*. And ſo after this manner the Matter had been entertain'd betwixt the Queen and the Duke from time to time, as is at length declar'd in the former Examinations.

Serj. The Effect of all, is the Duke's partial and untrue Dealing; for that before the Biſhop of *Roſſe*'s going to *York*, the *Scotiſh* Queen declar'd to the Biſhop of *Roſſe*, That ſhe doubted not of the Favour of the Duke of *Norfolk*; for ſhe told him that my Lady *Scroope* had by Motions and Means aſſur'd her of his good Will, and ſhe doubted not of my Lord of *Suſſex*'s, for the great Friendſhip and tender Love he bare to the Duke; and ſhe made account that Mr. *Sadler* would be friendly, for that he alone would not ſtand to them both. It appeareth alſo, for further proof of his partial Dealing, that tho' he were ſworn, both as a Counſellor to the Queen's Majeſty, and alſo ſpecially for the Matter of this Commiſſion; yet he indirectly, ſecretly, and underhand, dealt with *Ledington*, and told him, how that the Earl of *Murray* and his Side intended to utter ſharp Matter againſt the *Scotiſh* Queen. The Duke gave his Advice how to ſtay it, and ſo dealt partially, and againſt the Queen's Majeſty's ſpecial Truſt and Commandment, and againſt his own Oath and Promiſe. Next after that, in Conference had with the Duke of *Norfolk* on the *Scotiſh* Queen's part, the Duke declar'd his good Will that he bare to the *Scotiſh* Queen: He ſhewed how, that if the ſame matter of Evidence againſt her, were once utter'd by the Earl of *Murray*, ſome of the Queen's Majeſty's Counſellors of *England* would procure her Majeſty to publiſh them. He adviſed that the matter ſhould be compounded with the Earl of *Murray*; and that he ſhould not ſtick, being here in *England*, and not at her own liberty, for the preſent time, to be content to ratify the Dimiſſion of the Crown of *Scotland*, which ſhe made at *Lochlevin*; and ſo ſhe might be reſtor'd into her own Country, and then ſhe might undo all again at her pleaſure: and upon pretence of Conſtraint and Fear, as well revoke that which ſhe ſhould do in *England*, as ſhe before revoked that which ſhe had done at *Lochlevin* in *Scotland*. Alſo the Duke at that time was privy to the Device, that *Ledington* accompany'd the Earl *Murray* only to underſtand his Secrets, and to betray him; and that *Ledington* ſtole away the Letters, and kept them one Night, and cauſed his Wife to write them out. Howbeit, the ſame were but Copies tranſlated out of *French* into *Scotch*; which, when *Ledington*'s Wife had written out, he cauſed them to be ſent to the *Scotiſh* Queen: She laboured to tranſlate them again into *French*, as near as ſhe could to the Originals wherein ſhe wrote them; but that was not poſſible to do, but there was ſome Variance in the Phraſe; by which Variance, as God would, the Subtilty of that Practice came to light.

Duke. What if all this be true? What is this to the matter? Any dealing of mine with the *Scotiſh* Queen by my Siſter *Scroope*'s Means, I utterly deny. As for *Ledington*, and the Biſhop of *Roſſe*, what their Speeches were to me, I care not; I am to anſwer but for mine own Speeches.

Serj. The Biſhop of *Roſſe* accuſeth you of your own Speeches, and this he doth, being examined freely, and without any Compulſion.

Duke. He is a *Scot*.

Serj. A *Scot* is a Chriſtian Man.

Duke. At my being at *York* in Commiſſion, *Ledington* broke with me himſelf to have the Matter compounded between the *Scotiſh* Queen and the Earl of *Murray*. I told him that our Commiſſion was only to hear indifferently what ſhould be alledged on both parts, and thereof truly to make report. What hurt is this? The Biſhop of *Roſſe* afterwards ſent for me, that he might ſpeak with me: when we met, he moved me for the compounding of the Matter, as *Ledington* had done. I told him, that our Commiſſion was but to hear and report, as I had told *Ledington* before; and therefore if they would fall to compounding, I willed them to deviſe the Means themſelves, and to make Offers; and thereupon we would advertiſe the Queen's Majeſty thereof, as we would of all the Matters alledged. If it be otherwiſe, and as you ſay, let my Letters be looked on, and ſee if they contain any ſuch Matter. If the Biſhop of *Roſſe*, for Fear or for Malice, have ſaid untruly; if being a *Scot*, he care not how many *Engliſh* Men, by his falſe Teſtimony, he bring to deſtruction; I beſeech you let not that hurt me.

Serj. You made the firſt Motion of compounding the Matter to *Ledington* your ſelf; and another time to the Biſhop of *Roſſe*, you offered to further it all that you could.

Duke. I never ſaw the Biſhop of *Roſſe* before I came to *York*; and would I, think you, deal ſo dangerouſly with a *Scot* that I never ſaw before? Alſo, I did by my Letters ſignify to the Queen's Majeſty our Proceeding, and my miſliking of the *Scotiſh* Queen's part: Let that Letter be ſeen; which Letter was written after my talk with *Ledington*. I wrote it when I went from *York*, and I never ſaw the Biſhop of *Roſſe* afterward, till I came to *London*.

Serj. The writing of your Letters to the Queen's Majeſty, wherein you advertiſed againſt the *Scotiſh* Queen, and though the ſame were written after your Conference with *Ledington* and the Biſhop of *Roſſe*, is no proof but that you dealt partially for the *Scotiſh* Queen; for thoſe Letters were written by others, as well as your ſelf, namely, by my Lord of *Suſſex*, and Mr. Chancellor of the Dutchy: and you could not otherwiſe do, but ſo ſignify, notwithſtanding your partial ſecret Dealing; for elſe you ſhould have too openly bewrayed your Intention.

Duke. When *Ledington* moved me of the Marriage of the *Scotiſh* Queen, I utterly refuſed it.

Serj. That is not ſo: And for proof, as well of your partial Dealing in the Commiſſion as for the Marriage, there ſhall be brought forth ſufficient Evidence.

Here was alledged how a Letter had been written to the Earl of *Murray*, requiring to be advertiſed by him of ſo much as he knew concerning the Doings of the Duke of *Norfolk*, both for the Matter of the Commiſſion, and the Practice of his Marriage with the *Scotiſh* Queen: And the Earl *Murray*'s Anſwer to the ſame Letter was produced, and read, as followeth.

Note, That the beginning and ending of this Letter was not read; but ſo much only as pertained to the matter, *viz.*

‘IN *York*, at the meeting of all the Commiſſioners, I found very honourable and neutral Dealing with the Duke and others her Highneſs's Commiſſioners, in the beginning of the Cauſe, as in the making of the Oaths to proceed ſincerely, &c. During which time, I only entered into general Speech, ſticking at our juſt Defence in the Matters that were objected againſt us by the ſaid Queen's Commiſſioners; looking certainly for none other thing but a ſummary Cognition in the Cauſes of Controverſy, with a ſmall Declaratory to have followed. Upon a certain Day, the Lord *Ledington*'s Secretary rid with the Duke to *Cawood*; what purpoſe they held, I cannot ſay: but that night, *Ledington* returning, and entering in Conference with me upon the State of our Action, I was adviſed by him to paſs to the Duke, and to require familiar Conference; by the which I might have ſome feeling to what Iſſue our Matters would tend. According to which Advice, having gotten Time and Place convenient in the Gallery of the Houſe where the Duke was lodged; after renewing of our firſt Acquaintance made at *Berwick*, the time before the Siege of *Lyth*, and ſome Speeches paſſed betwixt us, he began to ſay to me how he in *England* had Favour and Credit, and I in *Scotland* Good-will and Friendſhip of many. It was thought there could be none more fit Inſtruments to travel for the Continuance of the Amity betwixt the two Realms, than we two. And from that Diſcourſe upon the State of both, and how I was entered in that Action tending ſo far to the Queen's diſhonour, I was willed by him to conſider how Matters ſtood in this Iſle, what Honour I had received of the Queen, and what Inconveniencies her Defamation in the matters laid to her charge, might breed to her Poſterity, whoſe Reſpect was not little to the Crown of *England*. There was but one Babe, the *Hamilton*'s, my Unfriend, had the next Reſpect; and if I ſhould, the Iſſue of her Body would be the more affectionate to me and mine, than any other that could attain to that Room: and ſo it ſhould be meeteſt that ſhe affirmed her Dimiſſion made in *Lochlevin*, and we to abſtract the Letters of her Hand writ, that ſhe ſhould not be defamed in *England.* My Reply to that was, how the matter had paſs'd in Parliament, and the Letters ſeen to many; ſo that the abſtracting of the ſame, could not then ſerve her to any purpoſe: and yet ſhould we in that Doing bring the Ignominy upon us, affirming it could not be ſure for us that way to proceed, ſeeing the Queen's Majeſty of *England* was not made privy to the matter, as ſhe behoved to be, in reſpect we were purpoſely come into *England* for that End, and for the juſtifying of the Grounds of our Cauſe. The Duke's Anſwer was, he would take in hand to handle matters well enough at the Court. After this, at the Occaſion of certain Articles that were required to be reſolved in, before we entered directly in the Declaration of the very Ground of our Action, we came up to the Court; where ſome new Commiſſioners were adjoined to the former, and the hearing of the Matter ordain'd to be in the *Parliament-Houſe* at *Weſtminſter*. In preſence of which Commiſſioners for the ſaid Queen, and partly thro' the ſharp rebuking of the Queen's Majeſty of *England*'s Commiſſioners, we utter'd the Grounds of the Action, and produc'd ſuch Evidences, Letters, and Probations as we had, which might move the Queen's Majeſty to think well of our Cauſe. Whereupon expecting her Highneſs's Declaration, and ſeeing no likelihood of the ſame to be ſuddenly given, but daily Motions made to come to an accord with the ſaid Queen, our Matters at home in *Scotland* in the mean ſeaſon ſtanding in hazard and danger; we were put to the uttermoſt Point of our Wit to imagine whereunto the Matters would tend: for albeit we had left nothing undone for the Juſtification of our Cauſe, it appeared yet no End, but continual Motions made, to come to ſome accord with the Queen, and reſtore her to whole or half Reign. I had no other Anſwer to give them, but that I could neither do againſt Conſcience nor Honour in that matter. Notwithſtanding, ſeeing this my plain Anſwer wrought no End or Diſpatch to us, and that I was informed that the Duke began to miſlike of me, and to ſpeak of me as that I had reported of the ſaid Queen irreverently, calling her Whore and Murderer; I was adviſed to paſs to him, and to give him good Words, and to purge myſelf of the things objected to me; that I ſhould not upon the ſudden enter in his evil Grace, nor have him to our Enemy, conſidering his Greatneſs: it being therewithal whiſper'd and ſhew'd to me, that if I departed, he ſtanding diſcontented and not ſatisfy'd, I might peradventure find ſuch trouble in my way, as my Throat might be cut before I came to *Berwick*. And therefore ſince it might well enough appear that he aſpired to her Marriage, I ſhould not put him in utter deſpair that my Good-will cannot be had therein. So, few days before my departing, I came to the Park at *Hampton-Court*, where the Duke and I met together; and there I declared, that it was come to my ears how ſome Miſreport ſhould be made of me to him, as that I ſhould ſpeak irreverently and raſhly of the ſaid Queen, my Sovereign's Mother, ſuch words as before expreſs'd, that he might perceive my Affection to be ſo alienated from her, as I could not love her, nor be content of her Preferment. Howbeit, he might perſuade himſelf of the contrary; for as ſhe once was the Creature in the Earth that I loved beſt, having that Honour to be ſo near unto me, and having received ſuch Advancement and Honour by her, I was not ſo unnatural ever to wiſh her Body harm, or to ſpeak of her as was untruly reported of me, howſoever the Truth were in itſelf. And as the Preſervation of her Son, now my Sovereign, had moved me to enter in this Cauſe, and that her own preſſing was the occaſion of that which was uttered to her Infamy; ſo whenſoever God ſhall move her Heart to repent of her by-paſt Behaviour and Life, and after her known Repentance, that ſhe ſhould be ſeparate from that ungodly and unlawful Marriage that ſhe was entered in, and then after were join'd with ſuch a godly and honourable Perſonage, as were affectioned to the true Religion, and whom we might truſt; I could find in my heart to love her, and to ſhew her as great Pleaſure, Favour, and Good-will, as ever I did in my Life. And in caſe he ſhould be that Perſonage, there was none whom I ſhould better like of, the Queen's Majeſty of *England* being made privy to the matter, and ſhe allowing thereof; which being done, I ſhould labour in all things that I could, to her Honour and Pleaſure, that were not prejudicial to the King my Sovereign's Eſtate: and pray'd him not to think otherwiſe of me, for my Affection was rather bury'd and hid within me, waiting until God ſhould direct her to know herſelf, than utterly alienate and abſtracted from her. Which he ſeem'd to accept in very good part, ſaying, Earl of *Murray*, thou knoweſt of me that thing whereunto I will make none in *England* nor *Scotland* privy, and thou haſt *Norfolk*'s Life in thy hands. So departing, I came to my Lodging, &c.

‘ Thus have I plainly declared how I have been dealt withal for this Marriage, and how juſt Neceſſity moved me not to repugn directly that which the Duke appear'd ſo bent unto. And for my Threatnings to aſſent to the ſame, I have expreſs'd the manner. The Perſons that laid the Terror before me, were of mine own Company, and the Duke ſince hath ſpoken, that it was his writing which ſaved my Life at that time. In concluſion, I pray you perſuade her Majeſty, that ſhe let no Speeches, nor any other thing paſs'd and objected to my prejudice, move her Majeſty to alter her Favour towards me, or any ways to doubt of my aſſured Conſtancy towards her Highneſs: for in any thing that may tend to her Honour and Surety, I will, while I live, beſtow my ſelf, and all that will do for me, notwithſtanding any Hazard or Danger; as proof ſhall declare, when her Majeſty finds time to employ me.’

Serj. Thus appeareth it, That the Duke of *Norfolk* firſt travell'd with *Ledington* for ſtay and compounding the matter, and afterward likewiſe with the Biſhop of *Roſſe*, and at both times firſt moved it of himſelf: ſo now the Earl of *Murray* alſo by his Letters doth teſtify, that in Conference with him, it came firſt of the Duke to move the ſtay of the Contention, and to what end the Duke did it, namely, for that he aſpired to the Marriage of the *Scotiſh* Queen, and therein made account of her Reſpect to the Crown of *England*; and that without the Queen's Majeſty's Aſſent or Knowledge. Now ſhall you alſo ſee, for further proof thereof, the Biſhop of *Roſſe*'s Letter to the *Scotiſh* Queen: For the Biſhop of *Roſſe* went from *York* to *Bolton*, as you have before heard in his Examination. On the way, before he came to *Bolton* to the *Scotiſh* Queen, from his Lodging he wrote a Letter to her, which Letter was loſt by his Servant; but as good hap was, he reſerv'd a Copy thereof, and negligently left it behind him in his Lodging at *Newcaſtle*, where the Earl of *Murray* half a year after being lodg'd in the ſame Chamber, found it, and ſent it to the Queen's Majeſty's Council; and here it is all written with the Biſhop's own Hand, as himſelf, being examin'd thereof, hath confeſs'd. Here he ſetteth out the Conference between the Duke of *Norfolk* and *Ledington*, and himſelf. He ſheweth the Duke of *Norfolk*'s Advice to the *Scotiſh* Queen, for a Letter by her to be written to the Queen's Majeſty; and alſo he openeth the Duke's Advice, how to work for the *Scotiſh* Queen, with diſcloſing the Queen's Majeſty's Secrets.

Here was the ſaid Letter produced, and read as followeth.

Copy of the Letter ſent from York *by the Biſhop of* Roſſe *to the Queen-Mother, to the Queen our Sovereign Lady, then remaining at* Bolton.

‘ PLeaſe your Majeſty, I confer'd at great length with *A.* one great part of the Night; who aſſured me he had reaſon'd with *B.* this Saturday, as yeſterday on the Fields who *C.* determined to him, that it was *D.*'s determinate Purpoſe not to end your Cauſe at this time, but to hold the ſame in ſuſpenſe; and did what was in her power to cauſe us: *E.* purſued extremely, to the effect *F.* and his Adherents might utter all that they could to your diſhonour; to the effect, as was ſuppos'd, to cauſe you come in diſdain with the whole Subjects of this Realm, that you may be the more unable to attempt any thing to her diſadvantage; and to this effect is all her Intention. And when they have produced all they can againſt you, the Queen will not appoint the matter inſtantly, but tranſport you up in the Country, and reſerve you there till ſhe think time to ſhew you Favour; which is not able to be haſtily, becauſe of your Uncles in *France*, and the fear ſhe hath of your ſelf to be her Unfriend. And therefore their Counſel is, that you write a Writing to the Queen, meaning that you are informed concerning your Subjects, which have offended you, this in effect; That your Majeſty hearing the Eſtate of your Affairs, as they proceed in *York*, was inform'd that her Majeſty was inform'd of you, that you could not godly remit your Subjects in ſuch ſort, as they might credit you hereafter: which was one great cauſe of the ſtay of this Controverſy to be ended. And therefore perſuading her Grace effectuouſly not to truſt any who made ſuch Narration; but like as you had rendred you in her hands, as moſt tender you of any living, ſo pray'd her Grace to take no Opinion of you: but you would uſe her Counſel in all your Affairs, and would prefer her Friendſhip to all others, as well Uncles as others, and aſſure her to keep that thing you would promiſe to your Subjects by her Advice. And if her Grace diſcredit you, you would be glad to ſatisfy her in that point, to be removed within her Realm in ſecret and quiet manner, where her Grace pleaſed, unto the time her Grace were fully ſatisfy'd, and all occaſion of Diſcredit removed from her; ſo that in the mean time your Realm were holden in quietneſs, and your true Subjects reſtored and maintained in your own Eſtate, and ſuch other things tending to this effect. And affirms, that they believe that this may be occaſion to cauſe her credit you better, that you offer ſafer, and may come, that within two or three Months ſhe may become better minded toward your Grace; for nowwhile ſhe is not well minded, and will not ſhew you any pleaſure, for the cauſes aforeſaid.’

A. Ledington.
B. The Duke of Norfolk.
C. The Day he rode to Cawood.
D. The Queen's Majeſty.
E. The Engliſh *Queen's Commiſſioners.*
F. The Lord Regent of Scotland.

Duke. Here be many things and many parts very hard for me to remember; and here be produced three Witneſs againſt me, *Ledington*, the Biſhop of *Roſſe*, and the Earl of *Murray*. Hereunto I will anſwer as my Memory will ſerve me: *Ledington*, becauſe he and I were acquainted at *Lyth*, came to me and practiſed to ſearch at my hands, and to feel how the Queen's Majeſty was ſatisfy'd. I told him, that 'till I heard what the Queen's Majeſty would reſolve, I could tell him nothing: And ſo time ſpent away. And in the mean ſeaſon, upon a *Saturday*, I being at Dinner with the Lord of *Suſſex*, *Ledington* came in; and after Dinner talking with me, he brake more earneſtly for me with the *Scotiſh* Queen, and for a Marriage between her and me, which I utterly refuſed, as by my Letters from *York* to the Queen's Majeſty it may appear; wherein I ſignify'd my Opinion of the *Scotiſh* Queen, or elſe ſhe muſt be maintain'd by the Queen of *England.* I ſaid to him again, that the Queen's Majeſty ſought the Quietneſs of that Realm; but for any Advice of reſtoring the *Scotiſh* Queen into her Country, I could not ſee how it might be conſider'd: and ſo I adviſed him to ſubmit the whole Matter to the Queen's Majeſty's Judgment. Otherwiſe he and I never talk'd. Of thoſe other doings, between *Ledington* and the *Scotiſh* Queen, I know nothing. The Biſhop of *Roſſe* ſhortly after ſaid to me, and intreated to have my help for compounding of the Matter, as you know well he can ſpeak fair. I told him I could do nothing without my Fellows, and only in ſuch manner as was preſcrib'd by our Commiſſion. I told him alſo, that we were but to hear and certify; and for the matter of compounding, they were beſt to make Offers themſelves; for we were but to receive ſuch Devices as they ſhould chuſe, and to give Advertiſement of the ſame. To what end ſhould I need to utter the Matters of the Earl of *Murray*'s part to the other ſide, when *Ledington* himſelf was preſent, and privy to all? I ſpake not with the Biſhop of *Roſſe*, but at that time only. And as for that Advice, to avoid the diſcovering of thoſe rigorous Matters by the Earl, and the publiſhing thereof to the Queen's Majeſty, to the *Scotiſh* Queen's Infamy; I never diſcloſed any ſuch Secrets, nor gave any ſuch Advice: Only I did adviſe the Biſhop of *Roſſe*, that he and that ſide ſhould hold themſelves contented with the Queen's Majeſty's dealing, and with the Determination taken at *Hampton-Court*, which was ſuch as might content them, and ſuch as my Lord *Burleigh* then miſlik'd. As for the Earl *Murray*, he began with me, and not I with him: He came to me at *Cawood*, and prayed me to tell him what end would come of the Matter. I ſaid, I knew not; for it muſt come from the Queen's Majeſty: We knew not of the differing of the Commiſſion at that time, nor till ſuch time as Mr. *Sadler* was ſent for. How could I tell him, and knew it not my ſelf? I never yielded to the Marriage between the *Scotiſh* Queen and me: I cannot gather ſuch Matter of Looks alone, I never dealt more therein, but only that *Ledington* broke it. Have I not anſwered all theſe Matters? If I have not, put me in any thing I have omitted, and I will anſwer it.

Serj. Your Anſwer is but only Denial; *Ledington* and the reſt write otherwiſe, that you made the firſt Motion to them: and therefore *Ledington*, by Practice between you and him, ſent the Earl of *Murray* to you, under pretence of ſearching to learn the State of their own Cauſe, to be moved by you for the Marriage; upon your Anſwer, it is but yea and nay between you. If you meant directly, then needed you not to have dealt ſo ſecretly in Conference with *Ledington*, without the reſt of the Commiſſioners; and beſides *Ledington*'s Conference with you, both the Biſhop of *Roſſe* and the Earl *Murray* affirm your practiſing with them to the ſame intent: which is ſufficient Proof againſt your own bare denial.

Duke. The Earl *Murray* ſought my Life, the other are not of Credit; yet all theſe prove not that I dealt in the matter of the Marriage with the *Scotiſh* Queen, in any reſpect of her Claim to the Crown of *England*. If the Biſhop of *Roſſe*, or any other, can ſay otherwiſe, let them be brought before me face to face. I have often ſo deſired it, but I could not obtain it.

Serj. The Biſhop of *Roſſe* confeſſeth it; this is his own hand; and here you ſhall have, by Witneſſes, proved the Duke's Aſſent to the Marriage with the *Scotiſh* Queen: and to practiſe the furtherance thereof, you ſhall ſee how that afterwards he was privy to a Device, that the Earl *Murray* ſhould have been murdered at *Northallerton*, in his way homeward, by the *Nortons*, *Markenfield*, and other Rebels; and afterwards, being ſatisfy'd at the Earl *Murray*'s hands, a Letter was written to ſtay that Device: containing alſo a Device of compounding the Matter, and how the Earl *Murray* had aſſented to the Marriage.

Here was contained the Biſhop of *Roſſe*'s Confeſſion, in Article the ninth; wherein appeareth,

That the Earl *Murray* ſhould have been murdered by the way, going home into *Scotland*; and that the Biſhop of *Roſſe* wrote to the *Scotiſh* Queen that the Duke of *Norfolk* adviſed her to ſtay that Murder, becauſe the Earl *Murray* had yielded his good Will to the Marriage as followeth:

Out of the Biſhop of Roſſe'*s Examination, taken the 6th of* November, 1571.

To the 9th he ſaith, That the Earl of *Murray* was in fear to have been murdered by the way, in his Return to *Scotland*; whereupon this Examinate, by the Duke's Advice, did write to the Queen of *Scots*, that the Attempt might be ſtaid, for that *Murray* had yielded to the Duke to be favourable; and the Murder ſhould have been executed about *Northallerton*, by the *Nortons*, *Markenfield*, and others, as this Examinate was advertiſed by the *Scotiſh* Queen's Servants that came from *Bolton*.

Serj. Thus it appeareth, that the Duke ſo far aſſented to the Marriage, that rather than it ſhould not have taken effect, he was contented that the Earl of *Murray* ſhould have been murdered.

Duke. The Unkindneſs between the Earl *Murray* and me, was not about this Matter of his Miſtreſs the *Scotiſh* Queen, but for another Cauſe; it was becauſe the Earl *Murray* had reported that I ſought the Marriage of the *Scotiſh* Queen. I charg'd him therewith by Meſſage, he excuſed himſelf thereof, and laid it upon the Earl *Moreton* and the Biſhop of *Orkney*; and for the Device of murdering him, I was never privy to it. And where the Article ſaith, that I heard it by the *Scotiſh* Queen's Servants that came from *Bolton*, it is not true. I never heard of it till *Whitſuntide* after, when *John Wood* came, and then I heard it not but by the Biſhop of *Roſſe*; neither did I hear that it ſhould have been done by the *Nortons*, but by my Brother of *Weſtmoreland* being an hunting, when the Earl *Murray* eſpying a great Company on the Hill-ſide, imagin'd that he ſhould have been ſlain.

Serj. You ſhall alſo underſtand, that the Duke himſelf wrote to the Earl of *Murray*, wherein is plainly declared his Practice and Aſſent to the Marriage: which very Letter we have not, but the Copy thereof, under the Regent's own hand, which the Regent ſent to the Queen's Majeſty, whereby the Matter moſt plainly appeareth.

My good Lord,

‘ I Have received your courteous Letter, whereby I do not only perceive you well affected for the Advancement of your common Weal, and the uniting of this Iſland, but alſo your good Mind towards me; which two Points I cannot but note to your ſpecial Commendation, and my great Comfort. As you ſhall prove me induſtrious to aſſiſt you with all my Power in the one, ſo ſhall you not find me ungrateful in the other, but really to requite you to my uttermoſt for your Friendſhip ſo frankly offered; the rather I ſhall have occaſion to imploy my ſelf for the juſt Reward of your Deſerts, the ſooner I ſhall think my ſelf in Nature, Friendſhip, and Conſcience diſcharged of my Obligation. In the mean time, good my Lord, aſſure your ſelf, that you have not only purchas'd a faithful Friend, but alſo a natural Brother, who is not, nor will not be leſs careful for your Weal and Surety, than his own Honour and Credit: whereof I am fully perſuaded you doubt not: and therefore in that Point I need not to be over-tedious, but briefly to return to that you deſire to be ſatisfy'd of, which is, for my Marriage with all Sincerity with your Siſter; wherein I muſt deal plainly with your Lordſhip, as my only Friend, that I have ſo far proceeded herein, as I, with Conſcience, can neither revoke that that I have done, nor never do mean, while I do live, to go back from this that is done, nor with Honour proceed further, until ſuch time as you there ſhall remove ſuch Stumbling-blocks, as be Impeachment to our more apparent Proceeding; which when by me it ſhall be finiſhed, upon mine Honour the reſt ſhall follow to your Contentment and Comfort. Wherefore my earneſt Requeſt, at this preſent, to my good Lord, is, that you will proceed herein with ſuch Expedition, as the Enemies of this good Purpoſe, which will be no ſmall number, againſt the uniting of this Land into one Kingdom in time coming, and the Maintenance of God's true Religion, may not have Opportunity, thro' the Delay given them, to hinder our intended Determination; againſt the which, I am of opinion, there will be no Practices by foreign Princes omitted. This I hope will be ſufficient to reſolve you, my Lord, of your Deſire touching the Marriage; referring my ſelf wholly, for your more ample Inſtruction and Satisfaction in all Points, to my Lord *Boid*, who hath commiſſion both by the Queen of *Scotland*, your Siſter, and alſo by me, to reſolve you of all Doubts, whom I wiſh you to credit as my ſelf. You ſhall not want the furtherance in this Enterprize of the moſt part of the Noblemen of this Realm; whoſe faithful Friendſhip in this Caſe, and all other my Actions, I have to my Contentment ſufficiently proved. Thus being perſuaded that your Lordſhip's Endeavour is for the Maintenance of God's Glory, and the Advancement of the common Weal of this Iſland, I have adventured to impart my ſecret Determination, as to one whom I make account to be aſſured of, and unto whom I wiſh long Life and proſperous Health, to his Heart's Deſire. So with my hearty Commendations at this preſent, without further Moleſtation, I am,

My good Lord,
Your faithful and moſt aſſured Friend.

From my Houſe in
London, *July* 1.

‘ I have heard you have been in the *North* of *Scotland*, and doubt not but you have ſatisfy'd the Requeſt I made for the Biſhop of *Roſſe*, and have cauſed his Servants to be obeyed of his Benefices; and what is left undone, I pray you cauſe it to be effectually furthered. He hath the Queen of *Scots* Letter, directed to you for that effect; but truſting that my Requeſt ſhall make him to be obeyed, ere the other come to your hands, wherein you ſhall do me ſingular Pleaſure. *Norfolk.*

Duke. All theſe are Letters, and anſwer'd two years ago, when Mr. *Sadler* and Mr. *Attorney* were ſent to examine me upon Interrogatories. Indeed I muſt confeſs my Folly; it is an ill Cook that cannot lick his own Fingers. The Biſhop of *Roſſe* wrote the Letter, and he lick'd his own Fingers. The Earl of *Murray* wrote to me very humbly, and that he was at my Commandment, with ſuch like words. I having no leiſure to write Anſwer to him, drew Articles to give him thanks: but that the Noblemen liked of that Marriage, and that I wiſhed no Man's Friendſhip more than his in it, the Biſhop of *Roſſe* added of his own, and put it in Cipher in this Form, which Cipher I had not then.

Serj. This is the very Copy of your own Letter.

Duke. See my Anſwer made in my firſt Troubles, two years paſt.

Serj. The Queen's Majeſty underſtanding the Duke's Intention to marry with the *Scotiſh* Queen, the Duke himſelf, by way of Prevention, complained to her Majeſty of the Rumour that was ſpread againſt him, that he ſought the *Scotiſh* Queen's Marriage, and prayed it might be examined. In which her complaint, as I have heard her Majeſty her ſelf declare it, and ſome here of my Lords have likewiſe heard it, he ſaid, among other things, To what end ſhould I ſeek to marry her, being ſo wicked a Woman, ſuch a notorious Adultereſs and Murderer? I love to ſleep upon a ſafe Pillow: I account my ſelf, to your Majeſty's good Favour, as good a Prince at home in my Bowling-Alley at *Norwick*, as ſhe is, tho' ſhe were in the middle of her Kingdom. The Revenues of the Crown of *Scotland* (all the ordinary Charges deducted) about the neceſſary Affairs of the Realm, are not comparable to mine own that I enjoy by your goodneſs, as I have heard of the chief Officers of that Realm; conſidering alſo that her Kingdom is not in her hand, but poſſeſs'd by another; if I ſhould ſeek to match with her, knowing, as I do know, that ſhe pretendeth a Title to the preſent poſſeſſion of your Crown, your Majeſty might juſtly charge me with ſeeking your own Crown from your Head. This the Duke ſpake to the Queen's Majeſty, in his Excuſe, when the Fame went of his Marriage with the *Scotiſh* Queen, when yet, beſide that time, he had dealt earneſtly in it.

Duke. I may not nor will not ſtand againſt her Majeſty's Teſtimony, I muſt give place unto it; but hereof I was examined two years ago, and then I declared, as I now do, that at that time I intended not the Marriage. And true it is, that I have at ſundry times, ſome at one time, and ſome at another, uſed ſome of thoſe kinds of Speeches; but at that time I dealt not with that Marriage, nor minded it.

Serj. Your own Confeſſion is otherwiſe; for your ſelf have ſince confeſſed, that you concealed from the Queen your Conferences with *Ledington* and *Roſſe* about the Marriage, both the Conferences had at *York* and at *Hampton-Court*.

Duke. I never conſented to the Marriage at thoſe times of their Conferences, and ſo I might well uſe their Speeches.

Then was produced his own Examination the 6th of *November*, 1571. and it was read, and he confeſſed his Concealment of thoſe Speeches and Conferences before uſed about the Marriage, and that it had indeed been moved, but not concluded on: He remembreth that the Queen charged him ſtraightly not to proceed in that Marriage; but he remembreth not that ſhe charged him upon his Allegiance.

The Duke of Norfolk, *the 6th of* November, 1571.

To the firſt and ſecond, he ſaith, That he remembreth that at *Hampton-Court*, upon a Report made by *Robert Melvin*, ſo declared by *Woolcock*, that this Examinant had gone about a matter of Marriage with the *Scotiſh* Queen for himſelf, wherein he took himſelf to be much wronged, and deſired to have the Matter examined; for that he had not dealt in that Matter, and doth not remember what the Queen's Majeſty ſaid unto him at that time: at which time he ſaid for himſelf, That he intended no ſuch thing, nor meant any ſuch thing; and yet he confeſſeth, That he did not declare to the Queen's Majeſty, at that time, of any Speech that had been uſed unto him by *Ledington* at *York*, and the Earl of *Murray* at *Hampton-Court*, touching the ſaid Marriage. Being at *Titchfield*, the Queen's Majeſty called him to her Gallery, aſking of him, Whether he had dealt any wiſe for the Marriage of the Queen of *Scots*, as it was reported? Whereunto he anſwered, He thought her Majeſty had heard by others. But ſhe willed him to declare the Truth, becauſe ſhe had rather hear it of himſelf: And ſo he declared, declar'd, That he had received Letters from her; that the matter had been mov'd and written unto her; but he had not made any Concluſion in that Matter with her. Whereupon her Majeſty ſhewing herſelf to miſlike thereof, commanded and charged him that he ſhould not deal any further therein with the Queen of *Scots*, nor any other Perſon in that Matter: But that he was charg'd upon his Allegiance, he doth not certainly remember; but that he was ſtraitly commanded, he doth well remember.

At length he confeſs'd, that he was charg'd upon his Allegiance.

Serj. At *Titchfield* the Queen's Majeſty expreſly commanded the Duke of *Norfolk* upon his Allegiance, as himſelf hath now confeſs'd, not to proceed in that Marriage with the *Scotiſh* Queen: Now, if we prove that this Commandment notwithſtanding, and againſt his own Promiſe, he afterward ſtill proceeded, and that much more earneſtly than before; and yet nevertheleſs, that he had all the while conceived an evil Opinion againſt the *Scotiſh* Queen, and upon the ſight of her Letters, and other Evidences, ſhewed he thought her plainly guilty of abominable Whoredom, of the Murder of her Huſband, and ſignify'd it by Letters, and declar'd the ſame his Opinion to *Banniſter:* And alſo, That he made no account of her Kingdom of *Scotland*, which ſhe had not in Poſſeſſion; or if ſhe would have it, yet he counted it not comparable to his own Dukedom. He (I ſay) ſo doing, and ſo conceiving and ſo declaring, and yet ſtill more and more proſecuting the Marriage, cannot be ſaid to have proſecuted it, in reſpect of her Perſon, but of ſome other thing (forſooth the Crown of *England*) which he hoped to attain under her pretended Title. You never ſaw her, you could not then be carried with Love of her Perſon; you conceiv'd ill Opinion of her, ſo could you not be led with Love of her Conditions; the Fame of her good Qualities and virtuous Conditions you never heard much of, except it were by herſelf, or the Biſhop of *Roſſe*, or ſome of her Miniſters; her Kingdom of *Scotland* you eſteemed not, both becauſe ſhe had it not in Poſſeſſion, but it was in Poſſeſſion of her Son, by her own Dimiſſe ratify'd by Parliament, and for that it was not of ſo good value as your own Poſſeſſions were. To what end then purſued you the Marriage? To no other End ſurely, but to advance and maintain the falſe and pretended Title to the preſent Poſſeſſion of the Crown of *England*; and for the attaining thereof, to practiſe the Deprivation, Death and Deſtruction of the Queen's Majeſty. If further, we ſhall plainly prove that after your departing from the Court, you meant not only to proſecute the Marriage, but alſo to proſecute it with Force, againſt the Queen in her own Realm; then it muſt needs be with intent of her Majeſty's Deprivation and Deſtruction, and ſo High-Treaſon, within compaſs of the Statute of 25 of *Edward* the Third. For whoſo ſhall take upon him to proſecute and maintain a Title to the Crown by force againſt the Queen, and within her own Realm, muſt needs make account that the Queen muſt and will reſiſt that Force; if then that Force may overcome the Prince's Force, what is the likelihood then to enſue? There muſt needs follow Deprivation of the Queen, and thereupon her Death and Deſtruction; for the Jealouſy of an Uſurper by Force, can in no wiſe ſuffer a rightful Prince to live. Now to prove your Intention to purſue the Marriage with Force againſt the Queen: In your Journey towards *London*, you entered into Conference and Device between another and you, for taking the *Tower* of *London*, with all the Queen's Ordnance, Ammunition and Treaſure therein, and to have kept the *Tower* by Force againſt the Queen, and ſo to have brought the Marriage to paſs by Force, whether the Queen would or no. But it took not Effect: for the Queen's Majeſty having underſtanding thereof before, provided for enforcing the Place with new Supply; and Mr. *Pelham*, Lieutenant of the Ordnance, was, for that purpoſe, put in with ſufficient Power. Afterward being at your own Houſe, the *Charter-Houſe*, the Queen's Majeſty underſtanding of theſe Attempts, ſent for you; whereunto you make a feigned Excuſe of doubt of Sickneſs, and that you had taken Phyſick, ſo that for four or five Days you could not journey; promiſing after thoſe four or five Days, to wait on her Majeſty, according to your Duty. And immediately after this Excuſe ſent, without tarrying four or five Days, or any more Days, the ſame Night, you by and by ſtole away into *Norfolk*, and there intended to have levied Force; but that the Queen's Majeſty and her Council ſuſpecting your Purpoſe, had ſecretly ſent into thoſe Parts before, and taken Order for impeaching of your Intention. If this then be prov'd true, That you ſtill proſecuted the Marriage, without liking of her Perſon, without Eſtimation of her Poſſeſſions, with only reſpect to her falſe Title to the Crown of *England*, and with Force; and ſithence it cannot be purſued with Force againſt the Queen, nor Force levied againſt her Majeſty, without Purpoſe to ſuppreſs her Majeſty's Force, and to depoſe her from her Crown and Dignity; and he that ſo ſeeketh to depoſe her muſt needs be thought that he will not ſuffer her to live: All theſe Matters conſider'd, the ſeeking of this Marriage in this Form, muſt needs be High-Treaſon, within Compaſs of the Statute of 25 of *Edward* the Third.

Here was produced the Duke's own Letter, and the other Commiſſioners, from *York* to the Queen's Majeſty; wherein is ſignified the great Abomination of the *Scotiſh* Queen, appearing in her own Letters, and the Certainty of the Truth of thoſe Letters, both by offer of Oath of thoſe that exhibited them, and by Diſcourſes of ſome Matters there; which could not be written but by herſelf, being known to none other. The Commiſſioners Letter is as followeth.

“ Afterwards they ſhew'd unto us an horrible and long letter of her
“ own Hand (as they ſay) containing foul Matter, and abominable to
“ be either thought of, or to be written by a Princeſs, with divers fond Bal-
“ lads of her own Hand; which Letters, Ballads, and other Writings be-
“ fore ſpecify'd, were cloſed in a little Coffer of Silver and gilt, hereto-
“ fore given to her by *Bothwell*. The ſaid Letters and Ballads did diſcover
“ ſuch inordinate and filthy Love, between her and *Bothwell*, her Loath-
“ ſomneſs and Abhorring of her Huſband that was murdered, and the Con-
“ ſpiracy of his Death, in ſuch ſort as every good and godly Man cannot
“ but deteſt and abhor the ſame. And thoſe Men here do conſtantly affirm
“ the ſaid Letters and other Writings, which they produce of her own
“ Hand, to be her own Hand indeed, and do offer to ſwear and to take
“ their Oath thereupon; as indeed the Matter contain'd in them being
“ ſuch as could hardly be invented or deviſ'd by any other than by her-
“ ſelf; for that the Diſcourſe of ſome things, which were unknown to any
“ other than to herſelf and *Bothwell*, doth the rather perſuade us to be-
“ lieve that they be indeed of her own Hand-writing. And as it is hard
“ to counterfeit ſo many and ſo long Letters; ſo the Matters of them,
“ and the Manner how theſe Men came by them is ſuch, as it ſeemeth
“ that God, in whoſe ſight the Murder and Blood of the Innocent is
“ abominable, would not permit the ſame to be hid or conceal'd. In a
“ Paper herein incloſ'd, we have noted to your Majeſty the chief and
“ principal Points of their Letters, written (as they ſay) with her own
“ Hand, to the Intent it may pleaſe your Majeſty to conſider of them,
“ and ſo to judge whether the ſame be ſufficient to convince her of the de-
“ teſtable Crime of the Murder of her Huſband; which in our Opinion
“ and Conſciences, if the ſaid Letters be written with her own Hand (as
“ we believe they be) is very hard to be avoided.”

Duke. This maketh for me; for this proveth that I ſo much miſliking her, and ſignifying by my Letter ſo much againſt her, dealt not on that ſide when I was at *York*, where this Letter was written.

Serj. There were others join'd with you in the Letter, ſo that you could not otherwiſe write, however you otherwiſe dealt: but this maketh much againſt you, for it prov'd you had an evil Opinion of her, and ſo could not ſeek the Marriage in reſpect of her Perſon, but only in reſpect of her falſe Title; and that not to the Kingdom of *Scotland*, which ſhe had not, and which you deſpis'd, but to the Crown of *England*. Now you ſhall, to the ſame end, hear your own Report againſt her to *Banniſter*.

Duke. *Banniſter* was ſhrewdly cramp'd when he told that Tale. I beſeech you let me have him brought Face to Face.

Serj. No more than you were.

Then was read *Banniſter*'s Confeſſion, in *October*, 12 *Eliz.*

This ſheweth that you had an evil Opinion of her, and ſo no Affection to the Perſon; therefore your ſeeking of that Marriage was for another Reſpect; and therefore *Ledington*, *Roſſe*, and you practis'd the Matter at *York*.

Duke. They broke it to me. What is this to me? Did I conſent?

Serj. You conſented.

Duke. No.

Serj. They ſay plainly, that you practis'd to withdraw the things that might charge her.

Wilbraham. You have ſaid, that the Biſhop of *Roſſe* hath accus'd you of Malice; but you anſwer nothing to that which the Biſhop of *Roſſe* wrote to his Miſtreſs, the *Scotiſh* Queen, in Secrecy, wherein could be no Malice.

Duke. *Ledington* broke it to me, and the Earl *Murray* broke it to me. I pray you, let them be brought face to face to me: I have often requir'd it, and the Law I truſt is ſo.

Serj. The Law was ſo for a time, in ſome Caſes of Treaſon: but, ſince, the Law hath been found too hard and dangerous for the Prince, and it hath been repeal'd. You intended to have proceeded with the Marriage by Force; and for proof thereof, you have heard of the Device for taking of the *Tower*. Now to prove further your Purpoſe to purſue your Enterprize by Force, let be read the Confeſſion of the Biſhop of *Roſſe* to the ſecond Article.

The Biſhop of Roſſe'*s Confeſſion the* 3*d of* November, 1571.

To the ſecond Article. The Duke being after conferr'd with by the Biſhop of *Roſſe*, from his Miſtreſs, to know what he would do in the Matter of the Marriage, if the Queen would not aſſent, ſaid, he knew ſhe would, tho' not at the firſt; becauſe moſt of the Council and Noblemen thought it meet; and that he had known the Minds of moſt of the Noblemen. And after, when the Queen was offended with him coming from *Southampton*, he told the Biſhop he would depart into his own Country, and ſo was reſolv'd, by the Earls of *Arundel* and *Pembroke*, who would do the like; and there would take purpoſe, by the Advice of his Countrymen and Friends, and do that was likelieſt for the Advancement of the Cauſe. The Biſhop ſaid, the Queen's Majeſty would by Force fetch him out of his Country. He anſwer'd; That no Nobleman in *England* would accept that Charge at her Commandment; for he knew their Minds, ſpecially for thoſe in the *North*, who would aſſiſt. And if that he might once have that open Quarrel againſt her, that ſhe would firſt purſue him, he would have Friends enough to aſſiſt him, and that the *Scotiſh* Queen ſhould be ſafely enough provided for; for that was the principle Mark he ſhot at, and would do what he could to have her in his hands. And the Earls of *Arundel* and *Pembroke* had promiſed to do as he did; and they in the *North* had promis'd the like. *Item*, *Liggons* told the Biſhop, that the Duke was reſolv'd to go thro' with the Matter by Force, if the Queen would not aſſent to it. At this time common Meſſages paſt between the *Scotiſh* Queen and the Duke, and them of the *North*.

Duke. All is falſe, ſaving that the Biſhop of *Roſſe* once ſpake with me; and then underſtanding him to be a ſuſpected Man, I deſir'd him to forbear to come to me; nevertheleſs, by his great Earneſtneſs and Importunity, that I would but once admit him to come to me, at length he came, and then he mov'd me for certain Money of the *Scotiſh* Queen's, about 2000*l.* remaining in my keeping: One Letter he brought me, and no more Letters, 'till after my firſt Trouble. As for my going into *Norfolk*, I can bring good Witneſs, that I meant not to go into *Norfolk*, four Hours before I went, and that I ſpake not with him in two days before. It is of good ground that I have prayed to have the Biſhop of *Roſſe* brought to me in private Examination face to face, whereby I might have put him in remembrance of Truth; but I have not had him face to face, nor have been ſuffer'd to bring forth Witneſſes, Proofs, and Arguments, as might have made for my Purgation. As for ſending of Letters to my Lord of *Northumberland*, or my Brother of *Weſtmoreland*, all is falſe; I never received Letters from them in all my time. If ever I ſent to them, or receiv'd from them any Letters in three Quarters of a Year before, let me never be credited.

Serj. You ſhall have Proofs that the Biſhop of *Roſſe* hath ſaid it. You ſtand much upon your own Credit: Now therefore to your Credit, I will ſay ſomewhat againſt your Oath ſpecially taken, when you were appointed Commiſſion for the Matter at *York*; and againſt your Oath of a Counſellor to the Queen's Majeſty, you dealt indirectly and partially; you deceived the Queen's Majeſty's Truſt, and diſcloſed her Secrets.

Duke. I deny it.

Serj. It is well proved that at *Hampton-Court*, being examined of the Matter by the Queen's Majeſty, you diſſembled it: Being examined of Money lent by you to the *Scotiſh* Queen, you denied it: Being charged upon your Allegiance, you promiſed not to proceed further in the Matter. Notwithſtanding that expreſs Commandment of her Majeſty; yet, againſt your Duty, againſt your Promiſe and Faith, you ſtill proceeded.

Duke. I confeſs this was mine Error; but I have already made humble Petition to my Peers, not to confound my Faults together, nor to mingle my inferior Offences with this great Cauſe.

Serj. Sithence the Commandment given to you at *Titchfield*, not to proceed in Dealing with the *Scotiſh* Queen in any wiſe, you have continually dealt with her: You have lent her Money; you have maintained *Liggons*, your Man and your Solicitor, continually to advertiſe you, from the Biſhop of *Glaſgow*, and the Pope's Nuncio; and you have advertiſed him from hence. He hath had Money of you, and you have received Letters from him four times in Coffers.

Duke. *Liggons* is not my Sollicitor.

Serj. He is your Sollicitor, and ſo your ſelf have expounded him; for where the *Scotiſh* Queen, in her Letters, ſpeaketh of your Sollicitor, being aſked whom ſhe meant thereby, you have anſwered, *Liggons*.

Duke. At the firſt indeed ſhe ſo called him; but Sollicitor is no Name of uſe. He hath not been ſo ſince my firſt Trouble; and ſo for her calling, it is no matter, ſhe once called me *Legiſta*.

Serj. He is your Sollicitor; for ſhe ſo taketh him, and your ſelf do ſo expound it.

Then was read his own Confeſſion, of Money lent 2000*l.* and received, *&c.*

The Duke confeſſed this receiving and lending of Money.

Then was read the Biſhop of *Roſſe*'s Confeſſion, concerning Money ſent by *Barthwick*, and of Money delivered to *Francis Biſhop*.

Duke. This I deny not.

Serj. *Francis Biſhop* was a Traitor.

Duke. I knew him not.

Serj. Now for the matter of taking the *Tower*.

Duke. I deny it.

Serj. Was it not mentioned unto you in the way, when you came from *Titchfield*, by one that came to you, and moved you a Device between you and another, for taking the *Tower?*

Duke. I have confeſſed that ſuch a Motion was made to me, but I never aſſented to it.

Serj. You concealed it: And to what end ſhould you have taken the *Tower*, but to have kept it againſt the Queen by Force? But you ſay you liked not the Motion, you aſked advice of it.

Duke. Indeed I told one of it: *Owen* met me by the way from *Titchfield*, and told me how we were all in danger, and ſaid, That ſome of our Friends thought it was beſt to take the *Tower*. I refuſed to do it, and ſaid, Take the *Tower!* that were a proper Device indeed! And thence I went to my Lord of *Pembroke*'s, and there din'd; and then I told my Lord of *Pembroke* of that Device; whereunto he anſwered, We are well, and ſafe enough: Let them that be faulty take the *Tower*, if they will. And to what end ſhould I have taken the *Tower?*

Serj. To maintain by Force that which you had practiſed againſt the Queen's Majeſty's Commandment, which was the Marriage with the *Scotiſh* Queen.

Duke. I had not then dealt with it.

Serj. It is well proved that you had; and afterward, at your Houſe at *Charter-Houſe*, you receiv'd Letters, Meſſages, and Tokens from the *Scotiſh* Queen; you received from her a Brooch, with a Hand cutting down a Vine, and this Poeſy upon it, *Vireſcit vulnere Virtus*. But my Lord, do green Vines grow when they be cut? And a green Vine it was.

Wilbraham. My Lord, you ſtill ſay you dealt not at this time, or that time, againſt her Majeſty's Commandment; I pray you at what time, ſince her Majeſty's Commandment upon your Allegiance, did you forbear to deal with the *Scotiſh* Queen?

Serj. Beſide this you have given advice as a Counſellor to the *Scotiſh* Queen, againſt the Queen's Majeſty: namely, when in Treaty between the Queen's Majeſty and her, there were three Articles propounded on the Queen's Majeſty's part; the one for the Delivery of her Son into the Queen's Majeſty's Cuſtody; the other for delivering the *Engliſh* Rebels that were fled into *Scotland*; the third for delivering of certain Holds in *Scotland* into *Engliſh* Men's Poſſeſſion: He gave Advice herein as a Counſellor, againſt the Queen his Sovereign Lady. The Articles were expreſly ſent to the Duke to have his Advice, before that the *Scotiſh* Queen would reſolve of any Anſwer; and ſhe reſpited her Anſwer to be made according to his Direction. He gave Advice, that ſhe ſhould in no wiſe deliver her Son, for it was againſt her own Safety, not knowing whether ſhe delivered him into her Friends hands or no. As for the Rebels, ſhe ſhould in no wiſe deliver them, for it were againſt her Honour: And as for the Holds, ſhe ſhould not deliver any; for it were againſt the Safety of her Friends in *Scotland*.

Duke. For adviſing not to deliver the Rebels, I deny that ever I gave any ſuch Advice. As for Delivery of her Son, I adviſed her no otherwiſe but thus, that I wiſhed her to beſtow him there, where ſhe might have ſure Friends.

Serj. Thus, contrary to your Oath, Allegiance, and Fidelity, and againſt the Credit that you would fain be thought of, you became, by your own Confeſſion, a Counſellor to a foreign Prince againſt your own Sovereign Lady.

Burleigh. My Lord, did you ever deſire to have any Proofs or Witneſſes produced for your part, to prove any thing that might make for you? And were you denied?

Duke. I have divers times prayed, that if any thing were denied to be true which I ſaid, I might be driven to my Proof of it.

Burleigh. I aſk it, becauſe I have not heard it reported to her Majeſty that you made any ſuch Requeſt, to have any ſpecial Witneſſes examined, or Proofs heard, on your part.

Here was produc'd and read the Confeſſion of *Hickford* to the 3d Article.

Duke. I adviſed her, touching her Son, that ſhe ſhould firſt be well aſſur'd that he ſhould be beſtow'd among her Friends. For her Caſtles, I adviſed her, that ſhe ſhould in any wiſe take heed, that they might not after come into the hands of her Enemies; for ſo if ſhe deliver'd *Edinburgh-Caſtle*, ſhe ſhould not be ſafe in *Holyrood-Houſe*.

Serj. How ſtandeth this with the Duty and Oath of a Counſellor, to give Advice to a foreign Prince againſt the Queen's Majeſty?

Duke. I excuſe it not, herein I confeſs my Error; I beſeech you call not theſe my inferiour Faults, which I have confeſs'd, among the greater wherewith I am charg'd.

Serj. Thus appeareth how he hath given Advice againſt the Queen to the *Scotiſh* Queen. Now it ſhall be further prov'd unto you, that where the *Scotiſh* Queen is here in Cuſtody as the Queen's Priſoner, he hath alſo been privy to Devices for conveying her away.

Here was produc'd the Confeſſion of *Barker*, *October* 5. 1571. Article 13.

Duke. This is not true, ſaving that indeed Advice was broken to me of conveying her away at a Window, at a Gallery's-end, in one of my Lord of *Shrewsbury*'s Houſes, of the which Window the Biſhop of *Roſſe* had taken a meaſure; but this Device was overthrown at ſuch time as it was told me. As for that which *Barker* hath here confeſs'd, it is utterly falſe.

Serj. Now ſhall you hear the Duke's own Confeſſion.

Here was read the Duke's Examination, 13 *Octobris*.

Serj. Beſides this, the Duke being in Priſon in the *Tower*, made a Submiſſion to the Queen's Majeſty, confeſs'd his Error in dealing with the *Scotiſh* Queen, and promis'd, upon his Faith and Allegiance, never to deal with that Marriage, nor with any other Matter touching the *Scotiſh* Queen.

Duke. I confeſs I did ſo.

Serj. Before his ſubſcribing his ſaid Submiſſion, he firſt made the *Scotiſh* Queen privy to it, and ſent her a Double of it.

Duke. I ſent it to the Biſhop of *Roſſe*.

Serj. All is one.

Duke. I confeſs it.

Serj. What ſhould move my Lord of *Norfolk* now ſo earneſtly ſtill to purſue this Marriage? You ſee he liked not the Perſon, ſhe was not of good Fame, he ſo ſignify'd to the Queen, he ſo reported to *Banniſter*. The Kingdom of *Scotland* he eſteem'd not, and alſo it was out of her Poſſeſſion, in the hands of the King her Son, by her own Dimiſſion ratify'd by Parliament. Forſooth he had an old blind Prophecy lying by him: *In exaltatione Lunæ Leo ſuccumbet, & Leo cum Leone conjungetur, & catuli eorum regnabunt*; which belike is thus to be expounded, *At the Exaltation of the Moon* (which was the Riſing of the Earl of *Northumberland*, that giveth the Moon) the *Lion* (which is the Queen's Majeſty) *ſhall be overthrown*; *then ſhall the Lion be join'd with a Lion* (which is the Duke of *Norfolk* with the *Scotiſh* Queen, for they both bear Lions in their Arms) *and their Whelps ſhall reign* (that is, their Poſterity ſhall have the Kingdom).

Duke. I do not remember any ſuch Prophecy.

Serj. It was in your own keeping.

Duke. What ſhould I do with it?

Serj. Such blind Prophecies have oft deceiv'd Noblemen.

Duke. This is nothing to the purpoſe; I kept it not to any ſuch end.

Serj. You utter'd it to your Servant *Hickford*.

Here was produced and read *Hickford*'s Teſtimony.

Duke. A Toy! You ſee I call it a fooliſh Prophecy.

Serj. Where had you it?

Duke. I remember it not.

Serj. Hitherto have you heard the Evidence to prove the Duke's Imagination, Compaſſing, and Conſpiracy, to deprive the Queen's Majeſty of the Crown and her Royal Eſtate, and ſo to bring her Highneſs to Death and Deſtruction. For proving this his Intent, you have heard thoſe Matters prov'd, his Practice to join himſelf in Marriage with the *Scotiſh* Queen, whom he then well knew falſely to claim and pretend Title to the preſent poſſeſſion of the Crown of *England*: alſo his proſecuting the ſame Marriage without the Queen's Majeſty's Knowledge, againſt her Highneſs's expreſs Commandment upon his Allegiance, againſt his Faith, Promiſe, and Submiſſion; yea, and to purſue that with force, and to uſe the Advice and Strength of his Friends, to maintain the ſame force againſt the Queen; his hearkening to blind Prophecies, Money by him lent to the *Scotiſh* Queen, and againſt the Queen his Sovereign Lady. If then his Purpoſe ſo were to purſue it with force, it muſt needs follow, that the ſame muſt be of Intent, Imagination, and Compaſſing, to deprive and depoſe the Queen's Majeſty from her Crown, Royal Eſtate, and Dignity, and to advance and maintain that falſe and uſurp'd Title of the *Scotiſh* Queen unto the preſent poſſeſſion of the Crown of *England*, and ſo conſequently, for maintenance of his Imagination and Purpoſe, to compaſs the Queen's Majeſty's Death and Deſtruction. Now ſhall you further hear Proof of his own words, declaring the ſame intent to purſue the Marriage by force, and rather to loſe his Life than to give it over.

Cavendiſh's *Depoſition.*

That at his ſeveral Journies unto the Places of the Queen of *Scots* Abode, the Duke procur'd him to labour the Cauſe of his Marriage with her with all diligence. *Item*, That her Majeſty being at *Southampton*, *Richard Candiſh*, a certain Night walking in his Chamber, and perſuading him by all means to labour for the Queen's Favour concerning that Marriage; the Duke affirm'd, that before he loſt that Marriage he would loſe his Life: and ſaid moreover, that if ever he handled thing wiſely or cunningly, I would ſay it was the Matter of that Marriage, if I knew it from the beginning. *Item*, That the Monday at night, after the Duke's Departure from *Southampton*, *Richard Candiſh* being at *Hayward-Houſe* with him, in the Company of the Lord *Lumley*, the Duke and the ſaid Lord *Lumley* talking ſecretly together, ſuddenly the Duke brake out into this Speech: *Candiſh*, quoth he, *is able to accuſe me of no diſloyal Practices.* Whereat the Lord *Lumley*, as it were wondering, *Can he not indeed*, quoth he? *No indeed*, quoth the Duke; and turning to *Candiſh*, ſaid, *Candiſh, I in this Caſe defy thee, ſay thy worſt.* To which *Candiſh* anſwer'd, *Beſides the Practice of this Marriage, I truly can accuſe you of none. Item,* The Duke, at another time, in the ſaid Houſe, ask'd *Candiſh, If God take away the Queen's Majeſty, whether he could aſſure him of his Brother* Candiſh, *and procure his ſaid Brother to promiſe unto him Sir* Robert Ningfield ? *Item,* At his laſt being at *Remming-Hall*, among many others talking, he had this Speech; *Candiſh* (quoth he) *nothing will undo us but the Riſing of the* Northern *Lords.* To whom I anſwered, *God forbid that any ſuch thing ſhould be, for it will undo us all*; whereat he replying, ſaid, *I fear they will riſe.*

Duke. The Duke looking upon *Cavendiſh* with a ſcornful and ſmiling Countenance, ſaid, *You are an honeſt Man!* That which he ſaith of the Talk between him and me at *Southampton*, is utterly falſe: At that time you were moſt earneſt on my part, and came to me as for Succour, for that as you ſaid your Couſin *Chriſtmas* was fallen out with you. When we rode to my Lord of *Pembroke*'s, you came to me and told me, my Lord *Burleigh* findeth me well, I will ride with him and find his Humour, and I will face that Fellow thorowly; ſo from *Saliſbury* you ſaid you would ride to *Leiceſter*, and ſo home with my Lord *Burleigh*, and you doubted not to bring me ſuch word from him as ſhould ſatisfy me. You told me how my Lord of *Leiceſter* was firm, and Sir *Nicholas Throckmorton* my ſure Friend, and that they would both join to deal with the Queen for me; and how Sir *Nicholas Throckmorton* ſent me word, That he doubted not the Queen would take order to my Contentation at her next Coming to a ſtaid Houſe. Then came you to *London*, and tho' I had no great Liking of you, yet becauſe you were loth to lie at *Arundel*'s, and were ſomewhat ill at eaſe, I let you lie in my Houſe. I never made great account of you; my Lord of *Leiceſter* made us firſt acquainted, your Brother you know was not my Friend. I then took you as I now find you. While you could hold on, you ſhew'd your Letters that you did write on my behalf; then you came to me and ſaid, you had need, and borrowed Money of me; I had none at that time, but I ſent it you by *Bowes.* I was warned by divers of my Friends to take heed of you; you dealt with *Dier* and with *Straunge* very maliciouſly. As for the Speech at *Remming-Hall*, that you ſpeak of me, it is untrue; I dealt not with you there about any ſuch matter; I left you at *London*, I looked not for you; when you came, I was glad to be rid of you; you ſaid you were going to *Norwich*, and I was glad you were going, and willed you to look at my Houſe at *Norwich*, and tell me how you liked it: Out of the *North* I heard nothing in ſix Weeks before. You ſuddenly ſlipped away from me, and then came I up to *London* ward; you are an honeſt Man, indeed! It is all falſe that he hath ſaid.

Then *Cavendiſh* began to report and juſtify what he had ſaid, and to put the Duke in remembrance, when the Duke gave him reproachful words of Diſcredit.

Serj. He is ſworn, there needeth no more proving; you ſent *Havers* to the Earl of *Weſtmoreland.*

Then was alledged the Examination of one *Haveling* touching *Havers*, whom the Duke ſent to the Earl of *Northumberland*, with this Meſſage, *That if the two Earls ſhould riſe, he were undone.*

Duke. This may be ſeen of two years old, and by me fully declared and anſwered.

Then was read the Confeſſion of *Havers.*

Then was alledged a Letter of the *Scotiſh* Queen's in Cipher to the Duke, containing, that the Lord of *Shrewſbury* had told her, that the Earl of *Northumberland* was deliver'd to the Earl of *Suſſex*; for which ſhe was very ſorrowful three days together, for fear of cumbring of Friends if he were taken.

Serj. What Friends was ſhe ſo careful for, that ſhe wrote to the Duke, unleſs ſhe thought it ſhould light upon the Duke himſelf?

Duke. That Letter never came to my hands.

Serj. It was found in the Bag which you willed to be burned.

Then the ſaid Letter was read.

Duke. All this is nothing to me.

Serj. This proveth in you a Practice to the Rebellion; for all her Sorrow of the yielding of the Earl of *Northumberland* was, for fear he ſhould bewray and cumber her Friends.

Duke. That toucheth not me; for I am ſure the Earl of *Northumberland* hath been ſought for me, and yet he cannot accuſe me.

Serj. Had it not concerned you, it had not been written to you.

Duke. Some Letters never came to my hands: ſometime they came to the Biſhop of *Roſſe*, ſometime to *Banniſter*, ſometime not all deciphered; as *Straunge* and *Bowes*, and other that have been Meſſengers for me, can tell.

Here Mr. *Attorney* began to proſecute the ſecond part, and ſpake firſt to this effect.

Attorney. Now you have heard enough of the firſt matter. In this Indictment are contained three principal Treaſons, whereof the firſt is imagining and conſpiring the Deprivation, Death, and Deſtruction of the Queen's Majeſty: for proof hereof, it hath been truly ſaid, That to imagine, compaſs, or procure the Depoſing or Death of the Prince, is High-Treaſon by the Statute of 25 *Edward* III. and at the Common Law; for the Statute is but a Declaration what was Treaſon at Common Law: which Imagination, when it appeareth by Overt-fact, muſt needs be judged Treaſon; for Overt-fact is but a ſhewing of a Man's mind, which when a Man by outward Speech or Deed hath uttered, it muſt needs be judged that ſo was his meaning; which muſt be gathered by ſuch means, as it may be made to appear. For no Traitor is ſo bold, to ſay expreſly, he will depoſe or kill the King; but often it hath been ſeen, that they go about indirectly, and by means that tend to that End: and therefore he that goeth about to ſtir the People to Rebellion, or to levy War within the Realm, to aſſail or withſtand the Prince by Force, is taken to ſeek the Death of the Prince. Now therefore to prove that the Duke of *Norfolk* hath imagined and compaſſed the Depoſing and Death of the Queen's Majeſty, this hath been ſhewed you: firſt, by ſecret and indirect means, he ſought to join himſelf in Marriage with the *Scotiſh* Queen, who pretendeth Title to the Queen's Crown. This he did without the Queen's Majeſty's privity, againſt her Highneſs's expreſs Commandment upon his Allegiance, againſt his own Promiſe and Submiſſion. Firſt, being at *York*, a Commiſſioner appointed by the Queen, contrary to his Oath and Charge, he dealt undirectly and partially, and play'd an untrue part with the Queen; he ſecretly practiſed for the Marriage. This being objected againſt him, he hath denied it: you have heard it teſtified by three Witneſſes, the Earl of *Murray*, *Ledington*, and the Biſhop of *Roſſe.* So it appeareth, that all that Practice and indirect Dealing was to this end, to compaſs the Deprivation and Death of the Queen's Majeſty; for he well knew that the *Scotiſh* Queen made Title to the preſent Poſſeſſion of the Crown of *England*; that ſhe denyed the Queen's Majeſty to be lawful Queen of this Realm; that ſhe uſurped the Royal Style; that ſhe quartered the Arms of *England* without any difference: all this he knew; he was of the Queen's Majeſty's Privy Council at the ſame time; he knew that ſhe made no Renunciation of her unjuſt Claim, tho' it were required of her. It was alſo one Article in the Commiſſion where he himſelf was Commiſſioner, To require the Recognition of her Error, and of the Queen's Majeſty's preſent Right: he knew well it was not done. If the *Scotiſh* Queen claimed ſuch preſent Title, then was ſhe no Friend to the Queen's Majeſty, but a Seeker of her Highneſs's Overthrow and Deſtruction: and yet the Duke of *Norfolk* knowing this, practiſed to compaſs this Marriage. Wherefore, I pray you, ſought he that Marriage; yea, and ſought it as he meant to atchieve it with Force? It was not in reſpect of her Perſon, for he knew her not; it could not be for any good Report of her virtuous Conditions, for he had an evil Opinion of her: he did by his writing certify againſt her, he declared to *Banniſter* that he thought very ill of her. It was not for her Title to the Kingdom of *Scotland*, for neither was ſhe poſſeſſed of it, neither did he eſteem it though ſhe had it. Wherefore ſought he her then? Surely in reſpect of that unjuſt Claim and Title that ſhe pretended to the preſent Poſſeſſion of the Crown of *England*; which Title cannot be maintained without evident purpoſe to depoſe the Queen's Majeſty, and to bring her to Death and Deſtruction, which is plain Treaſon by the Statute of 25 *Edward* III. for no more can *England* bear two Queens, than the World can bear two Suns. And how ſhould we have maintained it, but with Force? And how could that have been, without depriving of the Queen's Majeſty from the Royal Eſtate? And how could that have been done, without compaſſing her Highneſs's Death and Deſtruction? for the Jealouſy of an Uſurper cannot ſuffer the juſt Prince to live. This your Honours are to ſearch and conſider, and to your Judgments we refer it. Now my Lord of *Norfolk*'s chief and only Anſwer is but his bare Denial, which is no ſufficient Anſwer; ſpecially ſith he himſelf hath fallen into ſo great diſcredit, by doing againſt his Word, his Hand, his Oath. He promiſed, being commanded upon his Allegiance, never to deal in that matter; he promiſed, by his Submiſſion under his own Hand, utterly to forſake it, and to deal no more with the *Scotiſh* Queen for that Marriage, nor any other matter: He promiſed by Oath ſpecially taken when he was Commiſſioner for hearing the matter at *York*, to do therein directly and indifferently without partiality. All theſe Oaths and Promiſes he hath broken, beſide the Oath of a Counſellor which he hath alſo broken, in diſcloſing the Queen's Secrets, and in ſecret practiſing againſt her expreſs Commandment. Now alſo, ſince he was laſt apprehended and committed, he hath denyed certain things, which he hath afterward, being conſtrained with ſtrength of proof, confeſſed; yea, he hath denyed thoſe things upon his Oath, which he hath afterward granted to be true: ſo is he not to be believed upon his Word, if his own Word diſcredit him, how great ſoever he be in Degree.

Duke. Upon the Statute of 25 *Edward* III. he inferreth, that it is Treaſon to imagine or compaſs the Deprivation and Death of the Queen's Majeſty; as the Lord forbid, and I pray God I may ſooner be buried in the Earth, than I ſhould ſeek or attempt any thing to the Deſtruction of her Majeſty's Perſon. There is a Maxim in Law, that penal Statutes muſt be conſtrued ſtrictly, and no penal Statute ought to be extended further than the very words: Now in all that my Accuſers have depoſed or ſaid againſt me, how falſe ſoever it be, there is not one of them that ſay I went about any hurt to her Majeſty's Perſon, or that I levied or practiſed to levy any Power againſt her, or to do any of thoſe things that are contained for Treaſons within the words of the Statute. Is the Biſhop of *Roſſe* a ſufficient Witneſs againſt me? There be Points enough in the Law to prove him no ſufficient Witneſs: He is a Stranger and a *Scot*; a Stranger can be no ſufficient Witneſs, much leſs a *Scot*: for whereas when there is Peace between the Queen's Majeſty and a foreign Realm, the People of that foreign Realm may freely come and traffick in this Realm; yet tho' there be a Peace between *England* and *Scotland*, if a *Scot* come into *England* without a Paſſport, he may be a lawful Priſoner. Again, I cannot tell what he may for fear. *Bracton* ſaith, That Witneſſes muſt be *Liberi Homines*, Free Men, full Age, Honeſt, and of Good Report: the Biſhop of *Roſſe* is none ſuch. So is nothing proved of any Overt-fact againſt me, neither am I accuſed by any but the Biſhop of *Roſſe*, who can be no ſufficient Witneſs againſt me. What care I what *Hamlin* ſays? It toucheth me not. As for *Havers*, I never ſent him with any ſuch Meſſage: indeed I aſked him what Company he found with my Brother of *Weſtmoreland.* He told me, he found none but my Brother *Weſtmoreland.* But as for my Lord of *Northumberland*, I ſent not to him. If I might have brought forth my Proofs, I could have brought forth Proofs of good fame, that I ſent no ſuch Meſſage; I could have proved it by Confeſſions, and not by Hearſay. So is only the Biſhop of *Roſſe* Witneſs againſt me, and what he is, all you perceive. I never heard of the Rebellion, till Sir *Henry Nevill* told me of it. If I had had ſuch a mind when I was in *Norfolk*, I needed not to have come hither; I could have made a ſhift well enough. If I had intended any ſuch Rebellion or Treaſon, I would not have put my Lord of *Northumberland* in truſt withal, nor yet my Brother of *Weſtmoreland*, nor would have come hither to put my Head in the Halter in the *Tower*: but being as I was, in ſuch place where I might have ſhifted, I would have kept me from coming here well enough. If Fear had moved me, and that I doubted of mine own Caſe, I could eaſily have avoided. So, I ſay, to prove me guilty of Treaſon, you muſt ſhew ſome Overt-fact that I have done againſt her Majeſty's Perſon: And to the Witneſſes, I think I have ſaid ſufficiently. As touching my dealing with the *Scotiſh* Queen, ſo far as I dealt without compaſs of Treaſon, this I ſay for my meaner Faults, inferior to Treaſon, I have with all Repentance and Humility ſubmitted my ſelf to the Queen's Majeſty, I beſeech you confound not thoſe with this Caſe: but in my dealing with her about Marriage, I pray you draw it not to ſuch Intention, to advance her Title againſt the Queen; becauſe, tho' ſhe once made ſuch Claim, yet conſidering what Amity hath ſince been between the Queen and her, to make her now an Enemy, is hard; and ſurely to marry her, tho' I treated of it, I never concluded, minded, nor intended. Where it's ſaid I was privy to the Device of her taking away, I utterly deny it. If I had been ſo, I would not have been againſt her, nor would have certified againſt her; I ever adviſed her to ſubmit her ſelf to the Queen's Majeſty: but when no Overt-fact of Treaſon can be proved againſt me, to bring me in thus by Arguments and Circumſtances, I think it very hard. If I ſhould have ſtolen her away, I could not do it alone: was I ſo deſtitute of Friends, that I could not make any Man privy to it? And who is there that accuſeth me of it, that may ſpend five Marks a year? Now ſith nothing is proved againſt me by any Witneſs ſufficient, I beſeech you conſider favourably of me. Indeed my Brother of *Weſtmoreland* ſent me his Man with Recommendations; and I ſent him, by his Man, a Ring which my Siſter had ſent me before; and alſo *Havers* with this Meſſage, *Commend me to my Brother of* Weſtmoreland, *and tell him that I am well, mine Innocency ſhall deliver me:* but nothing touching any Riſing at all. If ever I were privy to that Rebellion, then condemn me of all the Treaſons that you lay againſt me.

Attorney. My Lord and I are now at iſſue upon this point; I affirm it with Proofs, and his Lordſhip barely denieth it. If his Intent were to compaſs the Marriage, knowing her to pretend Title to the preſent Poſſeſſion of the Crown; then muſt this grow to an Imagining to depoſe the Queen, and then it is Treaſon *. An Overt-fact is a Declaration of the Mind; Letters, Tokens, Speeches, Meſſages, and ſuch like, be Overt-facts. Now if you had married her, you muſt have maintained her pretended Title, which you could not have done without manifeſt Purpoſe and Compaſſing to depoſe the Queen, and to bring her to Death, which is High-Treaſon. Now beſide, there is one other Fact, which I will give you in Evidence; which moſt evidently proveth the Duke of *Norfolk*'s Imagination and Compaſſing to depoſe and deſtroy the Queen. It is well known that *Pius* V. the Biſhop of *Rome*, is the Queen's Majeſty's notorious Enemy, he hath been ſo publiſhed; he hath ſo ſhewed himſelf in his proceedings; he hath ſhewed it in his Bulls, they have been brought into this Realm, and ſome have ſuffered for them. The Duke of *Norfolk* knowing it to be ſo, hath practiſed with his Factor, hath ſent unto the Pope for Aid and Force againſt the Queen: he conferred with one *Rodolph* a Merchant Stranger, to go over Sea to the Duke of *Alva*, and to the Pope, in the Name of the *Scotiſh* Queen and the Duke of *Norfolk*, to procure Power to invade this Realm, for the Advancement of the *Scotiſh* Queen's falſe Title to the Crown of this Realm of *England*; and in the mean time, the Duke promiſed to move her Friends to levy ſuch Power as they were able, to aſſiſt the Strangers when they came in. If this be proved unto you, then is it flat Treaſon. To uſe Force againſt her Majeſty in her own Realm, muſt needs be done with intent to depoſe her, which Force ſhe muſt needs reſiſt; which if ſhe be not able to do, then followeth her Death and Deſtruction. My Lords, here goeth ſtill all to one manner of purpoſe, his own bare denial, and allowing of no ſufficient Witneſs; but here God himſelf ſhall be Witneſs: this is a matter opened by God himſelf. It was known, that a Treaſon was in hand; many Searches were made to underſtand it, no Man could by any Travel find it out, till God himſelf opened it; ſo as the Saying is fulfilled, *What is done in ſecret ſhall be made open.* The Treaſons my Lords of the Council knew of; it appeared in *April* laſt, that ſuch a Treaſon was; but whom it toucheth was not known to them, no not to him that opened it. So as God hath opened it, to affirm theſe mean Men to be of credit. The Treaſon being known to the Privy-Council half a year together, yet could they not underſtand the Party, till God diſcloſed it by marvellous chance. In *Auguſt* laſt there was ſix hundred Pound of Money prepared to be ſent with Letters into *Scotland* to the Queen's Enemies, for their Relief and Maintenance, and by the Duke of *Norfolk*'s appointment to be conveyed to his Man *Banniſter*, and ſo into *Scotland*. This Money was delivered to one *Browne* of *Shrewſbury*, by one of the Duke's Servants, one *Hickford*; who ſaid to *Browne*, *Here is* 50 *l. I pray you help that it be conveyed to Mr.* Banniſter'*s Dwelling near* Shrewſbury. *Browne* having received the Money, tho' the Bulk was ſomewhat like the proportion of 50 *l.* in Silver, yet the Weight, by reaſon it was Gold, made him ſuſpect it: whereupon he went to one of the Queen's Privy-Council, and diſcloſed his Suſpicion, that ſo he might learn what he carried. This Bag being opened, there was found 600 *l.* in Gold, and certain Letters withal, to the Queen's Enemies, and to *Banniſter:* Whereupon the Duke's Man, that ſent the Money, was apprehended; and then, by God's good Providence, was it found that this Treaſon touched the Duke of *Norfolk*, under the Name and Cipher of *Quarante* 40, and another Nobleman was ſignified by the Cipher of 3 *Trente*. Then fell out new Matters: Certain of the Duke's Servants examined, whether they knew of any Cipher uſed to any Man by the Name *Quarante*, they confeſſed that *Quarante* was the Duke of *Norfolk*; they were kept in ſeveral Places, the Biſhop alſo a Priſoner in a place ſeveral from them all, and yet they all agreed in one. So God's Work hath enforced their Credit by their Agreement, being ſeverally kept. Thus came it to light by God's own Work. Now ſee what the Cauſe was: The great Treaſon was contained in Letters written in Cipher, to one ſignified by the Number *Quarante*; this *Quarante* was for the Duke, and ſo the Duke confeſſeth. What Cauſe had they to ſuſpect him? Letters from *Rodolph* made mention of great Treaſon, and of Proviſion of Men from beyond the Seas, to invade this Realm, according to his Order and Requeſt, who was meant by *Quarante*. If then we ſhall prove unto you that *Rodolph* had this Meſſage and Commiſſion from the *Scotiſh* Queen and the Duke of *Norfolk*, to treat with the Pope, King *Philip* and the Duke of *Alva*, for the bringing in of ten thouſand Men to invade *England*, and to make War againſt the Queen in her own Realm; there muſt needs be compaſſing to depoſe the Queen, and to bring her to Death, and ſo High-Treaſon: For he that will levy Force to invade or make War in a Prince's Realm, and that in Maintenance of a Title to the preſent enjoying of the Crown, doth what he can to depoſe the Prince, and conſequently alſo doth what he can to deſtroy the Prince. Now to prove that the Duke of *Norfolk* dealt in this manner, ſent this Meſſage, and practiſed to bring in this Force of Strangers, and to levy War againſt the Queen within the Realm, it ſhall be good firſt to ſhew what manner of Man this *Rodolph* was: He was one that lived divers Years here in this Realm, a notable Traitor and Enemy to the Queen and Realm of *England*, and of long time the Pope's Factor. In the Duke's firſt Trouble, this *Rodolph* was ſuſpected of ſuch Practices, and therefore by the Council committed to the Cuſtody of Mr. *Walſingham* till *October* was Twelve-month; and for that no evident Matter appeared, he was delivered again in the *November* following: So ſoon as he was delivered, he by and by opened to the Biſhop of *Roſſe*, That he was Factor for the Pope; he ſhewed him his Commiſſion, and ſundry Letters written to him by the Pope's Nuncio in *France*, about Matters of the Practice a long time. This *Rodolph* was well known to the *Scotiſh* Queen, the Pope himſelf and his Nuncio recommending him to the *Scotiſh* Queen: The Duke was made privy of it, and made him privy to his dealings, and kept it ſecret from the Queen and her Council. When the Bull was brought over, that *Felton* died for, this *Rodolph* had ſix Copies of it, and diſperſed them; whereof he gave one to the Biſhop of *Roſſe*, one other to the *Spaniſh* Embaſſador, and the third to the *French* Embaſſador, and the reſt we know not what he did with them. Now the Duke knowing him to be ſuch a one, he was a fit Man to deal with. That he was ſuch a one, and that the Duke well knew it, and ſent him in Meſſage to the Duke of *Alva*, and to the Pope, you ſhall ſee plainly proved. Then what his Meſſage was, you ſhall ſee alſo diſcloſed, and how things hidden will, by God's Providence, come to light. The Letters were written in Cipher, and decipher'd, and the Cipher hid in the Tiles, and found by chance; ſo as it may appear God's own Work to open theſe Treaſons.

Here the Duke took exception to his ſaying, that the Cipher was found in the Tiles; and ſaid, it was not the Cipher that was found there, but the Alphabet: ſo the Duke always in his Speech called the Letters or Matter written in ſtrange Characters, the Cipher; and the Paper of the Characters themſelves he called the Alphabet, which Mr. Attorney uſually called the Cipher.

Then was read the Biſhop of *Roſſe*'s confeſſion the 3d of *November*, to the 5th Article.

Alſo *Roſſe*'s Confeſſion ad 7 Artic. litera 6.

Alſo his Confeſſion the laſt of *October*, Article 23.

All this the Duke denied, and ſaid, I never ſaw any Letters from the Pope, but one, which I will ſpeak of anon.

Then was read the Biſhop of *Roſſe* to the 6th, 7th, and 8th, making mention of a Pacquet, wherein was one Letter to the Duke, by the Title of *Quarante*.

Then was read the Biſhop of *Roſſe*'s Confeſſion, 26th of *October*, Fo. 2. concerning *Andrew Beton*'s coming.

Attorney. The Duke had theſe deciphered, and read them.

Then was read *Barker*'s Confeſſion, 6th of *November*, Article 3.

Attorney. Thus plainly appeareth, that the Duke was privy to theſe Meſſages to the Pope, and Conference with his Factor: Now it reſteth to underſtand what followeth of this Courſe begun with *Rodolph* the Pope's Factor; what Meſſages were ſent; what Practices deviſed; and what enſued. Upon this Letter, the *Scotiſh* Queen wrote a Letter to the Biſhop of *Roſſe*, wherein ſhe wrote back a Diſcourſe of her Eſtate and Device, what ſhe thought beſt to be done, referring all to the Direction of the Duke of *Norfolk*. Here is the Letter itſelf to be ſeen.

This Letter came to the Biſhop of *Roſſe*; he ſent it over to the Duke, with a Letter from the *Scotiſh* Queen to the Duke. This Letter was deciphered, and found hidden in the Duke's Houſe under the Mats in an Entry, in the Way as the Duke went to his Bed-chamber; the Cipher it ſelf was found in the Tiles of the Houſe. This plainly declareth, how the Duke in dealing with the *Scotiſh* Queen and the Pope, purſued his Purpoſe of advancing the *Scotiſh* Queen to the Crown of *England:* That the *Scotiſh* Queen was in practice for it with the Pope, and referred the Diſpatch of *Rodolph* to the Duke; and the Receipt of thoſe Letters is confeſſed by *Hickford*, and by the Duke himſelf.

Here was read the Letter of the *Scotiſh* Queen to the Biſhop of *Roſſe*.

Attorney. By this Letter appeareth, how the *Scotiſh* Queen hath ſet out the whole Plot of the Treaſon: A Meſſage ſhould be ſent for Aid from foreign parts; *Rodolph* the fitteſt Man to be the Meſſenger; and that *Rodolph* ſhould be diſpatched to go about it, when the Duke of *Norfolk* would. The Device was to move King *Philip* for Aid, upon a Conſideration of her State here, to enter into Deliberation of the Time and Opportunities to ſet her Friends to Field, and to ſeize themſelves of her. This is confeſſed by *Hickford*; and this Letter is alſo confeſſed by the Duke himſelf, that he received it about *January* was Twelve-month, and it was hid under the Matts.

Duke. I bid that the Letter ſhould be burnt.

Attorney. God would not have it ſo; but that it ſhould remain for diſcloſing the Matter.

Duke. As touching *Rodolph*, what Manner of Man he was, is no matter to me: I know of no more, nor am to be charged with no more than I my ſelf am privy to. I never dealt with him about any Cauſe of mine. I received no ſuch Letter, but that which *Barker* ſaid came from him, which was not that of *January* that you ſpeak of, about two years ago; and as for Inſtructions and Letters about that *January* was Twelve-month, I received none.

Burleigh. Here the Lord *Burleigh* ſaid to Mr. Attorney, You may miſtake, it was this time Twelve-month, for now we are in *January*. And ſo Mr. Attorney remembring this preſent Month to be *January*, referred the Letter to *January* now a Year paſt; and ſaid, This Letter that I now charged you with, came to your hands at this *January* was Twelve-month: It came firſt to the *Scotiſh* Queen's hand; ſhe took occaſion upon conſidering her own Caſe here in *England*, in *France*, and in her own Country, that it was beſt for her to cleave unto *Spain*. She wrote to the Biſhop of *Roſſe* her Diſcourſe to that end: She counted *Rodolph* the fitteſt Meſſenger; Matter was deviſed for his Inſtructions; ſhe referred the Diſpatch wholly to the Duke of *Norfolk*; the Duke dealt in it, his Meſſage appeareth. And thus it continued till *March*; and then, according to the Plot before laid, *Rodolph* was diſpatched, and went over indeed.

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* See *Hale*'s Hiſt. P. C. *Vol.* I. *p.* 120.

Duke. What was deliver'd to *Barker*, I know not; that is nothing to me: I am ſure they will not ſay they deliver'd it me, nor that I receiv'd any ſuch Letters or Inſtructions. This I ſay, the Biſhop ſent me a Letter of the *Scotiſh* Queen's, together with a Letter of his own: In her Letter ſhe complaineth of her own Subjects, and ſaith, ſhe will ſeek other Means for her Relief. This Letter was decypher'd; I miſlik'd the Device, and bad that the Letter ſhould be burn'd; ſo the Letter in Cypher was burn'd, and the Alphabet was ſav'd. I ſent word that I miſlik'd all thoſe Devices, and I adviſ'd the *Scotiſh* Queen to depend only upon the Queen's Majeſty, or elſe, if ſhe would take any other Cauſe, both I, and all other her Friends in *England*, would give her over; and thereupon it was that I ſaid, that the Queen, if ſhe fell to ſuch Practices, would publiſh her Letters and Doings to her Infamy. Upon which my Words, the Biſhop of *Roſſe* excus'd himſelf, and laid all this Matter, of this new Device, to *Beyton* and *Rewley*. It is not true that *Barker* made me privy to any ſuch Meſſage or Inſtructions, as hath been alledg'd. Alſo he is not to be allow'd for a Witneſs againſt me, for he hath confeſs'd Treaſon againſt himſelf; and Perſons outlaw'd, or attainted of Treaſon, are no ſufficient Witneſſes.

Catlin. My Lord, there is none of thoſe Witneſſes, that have declar'd Matter againſt you, outlaw'd, or attainted of Treaſon, or yet indicted.

Duke. They are worſe; for they have confeſs'd Treaſon.

Attorney. The Biſhop of *Roſſe*, at this time, was in Cuſtody; and theſe Men alſo that have confeſs'd againſt you, were alſo kept in Cuſtody, kept aſunder in ſeveral Places, and ſeverally examin'd, agreed all in one, and your own Confeſſions agree with them: How can this be imagin'd and falſe? All theſe do teſtify it with one Conſent. The Biſhop of *Roſſe*, when he firſt came to the City, was examin'd of theſe things, he deny'd all, he ſtood in it earneſtly; when queſtions were aſked him, he ſaid, He was an Embaſſador, and not ſo to be dealt with, but to be referr'd to his own Miſtreſs the *Scotiſh* Queen. When he was committed to the *Tower*, and there again examin'd, ſeeing things confeſs'd already; and by the manner of the Queſtions that were aſk'd, perceiving ſome Light that the Truth was known; then he confeſſed alſo, and in his Confeſſions doth agree fully with *Barker* and the reſt: which Conſent could not poſſibly be, if the Matter were not true; beſides that, he hath in his Confeſſion touch'd himſelf.

Duke. They have not agreed in Confeſſion againſt me, that I told them any ſuch thing; but one of them told another, and ſo from hand to hand it went among them.

Attorney. Well, you ſee what is confeſs'd, and with what Conſent we are at Iſſue; here is but your Lordſhip's Denial; I leave it to my Lords here to conſider of the Proofs. If you had been a good Subject, being then a Priſoner in your own Houſe, when ſuch dangerous Matter came to your Underſtanding, you would have open'd it, that the Queen's Majeſty and her Council might have provided to withſtand them, but you did it not. The Duke of *Norfolk* found flat Treaſon intended; *Rodolph* was the Meſſenger that procured it; the Duke knew it; *Rodolph* was referr'd to the Duke's Diſpatch, upon the Conference of the Biſhop of *Roſſe* and *Rodolph* about the Matter, and the *Scotiſh* Queen's Willingneſs to have him ſent about the Matter. Thus it proceeded: It was agreed that *Rodolph* ſhould have his Meſſage in Writing; and at the ſame Conference, *Barker* being alſo among them, it was agreed, and ſet down in his Inſtructions, that his Meſſage ſhould be this: He ſhould go to the Pope and the King of *Spain*, in the Name of the *Scotiſh* Queen and of the Duke of *Norfolk*, to require of them Money and Men for the Enterprize. *Rodolph* requir'd to ſpeak with the Duke: *Barker* brought him to the Duke at *Howard-Houſe*; there they talk'd together, the Duke and *Rodolph* a whole Hour, till it was nine of the Clock at Night. After this Talk, the Duke deliver'd to *Barker* a Paper, ſaying, that *Rodolph* left it with him; which Paper contain'd the Sum of the Treaſon, and therein was alſo a Paper of the Names of divers Noblemen, Knights, and Gentlemen in Cipher, whom they counted that they would take the Duke's part, but they counted without their Hoſt; ſo that there was for every Name a Cipher, of the which 40 was for the Duke, and 30 for the Lord *Lumley*. *Barker* receiv'd it of the Duke, and deliver'd it again to *Rodolph*. Upon this Cipher of 40, fell out the underſtanding of the Treaſon.

Here was read *Barker*'s Depoſition, 10 *October*, Interr. 8.
Item, *Barker* to the 22 Interr.

Attorney. In this Bill the Duke is proved to be 40, the Duke himſelf hath alſo confeſs'd that 40 ſtandeth for his own Name. *Barker* brought *Rodolph* to the Duke, which the Duke alſo confeſs'd, and that *Barker* brought him Inſtructions for *Rodolph*'s Money.

Here Mr. Treaſurer and Mr. Chancellor of the Exchequer, ſworn, did teſtify that *Barker* made all theſe Confeſſions freely, without Compulſion.

Alſo Mr. *Wilſon*, ſworn, did teſtify the ſame; and that *Barker* was never offer'd Torture, nor was once in the Priſon where the Rack was: but the Duke ſaid *Barker* ſaw where his Fellow had been.

Attorney. Did not *Barker* bring *Rodolph* to you at nine of the Clock at Night? Did he not leave with you Inſtructions in *French?*

Duke. I confeſs it.

Then was read *Barker* to the 16th.

Attorney. *Rodolph* came alſo the ſecond time to the Duke; after he was come from the Duke, he ſaid to *Barker*, That the Duke and he were agreed of his Journey, and that the Duke pray'd him to depart with ſpeed.

This Meſſage was to procure Men and Money for the Enterprize of the Treaſon; and on this Meſſage the Duke diſpatch'd him.

Duke. Touching *Rodolph*'s coming, I have indeed confeſs'd that he came to me. I was in Summer was Twelve-Month bound in Recognizance for 1800*l.* to *Rodolph*, for my Lord of *Arundel*, and for my Brother *Lumley*; the Day was paſs'd whereby I ſtood in danger of my Recognizance. I ſent to *Rodolph* to intreat him to cancel my Recognizance, and I offer'd to give him twenty Yards of Velvet; *Rodolph* would not be perſuaded, but deſired to ſpeak with me himſelf, which *Barker* reported to me. I was very loth that he ſhould come to me, for he was in Trouble at my laſt Trouble, and ſo I thought his coming to me would be ſuſpicious. *Barker* promis'd that he would bring him to me ſecretly, and at ſuch a time as it ſhould not be known to make any Suſpicion. So *Rodolph* came to me, and I did what I could to intreat him about my Recognizance, and I could not perſuade him more, than to promiſe that he would not ſue me. He told me of his Trouble and of his Impriſonment at Mr. *Walſingham*'s, and what Words Mr. *Walſingham* gave unto him, alſo of the *Scotiſh* Queen; and that he ſhould deal with the Duke of *Alva* for Money for her to her own uſe, and for Neceſſaries, as he had done before. He pray'd alſo my Letters in the *Scotiſh* Queen's favour to the Duke of *Alva:* I began to miſlike him, and was loth to write; I ſought ways to ſhift me from him; I ſaid I was not well at eaſe; I could not write, and it was late, and ſo I would not deal. As for the Bill of Names, I ſaw none ſuch, nor underſtood of any ſuch, till the Letter that came over from *Rodolph* about *Eaſter*. I deliver'd a Writing to *Barker:* I confeſs it; but it was about that Matter which I have confeſs'd already for my Recognizance; and ſo I dealt not with any ſuch Matter as is alledg'd againſt me, nor receiv'd any other Inſtructions, but only as I have ſaid, about my own Matters.

Attorney. My Lord, this is but your own ſaying, and it carrieth no Likelihood: But *Barker* goeth nearer to you; he telleth you plainly what the Inſtructions were: It was to King *Philip* for Men, and to the Pope for Money.

Duke. *Barker* hath confeſs'd himſelf a Traitor, and therefore is no ſufficient Witneſs againſt me. I never knew of any ſuch Bill of Names, nor ſuch Inſtruction in *French*.

Attorney. It is ſufficiently prov'd. Now *Rodolph* came to you again a ſecond time.

Duke. I deny it: He came no more to me.

Attorney. That is not ſo: for *Barker* telleth plainly, not only the Time, but alſo the ſeveral Ways by which he himſelf brought *Rodolph* to you.

Duke. There be Ways enough, he might have deviſed alſo a dozen Ways more, if he would, in that Houſe.

Here was read *Barker ad* 11.

Attorney. Lo! he telleth you which way *Rodolph* came to you.

Duke. So he may deviſe more Ways when he will.

Attorney. Now you ſhall alſo hear it confeſs'd by the Biſhop of *Roſſe*, who at the time of his Confeſſion was in Priſon, not knowing what *Barker* had ſaid.

Here was read *Roſſe*'s Confeſſion of that Matter.
Here was alſo read *Roſſe*, the ſixth of *November*.

Attorney. Here you ſee how the Duke agreeth with *Barker*. And there was read *Roſſe* more, the ſixth of *November*; how *Rodolph* made account of his Time, and of his Return before the Parliament ended.

Then Mr. Attorney made a brief Rehearſal of the Matters contain'd in thoſe Confeſſions, and ſhew'd the Agreement of *Roſſe* and *Barker*; and then was read *Roſſe*, Fol. 3. touching *Rodolph*'s Account of his old Soldiers, that he could bring againſt the *Engliſh*, of the Duke of *Medina*'s coming, of 7000 *Spaniards* to be ſpar'd. Now the Duke had ſatisfy'd *Rodolph* for his Credit, and tho' the Duke ſubſcribed not, yet if the Duke were a Chriſtian Man, he was aſſured of him, and ſo would aſſure foreign Princes on the Duke's part.

Then was read the Confeſſion of the Biſhop of *Roſſe*, to the 18th.

Now ſhall you hear further: *Rodolph*, before his Voyage, mov'd to have Letters of Credit, that he might deal with foreign Princes; whereupon three Letters were deviſed, to commend *Rodolph* to the Pope, the King of *Spain*, and the Duke of *Alva*, and to give him Credit in his Meſſage, that he might be able to procure Aid for the *Scotiſh* Queen, and for the Advancement of the Catholic Faith. The Duke anſwer'd, I am loth to write; for if I write, the Queen's Majeſty hath great Intelligence, and ſo if my Writing ſhould come to light, all were marr'd; and ſo he would not write. Then the Biſhop of *Roſſe*, and *Barker*, travailed earneſtly with him to ſubſcribe the Letters; but he would not. Then, at length, it was adviſed and agreed among them, that if the Duke ſhould ſend one to the *Spaniſh* Embaſſador, to declare his Aſſent to affirm the Letters, it ſhould ſatisfy *Rodolph* and the foreign Princes, tho' he ſubſcribed not: wherewith the Duke was content, and ſent *Barker* with the Biſhop of *Roſſe*, and *Rodolph*, to declare to the *Spaniſh* Embaſſador, that the Duke was content to affirm the Letter, and to let it paſs in his Name. And ſo the *Spaniſh* Embaſſador recommended *Rodolph*'s Meſſage in the Duke's Name, without the Duke's Subſcription.

Here was read the Biſhop of *Roſſe*, ult. *Octob. ad* 20.
Alſo *Barker* was read of the ſame Matter.

Attorney. Thus it is plainly prov'd: and if they ſay true, as it cannot be that they can ſo agree, if it were not true; then can it not be deny'd that the Duke is guilty of all this Treaſon.

Duke. Here is too much at once for me to anſwer without Book; my Memory is not ſo good, to run thro' every thing, as they do that have their Books and their Notes lying before them: Therefore, I pray you, if I forgot to anſwer to any thing, remember me of it.

It is ſaid, That there are two or three Witneſſes againſt me; all this two or three are but one Witneſs: for *Rodolph* ſaid it to the Biſhop of *Roſſe*, and of his Mouth the Biſhop of *Roſſe* told it to *Barker*, and ſo from Mouth to Mouth; they are all but one Witneſs. Beſides that they have confeſs'd themſelves wholly in Treaſon, and now they would bring me in with them too; and ſo are no ſufficient Witneſſes againſt me. Note, I pray you, the Advices, and ſee how likely they are: Ten thouſand Men muſt be landed, whereof three or four thouſand muſt be Horſemen; they muſt land at *Harwich*, and a Port in my Country; neither is *Harwich* a Port in my Country: And I am not of ſo little Skill, that I would have three or four thouſand Horſemen land in *Eſſex*, the unfitteſt Place for Horſemen to land in all *England*, a Country beſt inhabited of Noblemen, Gentlemen, and other Ability to reſiſt them: And who would land Horſemen in *Eſſex*, a Country all full of Lanes, Woods, Ditches, and Marſhes? I would have choſen ſome other Country rather, if I had been ſo minded. Again, in reſpect of Religion, I would not have landed them in *Eſſex*, that came to deſtroy Religion, and ſo ſhould have found but little Aſſiſtance. And would I have brought in Power, or join'd with them to the Overthrow of Religion? It hath lately been ſaid by that ſide, that I could not be recover'd from my Religion: I would not be chang'd from my Religion; I had rather be torn with wild Horſes. Beſides that the County of *Eſſex*, adjoining to the County of *Suffolk*, is moſt unfit for that purpoſe; no County in *England* more repleniſh'd with Proteſtants nor of better Ability, and none more likely to withſtand Papiſts. As for moving of Friends, I never dealt to move any Perſon in the matter; I never made Proviſion for it; I provided no Armour, Shot, Powder, nor Money; I made no Friends privy to any ſuch Intent. Some Preſumption it is, that if I had intended any ſuch matter, I would have made ſome privy to it. I was no otherwiſe ſo deſtitute of Friends, I would have provided Armour, Shot, and Powder; I would have provided Money; I am ſure there was not much Money found. For Armour, I had not at my houſe here paſt eight Armours which were of Proof, and a hundred Harquebuſſes; and beſides this, I beſtow'd not 10 *l.* in Armour theſe ten Years: Powder I have not two Barrels; yea, not above a Barrel in all. So ſee the likelihood of their Devices; no Conference of Friends to take part; no Proviſion of Furniture; a Country, both in Religion and Situation, unapt for the Matter.

Where they ſay *Rodolph* told *Barker*, and *Barker* told me; and *Barker* came from *Roſſe* and from *Rodolph* to me, and from me to *Roſſe*, to declare that I was content to affirm the Letters of Credit, I deny it. As for my Conſent, that the *Spaniſh* Embaſſador ſhould affirm the Letters in my Name, how unlikely a thing it is, that I was content to affirm them, but not to ſubſcribe them; as if I knew not how ſmall is the Difference between ſubſcribing and affirming; and as if I had ſuch ſlender Wit. *Rodolph* never came to me but once; indeed I heard that *Rodolph* would fain have came to me again the ſecond time, but I would not; *Barker* earneſtly urged it, but I refus'd. To pleaſe the curious *Italian* Head of *Rodolph*, they devis'd it among them to deal with the *Spaniſh* Embaſſador. As for me, I never heard from the *Spaniſh* Embaſſador in the matter; I never ſaw him but once at my Lord Treaſurer's. I was angry with *Barker* for going to him in my Name; and he excus'd it, and ſaid, he could not otherwiſe content the Biſhop of *Roſſe* and *Rodolph:* and ſo that affirming of the Letters was *Barker*'s own doing, and not mine. I would they might, in our private Examinations, have been brought face to face with me. I could have put them in mind of things; they have confeſs'd Treaſon of themſelves, and they would bring me in with them, and lay it on my ſhoulders. I am hardly handled, I have been eighteen Weeks committed, I can ſpeak with no body; if I might have had them face to face, and been allow'd to bring forth my Proofs, I would have brought forth direct Matter and Proofs, and therewith made them remember themſelves. Conſider, I beſeech you, what they be that accuſe me; the Preſumptions be in all likelihood, that I ſhould not ſo do as they accuſe me; and as for them, they be Perſons that have accus'd themſelves of Treaſon, and ſo be of no Credit. As for mine own Examinations, they wholly agree in ſuch ſort as I have here declar'd in mine Anſwer.

Attorney. Your Anſwer is nothing but bare Denial; and here are three Witneſſes againſt you, and all three ſeverally examin'd, have agreed in one; and *Barker* hath directly confeſſed; and if you doubt of Impulſion, you ſhall hear how willingly and how freely he confeſs'd it, becauſe the ſame Examination was taken before Sir *Thomas Smith*, and ſubſcrib'd with his Hand: Mr. *Wilſon* upon his Oath declar'd the ſame to be Sir *Thomas Smith*'s Hand.

Duke. Where it is ſaid, that I ſhould bid them to write, or ſhould affirm their Writing, it is not true. Indeed *Banniſter* ſpake to me to write for Money for the *Scotiſh* Queen, and I refuſed to do it. If I ſhould have dealt in any ſuch matter, I would have truſted one *Banniſter* afore fifteen *Barkers.* And as for your number of Witneſſes in this manner by Hands one from another, twenty Witneſſes may prove but one Witneſs.

Attorney. You ſhall hear your own Confeſſion agreeing with them; you were content *Rodolph* ſhould uſe your Name to the Duke of *Alva*, and that he ſhould aſſure the Duke you were a Catholick, and that he ſhould ſhew Tokens to prove it, for that you kept Papiſts in your Houſe, and were a Friend to Papiſts.

Here was read the Duke's Confeſſion, 10 *October*, *ad interr.* 58.

Here his own Hand confeſſeth the Matter.

Duke. I ſaw the Inſtructions indeed, and this Matter was in it. They ſought to have it thought I was a Catholick, to ſerve their Purpoſe, and did put it in of themſelves; but I allowed it not, I would rather be torn with wild Horſes than forſake my Religion.

Attorney. Theſe Inſtructions remained ſtill in your cuſtody: Why did you not burn theſe, as well as you ſay that you commanded the Letter to be burned?

Duke. Becauſe it was their writing, and not mine.

Wilb. You are content it ſhould be extant; to what purpoſe was that, if you miſlik'd it?

Attorney. Your Lordſhip ſhall yet ſee further a Letter of the Biſhop of *Roſſe*, written to the *Scotiſh* Queen, wherein the whole Plot and Courſe of the Treaſon is plainly ſet out at large; the Letter came to the *Scotiſh* Queen's hands while my Lord Steward was there, which my Lord Steward affirmed. So the Letter was read.

Duke. The Biſhop of *Roſſe* is no ſufficient Witneſs againſt me, for the Cauſes that I have declared.

Attorney. I leave his Credit to my Lords here to conſider, let them weigh it as they ſee cauſe. Now come to conſider your own Doings; ſince your laſt Impriſonment, Letters have been conveyed unto you, and you have ſent Letters abroad, by many ſubtle and ſecret Ways of Conveyance. One Letter you ſent out, written with Red-Ocre, wherein plainly appeareth that you feared the Matter, and that ſomething was confeſſed, and that you were afraid of more; you willed the Biſhop of *Roſſe* ſhould take all upon him, becauſe he was an Embaſſador, and that a Bag of Writings ſhould be ſought out and burned.

Here the Letter written in Red-Ocre was read, which the Duke confeſſed to be his own.

Attorney. This Letter gave occaſion to ſeek the Bag, and ſo were the Writings found under Boards faſt nailed, and thereby was underſtood that *Quarante* was the Duke; and ſo by God's Work broke out the whole Practice of the Treaſon. This Letter was directed to nobody.

Duke. It was written to *Bayly*, and *Bayly* received it. I can anſwer this Letter well enough. Here I am charged with two Matters, for matter of my Confeſſions, and for burning the Bags of Letters. As for that which is there ſaid, that I confeſſed nothing but what I ſaw confeſſed by others, the truth is, I received a Letter, wherein I was charged, that I had accuſed ſome falſely. I wrote to ſatisfy, that I had not accuſed any of any matter of Treaſon, nor could if I would; and this was the meaning of that Part of my Letter.

Attorney. Where is the Letter whereby you were charged that you had accuſed falſely?

Duke. I kept it not; think you I would keep Letters? Burned Letters do no hurt. As for burning the Writings in the Bag, it maketh nothing againſt me in this Caſe; for they were nothing but private Letters of the *Scotiſh* Queen's, written before, and when I was laſt in Trouble, long before this Matter. At *Banniſter*'s coming up at *Eaſter* laſt, he brought them to me, and I willed *Barker* to lay them up: What needeth ſuch ſearching for elder Matters? I bad them be made away, for they were but private Matters between the *Scotiſh* Queen and me.

Attorney. There was the Letter that diſcloſed you to be *Quarante*, whereby the Treaſon was known: now here is alſo another Letter of your own, which you ſecretly ſent out of the *Tower*, which ſheweth your Guiltineſs in the matter of the great Treaſon with *Rodolph.*

Here the Duke's other Letter was read.

Duke. This was only, as I have declared before, for my Conference with *Rodolph*, for the Matter of Money, both touching mine own Recognizance, and procuring of money for the *Scotiſh* Queen, for her Neceſſity.

Attorney. By the whole Courſe of the Matter that goeth before, it is for the Treaſon, and not for the Money.

Here is alſo another Letter of your own, which carrieth manifeſt Preſumptions of the Treaſon, where, among other things, you will *Barker* to confeſs no further, if he love his Life: beſides other moſt manifeſt ſuſpicious Matters.

Duke. I wrote it not in reſpect of any fear that *Barker* could hurt me, when I willed that *Barker* ſhould confeſs no more, as he loved his Life: For indeed he might touch himſelf in Treaſon, (as he hath done) but not me, for I never conſented to it.

Attorney. Now ſhall you ſee how the Matter proceeded further: After the diſpatch of *Rodolph*, in *Lent* laſt, as he had made ſhew before, that he intended to go over Sea, and was all this while practiſing about this Treaſon; at length being frighted with theſe Meſſages, he came to ſue to the Queen's Majeſty for a Paſs-port, which was granted him, and he carried over two Geldings with him, which is evident Proof that he went over. Now ſhall you ſee what effect it took, and by the Anſwer you ſhall diſcern the Meſſage and Practice: Being beyond the Sea, and having done his Meſſage, he ſent Advertiſement to the Duke how he ſped, and likewiſe from the Pope; which plainly diſcloſeth the whole Purpoſe and Plot of the Treaſon, as ſhall be declared unto your Lordſhips.

Here began Mr. Sollicitor.

Sollicitor. For that the time is ſpent, and your Lordſhips, I think, are weary, I will not now make any Collection what hath been gathered of the attempt of Marriage with the *Scotiſh* Queen, only I will deal with the Matter of *Rodolph*'s Meſſage, and the effect thereof: And the Duke's adhering to the Queen's Enemies and Rebels, ſhall be another part. In this Matter of *Rodolph*, hath been laid before you a plain Plot for a Rebellion, and for Invaſion of the Realm, ſet forth in the *Scotiſh* Queen's Letter, which was deciphered by *Hickford*, by the Duke's Commandment, as hath been ſaid unto you; the effect whereof was as hath been declared.

And here he repeated the Effect of that Letter, containing the Device of putting Men into the Field, and to ſeize the *Scotiſh* Queen. Now if the Device were follow'd, and if the Duke were a Doer in it, if he were a Conſenter unto it, if *Rodolph* were practiſed with for the Journey, if he received his Meſſage to that end, if he went and purſued it, if he ſent Anſwer accordingly; then it muſt needs be that here is matter of High-Treaſon, and the Duke of *Norfolk* guilty of it. It hath been ſhewed by the Declaration of *Barker*, and of the Biſhop of *Roſſe*, how *Rodolph* was the Pope's Factor, was commended by the *Scotiſh* Queen for a fit Meſſenger in this Matter, was conferred with about it, Articles were deviſed, they were ſhewed the Duke, and the Duke himſelf hath confeſſed that he ſpake with *Rodolph*, and that he ſaw the Inſtructions. Now is the queſtion, How far the Inſtructions extended, whether to matter of High-Treaſon, as hath been alledged, or no? The Duke ſaith for his excuſe, That the Inſtructions were but for a private cauſe of Money, and that when *Rodolph* required him to write his Letters, the Duke refuſed and caſt him off. See how this accordeth: If it were but a private Cauſe, whereto ſerved that refuſal to write? As well he might by Letters, as by Inſtructions, purſued in a private Cauſe. What needeth that ſecret coming in the Night-time about a private Cauſe? The Duke himſelf confeſſeth, that the Inſtructions were ſhewed him before *Rodolph* came to him; he confeſſeth alſo that *Rodolph* was commended by the *Scotiſh* Queen; the Inſtructions have here been ſhewed, containing the Matter of his Journey, and extending to the Treaſon: He came to confer with the Duke. Now let your Lordſhips judge why, and about what Matters they conferred.

The Biſhop of *Roſſe* and *Barker* do, of their own knowledge, declare, how, for Furniture of this Meſſage, there were Letters of Credit deviſed in the name of the *Scotiſh* Queen and the Duke of *Norfolk*, to the Pope, the *Spaniſh* King, and the Duke of *Alva*; the Duke refuſed to ſubſcribe them, for fear, if he ſhould deal too openly, the Treaſon might perhaps to ſome appear: therefore a Device was found out how to ſalve the matter, That he ſhould, by his Servant, affirm the Letters to the *Spaniſh* Embaſſador, and ſo they ſhould, by the *Spaniſh* Embaſſador's Commendation, paſs with as good credit as if they had been ſubſcribed. This Device was performed, his Aſſent was witneſſed, and the Letters of credit confirm'd accordingly. *Rodolph* went over to the Duke of *Alva*, and from thence to the Pope; he return'd anſwer of his Meſſage, and gave Advertiſement to the Duke. Did not he ſend his anſwer concerning the very Inſtructions that have been alledg'd, and the matter of Treaſon, and not of a private Cauſe? And to whom? Sent he not anſwer to the Duke, by the name of *Quarante?* Would *Rodolph* make anſwer to, and advertiſe him that never ſent him, and of a Matter that he never ſent him about? By this you may ſee the intent of the Meſſage. Now ſhall you ſee what Anſwer was return'd.

The Biſhop of *Roſſe*, after this, ſent over a Servant of his, one *Charles Bayly*, to fetch certain Books that were printed in thoſe Parts; Books containing very ſeditious Matter, whereof I have ſeen ſome, by permiſſion, tending to theſe ends. Firſt, therein is conveyed to the *Scotiſh* Queen a Title to the Crown of *England*, a Deſcent above the Conqueſt, and ſo labouring to impair the Intereſt of all our Kings that have reigned ſince the Conqueſt. Then the Judgment of the Right of the Crown of this Realm is reduc'd to an univerſal Law, which they call *Jus Gentium*, and the diſcerning thereof exempted from the Laws of this Realm. And of that univerſal Law they eſtabliſh one univerſal Judge, whom they inſinuate to be the Pope, whoſe Bulls you ſee have paſs'd in prejudice of the Queen's Majeſty's undoubted Right. This *Charles Bayly* being in thoſe parts for this occaſion of the Books, met with *Rodolph* at *Bruſſels*, after that *Rodolph* had had his diſpatch from the Duke of *Alva*, and was haſting to the Pope; and therefore having haſte of his Journey, and much to write, and ſmall leiſure, he deſired *Charles Bayly* to write for him two Letters for two Noblemen of this Realm, both in Cipher: but to whom the Letters were directed, *Charles* himſelf could not tell; for *Rodolph* ſubſcrib'd the Letters himſelf, one to *Quarante*, the other to *Trente*. *Charles Bayly* bringing their Books and Letters, was taken at *Dover*, the Books were brought to the Council, the Pacquet of Letters were convey'd away to the Biſhop of *Roſſe*: And daily more and more grew the Suſpicion, by reaſon of the repair of the Biſhop of *Roſſe*'s Servants to the *Marſhalſea*, where *Charles* was. At length there were Letters taken between the Biſhop of *Roſſe* and *Charles*, mentioning the recovery of *Rodolph*'s Pacquet. In this Pacquet was the Advertiſement of the Succeſs of the Voyage, from *Rodolph* to the Duke, by the name of 40. This Letter of *Rodolph*'s was ſent to the Duke from the Biſhop of *Roſſe* by *Barker*; *Barker* deliver'd it to the Duke, from whence it was ſent back again to the Biſhop of *Roſſe* by *Gutbert*, and by *Gutbert* it was deciphered, and carried again to the Duke by *Barker*: Upon this occaſion *Gutbert* was ſought for, the Duke convey'd him away, and this conveying away of *Gutbert*, the Duke hath confeſſed. If this be thus, then muſt it needs be that *Rodolph* was ſent by him, and to ſuch end as the Letter bringeth anſwer of. In the Letter, this was contain'd, That *Rodolph* had ſpoken with the Duke of *Alva*; That he had very good and loving Audience; That the Duke of *Alva* lovingly promis'd all the help that he could; and that he would commend the Cauſe to the King of *Spain* his Maſter: And he adviſed *Rodolph* to go forward to the Pope, and that he ſaid he could not do further without more Warrant, which he would ſeek to procure. Alſo certain queſtions were ask'd by the Duke of *Alva*; as, What Fort was between the Haven where they ſhould land and *London*? How near *London* it was? So the nearneſs of *London* was reſpected, how incommodious ſoever your Lordſhip ſaith the Place was for Horſemen. Theſe Queſtions belike depended upon the Matter propounded, which touch the Plot of the Treaſon, and not a private Cauſe, as your Lordſhip pretendeth. The Duke of *Norfolk* confeſſeth the receipt of theſe Letters, and the deciphering of them. So *Charles Bayly*, by *Rodolph*'s Requeſt, wrote the two Letters in Ciphers; *Rodolph* himſelf directed them to 40 and 30. *Charles* being taken, and confeſſing the writing, and bringing of theſe Letters, and the Matter contain'd in them in *April* laſt, yet knew not who was 40 nor 30. This was ſtrangely convey'd, Treaſon known in Matter, and yet the Perſon not known to himſelf that wrote it.

Here was read *Charles Bayly*'s Letter.

Theſe Letters of *Rodolph* were convey'd to the Biſhop of *Roſſe* to deliver to 30 and 40, referring the reſt to his Diſpatch at *Rome*. And this falleth out alſo very likely for the Time; for *Rodolph* departed home about *Eaſter* before.

Here was read *Charles Bayly*'s Confeſſion, *ad* 3.

Sollic. Now you ſee to what End the Effect of the Meſſage tended; you ſee what it was, and how it was done; you ſee how it was receiv'd, and the Duke of *Alva*'s Queſtions upon it: now you ſhall ſee the Contents of the Anſwer, by the Examinations of the Biſhop of *Roſſe*, and *Barker*; the receipt of the Letters of Anſwer the Duke himſelf hath confeſſed.

Duke. Where they ſay this Meſſage was ſent by my Privity, by reaſon that I was meant by 40, I deny it; I never wrote by *Rodolph*, I refus'd to do it, I knew not his Letters were to me, but as *Barker* ſaid: And it was not likely they ſhould be to me; for it was a Matter which I was not privy of, and in a Cipher which I had not; *Rodolph* left no Cipher with me. As for the taking of the Pacquet, I knew nothing of it; the Letter I never ſaw in Cipher; *Barker* brought me a Decipher, telling me, That 40 was for me, and 30 for the Queen of *Scots*. When he told me firſt he had the Cipher, I aſk'd what I ſhould do with it, and how I ſhould read it, having no Cipher? *Barker* anſwered, that it was left with *Gutbert*; for *Rodolph*, at his departure, had told him, That he would write anſwer of the Money for the *Scotiſh* Queen, and that he would leave the Cipher with *Gutbert*; and that he had ſo done, and in the Letters deciphered did appear, that the Duke of *Alva* had promiſed aid of Money for the *Scotiſh* Queen for her Neceſſities; but he could not yet do it for want of Commiſſion, but as ſoon as he had Commiſſion he would. When I heard of this I miſlik'd this dealing with the Duke of *Alva*, having before refus'd to write to him in the Matter at *Rodolph*'s Requeſt; and I threatned *Barker* if he ſo dealt any more with me. The Letters might be to me, as *Barker* ſaid, but I knew not ſo much.

Sollic. This your Anſwer is in all no more than a bare denying, and ſo be all your Speeches, all upon your own Credit only.

Here was read *Barker*'s Confeſſion, *ad* 2, & 3, concerning *Rodolph*'s Letters in Cipher, and the Deciphering by *Gutbert*, and the Port where the *Walloons* ſhould have landed, &c.

Then was read the Biſhop of *Roſſe*'s to the 12 and 13, to the ſame effect.

Then Mr. Sollicitor recited again the Effect of the Letters, and the ſaid Confeſſions of *Roſſe* and *Barker*, and proceeded further thus:

You ſee all theſe agree in one concerning the Contents of the Letter; now the Letter being deciphered by *Gutbert*, and *Gutbert* being able to diſcover the whole, this *Gutbert*, when he was ſent for by the Council, was convey'd away by the Duke's means, as the Duke himſelf hath confeſſed.

Duke. It may be *Barker* received this Letter as you ſpake of, and that *Gutbert* deciphered it, and that it contain'd the Matters that you alledge; it may be that they kept that Letter ſtill to themſelves, and might bring me another Letter, containing only ſuch Matter as I was contented with, containing the private Cauſe.

Sollic. An unlikely matter; but thus you ſee the Duke confeſſeth the Receipt of the Letter, he only denieth that it was to this effect. It was confeſſed, that a Letter to this effect was written to 40; he alſo confeſſeth, that 40 was for the Duke himſelf.

The Duke of *Alva*'s Queſtions prov'd the form of the matter; the Duke read that Letter.

Duke. I read not that Letter, but of another Matter, and you bring but one Witneſs to prove it.

Sollic. There be two Witneſſes, *Barker* and the Biſhop of *Roſſe*, ſeverally examined, who agreed directly, expreſſing it. And *Bayly* alſo wrote the Letter himſelf containing the Treaſon, and not knowing to whom the Letter was directed, accordeth with them.

Duke. *Barker* and *Gutbert* might make the Letter themſelves, and put in and out what they liſt.

Sollic. Why did *Rodolph* write you a Letter at all?

Duke. I know not. *Barker* preſented me the Letters out of Cipher, and I had not the Cipher, nor ſaw any ſuch Letter as you alledge.

Sollic. It appeareth further, how after this diſpatch with the Duke of *Alva*, *Rodolph* went forward on his Meſſage to the Pope; and having alſo good Succeſs there, he ſo advertis'd again. The Pope ſent Letters to the Duke and the *Scotiſh* Queen, to this effect, That he liked well of their Enterprizes, &c.

Would *Rodolph* have gone to the Pope and procur'd Letters, if he had not had Inſtructions accordingly? The Duke himſelf hath confeſſed ſuch a Letter, conceived there came Letters, both of one Tenour; the one by the way of *France*, the other by the way of *Flanders*: the effect you have heard, and the Receipt is confeſſed.

Duke. *Barker* indeed brought me about ſix or ſeven Lines, written in a Roman Hand in *Latin*, beginning thus, *Dilecte fili, ſalutem.* I asked what it was? and *Barker* told me, it was a Letter from the Pope to me: Wherewith I was offended, and ſaid, A Letter to me from the Pope! What have I to do with him, that is Enemy to my Religion and Country? How cometh this to paſs? So I received it, and not otherwiſe: and *Barker* excus'd it, and ſaid, That *Rodolph* had procur'd it for his own Credit.

Here was read *Barker*, *ad* 29.

Sollic. Thus you ſee the Effect of this Letter, and how this was directed to the Duke from *Rodolph*, alſo by the name of 40, deciphered by *Gutbert*, and delivered to the Duke by *Barker*. The Duke received it and read it, and ſaid, *Rodolph* hath been at *Rome*, I perceive there will nothing be done this year. By this it appeareth, that he reproved not *Barker* at all for bringing it unto him, for *Barker* brought it him twice: Would he have brought it him the ſecond time, if the Duke had been angry with him for it at the firſt?

Duke. I knew not at the firſt time what it was, for it was in Cipher.

Then was read *Barker*'s Confeſſion to the 8th.

Duke. *Barker* is not of Credit, he accuſeth me falſely.

Sollic. He was your Servant, and of near Place and Credit about you; why ſhould he accuſe you wrongfully?

Duke. He was not of Credit about me; for I uſed him not this fourteen Years.

Sollic. That is not ſo, as hath well appeared. Beſides this, the conveying away of *Gutbert*, which was done by your means, and who deciphered this Letter, and could have diſcloſed the Matter, proveth a great Guiltineſs in you.

Duke. He was convey'd away at his own Requeſt made, and not for my Safety.

Sollic. You cauſed him to be convey'd away, and were privy to his conveying.

Duke. *Barker* removed him: indeed I was not privy.

Sollic. You moved *Bowes* to join with *Barker* to do it.

Then Mr. Sollicitor ſaid further to the Peers, I have alſo, my Lords, one thing more to ſay to you from the Queen's Majeſty's own Mouth: The Lords that be here of the Privy-Council do know it very well, not meet here in open Preſence to be uttered, becauſe it toucheth others that are not here now to be named; but by her Highneſs's Order, we pray that their Lordſhips will impart it unto you more particularly. In *Flanders*, by the Embaſſador of a foreign Prince, there the whole Plot of this Treaſon was diſcovered, and by a Servant of his brought to her Majeſty's Intelligence; the Miniſter not meaning to conceal ſo foul and diſhonourable a Practice, gave Intelligence hither by Letters, and hath therein diſcloſed the whole Treaſon in ſuch Form as hath here been proved unto you: Wherefore I refer the more particular Declaration thereof to the Peers of the Privy-Council.

Then began Mr. *Wilbraham*, Attorney of the Wards, and ſaid to this effect.

Wilbraham. There is yet ſomething unſpoken, it conſiſteth in two Points, I will be ſhort in both. The Matters are plain, and eaſy to underſtand. Let my Lord anſwer, and your Lordſhips ſhall eaſily judge of them. Here have been ſet forth before you the imagining and practiſing of the Deprivation and Death of the Queen's Majeſty, with bringing in of Strangers into the Realm to invade, and levy War, with the Appurtenances both miſerable and many. This Requeſt I am now to make, that for proof of theſe Treaſons, that I will intreat you to have in memory what hath before been ſaid; for tho' the Proofs of theſe Treaſons we divide to ſeveral Parts, for Eaſe and Shortneſs, as the ſeeking of the Marriage, *Rodolph*'s Voyage, the Succeſs thereof, and the Reſidence that remaineth, ought all to be compared together; any one appearing plainly true, giveth Credit to the reſt. The Queen's Majeſty's Proceeding in this Trial is very honourable, mild, and gracious; the Confeſſions have been made by the Parties freely, without Torture or Conſtraint. You ſhall ſee each of them, and each part ſo prove the other, as the whole ſhall be clearly out of doubt; Where the Earl of *Northumberland* and his Wife, the Earl of *Weſtmoreland*, *Richard Norton*, and others in the North Parts raiſed Rebellions, and levy'd open War againſt the Queen's Majeſty within her Realm; and being overthrown by the Queen's Power, fled into *Scotland*, and there were received by the Duke of *Chaſtelleroy*, the Lord *Harris*, the Lord *Hume*, the Lord *Buccleugh*, and others, and by them were comforted and detained againſt the Queen's Majeſty, requiring to have them delivered. Her Majeſty being denied to have them reſtored; publiſh'd and proclaim'd open War againſt thoſe Detainers of her Rebels, and appointed the Earl of *Suſſex* her Lieutenant-General, with an Army to invade *Scotland*, and there to purſue thoſe her Enemies, ſparing the reſt. He entered into the Land, made open War upon them, blew up their Houſes with Powder, waſted their Countries, and drove the Rebels out of *Scotland*. The one Matter now that I am to diſcloſe, is, That the Duke of *Norfolk* knowing all this, yet did adhere unto, comforted and relieved the ſaid Rebels; he procured Money to be diſtributed to the Earl of *Weſtmoreland*, the Counteſs of *Northumberland*, and other of them; and this is manifeſt Treaſon. The other Matter is, That the Duke of *Norfolk* knowing all this to be true, adhered unto, comforted and relieved the ſaid Lords of *Scotland*, the Queen's Enemies, Receivers and Detainers of her Rebels; and this is alſo Treaſon. And firſt for the aiding of the Rebels: After this Rebellion, and their Overthrow by the Queen's Power, they fled into *Scotland*, (a very bare Country) where they were driven to hard Shifts, ſo were they enforced to ſue to the Pope for help; they wrote to him, the *Scotiſh* Queen wrote in their favour to the Pope's Nuncio, the Matter was purſued for them by one *D. Morton*: this *Morton* was he that was the Procurer of the Bull that was ſent over againſt the Queen's Majeſty; this *Morton* was he that reconciled the Earl of *Northumberland* to the *Romiſh* Church, by a Bull of Abſolution: he went to the Pope on their Meſſage; the Pope granted them Relief, and wrote Letters in the mean time to comfort them, which were directed thus; Thomæ & Carolo Northumbriæ & Weſtmorlandiæ *Comitibus, reliquiſque Nobilibus Catholicis partium Borealium Regni* Angliæ: *To* Thomas *and* Charles, *Earls of* Northumberland *and* Weſtmoreland, *and other of the Catholick Noblemen of the North Parts of the Realm of* England. Belike, ſo calling them noble in the fulfilling of *D. Story*'s Promiſe, that by their rebellious Enterprize they were now of Worſhipful become Honourable.

Here was read the Effect of the Pope's Letters to the Rebels.

The Letters hereof came to the Biſhop of *Roſſe*; the Money was aſſigned in *Flanders*; the Biſhop of *Roſſe* ſent to the Duke of *Norfolk* for his Advice, and for his Help to convey the Money to them. The Biſhop thought it beſt to have the Money ſent by the Weſt-Borderers, where the Lord *Harris* was, and with him *Leonard Davis*: the Duke, for their ſpecial Diſpleaſures to *Leonard Davis*, was not willing that *Leonard Davis* ſhould have part of it; but had more mind to have his Brother of *Weſtmoreland* relieved, and to that end he deviſed with *Banniſter* for the ſending of the Money. In the mean time, behold how that courſe was interrupted: The Queen's Majeſty had a Treaty with the Queen of *Scots*, wherein one ſpecial Article was, That the Rebels ſhould be delivered. This the *Scotiſh* Queen was loth and liked not to do; ſhe aſked the Duke of *Norfolk*'s Counſel in it; he adviſed that in no wiſe they ſhould be delivered, for that were too much againſt her Honour: nevertheleſs, for that he feared that the Article concerning the delivery of the Rebels might be ſome ſtay to ſuch concluſion, as otherwiſe they might have liked of, he gave advice that the Rebels ſhould depart out of *Scotland*. *Roſſe* wrote to them to that end, and therewith ſent them the Pope's Letters, and ſo they all departed out of *Scotland* into *Flanders*, except only *Leonard Davis*, who remained with the Lord *Harris* and the Earl of *Northumberland*, who would alſo fain have been gone if he might; and ſo by this occaſion, and by *Banniſter*'s means, was this ſending of the Money into *Scotland* diſappointed. Then was there another Device taken, to diſtribute it in *Flanders*; and becauſe it ſhould not all be ſuddenly waſted, it was agreed by the Biſhop of *Roſſe*, that it ſhould be diſtributed monthly.

This Order was opened to the Duke by *Barker*, the Duke liked well of it, and willed it to be done accordingly. A Man was ſent over for this purpoſe, and the Money diſtributed. The Counteſs of *Northumberland* wrote over to the Biſhop of *Roſſe* a Letter of Thanks. Hereupon report was made to the Duke, that it was done as he had appointed. Now the Duke will aſk us, What proof we have hereof? We ſay, The Confeſſions of *Roſſe* and *Barker*. Againſt this he taketh exception; his only anſwer is his bare denial, and his defacing of their Credit. He ſaith they are Traitors, and have confeſſed Treaſon againſt themſelves, and not to be received for ſufficient Witneſſes againſt him. This hath been well anſwered already by my Lords the Juſtices, that by the Law they are ſufficient Witneſſes. You may not ſtand upon your Honour and difference of Degree, and thereby limit how far they are to be credited. But now let us examine their Credit, and their likelineſs to tell Truth, and how meet in this Caſe they are to be believed. Firſt, For the Biſhop of *Roſſe*, he is a wiſe Man, he is learned, he is a Biſhop, he is an Embaſſador, a great Friend to the Duke of *Norfolk*; ſo far in Credit with the *Scotiſh* Queen, that he hath been the principal Doer of all her Affairs; ſo the fitteſt Man for this Treaſon, the meeteſt Man to be uſed in it, ſince the *Scotiſh* Queen's Title is the ground of the Treaſon. Who then but ſuch a Man was fit to be uſed? Who meeter to be heard in ſuch a matter than he? A *Scot*, a wiſe Man, well acquainted with the matters, well able to deal in them, ever at hand, and every way the meeteſt Man. He was a *Scot*, ſay you; the more to blame the Duke of *Norfolk* to deal ſo with him, againſt the expreſs Commandment of his Sovereign upon his Allegiance, and againſt his own Faith, Submiſſion and Promiſe, and ſo himſelf unworthier Man to be believed than the *Scotiſh* Witneſs. Why ſhould the Biſhop of *Roſſe* accuſe him falſely? What ſhould move him to it? He accuſeth you, he alſo proveth it againſt you; he is the apteſt Man to know it, the apteſt of all other to repeat it. And why will you ſay he is ſo oft produc'd for every matter againſt you? Surely great Cauſe, great Difference between him and all other; he knew all; he dealt in all, and where the reſt had every one but his Part to play, the Biſhop of *Roſſe* continually kept the Stage; he had a long Part, he anſwered all Men; when every Man brought forth their Tallies, he kept the Stocks of all; he ſpeaketh of that he underſtandeth, he ſpeaketh credibly, he carrieth Proof and Conſent of other. Speaketh he of Malice againſt the Duke? That cannot be, the Duke never offended him; the Duke was ever his greateſt Friend, and he the greateſt Friend to the Duke, and the chief Advancer of the Marriage that the Duke ſo earneſtly ſought, as moſt beneficial; he hath in his Confeſſion touched his own Miſtreſs, upon whom he depended, to whom he ought no Malice; he hath diſcloſed the Treacheries of the Pope, him he hath offended, he gets no more Benefices at his hand; he hath offended the King of *Spain* and the Duke of *Alva*, he is fallen out with all his Friends, he is fallen from all his commodious Hopes by his Confeſſion. Beſides that, How hath he told it? Not at the firſt as of Malice, and deſirous to do the Duke a ſhrewd turn; but with leiſure, after other former Confeſſions. He held off, and diſcloſed nothing, till his Face (tho' it were a Face of Braſs) could no longer withſtand apparent Truth diſcloſed by others; except he had been mad and a ſtark Fool, as he is very wiſe, he would not have thruſt himſelf into all thoſe Hardineſſes, to tell an untruth to his own ſo great Loſs and Hindrance. Would he, being wiſe, for Malice to the Duke of *Norfolk*, undo his own Miſtreſs the *Scotiſh* Queen; and bring upon himſelf the hatred of the Duke of *Alva*, the *Spaniſh* King, and the Pope; and ſo loſe all his Friends, and make them his Foes, and indanger himſelf, and undo himſelf, with confeſſing Treaſon againſt himſelf, for only Malice of the Duke of *Norfolk*? It cannot be true; I muſt needs believe him, becauſe it is Treaſon that he ſpeaketh of the Man's own Faculty: He is a credible Traitor. If he had told us a matter of Virtue, good Life, and true Religion, it had been a Vanity to hear the Biſhop of *Roſſe* ſpeak; but ſpeaking of Treaſon, he is the ſkilfulleſt Man, and meeteſt to be heard. As for *Hickford* and *Banniſter*, they be both ſtill in Credit, the Duke excepteth not againſt them, and yet they accuſe him deeply. For compariſon of their Values and Credit, the Duke is noble, and theſe are ſaid not able to ſpend five Marks. What then? Indeed their Honour is leſs, but their Underſtanding is great, and their Credit ſufficient. *Barker* is miſliked, and counted by the Duke not worthy to be believed. It is miſliked that he is ſtill brought forth, he is as the baſe Inſtrument ſtill play'd on. There is good cauſe why the Duke ſo continually uſed him: You muſt underſtand that things muſt be done by Means and Inſtruments: The Heads need the Service of inferior Members; the Heads do deviſe, the Hands and the Feet do put in execution. If the Duke of *Norfolk* ſhould, for every Meſſage and Matter to be treated with the Biſhop of *Roſſe*, *Rodolph*, and the *Spaniſh* Embaſſador, or other, have himſelf trotted thro' dirty *Smithfield*, and the Streets of *London*, unto *Thames-ſtreet*, and other Places, it muſt needs have been wondered at, and would not have been without notable Suſpicion. But *Barker*, a ſly Fellow, ſufficient for Skill, exerciſed in the Matters, acquainted with the Practices, might well go dreaming to all Places without Suſpicion. Sometimes upon a Robbery or a ſhrewd Turn done, the length of a Foot in the Snow, or in the Mire, hath betrayed the Doer; ſo the Foot may ſometimes accuſe the Head. *Barker* was one of the Duke's Secretaries, privy to his greateſt Affairs, the Writer of his Ciphers, the common Carrier of ciphered and deciphered Letters, the common Conveyer and Sender of his Meſſages and Letters between him and the Queen of *Scots*: The Duke himſelf agreeth with them in confeſſing of ſundry Circumſtances of the Matters, which he calleth his Errors and inferior Faults; with theſe Men he dealt in them himſelf, gave them Credit, therefore it is no reaſon himſelf ſhould take from them the Credit of their Confeſſions.

But he ſaith there are but two of them; the Fault is in the Duke of *Norfolk* there are no more, for there are more if they were here, and by the Duke's means they are abſent: *Liggons*, *Gutbert*, and *Rodolph* could tell it alſo. The one of them, *Liggons*, he hath ſent away, and findeth him in *France*. *Gutbert*, as the Duke himſelf hath confeſſed, the Duke hath cauſed to be carried away. *Rodolph* is, by the Duke himſelf, ſent out of the Realm on his Meſſage, and not return'd (it is no reaſon that their abſence excuſe him), for it is not reaſon that he ſhould take advantage of his own Wrong, that hath made them be abſent; ſo their abſence muſt ſtand for great Teſtimony againſt him, and be judged to concur with them that are preſent, and have confeſſed.

Rodolph, the greateſt Teſtimony of all, is in Perſon withdrawn; but his Letters ſpeak lively. He hath teſtified by his Letters againſt the Duke, and of a matter that himſelf well knew, not conſtrained, not examined, but with the Tenor and Courſe of the Proceeding of the Treaſon, advertiſing the Duke of the anſwer of his Meſſage. You ſay he dealt for you in other private Matters, not in the Treaſon: If that were ſo, then the Pope had not given him charge to deal with the *Scotiſh* Queen and you; the *Scotiſh* Queen had not commended him to you; the Inſtructions had not been ſo penned; the Anſwer had not been ſo return'd. But ſaith the Duke, It is true, *Rodolph* talked with me indeed, he required my Letters to the Duke of *Alva*, for the *Scotiſh* Queen; he moved me about theſe matters; but I was angry with him, I would not write by him, I departed from him in anger, and thus in anger away he went. And whither went he? Even ſtrait to the Duke of *Alva*, and from thence to the Pope, even to the ſame Places and Perſons to whom he ſhould have gone for the Duke, if the Duke had been without anger, beſt pleaſed and contented with his Journey. To what Intent, and of what Meſſage went he thither? Even the ſame that the Duke ſaid he was angry to be moved of, and refuſed to write in. What effect hath it? Gentle Audience, great Promiſes and Agreement to the Requeſts, as if he had travailed not for a Man angry with the matter, but moſt deſirous. What Anſwer return'd he? Even the ſame that accordeth with the Inſtructions concerning the Treaſon, the very Plat and Ground of his Meſſage. He reporteth Queſtions aſked by the Duke of *Alva*, agreeing only with the matter of the Treaſon, and no private Caſe. Would he have written anſwer to him that ſent him not? Would he have written as to pleaſe him with good News of a good Audience that ſent him not? From whence departed he in anger? He writeth of the Courſe to be kept in Execution of the Treaſon, which he would not have done to him that was angry to hear of it. He braggeth of his 10000 *Walloons*, old beaten Soldiers. If the Duke of *Norfolk* had been a true Man, and angry with the matter, as he now ſaith, and done his Duty; tho' they had come, his *Walloons*, his old beaten Soldiers, might have been ſo new beaten of the old *Engliſh* Faſhion, as they were never ſo ſwinged in their Lives.

This Point Mr. Attorney ſpake with ſuch a Grace, ſuch Chearfulneſs of Heart and Voice, as if he had been ready to be one at the doing of it; like a hearty true *Engliſhman*, a good Chriſtian, a good Subject, a Man enough for his Religion, Prince and Country.

If the Duke ſays it was the *Scotiſh* Queen's Meſſage only, and not his (for advancement of her wrongful Claim by force) he knowing this, Why ſought he to marry her againſt the Queen's Majeſty's Will, and to purſue it by force? If he ſay it was *Barker*'s ſingle Device, to ſend theſe Meſſages, to procure theſe Treaſons, and work all theſe Miſchiefs of his own head; to what end I pray you ſhould *Barker* do it, but to advance the Marriage of the Duke his Maſter, and the *Scotiſh* Queen? And was this without the Duke's privity? Could *Barker* compel the Duke to take a Wife at his pleaſure? Examine now all theſe Witneſſes, and weigh their Credits together; conſider them ſeverally, their Credits are great; join them all together, they be much greater; but ſeverally examin'd, and all according in one, they be greateſt of all, and not poſſible to be falſe. Add to that the Duke's own Confeſſions of Circumſtances concerning himſelf, and their uttering of matters of Treaſon againſt themſelves; conſider the difference of dangers in telling truly or falſely: for if they utter'd it, and it were true, then ſtood they but in danger of their bodily Life; if they ſhould falſely accuſe, yet that Accuſation ſuffering againſt themſelves for Treaſons, they loſt both Body and Soul, in falſely accuſing others. The Duke was their Maſter, they his Servants, and his true Servants, and ſuch as were to gain by his Proſperity; would they untruly accuſe him, the ſtay of their Preferment? For tho' they be Traitors, and howſoever they be otherwiſe without Credit, yet againſt the Duke of *Norfolk* they are well to be believ'd.

Now on the other ſide, conſider the Duke's own Credit, which he hath by his own doings impaired and made inferior to theſe of lower degree: You have heard of his Oath eſpecially taken for the Commiſſion at *York*, to deal truly and ſincerely; he kept it not, he ſo dealt as if an Oath were of no great weight with him. His Oath of a Counſellor he hath broken, both in diſcloſing of Secrets, and in giving advice to a foreign Prince, and a Competitor of the Queen's Crown, againſt the Queen's Majeſty his Sovereign Lady. Now may it not be that theſe Men of mean degree and value, againſt whom it is not alledg'd that they have been at any time perjured, may be produced and credited againſt him that hath ſo little eſteem'd his Oath? I have heard alſo, that there was an Oath wilfully taken upon a Bible, in denying of things laid to his charge, and yet the matter found true, and by himſelf within a ſhort ſpace confeſſed: ſo that his Oath, his Hand, and his Word, bear no ſway with him.

He ſubmitted himſelf, he ſubſcribed his Submiſſion, and ſeal'd it; he added ſolemn Promiſes upon his Faith and Allegiance, not to proceed in the Marriage between the *Scotiſh* Queen and himſelf: but he kept not touch, he broke Promiſe alſo, and yet he ſaith his Hand, Mouth and Heart go together. If they go together in the right way, it is well; but when they go together in Untruth, it is evil and dangerous: therefore it is not for my Lord of *Norfolk* to ſtand ſo much upon the diſcrediting of the Witneſſes, and advancing of his own Credit, which himſelf hath ſo much decayed. Now I will go to the Proof.

Duke. I ſhall hardly come, after ſo ſmooth a Tale as Mr. Attorney of the Wards can tell; yet one good Proof I have to my Comfort, that they be as pleaſe your Lordſhips to weigh them. If you would not have dealt thus untruly with me, I would not have taken exception againſt them, tho' I chiefly challenge none but *Barker*, in whom you may ſee what Fear may do; beſides that they have confeſſed themſelves Traitors, and ſo Men of no Conſcience or Credit. It is well known that *Barker*'s Stomach is nothing; he hath been known well enough, Fear hath done much in him. The Biſhop of *Roſſe* is alſo a fearful Man. As touching *Barker* and the Biſhop of *Roſſe*, *Bracton* hath a Saying, That Witneſſes muſt be Freemen and not Traitors, neither outlawed nor attainted.

Catlin. None of them be outlaw'd, attainted, or indicted.

Duke. I mean not that they were indicted, but they be in as ill Caſe, for they have confeſſed themſelves Traitors. He ſaith alſo, they muſt be *Legales*, lawful Men, and ſo cannot Strangers be, as the Biſhop of *Roſſe* and *Rodolph*; it is theſe Strangers that charge me only, the other having dealt ſo diſloyally, and confeſſed it againſt themſelves, are not to be believ'd. As for *Barker*, I have not uſed him for my Secretary theſe thirteen years: he entered with the Biſhop of *Roſſe*, and dealt with him in theſe Matters againſt my Knowledge.

Catlin. Bracton indeed is an old Writer of our Law, and by *Bracton* he may be a Witneſs; a Stranger, a Bondman may be a Witneſs: Aſk you all the Judges here. And the Judges affirmed that he may.

Duke. If a Stranger be to give Evidence whereby Lands ſhould be recovered, you ſhall not recover upon that Evidence given by a Stranger.

Wilbraham. This were a ſtrange Device, that *Scots* might not be Witneſſes; for ſo, if a Man would commit Treaſon, and make none privy but *Scots*, the Treaſon were unpuniſhable; and ſo were a kind of Men found out, with whom a Man might freely conſpire Treaſon.

Duke. You ſay my Indictment is only upon the Statute of 25 *Edward* III. That Statute ſtandeth upon three points, compaſſing the Death of the Prince's Perſon, levying of War againſt the Prince, and aiding of the Prince's Enemies; and all theſe muſt be prov'd Overt-fact. If by any way, by any Overt-fact, you can prove that I have directly touch'd the Prince's Perſon, or done any of the ſaid things that the Statute extendeth to, I will yield myſelf guilty. If any thing be doubtful, the Statute referreth it to the Judgment of the Parliament.

Catlin. Uſage is the beſt Expounder of the Law, that is, the common Uſe how the Statute hath been taken and expounded; and the ſame Statute is but the Declaration of the common Law.

Duke. The Preamble of the Statute is to bring the Laws of Treaſon to a certainty, that Men may certainly know what is Treaſon.

Attorney-Gen. You complained of your cloſe keeping, that you had no Books to provide for your Anſwer; it ſeemeth you have had Books and Counſel, you alledge Books, Statutes, and *Bracton*; I am ſure the ſtudy of ſuch Books is not your Profeſſion.

Duke. I have been in Trouble theſe two Years, think you that in all this time I have not had cauſe to look for myſelf?

Attorney-Gen. But if you ſtand ſtill upon proof, whether you have done any thing to the Deſtruction of the Prince's Perſon, if the Lords upon the Evidence already produced, do think the Matters true in Fact that are already alledged againſt you, ſurely the ſame muſt needs be conſtrued a compaſſing of the Queen's Death; for the Law of Treaſon hath ever been largely conſtrued for the Prince's Safety. Think you that practiſing to levy War within the Realm is not Treaſon? Yes indeed is it; and a compaſſing of the Prince's Death. Sir *William Stanley*'s Caſe was this: He did but ſend *Clifford* over Sea, to hearken and ſend him word what *Perkin Warbeck* was; that if he thought *Perkin* was ſuch a Man as he was ſaid to be, he would take his part. This was *Stanley*'s Caſe, and this was judged Treaſon, and a compaſſing of the King's Death.

Here was read *Barker*'s Confeſſion the 6th of *November*.

Duke. I never dealt with that Money, nor heard of it; I dealt not at that time with *Barker*, nor heard any thing of the Rebels, ſince they went into *Flanders*.

Then was read the Biſhop of *Roſſe*'s Confeſſion of the ſame Matter, 6 *November*, ad 5.

And again *Roſſe*, 6 *November*, Fo.

Alſo *Roſſe* 29, of 1700 Crowns ſent by *Moreton*'s means, and what *Moreton* was.

Wilbraham. You hear how the Money was procured; how it was diſtributed by the Duke's Order, and Thanks written by the Counteſs of *Northumberland* for the receipt of it, which was alſo declared to the Duke. You ſhall hear, that after the Practice of the Marriage, it was a general Rule between the *Scotiſh* Queen and the Duke, That the Biſhop of *Roſſe* ſhould never propone to the Queen's Majeſty's Council, nor deal in any great Matter, but by the advice and directions of the Duke of *Norfolk*.

Here was read, for the proof thereof, the Biſhop of *Roſſe*.

Wilbraham. This is a plain Courſe.

Duke. What doth this make againſt me?

Wilbraham. That he follow'd his Commiſſion, that he kept his manner of Conference continually, and that according to that uſe, the Money was diſtributed by your Directions.

Duke. He dealt not with me in a great time, and I can tell when he broke off and dealt no more with me; I was never privy to the diſtribution of the Money, nor I never ſpake with *Barker* about it; I was in the Tower at that time.

Wilbraham. That was when you were not in the *Tower*; they lurked in *Flanders* a while in great neceſſity, without Apparel, and ſuddenly, with this Money, they were waxed gay; and theſe Men have confeſſed that it is diſtributed by your Order and Direction.

Duke. None accuſe me but three, one abſent, a Stranger, and a Traitor.

Wilbraham. And if every one that is privy to Treaſon muſt be refuſed for Witneſſes, then ſhould no Treaſon be proved; for none can tell it but they that be privy, and all ſuch are guilty.

Now to the ſecond point, That you adhered to, and aided the *Scotiſh* Lords, the Queen's Majeſty's Enemies, and Maintainers of her Rebels. The Rebels, after their flying into *Scotland*, were there received by the Duke of *Chaſtelleroy*, the Lord *Harris*, the Lord *Hume*, the Lord of *Buccleugh* and others; and being there, they entered again of new into the Realm, and made new Roads, and burned and waſted *England* with Fire and Sword. Theſe *Scots* that thus aſſiſted the Rebels, the Nobles of *Scotland* that remain'd in Amity with the Queen's Majeſty, went about to ſuppreſs. The Queen's Majeſty proclaim'd open War againſt them; ſhe appointed my Lord of *Suſſex* her Lieutenant, with a ſtrong Army to invade them, and to purſue both the Rebels and the ſaid *Scots* that were her Enemies. This my Lord of *Suſſex* purſued, made open War upon them, burned their Towns, Houſes, Corn and Goods, blew up their Caſtles with Powder, and kept good Peace with the reſt: So were they publiſh'd the Queen's Enemies, both by Proclamation, which is here ready to be ſhewed, and by open War itſelf, the beſt Proclamation of all. The Queen's Power there tarried a great while, ſome came home, ſome remain'd ſtill in *Hume*-Caſtle, and other Places. Theſe thus known the Queen's Enemies, and ſo publiſh'd, the *Scots* that were the Queen's Friends did ſtill purſue ſo far, that the ſaid *Scotiſh* Queen hearing thereof, complain'd to the Duke of *Norfolk*, *viz.* How ſhe had no Aid from *France*, and if none came at all, her Friends in *Scotland* muſt of Force be conſtrained to yield: She prayed the Duke of *Norfolk*'s Advice. The Duke made anſwer, and *Hickford* wrote it to the *Scotiſh* Queen, That ſhe ſhould procure the *French* Embaſſador's Letters to them in *Scotland*, to put them in ſome good hope, that they might hold out a while till Aid come. The *Scotiſh* Queen accordingly wrote to the *French* Embaſſador Monſieur *de la Mot*; he by and by wrote ſix Letters to the Lord *Harris* and other Lords of *Scotland*, with fair and comfortable Promiſes. The Pacquet of theſe Letters were ſent to the Duke, he had it, he cauſed it to be ſent with a Letter to *Banniſter*, to convey it to *Lowther* upon the Weſt Borders of *Scotland*, and that *Lowther* ſhould convey it over to the Lord *Harris*. *Hickford*, the Duke's Secretary, delivered this *French* Pacquet, and the other Letter to *Henry* the Duke's Footman, who carry'd it to *Banniſter*, and *Banniſter* ſent it to *Lowther*, by *Colborn* his Servant: and to diſſemble the Cauſe of his Servant's going, and to know ſome certainty, whether it came to *Lowther*'s hand or no, *Hill* feigned a privy Token between him and *Lowther*, about the gathering of the Rent of the Lord *Dacre*'s Lands. *Lowther* ſent over the Pacquet, and returned anſwer to *Banniſter*, that he had ſent it to the Lord *Harris*, and willed *Colborn* to tell him, which was their privy Token, that tho' it were troubleſome, yet he would gather up the Rents for him.

Here was read *Barker*'s Confeſſion, 14 *September*, That in *July* laſt he receiv'd the Pacquet, *&c.*

All *Hickford*'s Confeſſion the ſame day, with a great Proteſtation why he confeſſed not at the firſt, but tarried till *Barker* had diſcloſed; becauſe he would not be counted a betrayer of his Maſter.

Wilbraham. You hear how *Barker* bewrayeth it; you hear alſo how *Hickford* himſelf confeſſeth it: And in what manner, I pray you, do they diſcloſe it? They make no haſte to accuſe the Duke, but all by leiſure; and *Hickford* maketh it a matter of great Conſcience, to utter it againſt his Maſter: And here is a Leſſon meet to be learned of all Servants. Many ſuppoſed it a Treaſon and foul Offence to utter their Maſter's Treaſons; they muſt otherwiſe think it is a dangerous Opinion.

Duke. I challenge not this Man.

Then was read *Hickford*'s Examination, 11 *October*.

Alſo *Banniſter*, 17 *September* 1.

The ſame *Banniſter*, 29 *November* pa.

Alſo *Banniſter*, 28 and 29 *Sept.* ante 5, *and* 6.

Wilbraham. Thus it appeareth, that thoſe the *Scotiſh* Queen's Friends in *Scotland*, for whom ſhe ſorrowed and feared their yielding, were the Queen's Majeſty's Enemies; and how to thoſe the Duke adhered, thoſe he comforted, for thoſe he procured the comfortable Letters to be ſent, as you have heard.

Duke. I confeſs it, that I cauſed the Letters to be ſent, but that I procured the Letters to be written, I remember not; but therein I truſt *Banniſter*'s Memory.

Wilbraham. Now for ſending Money to relieve the Queen's Majeſty's Enemies, and touching the 6000*l.* the *French* Embaſſador had 14 hundred Crowns ready to relieve them, which he ſent to the *Scotiſh* Queen, to know how it ſhould be beſtowed. She would have had the Duke to make it up three thouſand Crowns; ſhe ſent one thouſand more her ſelf, and referred the Direction of all to the Duke himſelf. The Duke having the chief Charge of all, willed two thouſand Crowns to be conveyed to the Queen's Majeſty's Enemies in *Scotland.* The Biſhop of *Roſſe* had deviſed, that it ſhould be ſent ſewed in *Panton*'s Doublet. The Duke was made privy to it on the *Sunday* after *Bartholomew-Day:* becauſe *Panton* was a *Scot*, and like to be ſearched, this Device was miſliked, ſo was the Money delivered to *Brown* of *Shrewſbury*; and ſo he rehearſed the manner of the delivery to *Brown*, and the Letters in Cipher, as it was afore rehearſed by Mr. Attorney-General.

Duke. I received the Money at *Thambour*'s hands; I was not by at the writing of the Letter in Cipher.

Wilbraham. I ſaid not ſo.

Then was read the Letter to *Banniſter:* You ſhall receive a Bag by this Bearer, *&c.*

Duke. I do not deny the conveying of the Money; but it never came to the Queen's Enemies hands.

Wilbraham. It was out of our Poſſeſſion; *Panton* was ſent before to receive the Money.

Duke. Not of my knowledge. And as for *Grange* and *Ledington*, I have not heard they were the Queen's Enemies.

Wilbraham. That is no matter; for the Indictment is generally of the Queen's Enemies, and you know the Money went to the Lord *Harris.*

Duke. Lord *Harris* was not appointed to have any part of it.

Wilbraham. This is no matter, it was a comfort to him, being the Queen's Enemy, to be the Factor, and to have the Countenance and Diſtribution of it at his pleaſure: Beſide that, you may be ſure he would not let all paſs without ſome ſhare to himſelf.

Duke. May a Subject be the Queen's Majeſty's Enemy, while the Prince is her Friend, and in Amity with her?

Catlin. In ſome caſes it may be ſo: As in *France*, if the Dukedom of *Britany* ſhould rebel againſt the *French* King, and ſhould (during the Amity between the *French* and Queen's Majeſty) invade *England*, thoſe *Britons* were the *French* King's Subjects, and the Queen's Enemies, though the *French* King remaineth in Amity; and ſo in your Caſe.

Duke. Where was the Proclamation made?

Wilbraham. The Proclamation was made in *England*, and here it is to be ſhewed; but the War itſelf is ſufficient Proclamation. The Queen's Army was ſent againſt him, and the Queen is not otherwiſe bound to proclaim.

Duke. I truſt my Lords the Peers will have Conſideration of me, who they be that accuſe me, the Biſhop of *Roſſe* and Strangers; and the reſt over-reach'd in Treaſon themſelves.

The Lord Steward aſk'd if they had aught elſe to ſay.

The Duke ſaid, I truſt to God and my Truth.

Then the Priſoner was withdrawn.

Then the Serjeant made an *O Yes*, ſaying, *My Lord Grace the Queen's Commiſſioner, High-Steward of* England, *chargeth all Men to keep ſilence upon peril of Impriſonment.*

Then the Lord Steward ſpake to the Lords, and willed them to go together.

Note, *That the Money was taken up by the way.*

Then the Lords withdrew themſelves into a Place prepar'd in the *Chancery-Court* for Conſultation, and the Priſoner was withdrawn.

The Lords continued in Conſultation an hour and a quarter; the Lord Steward ſtill remain'd in his Seat.

After an hour and a quarter, which was immediately after eight of the Clock at night, the Lords came again upon the Scaffold, and took their Places, as they were afore; and then the Lord Steward demanded of every of them ſeverally, ſitting in their Places, beginning at the youngeſt Baron, in this manner:

My Lord *De la Ware*, What ſay you, Is the Priſoner guilty of theſe Treaſons or not? And they all ſeverally anſwered in Order and Form following:

L. *La Ware*,	*Wentworth*,	*Hertford*,	Guilty.
Buckhurſt,	*Sandes*,	*Pembroke*,	
St. John of *Bletſhoe*,	*Mountjoy*,	*Bedford*,	
North,	*Grey* of *Wilton*,	*Warwick*,	
Rich,	*Burleigh*,	*Huntington*,	
St. John,	*Howard*,	*Suſſex*,	
Mordant,	*Hereford*,	*Worceſter*,	
Burghe,	*Leiceſter*,	*Kent*,	

Then the Lieutenant was, by the Serjeant, commanded to bring again the Priſoner to the Bar, which he did.

Then the Lord Steward ſaid thus: *Thomas* Duke of *Norfolk*, thou haſt been heretofore indicted of High-Treaſon, and haſt been arraign'd upon the ſame, and haſt pleaded Not Guilty, and haſt put thy ſelf upon thy Peers; the Lords, thy Peers, have found thee Guilty: What haſt thou to ſay, why I may not proceed to Judgment? The Duke anſwer'd, The Lord's Will be done, God be Judge between me and my falſe Accuſers. Then the Axe was turned the Edge towards him.

Then ſtood up Mr. Serjeant *Barham*, and ſaid, It appeareth that *Thomas* Duke of *Norfolk* hath heretofore been indicted of High-Treaſon, and now hath been arraign'd upon the ſame, and hath pleaded Not Guilty, and hath put himſelf upon his Peers; now the Lords his Peers, upon Conſideration of the Evidence ſhew'd forth to prove the Indictment, have found him guilty. I am moſt humbly to pray of your Grace Judgment againſt him for the Queen's Majeſty, according to the Verdict.

Then ſaid the Lord Steward; *Thomas* Duke of *Norfolk*, whereas thou haſt heretofore been indicted of High-Treaſon, and haſt been arraign'd upon the ſame, and haſt pleaded not Guilty, and haſt put thy ſelf upon thy Peers, and the Lords thy Peers have found thee Guilty: Wherefore thou ſhalt be had from hence to the *Tower* of *London*, from thence thou ſhalt be drawn thro' the midſt of the Streets of *London* to *Tyburn*, the Place of Execution; there thou ſhalt be hang'd, and being alive thou ſhalt be cut down quick, thy Bowels ſhall be taken forth of thy Body, and burnt before thy Face, thy Head ſhall be ſmitten off, thy Body ſhall be divided into four Parts or Quarters; thy Head and thy Quarters to be ſet up where it ſhall pleaſe the Queen's Majeſty to appoint; and the Lord have Mercy upon thee.

Then the Duke ſaid, This is the Judgment of a Traitor, and I ſhall die as true a Man to the Queen, as any liveth: knocking himſelf hard upon the Breaſt, he ſaid, I will not deſire any of you all to make any petition for my Life; I will not deſire to live, I am at a point. And, my Lords, ſeeing you have put me out of your Company, I truſt ſhortly to be in better Company: Only I beſeech you, my Lords, to be humble Suitors to the Queen's Majeſty for my poor Orphan Children, that it will pleaſe her Majeſty to be good to my poor Orphan Children, and to take Order for the Payment of my Debts, and ſome Conſideration of my poor Servants; for I am at a point. God doth know how true a Heart I bear to her Majeſty, and how true a Heart to my Country, whatſoever this Day hath been falſely objected againſt me. Farewell, my Lords.

Then the Lieutenant was commanded to avoid his Priſoner; which thing was done.

Then the Serjeant made an *O Yes*, and proclaim'd thus: *My Lord's Grace, the Queen's Commiſſioner, High Steward of* England, *chargeth all Perſons to depart in God's Peace and the Queen's, and hath diſſolv'd his Commiſſion.*

And therewith the Lord Steward ſtanding up afore his Chair, broke his Rod in the midſt, and the People cry'd,

God ſave the Queen. Amen.

ON the 2d of *June* 1572, about eight in the Morning, the Duke was brought to a Scaffold erected on *Tower-hill*, attended by *Alexander Nowel*, Dean of St. *Paul*'s, who having deſir'd the People to keep ſilence, the Duke ſaid:

It is not rare, good People, to ſee a Man come to die; although, Thanks be to God, ſince the beginning of the Queen's Majeſty's Reign in this Place hath not been any; ſuch hath been, and is the Mercifulneſs of her Majeſty, whom God long preſerve. But ſince it is my Fortune to be the firſt, I pray God I may be the laſt. You know I have been long looked for in this preſent Caſe of mine, divers times in this Place; but by her Majeſty's Clemency prolonged hitherto. It is not common to ſee a Man of my Vocation to be a Speaker; nevertheleſs I will be brief, and gladly ſhew you the Eſtate of thoſe Offences which my Conſcience doth burden me for. I have been by my Peers found worthy of Death, whereof I do acquit them; for I come not hither to juſtify myſelf, neither yet to charge my Peers with Injuſtice, but rather ſubmit myſelf to this which God hath prepared for me. And thus conſidering the Weakneſs of my Fleſh and Blood, that at ſuch a time a Man's Senſes will partly fail, I do mind to divide my Speeches into three Parts, deſiring you to take it full and whole, and not to tear it in pieces.

And firſt, in dealing in Matters temporal towards the Queen of *Scots*, I dealt not as a good Subject, for that I made not the Queen's Majeſty privy thereunto, which indeed I confeſs I ought to have done; for this Offence I was committed to this Houſe [pointing to the *Tower*] and, upon my humble Submiſſion, deliver'd; then making Promiſe to the Queen's Majeſty (whom I pray God long to proſper) never to deal in thoſe Matters again: But contrary to my Submiſſion and Promiſe made to the Queen's Majeſty, abuſing her Clemency towards me; which hath and doth grieve me more than any one thing hath done; I dealt in this Matter again, perfectly for ſaving my Life, and other Cauſes which I could alledge.

[*Here Mr. Sheriff* Branch, *ſtanding by the Duke, deſir'd him very courteouſly to make an End as ſhort as might be, for the time did ſpend.*]

Then the Duke beginning again, ſaid, It hath been bruited, that I took my Oath, and receiv'd the Sacrament, that I ſhould never deal in thoſe Matters again; which is untrue; and yet the Oath too much.

[*Now Mr.* Chriſtopher, *one of the Officers, hearing theſe Words, deſir'd the Duke to be ſhort: We are come hither, ſaid he, to ſee you put to Execution, and we muſt not delay while theſe Speeches paſs from you, for in this we hazard our Lives.*]

Then the Duke ſaid, I do not excuſe myſelf, but I come to diſcharge my Conſcience, and to acquit my Peers, and not to complain of any Injuſtice, for I have deſerv'd this, and more a great deal, in that I have abuſed the Queen's Majeſty's Mercy towards me; whom once again, with Hands lifted up, I pray God long to preſerve and reign over you, and that my death may be an End of all Troubles. And to augment my Fault, it is ſaid I had Familiarity with evil Dealers: Indeed I will confeſs and tell you, that I never ſaw, nor never had Conference, but once with one *Rodolph*, and yet never againſt the Queen's Majeſty, God is my Judge; altho' many leud Offers and Motions were made to me: for it is well known I had to do with him, by reaſon I was bound to him by Recogniſance for a great Sum of Money. And as for the two Letters that came from the Pope, I confeſs I did ſee them, the one cipher'd, the other decipher'd; I never conſented to them, neither was I conſenting to the late Rebellion in the North, notwithſtanding I come not hither as unguilty.

To the ſecond Part, I know I have not only been thought to be a Papiſt, but a Favourer of Papiſts, and a Maintainer of them. God is my Judge, before whom I ſtand (lifting up his Eyes) I thank God I was never a Papiſt ſince I knew what Religion meant; but I did always deteſt Papiſtry, and all the vain Toys thereof, embracing ever, from the Bottom of my Heart, the true Religion of Jeſus Chriſt, truſting, by the Aſſurance of Faith in his Blood, that he is my only Redeemer and Saviour: Indeed I muſt confeſs that I had Servants and Friends that were Papiſts; but if thereby I have offended God's Church, or any Proteſtant, I deſire God and them to forgive me.

Well now to the third Point, wherein I am to ſhew how much I am bound to the Queen's Majeſty for her Mercifulneſs towards me, in that her Majeſty hath promiſed to be good and gracious to my poor Children. I remember good Father *Latimer* making a Sermon in a more honourable Place than this is, out of the Pulpit (neither do I compare myſelf to him) he ſaid, *That God did oftentimes take away a good and gracious Prince, for the Sins and Diſobedience of his Subjects*; which God grant not to be in theſe Days, but that it will pleaſe God to continue and increaſe her Majeſty's Years; yea, until the World's End, if it be his bleſſed Will and Pleaſure. You have a moſt gracious Queen, as I muſt needs confeſs, and alſo Godly Religion; therefore look that your Livings and Converſations be anſwerable to the Religion of Chriſt that proves you; that God may proſper the Prince, overthrow the Pope, and maintain your Wealth and Quietneſs. Let not my Perſon, good People, make my Speech worſe; they that have Factions (I ſpeak not particularly, but generally) let them beware they be given over betimes; ſeek not to breviate God's Doings, leſt God prevent yours.

And then the Sheriff haſtening him, he turned to the People, and embracing Sir *Henry Lee*, ſaid, I have, and always have had as true a Heart to my Prince as ever any Subject hath had. And ſo Sir *Henry Lee* ſtaying him by the left Arm, he kneel'd down and aſk'd the Queen's Majeſty Forgiveneſs; and riſing again, he embrac'd Mr. Dean of *Paul*'s with a chearful Countenance; and afterwards for the moſt part ſhaking thoſe that were on the Scaffold by the Hands, and deſiring them to pray for him; amongſt the reſt, the Executioner did on his Knees deſire Forgiveneſs of his Death, who did very courteouſly forgive him, and put into the Hand of the Executioner four Soveraigns of Gold, and eighteen Shillings and ſix Pence of Silver. This done, the Duke kneeling down, and the Dean of *Paul*'s with him, he made his Prayers to God, and read the 51ſt *Pſalm*, ſaying on to the laſt Verſe ſave one, *viz. Build up the Walls of* Jeruſalem; he pauſed and ſaid, *The Walls of* England, *good Lord*. That Pſalm finiſh'd, he began to read another; and at the ſeventh Verſe of the Pſalm, he pauſed and ſaid, I had almoſt forgotten, but not too late; I aſk all the World Forgiveneſs, and I forgive all the World. The Pſalm finiſhed, and other Prayers; he ſaid, *In manus tuas, Domine, commendo Spiritum meum*, Lord, into thy Hands I commend my Spirit. Then he roſe up and pulled off his Velvet Gown, his black Sattin Doublet, and his Velvet Night-Cap, and gave them to the Executioner; and being in a white Fuſtian Waiſtcoat, he ſaid to Mr. Dean of *Paul*'s, This is the *white Sattin Doublet* I made to die in, which the Preacher did ſpeak of; and ſo kneeling at the Block, he laid down himſelf, and roſe again, and laid the Straw and other things in ſuch ſort, as he might in a more convenient manner yield himſelf for the ſpeedier Execution. This done, his Eyes and Hands lifted up, Mr. Dean deſired the People's ſilence, and ſaid, Now all together, with one Voice, pray for him, ſaying, *Lord Jeſus receive thy Soul*. The Duke yielding himſelf to the Block, refuſing to have any Handkerchief before his Eyes, his Head was at one Chop cut off, and ſhewed to all the People; and afterwards his Corpſe was put into a Coffin appertaining to *Barkin* Church, with the Head alſo, and the Burial-Cloth laid over him, and ſo was carried by four of the Lieutenant's Men, and was buried in the Chapel of the Tower by the Dean of St. *Paul*'s.

VIII. *The Trial of Mr.* ROBERT HICKFORD, *at the* Queen's-Bench, *for* High-Treaſon, 9 February, 1571. Hil. 14 Eliz.

AFTER the reading of the Indictment, being aſk'd by the Clerk of the Crown, If he were Guilty or Not Guilty? He anſwer'd to this effect; being admoniſh'd to ſpeak higher, whereunto he excuſed himſelf by the Lowneſs of his Voice.

Hickford. I am here indicted of divers Points of High-Treaſon, part whereof I deny, for that I was never privy to the ſame: My Fact, ſuch as it is, I am ready to confeſs, and declare as I have already confeſs'd it. I am not learned in the Law. I know not in what Form to anſwer unto it. This only I require to be heard to declare the Truth, ſo far as the Matter toucheth me: I here proteſt before your Honours, and in the Preſence of God, that I bring a Conſcience untouch'd with any intent of hurt, ever conceiv'd by me againſt the Queen's Majeſty's Perſon or my Country; I never meant any ſuch thing in my Heart: I know the Law hath not Intent to the Conſcience, or Intent of Men; but is to judge only of the Mind, according to the appearing of outward Facts; ſo the Law cannot accept my Intent for my Purgation. Therefore I ſhall declare the Truth of my Doing, and upon that further open unto you at large my Dealing in the Matters contain'd in the Indictment. Firſt, For the Matter of moving of Sedition, I did never know that any ſuch thing was meant by my Lord, or any other; and whatſoever was by him, or any other intended, I was not privy unto it. I do confeſs indeed, that the Articles mention'd in the Indictment were ſent to my Lord, my late Maſter, which by his Commandment I decipher'd, for they were brought in cipher. Then my Lord read them, and folded them up, and put them in the Pocket of his Hoſe, and ſaid, The Biſhop of *Roſſe* will never be quiet, and then he went to Supper; and from that time I never ſaw that Writing till it was ſhew'd me in the *Tower*. What Anſwer my Lord made to them, or whether he anſwer'd them or no, I know not.

C. J. *Catlin. Hickford*, you ſeem to be a Man of Knowledge and Learning, you have been indicted, and are now arraign'd according to Order of Law; you muſt follow Order, you muſt anſwer to the Indictment, confeſs or deny it, you ſhall be heard after to ſay your Mind. You muſt plead unto it Guilty or not Guilty.

Hickford. I do confeſs the Law hath not reſpect to Man's Intent, but judgeth according to his Fact. I confeſs I ſaw theſe Articles and decipher'd them, I ſhew'd them to my Lord; I revok'd them not, as in Duty I ought to have done, and therefore I think my ſelf Guilty.

Catlin. The Indictment containeth divers Clauſes of Treaſon, therefore anſwer, if you be guilty, to any ſpecial Matters contain'd in the Indictment, or that you will confeſs yourſelf Guilty of the whole.

Hickford. I may not confeſs of my ſelf that whereof my Conſcience doth not accuſe me, ſome Parts I am not privy to; the firſt Point, concerning ſtirring of Sedition, I do not know that ever any ſuch thing was meant by my Lord. What Intention he had, God and his own Conſcience knoweth it. As touching the Matter of *Rodolph*'s going over to the King of *Spain*, to the Pope, and the Duke of *Alva*, and the Inſtructions of that Voyage contain'd in the thing, that by my Lord's Commandment I decipher'd: I anſwer, as I have before ſaid, that I never knew of any Proceeding, nor dealt therein afterwards; and my Lord, when he read it decipher'd, he anſwer'd as I ſaid before, The Biſhop of *Roſſe* will never be quiet. I thought he had burnt that Paper, as a thing that he lik'd not; but what he did with it, or in the Matter afterward, I cannot tell.

Catlin. You muſt anſwer more roundly and directly to the Matter; for theſe Circumſtances and Points, you ſhall be heard afterward. In the mean time anſwer plainly, if you be Guilty or not Guilty.

Southcote. Mr. *Southcote* ſpake to the ſame effect, and told him, That if he pleaded Not Guilty, theſe his Declarations ſhould be heard at large upon the Evidence.

Hickford. To part of the Indictment I confeſs my ſelf Guilty, which concerneth the deciphering of the Letters by my Lord's Procurement and Commandment; after which time I never dealt in it.

Southcote. You were beſt to plead Not Guilty to the whole Indictment; and for ſuch Matters and Parts of the Indictment as you can clear your ſelf, the Jury may find you Not Guilty, and find you Guilty for the reſt.

The Lord Chief Juſtice and Mr. Attorney adviſed to the ſame effect.

Hickford. I am Guilty. I know under how merciful a Queen I live; I ſubmit my ſelf wholly to her Majeſty's Mercy. I will not ſtand long upon that, whereof mine own Conſcience condemneth me.

Catlin. Confeſs you Guilty to the whole Indictment?

Hickford. Yea.

* *Attorney.* Are you Guilty of adhering to and comforting the Queen's Enemies, and the conveying of the *French* Packet and Money that was ſent to relieve them?

* *Mr.* Gilbert Gerard.

Hickford. I confeſs my ſelf Guilty.

Serj. Then, after ſome pauſe, Mr. Serjeant *Barham* ſpake to this effect: Foraſmuch as *Robert Hickford* hath been indicted of High-Treaſon, and, among other things, that he hath adher'd to and comforted the Queen's Enemies, and the ſame Indictment hath been read unto him, and he hath confeſs'd the Treaſons; I am to pray your Lordſhips on the Queen's Majeſty's behalf, that his Confeſſion may be entered, and Judgment given for the Queen againſt him, according to the Law.

Hickford. May I now declare to what Points I am not Guilty?

Attorney. There are two Points in the Indictment that concern your ſelf; the Dealing in the Matter about *Rodolph*'s Voyage, and the Inſtruction for the ſame; and the adhering to and comforting of the Queen's Enemies: Are you not Guilty of theſe?

Hickford. I am Guilty.

Catlin. If you will yet wave and forſake your Confeſſion, we are content to admit you to do ſo, and you may yet plead Not Guilty, and you ſhall have your Trial.

Hickford. No, I will ſubmit me wholly to her Majeſty's Mercy: I know under how merciful a Prince I live, tho' my Deſerts be far unworthy, by my Maſter's Means and Procurement. I know I bring, as I ſaid, a Conſcience untouch'd with any Intent or Meaning of Hurt to her Majeſty's Perſon, or to my Country. And this I ſay before God and in the Preſence and Witneſs of you all; howbeit the Law accepteth not, nor judgeth by ſecret Intents, for ſo might every Man clear himſelf.

Catlin. Hickford, thou haſt heard the Indictment read, where by the Oaths of a Jury thou art found and preſented guilty of divers High-Treaſons: Thou haſt been arraign'd thereof, and confeſs'd thy ſelf guilty, and ſubmitted thy ſelf to her Majeſty's Mercy. The Queen's Majeſty's Serjeant hath, on her behalf, requir'd Confeſſion to be entered, and Judgment to be given againſt thee, according to the Order of the Laws; ſo nothing reſteth now but Judgment to be given againſt thee, and that thou hear thy Judgment. A few words for good Admonition ſhall ſerve: Thou art a Gentleman, wiſe, and well-learned, I would to God there had been in thee as much Loyalty and Truth, as there is Learning, and other good Qualities and Gifts of God, then hadſt thou not fallen into this great Fault and Miſery. But there have been evil Enticers, evil School-maſters, evil Seedſmen, as one call'd them here laſt day; they have brought thee from Truth and good Eſtate, to Untruth, Treaſon, and Wretchedneſs; where before thou and others were of good Name and Fame, they have brought you to Infamy; of loyal, good, and true Subjects, they brought you to the Name and State of diſloyal Traitors: A great Blot to be a Traitor, and the greateſt Infamy that can be. It is the chiefeſt Point of the Duty of every natural and reaſonable Man, which by the Gift of Reaſon differeth from a Beaſt, to know his Prince and Head, to be true to his Head and Prince. All the Members are bound to obey the Head; every Man is bound to repair Life, to lay out and expend Goods, Lands, and Poſſeſſions, to forſake Father, Mother, Kindred, Wife, and Children, in reſpect of preſerving the Prince; for in defending the

Prince, they preſerve Father, Mother, Kindred, Wife, Children, and all. It was well and wiſely ſpoken here the laſt day, by one that ſtood at the Bar, that was learned and as wiſe as you are, upon his confeſſing of himſelf guilty of Treaſon againſt his Prince; I would he had had as much Truth and Loyalty, as he had of Learning and Underſtanding: in few words, he comprehended a great heap of Matter concerning the Duty of the Subject to the Prince. All the Duties, ſaid he, to Father, Mother, Friends, Kindred, Children, yea to a Man's Wife that is his own Fleſh, are all inferior to the Duty that a Subject oweth to his Prince, for this Duty comprehendeth them all. In reſpect of Duty to the Prince, and preſerving the Prince, neither Wife, Parent, nor other are to be regarded, they muſt all ſtand behind. If in any Caſe, any reſpect ſhall allure a Man from Loyalty and Truth to his Prince, they muſt be forſaken, they muſt come behind; it muſt be ſaid, *Vade poſt me, Satana.* We muſt firſt look unto God the high Prince of all Princes, and then to the Queen's Majeſty the ſecond Prince, and God's Deputy, and our Sovereign Prince on Earth. In theſe few words he comprehended much Matter, he ſatisfy'd the Hearers for their Duty to the Queen's Majeſty. You are wiſe and learned as he was, and for knowledge of Duty and Underſtanding as much bound to God as he; but the evil Seedſmen, the evil Inticers and Seducers have wrought evil Effect in you both: the great good Seedſman hath ſow'd in you good Gifts, Learning, Knowledge, and good Quality, to ſerve him, your Prince and your Country withal, as it is ſaid in the Goſpel, *Bonus Seminator ſeminavit ſemen bonum*; but *ſupervenit Inimicus & ſeminavit zizania:* The good Seedſman ſow'd good Seed; but there came the Enemy, the evil Seedſman, and he ſow'd Darnel, Cockle, and noiſome Weeds. Such wicked Seedſmen have been in *England*; if they had ſown the right Seed for their own uſe, the Seed of Hemp, and felt of it, they had receiv'd according to their Deſerving. God hath ſown in you good Gifts and Qualities, meet to have ſerv'd any Prince in *Chriſtendom*; but *ſupervenit Inimicus*, the Devil and his Miniſters, wicked Seedſmen, ſow'd in you Darnel and Cockle, Treaſon and Diſloyalty; they have made you forget your Duty to your natural Prince and Country. If theſe had been handled as they have deſerv'd, they ſhould long ago have had of their own due Seed, Hemp beſtowed upon them, meet Seed for ſuch Seedſmen; ſuch miſchievous Seedſmen they be, that corrupt Men, otherwiſe well indued, that ſow Treaſon ſo abundantly in this Realm. O ſtrange matter! that ſuch Treaſons ſhould be, and ſo ripe in this Realm; a common Slander to this Realm of *England*, the Treaſons of *England* are every where talk'd of among ſtrange Nations: For proof of it they refer us to our Hiſtories of *H.* 2. *E.* 2. *Ric.* 2. *E.* 5. and ſo prove the oft Practices in this Realm to murder and depoſe our Princes, to the great Infamy and Slander of our Country. The very regard of our Country's Fame, that this great Slander of Treaſon ſhould not by your Fault have been renew'd and increas'd againſt us, if nothing elſe would, it ſhould have ſtaid you from ſo foul dealing in Treaſon. But is this ſowing of Treaſon lawful for any? May Embaſſadors be ſuch Seedſmen? Be theſe the Parts of Embaſſadors? They have their Articles in Law, by which they are bound, let them do as Law will let them. If they will tranſgreſs theſe, and fall to Treaſon, and procure the Danger of Princes, let them feel as Law will. I can ſhew you a Precedent and Hiſtory for it within memory, about thirty-ſeven or thirty-eight Years ago, about the 25th year of King *Henry* VIII. it was done by the Duke of *Milan*. The *French* King, that then was *Francis*, Grandfather to the *French* King that now is, ſent one Monſieur *de Marveilles* to the Duke of *Milan* as his Embaſſador: This Monſieur *de Marveilles*, the *French* King's Embaſſador, conſpir'd Treaſon againſt the State and the Duke of *Milan*; the Duke underſtood it, he caus'd him to be arraign'd after the Order of their Law, and being found guilty, he beheaded him: and this *Jure Gentium* was lawfully done. May Meſſengers conſpire Treaſon againſt Princes to whom they be ſent? Treaſon to Princes is not their Meſſage, it is no lawful Cauſe of their ſending; if of their own heads they preſume it, they muſt by Law be touch'd and taught to keep them within their Duties. As for them that ſeek Fame by Treaſon, and by procuring the Deſtruction of Princes, where ſhall ſound that Fame? Shall the golden Trump of Fame and good Report, that *Chaucer* ſpeaketh of? No; but the black Trump of Shame ſhall blow out their Infamy for ever. Again, theſe that follow ſuch heinous Treaſons, that bring forth the Fruit of ſuch Seeds as ſuch wicked Seedſmen have ſown, are in foul fault, and juſtly to be condemn'd, and worthy extremely to feel it. For that you are in Miſery, Men may have Pity and Compaſſion of your Miſery, and ſo forbear to grieve you with due Rehearſal; elſe Men might aggravate your Offence, with ſetting out the Particulars of it at length, and as they ſhould have fallen out, if you had ſtood in Trial: But you have confeſs'd it, and yielded yourſelf guilty, and ſubmitted yourſelf to the Queen's Majeſty's Mercy. Therefore I will leave to aggravate your Faults, and will proceed, as the Order of Law requireth, to Judgment. I pray God to give you Grace to make a good end. I need not give you long Exhortation, I am no Doctor of Divinity; you are learned your ſelf, your Knowledge is great, I would your Loyalty and Truth had been as great. But becauſe we are to do with Law, we muſt follow the Order of Law; one muſt ſpeak for all, and ſo I, for all the reſt, ſhall proceed to Judgment.

Then my Lord Chief Juſtice pronounced the Judgment uſual in Treaſon, concluding it in theſe words; *God be merciful unto you, and give you Grace to make a good End.*

Then *Hickford* anſwer'd to this effect: I humbly thank your Lordſhip for your good Admonition; I know and confeſs, that I ought unto the Queen's Majeſty a much greater and higher Duty than to my Maſter. And as it is ſaid of your Lordſhips to have been wiſely ſpoken, ſo was it truly ſaid, that the Duty of all Subjects to the Prince, is a much greater Duty than a Man oweth to his Maſter, or to any other; yea, or to thoſe that bear him into the World. I confeſs I have neglected that Duty to my Prince, howbeit I did it by my Lord, my late Maſter's Procurement and Commandment, and for good Intent, as my Maſter bare me in hand and perſuaded me; whereof I pray your Lordſhips I may declare the Truth. When firſt my Lord made choice of me to wait on him in the *Tower*, as I would to God he had rather made choice of any other, within ſhort time he receiv'd a Letter from the *Scotiſh* Queen in Cipher. He made me privy to it, and will'd me to acquaint my ſelf with that Cipher, for the deciphering of the like hereafter. At that firſt time I ſaid little unto it: Within three Weeks after there came another Letter to him from the *Scotiſh* Queen, and then I began to miſlike the Matter. Then my Lord walking on the Leads, (having ſo much liberty granted him) Sir *Henry Nevil* and Mr. *Lieutenant* being preſent upon the Leads, and departing a little aſide, my Lord call'd me to him, and after other Matters, entered into Talk of the *Scotiſh* Queen. I ſaid unto him, I would aſk a Queſtion of you, if I might without offending you. He aſk'd me what? I ſaid I would ſhew him, ſo that he would not be offended, for otherwiſe I durſt not. After he had aſſur'd me he would not be offended, I ſaid unto him, My Lord, I marvel much at your Doings; you are here, as you know, committed upon high Diſpleaſure of the Queen's Majeſty, for dealing with the *Scotiſh* Queen without the Queen's Majeſty's Conſent. Now in proceeding further by Letters between you, the Contrivance of this Dealing muſt much aggravate her Highneſs's Diſpleaſure againſt you. He anſwer'd me, Tuſh Fool, thou art a Fool, thou underſtandeſt not the Matter. I anſwer'd, I preſum'd to ſay this unto you, upon your Aſſurance that you would not be offended, and that maketh me aſk, why you continue this Dealing with the *Scotiſh* Queen? He anſwer'd me again, Thou art a Fool, thou ſeeſt not my Caſe; I hold a Wolf by the Ears, I can neither let go without danger, nor hold without peril. Unhappy Man I was when I was firſt committed; for if I could then have come to the Speech of the Prince, I would have laid it all at her Feet, and I truſt I ſhould have found Grace to have obtain'd Favour: But now, on the one ſide, I am entered into my Prince's high Diſpleaſure; on the other ſide*, if I ſhould pull the *Scotiſh* Queen, and all her Friends upon me, and make them mine Enemies, then were I in worſe Caſe than ever I was. If I could once recover my Prince's Favour, then would I ſoon ſhake off all Dealing with the *Scotiſh* Queen. In the mean time, till her Majeſty's Favour may be recover'd, I am driven to this Hardneſs that you ſee. I anſwer'd him again, You are your ſelf much wiſer than I am; but, in my poor Opinion, the ſooner you rid yourſelf of this Dealing the better. Then becauſe I was perſuaded that he truſted to recover the Queen's Majeſty's Favour, I was in the mean time contented to decipher the Letters from time to time, as they paſs'd between them. Shortly after he had ſo much Favour and Liberty, that his men had recourſe unto him freely into the *Tower*; whereupon we conceived hope of his ſhort Delivery, but it fell contrary, and ſo continued till Midſummer. Then was he adviſed to make ſubmiſſion to the Queen's Majeſty, and promiſed, that if he would ſubmit himſelf, and renounce all Dealing with the *Scotiſh* Queen, there was hope that the Queen's Majeſty would receive him to Grace. Whereupon he wrote a Submiſſion, he ſent it, it was deliver'd, and, as we heard, it was very well liked of. Within a fortnight after, he had the liberty of the *Tower*, and comfortable Letters came. I looked and had hope that he ſhould have been deliver'd preſently; it came not ſo to paſs, the cauſe God knoweth.

* *Behold an evident Entry into a Reſolution to leave the Queen, and ſeek to the* Scot *and Friends.*

Here the Lord Chief Juſtice offer'd to interrupt and end this courſe of Speech as impertinent, when he yet proceeded further, and ſaid:

Hickford. I beſeech you, my Lord, let me uſe a few words, to declare the Courſe of my Doing. My Lord was not then deliver'd: Shortly after it happen'd, that by occaſion of a Sickneſs, and being ſick of the Plague in the *Tower*, my Lord was remov'd to his own Houſe at the *Charter-Houſe*; then we had great hope that we ſhould ſhortly be received into her Majeſty's Favour, and come to the Court again, and ſo continued till the Cipher came from the Biſhop of *Roſſe*, before which time and ſince I was never privy to that Matter. The Cauſe why I was never afterward made privy, was this; My Lord being at home at his Houſe at *Charter-Houſe*, I told him, I liked not his doing, it would not have good end.

Attorney. Why did you then ſtill follow? Why left you him not?

Hickford. He anſwer'd me, Thou art a Fool, thou underſtandeſt not.

Catlin. He told you Truth, that you were a Fool, for you play'd the fool indeed.

Hickford. I would then have gone from him, and I ſought to depart; he would never give me leave, as Mr. *Banniſter* well knoweth.

Catlin. Why? he was not your Prince, you were not ſo bound that he could compel you to tarry with him.

Hickford. Otherwiſe I dealt not with the Biſhop of *Roſſe*.

Catlin. In following him, the Hurt was yours; if you had been a good Subject, and had regard of your Duty, you might and ſhould have taken other Courſe; but you had higher Hope, to have ſeen your Maſter in higher State to advance you; you had more Reſpect to your Maſter than to your Miſtreſs.

But this is nothing to the matter.

So his purpos'd longer Speech was cut off, and then he ſaid ſhortly thus:

Hickford. I humbly thank your Lordſhip again for your good Admonition; and as your Lordſhip hath rehears'd the Hiſtory of the *French* Embaſſador to the Duke of *Milan*, ſo I would and pray God, that he that hath brought my Lord to this, may have the like Succeſs. I humbly ſubmit my ſelf to the Queen's Majeſty's Mercy. I know I have liv'd under a moſt gracious and merciful Queen. I wiſh God long to preſerve her Majeſty, and this little time that I have left I will ſpend in Prayer for her Preſervation; and I beſeech God have Mercy upon me.

Whereunto the Court, and all that were preſent, ſaid, *Amen*; and ſome ſaid ſecretly, he had then ſhew'd himſelf a wiſer Man than his Maſter.

And ſo the Lieutenant was commanded to avoid the Priſoner.

God ſave Queen Elizabeth.

IX. *The Trial of Dr.* WILLIAM PARRY * *at* Weſtminſter, *for* High-Treaſon, *the 25th of* February 1584. 26 Eliz.

The COMMISSIONERS were,

Henry *Ld.* Hunſdon, *Governor of* Berwick;
Sir Francis Knolles *Knight, Treaſurer of the Queen's Majeſty's Houſhold*;
Sir James Croft *Knight, Comptroller of the ſame Houſhold*;
Sir Chriſtopher Hatton *Knight, Vice-Chamberlain to her Majeſty*;
Sir Chriſtopher Wray *Knight, Chief Juſtice of* England;
Sir Gilbert Gerrard *Knight, Maſter of the* Rolls;
Sir Edmund Anderſon *Knight, Chief Juſtice of the* Common-Pleas;
Sir Roger Manwood *Knight, Chief Baron of the* Exchequer; *and*
Sir Thomas Hennage *Knight, Treaſurer of the Chamber.*

The Court being ſat,

FIRST, three Proclamations for Silence were made, according to the uſual Courſe in ſuch Caſes. Then the Lieutenant was commanded to return his Precept; which he did, and brought the Priſoner to the Bar: to whom *Miles Sandes* Eſq; Clerk of the Crown ſaid, *William Parry*, hold up thy Hand; and he did ſo. Then ſaid the Clerk of the Crown, Thou art here indicted by the Oaths of twelve good and lawful Men of the County of *Middleſex*, before Sir *Chriſtopher Wray*, Knight, and others, who took the Indictment by the Name of *William Parry*, late of *London*, Gentleman, otherwiſe called *William Parry*, late of *London* Doctor of the Law; for that thou, as a falſe Traitor againſt the moſt Noble and Chriſtian Princeſs Queen *Elizabeth*, thy moſt gracious Sovereign and Liege Lady, not having the fear of God before thine Eyes, nor regarding thy due Allegiance, but being ſeduc'd by the Inſtigation of the Devil, and intending to withdraw and extinguiſh the hearty Love and due Obedience which true and faithful Subjects ſhould bear unto the ſame our Sovereign Lady, didſt at *Weſtminſter*, in the County of *Middleſex*, on the firſt Day of *February*, in the 26th Year of her Highneſs's Reign, and at divers other Times and Places in the ſame County, maliciouſly and traitorouſly conſpire and compaſs, not only to deprive and depoſe the ſame our Sovereign Lady of her Royal Eſtate, Title and Dignity, but alſo to bring her Highneſs to Death and final Deſtruction, and Sedition in the Realm to make, and the Government thereof to ſubvert, and the ſincere Religion of God eſtabliſh'd in her Highneſs's Dominions to alter and ſubvert. And that whereas thou *William Parry*, by the Letters ſent unto *Gregory* Biſhop of *Rome*, didſt ſignify unto the ſame Biſhop thy Purpoſes and Intentions aforeſaid, and thereby didſt pray and require the ſame Biſhop to give thee Abſolution; that thou afterwards, that is to ſay, the laſt Day of *March*, in the 26th Year aforeſaid, didſt traitorouſly receive Letters from one called Cardinal *de Como*, directed unto thee *William Parry*, whereby the ſame Cardinal did ſignify unto thee, that the Biſhop of *Rome* had peruſed thy Letters, and allow'd of thine Intent; and that to that end he had abſolv'd thee of all thy Sins, and by the ſame Letter did animate and ſtir thee to proceed with thine Enterpriſe; and that thereupon thou, the laſt day of *Auguſt*, in the 26th year aforeſaid, at St. *Giles in the Fields*, in the ſame County of *Middleſex*, didſt traitorouſly confer with one *Edmund Nevill* Eſq; uttering to him all thy wicked and traitorous Devices, and then and there didſt move him to aſſiſt thee therein, and to join with thee in thoſe wicked Treaſons aforeſaid, againſt the Peace of our ſaid Sovereign Lady the Queen, her Crown and Dignity. What ſayſt thou, *William Parry*, Art thou guilty of theſe Treaſons whereof thou ſtandeſt here indicted, or Not guilty?

Then *Parry* ſaid, Before I plead not Guilty, or confeſs my ſelf Guilty, I pray you give me leave to ſpeak a few words; and with humbling himſelf, began in this manner: God ſave Queen *Elizabeth*, and God ſend me Grace to diſcharge my Duty to her, and to ſend you home in Charity. But touching the Matters that I am indicted of, ſome were in one Place, and ſome in another, and done ſo ſecretly as none can ſee into them, except that they had Eyes like unto God; wherefore I will not lay my Blood upon the Jury, but do mind to confeſs the Indictment. Containeth it but the Parts that have been openly read, I pray you tell me? Whereunto it was anſwer'd, that the Indictment contain'd the Parts he had heard read, and no other. Whereupon the Clerk of the Crown ſaid unto *Parry*; *Parry*, thou muſt anſwer directly to the Indictment, whether thou be Guilty or not.

Then ſaid *Parry*, I do confeſs that I am Guilty of all that is therein contain'd; and further too, I deſire not Life, but deſire to die. Unto which the Clerk of the Crown ſaid, If you confeſs it, you muſt confeſs it in manner and form as it is compriz'd in the Indictment. Whereunto he ſaid, I do confeſs it in manner and form as the ſame is ſet down, and all the Circumſtances thereof. Then the Confeſſion being recorded, the Queen's learned Counſel being ready to pray Judgment upon the ſame Confeſſion, Mr. Vice-Chamberlain ſaid, Theſe Matters contain'd in this Indictment, and confeſs'd by this Man, are of great Importance; they touch the Perſon of the Queen's moſt excellent Majeſty in the higheſt degree, the very State and Well-being of the whole Common-wealth, and the Truth of God's Word eſtabliſhed in theſe her Majeſty's Dominions, and the open Demonſtration of that capital Envy of the Man of *Rome*, that hath ſet himſelf againſt God and Godlineſs, all good Princes and good Government, and againſt good Men. Wherefore, I pray you, for the Satisfaction of this great Multitude, let the whole Matter appear, that every one may ſee that the Matter of itſelf is as bad as the Indictment purporteth, and as he hath confeſſed. Whereto in reſpect that the Juſtice of the Realm hath been of late very impudently ſlander'd, all yielded as a thing neceſſary to ſatisfy the World in particular, of that which was but ſummarily compriſed in the Indictment, tho' in the Law his Confeſſion ſerv'd ſufficiently to have proceeded thereupon unto Judgment. Whereupon the Lords and others the Commiſſioners, her Majeſty's learned Counſel, and *Parry* himſelf agreed, that *Parry*'s Confeſſion, (taken the 11th and 13th of *February* 1584, before the Lord of *Hunſdon*, Maſter Vice-Chamberlain, and Maſter Secretary) and Cardinal *de Como*'s Letters, and *Parry*'s Letters to the Lord Treaſurer and Lord Steward, ſhould be openly read.

And *Parry*, for the better ſatisfying of the People and Standers-by, offered to read them himſelf; but being told that the order was, the Clerk of the Crown ſhould read them, it was ſo reſolved of all parts. And then Maſter Vice-Chamberlain cauſed to be ſhewed to *Parry* his ſaid Confeſſion, the Cardinal's Letter, and his own Letter aforeſaid; which after he had particularly viewed every Leaf thereof, he confeſſed, and ſaid openly they were the ſame.

Then ſaid Maſter Vice-Chamberlain; Before we proceed to ſhew what he hath confeſſed, what ſay you, ſaid he to *Parry*, is that which you have confeſſed here true? and did you confeſs it freely and willingly of yourſelf, or was there any extort means uſed to draw it from you?

Surely, ſaid *Parry*, I made that Confeſſion freely without any Conſtraint, and that is all true, and more too; for there is no Treaſon that hath been ſince the firſt Year of the Queen, any way touching Religion, ſaving receipt of *Agnus Dei*'s, and perſuading of others, wherein I have not much dealt, but I have offended in it. And I have alſo deliver'd mine Opinion in Writing, who ought to be Succeſſor to the Crown, which is ſaid to be Treaſon alſo.

Then his Confeſſion of the eleventh and thirteenth of *February*, all of his own Hand-writing, and hereafter particularly ſet down, was openly and diſtinctly read by the Clerk of the Crown.

The voluntary Confeſſion of William Parry, *Doctor of the Laws (now Priſoner in the* Tower), *and accuſed of Treaſon by* Edmund Nevil *Eſq*; *promiſed by him (with all Faith and Humility) to the Queen's Majeſty, in Diſcharge of his Conſcience, and Duty towards God and her: Before the Lord* Hunſdon, *Lord Governor of* Berwick; *Sir* Chriſtopher Hatton *Knight, Vice-Chamberlain*; *Sir* Francis Walſingham *Knight, principal Secretary*; *the 13th of* February 1584.

IN the Year 1570, I was ſworn her Majeſty's Servant, from which time until the Year 1580, I ſerved, honoured, and loved her with as great Readineſs, Devotion and Aſſurance, as any poor Subject in *England*. In the end of that Year, and until Midſummer 1582, I had ſome Trouble for the hurting of a Gentleman of the *Temple*. In which Action I was ſo diſgraced and oppreſſed by two great Men (to whom I have of late been beholden) that I never had contented Thought ſince. There began my Misfortune, and here followeth my woful Fall.

In *July* after, I laboured for Licence to travel for three Years, which (upon ſome Conſideration) was eaſily obtain'd. And ſo in *Auguſt*, I went over with doubtful mind of return; for that being ſuſpected in Religion, and not having received the Communion in twenty-two Years, I began to miſtruſt my advancement in *England*. In *September* I came to *Paris*, where I was reconciled to the Church, and adviſed to live without Scandal; the rather, for that it was miſtruſted by the *Engliſh* Catholicks, that I had Intelligence with the greateſt Counſellor of *England*. I ſtaid not long there, but removed to *Lyons* (a place of great Traffick) where, becauſe it was the ordinary Paſſage of our Nation to and fro, between *Paris* and *Rome*, I was alſo ſuſpected.

To put all Men out of doubt of me, and for ſome other cauſe, I went to *Milan*, from whence, as a place of ſome danger (tho' I found favour there) after I had clear'd my Conſcience, and juſtified my ſelf in Religion before the Inquiſitor, I went to *Venice*. There I came acquainted with Father *Benedicto Palmio*, a grave and learned Jeſuit. By Conference with him of the hard ſtate of the Catholicks in *England*, and by reading of the Book *De Perſecutione Anglicana*, and other Diſcourſes of like Argument;

1. I conceived a poſſible mean to relieve the afflicted ſtate of our Catholicks, if the ſame might be well warranted in Religion and Conſcience by the Pope, or ſome learned Divines. I aſked his Opinion; he made it clear, commended my Devotion, comforted me in it, and after a while made me known to the Nuncio *Campeggio*, Reſident there for his Holineſs. By his means I wrote to the Pope, preſented my Service, and ſued for a Paſſport to go to *Rome*, and to return ſafely into *France*. Anſwer came from Cardinal *Como*, that I might come, and ſhould be welcome. I miſliked the Warrant, ſued for a better, which I was promiſed: but it came not before my departure to *Lyons*, where I promiſed to ſtay ſome time for it. And being indeed deſirous to go to *Rome*, and loth to go without Countenance; I deſired *Chriſtophero de Salazar*, Secretary to the Catholick King in *Venice*, who had ſome underſtanding by Confe-

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* *This* William Parry *was but of Low Fortune, and very extravagant, and having committed a great Outrage againſt Mr.* Hugh Hare *of the* Inner-Temple, *with an intent to have murdered him in his Chambers, he was tried for the ſame and convicted; which prompted him to go beyond Sea, where becoming acquainted with Jeſuits, they engaged him in a deſign to kill the Queen.*

rence of my Devotion to the afflicted Catholicks at home and abroad, to commend me to the Duke *di Nova Terra*, Governor of *Milan*, and to the Count of *Olivaris Embi*, then Reſident for the King his Maſter in *Rome*: which he promiſed to do effectually for the one, and did for the other. And ſo I took my Journey towards *Lyons*, whither came for me an ample Paſſport (but ſomewhat too late) that I might come and go, *in verbo Pontificis per omnes Juriſdictiones Eccleſiaſticas, abſque impedimento.* I acquainted ſome good Fathers there, of my neceſſity to depart towards *Paris* by Promiſe, and prayed their advices upon divers Points; wherein I was well ſatisfied. And ſo aſſuring them that his Holineſs ſhould hear from me ſhortly, it was undertaken that I ſhould be excuſed for that time.

In *October* I came to *Paris*, where (upon better Opinion conceived of me amongſt my Catholick Countrymen) I found my Credit well ſettled, and ſuch as miſtruſted me before, ready to truſt and imbrace me. And being one day at the Chamber of *Thomas Morgan* a Catholick Gentleman (greatly beloved and truſted on that ſide) amongſt other Gentlemen, talking (but in very good ſort) of *England*, I was deſired by *Morgan* to go up with him to another Chamber; where he brake with me, and told me that it was hoped and looked for, that I ſhould do ſome Service for God and his Church. I anſwered him, I would do it, if it were to kill the greateſt Subject in *England*; whom I named, and in truth then hated. No, no, ſaid he, let him live to his greater Fall and Ruin of his Houſe.

2. It is the Queen I mean. I had him as I wiſhed, and told him it were ſoon done, if it might be lawfully done, and warranted in the Opinion of ſome learned Divines. And ſo the Doubt once reſolved, (tho' as you have heard I was before reaſonably well ſatisfied) I vowed to undertake the Enterprize, for the Reſtitution of *England* to the antient Obedience of the See Apoſtolick. Divers Divines were named: Dr. *Allein* I deſired, *Parſons* I refuſed; and by chance came Maſter *Wattes* a learned Prieſt, with whom I conferred, and was over-ruled.

3. For he plainly pronounced (the Caſe only altered in name) that it was utterly unlawful; with whom many *Engliſh* Prieſts did agree, as I have heard, if it be not altered ſince the Book made in anſwer to the Execution of the *Engliſh* Juſtice was publiſhed, which I muſt confeſs hath taken hard hold in me, and (I fear me) will do in others, if it be not prevented by more gracious handling of the quiet and obedient Catholick Subjects, whereof there is good and greater ſtore in *England*, than this Age will extinguiſh. Well, notwithſtanding all theſe doubts, I was gone ſo far by Letters and Conference in *Italy*, that I could not go back, but promiſed faithfully to perform the Enterprize, if his Holineſs upon my Offer and Letters would allow it, and grant me full Remiſſion of my Sins.

4. I wrote my Letters the firſt of *January* 1584, by their Computation; took Advice upon them in Confeſſion of Father *Anibal à Codreto*, a learned Jeſuit in *Paris*; was lovingly embraced, commended, confeſſed, and communicated at the Jeſuit's at one Altar with the Cardinals of *Vandoſmi* and *Narbone*, whereof I prayed Certificate, and encloſed the ſame in my Letter to his Holineſs, to lead him the rather to abſolve me; which I required by my Letters, in Conſideration of ſo great an Enterprize undertaken without Promiſe or Reward.

5. I went with *Morgan* to the Nuncio *Ragazzoni*, to whom I read the Letter and Certificate encloſed, ſealed it, and left it with him to ſend to *Rome*; he promiſed great Care of it, and to procure Anſwer: And ſo lovingly imbraced me, wiſhed me good ſpeed, and promiſed that I ſhould be remembred at the Altar.

6. After this I deſired *Morgan*, that ſome ſpecial Man might be made privy to this matter, leſt he dying, and I miſcarrying in the Execution, and my Intent never truly diſcovered, it might ſtick for an everlaſting ſpot in my Race. Divers were named, but none agreed upon, for fear of betraying.

7. This being done, *Morgan* aſſured me, that ſhortly after my departure, the Lord *Fernehurſt* (then in *Paris*) ſhould go into *Scotland*, and be ready upon the firſt News of the Queen's Fall to enter into *England* with 20 or 30000 Men to defend the Queen of *Scotland* (whom, and the King her Son, I do in my Conſcience acquit of any privity, liking, or conſent to this, or any other bad Action, for any thing that I ever did know). I ſhortly departed for *England*, and arrived at *Rye* in *January*, 1583, from whence I wrote to the Court, advertiſed ſome, that I had a ſpecial Service to diſcover to the Queen's Majeſty.

8. Which I did more to prepare Acceſs and Credit, than for any Care I had of her Perſon, tho' I were fully reſolved never to touch her (notwithſtanding any Warrant) if by any Device, Perſuaſion, or Policy ſhe might be wrought to deal more graciouſly with the Catholicks than ſhe doth, or by our manner of proceeding in Parliament meaneth to do, or any thing yet ſeen. I came to the Court (then at *Whitehall*) prayed Audience, had it at large, and very privately diſcover'd to her Majeſty this Conſpiracy, much to this effect, tho' covered with all the Skill I had. She took it doubtfully, I departed with Fear. And amongſt other things, I cannot forget her Majeſty's gracious Speech then uttered touching the Catholicks, which of late, after a ſort I avowed in Parliament: She ſaid to me, that never a Catholick ſhould be troubled for Religion or Supremacy, ſo long as they lived like good Subjects. Whereby I miſtruſted that her Majeſty is borne in hand, that none is troubled for the one or the other. It may be truly ſaid, that it is better than it hath been, tho' it be not yet as it ſhould be.

In *March* laſt, while I was at *Greenwich* (as I remember) ſuing for St. *Katharine's*, came Letters to me from Cardinal *Como*, dated at *Rome*, the laſt of *January* before; whereby I found the Enterprize commended and allowed, and myſelf abſolved (in his Holineſs's name) of all my Sins, and willed to go forward in the name of God. That Letter I ſhewed to ſome in Court, who imparted it to the Queen; what it wrought, or may work in her Majeſty, God knoweth; only this I know,

9. That it confirmed my Reſolution to kill her, and made it clear in my Conſcience, that it was Lawful and Meritorious. And yet was I determined never to do it, if either Policy, Practice, Perſuaſion, or Motion in Parliament could prevail. I feared to be tempted, and therefore always when I came near her, I left my Dagger at home.

10. When I looked upon her Majeſty, and remembered her many Excellencies, I was greatly troubled: and yet I ſaw no Remedy, for my Vows were in Heaven, my Letters and Promiſes in Earth; and the Caſe of the Catholick Recuſants, and others little bettered. Sometimes I ſaid to my ſelf, Why ſhould I care for her? What hath ſhe done for me? Have I not ſpent 10000 Marks ſince I knew her Service, and never had Penny by her? It may be ſaid, ſhe gave me my Life. But I ſay (as my Caſe ſtood) it had been Tyranny to take it: and I fear me it is little leſs yet. If it pleaſe her graciouſly to look into my Diſcontentments, I would to Jeſus Chriſt ſhe had it, for I am weary of it. And now to come to an end of this Tragical Diſcourſe: In *July* I left the Court, utterly dejected, diſcontented, and as her Majeſty might perceive by my paſſionate Letters, careleſs of my ſelf. I came to *London*; Dr. *Allein's* Book was ſent me out of *France*.

11. It redoubled my former Conceits; every word in it was a Warrant to a prepared Mind: It taught that Kings may be excommunicated, deprived, and violently handled: It proveth that all Wars Civil or Foreign undertaken for Religion, are honourable. Her Majeſty may do well to read it, and to be out of doubt (if things be not amended) that it is a Warning, and a Doctrine full dangerous. This is the Book I ſhewed, in ſome Places read, and lent it to my Couſin *Nevil* (the Accuſer) who came often to mine Houſe, put his Finger in my Diſh, his Hand in my Purſe; and the Night wherein he accuſed me, was wrapped in my Gown, ſix Months at leaſt after we had entered into this Conſpiracy: In which ſpace her Majeſty, and ten Princes in ſeveral Provinces, might have been killed. God bleſs her Majeſty from him; for before Almighty God, I joy and am glad in my Soul, that it was his hap to diſcover me in time, tho' there were no danger near.

And now to the Manner of our Meetings. He came to me in the beginning of *Auguſt*, and ſpake to me in this or like ſort. Couſin, let us do ſomewhat, ſithens we can have nothing. I offer'd to join with him, and gladly heard him, hoping becauſe I knew him to be a Catholick, that he would hit upon that I had in my Head; but it fell not out ſo. He thought the delivery of the Queen of *Scotland* eaſy, preſuming upon his Credit and Kindred in the North: I thought it dangerous to her, and impoſſible to Men of our Fortunes: He fell from that to the taking of *Berwick*. I ſpake of *Quinborough* and the Navy, rather to entertain him with Diſcourſe, than that I cared for thoſe Motions, my Head being full of a greater matter.

12. I told him that I had another manner of Enterprize, more honourable and profitable to us, and the Catholicks Commonwealth, than all theſe, if he would join in it with me, as he preſently vowed to do: He preſſed to know it; I willed him to ſleep upon the Motion: He did ſo, and (belike overtaken) came to me the next Morning to my Lodging in *London*, offered to join with me, and took his Oath upon a Bible, to conceal and conſtantly to purſue the Enterprize for the advancement of Religion; which I alſo did, and meant to perform: the killing of the Queen was the Matter.

The Manner and Place, to be on horſeback, with eight or ten Horſes, when ſhe ſhould ride abroad about *St. James's*, or ſome other like place. It was once thought fit in a Garden, and that the eſcape would be eaſieſt by Water into *Sheppey*, or ſome other part; but we reſolved upon the firſt.

This continued as agreed upon many Months, until he heard of the Death of *Weſtmoreland*, whoſe Land and Dignity (whereof he aſſured himſelf) bred belike this Conſcience in him to diſcover a Treaſon in *February* contrived and agreed upon in *Auguſt*. If it coſt him not an ambitious Head at laſt, let him never truſt me. He brought a tall Gentleman (whom he commended for an excellent Piſtolier) to me to *Chanon-Row*, to make one in the Match: but I refuſed to deal with him, being loth to lay my Head upon ſo many Hands.

Maſter *Nevil* hath (I think) forgotten, that he did ſwear to me at divers times, that all the advancement ſhe could give, ſhould ſerve but for her Scourge, if ever time and occaſion ſhould ſerve; and that tho' he would not lay hand upon her in a Corner, his Heart ſerv'd him to ſtrike off her Head in the Field. Now leaving him to himſelf, this much (to make an end) I muſt confeſs of my ſelf, I did mean to try what might be done in Parliament, to do my beſt to hinder all hard Courſes, to have prayed hearing of the Queen's Majeſty to move her (if I could) to take Compaſſion upon her Catholick Subjects; and when all had failed, to do as I intended. If her Majeſty by this Courſe would have eaſed them, tho' ſhe had never preferred me, I had with all Comfort and Patience borne it.

13. But if ſhe had preferred me without Eaſe or Care of them, the Enterprize had held.

Parry.

God preſerve the Queen, and incline her merciful Heart to forgive me this deſperate Purpoſe; and to take my Head (with all my Heart) for her better Satisfaction.

After which, for the better manifeſting of his Treaſons, on the 14th of *February* laſt, there was a Letter written by him to her Majeſty, very voluntarily, all of his own Hand, without any Motion made to him: the Tenour whereof, for that which concerneth theſe his traitorous Dealings, is as followeth.

A Letter written by Parry *to her Majeſty.*

‘YOUR Majeſty may ſee by my voluntary Confeſſion, the dangerous Fruits of a diſcontented Mind; and how conſtantly I purſued my firſt conceived Purpoſe in *Venice*, for the relief of the afflicted Catholicks; continued it in *Lions*, and reſolved in *Paris* to put it in adventure for the Reſtitution of *England* to the antient Obedience of the See Apoſtolick. You may ſee withal, how it is commended, allowed, and warranted in Conſcience, Divinity, and Policy, by the Pope and ſome great Divines: Tho' it be true or likely, that moſt of our *Engliſh* Divines (leſs practiſed in matters of this weight) do utterly miſlike and condemn it.

‘The Enterprize is prevented, and Conſpiracy diſcovered by an honourable Gentleman, my Kinſman and late familiar Friend, Maſter *Edmund Nevil*, privy and by ſolemn Oath (taken upon the Bible) Party to the matter, whereof I am heartily glad, but now ſorry (in my very Soul) that ever I conceived or intended it, how commendable or meritorious ſoever I thought it.

‘ God thank him, and forgive me, who would not now (before God) attempt it (if I had liberty and opportunity to do it) to gain your Kingdom. I beſeech Chriſt, that my Death and Example may as well ſatisfy your Majeſty and the World, as it ſhall glad and content me.

‘ The Queen of *Scotland* is your Priſoner; let her be honourably entreated, but yet ſurely guarded.

‘ The *French* King is *French*, you know it well enough, you will find him occupied when he ſhould do you good; he will not loſe a Pilgrimage to ſave you a Crown. I have no more to ſay at this time, but that with my Heart and Soul I do now honour and love you; am inwardly ſorry for mine Offence, and ready to make you amends by my Death and Patience. Diſcharge me *à culpâ*, but not *à pœnâ*, good Lady. And ſo farewell, moſt gracious, and the beſt-natured and qualified Queen that ever lived in *England*. From the *Tower*, the 14th of *February*, 1584.

W. Parry.

This done, the Cardinal *di Como* his Letter in *Italian* was delivered unto *Parry*'s hand, by the direction of Mr. Vice-Chamberlain; which *Parry* there peruſed, and openly affirmed to be wholly of the Cardinal's own Hand-writing, and the Seal to be his own alſo, and to be with a Cardinal's Hat on it: And himſelf did openly read it in *Italian*.

A mon Signore, mon Signore *Guglielmo Parry.*

MON Signore, la Santita di N. S. ha veduto le Lettere di V. S. del primo con la fede incluſa, & non puo ſe non laudare la buona diſpoſitione & riſolutione che ſcrive di tenere verſo il ſervitio & beneficio publico, nel che la Santita ſua leſſorta di perſeverare, con farne riuſcire li effetti che V. S. promette: Et accioche tanto maggiormente V. S. ſia ajutata da quel buon Spirito che l'ha moſſo, le concede ſua Beneditione, plenaria Indulgenza & Remiſſione di tutti li peccati, ſecondo che V. S. ha chieſto, aſſicurandos ſi che oltre il merito, che n'havera in cielo, vuole anco ſua Santita conſtituirſi debitore a riconoſcere li meriti di V. S. in ogni miglior modo che potra, & cio tanto piu, quanto che V. S. uſa maggior modeſtia in non pretender niente. Metta dunque ad effetto li ſuoi ſanti & honorati penſieri, & attenda aſtar ſano. Che per fine io me le offero di core, & le deſidero ogni buono & felice ſucceſſo. Di Roma *a* 30 *di* Gennaro, M.D.LXXXIV.

Al piacer di V. S.
N. Cardinale di Como.
Al. Sig. Guglielmo Parry.

The Words bearing Senſe as it were written to a Biſhop, or to a man of ſuch a degree, it was demanded of him by Mr. Vice-Chamberlain, Whether he had not taken the Degree of a Biſhop? He ſaid, No: But ſaid at firſt, thoſe Terms were proper to the Degree he had taken. And after ſaid, That the Cardinal did vouchſafe, as of a favour, to write ſo to him. Then the Copy of that Letter in *Engliſh* was in like manner openly read by the Clerk of the Crown; which *Parry* then acknowledged to be truly tranſlated.

Cardinal de Como*'s Letter to* Will. Parry, *January* 30, 1584. *by account of* Rome.

‘ MOnſignor, the Holineſs of our Lord hath ſeen the Letter of your Signory of the firſt, with the Aſſurance included, and cannot but commend the good Diſpoſition and Reſolution, which you write to hold towards the Service and Benefit publick: Wherein his Holineſs doth exhort you to perſevere, with cauſing to bring forth the effects which your Signory promiſeth. And to the end you may be ſo much the more holpen by that good Spirit which hath moved you thereunto, his Bleſſedneſs do grant to you plenary Indulgence and Remiſſion of all your Sins, according to your requeſt; aſſuring you, that beſides the Merit that you ſhall receive therefore in Heaven, his Holineſs will further make himſelf Debtor, to re-acknowledge the Deſervings of your Signory in the beſt manner that he can: And that ſo much the more, in that your Signory uſeth the greater Modeſty, in not pretending any thing. Put therefore to effect your holy and honourable Thoughts, and attend your Health. And to conclude, I offer my ſelf unto you heartily, and do deſire all good and happy Succeſs.

From Rome *the*
30*th of* January, 1584.

At the pleaſure of your Signory,
N. Card. of *Como.*

And thereupon was ſhewed unto *Parry* his Letter of the 18th of *February*, written to the Lord Treaſurer, and the Lord Steward: which he confeſſed to be all of his own Hand-writing, and which was read accordingly.

William Parry*'s Letter to the Lord Treaſurer, and the Earl of* Leiceſter.

‘ MY Lords, now that the Conſpiracy is diſcovered, the Fault confeſſed, my Conſcience cleared, and Mind prepared patiently to ſuffer the Pains due for ſo heinous a Crime; I hope it ſhall not offend you, if crying *Miſerere* with the poor Publican, I leave to deſpair with curſed *Cain*. My Caſe is rare and ſtrange, and, for any thing I can remember, ſingular: A natural Subject ſolemnly to vow the Death of his natural Queen (ſo born, ſo known, and ſo taken by all Men) for the Relief of the afflicted Catholicks, and Reſtitution of Religion. The Matter firſt conceived in *Venice*, the Service (in general words) preſented to the Pope, continued and undertaken in *Paris*; and laſtly, commended and warranted by his Holineſs, digeſted and reſolved in *England*, if it had not been prevented by Accuſation, or by her Majeſty's greater Lenity, and more gracious Uſage of her Catholick Subjects. This is my firſt and laſt offence conceived againſt my Prince or Country, and doth (I cannot deny) contain all other Faults whatſoever. It is now to be puniſhed by Death, or moſt graciouſly (beyond all common Expectation) to be pardoned. Death I do confeſs to have deſerved; Life I do (with all Humility) crave, if it may ſtand with the Queen's Honour, and Policy of the Time. To leave ſo great a Treaſon unpuniſhed, were ſtrange: To draw it by my Death in example, were dangerous. A ſworn Servant to take upon him ſuch an Enterprize, upon ſuch a Ground, and by ſuch a Warrant, hath not been ſeen in *England*: To indict him, arraign him, bring him to the Scaffold, and to publiſh his Offence, can do no good: To hope that he hath more to diſcover than is confeſſed, or that at his Execution he will unſay any thing he hath written, is in vain: To conclude, that it is impoſſible for him in time to make ſome part of amends, were very hard, and againſt former Experiences. The Queſtion then is, Whether it is better to kill him, or (leſt the matter be miſtaken) upon hope of his Amendment to pardon him. For mine own Opinion (though partial) I will deliver you my Conſcience. The Caſe is good Queen *Elizabeth*'s, the Offence is committed againſt her Sacred Perſon, and ſhe may (of her Mercy) pardon it without prejudice to any. Then this I ſay, in few words, as a Man more deſirous to diſcharge his troubled Conſcience, than to live. Pardon poor *Parry*, and relieve him; for Life without living is not fit for him. If this may not be, or be thought dangerous, or diſhonourable to the Queen's Majeſty (as by your favours, I think it full of Honour and Mercy) then I beſeech your Lordſhips (and no other) once to hear me before I be indicted, and afterwards (if I muſt die) humbly to intreat the Queen's Majeſty to haſten my Trial and Execution, which I pray God (with all my heart) may prove as honourable to her, as I hope it ſhall be happy to me; who will while I live (as I have done always) pray to Jeſus Chriſt for her Majeſty's long and proſperous Reign. From the *Tower*, the 18th of *February*, 1584.

W. Parry.

Theſe Matters being read openly, for manifeſtation of the matter, *Parry* prayed leave to ſpeak: Whereto Mr. Vice-Chamberlain ſaid, If you will ſay any thing for the better opening to the World of thoſe your foul and horrible Facts, ſpeak on; but if you mean to make any excuſe of that which you have confeſſed, which elſe would have been and do ſtand proved againſt you, for my part, I will not ſit to hear you.

Then her Majeſty's Attorney-General *Popham* ſtood up and ſaid, It appeareth before you, my Lords, that this Man hath been indicted and arraigned of ſeveral moſt heinous and horrible Treaſons, and hath confeſſed them, which is before you of Record; wherefore there reſteth no more to be done, but for the Court to give Judgment accordingly, which here I require in the behalf of the Queen's Majeſty.

Then ſaid *Parry*, I pray you hear me for diſcharging of my Conſcience. I will not go about to excuſe my ſelf, nor to ſeek to ſave my Life, I care not for it; you have my Confeſſion of Record, that is enough for my Life: And I mean to utter more, for which I were worthy to die. And ſaid, I pray you hear me, in that I am to ſpeak to diſcharge my Conſcience.

Then ſaid Mr. Vice-Chamberlain, *Parry*, then do thy Duty according to Conſcience, and utter all that thou canſt ſay concerning thoſe thy moſt wicked Facts.

Then ſaid *Parry*, My Cauſe is rare, ſingular, and unnatural, conceived at *Venice*, preſented in general words to the Pope, undertaken at *Paris*, commended and allowed of by his Holineſs, and was to have been executed in *England*, if it had not been prevented. Yea, I have committed many Treaſons, for I have committed Treaſon in being reconcil'd, and Treaſon in taking Abſolution.

There hath been no Treaſon ſithens the firſt year of the Queen's Reign touching Religion, but that I am guilty of, (except for receiving of *Agnus Dei*'s, and perſuading, as I have ſaid, and yet never intending, to kill Queen *Elizabeth*) I appeal to her own knowledge, and to my Lord Treaſurer's, and Maſter Secretary's.

Then ſaid my Lord *Hunſdon*, Haſt thou acknowledg'd it ſo often, and ſo plainly in Writing under thy Hand, and here of Record; and now, when thou ſhouldeſt have thy Judgment according to that which thou haſt confeſſed thy ſelf guilty of, doſt thou go back again, and deny the Effect of all? How can we believe that thou now ſaiſt?

Then ſaid Maſter Vice-Chamberlain, This is abſurd; thou haſt not only confeſs'd generally, that thou wert Guilty, according to the Indictment, which ſummarily, and yet in expreſs words, doth contain, that thou hadſt traitorouſly compaſſed and intended the Death and Deſtruction of her Majeſty; but thou alſo ſaidſt particularly, that thou wert guilty of every of the Treaſons contained therein, whereof the ſame was one, in plain and expreſs Letter ſet down, and read unto thee. Yea, thou ſaidſt that thou wert guilty of more Treaſons too beſides theſe. And didſt thou not, upon thy Examination, voluntarily confeſs, how thou waſt mov'd firſt thereunto by Miſlike of thy State after thy Departure out of the Realm, and that thou didſt miſlike her Majeſty, for that ſhe had done nothing for thee; how by wicked Papiſts and Popiſh Books thou wert perſuaded that it was lawful to kill her Majeſty; how thou wert by Reconciliation become one of that wicked ſort, that held her Majeſty for neither lawful Queen nor Chriſtian, and that it was meritorious to kill her? And didſt thou not ſignify that thy Purpoſe to the Pope by Letters, and receivedſt Letters from the Cardinal, how he allow'd of thine Intent, and excited thee to perform it, and thereupon didſt receive Abſolution? And didſt thou not conceive it, promiſe it, vow it, ſwear it, and receive the Sacrament that thou wouldſt do it? And didſt not thou thereupon affirm, that thy Vows were in Heaven, and thy Letters and Promiſes on Earth to bind thee to do it? And that whatſoever her Majeſty would have done for thee, could not have removed thee from that Intention or Purpoſe, unleſs ſhe would have deſiſted from dealing, as ſhe hath done, with the Catholicks, as thou calleſt them? All this thou haſt plainly confeſs'd; and I proteſt before this Great Aſſembly, thou haſt confeſs'd it more plainly and in better ſort than my Memory will ſerve me to utter: and ſaiſt thou now, that thou never meant'ſt it?

Ah, ſaid *Parry*, your Honours know how my Confeſſion, upon mine Examination, was extorted.

Then both the Lord *Hunſdon* and Maſter Vice-Chamberlain affirm'd that there was no Torture or threatning Words offer'd him.

But *Parry* then ſaid, that they told him, that if he would not confeſs willingly, he ſhould have Torture: Whereunto their Honours anſwered, That they uſed not any Speech or Word of Torture to him.

You ſaid, ſaid *Parry*, that you would proceed with Rigour againſt me, if I would not confeſs it of my ſelf.

But their Honours expreſly affirm'd, that they uſed no ſuch words. But I will tell thee, ſaid Maſter Vice-Chamberlain, what we ſaid. I ſpake theſe words: If you will willingly utter the Truth of your ſelf, it may do you good, I wiſh you to do ſo; if you will not, we muſt then proceed in ordinary Courſe to take your Examination. Whereunto you anſwer'd, that you would tell the Truth of your ſelf. Was not this true? Which then he yielded unto.

And hereunto her Majeſty's * Attorney-General put *Parry* in remembrance what Speeches he uſed to the Lieutenant of the *Tower*, the Queen's Majeſty's Serjeant at Law, Maſter *Gawdie*, and the ſame Attorney, on Saturday the 20th of *February* laſt, at the *Tower*, upon what he was by them then examined by Order from the Lords; which was, that he acknowledged he was moſt mildly and favourably dealt with in all his Examinations: which he alſo at the Bar then acknowledged to be true.

* Sir *John Popham.*

Then Mr. Vice-Chamberlain ſaid, That it was a wonder to ſee the Magnanimity of her Majeſty, which, after that thou hadſt opened thoſe traitorous Practices in ſort as thou haſt laid it down in thy Confeſſion, was nevertheleſs ſuch, and ſo far from all fear, as that ſhe would not ſo much as acquaint any one of her Highneſs's Privy-Council with it to his knowledge, no not until after this thine Enterprize diſcovered and made manifeſt. And beſides that which thou haſt ſet down under thine own hand, thou didſt confeſs, that thou hadſt prepared two *Scotiſh* Daggers, fit for ſuch a purpoſe; and thoſe being diſpoſed away by thee, thou didſt ſay, that another would ſerve thy turn. And withal, *Parry*, didſt thou not alſo confeſs before us, how wonderfully thou wert appalled and perplexed upon a ſudden, at the Preſence of her Majeſty at *Hampton-Court* this laſt Summer, ſaying, that thou didſt think, thou then ſaweſt in her the very Likeneſs and Image of King *Henry* VIII? And that therewith, and upon ſome Speeches uſed by her Majeſty, thou didſt turn about and weep bitterly to thy ſelf? And yet didſt ſtill call to mind that thy Vows were in Heaven, thy Letters and Promiſes on Earth; and that therefore thou didſt ſay with thy ſelf, that there was no remedy but to do it? Didſt thou not confeſs this? The which he acknowledged.

Then ſaid the Lord *Hunſdon*, Sayeſt thou now, that thou didſt never mean to kill the Queen? Didſt thou not confeſs, that when thou didſt utter this practice of Treachery to her Majeſty, that thou didſt cover it with all the Skill thou hadſt, and that it was done by thee, rather to get Credit and Acceſs thereby, than for any regard thou hadſt of her Perſon? But in Truth thou didſt it, that thereby thou mighteſt have better Opportunity to perform thy wicked Enterprize. And wouldſt thou have run into ſuch fear as thou didſt confeſs that thou wert in, when thou didſt utter it, if thou hadſt never meant it? What reaſon canſt thou ſhew for thy ſelf?

With that he cried out in a furious manner, I never meant to kill her: I will lay my Blood upon Queen *Elizabeth* and you, before God and the World. And thereupon fell into a Rage and evil Words with the Queen's Majeſty's Attorney-General.

Then ſaid the Lord *Hunſdon*, This is but thy Popiſh Pride and Oſtentation, which thou wouldſt have to be told to thy Fellows of that Faction, to make them believe that thou dieſt for Popery, when thou dieſt for moſt horrible and dangerous Treaſons againſt her Majeſty, and thy whole Country. For thy laying of thy Blood, it muſt lie on thine own head, as a juſt Reward of thy Wickedneſs. The Laws of the Realm moſt juſtly condemn thee to die, out of thine own Mouth, for the conſpiring the Deſtruction both of her Majeſty, and of us all: Therefore thy Blood be upon thee; neither her Majeſty nor we at any time ſought it, thy ſelf haſt ſpilt it.

Then he was aſked, What he could ſay, why Judgment of Death ought not to be awarded againſt him?

Whereunto he ſaid, he did ſee that he muſt die, becauſe he was not ſettled.

What meaneſt thou by that? ſaid Mr. Vice-Chamberlain. Said he, Look into your Study, and into your new Books, and you ſhall find what I mean.

I proteſt (ſaid his Honour) I know not what thou meaneſt: thou doſt not well to uſe ſuch dark Speeches, unleſs thou wouldſt plainly utter what thou meaneſt thereby. But he ſaid, he cared not for Death, and that he would lay his Blood amongſt them.

Then ſpake the Lord Chief Juſtice of *England*, being required to give the Judgment, and ſaid, *Parry*, you have been much heard, and what you mean by being ſettled, I know not; but I ſee you are ſo ſettled in Popery, that you cannot ſettle yourſelf to be a good Subject. But touching that you ſhould ſay, to ſtay Judgment from being given againſt you, your Speeches muſt be of one of theſe kinds, either to prove the Indictment (which you have confeſs'd to be true) to be inſufficient in Law; or elſe to plead ſomewhat touching her Majeſty's Mercy, why Juſtice ſhould not be done of you. All other Speeches, wherein you have uſed great liberty, is more than by Law you can aſk. Theſe be the Matters you muſt look to, what ſay you to them? Whereto he ſaid nothing.

Then ſaid the Lord Chief Juſtice: *Parry*, thou haſt been before this time indicted of divers moſt horrible and hateful Treaſons, committed againſt thy moſt gracious Sovereign and native Country: The Matter moſt deteſtable, the Manner moſt ſubtle and dangerous, and the Occaſions and Means that led thee thereunto moſt ungodly and villainous. That thou didſt intend it, it is moſt evident by thy ſelf. The Matter was the Deſtruction of a moſt ſacred and an anointed Queen, thy Sovereign and Miſtreſs, who hath ſhew'd thee ſuch Favour, as ſome thy Betters have not obtained; yea, the Overthrow of thy Country wherein thou wert born, and of a moſt happy Commonwealth whereof thou art a Member, and of ſuch a Queen, as hath beſtow'd on thee the Benefit of all Benefits in this World, that is, thy Life, heretofore granted thee by her Mercy, when thou hadſt loſt it by Juſtice and Deſert. Yet thou her Servant, ſworn to defend her, meant'ſt with thy bloody hand to have taken away her Life, that mercifully gave thee thine when it was yielded into her hands: This is the Matter wherein thou haſt offended. The Manner was moſt ſubtle and dangerous, beyond all that before thee have committed any Wickedneſs againſt her Majeſty: For thou making ſhew as if thou would'ſt ſimply have uttered for her Safety the Evil that others had contrived, didſt but ſeek thereby Credit and Acceſs, that thou mighteſt take the apter Opportunity for her Deſtruction. And for the Occaſions and Means that drew thee on, they were moſt ungodly and villainous, as the Perſuaſions of the Pope, of Papiſts, and Popiſh Books. The Pope pretendeth that he is a Paſtor, when as in truth he is far from feeding of the Flock of Chriſt, but rather as a Wolf, ſeeketh but to feed on, and to ſuck out the Blood of true Chriſtians, and as it were thirſteth after the Blood of our moſt gracious and Chriſtian Queen. And theſe Papiſts and Popiſh Books, while they pretend to ſet forth Divinity, they do indeed moſt ungodly teach and perſuade that which is quite contrary both to God and his Word: for the Word teaches Obedience of Subjects towards Princes, and forbiddeth any private Man to kill; but they teach Subjects to diſobey Princes, and that a private wicked Perſon may kill; yea, and whom? A moſt godly Queen, and their own natural and moſt gracious Sovereign. Let all Men therefore take heed how they receive any thing from him, hear or read any of their Books, and how they confer with any Papiſts. God grant her Majeſty, that ſhe may know by thee, how ever ſhe truſt ſuch like to come ſo near her Perſon. But ſee the end, and why thou didſt it, and it will appear to be a moſt miſerable, fearful, and fooliſh thing; for thou didſt imagine that it was to relieve thoſe that thou calleſt Catholicks, who were moſt likely amongſt all others to have felt the worſt of it, if thy deviliſh Practice had taken effect. But ſith thou haſt been indicted of the Treaſons compriſed in the Indictment, and thereupon arraigned, and haſt confeſſed thy ſelf guilty of them, the Court doth award, that thou ſhalt be had from hence to the Place whence thou didſt come, and ſo drawn thro' the open City of *London*, upon an Hurdle, to the Place of Execution, and there to be hanged and let down alive, and thy Privy Parts cut off, and thy Entrails taken out and burnt in thy ſight; then thy Head to be cut off, and thy Body to be divided in four Parts, and to be diſpoſed of at her Majeſty's Pleaſure: And God have Mercy on thy Soul.

Parry (perſiſting ſtill in his Rage and Paſſion) ſaid, I here ſummon Queen *Elizabeth* to anſwer for my Blood before God.

Whereupon the Lieutenant of the *Tower* was commanded to take him from the Bar, and ſo he did; and as he was going away the People cried out, *Away with the Traitor*, *away with him:* whereupon he was conveyed in a Barge to the *Tower* again by Water. Upon the 2d of *March* enſuing he was delivered by the Lieutenant of the *Tower*, early in the morning, to the Sheriffs of *London* and *Middleſex*, who received him at *Tower-Hill*; and according to the Judgment cauſed him to be forthwith ſet on an Hurdle, on the which he was drawn thro' the midſt of the City of *London* unto the place for his Execution in *Palace-Yard Weſtminſter*, where having long time of ſtay permitted him before his Execution, he impudently denied that he was ever guilty of any intention to kill Queen *Elizabeth*; and ſo (without any requeſt to the People to pray for him, or uſing any outward Prayer himſelf) he was turn'd off, and executed according to the Sentence.

X. *Proceedings againſt* Anthony Babington, Chidiock Titchburne, Thomas Saliſbury, Robert Barnewell, John Savage, Henry Donn, *and* John Ballard, *at* Weſtminſter *for* High-Treaſon, *the* 13*th and* 14*th of* September, 1586. 28 Eliz.

THE Commiſſion of Oyer and Determiner of all manner of Treaſons, Rebellions, Felonies, Offences, Routs, Riots, &c. was directed to *William* Lord *Cobham*, Lord-Warden of the Cinque-Ports; *Thomas* Lord *Buckhurſt*; Sir *Francis Knowles*; Sir *James a Croft*; Sir *Chriſtopher Hatton*; Sir *Francis Walſingham*; Sir *Chriſtopher Wray*, Lord Chief Juſtice of *England*; Sir *Edmund Anderſon*, Lord Chief Juſtice of the Common-Pleas; Sir *Roger Manwood*, Lord Chief Baron of the Exchequer; Mr. Doctor *Dale*; Mr. *Rugby*, Maſter of the Requeſts; Serjeant *Fleetwood*, Recorder of *London*; Mr. *Brograve*, Attorney of the Dutchy; Mr. *Randall*; Mr. *Cooke*; Mr. *Wrathe*. By force whereof was a Precept directed to the Lieutenant of the *Tower*, commanding him to have the Bodies of *Anthony Babington* Eſq; *Chidiock Titchburne* Eſq; *Thomas Saliſbury* Eſq; *Robert Barnewell* Gent. *John Savage* Gent. *Henry Donn* Gent. and *John Ballard* Clerk, before the ſaid Commiſſioners, the Day and Year aforeſaid. At which Day, before the Commiſſioners aboveſaid, (excepting Sir *Francis Knowles*, Sir *Francis Walſingham*, and Sir *Chriſtopher Wray*) Sir *Owen Hopton*, Lieutenant of the *Tower*, return'd his Precept in effect, That the ſaid Priſoners were committed to his Cuſtody by Commandment of the Privy-Council, there to be ſafely kept. Whereupon Mr. Vice-Chamberlain demanded of the Queen's learned Counſel, what Order they would take in Arraigning the Priſoners; and Anſwer was by them given, that they would proceed to the Arraignment of *Savage* firſt, foraſmuch as he meddled firſt in theſe Matters.

Savage's *Arraignment, Indictment and Confeſſion.*

Then *Savage* being brought to the Bar, and the other Priſoners removed, the Clerk of the Crown ſaid;

Sands, Clerk of the Crown. *John Savage* Gent. hold up thy Hand: Thou haſt been before this time indicted by virtue of Commiſſion, directed to Sir *Edmund Anderſon* Knight, &c. (and ſo read his Indictment) which in effect was, That *William Gifford*, Doctor of Divinity, maliciouſly moved him at *Rhemes* in the Country of *Champaigne*, traitorouſly and wickedly to kill and murder the Queen's moſt excellent Majeſty, his liege Sovereign and natural Prince; affirming to the ſaid

Savage, that the killing of her Majeſty was an Action lawful, honourable and meritorious: and that thereupon the ſaid *John Savage* did traitorouſly agree, conſpire and ſwear to murder the Queen's moſt excellent Majeſty, his own natural Prince. And afterwards, that is to ſay, the firſt Day of *April* 1586, at St. *Giles*'s *in the Fields*, in the County of *Middleſex*, did falſely conſpire to murder her ſaid Majeſty, to diſinherit her of her Kingdom, to ſtir up Sedition in the Realm, and to ſubvert the true Chriſtian Religion: and that to perform this malicious Practice, deviſed with *John Ballard* how to bring the ſame to paſs; and afterwards, the laſt Day of *May*, did receive Letters from *Morgan*, *William Gifford*, and *Gilbert Gifford*, whereby they did perſuade and provoke the ſaid *Savage* to execute and fulfil his ſaid Purpoſe and Determination. How ſayeſt thou, *Savage*, art thou Guilty, or Not Guilty?

Savage. For conſpiring at St. *Giles*'s, I am Guilty; that I received Letters, whereby they did provoke me to kill her Majeſty, I am Guilty; that I did aſſent to kill her Majeſty, I am not Guilty.

C. J. Anderſon. Whether thou didſt conſpire at St. *Giles*'s, or not, is not the ſubſtance of the Indictment; but, whether thou didſt conſpire or no, is the Matter, and the reſt is but Circumſtance: Moreover thou muſt ſay, either that thou art Guilty or not Guilty, for ſo hath the Law ordained every one to anſwer; and if thou anſwer not ſo, thou refuſeſt to be tried by the Law, and ſo ſhalt be Cauſer of thy own Death.

C. B. Manwood. Whoſoever refuſeth to anſwer directly, the Law pronounceth grievous Puniſhment to ſuch, and they are Murderers of themſelves, which is abominable before God.

Hatton. To ſay, that thou art Guilty to that, and not to this, is no Plea; for thou muſt either confeſs it generally, or deny it generally: Wherefore delay not the time, but ſay either Guilty, or not; and if thou ſay Guilty, then ſhalt thou hear further; if not Guilty, her Majeſty's learned Counſel is ready to give Evidence againſt thee.

Savage. Then, Sir, I am Guilty.

Then her Majeſty's Counſel ſaid, Albeit there were nothing now further to be done, but to proceed to Judgment upon his own Confeſſion; yet foraſmuch as they deſired that the Hearers ſhould be ſatisfied, and all the World know, how juſtly he was to be condemned, they crave licence to give ſuch Evidence as would ſufficiently and fully prove the Indictment. Which being granted, the Clerk of the Crown did read *Savage*'s own Confeſſion, taken before the Lord Chancellor, Lord Treaſurer, Mr. Vice-Chamberlain, and Mr. Secretary; which particularly in ſubſtance was,

That the ſaid *John Savage* ſerved in the Camp of the Prince of *Parma*, and from thence he departed towards *Rhemes*, where falling acquainted with one *Hodgſon*, and talking with him about Exploits of Services, it chanced Doctor *Gifford* over-heard them, and coming to them, ſaid, But a better Service could I tell you than all this (moving the Murder of the Queen of *England*): But *Savage* ſeemed to object how dangerous and difficult it was. So they went to Supper, and after Supper ended, *Gifford* declaring unto them, how neceſſary, how juſt and meritorious, the committing of the Murder ſhould be, ſaid, That peradventure he ſticked to do the Fact, foraſmuch as he, percaſe, was not reſolved whether the killing of a Prince were lawful or not. Whereupon he deſired him to adviſe himſelf, and to aſk Opinions of others: And *Savage* having heard others affirm, that the Murder was lawful, foraſmuch as in their pretence ſhe was an Heretick, an Enemy to true Religion, and a Schiſmatick Perſon: at laſt, after three weeks, wherein he had not ſeen *Gifford*, he anſwered, That he was contented to do any thing for his Country's Good. Then ſaid *Gifford*, Aſſure yourſelf you cannot do a greater good unto your Country, nor whereby the Country ſhould be more beholden, eſpecially all the *Throckmortons* and *Giffords*. At laſt *Savage*, overcome with their Perſuaſions, gave his Aſſent and Oath, that he would put the ſame in Practice. When he had given his Oath to murder her, *Gifford* declared unto him, how, and in what Place her Majeſty might be ſlain: And therefore *Gifford* charged him to forbear no Time nor Place, but to murder her; and therefore, as her Majeſty ſhould go into her Chapel to hear divine Service, *Savage* might lurk in the Gallery, and ſtab her with his Dagger: or if her Majeſty ſhould walk into her Garden, he might then ſhoot her through with his Dagg; or if her Majeſty did walk abroad to take the Air, as ſhe would often do, rather (as *Gifford* ſaid) accompanied with Women than Men, and thoſe few Men but ſlenderly weapon'd, *Savage* might then aſſault her with his arming Sword, and ſo make ſure Work; albeit in all theſe Caſes *Savage* ſhould be in extreme Hazard of his own Life, foraſmuch as the Thing itſelf was ſo lawful, honourable and meritorious, and he ſure to gain Heaven thereby. Thereupon came *Savage* over into *England* with this Intent and Purpoſe, for to kill the Queen: But not doing the ſame ſo ſoon as was looked for, he received Letters from *Morgan* and *Gifford* from beyond the Seas, perſuading him to execute the ſame. But then he fell acquainted with the moſt notorious Conſpiracy of *Babington*, whereby was another Plot deviſed, That there ſhould be Six which ſhould kill the Queen: *Savage* would not aſſent thereto, foraſmuch as he thought, except he did it himſelf, his Conſcience could not be ſatisfied, becauſe he had promiſed and vowed to do that himſelf. But *Babington* told him, he ſhould be one. In the mean ſeaſon was *Ballard* the Prieſt apprehended, the 4th of *Auguſt* laſt. Then came *Babington* to *Savage*, ſaying, *Ballard* is taken, all will be bewrayed, what Remedy now? Then ſaid *Savage*, No Remedy now, but to kill her preſently. Very well, ſaid *Babington*; then go you unto the Court to-morrow, and there execute the Fact. Nay, ſaid *Savage*, I cannot go to-morrow, for my Apparel is not ready, and in this Apparel ſhall I never come near the Queen. Go to, quoth *Babington*, here is my Ring, and all the Money I have, get the Apparel and diſpatch it. But the ſame Night, *Babington* fearing leſt *Savage* alone ſhould fail to do it, continued his other Plot, that Six ſhould ride to the Court and do it: but the next day, *Babington* ſuſpecting ſomewhat, fled, and all was diſcovered. Alſo it appeared by *Savage*'s own Confeſſion, how, between *Midſummer* and *Alhallontide*, 1585, he was ſollicited by *Gifford* to kill the Queen and the Earl of *Leiceſter*. Furthermore divers other Proofs were ſhewed forth by Confeſſion of others, all agreeing to *Savage*'s Confeſſion.

* *Attorney*. Now I hope, is *Savage*'s Indictment ſufficiently and fully proved.

Hatton. *Savage*, I muſt aſk thee one Queſtion: Was not all this willingly and voluntarily confeſſed by thy ſelf, without Menacing, without Torture, or without Offer of any Torture?

Savage. Yes.

Then ſpake her Majeſty's learned Counſel, deſiring to adjourn the Court until the morrow.

Hatton. Foraſmuch as if we ſhould now proceed with the other Priſoners which be here put, it would aſk time till three of the Clock in the Morning, and the Day is already far ſpent; alſo her Majeſty's Counſel having prayed that *Savage*'s Judgment be deferred till to-morrow by ſeven of the Clock: Therefore it is neceſſary that the Court ſhould be adjourned. Whereupon the Cryer made an O yes, that all ſhould keep their Day to-morrow Morning by ſeven of the Clock, and ſo the Court aroſe.

Wedneſday 14 *Septembris*, 1586.

The next Day being *Wedneſday*, the ſame Priſoners were brought unto the Bar, and the Commiſſioners being ſet, the Cryer commanded every Man to hold his peace, and keep ſilence; and then ſpake *Sandes* the Clerk of the Crown, in ſort enſuing.

Clerk of the Crown.

John Ballard, *Anthony Babington*, *John Savage*, *Robert Barnewell*, *Chidiock Titchbourne*, *Thomas Saliſbury*, and *Henry Donn*, hold up your Hands; which being done, he ſaid, Before this time you were indicted before Sir *Edmund Anderſon* Knight and others, *&c.* by virtue of her Majeſty's Commiſſion, *&c.* That where *Bernardino de Mendoza* a *Spaniard*, and *Charles Pagget*, the 26th Day of *April*, 1586, at *Paris* in *France*, did maliciouſly and wickedly deviſe, by what ways and means this Realm of *England* might be invaded, and by what ways and means *Mary* Queen of *Scots* might be delivered: it was concluded then, that thou the ſaid *John Ballard* ſhould go into this Realm of *England*, to underſtand and know what Ports and Landings might be procured and provided for the Enemies Invaſion, and for to learn by what means and ways the ſaid *Mary* Queen of *Scots* might be delivered from the Cuſtody wherein ſhe was. And that thou the ſaid *John Ballard*, coming into this Realm of *England*; you the ſaid *Anthony Babington*, *John Savage*, *Robert Barnewell*, *Chidiock Titchbourne*, *Thomas Saliſbury*, and *Henry Donn*, as falſe Traitors againſt the Crown, and the Queen's moſt excellent Majeſty, your true and natural Sovereign; intending to put away the Love of her Majeſty's moſt loving Subjects, the 5th Day of *June*, in the 28th Year of the Reign of our Sovereign Lady Queen *Elizabeth*, by the Grace of God, *&c.* at *St. Giles*'s *in the Fields*, within the County of *Middleſex*, did falſely, horribly, traitorouſly and deviliſhly, conſpire, conclude and agree, the Queen's moſt excellent Majeſty not only from her Royal Crown and Dignity to depoſe, but alſo her to kill and ſlay; and Sedition, Inſurrection and Rebellion to ſtir up and procure, and the Government of this Realm, and the true and Chriſtian Religion therein planted to ſubvert, and the whole State thereof for to deſtroy; and for to raiſe and levy War within the Realm. And thou the ſaid *John Ballard*, the 17th Day of *June*, in the 28th Year aforeſaid, at St. *Giles*'s aforeſaid, in the County of *Middleſex* aforeſaid, didſt go to have Speech, and confer with thee the ſaid *Anthony Babington*, by what means and ways your falſe traitorous imagined Practices might be brought to paſs. And that thou the ſaid *John Ballard* didſt oftentimes declare of an Army of the Pope, and the King of *Spain*, for to invade this Realm; and didſt alſo declare that *Pagget* and *Mendoza* required them the ſaid *Babington*, *Savage*, &c. to procure means how this Realm of *England* might be invaded. And that there thou the ſaid *Anthony Babington* didſt ſay the ſame could not be brought to paſs, without the Murder of the Queen's moſt excellent Majeſty; and afterwards, that is to ſay, the 7th day of *June*, at *St. Giles*'s aforeſaid, in the County of *Middleſex* aforeſaid, thou the ſaid *Anthony Babington* didſt falſely, horribly, traitorouſly, and deviliſhly conſpire to kill the Queen's moſt excellent Majeſty, and for to deliver the ſaid *Mary* Queen of *Scots* out of the Cuſtody wherein ſhe was, and how to bring foreign Enemies for to invade this Realm. And that thou *Thomas Saliſbury* went to *St. Giles*'s aforeſaid, in the County of *Middleſex* aforeſaid, traitorouſly to confer by what means and ways thy traitorous imagined Practices might be brought to paſs; and that thou didſt there conclude falſely and traitorouſly to go into thy Country, in the County of *Denbigh*, there to move and ſtir up Sedition and Rebellion; and for to perſuade the Subjects to conjoin with thee, for the delivery of the ſaid *Mary* Queen of *Scots* from the Cuſtody wherein ſhe was, and for to aid and aſſiſt the foreign Enemies which ſhould invade this Realm. And afterwards, the 9th Day of *June*, that you the ſaid *Anthony Babington*, and *John Savage*, went to *St. Giles*'s aforeſaid, in the County of *Middleſex* aforeſaid, traitorouſly to confer how, and by what means your traitorous imagined Practices might be brought to paſs; and afterwards, the 10th of *June*, you the ſaid *Anthony Babington*, and *John Savage*, maliciouſly between your ſelves, did appoint and conclude that thou the ſaid *John Savage* traitorouſly the Queen's moſt excellent Majeſty ſhouldſt kill and ſlay, and her to final Deſtruction for to bring. And that thou the ſaid *Babington* and *Savage* ſhould join and aſſiſt the foreign Enemies which ſhould invade this Realm. And that thou the ſaid *Anthony Babington*, *Chidiock Titchbourne*, and *Robert Barnewell*, afterwards, that is to ſay, the 11th day of *June*, in the Year aforeſaid, went to *St. Giles*'s aforeſaid, in the County of *Middleſex* aforeſaid, to confer by what ways and means your Treaſons might be fulfilled and brought to paſs. And thereupon the 12th Day of *June*, you the ſaid *Babington*, *Titchbourne*, and *Barnewell*, with divers other falſe Traitors, moſt horribly, deviliſhly, wickedly and traitorouſly did conclude and agree, that you the ſaid *Robert Barnewell*, *Chidiock Titchbourne*, with divers other horrible Traitors, the Queen's moſt excellent Majeſty would kill and ſlay, and the foreign Invaders would aid and aſſiſt. And furthermore, that thou the ſaid *Thomas Saliſbury*, together with *Edward Jones* Eſq; and other falſe Traitors, to bring to paſs your traitorous imagined Practices the 13th Day of *June*, in the Year aforeſaid, did go to St. *Giles*'s-*Fields* aforeſaid, in the County of *Middleſex* aforeſaid, to confer how your Treaſons might be brought to paſs: And the ſame 13th Day did confer, and had Speech, by what means your traitorous compaſſed Imaginations might be performed. And afterwards, that is to ſay, the 15th Day of *June*, at St. *Giles*'s-*Fields* aforeſaid, in the County of *Middleſex* aforeſaid, thou the ſaid *Thomas Saliſbury*, and the ſaid *Edward Jones*, did

* *Sir* John Popham.

conclude and agree, that the ſaid *Edward Jones* ſhould conjoin with thee for the delivery of the ſaid *Mary* Queen of *Scots*, and for to aid and aſſiſt the foreign Enemies which ſhould invade this Realm. And furthermore, that *John Travers* Gent. another falſe Traitor in this Conſpiracy, went to *Clerkenwell* in the County of *Middleſex* aforeſaid, traitorouſly to confer with thee the ſaid *Thomas Saliſbury*, how your traitorous compaſſed Imagination might be brought to paſs. And the ſame 15th Day of *June*, at *Clerkenwell* aforeſaid, in the County of *Middleſex* aforeſaid, the ſaid *John Travers* did traitorouſly conſpire, and agree, for the delivery of *Mary* Queen of *Scots*, and to aſſiſt the foreign Invaders of this Realm. And furthermore, that thou the ſaid *Henry Donn*, for the Compaſſing of thy traitorous Practices, the 22d of *June*, in the Year aforeſaid, traitorouſly didſt repair, and go to have Speech, and confer with the ſaid *Anthony Babington*, and *John Ballard*, how your traitorous compaſſed Imaginations might be brought to paſs. And the ſame 22d of *June*, as well in St. *Giles*'s aforeſaid, as in other places, didſt confer, and had Speech how your Treaſons might be brought to paſs. And that thou the ſaid *Henry Donn*, the 24th Day of *June*, at St. *Giles*'s-*Fields* aforeſaid, didſt conclude, and agree with the ſaid *Ballard* and *Babington*, to perform the beſt they could for the compaſſing of your Treaſons. And furthermore, that thou the ſaid *Anthony Babington*, the 8th Day of *July*, in the Year aforeſaid, received Letters dated the 25th of *June*, from *Mary* Queen of *Scots*, by which ſhe ſignified unto thee, that ſhe would not be unmindful of thy Affection towards her; and required thee to ſend her Letters from Friends in *France* and *Scotland*. And the ſame Day, thou the ſaid *Anthony Babington* didſt write unto the ſaid *Mary* Queen of *Scots*, declaring the Plot of thy Treaſons, and requiring from her, as from thy Sovereign and Prince, Authority and Commiſſion to proceed in thy Practices; and the 25th of *July* received Letters of anſwer, by which the ſaid *Mary* Queen of *Scots* willingly allowed of theſe Treaſons; and alſo by her ſaid Letters, did animate, comfort and provoke thee to fulfill the ſame effectually. And furthermore, that Sir *Thomas Gerrard*, another falſe Traitor, and thou the ſaid *John Ballard*, as falſe Traitors, not having the Fear of God before your Eyes, the 27th of *July*, in the 28th Year aforeſaid, at St. *Giles*'s aforeſaid, in the County aforeſaid, did conſpire traitorouſly to deprive and depoſe the Queen's moſt excellent Majeſty from her Royal Crown and Dignity, and her to final Death and Deſtruction for to bring; and Sedition and Rebellion to ſtir up and procure, and to alter the Government of the Realm, and the true Religion to ſubvert. And that thou the ſaid *Anthony Babington*, and the ſaid Sir *Thomas Gerrard*, the 29th of *July*, in the Year aforeſaid, went to St. *Giles*'s aforeſaid, in the County aforeſaid, traitorouſly to conſpire how and by what means your traitorous compaſſed Imaginations might be brought to paſs. And thereupon the laſt Day of *July*, at St. *Giles*'s aforeſaid, in the County aforeſaid, you the ſaid *Anthony Babington*, and the ſaid Sir *Thomas Gerrard*; did agree, that thou the ſaid Sir *Thomas Gerrard* ſhould join with thee the ſaid *Anthony Babington*, for the delivery of the ſaid *Mary* Queen of *Scots* from the Cuſtody wherein ſhe was, and for the aiding and aſſiſting of the foreign Enemies which ſhould invade this Realm. And furthermore, that thou the ſaid *John Ballard* didſt traitorouſly go to *Southampton-Houſe* in *Holborne*, within the County of *Middleſex*, traitorouſly to confer with *John Charnock* Gent. and other falſe Traitors in this Conſpiracy, how your traitorous compaſſed Imaginations might be brought to paſs; and there didſt confer and had Speech by what means your Treaſons might be performed: and afterwards the 2d Day of *Auguſt* at *Southampton-Houſe* aforeſaid, the ſaid *John Charnock* did traitorouſly aſſent to perform the beſt he could in fulfilling of your Treaſons, contrary to your Allegiances you owe to the Queen's moſt excellent Majeſty, her Crown and Dignity, and contrary to divers Statutes in ſuch Caſe provided.

Sandes. How ſayſt thou, *John Ballard*, art thou Guilty of theſe Treaſons whereof thou ſtandeſt indicted, or not?

Ballard. That I practiſed the delivery of the Queen of *Scots*, I am Guilty; and that I went about to alter the Religion, I am Guilty; but that I intended to ſlay her Majeſty, I am not Guilty.

Sandes. Anſwer directly, art thou Guilty according to the Purport of the Indictment?

Ballard. I anſwer as my Caſe is.

C. J. Anderſon. Either deny the Indictment generally, or confeſs it generally.

Hatton. *Ballard*, under thine own Hand are all things confeſſed; therefore now it is much vanity to ſtand vain-gloriouſly in denying it.

Ballard. Then, Sir, I confeſs I am Guilty.

Sandes. How ſay'ſt thou, *Anthony Babington*, art thou Guilty of the Treaſons contained in the Indictment?

Babington. Then began *Babington* with a mild Countenance, a ſober Geſture, and a wonderful good Grace, to declare the Beginnings and Proceedings of his Treaſons, which was according as he was indicted, and according to *Savage*'s Confeſſion, and *Ballard*'s Indictment. In the end he laid all the blame upon *Ballard*, for bringing him to his Deſtruction.

Hatton. A very fit Author for ſo bad a Fact!

Babington. Very true, Sir, for from ſo bad a Ground never proceeds any better Fruits; he was he that perſuaded me to kill the Queen, and to commit the other Treaſons, whereof now I confeſs my ſelf Guilty.

Sandes. How ſayſt thou, *John Savage*, art thou Guilty of the Treaſons contained in the Indictment?

Savage. I am Guilty.

Sandes. How ſayſt thou, *Robert Barnewell*, art thou Guilty? *&c.*

Barnewell. I never intended harm to her Majeſty's Perſon, but I confeſs I knew thereof, and I held it not lawful to kill the Queen: Howbeit, for my other Actions, foraſmuch as I know I am within the danger of the Law, I plead Guilty.

Sandes. How ſayſt thou, *Chidiock Titchbourne*, art thou Guilty of the Treaſons contained in the Indictment?

Titchbourne. That I knew of theſe Treaſons and concealed them, I muſt confeſs that I am Guilty; but unto the reſt, I am not Guilty.

Sandes. You muſt either anſwer Guilty, or not Guilty.

Titchbourne. What I am Guilty of, I plead Guilty, and I will confeſs no more.

Hatton. Then you may plead not Guilty.

Titchborne. Then Sir, I ſay, that I am not Guilty.

Hatton. Very well, ſtay then till we have aſked as much of *Saliſbury* and *Donn*, and then you ſhall be tried.

Sandes. How ſayſt thou, *Henry Donn*, art thou Guilty of the Treaſons, *&c.*

Donn. When I was moved, and made privy to theſe Treaſons, I always ſaid that I prayed unto God, that that might be done, which was to his Honour and Glory.

Hatton. Then it was thus, that they ſaid the Queen ſhould be killed, and thou ſaidſt, God's Will be done.

Donn. Yea, Sir.

Hatton. O Wretch, Wretch! thy Conſcience and own Confeſſion ſhew that thou art Guilty.

Donn. Well, Sir, then I confeſs I am Guilty.

Sandes. How ſayſt thou, *Thomas Saliſbury*, art thou Guilty? *&c.*

Saliſbury. For killing of the Queen's Majeſty, I proteſt I always ſaid I would not do it for a Kingdom.

Sandes. You are indicted, that you practiſed the Delivery of the Queen of *Scots*, the Invaſion of this Land with foreign Forces, and of ſtirring up Rebellion and Sedition in this Realm; are you Guilty of that?

Saliſbury. Then I am Guilty of that I ſtand indicted of.

Sandes. *Chidiock Titchbourne*, thou haſt pleaded not Guilty, how wilt thou be tried?

Titchbourne. I beſeech you, my Lords, give me leave to ſpeak.

Hatton. Say what you will.

Titchbourne. I thank your Honours: My good Lords, in the beginning of this Broil I had ſent for my Horſes to ride into the Country; and the occaſion of my longer abode in *London*, was for that I had a lame Leg. Then what probability may it be, that I went to kill the Queen here hard by *London*; when, had it not been for my lame Leg, I had been in *Hampſhire*.

C. J. Anderſon. Well then, if you plead not Guilty, we will proceed to your Trial.

Sandes. How ſayſt thou, art thou Guilty, or not Guilty?

Titchbourne. I will confeſs a Truth, and then I muſt confeſs that I am Guilty.

Then albeit nothing were to be done but Judgment to be given; yet for ſatisfying all the People, her Majeſty's learned Counſel gave in ſuch Evidence, as would ſufficiently prove the Indictment: Firſt, *Savage*'s own Confeſſion according to his former Arraignment, how that *Gifford* hearing them talk of Services at *Rhemes*, ſaid, I know not what ſervice you mean. But what ſay you to ſuch a Service, meaning the cutting of the Throat of the Queen of *England*, and of the Earl of *Leiceſter*? ſaying, he ſhould never do more good than kill an excommunicate Perſon, and that to do the ſame were a far better Service than to ſtudy Divinity. And *Gifford* ſaid moreover, that if *Savage* failed to do it, others ſhould do it. And how that *Ballard* going over into *France* at *Lent* laſt, did meet with one *Grateley*, who brought him to *Charles Paggett*, who told him that the Pope would reform the State here in *England*; and how that *Barnardino de Mendoza* ſaid the King of *Spain* his Maſter would invade this Realm. And that thereupon *Ballard* ſhould be ſent into *England*, to know what Friends they could make, and thereupon *Ballard* took an Oath to perform the ſame; and how that he had in mind to move *Babington* in that behalf before he came, and that he came over about *Whitſontide* laſt. And breaking the ſame with *Babington*, who thereupon ſaid that the Invaſion would never come to effect during her Majeſty's Life; whereupon *Ballard* ſaid that would eaſily be removed, and then made him privy to *Savage*'s practice: and that thereupon *Ballard* ſent to *Savage* to ſpeak with him on *Lambeth* ſide, and there told *Savage* of *Babington*'s Practice, and brought him to *Babington*, who was not Friends with *Savage* before. Then *Ballard* went into the North to ſollicit the People, and at his coming up, ſaid he had made 500 ſure more than he knew of before. Furthermore, it was declared that during *Ballard*'s abode in the North, *Babington* did write Letters to the Queen of *Scots*, a true Copy of which Letters written with *Babington*'s own Hand were read in the Court: wherein he began, 'Moſt high and mighty Princeſs, his true and Sovereign Liege, to whom 'alone he oweth Fidelity; declaring how he was her Servant, and that he 'ſtudied to deviſe her one good day's Service; and how himſelf with 'ten Gentlemen, and an hundred Horſe, would work her delivery from 'the Cuſtody wherein ſhe was, being in the Guard of a Puritan Knight, a 'mere *Leiceſtrian*. And how that he had appointed ſix noble Gentlemen 'for diſpatch of the wicked Competitor, declaring alſo at large the 'remainder of his Treaſons, and what means he had invented to compaſs 'the ſame.' And then *Ballard* returned from the North; and before it was determined that *Savage* ſhould have gone to the North, but he could not go, becauſe he had ſworn to kill the Queen. And therefore when *Babington* had deviſed that Six ſhould kill the Queen, *Savage* would not agree, except himſelf were one: And how in the mean ſeaſon, *Ballard* on Thurſday the 4th of *Auguſt*, about 11 of the Clock, was apprehended. Then *Babington* went to *Titchbourne*'s Lodging, where not finding him, he went to a Barber's without *Biſhopſgate*, where were his own, *Titchbourne*'s and *Savage*'s Pictures; and on *Babington*'s Picture was written,

Hi mihi ſunt Comites, quos ipſa pericula jungunt.

But then miſliking that, was written;

Quorſum hæc alio properantibus.

Then *Babington* went to *Smithfield*, and there walked with *Titchbourne*, and there ſaid unto him, I had rather than 500*l.* thy Leg were whole, for then this matter ſhould be diſpatched. Alſo *Saliſbury* confeſſed how *Babington*, *Titchbourne*, and he had communication as concerning the ſacking of the City of *London*. Alſo it was proved by their Confeſſion, how that to provide themſelves of Money for this Practice, they had deviſed to rob all the richeſt Men in *England*, and to ſet fire on the Ships (altho' *Babington* miſliked to fire the Ships), and to cloy all the great Ordnance. And all the Indictment was ſufficiently and moſt plainly proved by their Confeſſions, accordingly as they were intended.

Sandes. *John Ballard*, thou haſt been indicted of High-Treaſon, and thereupon arraigned, and haſt pleaded Guilty; what haſt thou to ſay for thy ſelf, wherefore Judgment and Execution of Death ſhould not be given againſt thee?

Ballard. *Ballard* ſpake ſomething, but not to any effect.

Sandes. Then *Sandes* demanded of *Babington* in like manner.

Babington. Who ſaid he was guilty of the Treaſons, according to his Confeſſion, for killing of the Queen, and the reſt by *Ballard*'s Perſuaſion.

Hatton. O *Ballard*, *Ballard*, what haſt thou done? A ſort of brave Youths otherwiſe endued with good Gifts, by thy inducement haſt thou brought to their utter Deſtruction and Confuſion.

Babington. Yea, I proteſt before I met with this *Ballard*, I never meant nor intended for to kill the Queen; but by his Perſuaſions I was induced to believe that ſhe was excommunicate, and therefore lawful to murder her.

Ballard. Yea, Mr. *Babington*, lay all the blame upon me, but I wiſh the ſhedding of my Blood might be the ſaving of your Life: Howbeit, ſay what you will, I will ſay no more.

Hatton. Nay, *Ballard*, you muſt ſay more, and ſhall ſay more, for you muſt not commit High-Treaſons and then huddle them up: but is this thy *Religio Catholica?* Nay rather, it is *Diabolica.*

Sandes. *John Savage*, thou haſt been indicted of High-Treaſon, *&c.* *(ut ſupra*, to *Ballard.)*

Savage and *Titchbourne.* *Savage* anſwered nothing, neither did *Titchbourne*, being demanded in like ſort alſo.

Sandes. So *Sandes* demanded of *Robert Barnewell* in like manner.

Barnewell. Foraſmuch as I have offended againſt the Law, I am contented to ſuffer Puniſhment according to the Law; howbeit, I here proteſt what I have done, was only for my Conſcience-ſake, neither did I ever intend Violence to her Majeſty's Perſon.

Hatton. O *Barnewell*, *Barnewell*, didſt not thou come to *Richmond*, and when her Majeſty walked abroad, didſt not thou there view her and all her Company, what Weapons they had, how ſhe walked alone? and didſt traverſe the Ground, and thereupon coming back to *London*, didſt make relation to *Babington*, how it was a moſt eaſy matter to kill her Majeſty, and what thou hadſt ſeen and done at the Court; yes, I know thou didſt ſo: How canſt thou then ſay, that thou never didſt intend to lay violent hands on her Majeſty? Nay, I can aſſure thee moreover, and it is moſt true which I ſay, that her Majeſty did know that thou didſt come to that end, and ſhe did ſee and mark thee how thou didſt view her and her Company; but had it been known to ſome there, as well as unto her, thou had never brought news to *Babington*. Such is the Magnanimity of our Sovereign, which God grant be not over-much, in not fearing ſuch Traitors as thou art.

Barnewell. What I did was only for my Conſcience-ſake, and not for any Malice or Hatred to her Majeſty's Perſon.

Hatton. Then wouldſt thou have killed the Queen for Conſcience. Fie on ſuch a deviliſh Conſcience!

Sandes. *Henry Donn*, thou haſt been indicted of High-Treaſon, *&c.* *ut ſupra* to *Ballard*; What canſt thou ſay for thyſelf wherefore Judgment and Execution of Death ſhould not be pronounced againſt thee?

Donn. What I have done herein, was for my Religion and Conſcience-ſake; and ſince it is counted Treaſon, I muſt abide the Puniſhment, and therefore *Fiat voluntas Dei.*

Sandes. *Salisbury*, What canſt thou ſay wherefore Judgment, *&c.* *(ut ſupra* to *Ballard.)*

Salisbury. I beſeech her Majeſty's moſt merciful Pardon for my Offence.

Then Mr. Attorney began to declare at large the Sum of their Treaſons: How they had conſpired her Majeſty's Death, and to make the Queen of *Scots* Queen of *England*; and if peradventure ſhe miſcarried in theſe Hurliburlies as to be ſlain, then would they ſet up the King of *Scots*, if he were a Catholick; if he were not a Catholick, then would they enforce the King of *Spain* to take the Crown and ſet it on his Head, and derive him a Title from the Houſe of *Clarence.* But becauſe that Title would be but ſlender, the Pope ſhould diſpenſe, and ſo make it clear without queſtion. Furthermore he declared, how Prieſts continually had been the beginning of all the Treaſons committed againſt her Majeſty; he began at the Rebellion in the North, and ſo proceeded till the Treaſons of *Throckmorton* and *Parry*, and ſo ended.

Then began Sir *Chriſtoper Hatton*, and made an excellent good Speech, in opening and ſetting forth their Treaſons, and how they all proceeded from the wicked Prieſts the Miniſters of the Pope. And firſt he ſhewed; How theſe wicked and deviliſh Youths had conſpired to murder the Queen's moſt excellent Majeſty; Secondly, To bring in foreign Invaſion; Thirdly, To deliver the Queen of *Scots*, and make her Queen; Fourthly, To ſack the City of *London*; Fifthly, To rob and deſtroy all the wealthy Subjects of this Realm; Sixthly, To kill divers of the Privy-Council, as the Earl of *Leiceſter*, the Lord Treaſurer, Mr. Secretary, Sir *Ralph Sadler*, Sir *Amias Paulett*; Seventhly, To ſet fire on all the Queen's Ships; Eighthly, To cloy all the great Ordnance; Ninthly and laſtly, To ſubvert Religion, and the whole State of Government. The Inventers and Beginners whereof were theſe deviliſh Prieſts and Seminaries, againſt whom he doubted the Parliament had not yet ſufficiently provided, who, now-a-days, do not go about to ſeduce the antient and diſcreet Men, for they (as the Prieſts ſay) be too cold; but they aſſail, with their Perſuaſions, the younger Sort, and of thoſe, the moſt ripe Wits, whoſe high Hearts and ambitious Minds do carry them headlong to all Wickedneſs. In the end, he concluded with Remorſe for the Youth of ſome of theſe unhappy Men, and with Deteſtation of the Facts of *Ballard*; and alſo ſhewed forth a notable Proof of the Falſhood of theſe lying Papiſts, which was a Book printed at *Rome*, and made by the Papiſts, wherein they affirm, That the *Engliſh* Catholicks which ſuffer for Religion, be lapped in Bear-Skins, and baited to death with Dogs; a moſt monſtrous Lye, and manifeſt Falſhood.

Then ſpake my Lord *Anderſon* to the like effect, almoſt in every Point, in abhorring the Abomination of the Jeſuits and Seminaries; and in the end concluded with an Exhortation for the Health of their Souls; and laſt of all pronounced the terrible Sentence of their Condemnation.

XI. *The Trial of* Edward Abington, Charles Tilney, Edward Jones, John Travers, John Charnock, Jerome Bellamy, *and* Robert Gage, *at* Weſtminſter *for* High-Treaſon, 15*th of* September, 1586. 28 Eliz.

ON *Thurſday* the 15th of *September*, the Commiſſioners came, and the Cryer commanded Silence, and the Lieutenant of the *Tower* was commanded to bring forth the Priſoners, which were *Edward Abington*, *Charles Tilney*, and *Edward Jones*, Eſquires; *John Travers*, *John Charnock*, *Jerome Bellamy* and *Robert Gage*, Gentlemen; and *Elizabeth Bellamy* Widow. All which the Lieutenant of the *Tower* had ready at the Bar, and there informed the Court, the Woman's name was *Katherine*, and not *Elizabeth*: whereupon the Lieutenant was commanded to take her from the Bar, and bring her to ſome other place.

Whereupon *Sandes*, Clerk of the Crown, began in ſort enſuing; *Edward Abington*, *Charles Tilney*, *Edward Jones*, *John Travers*, *John Charnock*, *Jerome Bellamy* and *Robert Gage*, hold up your Hands: which being done, he proceeded,

Clerk of the Crown. Before this time ye were indicted, that where *Bernardyne de Mendoza* a *Spaniard*, *Charles Paget* and *John Ballard*, the 2d day of *April*, in the 28th year of the Reign of our Sovereign Lady the Queen's Majeſty, that now is, at *Paris* in *France*, did confer in what Place this Realm of *England* moſt aptly might be invaded, and what Aid and Aſſiſtance might be procured for the ſame, and how and by what Ways and Means *Mary* Queen of *Scots* might be deliver'd from the Cuſtody wherein ſhe was. And that thereupon it was reſolved by the Counſel of *Morgan*, a moſt notorious Traitor, that the ſaid *Ballard* ſhould paſs into this Realm of *England* to underſtand what Help might be procured, and to prepare Ports to land the Enemies, for to invade the Realm, and to prepare Ways and Means how *Mary* Queen of *Scots* might be delivered; and thereupon the ſaid *John Ballard*, coming into *England*, you the ſaid *Edward Abington*, *Charles Tilney*, *Edward Jones* and *John Travers*, together with *Anthony Babington*, *John Ballard*, *John Savage*, *Henry Donn*, *Thomas Salisbury*, *Chidiock Titchbourne* and *Robert Barnewell*, as falſe Traitors, the 8th day of *June*, in the 28th year of the Reign of our Sovereign Lady the Queen's Majeſty that now is, at St. *Giles*'s *in the Fields*, in the County of *Middleſex*, did conſpire the Queen's moſt excellent Majeſty, not only from her Crown and Dignity to depoſe, but alſo her to kill and ſlay, and to ſtir up Sedition and Rebellion in the Realm, and Slaughter among the Subjects for to make, and the Government and Religion to ſubvert, and the whole Eſtate for to deſtroy, and divers Strangers, her Majeſty's Enemies, to invade the Realm, did procure and ſtir up. And afterwards, the twelfth day of *June*, in the year aforeſaid, thou the ſaid *Charles Tilney* and *Anthony Babington*, *Robert Barnewell*, and *Chidiock Titchbourne*, went to St. *Giles*'s aforeſaid, to confer by what Ways and Means, your traitorous compaſſed Imaginations might be brought to paſs; and there, the ſame day, had Speech, and did confer how your Treaſons might be performed: And on the ſaid 12th day of *June*, in the year aforeſaid, at St. *Giles*'s aforeſaid, did conclude, that thou the ſaid *Charles Tilney*, and *Robert Barnewell*, and *Chidiock Titchbourne*, would kill the Queen, and aid the foreign Enemies that ſhould invade the Realm; and that thou *Edward Jones*, with *Thomas Salisbury*, to perform your traitorous Imaginations, the 13th day of *June*, in the 28th year aforeſaid, went to St. *Giles*'s aforeſaid, to confer how your traitorous compaſſed Imaginations might be brought to paſs. And thereupon thou the ſaid *Edward Jones*, with the ſaid *Thomas Salisbury*, the 15th day of *June*, in the year aforeſaid, at St. *Giles*'s aforeſaid, did conclude and agree traitorouſly to join with the ſaid *Thomas Salisbury*, for the Delivery of the ſaid *Mary* Queen of *Scots*, and for to aid and aſſiſt the foreign Enemies which ſhould invade this Realm: And that thou the ſaid *John Travers*, to fulfill thy traitorous compaſſed Imaginations, the 15th day of *June*, in the 28th year aforeſaid, traitorouſly diddeſt go to *Clerkenwell*, within the County of *Middleſex*, to confer by what Means your Treaſons might be brought to paſs: And the ſame 15th day of *June*, at *Clerkenwell* aforeſaid, in the County aforeſaid, had ſpeech, and did confer how your traitorous compaſſed Imaginations might be brought to paſs. And the 16th of *June*, at *Clerkenwell* aforeſaid, in the County aforeſaid, didſt appoint and conclude, with the ſaid *Thomas Salisbury*, to join with him for the delivery of *Mary* Queen of *Scots*, and in aiding and aſſiſting the foreign Enemies which ſhould invade this Realm. And further, that thou *John Charnock*, with *Thomas Gerrard* Knight, *John Ballard* and *Anthony Babington*, the 27th of *July*, at St. *Giles*'s aforeſaid, in the County aforeſaid, didſt conſpire the Queen's moſt excellent Majeſty, not only from her Crown and Dignity to depoſe, but alſo her to murder and ſlay, and to make Sedition and Rebellion, and Slaughter of her Majeſty's Subjects, and the True and Chriſtian Religion to ſubvert, and the whole Eſtate and Government to alter. And that thou *John Charnock* traitorouſly didſt go to *Southampton*-Houſe in *Holbourn*, within the ſaid County of *Middleſex*, the laſt day of *July*; and the ſame laſt day didſt confer there with *John Ballard*, how your traitorous compaſſed Imaginations might be brought to paſs; and thereupon, the 2d day of *Auguſt*, at *Southampton*-Houſe in *Holbourn* aforeſaid, didſt conclude and agree to do the beſt thou couldſt for Performance of the Treaſons aforeſaid. And that thou *Jerome Bellamy* and *Robert Gage*, knowing that the ſaid *Anthony Babington*, *Robert Barnewell* and *Henry Donn*, had committed High-Treaſon at *Harrow on the Hill*, in the County of *Middleſex*, did receive and aid them, contrary to your Allegiance you owe to our Sovereign Lady the Queen, her Crown and Dignity, and contrary to divers Statutes in ſuch Caſe provided. How ſayeſt thou, *Edward Abington*, art thou Guilty of the Treaſons whereof thou ſtandeſt indicted, or Not Guilty?

Abington. Not Guilty.

Sandes. How wilt thou be tried?

Abington. By God and my good Country.

Sandes. Thou muſt ſay, by God and my Country.

Abington. Yea Sir, by God and my Country.

Sandes. How ſayſt thou, *Charles Tilney*, art thou Guilty of theſe Treaſons whereof thou ſtandeſt indicted, or Not Guilty?

Tilney. In no ſort Guilty, no more guilty than you are.

Sandes. Anſwer me directly, art thou Guilty or not Guilty?

Tilney. No Sir, I am not Guilty; and that I am ready to anſwer and prove.

Sandes. How wilt thou be tried?

Tilney. By God and honeſt Men.

Hatton. What Anſwers are theſe? *Abington* ſays, By God and my good Country; and thou ſayſt, By God and honeſt Men. Thou muſt ſay, By God and my Country.

Tilney. Yea Sir, ſo I ſay.

In like manner, *Jones*, *Travers*, *Charnock*, *Bellamy*, and *Gage* pleaded Not Guilty.

Thereupon was an Inqueſt of *Middleſex* called, who appeared at the Bar, and their Names were, *Richard Martin*, *William Fleetwood*, *Jaſper Cholmeley*, *William Kempton*, *Robert Loſhe* and *John Barnes*, Eſquires; *John Hill*, *Robert Wood*, *Thomas Hargrave*, *Thomas Clark*, *John Chawkellett* and *John Draper*, Gentlemen.

Then ſaid *Sandes* to the Priſoners, Have you any Challenge?

Tilney. No, not I; for I know them not.

Anderſon Lieutenant of the *Tower*, take away *Gage* and *Bellamy* to ſome other place out of the hearing of the Court.

So the Lieutenant did.

Abington's *Trial.*

Then ſaid *Abington*, I beſeech your Honours I may have a pair of Writing-Tables to ſet down what is alledged againſt me, that I may yield a ſufficient Anſwer thereunto.

Sandes. It was never the Courſe here.

Hatton. When you hear any thing you are deſirous to anſwer, you ſhall ſpeak an Anſwer at full, which is better than a pair of Tables.

Serj. *Puckering.* Well Sir, then will we give Evidence. And firſt, becauſe it falls out that *Abington* and *Tilney* were acquainted with *Savage*'s Conſpiracy, we will ſhew a little that which yeſterday was opened at full; and therefore, by *Ballard*'s Confeſſion, this Summer was Twelvemonth, *Ballard* went into *Scotland* to underſtand of the Willingneſs of the People, and *Tilney* offered to go with him.

Tilney. Yea Sir, ſo I did: What can you prove by that?

Puckering. Soft, I will tell you when I come to give Evidence againſt you. After *Chriſtmas*, *Ballard* went into the *North*, and afterwards had Speech with *Tilney* to go over beyond the Seas, and *Tilney* agreed and was contented. *Ballard* went over and ſent Letters to *Tilney*, deſiring to ſtay till *Ballard* came over back, and he would tell him more. When *Ballard* came over, *Tilney* was acquainted with *Savage*'s Purpoſe, and *Abington* too: But then *Ballard* fell acquainted with *Babington*, and ſo came a greater Conſpiracy. And *Abington* put forth a Propoſition to ſurprize the Queen, and *Tilney* was privy: And it is under *Babington*'s hand, that *Tilney*, *Titchbourne*, *Barnewell* and *Savage* undertook to kill the Queen. *Jones*, at *London*, talked with *Salisbury*, and ſtay'd for him, and was privy to a Writing that was ſent for *Salisbury*'s Apprehenſion. And *Jones* repaired unto *Salisbury* at Midnight, being in *Jones*'s Houſe, and told him, That he had undone them all, and lent him his own Horſe, and his Man's Cloak. *Charnock*, the ſame day that *Ballard* was taken, was moved by *Babington* to be one of the ſix to kill the Queen; and he aſſented, and afterwards lent *Babington* Apparel to fly in. Whereupon was *Ballard*'s Confeſſion read, which was, that he confeſſed, That he conferred with *Pagett* about the State of our Country; and that *Ballard* ſaid, It is now more eaſy to invade the Realm than before, becauſe the Earl of *Leiceſter*, with the beſt of our Captains, were in *Flanders*: and that they two talked with *Mendoza*; who aſked them, what armed Men they could make, and what Ports they could yield to the Invaders for to land in; and *Mendoza* told them, his Maſter had a greater Preparation than ever he had by Sea, but he knew not for what Matter; but he ſaid, He cared not whether they have any Help of them or no: but ſaid, If you will not aſſiſt us herein, we will be as Conquerors when we come, and uſe him alſo like Enemies. For when it came to the brunt, they always ſhrunk, only he had a great care for the Delivery of the Queen of *Scots*, and ſo ſent *Ballard* into *England*; and ſaid, His Maſter, the King of *Spain*, had vowed to loſe his Crown, and the Pope his Life, but they would convert *England*, and deliver the Queen of *Scots*. After *Ballard* arrived, he talked with *Babington*, and he ſeemed willing: Alſo he confeſſeth the killing of the Queen.

**Attorney.* *Edward Abington*, upon his Examination, denieth he knew *Ballard*; which we will prove to be falſe: Therefore read firſt his Denial, which was, That he denied the ſurprizing of her Majeſty; he denieth the knowledge of *Ballard*, *Forteſcue*, or *Browne*; he denieth the Delivery of the Queen of *Scots*; and being told, that the *Frenchmen* would invade this Land, he ſaid, He would ſpend his Life in her Majeſty's Defence: He confeſſeth, that on Sunday was ſevennight, he and his Brother lay on a Hay-mow.

* *Sir* John Popham.

† *Sollicitor.* Whoſo is guiltleſs will ſpeak truly and directly, but the Counterfeit muſt ſpeak Untruths. Thereupon was another Examination of his read, which was, That *Ballard* being brought to his face, ſaid, That *Ballard* was not with him ſince *Whitſuntide*; but he confeſſeth, he knew him ſome Years ago at *Chertſey*. *Abington*'s Brother confeſſeth, that *Ballard* was twice at *Edward Abington*'s Lodging at *Charing-Croſs*; and at one of the times his Brother *Ballard* talked ſecretly in one end of the Chamber: And *Ballard* was firſt acquainted with *Thomas Abington* at *Rhemes*; and *Ballard* ſaith, That he made *Edward Babington* acquainted with theſe Treaſons, and he gave his Conſent. And *Babington* ſaith, that *Abington* moved firſt the Surprize of the Queen. Then was read the Confeſſion of *Babington*, which was, that *Edward Abington* moved firſt the Surprize of the Queen to ſome ſtrong Place, and there to move her for Reformation or Toleration of Religion. *Tilney* confeſſeth, That at the *Three-Tuns* in *Newgate-Market*, *Babington* moved a Propoſition for removing of the Lord-Treaſurer and Mr. *Secretary*; and that *Abington* ſpake broad Speeches concerning that Matter; and that *Tilney* did reprove him for the ſame.

† *Sir* Thomas Egerton.

Tilney. I deny it, I never ſaid ſo.

Puckering. Here is your own Hand, and read it.

Tilney. It is mine own Hand, but what did I mean? When I ſaid concerning that Matter, I muſt interpret mine own Meaning, I meant to ſpeak broad Words concerning Religion.

Attorney. Then belike you reproved *Abington* for Religion?

Tilney. Yea, I reproved him for ſpeaking broad Words concerning Religion.

Attorney. What Matter did you talk of then but Treaſon? It is well the Jury doth hear your Anſwers.

C. B. Manwood. *Tilney*, you are too hot, this Evidence is againſt *Abington*, you ſhall anſwer your ſelf when it comes to you.

Sollicitor. *Tilney* confeſſeth that there was ſpeech between him and *Abington* concerning a Surprize of the Queen; and that *Abington* ſaid, he would ride to *Thomas Salisbury* into the Country.

Then ſaid the Queen's Attorney unto the Jury, You perceive how that *Abington* is found falſe for his Acquaintance with *Ballard*.

Then was read *Babington*'s Confeſſion, that *Abington* and *Tilney* were diſpoſed to kill the Queen.

Attorney. *Saliſbury* confeſſeth, that *Abington* deſired him to make haſte to his Country; and ſaid, He underſtood by *Babington* of certain Matters, and that he would come to *Salisbury*'s Country for Things to be done ſhortly.

Sollicitor. He confeſſeth himſelf, that he was privy unto it, and concealed it.

Then was read *Babington*'s Confeſſion before the Lords, which was, That when certain Seminaries in *Rome* came to take leave of the Pope, and to kiſs his Foot, the Pope asked what they were; and it was told him, that they were *Engliſhmen*, which went to ſpend their Lives for Reformation of Religion in their Country. The Pope ſaid, it was a good ſlow way; but ſaid, that he would make a Bridge over that Ditch into *England* ere it were long. Alſo he confeſſeth, That he and *Babington* heard *Edward Abington* uſe ſpeech to the ſame effect.

So you hear how *Babington* ſets down *Abington* to be one of the ſix to kill the Queen.

Alſo here is *Ballard*'s own Hand, that *Babington* appointed ſix to kill the Queen, *Abington*, *Titchbourne*, *Tilney*, and others.

Abington. It is very well, if I be at *Babington*'s Commandment; I proteſt I never knew thereof.

Sollicitor. Here is *Babington*'s Letter to the Queen of *Scots*, which proveth you to be one.

The Letter was read; among other, this Sentence was in: There be ſix noble Gentlemen which have undertaken the Tragical Execution, meaning the murdering of the Queen of *England*, only it reſteth, that their Attempt be honourably rewarded.

Abington. I proteſt before Heaven and Earth, as I am a true Chriſtian, I never knew thereof.

The Letter went further, and contained this; All the Actors have vowed, either to die, or elſe to perform their Purpoſe.

Abington. This is *Babington*'s Brag, to get Credit with the Queen of *Scots*.

Attorney. We will prove, *Abington*, that thou didſt provide Armour of proof too for your Brother and your ſelf, and one for another Perſon.

Then was *Foſter*'s Examination, an Armourer in *Holbourn*, read, which proved ſo much directly.

Attorney, to *Hatton.* Mr. Vice-Chamberlain, you deſired *Abington* to ſet down the Truth of theſe Things, thereupon he ſet down a great deal in Writing, and yeſterday he tore it in a hundred pieces; and here Mr. Lieutenant of the Tower hath given me the pieces, and here they be.

Hatton. *Abington*, you be very obſtinate, and ſeem indurate in theſe Treaſons.

Abington. I will anſwer what is laid againſt me: My firſt acquaintance was with *Savage*, by reaſon that my Brother and he were both of *Bernard*'s-*Inn*, and by him came I acquainted with *Savage*, who talking with me, he told me of a Book written at *Rhemes*, which inveighed againſt the Earl of *Northumberland*, *Throckmorton* and *Parry*, for that they intended Violence againſt her Majeſty's Perſon, which Book I liked; yea but, ſaid *Savage*, it may be but for a Colour. Then he told me, that it was written but for to blind the Counſellors in *England*, and make them ſecure and careleſs, when in very deed they at *Rhemes* deſire nothing more than the Murder of the Queen of *England*. Then I anſwered, He that allows of *Parry*'s Actions, ſavours not of Divinity. And this I proteſt is true. For *Ballard*'s Acquaintance, true it is, he came unto my Chamber, and I knew him not; and then he told me, he had ſeen me four Years ago at *Chertſey*. So then I aſked, What News? And he told me of an Invaſion intended againſt this Country. Whereunto I gave ſuch cold Anſwers, and ſuch cold Entertainment, as I never ſaw him ſince. For my Doings with *Babington*, his Lodging was right in my way to go from *Charing-Croſs*, thro' the Fields to *London*; and true it is, he made me privy to his Treaſons, and that I concealed them: And when he told me Strangers would invade this Realm to reform Religion, I proteſted to *Babington*, I had rather be drawn to *Tyburn* by the Heels for my Religion than to have it reform'd by Strangers. And for *Babington*'s Accuſation, what force can it be of? for he having committed and confeſſed Treaſon in the moſt high Degree, there was no hope for him but to accuſe.

Hatton. For *Babington*'s Hope thereof, I am perſuaded he hath no Hope at all; and my Lords here can aſſure there is no Hope at all of his Life: but he confeſſed what he knew for diſcharge of his Conſcience; and what he did, he did it willingly and voluntarily: for had not *Babington* voluntarily named *Abington*, who could have named *Abington*? And had he not alſo willingly accuſed *Tilney*, who could have accuſed *Tilney*?

Abington. Well then, Sir, to you my Lords the Judges I do now ſpeak: There is a Statute in the 1ſt and 13th of this Queen made, That who ſhall conſpire, &c. it ſhall be Treaſon, &c. provided, that he ſhall have two lawful Witneſſes, face to face, to avow it, *&c.* Now may it pleaſe your Honours to have two lawful Witneſſes, to teſtify againſt me. As for *Babington*, what Witneſs can he be, a condemned Man, *Savage* a condemned Man alſo, and *Ballard* a condemned Man likewiſe? So then there is no Witneſs againſt me; but I ſtand not upon this point, I ſtand upon mine own not Guiltineſs. Furthermore, it is not proved that *Babington* and I would be one to kill the Queen, but that he had appointed me to be one; and it is not proved that I knew thereof: and that I ſaid to *Salisbury*, I would come into the Country to underſtand of Things to be done, I proteſt I remember not; for what needed any coming into the Country to underſtand, when as *Salisbury* and *Babington* did ride to *St. Albans* in *Babington*'s Coach?

Manwood. You anſwer by Arguments, and not by Anſwers.

Abington. If it be true, that they rode together, as it is moſt true, what needed thoſe Speeches?

Manwood. That only anſwereth that *Babington* might confer; but it doth not anſwer, that you needed not to go into the Country to underſtand of things to be done, for you rode not in the Coach with them.

Abington. I proteſt before God, I remember not that ever I ſaid ſo.

Manwood. Let the Jury conſider of this Anſwer.

Anderſon. For Anſwer to you, *Abington*, for the point of the Statute, true it is, had you been indicted on the Statute of the 1ſt and 13th of this Queen, two Witneſſes ought to have been produced; but you ſtand indicted by the Common Law, and the Statute of 25 *Edw.* 3. which is, Who ſhall intend the Death of the King, *&c.* and in that Statute is not contained any ſuch Proof.

Tilney. The Statute of 25 *Edw.* 3. is, who ſhall compaſs or imagine, *&c.*

Anderſon. Very well, and not contained to prove by Witneſſes, as you would have it.

Sollicitor. See how they would acquit themſelves for want of Witneſs; and if it ſhould be as they would have it, then could never any Treaſon be ſufficiently proved. The Statute of *primo Eliz.* is ſo, the Overt-Act muſt be proved by two Witneſſes; but the Statute of 25 *Edw.* 3. is, Who ſhall imagine: how then can that be proved by honeſt Men, being a ſecret Cogitation which lieth in the Minds of Traitors? And ſuch Traitors will never reveal their Cogitations unto honeſt Men, but unto ſuch as themſelves, and they I hope be no honeſt Men; ſo then they would have their Treaſons never revealed.

Abington. For anſwer that I lay in a Hay-mow, it is moſt true I was in *Herefordſhire*, when my Houſe in *Worceſterſhire* was in ſearching, and there I heard how my Houſe was ſearch'd; and coming to *Worceſterſhire*, the Country hearing of the horribleneſs of the Things wherewith I was charged, I knew none would receive me nor entertain me; and ſo I was conſtrained to lie in a Hay-mow. And for preparing mine Armour, I proteſt I had the ſame in *Shoe-Lane*, and would have had it ready againſt the going over of the Earl of *Leiceſter*; and hearing him in *Holbourn* to be commended for the moſt ſingular Man in *England* in his Trade, I ſent to him to have it finiſhed.

Then ſaid the Attorney to the Jury, You have heard how *Babington* confeſſeth *Abington* would be one to kill the Queen, and you have heard his Anſwer thereunto.

Abington. If *Babington* ever moved it to me, let me die for it.

Attorney. It is *Babington*'s own Confeſſion, that Six, whereof *Abington* was one, were diſpoſed to kill the Queen.

Abington. If ever I imagined, or any part thought of the Indictment which you have alledged, I beſeech God I ſink as I ſtand in this Place.

Anderſon. You had a Seminary Prieſt in your Houſe.

Abington. He was only with me, but not in mine Houſe.

Hatton. Before *Babington* was taken, *Ballard* did voluntarily declare, that you two, *Abington* and *Tilney*, were diſpoſed to kill the Queen.

Anderſon. The Jury hath heard the Indictment and your Anſwers, let them conſider thereof in their Conſciences.

Tilney's *Trial.*

Firſt was read his Confeſſion, wherein he deny'd *Ballard*'s Acquaintance, and he denied that ever he heard *Ballard* ſay, we ſhould have a new World ſhortly. Then was read *Ballard*'s Confeſſion, which was, That before *Chriſtmas* laſt, *Ballard* did confeſs *Gage* and *Tilney* at a Houſe in *Holbourn.*

Tilney. I denied *Ballard*'s Acquaintance, becauſe, by the laſt Statute, he is a Traitor, and not for my Guilt or Crime And for that I was confeſſed by him, it was no otherwiſe than all the Subjects of the Realm of *England* were confeſſed in the days of King *Henry* VII.

Sollicitor. But now is the eſtate of this Realm quite other than it was in the days of *Henry* VII. For now the Pope is the greateſt Enemy her Majeſty hath, but it was not ſo then.

Tilney. How know I the Pope is her greateſt Enemy?

Hatton. Know not you how he invaded the Realm of *Ireland?*

Attorney. Know not you how he induced *Mary?*

Tilney. No, Sir, in my Conſcience wherein I ſhall die, I never conſpired any Treaſon.

Manwood. Were not you ſworn when you were made a Penſioner? How far different is it to theſe Actions, to be confeſſed, and to conceal Traitors?

Tilney. Yea, Sir, but I was not then a Catholick, but now I am; for which I thank God moſt heartily.

Puckering. Did not you ſay, if her Majeſty would forgive you this, you would never deal more with any Seminary Prieſt; but if there were any old Prieſt in *England*, you would have him, if he were to be gotten for Money?

Tilney. But what is this? This only concerneth my Religion, which I was promiſed I ſhould not be charged withal.

Attorney. No more you are for Lands nor Goods, this is only an Introduction to the Treaſon.

Then was read *Tilney*'s own Confeſſion, wherein he confeſſed (which alſo was given in evidence againſt *Abington)* that *Abington* ſaid, Why might not her Majeſty be as well ſurpriſed as the Queen of *Scots?* Which Words he ſpake at the *Three Tuns* in *Newgate-Market.* He confeſſed, *Ballard* came to his Chambers in *Weſtminſter*, in his Withdrawing-Chamber (as it was termed), where *Ballard* told him, He had provided a Penſion for *Windſor* in *France*, and would do ſo for him; and told him of an Invaſion intended againſt this Realm: He confeſſeth, he would have gone to *Scotland* to have liv'd there among the Catholicks, when *Ballard* went thither; and ſaid, that *Windſor* made him acquainted with *Ballard.*

Tilney. Theſe things I confeſs, but yet, 'tis no Treaſon to hear Treaſon talked of by others; as for my ſelf, what Preſumptions may there be if I ſhould be Guilty, being her Majeſty's ſworn Servant, (whoſe Highneſs God grant long to reign) a young Man of ſmall Ability, neither in Lands nor Goods able to make any Power at all? For Religion, I confeſs I am a Catholick, which I thank God for it, but that I am not now to be charged withal. As for *Ballard*'s coming to me, I do confeſs it; but it was in ſuch publick manner, as no Man in the World could judge his coming for any ſuch intent as Treaſon: For he came openly in the Day-time, not in the Night, and never came diſguiſed.

Sollicitor. *Tilney*, you ſay true; he came not diſguiſed, but I will tell you how he came; being a Popiſh Prieſt, he came in a grey Cloke laid on with Gold Lace, in Velvet Hoſe, a cut Sattin Doublet, a fair Hat of the neweſt Faſhion, the Band being ſet with Silver Buttons; a Man and a Boy after him, and his Name Captain *Forteſcue.*

Tilney. All this concerneth my Religion only.

Sollicitor. You confeſs that you were privy to theſe Treaſons; then we will prove directly that you did aſſent thereunto.

Then was read *Ballard*'s Confeſſion, wherein *Ballard* thinketh that *Tilney* did aſſent to kill the Queen, for he ſaw him not diſſent when he told him theſe Treaſons: likewiſe *Tilney* requeſted him for ſome Penſion in *France* when he came over.

Tilney. I ſtand upon the Aſſent.

Sollicitor. *Ballard* affirmeth it; *Babington* ſaid that you *Tilney* were one of the ſix.

Tilney. *Babington* told him ſo! That proves that *Babington* forſooth will be a Stateſman, when God knows he is a Man of no Gravity.

Sollicitor. *Babington*'s Confeſſion is, that *Tilney* and *Abington* were diſpoſed to kill the Queen.

Puckering. *Babington* ſaid yeſterday at the Bar, that *Tilney* would have had her Majeſty ſet upon in her Coach.

Tilney. No, I ſaid not ſo; only at the *Three Tuns* in *Newgate-Market*, I ſaid it might be her Majeſty might be ſet upon in her Coach, and I ſaid no more. But that proves not I did conſent.

Attorney. You have ſaid enough, if we had no other Evidence againſt you.

Tilney. How ſo?

Attorney. Becauſe you have confeſſed High-Treaſon.

Tilney. I tell you no, there is no ſuch matter intended in my words.

Manwood. Your Cenſure was your Aſſent, and your Cenſure was to kill the Queen in her Coach.

Hatton. Your words prove that you were concluded upon the Matter, and were deviſing on the Manner.

Attorney. *Babington* and *Ballard* reckoned *Tilney* for one of the ſix to kill the Queen, as by their Confeſſion appeareth.

Tilney. The firſt time that I knew *Babington*, was, that he came to my Chamber in *Weſtminſter*, to crave mine Acquaintance; I uſed him courteouſly, as appertained to a Gentleman. The ſecond time was at the *Three Tuns* in *Newgate-Market.* And the third time was in the Fields, and I never ſaw him elſe: that I ſhould truſt him in ſo high a matter for three times Acquaintance, is altogether improbable. As for *Babington* himſelf, albeit he be very wiſe, yet is he altogether vain.

Hatton. *Babington* declared all this voluntarily, for who could accuſe *Tilney* before *Babington* named *Tilney?*

Tilney. I will tell you how I meant my words in *Newgate-Market.* If a Servant which is faithful, knowing where his Maſter's money is, do ſay, If I would be a Thief, I could rob my Maſter, for in ſuch a place his Money is; this proves not that he would rob his Maſter, albeit he uſed ſuch words. And ſo, altho' I ſaid ſhe might be ſet upon in her Coach, it proveth not that I aſſented to the ſame; for I proteſt before God, I never intended any Treaſon in my Life.

Anderſon. But if a Servant knowing where his Maſter's Money is, among Thieves which are deviſing to take away the Maſter's Money, do ſay, This way my Maſter's Money may be taken, and be in view when it is taken; I ſay that he is acceſſary. And you, *Tilney*, being amongſt Traitors, that were deviſing how to kill her Majeſty, to ſhew by what means her Majeſty might be ſlain, it manifeſtly proveth your Aſſent. Therefore let the Jury conſider of their Evidence.

Tilney. Then ſaid *Tilney* unto the Jury, My very good Friends and Countrymen of the Jury, foraſmuch as I am charged highly to have offended againſt the Law, I am now to be tried according to the Law by you. And therefore if you ſhall find this Evidence ſufficient to prove my Guilt, you ought to find me Guilty; but if you ſee in your Conſciences that I have anſwered fully each Objection laid unto my Charge, I charge you to find me not Guilty, as you will anſwer me at the dreadful Day of Judgment.

The Trial of Jones.

Firſt was read his Confeſſion, That he ſaid to *John Travers* at *Jones*'s Houſe in *Denbighſhire*, *Salisbury* hath brought us all to Deſtruction. What remedy? ſaid *Travers*; it is then time for us to be packing. But *Jones* lent *Salisbury* his Horſe to ride away with. *Salisbury* confeſſed he acquainted *Jones* with the foreign Invaſion, and delivery of the Queen of *Scots*, deſiring his aid, which he promiſed him in *Lincolns-Inn-Fields:* And how that *Salisbury* fled upon *Jones*'s relation of *Babington*'s Apprehenſion. Alſo *Salisbury* confeſſed that he cauſed *Jones* to proteſt he would not diſcover him. *Jones* ſaith in his Examination, that *Salisbury* never aſked his Aſſent, becauſe he always thought himſelf aſſured of him. Alſo *Jones* ſaid to *Salisbury*, What have you done? You have undone us all. This was the Effect of the Evidence which was given againſt him.

Jones. For concealing of the Treaſon, I put me to her Majeſty's Mercy; I confeſs I haſtened *Salisbury* away.

Manwood. Then you deny not but that you horſed him away?

Jones. Then ſaid *Jones* to the Jury, I confeſs this, and put me to her Majeſty's Mercy; my Caſe was hard and lamentable, either to betray my deareſt Friend, whom I loved as my own ſelf; and to diſcover *Thomas Salisbury*, the beſt Man in my Country, of whom I only made choice; or elſe to break my Allegiance to my Sovereign, and ſo undo myſelf and my Poſterity for ever. And this was my Caſe.

Travers's *Arraignment.*

Saliſbury confeſſed he acquainted *John Travers* with his Treaſons, and that he conſented unto him. And *Travers* ſaid unto him, he would go beyond the Seas with him. *Saliſbury* confeſſeth he exacted no Oath of *Jones* and *Travers* when he acquainted them, but that they proteſted they would not diſcover him. Alſo it was proved that when *Jones* intended to have gone to *Ireland*, now lately when it was to have been inhabited by the *Engliſhmen*, *Travers* aſked him what he meant to go now, when his preſence was neceſſary; and ſaid, if Mr. *Saliſbury* came home, he would ſurely ſtay him.

Then was read *Culey*'s Confeſſion, That *Travers* and *Saliſbury* fled, and *Travers* called his own Name *Lacon*, and *Saliſbury* called his Name *Johnſon*, and that *Culey* would not change his Name, becauſe he had changed it before.

Travers. I fled and changed my Name, becauſe I was a Catholick, and doubted to be troubled for my Religion and Conſcience.

Sollicitor. Nay, *Travers*, thou didſt fly for Treaſon; for when *Jones* told you *Saliſbury* had undone you all, thou ſaidſt what remedy, and that it was time to be packing; and you had your Chaplain with you, *Culey* I mean.

Travers. If he be a Prieſt, I honour him for his Prieſthood. And he ſaid little elſe, as one that ſeemed not to care what Evidence came againſt him, but was reſolute to be hanged.

He confeſſed nothing in his Examination, he denied he had any Speech with *Babington*, ſaving Salutations. He confeſſed he ſerved in the *Spaniſh* Camp, and there was acquainted with *Savage*; and it was proved againſt him, that he ſaid *Savage*'s ſudden Bravery would bewray all their matters.

Charnock's *Trial.*

Charnock. I confeſs that *Ballard* did make me acquainted with the Invaſion of the Realm, and the other Treaſons, and thereupon I ſounded *Savage*, who anſwered he was not his own Man, but ſaid there was one in the Court who ſhould have done that long ſince, and that he was a *Morganiſt.*

Then was read *Babington*'s Confeſſion, that *Charnock* promiſed him to be at his Commandment, and *Babington* told him the Queen of *Scots* liked of their Actions.

And *Ballard*'s Confeſſion was read, that he told *Charnock* at large, and *Charnock* liked very well, and ſaid he would do the beſt he could herein.

And *Savage*'s Confeſſion was read, which was, that *Babington* moved *Charnock* to be one of the ſix, and *Charnock* told *Savage* that *Babington* moved him alſo.

Charnock. That I ſaid to *Babington* I would be at his Commandment, it is very true; for *Babington* was my good Friend in divers reſpects, and therefore I thought it pertained to Courteſy, to ſay I remained at his Commandment.

Sollicitor. Nay, thou didſt offer to be at *Babington*'s Commandment in this Action of Treaſon.

Then was *Babington*'s Confeſſion read, which was, that he talking in *Paul*'s with *Charnock* of the Queen's Death, *Charnock* promiſed to be diſpoſed by him in this Action, and that he offered to ſpend his Life, wherein *Babington* ſhould direct him.

Then was read *Charnock*'s own Confeſſion, wherein he confeſſed he lent Apparel to *Savage* to fly in, and that he fled into the Woods himſelf.

Charnock. Savage and I were acquainted when he was of *Barnard*'s-*Inn*, and I of *Furnival*'s-*Inn*; and we both ſerved in the *Spaniſh* Camp together, and *Savage* brought me acquainted with *Ballard.* As for *Savage*, becauſe I knew he was an excellent Soldier, a Man ſkilful in Languages, and learned beſides; when I met him here in *England*, I was glad to renew old Acquaintance with him. That I ſhould conſent to *Ballard* the 2d Day of *Auguſt*, ſee (if you pleaſe) what probability there is to the contrary: For on the 4th of *Auguſt Ballard* was apprehended, and before his Apprehenhenſion *Ballard* ſent a Letter to Mr. Secretary, offering to diſcover all; my ſelf was the Bearer of the Letter, and delivered it to one of Mr. Secretary's Men: what likelihood is it then, that I knowing of this Letter after that *Ballard* was taken, would conſent to *Babington* to kill the Queen, or that I conſented to *Ballard* the 2d of *Auguſt*; *Ballard* being apprehended the 4th of *Auguſt*, and before that time had written to Mr. Secretary, and my ſelf was the Meſſenger?

Hatton. Savage confronted thee to thy face, and avouched theſe things to thy face.

Charnock. For flying away with my Friend, I fulfilled the part of a Friend therein.

Hatton. To perform thy Friendſhip, thou didſt break thy Allegiance to thy Sovereign.

Charnock. Therein have I offended.

Anderſon. You of the Jury, you have now heard their ſeveral Anſwers at large; go together and conſider thereof in your Conſciences.

Then the Jury, upon this Evidence and their Anſwers, went up to a Houſe to agree upon their Verdict; and theſe five Priſoners were ſent away from the Bar.

Then *Bellamy* and *Gage* were called to the Bar, and a new Inqueſt were called and appeared at the Bar, and Evidence was given againſt the two Priſoners in ſort enſuing.

The Trial of Gage.

Firſt, was given in Evidence that *Gage* knew *Ballard* to be a Prieſt, and was reconciled, and gave Lodging unto *Ballard*, and attended *Ballard* as his Man when he went into the North to provoke the People to Rebellion: Alſo when all the Matter was diſcovered, he lent *Savage* a Horſe to fly to *Croydon*, and directed him to one of *Savage*'s Father's Men, who ſhould help him away: Alſo that he lent *Babington* his Apparel to fly in. Then was ſhewed forth his own Confeſſion, which was, that *Ballard* told him we ſhould have a new World ſhortly, and that he lodged *Ballard* for his Safety: Alſo he confeſſed, that during his flight he lodged in a Barn: Alſo he confeſſed that he was reconciled by *Ballard.*

Alſo *Charnock*'s Confeſſion was read, That *Gage* borrowed Apparel of him to fly in.

Then *Gage* was aſked by the Lord Chief Baron *Manwood*, Wherefore he fled into the Woods?

Gage ſtoutly and fiercely anſwered, For Company.

Bellamy's *Trial.*

He confeſſed that the noiſe of the Country was, that they (that is to ſay, *Babington*, *Barnewell* and *Donn*) had conſpired the Queen's Death, and how that after that he brought them Meat into the Woods, and lodged them in his Houſe. Alſo Evidence was given, that one coming to *Bellamy*'s Houſe to ſeek for the Traitors, telling him they conſpired the Queen's Death, he denied he knew whom they were; whereas at the ſame time he had them in his Houſe. *Bellamy* ſpake very little for himſelf, only he ſeemed to be a very clowniſh, blunt, wilful and obſtinate Papiſt.

Then this other Jury went up to a Houſe to agree upon their Verdict, and by that time was the firſt Jury agreed, which came to the Bar; and Alderman *Martin* being their Foreman, ſpake for them, and ſaid that they found all the five Priſoners Guilty; and further, that they knew not what Lands, Tenements, Goods or Chattels the Priſoners had, *&c.* So the Clerk of the Crown ſet down the Verdict, and diſcharged the Inqueſt of that Service.

Forthwith was the other Inqueſt agreed of their Verdict, and found *Gage* and *Bellamy* alſo Guilty of the Treaſons they were indicted of.

Puckering. Then *Puckering*, the Queen's Serjeant, craved Judgment of Death againſt the Priſoners.

Sandes. Then ſaid *Sandes*, the Clerk of the Crown; *Edward Abington*, thou haſt been indicted of High-Treaſon, and thereupon arraigned, and haſt pleaded not Guilty, thy Country hath found thee Guilty; what haſt thou to ſay for thy ſelf, wherefore Judgment and Execution of Death ſhould not be given againſt thee?

Abington. My good Lords, ſithence I have been tried by the Law, and am found Guilty of Offence againſt the Law, I am contented to abide the Puniſhment due unto my Guilt. The Inqueſt I cannot accuſe, foraſmuch as they thought in their Conſciences the Evidence ſufficient to condemn me; howbeit, that brainleſs Youth *Babington*, whoſe proud Stomach and ambitious Mind incenſing him to commit moſt abominable Treaſons, hath been the cauſe to ſhed the blood of others guiltleſs in his Actions. But I cry not Vengeance againſt him, for I am contented to die, being condemned to die. Only this one Petition to you, my good Lords, I make: I have one Siſter, whoſe Preferment alſo hath miſcarried; wherefore if it might pleaſe her Majeſty, with the Revenues of my Lands in ſome ſort to provide for her: If I live, I will endeavour to be thankful; and if I die, I will pray for her.

Then the Clerk of the Crown demanded the like of *Tilney*; who ſaid,

Tilney. And I, my good Lords, am able to ſay nothing in deferring of my Judgment. This humble ſuit muſt I make to your Honours; I owe in *London* about two or three hundred Pounds, and I beſeech your Honours to procure my Friends to pay it for diſcharge of my Conſcience.

Then the Clerk of the Crown demanded the like of *Jones*; who ſaid,

Jones. I beſeech your Honours to be a means to her Majeſty for Mercy, for I deſiring to be counted a faithful Friend, am now condemned for a falſe Traitor. The Love of *Thomas Saliſbury* hath made me hate myſelf, but God knows how far I was from intending any Treaſon. But if Mercy be not to be had, I beſeech your Honours this; I owe ſome Sums of Money, but not very much, and I have more owing me; I beſeech that my Debts may be paid with that which is owing me. Moreover, my good Lords, the Lands I have, which I had by deſcent from my Father, at the Marriage of a Gentlewoman which is now my Wife, were intailed unto me, and the Heirs Male of my Body; I beſeech you ſome Conſideration may be had of my Poſterity.

Hatton. Jones, did not you tell me that your Lands were Fee-ſimple, for an Argument of your Innocency?

Jones. Yea, Sir, ſo my Lands are; but at the time of my Marriage they were intailed as I tell you.

Sandes. Then the Clerk of the Crown demanded the like of *Travers*; who ſaid,

Travers. I never committed any Treaſon, but for my Religion, I will die in it; only I owe 4 *l.* or ſuch a matter, I beſeech you it may be paid out of the Profits of my Lands.

Then the Clerk of the Crown demanded the like of *Charnock*; who ſaid,

Charnock. I beſeech your Honour, Mr. Vice-Chamberlain, to get her Majeſty to pardon me.

Hatton. Charnock, thy Offence is too high for me to be an Obtainer of thy Pardon, but I am ſorry for thee; if thou hadſt applied thy ſelf the beſt way, thou mighteſt have done thy Country good Service.

Charnock. I beſeech you then, that ſix Angels, which ſuch a one hath of mine, may be delivered unto my Brother to pay my Debts.

Hatton. How much is thy Debts?

Charnock. The ſame ſix Angels would diſcharge it.

Hatton. Then I promiſe thee it ſhall be paid.

Then the Clerk of the Crown demanded the like of the reſt, who anſwered little: whereupon they all received Judgment of Death, according to their demerits.

ON the 20th of the ſame Month, *John Ballard*, *Anthony Babington*, *John Savage*, *Robert Barnewell*, *Chidiock Titchbourne*, *Charles Tilney* and *Edward Abington*, were drawn on Hurdles from the *Tower* to their Execution to St. *Giles*'s-*Fields*, being the Place where they uſed to meet; where was erected a Scaffold, and thereupon a Gallows.

John Ballard the Prieſt, the principal Conſpirator, confeſſed that he was guilty of thoſe things for which he was *Condemn'd*, but proteſted they were never enterpriſed by him upon any Hope of Preferment, but only, as he ſaid, for the Advancement of *true Religion.* He craved Pardon and Forgiveneſs of all Perſons, to whom his Doings had been any *Scandal*, and ſo made an end; making his Prayers to himſelf in *Latin*, not aſking her Majeſty Forgiveneſs, otherwiſe than *if he had offended.*

Anthony Babington alſo confeſſed, that he was come to die, as he had deſerved; howbeit he (as *Ballard* before) proteſted that he was not led into thoſe Actions upon Hope of Preferment, or for any temporal Reſpect; nor had ever attempted them, but that he was perſuaded by Reaſons alledged to this effect, That it was *a Deed lawful and meritorious.* He craved forgiveneſs of all whom he had any way offended; he would gladly alſo have been reſolved whether his Lands ſhould have been confiſcate to her Majeſty, or whether they ſhould deſcend to his Brother; but howſoever, his Requeſt was to the Lords, and others the Commiſſioners there preſent, that Conſideration might be had of one whoſe Money he had received for Lands, which he had paſſed no *Fine* for, for which the Conveyance was void in Law. He requeſted alſo, that Conſideration might be had of a certain Servant of his, whom he had ſent for certain Merchandize into the Eaſt Countries, who by his means was greatly impoveriſhed. For his Wife, he ſaid, ſhe had good Friends, to whoſe Conſideration he would leave her: And thus he finiſhed, aſking her Majeſty Forgiveneſs, and making his Prayers in *Latin.*

John Savage confeſſed his Guilt, and ſaid (as the other two before) that he did attempt it, for that in Conſcience he thought it a *Deed meritorious*, and a common Good to the Weal publick, and for no private Preferment.

Robert Barnewell confeſſed that he was made acquainted with their Drifts, but denied that ever he *conſented*, or could be in Conſcience perſuaded that it was a *Deed lawful.* And being urged that he came to the Court to ſpy Opportunities for the atchieving of their Purpoſes, and that being there, her Majeſty obſerving his *prying Looks*, acquainted before with their Intents, ſhe prayed God that all were well: To this he anſwered, That it was not unknown to divers of the Council, that he had Matters which he ſollicited, which was the Cauſe of his being there at that time; but I confeſs (ſaid he) at my Return, *Babington* aſked me what News; to whom I told, that her Majeſty had been abroad that Day, with all the Circumſtances that I ſaw there; and if I have offended her Majeſty, I crave Forgiveneſs; and aſſuredly, if the Sacrifice of my Body might eſtabliſh her Majeſty in the *true Religion*, I would moſt willingly offer it up. Then he prayed to himſelf in *Latin.*

Chidiock Titchbourne began to ſpeak as followeth, *viz.* Countrymen and my dear Friends, you expect I ſhould ſpeak ſomething; I am a bad Orator, and my Text is worſe: It were in vain to enter into the Diſcourſe of the whole Matter for which I am brought hither, for that it hath been revealed heretofore, and is well known to the moſt of this Company: Let me be a Warning to all young Gentlemen, eſpecially *Generoſis adoleſcentulis.* I had a Friend, and a dear Friend, of whom I made no ſmall Account, whoſe Friendſhip hath brought me to this: he told me the whole Matter, I cannot deny, as they had laid it down to be done; but I always thought it *impious*, and denied to be a Dealer in it; but the Regard of my Friend cauſed me to be a Man in whom the old Proverb was verified, I was *ſilent, and ſo conſented.* Before this thing chanced, we lived together in moſt flouriſhing Eſtate: Of whom went Report in the *Strand*, *Fleet-ſtreet*, and elſewhere about *London*, but of *Babington* and *Titchbourne?* No Threſhold was of force to brave our Entry. Thus we lived, and wanted nothing we could wiſh for: and God knows, what leſs in my Head than Matters of *State?* Now give me leave to declare the Miſeries I ſuſtained after I was acquainted with the Action, wherein I may juſtly compare my Eſtate to that of *Adam*'s, who could not abſtain *one thing forbidden*, to enjoy all other things the World could afford; the Terror of Conſcience awaited me. After I conſider'd the Dangers whereinto I was fallen, I went to Sir *John Peters* in *Eſſex*, and appointed my Horſes ſhould meet me at *London*, intending to go down into the Country. I came to *London*, and there heard that all was *bewrayed*; whereupon, like *Adam*, we fled into the *Woods* to hide our ſelves, and there were apprehended. My dear Countrymen, my Sorrows may be your Joy, yet mix your *Smiles* with *Tears*, and pity my Caſe; I am deſcended from an Houſe, from two hundred Years before the Conqueſt, never ſtained till this my Misfortune. I have a Wife and one Child; my Wife *Agnes*, my *dear Wife*, and there's my Grief, and ſix Siſters left on my hand: my poor Servants, I know, their Maſter being taken, were diſperſed, for all which I do moſt heartily grieve. I expected ſome Favour, tho' I deſerved nothing leſs, that the Remainder of my Years might in ſome ſort have recompenſed my former Guilt; which ſeeing I have miſſed, let me now meditate upon the Joys I hope to enjoy. This done, he prayed firſt in *Latin*, and then in *Engliſh*, aſking her Majeſty and all the World, heartily, Forgiveneſs, and that he hoped ſtedfaſtly, now at this his laſt Hour, his Faith would not fail.

Charles Tilney ſaid, I am a Catholick, and believe in Jeſus Chriſt, and by his Paſſion I hope to be ſaved; and I confeſs I can do nothing without him, which Opinion all Catholicks firmly hold: and whereas they are thought to hold the contrary, they are in that, as in all other things, greatly abuſed. To Dr. *White*, ſeeming to ſchool him in Points of Religion, differing from thoſe which he held; he ſpoke in anger, I came hither to *die*, Doctor, and not to *argue.* He prayed in *Latin* for himſelf, and after he prayed for Queen *Elizabeth*, that ſhe might live long; and warned all young Gentlemen, of what Degree or Calling ſoever, to take warning by him.

Edward Abington ſaid, I come hither to die, holding all Points firmly that the Catholick Church doth; and for the Matters whereof I am condemned, I confeſs all, ſaving the Death of her Majeſty, to the which I never conſented. He feared, as he ſaid, great Bloodſhed in *England* before it were long. Sheriff *Ratcliffe* ſaid, *Abington*, Seeſt thou all theſe People, whoſe Blood ſhall be demanded at thy Hands, if thou, dying, conceal that which may turn to their Peril; therefore tell why, or which way ſuch Blood ſhould be ſhed? He ſaid, All that I know, you have of Record; and at laſt, ſaid he, this Country is hated of all Countries for her Iniquity, and God loves it not. And being urged by Dr. *White* to be of a lively Faith; he anſwered, he believed ſtedfaſtly in the Catholick Faith. The Doctor aſked him, how he meant, for I fear me, ſaid he, thou deceiveſt thy ſelf: he anſwered, That Faith and Religion which is holden almoſt in all Chriſtendom, except here in *England.* Thus done, he willed them not to trouble him any longer with any more Queſtions, but made his Prayers to himſelf in *Latin.*

Ballard was firſt executed. He was cut down and bowelled with great Cruelty while he was alive. *Babington* beheld *Ballard*'s Execution without being in the leaſt daunted: whilſt the reſt turned away their Faces, and fell to Prayers upon their Knees. *Babington* being taken down from the Gallows alive too, and ready to be cut up, he cried aloud ſeveral times in *Latin*, *Parce mihi, Domine Jeſu!* Spare me, O Lord Jeſus! *Savage* broke the Rope, and fell down from the Gallows, and was preſently ſeized on by the Executioner, his Privities cut off, and his Bowels taken out while he was alive. *Barnewell*, *Titchbourne*, *Tilney* and *Abington* were executed with equal Cruelty.

On the next Day *Thomas Saliſbury*, *Henry Donn*, *Edward Jones*, *John Charnock*, *John Travers*, *Robert Gage*, *Jerome Bellamy*, were drawn to the place of Execution.

Thomas Saliſbury ſaid, Sithence it hath pleaſed God to appoint this Place for my End, I thank his infinite Goodneſs for the ſame; I confeſs that I have deſerved Death, and that I have offended her Majeſty, whom to forgive me I heartily beſeech, with all others whom I have any way offended. I deſire all true Catholicks to pray for me; and I deſire them, as I beſeech God they may, to endure with Patience whatſoever ſhall be laid upon them, and never to enter into any Action of Violence for Remedy. Then he ſaid his Prayers, looking earneſtly with his Eyes to Heaven, and prayed in *Latin* a long while: When he had thus done, he cried in *Engliſh* and *Latin*, Father, forgive me!

Henry Donn ſaid, Do the People expect I ſhould ſay any thing? I was acquainted, I confeſs, with their Practices, but I never did intend to be a Dealer in them. *Babington* oftentimes requeſted me to be one, and ſaid, for that he loved me well, he would beſtow me in one of the beſt Actions; which ſhould have been the Delivery of the Queen of *Scots*, to which I could not for a long time agree; at length, by many urgent Perſuaſions he won me, ſo as I told him I would do my beſt. And being aſked, as he was aſcending the Ladder, whether he thought it lawful to kill her Majeſty? He anſwered, No, no; for I take her to be my lawful and natural Prince. And (as *Saliſbury*) he deſired all Catholicks to endure with Patience, and never to attempt any thing againſt her Majeſty, under whoſe Government he had lived quietly, until within theſe ten Weeks, that thoſe things were firſt imparted unto him: and whereas he was indebted to divers, and divers in like manner to him, he forgave all that was owing to him, and craved Forgiveneſs of what he owed. He deſired God to forgive *Babington*, the only Cauſe of his Fall and Death; and was right ſorry for a Gentlewoman, one Mrs. *Bellamy*, at whoſe Houſe he, with the reſt, were relieved after they fled; he prayed God, whom he had chiefly offended, next her Majeſty, and laſt of all the People, Forgiveneſs; ſaying, No Soul was more ſorrowful than his, nor none more ſinful; and prayed for her Majeſty, wiſhing ſhe might live in all Happineſs, and after this Life be eternized in everlaſting Bliſs; and ſo he pray'd in *Latin* and *Engliſh.*

Edward Jones ſaid, I come hither to die, but how rightfully God knows; for thus ſtands my Caſe: At *Trinity Term* laſt, Mr. *Salisbury* made me acquainted with their Purpoſes; and for that he knew me to be well horſed, he thought me as fit as any to attempt the Delivery of the Queen of *Scots*, and requeſted me to be one; which I utterly denied, altogether miſliking their Practices, and perſuading him, by what Means I might, from it; and told him, this was the haughty and ambitious Mind of *Anthony Babington*, which would be the Deſtruction of himſelf and Friends, whoſe Company I wiſhed him to refrain; and for that I would have him out of his Company, I have divers times lent him Money, and pawned my Chain and Jewels to buy him Neceſſaries to go into the Country And whereas I had made Conveyance of my Lands to divers Uſes, with ſome Annuities, and placed my Wife with my Friends, and given over Houſekeeping, and by reaſon of my Conſcience thought to live at eaſe; I called my Servants together again, and began to keep Houſe more freſhly than ever I did, only becauſe I was weary to ſee *Salisbury*'s ſtraggling, and for that I was willing to keep him about home; and never conſented to any of his Treaſons, but always adviſed him to beware; for tho' I was, and am a *Catholick*, yet I took it to be a moſt wicked Act to offer Violence to my natural Prince. I did intend to go into *Ireland* with Mr. *Edward Fitton*, and there to have ſerved; until at length, very ſhortly after this, my determinate Mind being not ſettled, I received a Note of their Names, amongſt whom was the Name of my dear Friend: Then I began to fear what hath happened; I heard that Night he would be at my Houſe; and indeed he came thither about twelve o'clock, and the Door being opened him, as he was very familiar with me, he came running up to my Bed-ſide with a Candle in his Hand, which he took from one of my Men, ſaluting me with theſe Words, *Ned Jones*, how doſt thou? Ah! *Tom*, ſaid I, Art thou one of them that ſhould have killed the Queen? Yea, ſaid he, what meaneſt thou by that? See, and read this, ſaid I, giving him the Note wherein his Name was; he ſeeing, turned about and ſaid, there be many Catholicks in *England* as far in this Act as we are: The more the worſe, quoth I. Here is the Sum of my Fault, in which I know I have offended her Majeſty; firſt, becauſe I did conceal it at *London*, and laſtly, becauſe I did not apprehend my dear Friend *Tom*, being in my Houſe; for which Fault I am heartily ſorry, and do aſk her Majeſty Forgiveneſs. There is one thing wherein I am to move you, concerning my Debts; I have ſet them down ſo near as I could what they are: Good Sir *Francis Knowles*, I ſhall intreat you to be a mean to her Majeſty, that there may be ſome Care had of my Creditors and Debtors.

The Debts which I owe do amount, in the whole, to 980 *l.*

The Debts which are owing me are 1600 *l.*

But who ſhall look into my Compting-houſe ſhall find many of 100 *l.* 200 *l.* or 300 *l.* whereof all is diſcharged, except ſome of 50 *l.* and ſome 40 *l.* and ſuch like, without any Defeaſance, and lie only in my Credit; ſo that unleſs ſome Man of Conſcience enter into the Action of my Compting-houſe, it is like to be the utter undoing of a Number; but God knows my Mind, and I hope it ſhall not be laid to my Charge: and ſo concluded with his Prayers, firſt in *Latin*, and then in *Engliſh*, that the People might better underſtand what he prayed.

John Charnock and *John Travers* having their Minds wholly fixt on Prayer, recommended themſelves to God and the Saints. *Gage* extolled the Queen's great Grace and Bounty to his Father, and deteſted his own perfidious Ingratitude towards his Princeſs. And *Jerome Bellamy*, with Confuſion and deep Silence, ſuffer'd laſt.

The Queen being inform'd of the Severity uſed in the Executions the Day before, and deteſting ſuch Cruelty, gave expreſs Orders that theſe ſhould be uſed more favourably; and accordingly they were permitted to hang till they were quite dead, before they were cut down and bowelled.

XII. *PROCEEDINGS againſt* MARY *Queen of* Scots, *at* Fotheringay-Caſtle, *the* 12*th of* October, 1586. *for being concerned in a* Conſpiracy *againſt Queen* Elizabeth; *with ſome things previous thereto, and neceſſary to introduce and explain thoſe Proceedings.*

THE Subjects of *England* finding the Kingdom in danger of an Invaſion from abroad, and the Life of the Queen attempted by various Plots at home, carried on by the Papiſts, in proſpect of a Popiſh Succeſſor; voluntarily entered into an Aſſociation for the Queen's Safety, ſolemnly engaging and obliging themſelves to each other, to revenge her Death on thoſe who ſhould be the occaſion of it: which Aſſociation was as follows.

‘ FORASMUCH as Almighty God hath ordain'd Kings, Queens, and Princes to have Dominion and Rule over all their Subjects, and to preſerve them in the Poſſeſſion and Obſervation of the true Chriſtian Religion, according to his holy Word and Commandment; and in like ſort, that all Subjects ſhould love, fear, and obey their Sovereign Princes, being Kings or Queens, to the utmoſt of their power; at all times to withſtand, purſue, and ſuppreſs all manner of Perſons, that ſhall by any means intend and attempt any thing dangerous or hurtful to the Honour, State, or Perſons of their Sovereigns.

‘ Therefore we whoſe Names are or ſhall be ſubſcrib'd to this Writing, being natural-born Subjects of this Realm of *England*; and having ſo gracious a Lady, our Sovereign *Elizabeth*, by the Ordinance of God, our moſt rightful Queen, reigning over us theſe many Years with great Felicity, to our ineſtimable Comfort: And finding lately by divers Depoſitions, Confeſſions, and ſundry Advertiſements out of foreign Parts, from credible Perſons well known to her Majeſty's Council, and to divers others, that for the Furtherance and Advancement of ſome pretended Title to the Crown, it hath been manifeſted, that the Life of our gracious Sovereign Queen *Elizabeth* hath been moſt dangerouſly deſigned againſt, to the Peril of her Perſon, if Almighty God, her perpetual Defender, of his Mercy had not revealed and withſtood the ſame; by whoſe Life, we, and all other her Majeſty's true and loyal Subjects, do enjoy all ineſtimable benefit of Peace in this Land: Do for theſe Reaſons and Cauſes before alledged, not only acknowledge ourſelves moſt juſtly bound with our Lives and Goods for her defence, and in her ſafety to proſecute, ſuppreſs and withſtand all ſuch Intenders, and all other her Enemies, of what Nation, Condition or Degree ſoever they ſhall be, or by what Counſel or Title they ſhall pretend to be her Enemies, or to attempt any harm upon her Perſon; but do further think it our bounden Duties, for the great benefit of Peace, Wealth, and godly Government, we have more plentifully received theſe many Years under her Majeſty's Government, than any of our Forefathers have done in any longer time of any of her Progenitors, Kings of this Realm; to declare, and by this Writing make manifeſt our bounden Duties to our Sovereign Lady for her Safety.

‘ And to that end, we and every of us, firſt calling to witneſs the Name of Almighty God, do voluntarily and moſt willingly bind our ſelves, every one of us to the other, jointly and ſeverally in the Band of one firm and loyal Society; and do hereby vow and promiſe by the Majeſty of Almighty God, that with our whole Powers, Bodies, Lives and Goods, and with our Children and Servants, we and every of us will faithfully ſerve, and humbly obey our ſaid Sovereign Lady Queen *Elizabeth*, againſt all States, Dignities and earthly Powers whatſoever; and will as well with our joint and particular Forces during our Lives withſtand, purſue and offend, as well by force of Arms, as by all other means of Revenge, all manner of Perſons, of whatſoever ſtate they ſhall be, and their Abettors, that ſhall attempt any Act, or counſel or conſent to any thing that ſhall tend to the harm of her Majeſty's Royal Perſon; and will never deſiſt from all manner of forcible purſuit againſt ſuch Perſons, to the utter extermination of them, their Counſellors, Aiders and Abettors.

‘ And if any ſuch wicked attempt againſt her moſt Royal Perſon ſhall be taken in hand, or procured, whereby any that have, may or ſhall pretend Title to come to this Crown by the untimely Death of her Majeſty ſo wickedly procured (which God of his Mercy forbid!); that the ſame may be avenged, we do not only bind our ſelves both jointly and ſeverally never to allow, accept or favour any ſuch pretended Succeſſor, by whom or for whom any ſuch deteſtable Act ſhall be attempted or committed, as unworthy of all Government in any Chriſtian Realm or Civil State:

‘ But do alſo further vow and proteſt, as we are moſt bound, and that in the preſence of the eternal and everlaſting God, to proſecute ſuch Perſon or Perſons to death, with our joint and particular Forces, and to act the utmoſt Revenge upon them, that by any means we or any of us can deviſe and do, or cauſe to be deviſed and done for their utter Overthrow and Extirpation.

‘ And to the better Corroboration of this our Loyal Band and Aſſociation, we do alſo teſtify by this Writing, that we do confirm the Contents hereof by our Oaths corporally taken upon the Holy Evangeliſts, with this expreſs Condition, That no one of us ſhall for any Reſpect of Perſon or Cauſes, or for Fear or Reward, ſeparate ourſelves from this Aſſociation, or fail in the Proſecution thereof during our Lives, upon pain of being by the reſt of us proſecuted and ſuppreſt as perjur'd Perſons, and as publick Enemies to God, our Queen, and to our Native Country; to which Puniſhment and Pains we do voluntarily ſubmit ourſelves, and every of us, without benefit of any Colour and Pretence.

‘ In witneſs of all which Premiſes to be inviolably kept, we do to this Writing put our Hands and Seals; and ſhall be moſt ready to accept and admit any others hereafter to this Society and Aſſociation.’

This Aſſociation, although entered into voluntarily by Perſons in their private Capacities, was confirm'd and eſtabliſh'd by a Statute made 27 *Elizabeth* 1585, entitled, *An Act for the Security of the Queen's Royal Perſon, and the Continuance of the Realm in Peace*; and is as follows:

‘ FOraſmuch as the good Felicity and Comfort of the whole Eſtate of this Realm conſiſteth only (next under God) in the Surety and Preſervation of the Queen's moſt Excellent Majeſty; and for that it hath manifeſtly appeared, that ſundry wicked Plots and Means have of late been deviſed and laid, as well in foreign Parts beyond the Seas, as alſo within this Realm, to the great endangering of her Highneſs's moſt Royal Perſon, and to the utter Ruin of the whole Commonweal, if by God's merciful Providence the ſame had not been revealed: Therefore for the preventing of ſuch great Perils as might hereafter otherwiſe grow by the like deteſtable and deviliſh Practices, at the humble Suit and earneſt Petition of the Lords Spiritual and Temporal, and the Commons in this Parliament aſſembled, and by the Authority of the ſame Parliament; Be it enacted and ordained, If at any time after the end of this preſent Seſſion of Parliament, any open Invaſion or Rebellion ſhall be had or made, into or within any of her Majeſty's Realms or Dominions, or any Act attempted, tending to the hurt of her Majeſty's moſt Royal Perſon, by or for any Perſon that ſhall or may pretend Title to the Crown of this Realm after her Majeſty's deceaſe; or if any thing be compaſſed or imagined, tending to the hurt of her Majeſty's Royal Perſon, by any Perſon, or with the privity of any Perſon that ſhall or may pretend Title to the Crown of this Realm: That then by her Majeſty's Commiſſion under her Great Seal, the Lords and other of her Highneſs's Privy-Council, and ſuch other Lords of Parliament to be named by her Majeſty, as with the ſaid Privy-Council ſhall come up to the number of four and twenty at the leaſt, having with them for their aſſiſtance in that behalf ſuch of the Judges of the Courts of Record at *Weſtminſter* as her Highneſs ſhall for that purpoſe aſſign and appoint, or the more part of the ſame Council, Lords and Judges, ſhall by virtue of this Act have Authority to examine all and every the Offences aforeſaid, and all Circumſtances thereof, and thereupon to give Sentence or Judgment, as upon good Proof the matter ſhall appear unto them. And that after ſuch Sentence or Judgment given, and Declaration thereof made and publiſh'd by her Majeſty's Proclamation under the Great Seal of *England*, all Perſons againſt whom ſuch Sentence or Judgment ſhall be ſo given and publiſhed, ſhall be excluded and diſabled for ever to have or claim, or to pretend to have or claim the Crown of this Realm, or of any her Majeſty's Dominions; any former Law or Statute whatſoever to the contrary in any wiſe notwithſtanding. And that thereupon all her Highneſs's Subjects ſhall and may lawfully by virtue of this Act, and her Majeſty's Direction in that behalf, by all forcible and poſſible means purſue to death every ſuch wicked Perſon, by whom or by whoſe means, aſſent, or privity, any ſuch Invaſion or Rebellion ſhall be in form aforeſaid denounced to have been made, or ſuch wicked Act attempted, or other thing compaſſed or imagined againſt her Majeſty's Perſon, and all their Aiders, Comforters and Abettors.

‘ And if any ſuch deteſtable Act ſhall be executed againſt her Highneſs's moſt Royal Perſon, whereby her Majeſty's Life ſhall be taken away (which God of his great Mercy forbid); that then every ſuch Perſon, by or for whom any ſuch Act ſhall be executed, and their Iſſues being any wiſe aſſenting or privy to the ſame, ſhall by virtue of this Act be excluded and diſabled for ever to have or claim, or pretend to have or claim the ſaid Crown of this Realm, or any other her Highneſs's Dominions, any former Law or Statute to the contrary in any wiſe notwithſtanding. And that all the Subjects of this Realm, and all other her Majeſty's Dominions, ſhall and may lawfully, by virtue of this Act, by all forcible and poſſible means purſue to the Death every ſuch wicked Perſon, by whom or by whoſe means any ſuch deteſtable Fact ſhall be in form hereafter expreſſed denounced to have been committed, and alſo their Iſſues being any wiſe aſſenting or privy to the ſame, and all their Aiders, Comforters and Abettors in that behalf.

‘ And to the end that the Intention of this Law may be effectually executed, if her Majeſty's Life be taken away by any violent or unnatural means (which God defend): Be it further enacted by the Authority aforeſaid, That the Lords and others, which ſhall be of her Majeſty's Privy-Council at the time of ſuch her Deceaſe, or the more part of the ſame Council, joining unto them for their aſſiſtance five other Earls, and ſeven other Lords of Parliament at the leaſt (foreſeeing, that none of the ſaid Earls, Lords or Council be known to be Perſons that may make any Title to the Crown), thoſe Perſons which were Chief Juſtices of either Bench, Maſter of the Rolls, and Chief Baron of the Exchequer at the time of her Majeſty's Death, or in default of the ſaid Juſtices, Maſter of the Rolls, and Chief Baron, ſome other of thoſe which were Juſtices of ſome of the Courts of Records at *Weſtminſter* at the time of her Highneſs's deceaſe, to ſupply their Places; or any four and twenty, or more of them, whereof eight to be Lords of the Parliament, not being of the Privy-Council, ſhall to the uttermoſt of their power and ſkill examine the cauſe and manner of ſuch her Majeſty's Death, and what Perſons ſhall be any way guilty thereof, and all Circumſtances concerning the ſame, according to the true meaning of this Act; and thereupon ſhall by open Proclamation publiſh the ſame, and without any delay, by all forcible and poſſible means, proſecute to Death all their Aiders and Abettors; and for the doing thereof, and the withſtanding and ſuppreſſing all ſuch Power and Force, as ſhall be any way levied or ſtirred in diſturbance of the due Execution of this Law, they ſhall by virtue of this Act have Power and Authority, not only to raiſe and uſe ſuch Forces as ſhall in that behalf be needful and convenient, but alſo to uſe all other means and things poſſible and neceſſary for the maintenance of the ſame Forces, and Proſecution of the ſaid Offenders. And if any ſuch Power and Force ſhall be levied and ſtirred in diſturbance of the due Execution of this Law, by any Perſon that ſhall or may pretend any Title to the Crown of this Realm, whereby this Law may not in all things be fully executed, according to the effect and true meaning of the ſame; that then every ſuch Perſon ſhall by virtue of this Act be therefore excluded and diſabled for ever to have, or claim, or pretend to have or claim the Crown of this Realm, or of any other her Highneſs's Dominions, any former Law or Statute whatſoever to the contrary notwithſtanding.

‘ And be it further enacted by the Authority aforeſaid, That all and every the Subjects of all her Majeſty's Realms and Dominions, ſhall to the uttermoſt of their power aid and aſſiſt the ſaid Council, and all other the Lords and other Perſons, to be adjoined to them for aſſiſtance, as is aforeſaid, in all things to be done and executed according to the effect and intention of this Law; and that no Subject of this Realm ſhall in any wiſe be impeached in Body, Land or Goods, at any time hereafter, for any thing to be done or executed according to the Tenor hereof, any Law or Statute heretofore made to the contrary in any wiſe notwithſtanding.

‘ And whereas of late many of her Majeſty's good and faithful Subjects have in the Name of God, and with the Teſtimonies of good Conſciences, by one uniform manner of writing under their Hands and Seals, and by their ſeveral Oaths voluntarily taken, joined themſelves together in one Bond and Aſſociation, to withſtand and revenge to the uttermoſt all ſuch malicious Actions and Attempts againſt her Majeſty's moſt Royal Perſon: Now for the full explaining of all ſuch Ambiguities and Queſtions, as otherwiſe might happen to grow by reaſon of any ſiniſter or wrong Conſtruction or Interpretation to be made or inferred of or upon the words or meaning thereof; Be it declared and enacted by the Authority of this preſent Parliament, that the ſame Aſſociation, and every Article and Sentence therein contained, as well concerning the diſallowing, excluding, or diſabling any Perſon that may or ſhall pretend any Title to come to the Crown of this Realm, as alſo for the purſuing, and taking revenge of any ſuch wicked Act or Attempt as is mentioned in the ſame Aſſociation, ſhall and ought to be in all things expounded and adjudged according to the true intent and meaning of this Act, and not otherwiſe, or againſt any other Perſon or Perſons.’

The following Year, 1586, *Babington* and others being convicted of a Conſpiracy to aſſaſſinate Queen *Elizabeth*; and the Queen of *Scots* being charg'd with countenancing and encouraging that Conſpiracy, a Commiſſion was iſſued out, founded upon the abovesaid Statute, for the Examination and Trial of the ſaid Queen of *Scots*, to the effect following.

E*LIZABETH* by the Grace of God, of *England*, *France*, and *Ireland* Queen, Defender of the Faith, *&c.* To the moſt Reverend Father in Chriſt, *John* Archbiſhop of *Canterbury*, Primate and Metropolitan of all *England*, and one of our Privy-Council; and to our truſty and well-beloved Sir *Thomas Bromley* Kt. Chancellor of *England*, and one of our Privy-Council; and alſo to our truſty and well-beloved *William* Lord *Burghley*, Lord Treaſurer of *England*, another of our Privy-Council; and alſo to our moſt dear Couſin *William* Lord Marquis of *Wincheſter*, one of the Lords of the Parliament; to our moſt dear Couſin *Edward* Earl of *Oxford*, great Chamberlain of *England*, another of the Lords of the Parliament; and alſo to our moſt dear Couſin *George* Earl of *Shrewſbury*, Earl Marſhal of *England*, another of our Privy-Council; and to our moſt dear Couſin *Henry* Earl of *Kent*, another of the Lords of the Parliament; and alſo to our moſt dear Couſin *Henry* Earl of *Derby*, another of our Privy-Council; and to our moſt dear Couſin *William* Earl of *Worceſter*, another of the Lords of the Parliament; and alſo to our moſt dear Couſin *Edward* Earl of *Rutland*, another of the Lords of the Parliament; and to our moſt dear Couſin *Ambroſe* Earl of *Warwick*, Maſter of our Ordnance, another of our Privy-Council; and to our moſt dear Couſin *Henry* Earl of *Pembroke*, another of the Lords of the Parliament; and alſo to our moſt dear Couſin *Robert* Earl of *Leiceſter*, Maſter of our Horſe, another of our Privy-Council; and to our moſt dear Couſin *Henry* Earl of *Lincoln*, another of the Lords of the Parliament; and alſo to our moſt dear Couſin *Anthony* Viſcount *Montague*, another of the Lords of the Parliament; and to our truſty and well-beloved *Charles* Lord *Howard*, our great Admiral of *England*, another of our Privy-Council; and to our truſty and well-beloved *Henry* Lord of *Hunſdon*, our Lord Chamberlain, another of our Privy-Council; and alſo to our truſty and well-beloved *Henry* Lord *Abergavenny*, another of the Lords of the Parliament; and to our truſty and well-beloved *Edward* Lord *Zouch*, another of the Lords of the Parliament; and alſo to our truſty and well-beloved *Edward* Lord *Morley*, another of the Lords of the Parliament; and to our truſty and well-beloved *William* Lord *Cobham*, Lord Warden of our Cinque-Ports, another of our Privy-Council; and alſo to our truſty and well-beloved *Edward* Lord *Stafford*, another of the Lords of the Parliament; and alſo to our truſty and well-beloved *Arthur* Lord *Grey* of *Wilton*, another of the Lords of the Parliament; and alſo to our truſty and well-beloved *John* Lord *Lumley*, another of the Lords of the Parliament; and alſo to our truſty and well-beloved *John* Lord *Sturton*, another of the Lords of the Parliament; and to our truſty and well-beloved *William* Lord *Sandes*, another of the Lords of the Parliament; and alſo to our truſty and well-beloved *Henry* Lord *Wentworth*, another of the Lords of the Parliament; to our truſty and well-beloved *Lewis* Lord *Mordant*, another of the Lords of the Parliament; and to our truſty and well-beloved *John* Lord *St. John* of *Bletſho*, another of the Lords of the Parliament; and alſo to our truſty and well-beloved *Thomas* Lord *Buckhurſt*, another of our Privy-Council; and to our truſty and well-beloved *Henry* Lord *Compton*, another of the Lords of the Parliament; and alſo to our truſty and well-beloved *Henry* Lord *Cheiney*, another of the Lords of the Parliament; to our truſty and beloved Sir *Francis Knolles* Kt. Treaſurer of our Houſhold, another of our Privy-Council; and alſo to our truſty and well-beloved Sir *James Crofts* Kt. Comptroller of our ſaid Houſhold, another of our Privy-Council; and to our truſty and beloved Sir *Chriſtopher Hatton* Kt. our Vice-Chamberlain, another of our Privy-Council; and alſo to our truſty and beloved Sir *Francis Walſingham* Kt. one of our principal Secretaries, another of our Privy-Council; and alſo to our truſty and beloved *William Daviſon* Eſq; another of our principal Secretaries, and of our Privy-Council; and to our truſty and beloved Sir *Ralph Sadler* Kt. Chancellor of our Dutchy of *Lancaſter*, another of our Privy-Council; and alſo to our truſty and beloved Sir *Walter Mildmay* Kt. Chancellor of our Exchequer, another of our Privy Council; and to our truſty and beloved Sir *Amias Powlet* Kt. Captain of our Iſle of *Jerſey*, another of our Privy-Council; and to our truſty and beloved *John Wolley* Eſq. our Secretary for the *Latin* Tongue, another of our Privy-Council; and alſo to our truſty and beloved Sir *Chriſtopher Wray* Kt. Chief Juſticer aſſigned for the Pleas to be holden before us; and to our truſty and beloved Sir *Edmund Anderſon* Kt. our Chief Juſticer of the Bench; Sir *Roger Manwood* Kt. our Chief Baron of our Exchequer; Sir *Thomas Gawdy* Kt. one of our Juſticers aſſigned for the Pleas to be holden before us; and *William Periam* one of our Juſticers of the Bench, Greeting, *&c.*

‘ Whereas ſince the end of the Seſſion of Parliament, namely, ſince the firſt Day of *June*, in the 27th year of our Reign, divers matters have been compaſſed and imagined, tending to the hurt of our Royal Perſon, as well by *Mary* Daughter and Heir of *James* V. King of *Scots*, and commonly called Queen of *Scots*, and Dowager of *France*, pretending Title to the Crown of this Realm of *England*; as by divers other Perſons, *cum ſcientia*, in *Engliſh*, *with the privity* of the ſame *Mary*, as we are given to underſtand: And whereas we do intend and determine, that the Act aforeſaid be in all and every part thereof, duly and effectually executed, according to the tenor of the ſame, and that all Offences abovesaid, in the Act abovesaid mentioned, as aforeſaid, and the Circumſtances of the ſame, be examined, and Sentence or Judgment thereupon given, according to the Tenor and Effect of the ſaid Act: To you, and the greater part of you we do give full and abſolute Power, Faculty and Authority, according to the Tenor of the ſaid Act, to examine all and ſingular matters compaſſed and imagined, tending to the hurt of our Royal Perſon, as well by the aforeſaid *Mary*, as by any other Perſon or Perſons whatſoever, *cum ſcientia*, in *Engliſh*, *with the privity* of the ſame *Mary*, and all Circumſtances of the ſame, and all other Offences abovesaid in the Act abovesaid (as aforeſaid) mentioned whatſoever, and all Circumſtances of the ſame and of every of them: And thereupon, according to the tenor of the Act aforeſaid, to give Sentence or Judgment, as upon good proof matter ſhall appear unto you. And therefore we do command you, that you do at certain Days and Places, which you, or the greater part of you, ſhall thereunto fore-appoint, diligently proceed upon the Premiſes in form aforeſaid, *&c.*’

The moſt part of theſe Commiſſioners came the 11th of *October* to *Fotheringay*-Caſtle in the County of *Northampton*, ſeated upon the Bank of the River *Nen*, where the Queen of *Scots* was then kept. The next day the Commiſſioners ſent to her Sir *Walter Mildmay*, *Powlet*, and *Edward Barker*, a Publick Notary; who delivered into her hands Queen *Elizabeth*'s Letter; which when ſhe had read, ſhe, with a Countenance compoſed to Royal Dignity, and with a Mind untroubled, ſaid, It grieveth me that the Queen, my moſt dear Siſter, is miſinformed of me; and that I, having been ſo many years ſtraitly kept in priſon, and grown lame of my limbs, have lien neglected, after I have offered ſo many reaſonable Conditions for my Liberty. Though I have throughly forewarned her of many Dangers, yet hath no credit been given unto me, but I have been always contemned, though moſt nearly allied unto her in Blood. When the Aſſociation was entered into, and the Act of Parliament thereupon made, I foreſaw that whatſoever Danger ſhould happen either from foreign Princes abroad, or from ill-diſpoſed People at home, or for Religion's ſake, I muſt bear the whole blame, having many mortal Enemies in the Court. Certainly I might take it hardly, and not without cauſe, that a Confederacy hath been made with my Son without my knowledge: but ſuch matters I omit. As for this Letter, it ſeemeth ſtrange to me, that the Queen ſhould command me as a Subject, to appear perſonally in judgment. I am an abſolute Queen, and will do nothing which may prejudice either mine own Royal Majeſty, or other Princes of my Place and Rank, or my Son. My Mind is not yet dejected, neither will I ſink under my Calamity. I refer my ſelf to thoſe things, which I have proteſted before *Bromley*, now Chancellor, and the Lord *La-Ware*. The Laws and Statutes of *England* are to me moſt unknown; I am deſtitute of Counſellors, and who ſhall be my Peers I am utterly ignorant. My Papers and Notes are taken from me, and no Man dareth ſtep forth to be my Advocate. I am clear from all Crime againſt the Queen, I have excited no Man againſt her, and I am not to be charged but by mine own Word or Writing, which cannot be produced againſt me. Yet can I not deny but I have commended my ſelf and my Cauſe to foreign Princes.

The next day there returned unto her in the name of the Commiſſioners, *Powlet* and *Barker*, who ſhewed unto her this Anſwer drawn in Writing, and aſked her, whether ſhe would perſiſt in the ſame. When ſhe had heard it diſtinctly read, ſhe commended it as rightly and truly conceived, and ſaid, ſhe would perſiſt therein. But this, ſaid ſhe, I have forgotten, which I would have to be added thereunto: Whereas the Queen hath written, that I am ſubject to the Laws of *England*, and to be judged by them, becauſe I have lived under the Protection of them; I anſwer, that I came into *England* to crave Aid, and ever ſince have been detained in Priſon, and could not enjoy the Protection or Benefit of the Laws of *England*; nay, I could never yet underſtand from any Man, what manner of Laws thoſe were.

In the afternoon came unto her certain ſelected Perſons from amonſt the Commiſſioners, with Men learned in the Civil and Canon-Law. But the Lord Chancellor and the Lord Treaſurer declared their Authority by Patent, and ſhewed that neither her Impriſonment, nór her Prerogative of Royal Majeſty could exempt her from anſwering in this Kingdom; with fair Words adviſing her to hear what Matters were to be objected againſt her: Otherwiſe they threatened, that by Authority of Law, they both could and would proceed againſt her, though ſhe were abſent. She anſwered, That ſhe was no Subject, and rather would ſhe die a thouſand deaths, than acknowledge her ſelf a Subject, conſidering, that by ſuch an Acknowledgment, ſhe ſhould both prejudice the Height of Regal Majeſty, and withal confeſs her ſelf to be bound by all the Laws of *England*, even in matter of Religion: Nevertheleſs ſhe was ready to anſwer to all things in a free and full Parliament, for that ſhe knew not whether this Meeting and Aſſembly were appointed againſt her, being already condemned by Fore-judgings, to give ſome ſhew and colour of a juſt and legal Proceeding. She warned them therefore to look to their Conſciences, and to remember, that the Theatre of the whole World is much wider than the Kingdom of *England*. She began then to complain of Injuries done unto her: And the Lord Treaſurer interrupting her, began to reckon up Queen *Elizabeth*'s Kindneſſes towards her, namely, that ſhe had puniſhed ſome, which impugned the Claim ſhe laid to *England*, and had been a means to keep her from being condemned by the Eſtates of the Realm, for the Marriage ſought with the Duke of *Norfolk*, for the Rebellion in the North, and for other matters. All which when ſhe ſeem'd little to eſteem, they returned back.

Within few hours after, they delivered unto her, by the hands of *Powlet* and the Sollicitor, the chief Points of their Commiſſion, and the Names of the Commiſſioners, that ſhe might ſee, that they were to proceed according to Equity and Right, and not by any cunning point of Law, and extraordinary Courſe. She took no Exceptions againſt the Commiſſioners, but moſt ſharply excepted againſt the late Law, upon which the Authority of their Commiſſion wholly depended; as that it was unjuſt, deviſed of purpoſe againſt her, that it was without Example, and ſuch whereunto ſhe would never ſubject her ſelf. She aſked, by what Law they would proceed: If by the Civil or Canon-Law, then ſaid ſhe, Interpreters are to be fetched from *Pavia*, or *Poictiers*, and other foreign Univerſities; for in *England* none are to be found that are meet. She added alſo, That it was manifeſt, by plain Words in the Queen's Letters, That ſhe was already fore-judged to be guilty of the Crime, tho' unheard; and therefore there was no reaſon why ſhe ſhould appear before them: And ſhe required to be ſatisfied touching ſome Scruples in the ſaid Letters, which ſhe had for her ſelf noted confuſedly, and by Snatches, ſeverally by themſelves, but would not deliver them written out; for it ſtood not, ſaid ſhe, with her Royal Dignity, to play the Scrivener.

Touching this matter, the ſaid ſelected Commiſſioners went unto her again, to whom ſhe ſignified, that ſhe did not well underſtand what thoſe Words meant, *ſeeing ſhe is under the Queen's Protection*. The Lord Chancellor anſwered, That this was plain to every one of underſtanding, yet was it not for Subjects to interpret what the Queen's Meaning was, neither were they made Commiſſioners for that end. Then ſhe required to have her Proteſtation ſhewed and allowed, which ſhe had formerly made. It was anſwered, that it never had been, nor now was to be allowed, for that it was prejudicial to the Crown of *England*. She aſked, By what Authority they would proceed? It was anſwered, By Authority of their Commiſſion, and by the common Law of *England*.

But, ſaid ſhe, ye make Laws at your pleaſure, whereunto I have no reaſon to ſubmit my ſelf, conſidering that the *Engliſh* in times paſt refuſed to ſubmit themſelves to the Law Salique of *France*: And if they would proceed by the common Law of *England*, they ſhould produce Precedents and Caſes, foraſmuch as that Law conſiſteth much of Caſes and Cuſtom: And if by the Canon Law, none elſe ought to interpret the ſame, but the Makers thereof. It was anſwered, That they would proceed neither by the Civil nor Canon Law, but by the Common Law of *England*: That it might nevertheleſs be proved by the Civil and Canon Law, that ſhe ought to appear before them, if ſhe would not refuſe to hear it. And indeed ſhe refuſed not to hear it, but, as ſhe ſaid, by way of *Interlocution*, not *Judicially*.

From hence ſhe fell into other Speeches, That ſhe had intended nothing to the Deſtruction of the Queen; that ſhe had been incenſed with Injuries and Indignities; that ſhe ſhould be a Stone of Offence to others, if ſhe were ſo unworthily handled: that by *Naw* ſhe had offered her beſt means for revoking the Biſhop of *Rome*'s Bull; that ſhe would have defended her Innocency by Letters, but it was not allowed her; and finally, that all the Offices of Kindneſs, which ſhe had tender'd theſe twenty years, were rejected. Thus while ſhe wandered far in theſe Digreſſions, they called her back again, and prayed her to ſpeak plainly, whether ſhe would anſwer before the Commiſſioners. She replied, That the Authority of their Delegation was founded upon a late Law made to intrap her; that ſhe could not away with the Queen's Laws, which ſhe had good reaſon to ſuſpect; that ſhe was ſtill full of good Courage, and would not offend againſt her Progenitors, the Kings of *Scots*, by acknowledging her ſelf a Subject to the Crown of *England*: For this were nothing elſe but to profeſs them openly to have been Rebels and Traitors. Yet ſhe refuſed not to anſwer, ſo as ſhe might not be reduced to the rank of a Subject: But ſhe had rather periſh utterly than to anſwer as a criminal Perſon.

Whereunto *Hatton*, Vice-Chamberlain to Queen *Elizabeth*, anſwered: You are accuſed (but not condemned) to have conſpired the Deſtruction of our Lady and Queen anointed. You ſay you are a Queen: Be it ſo. But in ſuch a Crime the Royal Dignity is not exempted from anſwering, neither by the Civil nor Canon Law, nor by the Law of Nations, nor of Nature. For if ſuch kind of Offences might be committed without Puniſhment, all Juſtice would ſtagger, yea, fall to the ground. If you be innocent, you wrong your Reputation in avoiding a Trial. You proteſt your ſelf to be innocent, but Queen *Elizabeth* thinketh otherwiſe, and that neither without Grief and Sorrow for the ſame. To examine therefore your Innocency, ſhe hath appointed for Commiſſioners moſt honourable, prudent and upright Men, who are ready to hear you according to Equity with favour, and will rejoice with all their hearts, if you ſhall clear yourſelf of this Crime. Believe me, the Queen herſelf will be much affected with joy, who affirmed unto me at my coming from her, that never any thing befel her more grievous, than that you were charged with ſuch a Crime. Wherefore lay aſide the bootleſs Privilege of Royal Dignity, which now can be of no uſe unto you, appear in Judgment, and ſhew your Innocency, leſt by avoiding Trial, you draw upon your ſelf Suſpicion, and lay upon your Reputation an eternal Blot and Aſperſion.

I refuſe not (ſaid ſhe) to anſwer in a full Parliament before the Eſtates of the Realm lawfully aſſembled, ſo as I may be declared the next to the Succeſſion; yea, before the Queen and Council, ſo as my Proteſtation may be admitted, and I may be acknowledged the next of kin to the Queen. To the Judgment of mine Adverſaries, amongſt whom I know all defence of mine Innocency will be barred, flatly I will not ſubmit my ſelf.

The Lord Chancellor aſked her, whether ſhe would anſwer, if her Proteſtation were admitted? I will never (ſaid ſhe) ſubmit my ſelf to the late Law mentioned in the Commiſſion.

Hereupon the Lord Treaſurer anſwered; We, notwithſtanding, will proceed to-morrow in the Cauſe, tho' you be abſent and continue contumax.

Search (ſaid ſhe) your Conſciences, look to your Honour, God reward you and yours for your Judgment againſt me.

On the morrow, which was the 14th of the month, ſhe ſent for certain of the Commiſſioners, and pray'd them, that her Proteſtation might be admitted and allowed. The Lord Treaſurer aſked her, Whether ſhe would appear to her Trial, if her Proteſtation were only received and put in writing, without allowance. She yielded at length, yet with much ado, and with an ill-will, leſt ſhe ſhould ſeem (as ſhe ſaid) to derogate from her Predeceſſors or Succeſſors; but was very deſirous to purge her ſelf of the Crime objected againſt her, being perſuaded by *Hatton*'s Reaſons, which ſhe had weighed with Adviſement.

Soon after, the Commiſſioners which were preſent, aſſembled themſelves in the Preſence-Chamber. At the upper end of the Chamber was placed a Chair of Eſtate for the Queen of *England*, under a Cloth of Eſtate. Over-againſt it, below and more remote, near the tranſom or beam that ran croſs the Room, ſtood a Chair for the Queen of *Scots*. At the Walls on both ſides, were placed Benches, upon which ſate, on the one ſide, the Lord Chancellor of *England*, Lord Treaſurer of *England*, the Earls of *Oxford*, *Kent*, *Derby*, *Worceſter*, *Rutland*, *Cumberland*, *Warwick*, *Pembroke*, *Lincoln*, and the Lord Viſcount *Montacute*; on the other ſide, the Barons of *Abergavenny*, *Zouch*, *Morley*, *Stafford*, *Grey*, *Lumley*, *Sturton*, *Sandes*, *Wentworth*, *Mordant*, *St John* of *Bletſho*, *Compton*, and *Cheiney*. Nigh unto theſe ſate the Knights of the Privy-Council, Sir *James a Croftes*, Sir *Chriſtopher Hatton*, Sir *Francis Walſingham*, Sir *Ralph Sadleir*, Sir *Walter Mildmay*, and Sir *Amias Powlet*. Forward, before the Earls, ſate the two Chief Juſtices, and the Chief Baron of the Exchequer; and on the other ſide two Barons, the other Juſtices, *Dale* and *Ford*, Doctors of the Civil Law; and at a little Table in the midſt ſate *Popham* the Queen's Attorney, *Egerton* the Sollicitor, *Gaudy* the Queen's Serjeant at Law, the Clerk of the Crown, and two Writers.

When ſhe was come, and had ſettled her ſelf in her ſeat, after ſilence proclaimed, *Bromley* Lord Chancellor turning to her, ſpake briefly to this effect: The moſt High and Mighty Queen *Elizabeth*, being not without great grief of mind advertiſed, that you have conſpired the Deſtruction of her and of *England*, and the Subverſion of Religion, hath, out of her Office and Duty, leſt ſhe might ſeem to have neglected God, herſelf and her People, and out of no Malice at all, appointed theſe Commiſſioners, to hear the Matters which ſhall be objected unto you, and how you can clear your ſelf of them, and make known your Innocency.

She riſing up, ſaid, That ſhe came into *England* to crave aid, which had been promiſed her, and yet was ſhe detained ever ſince in Priſon. She proteſted, that ſhe was no Subject of the Queen's, but had been and was a free and abſolute Queen, and not to be conſtrained to appear before Commiſſioners, or any other Judge whatſoever, for any Cauſe whatſoever, ſave before God alone the higheſt Judge, leſt ſhe ſhould prejudice her own Royal Majeſty, the King of *Scots* her Son, her Succeſſors, or other abſolute Princes. But, that ſhe now appeared perſonally, to the end to refute the Crimes objected againſt her. And hereof ſhe prayed her own Attendants to bear witneſs.

The Lord Chancellor, not acknowledging that any Aid had been promis'd her, anſwer'd, That this Proteſtation was in vain, for that whoſoever (of what Place and Degree ſoever he were) ſhould offend againſt the Laws of *England*, in *England*, was ſubject unto the ſame Laws, and by the late Act might be examin'd and try'd; the ſaid Proteſtation therefore made in prejudice of the Laws and Queen of *England*, was not to be admitted. The Commiſſioners nevertheleſs commanded, that as well her Proteſtation, as the Lord Chancellor's Anſwer, ſhould be recorded.

Then after the Commiſſion was openly read, which was grounded upon the Act already often mentioned, ſhe ſtoutly oppoſed her Proteſtation againſt the ſame Act, as enacted directly and purpoſely againſt her, and herein ſhe appealed to their Conſciences.

When Anſwer was made by the Lord Treaſurer, that every Perſon in this Kingdom was bound even by the lateſt Laws, and that ſhe ought not to ſpeak againſt the Laws; and that the Commiſſioners would judge, according to that Law, what Proteſtations or Appellations ſoever ſhe interpoſed, ſhe ſaid at length, that ſhe was ready to hear and anſwer touching any Fact whatſoever againſt the Queen of *England*.

Gawdy now opened the Law from Point to Point, affirming, that ſhe had offended againſt the ſame; and hereupon he made an hiſtorical Diſcourſe of *Babington*'s Conſpiracy, and concluded, That ſhe knew of it, approved it, aſſented unto it, promiſed her Aſſiſtance, and ſhewed the Way and Means.

She anſwered with ſtout Courage, That ſhe knew not *Babington*, that ſhe never received any Letters from him, nor wrote any to him; that ſhe never plotted the Deſtruction of the Queen, and that to prove the ſame, her Subſcription under her own hand was to be produced; that for her part ſhe never ſo much as heard ſpeak thereof; that ſhe knew not *Ballard*, nor ever relieved him; but ſhe underſtood from ſome, that the Catholicks in *England* took many things very hardly, and hereof ſhe her ſelf had advertiſed the Queen by Letters, and beſought her to take pity on them; that many alſo, which were to her utterly unknown, had offered her their Help and Aſſiſtance, yet had ſhe excited no Man to commit any Offence; and being ſhut up in Priſon, ſhe could neither know nor hinder what they attempted.

Hereupon it was urged out of *Babington*'s Confeſſion, that there had been Intercourſe by Letters betwixt her and *Babington*. She confeſſed that there had paſſed Conference by Letters betwixt her and many Men, yet could it not thereby be gathered that ſhe was privy to all their wicked Counſels. She required that her own Subſcription, under her Hand, might be produced; and aſked, what hurt it were, if ſhe redemanded the Letters, which had been kept from her almoſt a whole Year? Then were read the Copies of Letters between her and *Babington*, wherein the whole Conſpiracy was ſet down.

The *Scotiſh* Queen's Letter to *Anthony Babington*.

MY very good Friend, albeit it be long ſince you heard from me, not more than I have done from you, it is againſt my Will; yet would I not you ſhould think I have in the mean while, nor ever will be unmindful of the effectual Affection you have ſhewed heretofore towards all that concerneth me. I have underſtood, that upon the renewing of your Intelligence, there were addreſſed unto you, both from France *and* Scotland, *ſome Packets for me; I pray you, if any be come to your hands, and be yet in place, to deliver them to the Bearer hereof, who will ſafely convey them unto me; and I will pray to God for your Preſervation.*

June *the 28th,*
Chartley.

Your aſſured good Friend,
MARY REGINA.

Anthony Babington's Letter to the *Scotiſh* Queen.

MOST mighty, moſt excellent, my dread Sovereign Lady and Queen, unto whom I owe all Fidelity and Obedience; may it pleaſe your gracious Majeſty to admit Excuſe of my long Silence, and Diſcontinuance from thoſe dutiful Offices, intercepted upon the Remove of your Royal Perſon from the antient place of your abode, to the cuſtody of a wicked Puritan, and meer Leiceſtrian, *a mortal Enemy both by Faith and Faction to your Majeſty and to the Catholick Eſtate: I held the hope of our Country's Weal depending (next under God) upon the Life of your Majeſty, to be deſperate, and thereupon reſolved to depart the Realm, determining to ſpend the remnant of my Life in ſuch ſolitary ſort, as the miſerable and wretched Eſtate of my Country doth require; only expecting, according to the juſt Judgment of God, the preſent Confuſion thereof, which God, for his Mercy ſake, prevent. The which my purpoſe being in execution, and ſtanding upon my departure, there was addreſſed unto me, from the Parts beyond the Seas, one* Ballard, *a Man of Virtue and Learning, and of ſingular Zeal to the Catholick Cauſe, and your Majeſty's Service. The Man informed me of great Preparations by the Chriſtian Princes, your Majeſty's Allies, for the Deliverance of our Country from the extreme and miſerable Eſtate wherein for a long time it hath remained. Which when I underſtood, my eſpecial Deſire was, to adviſe by what means I might, with the hazard of my Life, and all my Friends in general, do your ſacred Majeſty one day's good Service. Whereupon, moſt dread Sovereign, according to the great care, which thoſe Princes have of the Preſervation and ſafe Deliverance of your Majeſty's ſacred Perſon, I adviſed of Means, and conſidered of Circumſtances accordingly, to and with ſo many of the wiſeſt and moſt truſty, as with ſafety I might commend the Secrecy thereof unto: I do find, by the Aſſiſtance of the Lord Jeſus, aſſurance of good Effect, and deſired Fruit of our Travel. Theſe things are firſt to be adviſed in this great and honourable Action; upon iſſue of which dependeth, not only the Life of your moſt excellent Majeſty, which God long preſerve, to our ineſtimable Comfort, and to the Salvation of* Engliſh *Souls, and the Lives of all us Actors therein; but alſo the Honour and Weal of our Country, far more dear than our Lives unto us, and the laſt hope ever to recover the Faith of our Forefathers, and to redeem our ſelves from the Servitude and Bondage, which hereby heretofore hath been impoſed upon us with the loſs of many thouſand Souls. Firſt, for the aſſuring of Invaſions, ſufficient ſtrength on the Invaders parts to arrive is appointed, with a ſtrong Party at every place, to join with them, and warrant their landing, the Deliverance of your Majeſty, the Diſpatch of the uſurping Competitor. For the effecting of all, may it pleaſe your Majeſty to rely upon my Service, I proteſt before the Almighty, who hath long miraculouſly preſerved your royal Perſon, no doubt to ſome univerſal Good, that what I have ſaid ſhall be performed, or all our Lives happily loſt in the Execution thereof. Which Vow all the chief Actors have taken ſolemnly; and are upon Aſſurance, by your Majeſty to me, to receive the bleſſed Sacrament thereupon, either to prevail in the Church's behalf, and your Majeſty's, or fortunately to die for ſo honourable a Cauſe. Now, foraſmuch as delays are extreme dangerous, it might pleaſe your moſt excellent Majeſty, by your Wiſdom to direct us, and by your Princely Authority to enable us, and ſuch as may advance the Affairs: Foreſeeing, there is not any of the Nobility, at liberty, aſſured to your Majeſty in this deſperate Service, except unknown unto us; and ſeeing that it is very neceſſary that ſome there ſhould be to become Heads to lead the Multitude, who are diſpoſed by Nature in this Land to follow Nobility: Conſidering withal, it doth not only make the Commons and Country to follow without Contradiction or Contention, which is ever found in equality, but alſo doth add great Courage to the Leaders. For which neceſſary Regards, I would recommend ſome to your Majeſty as are fitteſt, in my knowledge, to be your Lieutenants, in the Weſt Parts, in the North Parts,* South-Wales, *and* North-Wales, *the Countries of* Lancaſter, Derby, *and* Stafford. *In all which Countries, Parties being already made, and Fidelity taken in your Majeſty's Name, I hold them as moſt aſſured, and of undoubted Fidelity. My ſelf, with ten Gentlemen of Quality, and an hundred Followers, will undertake the delivery of your Perſon from the hands of your Enemies: And for the Diſpatch of the Uſurper, from Obedience of whom, by the Excommunication of her, we are made free, there be ſix noble Gentlemen, all my private Friends, who, for the Zeal they bear to the Catholic Cauſe, and your Majeſty's Service, will undertake the Tragical Execution. It reſteth, that according to their infinite Deſerts, and your Majeſty's Bounty, their Heroical Attempts may be honourably rewarded in them, if they eſcape with Life, or in their Poſterity; and that ſo much by your Majeſty's Authority I may be able to aſſure them. Now it remaineth only in your Majeſty's Wiſdom, that it be reduced into Method, that your happy Deliverance be firſt, for that thereupon dependeth the only Good, and that the other Circumſtances concur; that the untimely end of the one do not overthrow the reſt. All which your Majeſty's wonderful Experience and Wiſdom will diſpoſe in ſo good manner as, I doubt not, thro' God's good Aſſiſtance, ſhall take deſerved effect: for the obtaining of which every one of us ſhall think his Life moſt happily ſpent. Upon the twelfth day of this month I will be at* Litchfield, *expecting your Majeſty's Anſwers and Letters, to execute what by them ſhall be commanded.*

Your Majeſty's
Faithful Subject, and
Sworn Servant,
Anthony Babington.

As for theſe Letters (ſaid ſhe) it may be that *Babington* wrote them, but let it be prov'd that I receiv'd them: If *Babington* or any others affirm it, I ſay they lye openly; other Men's Crimes are not to be caſt upon me. A Packet of Letters, which had been kept from me almoſt a whole Year, came to my hands about that time, but by whom it was ſent, I know not.

To prove that ſhe had receiv'd *Babington*'s Letters, there were read out of *Babington*'s Confeſſion the chief Heads of certain Letters, which he had voluntarily confeſs'd, that ſhe wrote back unto him: wherein when mention was made of the Earl of *Arundel* and his Brethren, and the Earl of *Northumberland*, the Tears burſt forth, and ſhe ſaid, Alas! what hath that noble Houſe of the *Howards* endur'd for my ſake? And ſhortly after, having wiped away the Tears, ſhe anſwered, That *Babington* might confeſs what he liſt, but it was an open Lye, that ſhe had deviſ'd ſuch means to eſcape: That her Adverſaries might eaſily get the Ciphers, which ſhe had uſed to others, and with the ſame write many things falſely: That it was not likely ſhe ſhould uſe *Arundel*'s help, whom ſhe knew to be ſhut up in Priſon; or *Northumberland*'s, who was very young, and to her unknown.

There were read alſo certain Points pick'd out of *Savage*'s and *Ballard*'s Confeſſions, who had confeſs'd that *Babington* imparted unto them certain Letters, which he had receiv'd from the Queen of *Scots*.

She affirmed, That *Babington* receiv'd none from her, yea that ſhe was angry with ſome which had ſecretly ſuggeſted Counſels unto her for invading of *England*, and had warned them to beware.

Now was there a Letter brought forth, wherein *Babington*'s Plot was commended and approved.

The Anſwer of the Scotiſh *Queen to a Letter written by* Anthony Babington, 12 July, 1586.

‘TRUSTY and Well-beloved, according to the Zeal and intire Affection which I have known in you towards the common Cauſe of Religion, and mine, having always made account of you as a principal and right worthy Member to be imployed both in the one, and in the other; it hath been no leſs Conſolation unto me to know your Eſtate, as I have done by your laſt Letter, and to have further means to renew my Intelligence with you, than I have felt Griefs all this while paſt, to be without the ſame. I pray you therefore to write unto me hereafter, ſo often as you can, of all Concurrants, which you may judge in any ſort importunate to the good of mine Affairs, wherein I ſhall not fail to correſpond with all the Care and Diligence that ſhall be by poſſibility. For divers great and importunate Conſiderations, which were here too long to be deducted, I cannot but greatly praiſe and commend your common deſire to prevent, in time, the Deſignment of our Enemies, for the Extirpation of our Religion out of this Realm, with the Ruin of us all; for I have long ago ſhewed to the Foreign Catholick Princes, what they have done againſt the King of *Spain*, and in the time the Catholicks here remaining, expoſed to all Perſecutions and Cruelty, do daily diminiſh in Number, Forces, Means and Power, ſo as if Remedy be not thereunto ſpeedily provided, I fear not a little but that they ſhall become altogether unable for ever to riſe again to receive any Aid at all whenſoever it is offered. Then for my own part, I pray you aſſure our principal Friends, that albeit I had no particular Intereſt in this Caſe, that all that I may pretend unto, being of no Conſideration to me in reſpect of the publick Good of the State, I ſhall be always ready, and moſt willing to imploy therein my Life, and all that I have, or may look for in this World. Now to ground ſubſtantially this Enterprize, and to bring it to good Succeſs, you muſt examine duly,

‘*Firſt*, What Forces, as well on Foot as on Horſe, you may raiſe among you all; and what Captains you ſhall appoint for them in every Shire, in caſe a General cannot be had.

‘*Secondly*, Which Towns, Ports and Havens, you may aſſure yourſelves, as well on the *North*, *Weſt* and *South*, to receive Succours, as well from the *Low-Countries*, *Spain* and *France*, as from other Parts.

‘*Thirdly*, What place you eſteem fitteſt, and of moſt advantage to aſſemble the principal Company of your Forces at the ſame time, which would be compaſſed conform to the proportion of your own.

‘*Fourthly*, For how long Pay and Munition, and what Ports are fitteſt for their Landing in this Realm, from the foreſaid three foreign Countries.

‘*Fifthly*, What Proviſion of Monies and Armour, in caſe you ſhould want, you would aſk.

‘*Sixthly*, By what means do the ſix Gentlemen deliberate to proceed.

‘*Seventhly*, The manner of my getting forth of this Hold.

‘Which Points having taken amongſt you who are the principal Actors, and alſo as few in number as you can; the beſt Reſolution in my Device is, That you impart the ſame with all diligence to *Bernardin de Mendoza*, Ambaſſador Lieger for the King of *Spain* in *France*, who beſides the Experience he hath of the Eſtate on this ſide, I may aſſure you, will imploy himſelf moſt willing: I ſhall not fail to write to him of the matter, with all the Recommendations I can, as alſo I ſhall do in any wiſe that ſhall be needful. But you muſt take choice Men for the managing of the Affairs with the ſaid *Mendoza*, and others out of the Realm, of ſome Faithful and very Secret, both in Wiſdom and Perſonage, unto whom only you muſt commit your ſelves; to the end things may be kept the more ſecret, which for your own Security I commend to your ſelf. If your Meſſenger bring you back again ſure promiſe, and ſufficient aſſurance of the Succours which you demand, then thereafter (but not ſooner, for that it were in vain) take diligent Order, that all thoſe on your part make, ſecretly as they can, proviſion of Armour, fit Horſes, and ready Money, wherewith to hold themſelves in a readineſs to march ſo ſoon as it ſhall be ſignified unto you by the Chief and Principal of every Shire: And for the better colouring of the matter, reſerving to the Principals the knowledge of the Ground of the Enterprize, it ſhall be enough at the beginning to give it out to the reſt, that the ſaid Proviſions are made only for the fortifying of your ſelves in caſe of need, againſt the *Puritans* of this Realm, the principal whereof having the chief Forces thereof in the *Low Countries*, as you may let the bruit go diſguiſed, do ſeek the Ruin and Overthrow at their return home of the Catholicks, and to uſurp the Crown, not only againſt me and all other lawful Pretenders thereto, but againſt their own Queen that now is, if ſhe will not altogether ſubmit her ſelf to their Government. Theſe Pretexts may ſerve to found and eſtabliſh among all, Aſſociations or Confederations general, as done only for your Preſervation and Defence, as well in Religion as Lands, Lives and Goods, againſt the Oppreſſion and Attempts of the ſaid *Puritans*; without directly writing, or giving out any thing againſt the Queen, but rather ſhewing your ſelves willing to maintain her and her lawful Heirs after her, not naming me. The Affairs being thus prepared, and Forces in readineſs, both without and within the Realm, then ſhall it be time to ſet the ſix Gentlemen on work; taking good order, upon the accompliſhment of their Diſcharges, I may be ſuddenly tranſported out of this Place, and meet without tarrying for the arrival of the foreign Aid, which then muſt be haſtened with all Diligence. Now for that there can be no certain Day appointed for the accompliſhment of the ſaid Gentlemen's Deſignment, to the end others may be in a readineſs to take me from hence, I would that the ſaid Gentlemen had always about them, or at leaſt at Court, divers and ſundry Scoutmen, furniſhed with good and ſpeedy Horſes, ſo ſoon as the Deſign ſhall be executed, to come with all diligence to advertiſe me thereof, and thoſe that ſhall be appointed for my tranſporting; to the end that immediately after they may be at the place of mine abode, before my Keeper can have advertiſement of the execution of the ſaid Deſignment, or at the leaſt before he can fortify himſelf within the Houſe, or carry me out of the ſame. It were neceſſary to diſpatch two or three of the ſaid Advertiſers by divers ways, to the end, if one be ſtaid, the other may come thro': At the ſame inſtant it were needful alſo to aſſay to cut off the Poſts ordinary ways. This is the Plot that I think beſt for this Enterprize, and the order whereby we ſhall conduct the ſame for our common Security: for ſtirring on this ſide before you be ſure of ſufficient foreign Forces, that were for nothing but to put our ſelves in danger of following the miſerable Fortune of ſuch as have heretofore travelled in the like Actions; and if you take me out of this Place, be well aſſured to ſet me in the midſt of a good Army, or ſome very good Strength, where I may ſafely ſtay till the Aſſembly of your Forces, and Arrival of the ſaid foreign Succours. It were ſufficient cauſe given to the Queen, in catching me again, to incloſe me in ſome hold, out of the which I ſhould never eſcape, if ſhe did uſe me no worſe; and to purſue with all extremity thoſe that aſſiſted me, which would grieve me more than all the unhappineſs might fall upon my ſelf. Earneſtly as you can, look and take heed moſt carefully and vigilantly to compaſs and aſſure all ſo well, that ſhall be neceſſary for the effecting of the ſaid Enterprize, as with the Grace of God you may bring the ſame to happy End; remitting to the judgment of your principal Friends on this ſide, with whom you have to deal, therein to ordain and conclude upon theſe Points, which may ſerve you for an Overture of ſuch Propoſitions as you ſhall amongſt you find beſt: and to your ſelf in particular, I refer the Gentlemen aforementioned, to be aſſured of all that ſhould be requiſite for the intire execution of their Good-wills. I leave their common Reſolution to Advice; in caſe the Deſign do not take hold, as may happen whether they will or no, do not purſue my Tranſport, and the Execution of the reſt of the Enterprize. But if the miſhap ſhould fall out, that you might not come by me, being ſet in the *Tower* of *London*, or in any other Strength, with ſtrong Guard; yet notwithſtanding, leave not for God's ſake to proceed in the Enterprize: for I ſhall at any time die moſt contentedly, underſtanding of your delivery out of the ſervitude wherein you are holden as Slaves. I ſhall aſſay, that at the ſame time that the work ſhall be in hand, at that preſent to make the Catholicks of *Scotland* to ariſe, and put my Son into their hands, to the effect, that from thence our Enemies here may not prevail by any Succour: I would alſo that ſome ſtirring were in *Ireland*, and that it were laboured to begin ſome time before any thing be done here, and then that the Alarm might begin thereby on the flat contrary ſide: that the ſtroke may come from your deſigns, to have ſome General, or chief Head, are very pertinent; and therefore were it good to ſend obſcurely for the purpoſe to the Earl of *Arundel*, or ſome of his Brethren, and likewiſe to ſeek to the young Earl of *Northumberland*, if he be at liberty, from over the Sea; the Earl of *Weſtmoreland* may be had, whoſe Hand and Name, you know, may do much in the *North* Parts; alſo the Lord *Paget*, of good Ability in ſome Shires thereabouts: both the one and the other may be had, amongſt whom ſecretly ſome more principal baniſhed, may return, if the enterprize be once reſolute. The ſaid Lord *Paget* is now in *Spain*, and may treat of all that (by his Brother *Charles*, or directly by himſelf) you will commit unto him touching the Affairs. Beware that none of your Meſſengers, that you ſend forth of the Realm, carry any Letters upon themſelves; but make their Diſpatches, and ſend them either after or before them by ſome others. Take heed of Spies and falſe Brethren that are amongſt you, eſpecially of ſome Prieſts, already practiſed upon by your Enemies for your diſcovery; and in any caſe keep never a Paper about you, that may in any ſort do harm: for from like Errors have come the Condemnation of all ſuch as have ſuffered heretofore, againſt whom otherwiſe nothing could juſtly have been proved. Diſcover as little as you can, your Names and Intentions to the *French* Ambaſſador, now Lieger at *London*; for altho', as I underſtand, he is a very honeſt Gentleman, yet I fear his Maſter entertaineth a Courſe far contrary to our deſignment, which may move him to diſcover us, if he had any particular knowledge thereof. All this while I have ſued to change and remove from this Houſe; and for anſwer, the Caſtle of *Dudley* only hath been named to ſerve the turn; ſo as by appearance about the end of this Summer, I may go thither: therefore adviſe ſo ſoon as I ſhall be there, what Proviſion may be had about that part, for my eſcape from thence. If I ſtay here, there is but one of theſe three ways or means to be looked for.

‘ The *Firſt*, That at a certain Day appointed for my going abroad on horſeback on the Mores, between this and *Stafford*, where ordinarily, you know, but few People do paſs, let fifty or threeſcore Horſemen, well mounted and armed, come to take me away, as they may eaſily; my Keeper having with him but eighteen or twenty Horſes, with only Dogs.

‘ The *Second* means, To come at Midnight, or ſoon after, and ſet fire on the Barns and Stables, which you know are near the Houſe; and whilſt my Guardian Servants ſhall come forth to the Fire, your Company having duly on a Mark, whereby they may be known one from another, ſome of you may ſurprize the Houſe, where I hope with the few Servants I have about me, I ſhall be able to give you correſpondent Aid.

‘ And the *Third* is, Some there be that bring Carts hither early in the Morning, three Carts may be ſo prepared; that being in the midſt of the great Gate, the Carts might fall down, or overthrow; that thereupon you might come ſuddenly, and make your ſelves Maſters of the Houſe, and carry me ſuddenly away; ſo you might eaſily do before any number of Soldiers, who lodge in ſundry Places forth of this Place, ſome half a Mile, and ſome a whole Mile, could come to relieve. Whatſoever Iſſue the matter taketh, I do, and ſhall think my ſelf obliged, ſo long as I live, towards you, for the offers you make to hazard your ſelf as you do for my Deliverance; and by any means that ever I may have, I ſhall do my endeavour to recognize by Effects your Deſerts: therein I have commanded a more ample Alphabet to be made for you, which herewith you ſhall receive. God Almighty have you in his Protection.’

Your aſſured Friend for ever,

Mary Regina.

Fail not to burn this privately and quickly.

Of this Letter ſhe required a Copy, and affirmed, That it proceeded not from her, but haply from her Alphabet of Ciphers in *France:* That ſhe had done her beſt Endeavour for the Recovery of her Liberty, which Nature it ſelf alloweth, and had ſollicited her Friends to deliver her; yet to ſome, whom ſhe liſted not to name, when they offered her their Help to deliver her, ſhe anſwered not a word. Nevertheleſs, ſhe much deſired to divert the Storm of Perſecution from the Catholicks, and for this ſhe had made earneſt Suit to the Queen: For her part, ſhe would not purchaſe the Kingdom with the Death of the meaneſt Man of the common People, much leſs of the Queen: That there were many which attempted dangerous Deſigns without her knowledge; and by a very late Letter, which ſhe had received, Pardon was aſked of her by ſome, if they ſhould enterprize any thing without her Privity: That it was an eaſy Matter to counterfeit the Ciphers and Characters of others, as a young Man did very lately in *France*, which had vaunted himſelf to be her Son's baſe Brother: That ſhe feared alſo leſt this were done now by *Walſingham* to bring her to her Death, who (as ſhe heard) had practiſed againſt her Life and her Son's. She proteſted that ſhe not ſo much as thought the Deſtruction of the Queen; that ſhe had rather moſt gladly ſpend her own Life, than for her ſake the Catholicks ſhould be ſo afflicted in Hatred of her, and drawn to cruel Death. And withal ſhe ſhed plenty of Tears.

But (ſaid the Lord Treaſurer) no Man which hath ſhewed himſelf a good Subject, was ever put to death for Religion; but ſome have been for Treaſon, while they maintained the Pope's Bull and Authority againſt the Queen.

Yet I (ſaid ſhe) have heard otherwiſe, and have read it alſo in Books ſet forth in print.

The Authors (replied he) of ſuch Books, do write alſo that the Queen hath forfeited her Royal Dignity.

Walſingham, who had found himſelf taxed even now by her words, took opportunity, and riſing up, proteſted that his Mind was free from all Malice: I call God (ſaid he) to record, that as a private Perſon I have done nothing unbeſeeming an honeſt Man; nor as I bear the place of a publick Perſon, have I done any thing unworthy my Place. I confeſs, that being very careful for the Safety of the Queen and Realm, I have curiouſly ſearched out the Practices againſt the ſame. If *Ballard* had offered me his help, I ſhould not have refuſed it; yea, I would have recompenſed the pains he had taken. If I have practiſed any thing with him, why did he not utter it to ſave his Life?

With this anſwer, ſhe ſaid ſhe was ſatisfied: She prayed him he would not be angry, that ſhe had ſpoken freely what ſhe had heard reported; and that he would give no more Credit to thoſe that ſlandered her, than ſhe did to ſuch who accuſed him: That Spies were Men of doubtful Credit, which diſſemble one thing, and ſpeak another; and that he would in no ſort believe that ſhe had conſented to the Queen's Deſtruction. And now again ſhe burſt forth into Tears; I would never (ſaid ſhe) make ſhipwreck of my Soul, by conſpiring the Deſtruction of my deareſt Siſter.

It was anſwered by the Lawyers, that this ſhould ſoon be diſproved by Teſtimony. *Thus far in the Forenoon.*

In the *Afternoon*, to diſprove this, was produced the Copy of a Letter which *Charles Paget* had written; and *Curle*, one of her Secretaries, had witneſſed that ſhe had received; touching a Conference betwixt *Mendoza* and *Ballard*, about the deſign for invading of *England*, and ſetting her at liberty.

This (anſwered ſhe) was nothing to the purpoſe, and proved not that ſhe had conſented to the Deſtruction of the Queen.

The Lawyers proceeded further, to prove that ſhe was both privy to the Conſpiracy, and conſpired alſo the Deſtruction of the Queen, by *Babington*'s Confeſſion, and Letters alſo that had paſſed betwixt her and him; wherein he called her, his moſt dread and Sovereign Lady, and Queen: And by the way, they mentioned that a Plot was laid for conveying the Kingdom of *England* to the *Spaniard.* She confeſſed, that a Prieſt came unto her, and ſaid, That if ſhe would not intermeddle, ſhe and her Son both ſhould be excluded from the Inheritance; but the Prieſt's Name ſhe would not tell. She added, that the *Spaniard* did lay claim to the Kingdom of *England*, and would not give place to any but to her.

Then preſſed they her with the Teſtimonies of her Secretaries *Naw* and *Curle*, out of *Babington*'s Confeſſion, and the Letters ſent to and fro betwixt her and *Babington*, and the whole Credit of their Proofs reſted upon their Teſtimony; yet were not they produced before her Face to Face. *Curle* ſhe acknowledged an honeſt Man, but not a meet Witneſs to be againſt her. As for *Naw*, he had been ſometimes a Secretary (ſaid ſhe) to the Cardinal of *Lorain*, and commended unto her by the *French* King, and might eaſily be drawn either by Reward, or Hope, or Fear, to bear falſe Witneſs, as one that had ſundry times raſhly bound himſelf by Oath, and had *Curle* ſo pliable unto him, that at his beck he would write what he bade him. It might be that theſe two might inſert into her Letters, ſuch things as ſhe had not dictated unto them. It might be alſo that ſuch Letters came to their hands, which notwithſtanding ſhe never ſaw; and ſo ſhe brake forth into ſuch words as theſe: The Majeſty and Safety of all Princes falleth to the ground, if they depend upon the Writings and Teſtimony of Secretaries. I deliver'd nothing to them but what Nature delivered to me, that I might at length recover my Liberty. And I am not to be convicted but by mine own Word or Writing. If they have written any thing which may be hurtful to the Queen my Siſter, they have written it altogether without my knowledge; and let them bear the Puniſhment of their inconſiderate Boldneſs. Sure I am, if they were here preſent, they would clear me of all blame in this Cauſe. And I, if my Notes were at hand, could anſwer particularly to theſe things.

Amongſt theſe Speeches, the Lord Treaſurer objected unto her, that ſhe had purpoſed to ſend her Son into *Spain*, and to convey her Title ſhe claimeth in the Kingdom of *England*, to the *Spaniard.*

To whom ſhe anſwered, That ſhe had no Kingdom which ſhe could convey, yet was it lawful for her to give thoſe things which were hers; at her pleaſure, and not to be accountable for the ſame to any.

When her Alphabets of Ciphers, ſent over to *Babington*, the Lord *Lodouic* and *Ferniburſt*, were objected unto her out of *Curle*'s Teſtimony; ſhe denied not, but ſhe had written out many; and amongſt others, that for the Lord *Lodouic*, when ſhe had commended him and another to the dignity of a Cardinal; and that without Offence, (ſhe truſted) for that it was as lawful for her to have intercourſe of Letters, and to negotiate her matters with Men of her Religion, as for the Queen with the Profeſſors of another Religion.

Then preſſed they her hard with the conſenting Teſtimonies of *Naw* and *Curle* reiterated: And ſhe reiterated her Anſwers, or elſe refelled their Teſtimonies by a flat denial; proteſting again, that ſhe neither knew *Babington* nor *Ballard.*

Amongſt theſe Speeches, when the Lord Treaſurer had mentioned, that ſhe knew *Morgan* well, which had ſent *Parry* privily to murder the Queen, and that ſhe had aſſigned him a yearly Penſion; ſhe replied, That ſhe knew not whether *Morgan* had done ſo, but ſhe knew that *Morgan* had loſt all for her ſake, and therefore it concerned her in Honour to relieve him; and ſhe was not bound to revenge an Injury done the Queen by a Friend, that had deſerved well at her hands; yet had ſhe terrified the Man from ſuch wicked Attempts: But contrarywiſe (ſaid ſhe) Penſions have been aſſigned out of *England* to *Patrick Gray*, and to the *Scots* my Adverſaries, as alſo to my Son.

The Lord Treaſurer anſwered, When the Revenues of *Scotland* were by the negligence of the Regents much diminiſhed, the Queen beſtowed ſomewhat in Bounty upon your Son the King, her near Kinſman.

Afterwards were produced the chief Points of certain Letters ſent to *England*, and the Lord *Paget*, and to *Bernardine de Mendoza*, about foreign Aid. But when ſhe had anſwered, That theſe things made not to the deſtruction of the Queen; and if Foreigners laboured to ſet her at liberty, it was not to be laid to her Charge; and that ſhe had ſundry times openly ſignified to the Queen, that ſhe would ſeek her own Liberty: the matter was prorogued till the next Day following.

The next day ſhe returned her former Proteſtation, and required to have it recorded, and a Copy thereof delivered unto her, lamenting, that the moſt reaſonable Conditions, which ſhe had many times propounded to the Queen, were always rejected, even when ſhe promiſed to deliver her Son and the Duke of *Guiſe*'s Son for Hoſtages, that the Queen or Kingdom of *England* ſhould receive no detriment by her: ſo as ſhe ſaw her ſelf already quite barred from all hope of her Liberty. But now ſhe was moſt unworthily dealt withal, whoſe Honour and Reputation was called in queſtion before foreign Lawyers, which by wretched Concluſions drew every Circumſtance into a Conſequence; whereas Princes anointed and conſecrate are not ſubject to the ſame Laws that private Men are. Moreover, whereas Authority was granted to the Commiſſioners, to examine matters tending to the hurt of the Queen's Perſon; yet was the Cauſe ſo handled, and Letters wreſted, that the Religion which ſhe profeſſed, the Immunity and Majeſty of foreign Princes, and the private Intercourſe betwixt Princes were called in queſtion, and ſhe her ſelf made to deſcend beneath her Royal Dignity, and to appear as a Party guilty before a Tribunal Seat: and all to no other purpoſe but that ſhe might be quite excluded out of the Queen's Favour, and her own Right to the Succeſſion; whereas ſhe appeared voluntarily to clear her ſelf of the matters objected againſt her, leſt ſhe might ſeem to have neglected the defence of her own Honour and Innocency. She called alſo to remembrance, how Queen *Elizabeth* her ſelf had been drawn in queſtion about *Wiat*'s Conſpiracy, whereas notwithſtanding ſhe was moſt innocent: religiouſly affirming, that tho' ſhe wiſhed the ſafety of the Catholicks might be provided for; yet would ſhe not that it ſhould be effected with the Death and Blood of any one. For her part, ſhe had rather play *Heſter* than *Judith*; make Interceſſion to God for the People, than deprive the meaneſt of the People of Life. She expoſtulated, that her Enemies had divulged abroad that ſhe was Irreligious; but the time was (ſaid ſhe) when I would have been inſtructed in the Proteſtant Religion, but they would not ſuffer me to be ſo, as if they cared not what became of my Soul. And now concluding, When ye have done all ye can (ſaid ſhe) againſt me, and have excluded me from my Right, ye may chance fail of your Cauſe and Hope. And withal making her appeal to God, and to the Princes her Kinſmen, and renewing her Proteſtation, ſhe prayed that there might be another meeting about this matter, and that an Advocate might be granted unto her to plead her Cauſe; and that ſeeing ſhe was a Princeſs, ſhe might be believed in the word of a Princeſs: For it were extreme folly to ſtand to their Judgment, whom ſhe ſaw moſt plainly to be armed with prejudice againſt her.

To theſe things the Lord Treaſurer ſaid, Whereas I bear a double Perſon, one of a Commiſſioner, another of a Counſellor, receive firſt a few Words from me as a Commiſſioner. Your Proteſtation is recorded, and a Copy thereof ſhall be delivered unto you. To us our Authority is granted under the Queen's Hand, and the Great Seal of *England*, from which there is no Appeal; neither do we come with Prejudice, but to judge according to the exact Rule of Juſtice. The Queen's learned Counſel do level at nothing elſe but that the Truth may come to light, how far you have offended againſt the Queen's Perſon. To us full Power is given to hear and examine the matter, even in your abſence; yet were we deſirous you ſhould be preſent, leſt we might ſeem to have derogated from your Honour: We purpoſed not to object any thing unto you, but what you were privy to, or have attempted againſt the Queen's Perſon. The Letters have been read to no other purpoſe, but to diſcover your Offence againſt the Queen's Perſon, and the matters to it belonging, which are ſo interlaced with other matters, that they cannot be ſever'd. The whole Letters therefore, and not Parcels picked out here and there, have been openly read, for that the Circumſtances do give aſſurance, what matters you dealt with *Babington* about.

She interrupting him, ſaid, The Circumſtances may be proved, but never the Fact: Her Integrity depended not upon the Credit and Memory of her Secretaries, tho' ſhe knew them to be honeſt and ſincere Men. Yet if they have confeſſed any thing out of fear of Torments, or hope of Reward and Impunity, it was not to be admitted, for juſt Cauſes, which ſhe would alledge elſewhere. Men's minds (ſaid ſhe) are diverſly carried about with Affections, and they would never have confeſſed ſuch matters againſt her, but for their own Advantage and Hope. Letters may be directed to others, than thoſe to whom they are written, and many things have been often inſerted, which ſhe never dictated. If her Papers had not been taken away, and ſhe had her Secretary, ſhe could better confute the things objected againſt her.

But nothing (ſaid the Lord Treaſurer) ſhall be objected, but ſince the 19th Day of *June*; neither will your Papers avail you, ſeeing your Secretaries and *Babington* himſelf, being never put to the Rack, have affirmed that you ſent thoſe Letters to *Babington*; which tho' you deny, yet whether more Credit is to be given to an Affirmation than to a Negation, let the Commiſſioners judge. But to return to the Matter; this which followeth, I tell you as a Counſellor: Many things you have propounded time after time concerning your Liberty; that they have failed of Succeſs, it is long of you, or of the *Scots*, and not of the Queen. For the Lords of *Scotland* flatly refuſed to deliver the King in Hoſtage. And when the laſt Treaty was holden concerning your Liberty, *Parry* was ſent privily by *Morgan*, a Dependant of yours, to murder the Queen.

Ah (ſaid ſhe) you are my Adverſary. Yea (ſaid he) I am Adverſary to Queen *Elizabeth*'s Adverſaries. But hereof enough, let us now proceed to Proofs. Which when ſhe refuſed to hear; Yet we (ſaid he) will hear them: And I alſo (ſaid ſhe) will hear them in another Place, and defend my ſelf.

Now were read again her Letters to *Charles Paget*, wherein ſhe ſhewed him that there was no other way for the *Spaniard* to reduce the *Netherlands* to Obedience, but by ſetting up a Prince in *England* that might be of uſe unto him; and to the Lord *Paget* to haſten his Auxiliary Forces to invade *England:* And Cardinal *Allen*'s Letter, wherein he called her his moſt dread Sovereign Lady, and ſignified that the matter was commended to the Prince of *Parma*'s Care.

As theſe Letters were in reading, ſhe interpoſed theſe Speeches: That *Babington* and her Secretaries had accuſed her to excuſe themſelves; that ſhe never heard of the ſix Executioners, and that the reſt made nothing to the purpoſe. As for *Allen*, ſhe held him for a Reverend Prelate; and ſhe acknowledg'd no other Head of the Church, but the Biſhop of *Rome.* In what Rank and Place ſhe was eſteemed by him and foreign Princes, ſhe knew not; neither could ſhe hinder it, if in their Letters they called her Queen of *England.* As for her Secretaries, ſeeing they had done contrary to their Duty and Allegiance ſworn unto her, they deſerved no Credit. They which have once forſworn themſelves, tho' they ſwear again with never ſo great Oaths and Proteſtations, are not to be credited. Neither did theſe Men think themſelves bounden by any Oath whatſoever in Court of Conſcience, foraſmuch as they had ſworn their Fidelity and Secrecy to her before, and were no Subjects of *England.* That *Naw* had many times written otherwiſe than ſhe had dictated unto him, and *Curle* wrote whatſoever *Naw* bade him. But for her part ſhe was willing to bear the burden of their fault in all things, but what might lay a blot upon her Honour. And haply alſo they confeſſed theſe things to ſave themſelves; ſuppoſing that they could not hurt her by confeſſing, who they thought ſhould be more favourably dealt withal as being a Queen. As for *Ballard*, ſhe never heard of any ſuch, but of one *Hallard*, which had offered her his help; which notwithſtanding, ſhe had refuſed, for that ſhe had heard that the ſame Man had alſo vowed his Service to *Walſingham.*

Afterwards were read certain brief Notes of her Letters to *Mendoza*, which *Curle* had confeſſed he had written in privy Cipher.

‘ I Find my ſelf greatly troubled what Courſe to take a-new, for the Affairs
‘ on this ſide the Sea; *Charles Paget* hath a Charge from me to impart unto
‘ you certain Overtures in my behalf; whereupon I pray you deliver him

freely, what you think may be obtained thereof from the King your Maſter.

‘ There is another Point depending thereof, which I have reſerved to write to your own ſelf, for to be by you ſent unto the King your Maſter on my behalf, no Man elſe, if it be poſſible, being privy thereunto; that is, that conſidering my Son's great Obſtinacy in Hereſy, and foreſeeing hereupon the imminent danger and harm like to enſue to the Catholick Church, he coming to the Succeſſion of this Realm, I have reſolved with my ſelf, in caſe my ſaid Son do not reduce himſelf before my Death to the Catholick Religion, (as I muſt tell you plainly, I have ſmall hope ſo long as he ſhall remain in *Scotland*) to give and grant my Right to the ſaid King your Maſter, in the Succeſſion of this Crown, by my laſt Will and Teſtament; praying him in Conſideration hereof from this time forward to take me wholly into his Protection, likewiſe the State and Affairs of this Country: the which for diſcharge of my Conſcience, I cannot think I can put into the hands of a Prince more zealous of our Religion, and able in all reſpects to re-eſtabliſh the ſame on this ſide, as it imports all the reſt of Chriſtendom. Let this be kept ſecret, foraſmuch as if it come to be revealed, it ſhould be in *France* the loſs of my Dower, in *Scotland* a clear Breach with my Son, and in this Country my total Ruin and Deſtruction.

‘ Thank on my behalf the ſaid King your Maſter, for the Favour and Liberality extended to the Lord *Paget* and his Brother, which I pray him moſt earneſtly to continue, and to gratify for my ſake with ſome Penſion poor *Morgan*, who hath ſo much endured not only for me, but for the common Cauſe.

‘ I recommend likewiſe unto you *Fulſambe* (whom you know) to help him to ſome ſupply, above the Entertainment that I have allotted him, according to the ſmall means I have.’

Out of theſe ſhe was preſſed as if ſhe had purpoſed to convey her Right in the Kingdom to the *Spaniard*, and that *Allen* and *Parſons* lay now at *Rome* for that cauſe. She complaining that her Secretaries had broken their Allegiance bound by Oath, anſwered, When being Priſoner I languiſhed in Cares without hope of Liberty, and was without all hope to effect thoſe things which very many expected at my hands, declining now thro' Age and Sickneſs; it ſeemed good to ſome, that the Succeſſion of the Crown of *England* ſhould be eſtabliſhed in the *Spaniard*, or ſome *Engliſh* Catholick. And a Book was ſent unto me to avow the *Spaniard*'s Title; which when it was not allowed by me, I incurred diſpleaſure among ſome: But now all my hope in *England* being deſperate, I am fully reſolved not to reject foreign Aid.

The Sollicitor put the Commiſſioners in mind what would become of them, their Honours, Eſtates and Poſterities, if the Kingdom were ſo conveyed. But the Lord Treaſurer ſhewed that the Kingdom of *England* could not be conveyed, but was to deſcend by Right of Succeſſion according to the Laws; and aſked her, if ſhe would any more.

She required that ſhe might be heard in a full Parliament, or that ſhe might in Perſon ſpeak with the Queen, who would (ſhe hoped) have regard of a Queen, and with the Council. And now riſing up with great Confidence of Countenance, ſhe had ſome Conference with the Lord Treaſurer *Hatton*, *Walſingham*, and the Earl of *Warwick*, by themſelves apart.

Theſe things being done, the Aſſembly was prorogued to the 25th of *October*, at the *Star-Chamber* at *Weſtminſter*. Thus far touching this matter out of the Commentaries of *Edward Barker*, principal Regiſter to the Queen's Majeſty; *Thomas Wheeler*, publick Notary, Regiſter of the Audience of *Canterbury*; and other credible Perſons which were preſent.

The ſaid 25th Day of *October*, all the Commiſſioners met, ſaving the Earls of *Shrewſbury* and *Warwick*, which were both of them ſick at that time; and after *Naw* and *Curle* had by Oath, *viva voce*, voluntarily without Hope of Reward, before them avowedly affirmed and confirmed all and every the Letters, and Copies of Letters, before produced, to be moſt true; Sentence was pronounced againſt the Queen of *Scots*, and confirmed with the Seals and Subſcriptions of the Commiſſioners, and recorded in theſe words: By their joint Aſſent and Conſent, they do pronounce and deliver their Sentence and Judgment, at the Day and Place laſt recited; and ſay, That after the end of the aforeſaid Seſſion of Parliament, in the Commiſſion aforeſaid ſpecified, namely after the aforeſaid 1ſt Day of *June*, in the 27th Year aboveſaid, and before the date of the ſame Commiſſion, divers matters have been compaſſed and imagined within this Realm of *England*, by *Anthony Babington* and others, *cum ſcientia*, in *Engliſh*, with the Privity of the ſaid *Mary*, pretending Title to the Crown of this Realm of *England*, tending to the hurt, death and deſtruction of the Royal Perſon of our ſaid Lady the Queen. And namely, That after the aforeſaid 1ſt Day of *June*, in the 27th Year aboveſaid, and before the Date of the Commiſſion aforeſaid, the aforeſaid *Mary* pretending Title to the Crown of this Realm of *England*, hath compaſſed and imagined within this Realm of *England*, divers matters tending to the hurt, death and deſtruction of the Royal Perſon of our Sovereign Lady the Queen, contrary to the form of the Statute in the Commiſſion aforeſaid ſpecified.

Concerning this Sentence, which depended wholly upon the Credit of the Secretaries, and they not brought forth Face to Face, according to the firſt Act of the 13th Year of Queen *Elizabeth*, much talk there was, and divers Speeches ran abroad; while ſome thought them credible Perſons, and ſome unworthy to be credited. I have ſeen *Naw*'s Apology to King *James*, written in the Year 1605; wherein laboriouſly proteſting, he excuſeth himſelf, that he was neither Author, nor Perſuader, nor the firſt Revealer of the Plot that was undertaken, nor failed of his Duty thro' Negligence, or want of Foreſight; yea, that this Day he ſtoutly impugned the chief points of Accuſation againſt his Lady and Miſtreſs: which notwithſtanding appeareth not by Records. But the ſame day was there a Declaration made by the Commiſſioners and Judges of the Land, That the ſaid Sentence did derogate nothing from *James* King of *Scots*, in Title or Honour, but that he was in the ſame place, degree and right, as if the ſame Sentence had never been pronounced.

Some few days after, a Parliament was holden at *Weſtminſter*, begun by virtue of a certain Power of Vice-gerency, granted by the Queen to the Archbiſhop of *Canterbury*, the Lord Treaſurer, and the Earl of *Derby*, and that not without Precedent. In which Parliament the Proſcription of the Lord *Paget*, *Charles Paget*, Sir *Francis Englefield*, *Francis Throckmorton*, *Anthony Babington*, *Thomas Saliſbury*, *Edward Jones*, *Chidiock Titchbourne*, *Charles Tilney*, and the reſt of the Conſpirators, was confirmed, and their Goods and Poſſeſſions confiſcate. The Eſtates alſo of the Realm, which had by their Voices approved and confirmed the Sentence given againſt the Queen of *Scots*, did with joint Aſſent put up a Supplication to the Queen by the hands of the Lord Chancellor, as follows:

MAY it pleaſe your moſt excellent Majeſty, our moſt gracious Sovereign, we your humble, loving and faithful Subjects, the Lords and Commons in this preſent Parliament aſſembled, having of long time to our intolerable grief ſeen by how manifold moſt dangerous and execrable Practices, *Mary* the Daughter and Heir of *James* V. late King of *Scots*, Dowager of *France*, and commonly called Queen of *Scots*, hath compaſſed the Deſtruction of your Majeſty's Sacred and moſt Royal Perſon, in whoſe Safety (next under God) our chief and only Felicity doth conſiſt; and thereby not only to bereave us of the ſincere and true Religion of Almighty God, bringing us and this noble Crown back again into the Thraldom of the Romiſh Tyranny, but alſo utterly to ruinate and overthrow the happy State and Commonweal of this moſt noble Realm; which being from time to time by the great Mercy and Providence of God, and your Highneſs's ſingular Wiſdom, foreſeen and prevented, your Majeſty of your exceeding great Clemency and Princely Magnanimity hath either moſt graciouſly paſſed over, or with ſingular favour tolerated, altho' often and inſtantly moved by your moſt loving and faithful Subjects to the contrary, in Times of your Parliaments, and at many other times; and hath alſo protected and defended the ſaid *Scotiſh* Queen from thoſe great dangers which her own People, for certain deteſtable Crimes and Offences to her imputed, had determined againſt her: All which notwithſtanding, the ſame Queen was nothing moved with theſe and many other your Majeſty's moſt gracious Favours towards her; but rather obdurate in Malice, and by hope of continual Impunity imboldened to proſecute her cruel and miſchievous Determination by ſome ſpeedy and violent Courſe; and now lately a very dangerous Plot being conceived and ſet down by *Anthony Babington* and others, That ſix deſperate and wicked Perſons ſhould undertake that wicked and moſt horrible Enterprize, to take away your Majeſty's Life, (whom God of his infinite Mercy long preſerve) ſhe did not only give her Advice and Direction upon every point, and all Circumſtances concerning the ſame, make earneſt requeſt to have it perform'd with all diligence, but did alſo promiſe aſſurance of large Reward and Recompence to the Doers thereof: which being informed to your Majeſty, it pleaſed your Highneſs, upon the earneſt Suit of ſuch as tendered the Safety of your Royal Perſon, and the good and quiet ſtate of this Realm, to direct your Commiſſion under the Great Seal of *England*, to the Lords and others of your Highneſs's Privy-Council, and certain other Lords of Parliament of the greateſt and moſt antient Degree, with ſome of your principal Judges, to examine, hear and determine the ſame Cauſe, and thereupon to give Sentence or Judgment according to a Statute in that behalf, made in the 27th Year of your moſt gracious Reign: By virtue whereof, the more part of the ſame Commiſſioners, being in number thirty-ſix, having at ſundry times fully heard what was alledged and proved againſt the ſaid *Scotiſh* Queen in her own Preſence, touching the ſaid Crimes and Offences, and what ſhe could ſay for her Defence and Excuſe therein, did after long Deliberation give their Sentence and Judgment with one Conſent, that the Death and Deſtruction of your Royal Perſon was imagined and compaſſed by the ſaid *Anthony Babington*, with the privity of the ſame *Scotiſh* Queen: And that ſhe her ſelf did alſo compaſs and imagine the Death and Deſtruction of your moſt Royal Perſon. Now for as much as we your Majeſty's moſt humble, loyal and dutiful Subjects, repreſenting unto your moſt excellent Majeſty the univerſal ſtate of your whole People of all degrees in this your Realm, do well perceive, and are fully ſatisfied, that the ſame Sentence and Judgment is in all things moſt Honourable, Juſt and Lawful; and having carefully and effectually, according to our moſt bounden Duties, weighed and conſidered upon what Ground and Cauſe ſo many traitorous Complots, and dangerous Practices againſt your moſt Royal Perſon and Eſtate, and for the invading of this Realm, have for the ſpace of many years paſt grown and proceeded, do certainly find, and are undoubtedly perſuaded that all the ſame have been from time to time attempted and practiſed, by and from the *Scotiſh* Queen, and by her Confederates, Miniſters and Favourers, who conceive an aſſured hope to atchieve ſpeedily by your Majeſty's untimely Death that which they have long expected, and whereof during your Life (which God long preſerve to our ineſtimable Comfort) they deſpair; to wit, to place her the ſaid *Scotiſh* Queen in the Imperial and Kingly Seat of this Realm, and by her to baniſh and deſtroy the Profeſſors and Profeſſing of the true Religion of Jeſus Chriſt, and the antient Nobility of this Land, and to bring this whole State and Commonweal to foreign Subjection, and utter Ruin and Confuſion: which their malicious and traitorous Purpoſe they will never ceaſe to proſecute by all poſſible means they can, ſo long as they may have their Eyes and Imaginations fixed upon that Lady, the only ground of their treaſonable Hope and Conceits, and the only Seed-Plot of all dangerous and traitorous Devices and Practices againſt your ſacred Perſon. And ſeeing alſo what inſolent Boldneſs is grown in the Heart of the ſame Queen, thro' your Majeſty's former exceeding Favours and Clemencies towards her; and thereupon weighing with heavy and ſorrowful Hearts, in what continual Peril of ſuch like deſperate Conſpiracies and Practices your Majeſty's moſt Royal and Sacred Perſon and Life (more dear unto us than our own) is and ſhall be ſtill, without any poſſible means to prevent it, ſo long as the ſaid *Scotiſh* Queen ſhall be ſuffered to continue, and ſhall not receive that due Puniſhment, which by Juſtice, and the Laws of this your Realm, ſhe hath ſo often and ſo many ways for her moſt wicked and deteſtable Offences deſerved: Therefore, and for that we find, that if the ſaid Lady ſhould now eſcape the due and deſerved Puniſhment of Death for theſe her moſt execrable Treaſons and Offences, your Highneſs's Royal Perſon ſhall be expoſed unto many more, and thoſe more ſecret and dangerous Conſpiracies than before, and ſuch as ſhall not or cannot be foreſeen or diſcovered, as theſe her late Attempts have been; and ſhall not hereafter be ſo well able to remove or take away the ground and occaſion of the ſame, as now by Juſtice may or ought to be done: We do moſt humbly beſeech your moſt excellent Majeſty, that as well in reſpect of the Continuance of the true Religion now profeſſed amongſt us, and of the Safety of your moſt Royal Perſon and Eſtate, as in regard of the Preſervation and Defence of us your moſt loving, dutiful and faithful Subjects, and the whole Commonweal of this Realm; it may pleaſe your Highneſs to take ſpeedy Order, That Declaration of the ſame Sentence and Judgment be made and publiſhed by Proclamation, and that thereupon direction be given for further Proceedings againſt the ſaid *Scotiſh* Queen, according to the effect and true meaning of the ſaid Statute: Becauſe upon adviſed and great Conſultation, we cannot find that there is any poſſible means to provide for your Majeſty's Safety, but by the juſt and ſpeedy Execution of the ſaid Queen, the neglecting whereof may procure the heavy Diſpleaſure and Puniſhment of Almighty God, as by ſundry ſevere Examples of his great Juſtice in that behalf left us in the Sacred Scriptures doth appear. And if the ſame be not put in preſent Execution, we your moſt loving and dutiful Subjects ſhall thereby (ſo far as Man's Reaſon can reach) be brought into utter Deſpair of the Continuance amongſt us of the true Religion of Almighty God, and of your Majeſty's Life, and the Safety of all your faithful Subjects, and the good Eſtate of this moſt flouriſhing Commonweal.

The Queen with great Majeſty of Countenance and Voice, anſwered to this purpoſe: So many and ſo great are the bottomleſs Graces, and immeaſurable Benefits beſtowed upon me by the Almighty, that I muſt not only moſt humbly acknowledge them as Benefits, but admire them as Miracles, being in no ſort able to expreſs them. And tho' there liveth not any that may more juſtly acknowledge himſelf bound to God than I, whoſe Life he hath miraculouſly preſerved from ſo many Dangers, yet am I not more deeply bound to give him Thanks for any one Thing, than for this which I will now tell you, and which I account as a Miracle: Namely, that as I came to the Crown with the moſt hearty Good-will of all my Subjects, ſo now after 28 Years Reign, I perceive in them the ſame, if not greater Good-will towards me; which if I once loſe, well might I breathe, but never think I lived. And now tho' my Life hath been dangerouſly ſhot at, yet I proteſt there is nothing hath more grieved me, than that one not differing from me in Sex, of like Rank and Degree, of the ſame Stock, and moſt nearly allied unto me in Blood, hath fallen into ſo great a Crime. And ſo far have I been from bearing her any Ill-will, that upon the diſcovery of certain treaſonable Practices againſt me, I wrote unto her ſecretly, that if ſhe would confeſs them by a private Letter unto my ſelf, they ſhould be wrapped up in Silence. Neither did I write thus in mind to intrap her, for I knew then as much as ſhe could confeſs. And even yet, tho' the matter be come thus far, if ſhe would truly repent, and no Man would undertake her Cauſe againſt me, and if my Life alone depended hereupon, and not the Safety and Welfare of my whole People, I would (I proteſt unfeignedly) moſt willingly pardon her. Nay if *England* might by my Death attain a more flouriſhing Eſtate, and a better Prince, I would moſt gladly lay down my Life: For, for your ſakes it is, and for my People's, that I deſire to live. As for me, I ſee no ſuch great Cauſe why I ſhould either be fond to live, or fear to die. I have had good Experience of this World, and I know what it is to be a Subject, and what to be a Sovereign. Good Neighbours I have had, and I have met with bad; and in Truſt I have found Treaſon. I have beſtowed Benefits upon ill Deſervers; and where I have done well, have been ill requited. While I call to mind theſe things paſt, behold things preſent, and expect things to come, I hold them happieſt that go hence ſooneſt. Nevertheleſs againſt ſuch Miſchiefs as theſe, I put on a better Courage than is common to my Sex, ſo as whatſoever befall me, Death ſhall not take me unprepared.

And as touching theſe Treaſons, I will not ſo prejudicate my ſelf, or the Laws of my Kingdom, as not but to think that ſhe having been the Contriver of the ſame Treaſons, was bound and liable to the antient Laws, tho' the late Act had never been made; which notwithſtanding was no ways made to prejudice her. So far was it from being made to intrap her, that it was rather intended to forewarn and terrify her from attempting any thing againſt it. But ſeeing it was now in force of a Law, I thought good to proceed againſt her according to the ſame. But you Lawyers are ſo curious in ſcanning the nice Points of the Law, and following of Precedents and Form, rather than expounding the Laws themſelves, that by exact obſerving of your Form, ſhe muſt have been indicted in *Staffordſhire*, and have holden up her hand at the Bar, and have been tried by a Jury of twelve Men. A proper Courſe forſooth of Trial againſt a Princeſs! To avoid therefore ſuch Abſurdities, I thought it better to refer the Examination of ſo weighty a Cauſe to a good number of the nobleſt Perſonages of the Land, and the Judges of the Realm; and all little enough. For we Princes are ſet as it were upon Stages, in the ſight and view of all the World. The leaſt Spot is ſoon ſpy'd in our Garments, a Blemiſh quickly noted in our Doings. It behoveth us therefore to be careful that our Proceedings be juſt and honourable. But I muſt tell you one thing, that by this laſt Act of Parliament you have brought me to a narrow ſtreight, that I muſt give Order for her Death, which is a Princeſs moſt nearly allied unto me in Blood, and whoſe Practices againſt me have ſtricken me into ſo great Grief, that I have been glad to abſent my ſelf from this Parliament, leſt I ſhould encreaſe my Sorrow by hearing it ſpoken of, and not out of fear of any danger, as ſome think. But yet I will now tell you a ſecret (tho' it is well known that I have the property to keep counſel): It is not long ſince theſe Eyes of mine ſaw and read an Oath, wherein ſome bound themſelves to kill me within a Month: hereby I ſee your danger in me, which I will be very careful to avoid.

Your Aſſociation for my Safety I have not forgotten, which I never ſo much as thought of, till a great number of Hands, with many Obligations, were ſhewed me; which as I do acknowledge as a ſtrong Argument of your true Hearts, and great Zeal to my Safety, ſo ſhall my Bond be ſtronger tied to a greater Care for your Good. But foraſmuch as this matter now in hand is very rare, and of greateſt conſequence, I hope you do not look for any preſent Reſolution; for my manner is, in matters of leſs moment than this, to deliberate long upon that which is once to be reſolved. In the mean time I beſeech Almighty God to illuminate my Mind, that I may foreſee that which may ſerve for the Good of his Church, the Proſperity of the Commonwealth, and your Safety. And that Delay may not breed Danger, we will ſignify our Reſolution with all Conveniency. And whatever the beſt Subjects may expect at the hands of the beſt Princes, that expect from me to be performed to the full.

The twelfth Day after, when ſhe had thoroughly weighed the matter in her Mind, being diſtracted with doubtful Care and Thought, and as it were in ſome Conflict with her ſelf what to do in ſo important a Buſineſs, ſhe ſent the Lord Chancellor to the Higher Houſe, and *Puckering* to the reſt in the Lower Houſe; praying them to enter into a new Conſideration upon ſo weighty a matter, and to deviſe ſome better remedy, whereby both the Queen of *Scots* Life might be ſpared, and her own Security provided for.

After much and long Deliberation, they judging that both the Welfare and Hurt of the Prince belongeth to all, concurred again with one Voice in the ſame Opinion, and that for theſe Cauſes: For that the Queen's Safety could not be ſecured as long as the Queen of *Scots* lived, unleſs ſhe either ſeriouſly repented and acknowledg'd her Offence, or were kept with a more ſtreight Guard, good aſſurance being given by Bond and Oath for her good Demeanour, or delivered Hoſtages, or elſe departed the Realm. As for her Repentance, they were out of all hope of it, conſidering that ſhe had ill requited the Queen which had ſaved her Life, and did not yet acknowledge her fault. As for a ſurer Guard, ſtreighter Cuſtody, Bonds, Oath, and Hoſtages, they held them all as nothing, for that the Queen's Life being once taken away, theſe would preſently vaniſh. And if ſhe ſhould depart the Realm, they feared leſt ſhe would preſently take Arms to invade the ſame.

Theſe Reaſons the Lord Chancellor, and *Puckering* Speaker of the Lower Houſe, opened more at large, in the manner following.

‘ Unleſs Execution of this juſt Sentence be done,

‘ I. Your Majeſty's Perſon cannot any while be ſafe.

‘ II. The Religion cannot long continue among us.

‘ III. The moſt flouriſhing preſent State of this Realm muſt ſhortly receive a woful Fall.

‘ IV. And conſequently, in ſparing her, your Majeſty ſhall not only give Courage and Hardineſs to the Enemies of God, of your Majeſty's Self and of your Kingdom; but ſhall diſcomfort and daunt with Deſpair the Hearts of your loving People; and ſo deſervedly provoke the heavy Hand and Wrath of God.

‘ And that ſummarily for the Reaſons enſuing:

‘ I. For as much as concerns the Danger of your Majeſty;

‘ Both ſhe and her Favourers think ſhe hath Right, not to ſucceed, but to enjoy your Crown in Poſſeſſion; and therefore as ſhe is a moſt impatient Competitor, (acquainted with Blood) ſo will ſhe not ſpare any means that may take you from us, being the only Lett, that ſhe enjoyeth not her Deſire.

‘ She is hardened in Malice againſt your Royal Perſon, notwithſtanding that you have done her all Favour, Mercy and Kindneſs; as well in preſerving her Kingdom, as ſaving her Life and Honour.

‘ And therefore there is no Place for Mercy, where there is no Hope of Amendment, or that ſhe will deſiſt from moſt wicked Attempts.

‘ The rather, for that her Malice appeareth ſuch as that ſhe maketh, as it were, her Teſtament of the ſame, to be executed after her Death, and appointeth her Executors to perform the ſame.

‘ She affirmeth it lawful to move Invaſion: therefore, as of Invaſion Victory may enſue, and of Victory the Death of the Vanquiſhed; ſo doth ſhe not obſcurely profeſs it lawful to deſtroy you.

‘ She holds it not only lawful, but honourable alſo and meritorious, to take your Life, *&c.* being deprived of your Crown by her Holy Father, and therefore ſhe will (as ſhe hath continually done) ſeek it by all means whatſoever.

‘ She is greedy of your Death, and preferreth it before her own Life: For in her late Direction to ſome of her Complices, ſhe willed, *Whatſoever became of her, the Tragical Execution ſhould be perform'd on you.* There is by ſo much the more Danger to your Perſon ſince the Sentence, than before, by how much it behoveth them, that would preſerve her or advance her, to haſten your Death now or never before Execution done upon her; as knowing that you, and none elſe, can give Direction for her Death, and that by your Death the Sentence would loſe the Force of Execution, and otherwiſe they ſhould come too late if they take not the preſent Opportunity to help her.

‘ Her Friends hold Invaſion unprofitable while you live, and therefore in their Opinion your Death is firſt and principally to be ſought, as the moſt compendious way to ruin the Realm by Invaſion.

‘ Some of the eldeſt and wiſeſt Papiſts ſet it down for a ſpecial good Drift to occupy you with Conceit, that the Preſervation of her Life is the Safety of your own; and therefore you may be aſſured, that they verily think that her Life will be your Death and Deſtruction.

‘ II. For as much as concerns Religion:

‘ It is moſt perilous to ſpare her, who hath continually breathed the Overthrow and Suppreſſion of the ſame; being poiſoned with Popery from her tender Youth, and at her Age joining in that falſe-term'd *Holy-League*, and ever ſince and now a profeſs'd Enemy of the Truth.

‘ She reſteth wholly upon Popiſh Hopes to be delivered and advanced, and ſo devoted and doted in that Poſſeſſion, that ſhe will (as well for Satisfaction of others, as feeding her own Humour) ſupplant the Goſpel, where and whenſoever ſhe may. Which Evil is ſo much the greater, and the more to be avoided, as that it ſlayeth the Soul, and will ſpread itſelf not only over *England* and *Scotland*, but alſo into all Parts beyond the Seas, where the Goſpel of God is maintained: The which cannot but be exceedingly weakened, if Defection ſhould be in theſe two moſt valiant Kingdoms.

‘ III. For

‘ III. For as much as concerns the happy Eſtate of this Realm:

‘ The *Lydians* ſay, *Unum Regem agnoſcunt Lydii, duos autem tolerare non poſſunt:* ſo we ſay, *Unam Reginam Elizabetham agnoſcunt Angli, duas autem tolerare non poſſunt.* And therefore, ſince ſhe ſaith, that ſhe is Queen here, and we neither can nor will acknowledge any other but you to be our Queen: It will follow, if ſhe prevail, ſhe will rather make us Slaves, than take us for her Children; and therefore the Realm ſigheth and groaneth under fear of ſuch a Step-Mother.

‘ She hath already provided us a Foſter-father and a Nurſe, the Pope and the King of *Spain*, into whoſe hands if it ſhould miſhappen us to fall, what can we elſe look for, but Ruin, Deſtruction, and utter Extirpation of Goods, Lands, Lives, Honour and all?

‘ Whilſt ſhe ſhall live, the Enemies of the State will hope and gape after your Death. By your Death they truſt to make Invaſion profitable for them; which cannot be, but the ſame ſhould be moſt lamentable for us: And therefore it is meet to cut off the Head of that Hope.

‘ As ſhe hath already, by her poiſoned Baits, brought to Deſtruction more Noblemen and their Houſes, and a great multitude of Subjects, during her being here, than ſhe would have done, if ſhe had been in poſſeſſion of her own Country, and armed in the Field againſt us; ſo will ſhe ſtill be continually cauſe of the like Spoil, to the greater Loſs and Peril of this Eſtate: And therefore this Realm neither can nor may endure her.

‘ Her Secretaries do write and print, that we be at our Wits end, World’s end, if ſhe overlive your Majeſty; meaning thereby, that the End of our World is the beginning of theirs: And therefore, take her away, and their World will be at an end before it begin.

‘ Since the ſparing of her in the 14th Year of your Reign, Popiſh Traitors and Recuſants have multiplied exceedingly; and if you ſpare her now again, they will grow both innumerable and invincible alſo.

‘ IV. And therefore now in the fourth Place:

‘ Mercy in this caſe would in the end prove Cruelty againſt all. *Nam eſt quædam crudelis Miſericordia.* And therefore to ſpare her is to ſpill us.

‘ She is only a Couſin to you in a remote degree, but we be the Sons and Children of this Land; whereof you be not only the natural Mother, but alſo the wedded Spouſe. And therefore much more is due from you to us all, than alone to her. It would exceedingly grieve and wound the Hearts of your loving Subjects, if they ſhould ſee ſo horrible Vice not condignly puniſhed: If any be wavering, it will win them to the worſer Part, and many will ſeek to make their own Peace. Wherefore as well for the Comfort of the one, as ſtay of the other, and retaining of all, it is moſt needful that Juſtice be done upon her.

‘ Thouſands of your loving Subjects of all Degrees, which have for ſpecial Zeal of your Safety made Oath, before God, to purſue to Death by all forcible and poſſible Means, ſuch as ſhe is, by juſt Sentence, found to be; cannot ſave their Oaths, if you keep her alive: For then either we muſt take her Life from her without direction, which will be to our extreme Danger by the offence of your Law; or elſe we muſt ſuffer her to live againſt our expreſs Oath, which will be to the uttermoſt Peril of our own Souls; wherewith no Act of Parliament, nor Power of Man whatſoever, can in any wiſe diſpenſe. And therefore, ſeeing it reſteth in you, by a moſt worthy and juſt Execution of this Sentence, to keep us upright and free us in both, we moſt humbly and earneſtly beſeech you, that ſpeedy Juſtice be done upon her, whereby your ſelf may be ſafe, the ſtate of your Realm preſerved, and we not only deliver’d from this Trouble of Conſcience, but alſo recomforted to venture our ſelves, and all ours, into whatſoever other Peril, for the Preſervation and Safety of you.

‘ *Laſtly*, God’s Vengeance againſt *Saul* for ſparing *Agag*, againſt *Ahab* for ſparing the Life of *Benhadad*, is apparent; for they were both by the juſt Judgment of God deprived of their Kingdom, for ſparing thoſe wicked Princes, whom God had deliver’d into their hands of purpoſe to be put to Death by them, as by the Miniſters of his eternal and divine Juſtice.

‘ How much thoſe Magiſtrates were commended, that put to death thoſe miſchievous and wicked Queens, *Jezebel* and *Athaliah!*

‘ How wiſely proceeded *Solomon* to puniſhment, in putting to death his own natural and elder Brother *Adonias*, for the only Intention of a Marriage, which gave ſuſpicion of Treaſon! Whereas there is no more deſired of your Majeſty, than the very Pope, (now your ſworn Enemy) ſome of theſe late Conſpirators, and this wicked Lady herſelf have thought fitting to fall upon her. He in like caſe gave Sentence, *Vita Conradini, mors Carolo; mors Conradini, vita Carolo.* They in their beſt Minds and Remorſe of Conſcience ſetting down the beſt means of your Safety, ſaid, *He that hath no Arms cannot fight, and he that hath no Legs cannot run away, but he that hath no Head can do no harm. Piſces primum à capite fœtent.* She by her voluntary ſubſcribing to the late Aſſociation, *&c.* gave this Sentence againſt herſelf.

‘ And after in her Letters of theſe Treaſons to *Babington*, wrote, *That if ſhe were diſcover’d, it would give ſufficient cauſe to you to keep her in continual cloſe Priſon.* By which Words ſhe could mean nothing elſe but Pains of Death.

‘ Therefore we ſeeing on the one Side how you have, to the offence of mighty Princes, advanced Religion, with what tender Care, and more than Motherly Piety you have always cheriſh’d us the Children of this Land, with what Honour and Renown you have reſtored the antient Rights of the Crown, with what Peace and Juſtice you have govern’d, and with what Store and Plenty you have reign’d over us:

‘ On the other Side, ſeeing that this Enemy of our Felicity ſeeks to undermine our Religion, to ſupplant us, and plant Strangers in the Place, to transfer the Rights of the Crown to that *Italian* Prieſt, and the Crown to herſelf, or to ſome other, from you; and therefore lieth in continual wait for to take away your Life:

‘ Therefore we pray you, for the Cauſe of God, his Church, this Realm, ourſelves and yourſelf; that you will no longer be careleſs of your Life or ſovereign Safety; nor longer ſuffer Religion to be threatened, the Realm to ſtand in Danger, nor us to dwell in Fear! But as Juſtice hath given rightful Sentence, ſo you will grant Execution: That as her Life threateneth your Death, ſo her Death may, by God’s Favour, prolong your Life; and that this Evil being taken away from the Earth, we may praiſe God for our Deliverance, and pray him for our Continuance; and with the Pſalmiſt ſay, *Dominus fecit Judicium*, and, *The ungodly is trapped in the works of her own hand.*

‘ And ſo pray God to incline your Heart to our juſt Deſires, *&c.*’

They concluded, that as it were Injuſtice to deny Execution of Law to any one of her Subjects that ſhould demand it, ſo much more, to her whole People of *England*, with one Voice and Mind making humble and inſtant Suit for the ſame. *The Queen then ſpake in this manner*;

Full grievous is that way, whoſe going on, and end, yield nothing but Cumber for the hire of a laborious Journey. I have this day been in greater Conflict with my ſelf, than ever in all my Life, whether I ſhould ſpeak, or hold my peace. If I ſpeak and not complain, I ſhall diſſemble: And if I ſhould be ſilent, your Labour taken were all in vain. If I ſhould complain, it might ſeem ſtrange and rare; yet I confeſs that my moſt hearty deſire was, that ſome other means might have been deviſed to work your Security and my Safety, than this which is now propounded. So as I cannot but complain, tho’ not of you, yet unto you; that I perceive by your Petitions, that my ſafety dependeth wholly upon the Death of another. If there be any that think I have prolonged the time of purpoſe to make a counterfeit ſhew of Clemency, they do me the moſt undeſerved wrong, as He knoweth, which is the Searcher of the moſt ſecret Thoughts of the Heart. Or if there be any that be perſuaded, that the Commiſſioners durſt not pronounce other Sentence, as fearing thereby to diſpleaſe me, or to ſeem to fail of their care for my Safety, they but heap upon me moſt injurious Conceits. For either thoſe, whom I have put in truſt, have failed of their Duties, or elſe they ſignified unto the Commiſſioners in my Name, that my Will and Pleaſure was, that every one ſhould deal freely according to his Conſcience, and what they would not openly declare, that they ſhould reveal unto me in private. It was of my moſt favourable Mind towards her, that I deſired ſome other means might be found out to prevent this miſchief. But ſince now it is reſolved, that my Surety is moſt deſperate without her Death, I have a moſt inward feeling of Sorrow, that I, which have in my time pardoned ſo many Rebels, winked at ſo many Treaſons, or neglected them with ſilence; muſt now ſeem to ſhew Cruelty upon ſo great a Princeſs.

I have, ſince I came to the Crown of this Realm, ſeen many defamatory Books and Pamphlets againſt me, accuſing me to be a Tyrant: Well fare the Writers Hearts, I believe their meaning was to tell me News; and News indeed it was to me, to be branded with the note of Tyranny: I would it were as great News to hear of their Impiety. But what is it which they will not write now, when they ſhall hear that I have given Conſent, that the Executioner’s hands ſhall be imbrued in the Blood of my neareſt Kinſwoman? But ſo far am I from Cruelty, that to ſave mine own Life, I would not offer her Violence; neither have I been ſo careful how to prolong mine own Life, as how to preſerve both: which that it is now impoſſible, I grieve exceedingly. I am not ſo void of Judgment, as not to ſee mine own Perils before mine eyes; nor ſo mad, to ſharpen a Sword to cut mine own Throat; nor ſo careleſs, as not to provide for the Safety of mine own Life. But this I conſider with my ſelf, that many a Man would put his own Life in danger to ſave a Princeſs’s Life. I do not ſay, ſo will I; yet have I many times thought upon it.

But ſeeing ſo many have both written and ſpoken againſt me, give me leave, I pray you, to ſay ſomewhat in mine own defence, that ye may ſee what manner of Woman I am, for whoſe Safety you have paſſed ſuch careful Thoughts; wherein as I do with moſt thankful Heart conſider your vigilant Care, ſo am I ſure I ſhall never requite it, had I as many Lives as you all.

When firſt I took the Scepter, I was not unmindful of God the Giver, and therefore began my Reign with his Service, and the Religion I had been both born in, bred in, and I truſt ſhall die in. And tho’ I was not ignorant how many Perils I ſhould be beſet withal at home for altering Religion, and how many great Princes abroad, of a contrary Profeſſion, would attempt all Hoſtility againſt me; yet was I no whit diſmayed, knowing that God, whom only I reſpected, would defend both me and my Cauſe. Hence it is, that ſo many Treacheries and Conſpiracies have been attempted againſt me, that I rather marvel that I am, than muſe that I ſhould not be, were it not that God’s holy Hand hath protected me beyond all Expectation. Then to the end I might make the better progreſs in the Art of ſwaying the Scepter, I enter’d into long and ſerious Cogitation what things were worthy and fitting for Kings to do: and I found it moſt neceſſary that they ſhould be abundantly furniſhed with thoſe ſpecial Virtues, Juſtice, Temperance, Prudence, and Magnanimity. As for the two latter, I will not boaſt my ſelf, my ſex doth not permit it: But for the two former, I dare ſay, (and that without Oſtentation) I never made a difference of Perſons, where Right was one; I never preferred for Favour, whom I thought not fit for Worth; I never bent my ear to credit a tale that was firſt told, nor was ſo raſh to corrupt my Judgment with Prejudice, before I heard the Cauſe. I will not ſay but many Reports might haply be brought me in too much favour of the one ſide or the other; for we Princes cannot hear all our ſelves: Yet this I dare ſay boldly, My Judgment went ever with the Truth according to my Underſtanding. And as full well *Alcibiades* wiſhed his Friend, not to give any Anſwer till he had run over the Letters of the Alphabet; ſo have I not uſed raſh and ſudden Reſolutions in any thing.

And therefore as touching your Counſels and Conſultations, I acknowledge them to be ſo careful, provident and profitable for the preſervation of my Life, and to proceed from Minds ſo ſincere and to me moſt devoted, that I ſhall endeavour my ſelf all I can, to give you cauſe to think your pains not ill-beſtowed, and ſtrive to make my ſelf worthy of ſuch Subjects.

And now for your Petition, I pray you for this preſent to content your ſelves with an Anſwer without Anſwer. Your Judgment I condemn not, neither do I miſtake your Reaſons, but pray you to accept my Thankfulneſs, excuſe my Doubtfulneſs, and take in good part my Anſwer anſwerleſs. If I ſhould ſay, I would not do what you requeſt, I might ſay perhaps more than I think: And if I ſhould ſay I would do it, I might plunge my ſelf into Peril, whom you labour to preſerve; which in your Wiſdoms and Diſcretions ye would not that I ſhould, if ye conſider the Circumſtances of Place, Time, and the Manners and Conditions of Men.

After this, the Aſſembly of the Eſtates was prorogued.

About that time were Lord *Buckhurſt* and *Beale* ſent to the Queen of *Scots*, to ſignify unto her that Sentence was pronounced againſt her; that the ſame was approved and confirmed by Act of Parliament, as moſt juſt, and the Execution thereof inſtantly ſued for by the Eſtates, out of a due regard of Juſtice, Security and Neceſſity: and therefore to perſuade her to acknowledge her Offences againſt God and the Queen, and to expiate them before her Death by Repentance: letting her underſtand, that as long as ſhe lived, the received Religion in *England* could not ſubſiſt. Hereat ſhe ſeemed with a certain unwonted Alacrity to triumph, giving God thanks, and rejoicing in her heart that ſhe was holden to be an Inſtrument for the re-eſtabliſhing of Religion in this Iſland. And earneſtly ſhe prayed, that ſhe might have a Catholick Prieſt to direct her Conſcience, and miniſter the Sacraments unto her. A Biſhop and a Dean whom they commended unto her for this uſe, ſhe utterly rejected, and ſharply taxed the *Engliſh* Nation, ſaying often, That the *Engliſh* had many times ſlaughtered their Kings; no marvel therefore, if they now alſo ſhew their Cruelty upon me, that am iſſued from the Blood of their Kings.

The Publication of the Sentence was ſtayed a while by the Interceſſion of *L'Aubeſpine* the *French* Embaſſador *; but in the month of *December*, through the earneſt Inſtance of ſome Courtiers, it was publickly proclaimed all over the City of *London*, the Lord Mayor, the Aldermen, and principal Officers and Citizens being preſent, and afterward throughout the whole Realm. In the Proclamation the Queen ſeriouſly proteſted, that this Publication was extorted from her not without exceeding Grief of Mind, out of a certain Neceſſity, and the moſt vehement Prayers and Obteſtations of the Eſtates of the Realm; tho' there were, which thought this to proceed of Women's Cunning, who tho' they much deſire a thing, yet will always ſeem rather to be conſtrained unto it. Afterwards on *February* the 1ſt, a Commiſſion paſſed the Great Seal for her Execution, which was as follows:

‘ELIZABETH, by the Grace of God, Queen of *England*, *France* and *Ireland*, &c. To our truſty and well-beloved Couſins, *George* Earl of *Shrewſbury*, Earl Marſhal of *England*; *Henry* Earl of *Kent*; *Henry* Earl of *Derby*; *George* Earl of *Cumberland*; and *Henry* Earl of *Pembroke*, Greeting, &c. Whereas ſithence the Sentence given by you, and others of our Council, Nobility and Judges, againſt the Queen of *Scots*, by the Name of *Mary*, the Daughter of *James* V. late King of *Scots*, commonly called the Queen of *Scots*, and Dowager of *France*, as to you is well known; all the States in the laſt Parliament aſſembled, did not only deliberately, by great Advice, allow and approve the ſame Sentence as juſt and honourable, but alſo with all humbleneſs and earneſtneſs poſſible, at ſundry times require, ſollicit, and preſs us to direct ſuch further Execution againſt her Perſon, as they did adjudge her to have daily deſerved; adding thereunto, that the forbearing thereof was, and would be daily certain and undoubted Danger, not only unto our own Life, but alſo unto themſelves, their Poſterity, and the publick Eſtate of this Realm, as well for the Cauſe of the Goſpel, and true Religion of Chriſt, as for the Peace of the whole Realm: whereupon we did, altho' the ſame were with ſome delay of time, publiſh the ſame Sentence by our Proclamation, yet hitherto have forborn to give Direction for the further Satisfaction of the aforeſaid moſt earneſt Requeſts, made by our ſaid States of our Parliament, whereby we do daily underſtand, by all ſorts of our loving Subjects, both of our Nobility and Council, and alſo of the wiſeſt, greateſt, and beſt devoted of all Subjects of inferior degrees, how greatly and deeply, from the bottom of their Hearts, they are grieved and afflicted with daily, yea hourly fears of our Life, and thereby conſequently with a dreadful Doubt and Expectation of the Ruin of the preſent happy and godly Eſtate of this Realm, if we ſhould forbear the further final Execution, as it is deſerved, and neglect their general and continual Requeſts, Prayers, Counſels and Advices. And thereupon contrary to our natural Diſpoſition in ſuch Caſe, being overcome with the evident weight of their Counſels, and their daily Interceſſions, importing ſuch a neceſſity, as appeareth directly tending to the Safety not only of our ſelf, but alſo to the Weal of our whole Realm, We have condeſcended to ſuffer Juſtice to take place; and for the Execution thereof, upon the ſpecial truſty Experience and Confidence which we have of your Loyalties, Faithfulneſs and Love, both toward our Perſon and the Safety thereof, and alſo to your native Countries, whereof you are moſt noble and principal Members; We do will, and by Warrant hereof do authorize you, as ſoon as you ſhall have time convenient, to repair to our Caſtle of *Fotheringay*, where the ſaid Queen of *Scots* is in Cuſtody of our right Truſty and Faithful Servant and Counſellor, Sir *Amias Powlet* Kt. and then taking her into your Charge, to cauſe by your Commandment Execution to be done upon her Perſon, in the preſence of your ſelves, and the aforeſaid Sir *Amias Powlet*, and of ſuch other Officers of Juſtice as you ſhall command to attend upon you for that purpoſe; and the ſame to be done in ſuch manner and form, and at ſuch time and place, and by ſuch Perſons, as to five, four or three of you, ſhall be thought by your Diſcretions convenient, notwithſtanding any Law, Statute or Ordinance to the contrary. And theſe our Letters Patent ſealed with our great Seal of *England*, ſhall be to you, and every of you, and to all Perſons that ſhall be preſent, or that ſhall be, by you, commanded to do any thing appertaining to the aforeſaid Execution, a full ſufficient Warrant, and Diſcharge for ever. And further, we are alſo pleaſed and contented, and hereby we do will, command and authorize our Chancellor of *England*, at the Requeſts of you all, and every of you, that the Duplicate of our Letters Patent, be to all Purpoſes made, dated and ſealed with our great Seal of *England*, as theſe Preſents now are: In witneſs whereof, we have cauſed theſe our Letters to be made Patent. Yeoven at our Manor of *Greenwich*, the 1ſt Day of *February*, in the 29th Year of our Reign.

Queen Elizabeth's *Letter directed to Sir* Amias Powlet *Kt. Keeper of the Queen of* Scots, *at the Caſtle of* Fotheringay.

‘AMIAS, my moſt faithful Servant, God reward thee treble-fold in the double of thy moſt troubleſome Charge ſo well diſcharged: if you knew, my *Amias*, how kindly, beſides dutifully, my grateful Heart accepts your double Labours, and faithful Actions, your wiſe Orders, and ſafe Regards, performed in ſo dangerous a Charge, it would eaſe your Travel, and rejoice your Heart, in that I cannot ballance, in any weight of my Judgment, the value that I prize you at, and ſuppoſe no Treaſure to countervail ſuch Faith; and ſhall condemn myſelf, in that thought I never committed, if I reward not ſuch deſerts; yea, let me lack when I moſt need, if I acknowledge not ſuch a Merit with a Reward, not *omnibus datum:* but let your wicked Murdereſs know, how with hearty ſorrow her vile deſerts compel theſe Orders; and bid her from me, aſk God forgiveneſs for her treacherous dealing againſt my Life many Years, to the intolerable Peril of her own; and yet not content with ſo many Forgiveneſſes, but muſt fall again ſo horribly, far paſſing a Woman's Thought, much leſs a Princeſs's; inſtead of excuſing whereof, not one can ſerve it, being ſo plainly confeſſed by the Author of my guiltleſs Death. Let Repentance take place, and let not the Fiend poſſeſs her, ſo that the better part be loſt, which I pray with hands lifted up to Him, that can both ſave and ſpill, with my moſt loving Adieu, and Prayer for thy long Life,

Your aſſured and loving Sovereign,
as Heart, by good Deſert, indureth,
Elizabeth Regina.

In purſuance of this Commiſſion, ſhe was executed the 8th day of *February* following, in which Queen *Elizabeth* afterwards pretended ſhe was ſurprized; the manner whereof is thus related by *Camden*. *Camd.* Eliz. p. 382.

QUeen *Elizabeth*, after ſome Heſitation, having delivered a Writing to *Daviſon*, one of her Secretaries, ſign'd with her own Hand, commanding a Warrant under the great Seal of *England* to be drawn up for the Execution, which was to lie in readineſs in caſe of any dangerous Attempt upon Queen *Elizabeth*, commanded him to acquaint no Man therewith; the next Day the Queen changed her Mind, and commanded *Daviſon* by *Killegrew* that the Warrant ſhould not be drawn. *Daviſon* came preſently to the Queen, and told her that it was drawn and under Seal already; at which ſhe was ſomewhat mov'd, and † blamed him for making ſuch haſte. He notwithſtanding acquainted the Council both with the Warrant and the whole Matter, and eaſily perſuaded them, who were apt to believe what they deſired, that the Queen had commanded it ſhould be executed. Hereupon without any Delay *Beale*, who in reſpect of Religion was the Queen of *Scots* moſt bitter Adverſary, was ſent down with one or two Executioners, and a Warrant, wherein Authority was given to the Earls of *Shrewſbury*, *Kent*, *Derby*, *Cumberland*, and others, to ſee Execution done according to Law; and this without the Queen's Knowledge. And tho' ſhe at that very time told *Daviſon*, that ſhe would take another Courſe, yet did not he for all that call *Beale* back.

As ſoon as the Earls were come to *Fotheringay*, they, together with Sir *Amias Powlet*, and Sir *Drew Drury*, to whoſe Cuſtody the Queen of *Scots* was committed, came to her and told her the Cauſe of their coming, reading the Warrant, and in few Words admoniſh'd her to prepare her ſelf for Death, for ſhe was to die the next Day. She undauntedly, and with a compoſed Spirit, made this Anſwer: *I did not think the Queen, my Siſter, would have conſented to my Death, who am not ſubject to your Law and Juriſdiction: But ſeeing her Pleaſure is ſo, Death ſhall be to me moſt welcome; neither is that Soul worthy of the high and everlaſting Joys above, whoſe Body cannot endure one Stroke of the Executioner.*

She deſired ſhe might have Conference with her Almoner, her Confeſſor, and *Melvin*, the Maſter of her Houſhold: For her Confeſſor it was flatly deny'd that he ſhould come at her; and the Earls recommended to her the Biſhop, or the Dean of *Peterborough*, to comfort her; whom ſhe refuſing, the Earl of *Kent*, in a hot burning Zeal to Religion, broke forth into theſe Words among other Speeches: *Your Life will be the Death of our Religion, as contrariwiſe your Death will be the Life thereof.* Mention being made of *Babington*, ſhe conſtantly denied his Conſpiracy to have been at all known to her, and the Revenge of her Wrong ſhe left to God. Then enquiring what was become of *Naw* and *Curle*; ſhe aſked whether it were ever heard of before, that Servants were ſuborn'd and accepted as Witneſſes againſt their Maſter's Life?

When the Earls were departed, ſhe commanded Supper to be haſten'd, that ſhe might the better diſpoſe of her Concerns. She ſupped temperately, as her manner was; and ſeeing her Servants, both Men and Women, weeping and lamenting as ſhe ſat at Supper, ſhe comforted them with great Courage and Magnanimity, bad them leave mourning, and rather rejoice, that ſhe was now to depart out of a World of Miſeries. Turning to

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* *See the* French *Ambaſſador's* (Bellevre) *Speech to Queen* Elizabeth. Thuan. Hiſtor. Lib. 86. p. 157. Genev. Edit.

† *This ſeems to have been one of that* Queen's *Artifices in order to excuſe herſelf to the King of* Scots; *and tho', to put the better Colour upon it, ſhe afterwards ſacrificed her* Secretary, *yet the whole Affair was* (very probably) *tranſacted with her Knowledge and Approbation, for which, ſee* Daviſon's Apology *in* Camden. *See* State-Tr. Vol. VII. p. 20. *for the Proceedings againſt* Daviſon.

Burgoin, her Phyſician, ſhe aſked him whether he did not now find the Force of Truth to be great: *They ſay* (quoth ſhe) *that I muſt die, becauſe I have plotted againſt the Queen's Life; yet the Earl of* Kent *tells me, there is no other Cauſe of my Death, but that they are afraid for their Religion becauſe of me; neither hath my Offence againſt the Queen, but their Fear becauſe of me, drawn this End upon me, while ſome, under the Colour of Religion, and the publick Good, aim at their own private Reſpects and Advantages.*

Towards the end of Supper ſhe drank to all her Servants, who pledg'd her in Order upon their Knees, mingling Tears with the Wine, and begging Pardon for their Neglect of their Duty; as ſhe alſo in like manner did of them.

After Supper ſhe peruſed her Will, read over the Inventory of her Goods and Jewels, and wrote down the Names of thoſe, to whom ſhe bequeath'd every Particular. To ſome ſhe diſtributed Money with her own Hand. To her Confeſſor ſhe wrote a Letter, that he would make Interceſſion for her to God in his Prayers. She wrote alſo Letters of Recommendation for her Servants to the *French* King and the Duke of *Guiſe*. At her wonted time ſhe went to Bed, ſlept ſome Hours; and then waking, ſpent the reſt of the Night in Prayer.

The fatal Day being come, which was the 8th of *February*, ſhe dreſs'd her ſelf as gorgeouſly, as ſhe was wont to do upon feſtival Days, and calling her Servants together, commanded her Will to be read; pray'd them to take their Legacies in good part, for her Ability would not extend to giving them any greater Matters.

Then fixing her Mind wholly upon God in her Oratory or ordinary Place of Prayer, with Sighs and Groans, and Prayers, ſhe begg'd his Divine Grace and Favour, till ſuch time as *Thomas Andrews*, Sheriff of the County, acquainted her, that ſhe muſt now come forth: And forth ſhe came with State, Countenance and Preſence majeſtically compoſed; a chearful Look, and a Matron-like and modeſt Habit; her Head covered with a Linen Veil, and that hanging down to the Ground, her Prayer-Beads hanging at her Girdle, and carrying a Crucifix of Ivory in her Hands.

In the Porch ſhe was received by the Earls and other Noblemen, where *Melvin*, her Servant, falling upon his Knees, and pouring forth Tears, bewailed his hard Hap, that he was to carry into *Scotland* the woful Tidings of the unhappy Fate of his Lady and Miſtreſs: She thus comforted him, *Lament not, but rather rejoice, thou ſhalt by-and-by ſee* Mary Stuart *freed from all her Cares. Tell them, that I die conſtant in my Religion, and firm in my Fidelity and Affection towards* Scotland *and* France. *God forgive them, who have thirſted after my Blood, as Harts do after the Fountain! Thou, O God! who art Truth itſelf, and perfectly and truly underſtandeſt the inward Thoughts of my Heart, knoweſt how greatly I have deſired that the Kingdoms of* England *and* Scotland *might be united into one. Commend me to my Son, and aſſure him, that I have done nothing, which may be prejudicial to the Kingdom of* Scotland; *admoniſh him to hold in Amity and Friendſhip with the Queen of* England; *and ſee thou do him faithful Service.*

And now the Tears trickling down, ſhe bad *Melvin* ſeveral times farewel, who wept as faſt as ſhe. Then turning to the Earls, ſhe prayed them that her Servants might be civilly dealt withal: That they might enjoy their Legacies, that they might ſtand by her at her Death, and might be ſent back into their own Country with Letters of ſafe Conduct. The former Requeſt they granted, but that they ſhould ſtand by her at her Death, the Earl of *Kent* ſhewed himſelf ſomewhat unwilling, fearing ſome Superſtition. *Fear it not* (ſaid ſhe). *Theſe harmleſs Souls deſire only to take their laſt Farewel of me: I know my Siſter* Elizabeth *would not have denied me ſo ſmall a Matter, that my Women ſhould be then preſent, were it but for the Honour of the female Sex. I am her near Kinſwoman, deſcended from* Henry VII. *Queen* Dowager *of* France, *and anointed Queen of* Scots.

When ſhe had ſaid this, and turned her ſelf aſide, it was at laſt granted, that ſuch of her Servants as ſhe ſhould name ſhould be preſent. She named *Melvin*, *Burgoin* her Phyſician, her Apothecary, her Surgeon, two waiting Women, and others, of whom *Melvin* bore up her Train. So the Gentlemen, two Earls and the Sheriff going before her, ſhe came to the Scaffold, which was built at the upper End of the Hall, on which was placed a Chair, a Cuſhion, and a Block, all covered with black Cloth. As ſoon as ſhe was ſet down, and Silence commanded, *Beale* read the Warrant: She heard it attentively, yet as if her Thoughts were taken up with ſomewhat elſe. Then *Fletcher*, Dean of *Peterborough*, began a long Speech to her touching the Condition of her Life paſt, preſent, and to come. She interrupted him once or twice as he was ſpeaking, pray'd him not to trouble himſelf, proteſting that ſhe was firmly fixed and reſolved in the antient Catholick *Roman* Religion, and for it was ready to ſhed her laſt Blood. When he earneſtly perſuaded her to true Repentance, and to put her whole Truſt in Chriſt by an aſſured Faith; ſhe anſwer'd, That in that Religion ſhe was both born and bred, and now ready to die. The Earls ſaid they would pray with her, to whom ſhe ſaid, That ſhe would give them hearty Thanks, if they would pray for her; but to join, ſaid ſhe, in Prayer with you, who are of another Profeſſion, would be in me a heinous Sin. Then they appointed the Dean to pray; with whom while the Multitude that ſtood round about were praying, ſhe fell down upon her Knees, and holding the Crucifix before her in her Hands, pray'd in *Latin*, with her Servants, out of the Office of the Bleſſed Virgin *Mary*.

After the Dean had made an end of praying, ſhe in *Engliſh* recommended the Church, her Son, and Queen *Elizabeth* to God, beſeeching him to turn away his Wrath from this Iſland, and profeſſing, that ſhe repoſed her Hope of Salvation in the Blood of Chriſt: Lifting up the Crucifix, ſhe called on the Celeſtial Choir of Saints to make Interceſſion to him for her: She forgave all her Enemies, and kiſſing the Crucifix, and ſigning her ſelf with the Croſs, ſhe ſaid, *As thy Arms, O Chriſt! were ſpread out upon the Croſs, ſo receive me with the ſtretched-out Arms of thy Mercy, and forgive my Sins.* Then the Executioners aſked her forgiveneſs, which ſhe granted them. And when her Women had taken off her upper Garments (which ſhe was eager and haſty to have done), wailing and lamenting the while, ſhe kiſs'd them; and ſigning them with the Croſs, with a chearful Countenance bid them forbear their womaniſh Lamentations, for now ſhe ſhould reſt from all her Sorrows. In like manner turning to her Men-Servants, who alſo wept, ſhe ſign'd them with the Croſs, and ſmiling, bad them farewel. And now having cover'd her Face with a Linen Handkerchief, and laying her ſelf down to the Block, ſhe recited the Pſalm, *In thee, O Lord! do I put my Truſt, let me never be confounded.* Then ſtretching forth her Body, and repeating many times, *Into thy Hands, O Lord! I commend my Spirit*, her Head was taken off at two Strokes: The Dean crying out, *So let Queen* Elizabeth'*s Enemies periſh*; the Earl of *Kent* anſwering *Amen*, and the Multitude ſighing and ſorrowing. Her Body was embalmed and order'd with due and uſual Rites, and afterwards interr'd with a Royal Funeral in the Cathedral Church of *Peterborough*. A pompous Obſequy was alſo perform'd for her at *Paris*, by Procurement of the *Guiſes*.

XIII. *The Trial of* Philip Howard, *Earl of* Arundel *, *before the Lords*, *for* High-Treaſon, *the* 18*th of* April, 1589. 31 Eliz.

FROM the outward Bar in the *King's-Bench*, there was a Court made of 30 Foot ſquare, within which was a Table of 12 Foot ſquare, covered with green Cloth; and in the ſame Court were Benches to ſit upon, covered with green Say. In the midſt of the ſame Court, at the upper end, was placed a Cloth of State, with a Chair and Cuſhion for the Lord Steward: from the midſt of the ſame Court, to the midſt of the Hall, was built a Gallery for the Priſoner to come upon to the Court, in length 110 Foot, and in breadth 15 Foot, and in height from the ground 6 Foot, railed round about, and going down with ſeven Steps.

Between eight and nine of the Clock in the morning, the Earl of *Derby*, Lord Steward his Grace, entered the Hall, attended by divers Noblemen and Officers, four Serjeants at Arms, with their Maces, waiting before him; next before his Grace the Earl of *Oxford*, Lord Great Chamberlain of *England*. My Lord of *Derby*'s Grace being ſeated in his Chair of State, every Nobleman was placed in his degree, by Garter King of *Heraults*.

At his Grace's feet did ſit Mr. *Winckefield*, one of her Majeſty's Gentlemen-Uſhers, holding a long white Wand in his Hand, being accompany'd with Mr. *Norris*, Serjeant of the Garter.

Before them did ſit Mr. *Sandes*, the Clerk of the Crown of the *King's-Bench*.

Oppoſite againſt my Lord's Grace did ſit the Queen's Majeſty's Learned Counſel, *viz.*

1. Serjeant *Puckering*.
2. Serjeant *Shettleworth*.
3. Mr. *Popham*, the Queen's Attorney-General.
4. Mr. *Egerton*, the Queen's Sollicitor.

The Names of the Commiſſioners on the Right Hand, ſitting upon a lower Bench, under the Lords of the Jury.

1. Sir *Francis Knowles* Kt. Treaſurer of the Houſhold.
2. Sir *James a Crofts* Kt. Comptroller of the Houſhold.
3. Sir *John Parrat*, one of her Majeſty's moſt Honourable Privy-Council.
4. Mr. *Wolley*, Secretary of the *Latin* Tongue, of the Privy-Council.
5. *John Forteſcue*, Maſter of the Wardrobe, and of the Privy-Council.
6. Dr. *Dale*, one of the Maſters of Requeſt to her Majeſty.
7. *William Fleetwood*, Serjeant at Law, and Recorder of *London*.
8. Mr. *Rockby*, Maſter of Requeſts, and Maſter of St. *Katherine's*.

The Names of the Commiſſioners on the Left Hand.

9. The Lord Chief Juſtice of *England*, Sir *Chriſtopher Wray*.
10. The Maſter of the Rolls, Sir *Gilbert Gerrard*.
11. The Lord Chief Juſtice of the Common-Pleas, *Edmund Anderſon*.
12. The Lord Chief Baron of the Exchequer, *Roger Manwood*.
13. Juſtice of the Common-Pleas, *William Periam*.
14. Juſtice *Gawdy*, of the King's-Bench.

The Serjeant at Arms uſually attending on the Lord Chancellor, named *Roger Wood*, was commanded to make an *O Yes* three times.

Then Mr. *Sandes*, Clerk of the Crown, read the Commiſſion.

And Sir *Francis Knowles* Kt. gave up the Verdict of the great Aſſize.

Then was called *Matthew Spencer*, Serjeant at Arms, to return his Precept; which was returned and read.

After that, the Noblemen and Peers of the Jury, for his Trial, were ſeverally called by their Names, as followeth:

1. *William* Lord *Burleigh*, Lord Treaſurer of *England*.
2. *Edward* Earl of *Oxford*, Lord Great Chamberlain of *England*.
3. *William* Lord Marquiſs of *Wincheſter*.
4. *Henry* Earl of *Kent*.
5. *Henry* Earl of *Suſſex*.
6. *Henry* Earl of *Pembroke*.
7. *Edward* Earl of *Hertford*.
8. *Henry* Earl of *Lincoln*.

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* Camd. Eliz. ſub Anno 1589. Part 2. p. 3. mihi.

9. *Henry* Lord *Hunſdon*, Lord Chamberlain of her Majeſty's Houſhold.
10. *Peregrine* Lord *Willoughby* of *Eresby*.
11. Lord *Morley*.
12. Lord *Cobham*.
13. *Arthur* Lord *Grey*.
14. Lord *Darcy*, of the North.
15. Lord *Sandes*.
16. Lord *Wentworth*.
17. Lord *Willoughby* of *Parham*.
18. Lord *North*.
19. Lord *Rich*.
20. Lord *St. John* of *Bletſho*.
21. Lord *Buckhurſt*.
22. Lord *De la Ware*.
23. Lord *Norris*.

Then the Lieutenant of the Tower was called to return his Precept, and to bring forth his Priſoner, *Philip* Earl of *Arundel*. The Earl came into the Hall, being in a wrought Velvet Gown, furred about with Martins, laid about with Gold Lace, and buttoned with Gold Buttons, a black Sattin Doublet, a pair of Velvet Hoſe, and a long high black Hat on his Head; a very tall Man looking ſomewhat Swarth-colour'd.

Then was the Earl brought to the Bar, with the Ax carried before him by Mr. *Shelton*, Gent. Porter of the Tower, being accompanied with Sir *Owen Hopton* Kt. Lieutenant of the Tower, Sir *Drew Drury*, Conſtable of the Tower for the time, Mr. *Henry Bronkard*, and others.

At my Lord of *Arundel*'s coming to the Bar, he made two Obeyſances to the State, and to the Nobles, and others there preſent.

Then did Mr. *Sandes*, Clerk of the Crown, ſay, he was indicted of ſeveral Treaſons, and ſaid unto him,

Philip Howard, Earl of *Arundel*, late of *Arundel* in the County of *Suſſex*, hold up thy Hand.

He held up his Hand very high, ſaying, Here is as true a Man's Heart and Hand, as ever came into this Hall.

Mr. *Sandes* then read the Indictment.

That whereas divers traitorous Perſons, in the Parts beyond the Seas, being natural *Engliſh*-Men, *viz.* Dr. *Allen*, *Parſons*, *Champion*, *Mott*, and divers others, have heretofore, divers and ſundry times, with ſundry Perſons, as well *Engliſh*-men as of other Countrys, practiſed to accompliſh and bring to paſs ſeveral dangerous and unnatural Treaſons againſt the Queen's Majeſty, her royal Perſon, Crown and Dignity, *viz.* to ſubvert the State, invade the Realm, to ſet up Catholick Religion, to raiſe Inſurrections, *&c.* among which number of unnatural Traitors the Earl of *Arundel* was well acquainted with that notorious Traitor Dr. *Allen*, by means of *Bridges*, *Weſton*, *Ithill*, and other Popiſh Prieſts, with whom, divers times, ſithence the 20th year of her Majeſty's Reign, he hath had private and ſecret Conference, and Communication of ſeveral Treaſons; inſomuch, that the Earl of *Arundel* did preſently diſpatch his ſeveral Letters by *Bridges* aforeſaid, to Dr. *Allen*, to wiſh him at any hand to do ſomething concerning the Cauſe Catholick; wherein he promiſed to perform any thing that Dr. *Allen* ſhould think fit for him to do. And whereas, the 24th day of *April*, in the 27th Year of the Queen's Reign, he was flying by Sea to Dr. *Allen*, that Arch-Traitor; and that the Biſhop of *Rome*, and the King of *Spain*, were thereupon ſollicited by *Allen* aforeſaid, to raiſe War againſt this Realm: And whereas alſo the Earl of *Arundel* had underſtanding of a Bull, that *Sixtus* the Fifth, Pope of that Name, had ſent into *England* for the Excommunication of her Majeſty, and for the invading of the Realm, *&c.* And that at the Tower, the 21ſt of *July*, in the 30th Year of her Majeſty's Reign, he did imagine, with other traitorous Perſons, that the Queen was an Heretick, and not worthy to govern the Realm; and that he did move and procure one *William Bennet*, a Seminary Prieſt, to ſay Maſs for the happy Succeſs of the *Spaniſh* Fleet; whereupon he had Maſs, and did help to ſay Maſs himſelf, to that purpoſe: And having News of the Conflict at Sea betwixt the *Spaniſh* Fleet and the *Engliſh*, he procured Sir *Thomas Gerrard*, and divers others, then Priſoners in the Tower, to ſay Maſs with him for the fortunate Succeſs of *Spain:* and that he made a Prayer ſpecially for that purpoſe to be daily uſed and exerciſed amongſt them.

Hereupon Mr. *Sandes* asked the Earl of *Arundel*, if he were Guilty, or Not Guilty of the ſeveral Treaſons compriſed in the ſaid Indictment?

To this the Earl anſwered, he would fain know, whether the ſeveral Points in the Indictment contained were but one Indictment, yea or no?

The Judges ſatisfied him, it was but one Indictment, and a matter he need not ſtand upon.

He deſired to know, if they could proceed againſt him for the Treaſons in the Statute of 13 *Eliz.* after the ſix Months were expir'd; to this he was anſwer'd, That they did not proceed againſt him on that Statute, but on the 25th *Ed.* 3. After this, being call'd upon to plead, he pleaded Not Guilty; and ſaid, he was well contented to be tried by his Peers, and liked the Trial well, that he ſhould be tried by ſuch good Noblemen there preſent, that knew his Life: He ſaid, he had been Priſoner four years, and twenty-five weeks cloſe Priſoner, and that he had been ſick and weak, whereby his Memory might fail him; and therefore humbly deſired my Lord Steward's Grace, making three ſeveral Obeyſances on both Knees, that he might be heard to make anſwer to every particular Point.

My Lord Steward anſwered, that there was no other Meaning nor Intent, and that he ſhould be heard deliberately.

Then did Mr. Serjeant *Puckering* deliver to the Lords of the Jury, the Effect of the Indictment, and other Evidence at large as followeth:

Firſt, that my Lord had private and ſecret Conference with *Bridges* aforeſaid, and divers other Traitors and Seminary Prieſts; and that he had written his Letters to Dr. *Allen*, to find which way he might further the Cauſe Catholick.

That he did faſt twenty-four hours, and prayed for the happy Succeſs of the *Spaniſh* Fleet.

That *Allen* and others, being arrant Traitors, had taken order, that in the 22d Year of her Majeſty's Reign, there ſhould be 50 Men in privy Coats, and Pocket-Daggers, to kill the Queen; and that one *Pain*, and one *Elliot*, were put in truſt to perform the ſame.

That my Lord was a Catholick, and favoured their Proceedings.

My Lord anſwered, he was no Catholick in the 22d Year of the Queen's Reign.

That he ſecretly was flying out of the Realm to Dr. *Allen*, being an Arch-Traitor; which doth argue my Lord to be no good Subject.

That *Throckmorton* practiſing his Treaſons by ſounding the Ports, he did ſet down in his Catalogue, that a South-weſt Wind would ſerve from *Spain* to *Arundel*-Caſtle in *Suſſex*, and an Eaſterly Wind from the *Low-Countries*.

That in *Throckmorton*'s Catalogue of all the Names of all the Noblemen and Gentlemen of every Shire that affecteth the Catholicks; he began in *Suſſex*, and ſet down the Earl of *Arundel*'s Name the firſt.

That further, one *Mott* a Prieſt informed *Throckmorton*, that he was come over to ſound the Intents of the Earls of *Arundel* and *Northumberland*, and others.

My Lord anſwered, when *Mott* was in *Suſſex*, he never came there, but always attended at Court.

Mr. *Puckering* ſaid, the Traitors have a good Conceit of my Lord of *Arundel*, in knowing him to be affected to the Catholick Cauſe.

It was defined, that the Catholick Cauſe was mere Treaſon.

Petro Paulo Roſſetto came over to ſound Noblemen and Gentlemen in *England*.

Then ſaid my Lord, How prove you me to be a Traitor in theſe Points?

Becauſe, ſaid Mr. *Popham*, you have confederated with Traitors by deſiring Dr. *Allen* in your Letters to employ you any way, that concerned the Cauſe Catholick: becauſe you have been reconciled to the Pope; and there was a Law made in the 22d Year of this Queen, That whoſoever was reconciled to the Pope from the Obedience of the Queen's Majeſty, was in caſe of Treaſon.

My Lord confeſſed, that *Bridges* did confeſs him, but not reconcile him in any ſuch ſort, but only for Abſolution of his Sins.

Mr. *Popham* charged him, that he did once ſubmit himſelf, but ſithence fell from his Submiſſion, and therefore practiſed new Treaſons.

He confeſſed he was acquainted with the Prieſts, and by two of them had been abſolved and confeſſed.

Sithence which time, ſaid Mr. *Popham*, he came to the Church, and fell to the Catholick Cauſe again, which he cannot do by their Order, unleſs he be reconciled.

My Lord denied, that ever he came to the Church after that time.

There was a Letter ſent to the Queen of *Scots* by *Morgan* of *France* in Commendation of two Prieſts, wherein he ſaith, one of them had reconciled the Earl of *Arundel*.

Edmonds a Prieſt, upon Examination, ſaid, that Reconciliation was odious.

My Lord ſaid, Theſe be but Allegations and Circumſtances, and that they ought to be proved by two Witneſſes.

It was juſtified, he ſaid, once in the Star-Chamber amongſt the Lords there aſſembled concerning a Libel there in queſtion, That whoſoever was a Prieſt or Papiſt was an arrant Traitor.

Mr. *Popham* ſaid, it was a Diſcontentment made my Lord a Catholick, and not Religion; and that he did diſguiſe himſelf in ſhadow of Religion.

There was a Picture ſhewed, that was found in my Lord's Trunk, wherein was painted a *Hand bitten with a Serpent ſhaking the Serpent into the Fire*, about which was written this Poeſie, *Quis contra nos?* On the other ſide was painted a *Lion Rampant, with his Chops all bloody*, with this Poeſie, *Tamen Leo.* My Lord ſaid, one *Wilgrave*'s Man gave him the ſame, with a pair of *Hangers* for a New-year's Gift.

One *Jonas Meredith* being examin'd, about his Communication with a Town's-man, who commended my Lord of *Arundel* for his Forwardneſs, in that he had often obſerved my Lord at *Paul's Croſs:*

This *Jonas* anſwered, that he knew he had often been at *Paul's Croſs* in the Forenoon, and hath heard a Maſs with him at the *Charter-houſe* in the Afternoon.

To this my Lord ſaid nothing, but ſeemed to deny it.

My Lord being examin'd in the Tower, of his ſudden going away to Sea, he anſwered, To ſerve the Prince of *Parma*, or whither Dr. *Allen* ſhould direct him for the Cauſe-Catholick.

My Lord ſaid alſo, he was going away for fear ſome Statute ſhould be made in the 22d of this Queen's Reign againſt the Catholicks in that Parliament; and that Dr. *Allen* adviſed him that he ſhould not go over, if he could tarry here in any ſafety, becauſe he might be the better able to make a Party in *England*, when they came.

Before my Lord's going to Sea, he wrote a Letter to be given to the Queen after he was gone, wherein he found fault with her hard dealing in giving countenance to his Adverſaries, and in diſgracing him; and that he was diſcontented with the Injuſtice of the Realm towards his Great Grandfather, his Grandfather and his Father.

My Lord ſaid, *Holinſhed* * was faulty, for ſetting forth in his Chronicle, that his Grandfather was attainted by Act of Parliament, but ſhewed no cauſe wherefore.

He ſaid, in his Letter, his Grandfather was condemned for ſuch Trifles, that the People ſtanding by were amazed at it: he found fault alſo with the Proceedings againſt his Father.

Whereby 'tis apparent, ſaid Mr. *Popham*, 'twas Diſcontentment moved my Lord, and not Religion: and fearing leſt his Friends ſhould think amiſs of him, he left a Copy of his Letter with *Bridges* a Traitor to be diſperſed, to make the Catholicks to think well of him; for, ſaid Mr. *Popham*, being diſcontented he became a Catholick, and being ſo great a Man he became a Captain of the Catholicks, which is as much as to be a Captain over Traitors.

A counterfeit Letter was made twenty-two days before his going to Sea, directed to one *Baker* at *Lynn*, there being no ſuch Man abiding; wherein was ſignified, that my Lord was very hardly dealt withal by ſome of the Council, and that he was gone into *Suſſex*, and a farther Voyage, and that he would come home by *Norfolk*.

This was a counterfeit Letter, ſaid Mr. Attorney, appointed by my Lord to be diſperſed, to make it known he was diſcontented.

Alſo *Allen* ſent a Letter to the Queen of *Scots* in Ciphers, ſhewing a great Party in *England*.

Allen ſent my Lord word, if he did come over, he muſt take a greater Title than that of Earl upon him, and therefore addreſt my Lord in this Style, To *Philip* Duke of *Norfolk*, Earl of *Arundel*.

Babington in his Examination ſaid, the Queen of *Scots* ſent him word that the Earl of *Arundel* was a fit Man to be a chief Head for the Catholicks

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* Holin. Chron. *Vol.* 3. *p.* 976. *b.*

Allen ſent word to *Rome*, that the Bull which was laſt ſent over into *England*, was at the Interceſſion of a great Man in *England*.

My Lord (ſaid Mr. *Popham*) was one of the principalleſt, and acquainted thus far with *Allen*; *Ergo*, my Lord of *Arundel*, that great Man.

Dr. *Allen* made a moſt villainous and ſlanderous Book, which was very hard to be got, in which was contained, That the Earl of *Arundel* was a Procurer of the laſt Bull, and the Procurer of the Invaſion alſo. The Bull it ſelf was ſome part read, and the Book was part read alſo.

My Lord being charged on his Confeſſion, being examined, why he would be ruled thus by Dr. *Allen*, he excuſed it by ſaying, that he ſaid he would be ruled by *Allen* in all things, ſaving in that did concern her Majeſty and the State; and thereupon appealed to my Lord Chancellor, and Sir *Walter Mildmay*, who were not preſent.

The Book aforeſaid intended, that my Lord was a practicer with *Allen* about the Invaſion.

Then ſaid my Lord, he would ſerve the Queen againſt all Princes, Pope, or Potentates whatſoever.

The Queen's Sollicitor ſtood upon theſe Points; and becauſe it was proved, that the Earl of *Arundel* would be ruled by *Allen* in any thing that ſhould concern the Catholick Cauſe:

And for that Dr. *Allen* hath ſince that time practiſed divers monſtrous Treaſons, and continually hath built upon the help of ſome chief Man in *England*, there is none yet known of his degree, that hath any thing to do with *Allen*; and therefore my Lord muſt needs be culpable of all the Treaſons *Allen* hath practiſed and procured, in flying to *Allen* to ſerve the Prince of *Parma*, *ut antea.*

My Lord was charged with relieving of divers Traitors, as Prieſts; and that he did converſe, and was confederate, with divers and ſundry Traitors attainted, indicted and ſuſpected, being Priſoners in the Tower, and that he had Maſs in the Tower; and that if the *Spaniards* ſhould ſurprize the Tower, Sir *Owen Hopton* ſhould be put to the Rack-houſe.

He was alſo charged, That divers Papiſts, Seminaries, and ſuch like, being Priſoners in *Newgate*, and other Priſoners, reported, that they hoped to ſee the Earl of *Arundel* King of *England*, and that Cardinal *Allen* ſhould direct the Crown of *England*.

Before the coming of the *Spaniards* Fleet, when our Commiſſioners were in the *Low-Countries*, news was brought to the Tower, that we ſhould have Peace betwixt *Spain* and *England*; then would my Lord of *Arundel* be penſive.

When the *Spaniſh* Fleet was upon our Coaſt, and news was brought to the Tower, that the *Spaniards* ſped well, then the Earl would be merry.

Then when news came, the *Engliſh* Fleet ſped well, the Earl would be ſorry.

When news came, the *Spaniſh* Fleet was come upon the Coaſt of *Kent*, my Lord ſaid, It is a great Wood, and a puiſſant Fleet, we ſhall have luſty Play ſhortly, I hope we ſhall plague them that have plagued us.

My Lord ſaid, He would not fight againſt any that came to fight for the Catholick Faith.

He ſaid, when the *Spaniſh* Fleet was at Sea, he would have three Maſſes a-day for the happy Succeſs of *Spain*.

He ſaid alſo, He would have continual Prayer without ceaſing for a time, for the good Succeſs of *Spain*, *viz.* he would have every twenty-four hours five Prieſts to pray two hours a-piece for the defect of Lay-men, and fourteen Lay-men to pray every one an hour a-piece for the happy and fortunate Succeſs of *Spain*.

He made himſelf a ſpecial Prayer for that purpoſe, and cauſed Copies in haſte thereof to be made.

Mr. *Shelley*, then Priſoner in the Tower, told my Lord, That to exerciſe that Prayer were dangerous, and wiſhed my Lord to let it alone: Therefore my Lord called for the Copy of the Prayer again, and would not have it copied.

He was charged, That he did conjure Sir *Thomas Gerrard* Kt. to keep Counſel in all theſe Matters before ſet down, who promiſed him, he would.

Bennet alſo promiſed to keep his Counſel, and divers others.

Then were Sir *Thomas Gerrard*, Mr. *Shelley*, *Bennet* the Prieſt, and divers others, removed from the Tower to ſeveral other Priſons, and upon Examination confeſſed all as aforeſaid.

My Lord hearing all theſe Matters laid hard againſt him by Mr. *Sollicitor*, grew into ſome Agony, and called for his Accuſers face to face; which the learned Counſel did not yet yield unto.

He was likewiſe charged, That he came once merrily to *Bennet* the Prieſt in the Tower, ſaying, *Come, Mr.* Bennet, *let us pray, that the* Spaniards *may beat down* London Bridge; and promiſed to give him a Damaſk Gown ſhortly, and that he hoped to make him Dean of *Paul*'s ere it were long: that the time of their Delivery was at hand, and willed him in any wiſe to be ſecret, for, if he ſhould reveal theſe things, he would deny them to his face.

When news came to the Tower, that the *Spaniſh* Fleet was driven away, my Lord ſaid, *We are all undone*; there is no hope for us this Year, and the King of *Spain* cannot provide ſuch a Power again theſe five or ſix Years, ſome of us may be dead and rotten ere that time.

There were then brought into the Court, *vivâ voce*, upon their ſeveral Oaths, *Anthony Hall*, and *Richard Young*, a Juſtice of the Peace, who aimed ſomething by hearſay to the Proof of the former Matter.

Alſo Sir *Thomas Gerrard*, *William Bennet*, *Tuchnon*, *Snoden*, and *Ithel*, and divers others, were cloſely kept in a place over the *King*'s-*Bench*, cloſed in with Arras, and were thereupon ſeverally called into the Court, *vivâ voce*, upon their ſeveral Oaths, to affirm that which is ſpecified before; ſithence Mr. *Sollicitor* began to ſpeak, how this *Mark Bennet* the Prieſt was charged with a Letter written to my Lord, wherein he ſhould be ſorry for the opening of theſe Matters as aforeſaid againſt my Lord.

One *Randal* had writ this Letter in *Bennet*'s Name, by advice of my Lord of *Arundel*, to blind his Practices. *Bennet* openly denied the writing of that Letter; whereupon my Lord *Grey* and my Lord *Norris* aſked *Bennet*, if he knew of the Letter, yea, or no? For the better Evidence, *Bennet* confeſſed, he had been moved to ſuch a Matter, but he did it not.

Againſt Sir *Thomas Gerrard*, my Lord ſtood very ſtoutly in denial of what he witneſſed, willing him to look him in the Face, and charging him as he would anſwer before God, in whoſe Preſence he ſpoke, to tell nothing of him but Truth. In anſwer whereof, Sir *Thomas* referred himſelf to his Depoſitions before read, to which he ſaid he was ſworn; yea, twice ſworn.

There were called into the Court two Witneſſes more, *viz.* one *Walton*, and one *Church*, who juſtified Letters were brought from *England* to *Rehnes*, where they both were; which Letters were ſent by one *Hill*, one of my Lord's Faction, that the Earl of *Arundel* ſhould be General of the Catholicks, when the Tower ſhould be ſurprized.

To *Walton*, my Lord took exception, affirming, that he was a naughty leud Fellow, who had ſold that little Land he had to three ſeveral Men: and of the other witneſſes he ſaid, that ſome were attainted, ſome indicted, bad Men and Priſoners, and that their Words were worth little Credit.

Then ſaid Mr. *Popham*, they were never tortured, but confeſſed all this willingly, and they are ſuch, as you have accompanied.

Here ended every Man's Speech, and the Noblemen and Peers of the Jury went together.

My Lord humbly having ſubmitted himſelf to the Conſideration of his Peers, with Proteſtation of Loyalty; the Lieutenant brought him from the Bar unto a Seat near unto the Court of *Common-Pleas*, where the Warders attended upon him.

My Lord Steward likewiſe withdrew himſelf a little while, as it ſeemed, to take ſome Refreſhment; having all the day for the time of his Buſineſs, forborn to eat any thing; and preſently returned to his Seat of State.

Within one hour after the Noblemen of the Jury came every one back, and were again placed by Garter King at Arms.

Then Mr. *Sandes* aſked every Man of the Jury, ſeverally, beginning at my Lord *Norris*, the youngeſt Baron, and proceeding to my Lord Treaſurer, the Foreman, whether the Priſoner were Guilty, yea, or no?

Which every one of them, laying their Hands upon their Hearts, did proteſt in their Conſciences, and upon their Honours, that he was Guilty.

Then was the Lieutenant called to bring his Priſoner to the Bar, who was brought accordingly, attended as before.

Then ſaid Mr. *Sandes* unto him, That he had been indicted of ſeveral Treaſons, and that he had put himſelf upon the Trial of his Peers, who had found him Guilty; and therefore aſked, why Judgment ſhould not be given againſt him.

Whereupon my Lord making three very low Obeyſances upon his knees, did humbly ſubmit himſelf to my Lord Steward's Grace, and the Favours of the reſt of the Nobles and Peers there preſent, and beſought them to be Mediators for him, that he might obtain at her Majeſty's hands, to have order taken for his Debts, and to have Conference with his Officers, and to talk with his Wife, and to ſee his Infant, born after his Impriſonment, whom he had never ſeen.

Then my Lord's Grace pronounced Judgment, *viz.* That he ſhould be conveyed to the Place from whence he came, and from thence to the place of Execution, and there to be hanged until he were half dead, his Members to be cut off, his Bowels to be caſt into the Fire, his Head to be cut off, his Quarters to be divided into four ſeveral parts, and to be beſtowed in four ſeveral Places: and ſo (ſaid my Lord Steward) the Lord have Mercy on thy Soul.

To this the Earl of *Arundel* ſaid, as it were ſoftly to himſelf, *Fiat voluntas Dei.* And ſo having made a low Obeyſance to the State, the Lieutenant took him away; Mr. *Shelton* going before him with the Edge of the Ax towards him.

Then there was an O yes made by the Serjeant at Arms, and the Court, together with my Lord Steward's Commiſſion, diſſolved: which done, my Lord of *Derby* took the white Wand out of Mr. *Winkfield*'s Hand, and broke the ſame in pieces; and every Man cried, *God ſave the Queen.*

Whereupon the Earl of *Arundel* was carried back to the Tower, where after ſeveral Reprieves he died a natural Death, *October* 19, 1595, having been Priſoner there ten Years and ſix Months; four Years whereof paſſed before he was brought to his Trial.

XIV. *The Trial of Mr.* JOHN UDALL, *a Puritan Miniſter, at* Croydon *Aſſizes, for* Felony, 24 July, 1590. 32 Eliz.

[*Wrote by Himſelf.*]

ON Tueſday the 13th of *January*, 1589, I appeared at my Lord *Cobham*'s Houſe in the *Blackfryers*, before my Lord *Cobham*, my Lord *Buckhurſt*, my Lord *Anderſon*, the Biſhop of *Rocheſter*, Mr. *Forteſcue*, Mr. *Egerton* the Queen's Sollicitor, Dr. *Aubery*, and Dr. *Lewen*. Then was I called in before them; whereupon my Lord *Anderſon* ſaid unto me,

Anderſon. How long have you been at *Newcaſtle*?

Udall. About a Year, if it pleaſe your Lordſhip.

Ander. Why went you from *Kingſton* upon *Thames*?

Udall. Becauſe I was ſilenced there, and was called to *Newcaſtle*.

Rocheſter. What calling had you thither?

Udall. The People made means to my Lord of *Huntingdon*, who ſent me thither.

Roch. Had you the allowance of the Biſhop of that Dioceſe?

Udall. There was none at that time.

Roch. Then you ſhould have gone to the Archbiſhop.

Udall. There was no Archbiſhop of *York* neither.

Ander. You are called hither to anſwer concerning certain Books, which are thought to be of your making.

Udall. If it be for any of *Martin*'s Books (according as my Lord Chamberlain's Letters, that fetched me, import) I have already anſwered, and am ready ſo to do again.

Ander. Where have you anſwered, and in what manner?

Udall. At *Lambeth*, a Year and a half ago, I cleared my ſelf not to be the Author, nor to know who he was.

Ander. Is this true, Mr. *Beadle?*

Beadle. I have heard that there was ſuch a thing, but I was not there at it, if it pleaſe your Lordſhip.

Aubery, *Lewen.* There was ſuch a thing, as my Lord's Grace told us.

Udall. I am the hardlier dealt withal, to be fetched up ſo far at this time of the Year. I have had a Journey, I would not wiſh unto my Enemy.

Roch. You may thank your own dealing in matters that you ſhould not have meddled withal.

Ander. It is more than I heard, that ever you were called to anſwer; but you are to anſwer concerning other Books.

Udall. I hope your Lordſhips will not urge me to any others, ſeeing I was ſent for about thoſe.

Ander. You muſt anſwer to others alſo: What ſay you to thoſe Books? A *Demonſtration* or a *Dialogue*, &c. did not you make them?

Udall. I cannot anſwer thereunto.

Ander. Why would you clear your ſelf of *Martin*, and not of theſe, but that you are guilty herein?

Udall. Not ſo, my Lord; I have reaſon to anſwer in the one, and not in the other.

Ander. I pray you let us hear what Reaſon, for I cannot conceive of it, ſeeing they are all written concerning one matter.

Udall. This is the matter, my Lord; I hold the matter propos'd in them all to be one, but I would not be thought to handle it in that manner, which the former Books do; and becauſe I think otherwiſe of the latter, I care not tho' they ſhould be fathered upon me.

Buck. But I pray you tell me, know you not *Penry?*

Udall. Yes, my Lord, that I do.

Buck. And do you not know him to be *Martin?*

Udall. No, ſurely, neither do I think him to be *Martin.*

Buck. What is your Reaſon?

Udall. This, my Lord; when firſt it came out, he (underſtanding that ſome gave out that he was thought to be the Author) wrote a Letter to a Friend in *London*, wherein he did deny it, with ſuch Terms as declare him to be ignorant and clear in it.

Buck. Where is that Letter?

Udall. Indeed I cannot now ſhew you, for I have forgotten unto whom it was written.

Buck. You will not tell where it is.

Udall. Why, my Lord, it tendeth to the clearing of one, and the accuſing of none.

Buck. Can you tell where *Penry* is?

Udall. No, ſurely, my Lord.

Buck. When did you ſee him?

Udall. About a quarter of a Year ago.

Buck. Where did you ſee him?

Udall. He called at my Door, and ſaluted me.

Buck. Nay, he remained belike with you?

Udall. No, indeed; he neither came in my Houſe, neither did he ſo much as drink with me.

Buck. How came you acquainted with him?

Udall. I think at *Cambridge*, but I have been often in his Company.

Buck. Where?

Udall. At divers places, and namely in mine own Houſe whilſt I dwelt at *Kingſton.*

Buck. What cauſe had you to be ſo often in his Company?

Udall. He being a Scholar and Student in Divinity, and one whom I always thought to be an honeſt Man, your Lordſhip may eaſily conceive the Cauſe. Here was much to this ſame effect ſpoken about Mr. *Penry*, and my being at Mrs. *Crane*'s Houſe at *Moulſey*, and with her, &c. which I always anſwered, as in the like Caſe concerning Mr. *Horton* of *Richmond* before the Archbiſhop.

Then Dr. *Lewen* reading my Anſwers to thoſe Queſtions, that had been by the Archbiſhop propounded unto me concerning my Papers in my Study, and namely the Notes of my ſeveral Conferences with the Biſhops and their Officers; I was aſked, as I remember, by Mr. *Forteſcue:*

Forteſcue. Why did you pen ſuch things, and keep them?

Roch. Becauſe he and ſuch like might apiſhly imitate the Martyrs of former times, and account themſelves perſecuted by us, as thoſe were by the Popiſh Biſhops.

Udall. The Cauſe is this, for that in the quickneſs of Wit, and readineſs of Memory in Youth, thoſe things may be ſpoken, that in Age will be more eaſily made uſe of in Writing than otherwiſe, the Memory of Man not being infinite.

Ander. What ſay you, did you make theſe Books, or know you who made them?

Udall. I cannot anſwer to that Queſtion, my Lord.

Ander. You had as good ſay you were the Author.

Udall. That will not follow; but if you think ſo, I cannot do withal.

Cob. Mr. *Udall*, if you be not the Author, ſay ſo, and if you be, confeſs it; you may find Favour.

Udall. My Lord, I think the Author, for any thing I know, did well, and I know that he is enquired after to be puniſhed; and therefore I think it my Duty to hinder the finding of him out, which I cannot do better than thus.

Ander. And why ſo, I pray you?

Udall. Becauſe if every one that is ſuſpected do deny it, the Author at the length muſt needs be found out.

Ander. Why dare you not confeſs it, if you be the Author of it? Dare you not ſtand to your own doings?

Udall. I profeſſed before that I lik'd of the Books, and the Matter handled in them: but whether I made them or no, I will not anſwer; neither of any other Book of that Argument, whatſoever goeth without Name, if you ſhould aſk me, for the Reaſon alledged before: beſides that if I were the Author, I think that by Law I need not anſwer.

Ander. That is true, if it concerned the Loſs of your Life.

Udall. I pray your Lordſhip, doth not the Law ſay generally, No Man ſhall be put to anſwer without Preſentment before Juſtices, or things of Record, or by due Proceſs, or Writ Original? *&c. Anno* 42 *Edw.* 3. *cap.* 5.

Ander. That is Law, and it is not Law.

Udall. I underſtand you not, my Lord; it is a Statute which is in force, if it be not repealed.

Ander. I tell you, by Law you ought to anſwer in this Caſe.

Udall. Good my Lord, ſhew me this favour, to tell me in what Book of the Law I ſhall find it; for I profeſs to underſtand the *Latin*, *French* and *Engliſh Tongues*, wherein all the Laws be written.

Forteſ. You are very cunning in the Law; I pray you by what Law did you preach at *Newcaſtle*, being forbidden at *Kingſton?*

Udall. I know no Law againſt it, ſeeing it was the Official Dr. *Hone*, who did ſilence me; whoſe Authority reacheth not out of his Archdeaconry.

Forteſ. What was the Cauſe for which you were ſilenced?

Udall. Surely I cannot tell, nor yet imagine, ſaving the ſecret Suggeſtions of Mr. *Harvie.*

Forteſ. To be ignorant of that, is *craſſa & ſupina ignorantia.*

Udall. No, Sir, the Action was *craſſa & ſupina injuria.*

Ander. Well, what ſay you to thoſe Books? Who made them, and where were they printed?

Udall. Tho' I could tell your Lordſhip, yet dare I not, for the Reaſons before alledged.

Roch. I pray you let me aſk you a Queſtion or two concerning your Book.

Udall. It is not yet proved to be mine; but I will anſwer to any thing concerning the Matter of the Book, ſo far as I know.

Roch. You call it a Demonſtration; I pray you what is a Demonſtration? I believe you know not what it is.

Udall. If you had aſked me that queſtion when I was a Boy in *Cambridge* of a Year's ſtanding, it had been a Note of Ignorance in me, to have been unable to anſwer you.

Roch. Surely it ſeemeth by the Frame of the Syllogiſms and Reaſons in it, that you know it not, if you be the Author of that Book: I read none of it late, but in the Parliament-time, ſitting in a Morning in the Houſe, I read ſome of it; and it ſeemed to me in many things, not to conclude probably, much leſs demonſtratively.

Udall. I will ſhew you, as I take it, why the Author called it a *Demonſtration*; becauſe the Reaſon which is uſually brought to prove the Concluſions, is commonly drawn from a place of Scripture, which hath more force in it to manifeſt the Concluſion ἀποδεικτικος, than any of *Ariſtotle*'s Proofs drawn, as they ſay, *ex primis*, *veris*, *neceſſariis*, *& immediatis cauſis.*

Roch. Indeed that which is proved by the Scriptures, is proved moſt demonſtratively; but the proofs in that Book are far from any ſuch.

Udall. Let that be the queſtion, and try it in ſome one.

Ander. My Lord of *Rocheſter*, I pray you let us make ſhort work with him, offer him a Book; will you ſwear to anſwer to ſuch things as ſhall be demanded of you in the behalf of our Sovereign Lady the Queen?

Udall. I will take an Oath of Allegiance to her Majeſty, wherein I will acknowledge her Supremacy according to Statute, and promiſe my Obedience as becometh a Subject; but to ſwear to accuſe my ſelf or others, I think you have no Law for it.

Ander. Mr. Sollicitor, I pray you tell him the Law in this point.

Then Mr. Sollicitor (who had ſitten all the while very ſoberly) noting what paſſed (and if a Man's Mind may be known by his Countenance, ſeeming to miſlike the Courſe holden againſt me) upon my Lord *Anderſon*'s Commandment, ſtood up, and putting off his Hat unto me, ſaid:

Eger. Mr. *Udall*, I am ſorry that you will not anſwer, nor take an Oath, which by Law you ought to do: I can aſſure you, your Anſwers are like the Seminary Prieſts Anſwers; for they ſay, there is no Law to compel them to take an Oath to accuſe themſelves.

Udall. Sir, if it be a Liberty by Law, there is no reaſon why they ſhould not challenge it; for (tho' they be very bad ones) they are Subjects, and until they be condemned by Law, may require all the benefits of Subjects; neither is that any Reaſon, that their anſwering ſo, ſhould make the claim of leſs value for me, ſeeing that herein we are Subjects alike, tho' otherwiſe of a moſt contrary Diſpoſition.

Buck. My Lord, it is no ſtanding with him thus: what ſayſt thou, wilt thou take the Oath?

Udall. My Lord, I have ſaid as much thereunto as I can.

They then commanded me to go forth, and they conſulted a little ſpace, and called me again, at which time almoſt every one of them uſed many words to perſuade me to confeſs a Truth; ſaying the Queen was merciful, and that otherwiſe it would go hardly with me: to whom I ſaid, My Lords, I know not that I have offended her Majeſty; when it is proved that I have, I hope her Mercy will not then be too late: howſoever it be, I dare not take this Oath.

Aubery, *Lewen.* You have heretofore taken it, and why will you not take it now?

Udall. Indeed you call to remembrance a good Reaſon to refuſe it; I was called to anſwer to certain Articles upon mine Oath heretofore, which I voluntarily did, and freely confeſſed that againſt my ſelf, concerning my Judgment and Preaching of the Points of Diſcipline, which could never have been proved; and when my Friends laboured to have me reſtored to my Place, the Archbiſhop anſwered, that there was ſufficient matter againſt me, by mine own Confeſſion, why I ſhould not be reſtored: whereupon I covenanted with mine own Heart, never to be mine own Tormentor in that ſort again.

Ander. Whatſoever be the Iſſue of it, you muſt do your Duty, and deal plainly with the Magiſtrate.

Udall. I take my Duty to be in this Caſe, not to anſwer, nor the Magiſtrate's to require it of me; ſeeing the Apoſtle ſaith, *Receive not Accuſation againſt an Elder*, *under two or three Witneſſes:* which *Semanca*, the *Spaniſh* Inquiſitor, alledgeth to the ſame purpoſe.

Buck. What, you are an Elder, are you?

Udall. My Lord, howſoever the word Elder be taken, whether ſo largely as I and my Brethren that deſire the Diſcipline do take it, or only for a Miniſter of the Word, as our Adverſaries underſtand it, I am an Elder.

Roch. It is true, my Lord, that an Elder in that place containeth all ſuch as he is, but none elſe.

Buck. Yea, but they would have other Elders to govern the Church; which Deſire of theirs, when it cometh to paſs, I will give over my Barony, and become an Elder.

Udall. If your Lordſhip underſtood what great Pains, and ſmall worldly Recompence belongeth to that Office, you would never ſay ſo.

Roch. The Day is paſt, and we muſt make an end: will you take the Oath?

Udall. I dare not take it.

Roch. Then you muſt go to Priſon, and it will go hard with you, for you muſt remain there until you be glad to take it.

Udall. God's Will be done! I had rather go to Priſon with a good Conſcience, than to be at Liberty with an ill one.

Roch. Your Sentence for this time is, to go to the *Gate-Houſe* cloſe Priſoner, and you are beholden to my Lords here, that they have heard you ſo long.

Udall. I acknowledge it, and do humbly thank their Honours for it.

And when they were all gone, my Lord *Cobham* ſtayed me to ſpeak to me; who told me, that it might be he and others wiſhed things to be amended as well as I, but the time ſerved not, and therefore he wiſhed me not to ſtand in it: and I praying his Lordſhip's good Favour, he promiſed to do for me what he could; for which I humbly thanked him, and ſo was carried to the *Gate-Houſe* by a Meſſenger, who delivered me with a Warrant to be kept cloſe Priſoner, and not be ſuffered to have Pen, Ink, or Paper, or any body to ſpeak with me. Thus I remained there half a Year, in all which time my Wife could not get leave to come unto me; ſaving only that in the hearing of the Keeper ſhe might ſpeak to me, and I to her, of ſuch things as he ſhould think meet, notwithſtanding that ſhe made ſuit to the Commiſſioners, yea unto the Body of the Council, for ſome more Liberty: all which time my Chamber-fellows were Seminary Prieſts, Traitors, and profeſſed Papiſts. At the end of half a Year, I was removed to the *White-Lion* in *Southwark*, and ſo carried to the Aſſizes at *Croydon*; where what was done, I will not mention, ſeeing there were preſent ſuch as were both able, and I think willing to ſet down; unto whoſe Report I refer thoſe that would know the ſame.

At the Aſſizes at Croydon, *the 24th* July, 1590.

Mr. *Udall* was called, and commanded to hold up his Hand at the Bar; who held up his Hand accordingly. Then was his Indictment read, being thus: *John Udall*, late of *London* Clerk, thou art indicted, &c. The form of which Indictment was as againſt Murderers: namely, That he not having the Fear of God before his Eyes, but being ſtirred up by the inſtigation and motion of the Devil, did maliciouſly publiſh a ſlanderous and infamous Libel againſt the Queen's Majeſty, her Crown and Dignity. And being aſked whether he were Guilty, or not Guilty, he anſwered thus:

Udall. My Lords, may it pleaſe you to hear me a word or two?

Judge Clarke. Anſwer firſt to the Indictment, and then you ſhall be heard.

Udall. My Lords, I beſeech you hear me firſt a word or twain.

Judge. Say on.

Udall. My Caſe is rare, and ſuch as hath not been heard of heretofore, and conſiſteth upon divers points of Law; I humbly crave of your Lordſhips to grant me to anſwer by Counſel, if it may be.

Judge Clarke. You cannot have it, and therefore anſwer to your Indictment.

Udall. Then I anſwer (my Lords), that I am not Guilty.

Judge Clarke. How wilt thou be tried?

Udall. I do deſire to be tried by an Inqueſt of learned Men; but ſeeing I ſhall not, I am contented to be tried by the ordinary Courſe, as theſe Men before me are, that is (as you uſe to ſay) by God and the Country.

Then the Clerk of the Aſſizes ſaid to the Parties arraigned, (after he had read the Names of the Jury before them) Theſe Men whoſe Names you have heard, are to go upon your Lives and your Deaths; look upon them when they are called to be ſworn, and if you know any Cauſe, take exception againſt them. Then the reſt of the Felons having nothing to ſay, Mr. *Udall* ſaid, My Lords, I am ignorant of the Law in this Point; I pray you therefore ſhew me the manner of Challenging the Jury; how many I may challenge, and whether I may render a Reaſon of the ſame.

Judge. I think you will know a Cauſe in your Conſcience, before you challenge any of them.

Udall. Then I pray you, my Lord, how many am I by Law permitted to challenge?

Judge. Nay, I am not to tell you that; I ſit to judge, and not to give you counſel.

Then Mr. *Udall* keeping ſilence, Proclamation was made according to the manner: That if any Man could give in Evidence againſt *John Udall*, Priſoner at the Bar, that they ſhould come into the Court and be heard. Then Mr. *Daulton* ſtood up: And in the mean while Mr. *Udall* ſaid to the Judges thus; My Lords, I beſeech you anſwer me to one queſtion before Mr. *Daulton* begin to ſpeak.

Judge. Say on.

Udall. Is it permitted me by Law to anſwer to thoſe things in particular, which are brought to prove this Indictment?

Judge. It is permitted.

Udall. Then I humbly crave of your Lordſhips to grant me two Petitions, which I think will greatly further both him in ſpeaking, me in anſwering, and alſo be a more ready help to the memory of the Jury, that they may be able to bear the matter away.

Judge. What are your Petitions?

Udall. The firſt is, that when Mr. *Daulton* hath ſpoken to one Point what he can, I may anſwer to that before he proceed any further, leſt my Memory being overwhelmed with multitude of matter, I ſhould forget to anſwer to ſome Points of Importance, and the Jury made leſs able to diſcern of the Particulars. The ſecond is, that it might pleaſe you to grant me to anſwer without Interruption.

Judge. You ſhall have them both granted.

Dault. Then Mr. *Daulton* ſaid, Mr. *Udall*, you have theſe Petitions granted you, I deſire the ſame of you. And then he deſiring leave of the Judges, before he ſhould prove the Indictment, to ſay ſomething touching this, that this Man, and ſuch as he is, do maintain, &c. After leave given him, he uſed a very long Speech, to the great diſgrace and ſlander of the Cauſe, and thoſe Men that profeſſed the ſame, eſpecially of Mr. *Udall*: and making mention in the ſame his Speech, of five ſeveral Books of Common-Prayer, made by ſuch as deſire Reformation; he affirmed, that in one of the ſaid Books there was horrible Blaſphemy, in theſe words of the Conſecration of the Lord's Supper, *Take, eat, this is my Body; drink, this is my Blood.* Then he cried out, ſaying, *Oh horrible Blaſphemy!* And taking occaſion upon the variety of theſe Books, he affirmed that there was no conſtancy in theſe Men: And whereas one of the Books doth allow, that over every Congregation there ſhould be a faithful Paſtor; that is, quoth he, a Shepherd, whereby they may take the Government out of her Majeſty's hand, and ſo bring her Majeſty to be one of their Sheep; no, quoth he, her Majeſty is no Sheep under any Shepherd in the World, except Chriſt: and for the Government that theſe Men do ſeek for, I am aſſured there is none ſuch to be found in the Word of God.

Udall. Mr. *Daulton* hath uſed a very large Speech, which doth nothing concern to prove the Indictment, or me in particular; and therefore ſeeing I am not called hither to diſpute (as if I would, I ſhould not be permitted) I will not anſwer it; only thus much will I ſay (if it pleaſe your Lordſhips) that ſeeing Mr. *Daulton* is by Profeſſion a Lawyer, and the Cauſe is yet in queſtion amongſt the learned Divines, methinks it had been more modeſty for Mr. *Daulton* to have ſuſpended his Judgment until the Controverſy had been determined amongſt them, to whoſe Profeſſion it belongeth: eſpecially ſeeing Mr. *Daulton* knoweth in his Conſcience, that he hath heretofore carried ſome ſhew of liking to the Cauſe, which now he ſpeaketh againſt.

Judge. Sirrah, Sirrah, anſwer to the matter that Mr. *Daulton* hath againſt you; Mr. *Daulton*, proceed to the proof of the points of the Indictment.

Dault. My Maſters, you of the Jury, &c. I will prove, Firſt, That he had a malicious Intent in making of this Book: Secondly, that he is the Author of it: And Thirdly, That theſe matters contained in the Indictment are Felony, by the Statute *Eliz.* 23. *cap.* 2.

Then was Mr. *Beadle* the Regiſter called, who was ſworn, that theſe Examinations following were as the Parties themſelves confeſſed the ſame: And to prove the firſt, the Clerk of the Aſſizes cauſed *Stephen Chatfield* to be called into the Court, to give in Evidence againſt *John Udall*; but he appeared not at all, for which the Judges were offended; and Serjeant *Puckering* ſaid, there was a Warrant ſent for him: whereupon ſome ſtanding by affirmed, that the Warrant came after his departure from home. Then Mr. *Daulton* ſaid, that he went out of the way of purpoſe; and Judge *Clarke* ſaid, Mr. *Udall*, you are glad of that. Mr. *Udall* anſwered;

Udall. My Lords, I wiſh heartily he had been here; for as I am ſure he never could ſay any thing againſt me to prove this point, ſo I have heard and am able to prove it to be true, that he is very ſorry that ever he made any complaint againſt me, confeſſing he did it in his Anger, when *Martin* came firſt out; and by their Suggeſtions, whom he hath proved ſince by Experience to be very bad Men.

Dault. It is no great matter whether he be here or no, for we have his Articles againſt you, and your own Confeſſion, to prove this point ſufficiently.

Then were Mr. *Chatfield's* Articles (that he brought to the Archbiſhop againſt Mr. *Udall*) read by the Clerk, containing a Report of certain written Papers; tending, as he ſuppoſed, to the making of ſuch a Book as this is: and thereupon aſked Mr. *Udall* whoſe writing they were; who anſwered, they are a Friend's of mine: whereunto *Chatfield* replied, wiſhing him to take heed of them, and to rid his hands of them, and to return them to his Friend from whom he had them, for he doubted they concerned the State. Theſe Papers he ſaw in Mr. *Udall's* Study at *Kingſton*. Alſo he further ſaith, that at another time, he having conferred with Mr. *Udall* in a certain Field by *Kingſton*, called *Little-field*, about this putting to ſilence; he ſaith, that the ſaid Mr. *Udall* uttered theſe words, That if they put him to ſilence, he would give the Biſhops ſuch a Blow, as they never had.

Udall. May it pleaſe your Lordſhips that I may anſwer to theſe things in particular?

Judge. Say on, let us hear your anſwer.

Udall. I was accuſed this time two Years upon the words of *Chatfield*, that theſe Papers that he did ſee in my Study, ſhould be the matter of *Martin-Mar-Prelate*; and becauſe I cleared my ſelf of that, it is now brought to prove another matter: but it proveth nothing, unleſs it were ſet down in particular what they were.

Dault. It proveth this, that you had a purpoſe to write this Book; and thoſe things were Collections from your Friends, and Preparations thereunto.

Udall. Let the Jury conſider how that Point is prov'd by it. Beſides, it may be prov'd, that this Book was extant in Men's hands before the Conference between *Chatfield* and me; therefore how can it be prov'd that this is the Book that ſhould give them ſuch a Blow?

Dault. But you cannot deny the ſecond Point, that you had a pretended Malice, for it is extant in your own Confeſſion: Read his Anſwer to thoſe Articles of Mr. *Chatfield.* Then the Clerk read his Anſwer to this effect, That if the Biſhops put him to ſilence, they would give him Occaſion and Leiſure to be imployed in writing againſt them. Then ſaid Mr. *Daulton*, Is not this moſt evident, what can be plainer than it is?

Udall. I pray your Lordſhips give me leave to explain theſe things.

Judge. Say on, and be brief.

Udall. Mr. *Chatfield* told me, that he was commanded to come to *Kingſton* and be reſident there, of purpoſe that I might be put to ſilence, and that there might not appear any want of a Preacher, I being put down; whereupon I ſaid, in effect, as is above rehearſed: But I pray you hear in what ſenſe theſe words were uttered.

Judge. The Matter is clear, and we ſee what you can ſay to it well enough; proceed, Mr. *Daulton*, to the Proof of the ſecond Point.

Dault. And that you be the Author of this ſlanderous and infamous Libel, it ſhall be proved clearly to the Jury before your face. Then ſaid he to the Clerk, Read the Anſwer of *Nicholas Thompkins*, which was made upon his Oath before her Majeſty's High-Commiſſioners. Then was read to this effect, that *Thompkins* knew that Mr. *Udall* was the Author of that Book call'd *The Demonſtration*, for he ſaid that Mr. *Udall* himſelf told him ſo. Alſo that he ſaw either in Mr. *Udall's* Houſe, or in ſome other Place in *Kingſton*, a Catalogue of all the Books that Mr. *Udall* had made, amongſt which *The Demonſtration* was one.

Judge. You ſee here that this is clear, and a ſufficient Teſtimony.

Udall. It carried ſome ſhew, but it is nothing.

Judge. Do you call the Teſtimony of one being an honeſt Man, and upon his Oath, before the High-Commiſſioners, to be nothing? Can you anſwer it?

Udall. My Lords, I anſwer it thus, denying it to be his Teſtimony; for if it be, why is he not preſent to verify it face to face, according to the Law?

Judge Puck. It is verified to be his true anſwer, under the hands of Dr. *Auberie* and Dr. *Lewen*, the latter whereof confirmed it before me upon his corporal Oath.

Dault. You can take no Exceptions againſt that, and will you ſay he is not an honeſt Man?

Udall. I am perſuaded he was amazed, and anſwered he knew not what: for he hath reported it ſo diverſly, that it ſeemeth he remembreth not what he ſaid.

Judge. But the Oath of *Thompkins* is to be preferred before his bare Report.

Udall. My Lords, I anſwer; I proteſt unto you, (and will verify it upon my Oath, if it pleaſe you) that he told me the day before I was committed, at his Maſter's Houſe, that he could not ſay, neither would he for a thouſand Pounds affirm any more than this, that he heard me ſay I would not doubt but ſet my Name to that Book if I might have indifferent Judges. And further (if it pleaſe you, my Lords) here are ſome Witneſſes that upon their Oaths will teſtify, how diverſly he hath reported of his Confeſſion to this thing, if it pleaſe your Lordſhips to accept them. And the Witneſſes offering themſelves to be heard, were anſwered, that becauſe their Witneſs was againſt the Queen's Majeſty, they could not be heard. And after other Speeches paſſing, Mr. *Udall* ſaid;

Udall. My Lords, the Speech of the Catalogue is moſt vain, and hath no Senſe in it; for can I have made ſo many Books, as that I need make a Catalogue of them? It may be, my Lords, he ſaw a Catalogue of the Books in my Study, wherein if that were one, it is rather an Argument that I made it not; for Men uſe not to put their own Works in the Catalogue of thoſe that they have in their Study.

Dault. You of the Jury conſider this, that *Thompkins* was Mrs. *Crane*'s Man, and one that was privy to all the Printing that was at her Houſe; and Mr. *Udall* uſed to go often thither.

Udall. All that is nothing to me: what if I uſed to go thither, ſhe is of my Acquaintance, I know her to be an honeſt Gentlewoman; what can you gather by any of theſe things? Why is not *Thompkins* here to declare his Teſtimony, and to ſay what he can?

Dault. He is beyond the Seas about Merchandizes, ſent away by Mr. *Gore*, who married Mrs. *Crane*'s Daughter.

Udall. How doth that appear? He is no Merchant, but a Serving-Man; and if he were, what is that to me? But it cannot be proved that Mr. *Gore* did ſend him, ſo that here is nothing but bare Papers to ſhew for Evidence againſt me.

Then there was much ſaid, to prove that the Teſtimony of a Man abſent was ſufficient, if it were proved to be his upon the Oaths of others. And then the Judge ſaid,

Judge. What ſay you? Did you make the Book, *Udall*, yea or no? What ſay you to it, will you be ſworn? Will you take your Oath that you made it not? We will offer you that Favour which never any indicted of Felony had before; take your Oath, and ſwear you did it not, and it ſhall ſuffice.

Udall. My Lords, I pray you hear me to this: If I would have done ſo before the Lords of her Majeſty's Privy-Council that committed me, I had not come hither; but I neither then might, nor may do ſo now, whereof I pray you let me ſhew a Reaſon to the Jury. I and many more do think the Book to be good, for any thing we can find in it, and to be written in defence of a Cauſe which we take to be moſt true. Now the Author is ſought for, that he may be puniſh'd for ſome Speeches that may be wreſted in the Book; therefore leſt he ſhould be found (if one after another that are ſuſpected do deny it) it is thought beſt every one neither to confeſs nor to deny, yea tho' we ſuffer ſome Puniſhment, rather than the Author, being found out, ſhould ſuffer Extremity.

Judge. Nay, this is but a ſhift, I will go further with you; Will you but ſay upon your Honeſty that you made it not, and you ſhall ſee what ſhall be ſaid unto you?

Udall. My Lords, it is all one, I make a Conſcience of my Word as of my Oath, for I muſt give account for both. This is no direct Courſe in this Place.

Judge. You of the Jury conſider this. This argueth, that if he were not guilty, he would clear himſelf, and conſider well of it. And then ſpeaking to Mr. *Udall*, he ſaid, Do not ſtand in it, but confeſs it, and ſubmit your ſelf to the Queen's Mercy, before the Jury find you guilty.

Udall. My Lord, I anſwer, that according to my Indictment I am not guilty, every Point whereof muſt be proved, or elſe the whole is falſe. And I beſeech your Lordſhips give me leave, and I will be very brief: My Conſcience doth not accuſe me that I have ſo much as offended her Majeſty, her Council, or the meaneſt of her People in any thing I have done concerning this Cauſe; for if I ſhould, of all other I deſerved the leaſt Favour, being one that profeſſed to teach others Loyalty to her Majeſty, and Love to one another: and would you have me to confeſs a Fault where there is none? No, I cannot do it, neither will I: wherefore proceed in your Courſe begun.

Dault. We have yet more Proof than this, tho' yet this were ſufficient of itſelf; wherefore read the other Examinations. Then was read the Confeſſion of *Henry Sharpe* of *Northampton*, who upon his Oath, before my Lord Chancellor, had ſaid, that he heard Mr. *Penry* ſay, that Mr. *Udall* was the Author of *The Demonſtration.*

Udall. Sharpe and I were never above once in Company together (to my remembrance), neither knew he ever any of my Dealings. This is nothing to prove me the Author of the Book: Reports be uncertain; and if Reports be true, the Archbiſhop himſelf told me, that Mr. *Penry* made it; which is more forcible for me than any of *Sharpe*'s Reports can be againſt me.

Dault. You miſtake the Matter, the force of the Point reſteth in Mr. *Penry*'s Report, who was one of your great Acquaintance and Familiars; and you, and *Waldgrave*, and he, were at Mrs. *Crane*'s Houſe.

Udall. Here is one Man's ſaying that another ſaid ſo; let the Jury conſider of what force this Proof is; if you have any more, let it appear.

Judge Clarke. You of the Jury have not to enquire whether he be guilty of the Felony, but whether he be the Author of the Book; for it is already ſet down by the Judgment of all the Judges in the Land, that whoſoever was Author of that Book, was guilty by the Statute of Felony, and this is declared above half a year agone.

Udall. Tho' it be ſo determined already, yet I pray your Lordſhips give me leave to ſhew that which I have to ſay, and I will be very brief; and it is to prove, that tho' I were found to be the Author, yet it cannot be within the Compaſs of that Statute, *Anno* 23 *Eliz. cap* 2. whereupon the Indictment is framed.

Judge. You ſhall be heard to ſay for yourſelf what you can, therefore ſay on.

Udall. Tho' I be not by Profeſſion a Lawyer, yet I think I can ſhew it clearly by theſe Reaſons following: (1.) The intent of the Law-makers (which always is to be regarded in theſe Caſes) is to be conſidered, which appeareth in the Preface of the Statute in theſe words, *To fruſtrate the Malice of thoſe that be evil-affected to her Highneſs.* Now I pray you conſider this how can it be? or how is it poſſible that a Preacher, of the ſame Religion which her Majeſty profeſſeth and maintaineth, who is known continually to pray unto God for her Highneſs's Proſperity and Happineſs, both of Soul and Body; how is it poſſible, I ſay, that ſuch a one ſhould be maliciouſly affected towards her? Therefore it is evident that the Statute was made againſt the Papiſts, who uſe to ſlander her Highneſs with the Terms of Heretick, *&c.* and no way againſt us; for I dare boldly ſay of my ſelf, and in the name of all my Brethren, Curſed is he of God, and he deſerveth doubtleſs to be hated of Men, that doth imagine the leaſt hurt againſt her Highneſs. (2.) The Matter that maketh a Man a Felon by that Statute, muſt proceed from a malicious Intent againſt her Highneſs, which I or any ſuch as I am can no way juſtly be charged with; partly for that which is ſaid before, and partly for that my Courſe of teaching and living in this Country theſe nine years (ſaving this laſt Year, wherein I have been abſent) is known to have tended to no other end, than the provoking and perſuading of the People to like of and yield Obedience unto her Majeſty, and the Religion received in her Dominions: for the Proof whereof, I refer my ſelf to the Conſciences of all Men in the Country that have known me. And further, is it likely, that I who have been trained up in the Univerſities under her Majeſty's Protection, and have always bended my Studies to the Advancement of the Sincerity of the Goſpel; ſo that thoſe ſmall Crumbs of Learning which I have gathered, I do acknowledge to have received by her Majeſty's means: Theſe things conſidered, how can it be that I ſhould be evil-affected towards her Highneſs, whom I proteſt I unfeignedly reverence? And therefore the worſt that the Author can be charged withal, is his Over-heat and too much Vehemency, by reaſon of his Zeal againſt the Abuſes, and not any Malice againſt her Majeſty, or the meaneſt of her Subjects. Again, the Matter, to bring it within the Compaſs of the Statute, muſt be falſe: But this Book is written in the behalf of a moſt true Cauſe. Laſtly, The End of it muſt be either to the Defamation of the Queen's Majeſty, or ſtirring up of Inſurrection, Sedition, or Rebellion: For the former, I truſt that the whole Courſe of our Behaviour, both in our Miniſtry and Converſation, declareth it ſelf to be ſo far from ſeeking to defame her Highneſs, as it tendeth, to the uttermoſt of our Powers, to the Advancement of her Honour. For I am perſuaded that there is none of us that would refuſe to undergo any Pain, whereby her Majeſty might any way be the better honoured; yea, we would not refuſe, if need ſo required, to lay down our Lives for redeeming of the leaſt aking of her Majeſty's little Finger, wherewith ſhe might be grieved. Now for the ſecond End, which is the moving or ſtirring up of Rebellion, *&c.* I pray your Lordſhips, and you of the Jury to conſider this: There have been, ſince the firſt day of her Majeſty's Reign, learned Men, that have deſired the Advancement of this Cauſe, and many of the People that affected it, and yet hath it never appeared, that by Occaſion hereof, there hath in all this time been any in any Place that have raiſed any Inſurrection or Sedition: yea this Book, which is now in queſtion, hath been extant theſe two years; yet I truſt neither your Lordſhips, nor any here preſent can ſhew that any People in any Corner of the Land, nay it cannot be juſtly proved that any one Perſon hath taken any occaſion hereby to enterprize any ſuch matter: and therefore the making of this Book cannot be Felony. Beſides all this, if there had been any ſuch thing meant by the Author, or received by the People, as the Indictment chargeth me withal, (which is the Defamation of her Highneſs's Government) yet, as I take it, it ſhould not be Felony by that Statute; for the whole Courſe of it declareth, that it is only meant of them that defame her Highneſs's Perſon, and not her Government, as it is manifeſt by the laſt Proviſo; wherein it is ſhewed, that the whole Statute doth determine and end with her Majeſty's Life. And we may not think their Wiſdoms that made the Law to be ſo unadviſed, as to make a Law for the Preſervation of the Prince's Government, which is continual, to laſt no longer than the Life of one Prince, which is temporary: therefore it ſeemeth that the Statute hath no further regard than this, that her Highneſs's Perſon might be preſerved in that Honour and Dignity, which becometh her Royal Dignity and Eſtate. And I do beſeech your Lordſhips to anſwer me, for I appeal to your Conſciences, as you will anſwer to God for my Life; and I pray you tell the Jury, whether you do think the Intent of the Statute were in any ſort meant againſt us, and not rather againſt the Papiſts.

Judge Puck. Judge *Puckering* ſaid, You do not well to charge us ſo with our Conſciences, which God only is to know. I anſwer you, the Intent of the Statute is againſt all, for ſo the words are.

Udall. The words, my Lord, I confeſs are ſo; but is the principal Intent ſo?

Judge. Yea, it is ſo.

Judge Clarke. We have heard you ſpeak for your ſelf to this Point at large, which is nothing to excuſe you; for you cannot excuſe your ſelf to have done it with a malicious Intent againſt the Biſhops, and that exerciſing their Government which the Queen hath appointed them, and ſo it is by conſequence againſt the Queen.

Udall. My Lords, I am perſuaded that the Author did it not of any Malice againſt them; and for my ſelf, I proteſt I wiſh them as much good as I do to my own Soul, and will pray to God to give them Repentance. But the Cauſe why the Author did ſo earneſtly inveigh againſt them was this, as it ſeemeth, becauſe he perceived them not only to execute an Authority which he taketh to be unlawful by the Word of God, but alſo for that they do not the tenth part of that good (even in thoſe corrupt Callings) which by Law they might do; and I am perſuaded that your Lordſhips know in your own Conſciences, that they do not the tenth part of that they are bound to do.

Judge Clarke. That is true, they do not the good that they might do; but yet that doth not excuſe you: for it is plain in your Book, that you writ not againſt them only, but you writ againſt the State; for is it not againſt the State, when you ſay, that it is eaſier to live in *England* a Papiſt, an Anabaptiſt, of the Family of Love, and what not? Yea, you ſay, I could live ſo in a Biſhop's Houſe, it may be theſe twenty years, and never be much moleſted for it. What is this but a plain ſlandering of the State? And mark the words, for you ſay, you could live ſo in *England:* And doth her Majeſty's Laws allow of Papiſts? This maketh evidently againſt you, and it is ſo plain that you cannot deny it.

Udall. My Lords, if it might pleaſe you to hear me a word or two, I will ſhew the meaning of the Author of the Book; I beſeech you to hear me, and I will be very brief: I know the Laws of *England* do not allow of any ſuch as are mentioned in the Book, for there are godly Laws made for the puniſhing of them, if they were put in execution. But this I take to be the Author's Meaning: That it is not ſpoken in reſpect of her Majeſty's Government and Laws, but in reſpect of the Biſhops, whom your Lordſhips know to be wholly imployed in finding us out, and puniſhing of us, not regarding (in a manner) the puniſhing any Sin elſe.

Judge. What, Sirrah, will you not confeſs any Fault to be in the Book? You ſeek to excuſe all.

Udall. My Lords, I do acknowledge that there was never any Work of Man ſo perfect, but there have been imperfections in the ſame; and therefore there may be ſome fault in the Manner, but ſurely none in the Matter: for the Biſhops themſelves will confeſs that they may fail in their Actions, and be partial (as they are Men) in the manner of handling any thing. So alſo the Author of this Book being aſſured that the Matter is without reproof, may err in the Manner, in being over-zealous in the handling of it; and this fault I will eaſily confeſs to be in the Book, my Lord: but I am ſure the Author never had any malicious Intent againſt her Highneſs, or any of her Subjects.

Judge Clarke. This Book hath made you to come within the Compaſs of the Statute, tho' your Intent were not ſo: for I am ſure there was Mr. *Stubbs*, well known to divers here, to be a good Subject and an honeſt Man; yet taking upon him to write a Book againſt her Majeſty touching *Mounſeir*, he thereby came within the Compaſs of Law, which he intended not in making of the Book; and I am perſuaded, that he did it of a good affection towards her Majeſty; and yet if this Law had been made then, which was made ſince, he had died for it: So you, tho' you intended not to come within the compaſs of the Statute, yet the Law reacheth to your Fact, as that did to his.

Udall. My Lords, his Caſe and mine is not alike, for his Book concerned her Highneſs's Perſon; but the Author of this Book toucheth only the Corruptions of the Biſhops, and therefore not the Perſon of her Majeſty.

Judge. But I will prove this Book to be againſt her Majeſty's Perſon; for her Majeſty being the ſupreme Governor of all Perſons and Cauſes in theſe her Dominions, hath eſtabliſhed this kind of Government in the hands of the Biſhops, which thou and thy Fellows ſo ſtrive againſt; and they being ſet in Authority for the exerciſing of this Government by her Majeſty, thou doſt not ſtrive againſt them, but her Majeſty's Perſon, ſeeing they cannot alter the Government which the Queen hath laid upon them.

Udall. My Lords, we are not ignorant of this, that her Majeſty hath a care that all things might be well; and in that reſpect hath given them often in charge, (upon the Conſiderations of theſe Controverſies) to ſee to it that nothing be amiſs; and becauſe ſhe had a good Opinion of them for their Gravity and Learning, ſhe believeth them when they ſay all is well and in good caſe: whereas, if they had the Grace to look into theſe things, and to make them known as they be, indeed her Majeſty and the State, I doubt not, would quickly redreſs them; and therefore was it that the Author did ſo charge them.

Then the Judge proceeding farther in the Book to prove him to have offended; he took occaſion by the ſame to ſpeak againſt railing againſt Magiſtrates; and ſpeaking to Mr. *Udall*, he ſaid in effect thus:

Judge Clarke. Sirrah, you that ſhould have been a Teacher of her Majeſty's People, you ſhould have taught your ſelf not to have railed upon the Rulers of the People: for do you not know what is written in the 23d of *Exodus*, *Thou ſhalt not rail upon the Ruler of the People, for whoſoever doth ſo ſhall die the death.* And do you not know what is written in the 23d of *Acts*, where the Apoſtle *Paul* being before the High-Prieſt, called him a *painted Wall*; and being ſmitten by one of the High-Prieſt's Servants, it was ſaid unto him, *Revileſt thou the Lord's High-Prieſt?* To which *Paul* anſwered, *I knew not, Brethren, that he was the High-Prieſt.* Lo! thus did he acknowledge his Fault: Do you know theſe things, Sirrah?

Udall. My Lord, you know that we hold it not lawful for a Miniſter to be a Civil Magiſtrate, and there are at leaſt 500 in this Land, amongſt whom I am the moſt unworthy, that are of the ſame Judgment in this Point.

Judge. But how if the Queen doth give it them?

Udall. They ought not to take it. And, my Lord (if it pleaſe you), I will anſwer to your Proofs, tho' I came not hither to diſpute. But in my anſwering, my purpoſe is not to give any liberty to any Man to rail upon any that are in Authority. Now to your Proofs: I ſay, my Lords, that the place out of *Exod.* 23, doth rather concern your Lordſhips, and ſuch as are under her Majeſty for Judges, than any way to concern the Biſhops: And touching the ſecond place out of *Acts* 23, where the Apoſtle ſaith, *Brethren, I wiſt not that it was the High-Prieſt:* the meaning of that place is, as if he ſhould ſay, I thought there had not been any High-Prieſt now, ſeeing Chriſt being come, the High Prieſthood was to ceaſe: ſo that the Apoſtle doth not acknowledge any Fault in that his Speech, for there was no lawful High-Prieſt of that time; neither did he acknowledge any, ſeeing they did end in Chriſt. And thus do the beſt Divines expound the place.

Then, after ſome farther Speeches of this Expoſition, the Judge returned to the matter of the Book again, ſaying, That the Book did concern the State, and ſaid:

Judge. But, Sirrah, thou canſt not ſo excuſe thy ſelf, as though it touched not the Queen and the State; for is it not written in thy Book, that this Saying will not ſerve their turns, The Queen and Council will have it ſo? whereby it is plain, that thou didſt ſpeak againſt the Queen and the State.

Udall. My Lord, the Author only meaneth this, That when we are called before the Biſhops, they were often driven to uſe this Argument (when they had nothing elſe to ſay for themſelves), that they could be content many things were amended; but it muſt be ſo, for the Queen and Council will have it ſo: And ſurely herein methinks they ſlander her Highneſs; and we tell them, that however they bear it out here before Men, yet before God that Excuſe will not ſerve their turn.

Judge. Thou canſt not carry it away ſo: Doſt not thou plainly ſay, That they are not ſafe, tho' they have human Authority on their ſide; but he that is on our ſide is mightier than they? Whereby thou both abaſeſt her Majeſty, and alſo doſt threaten them with ſome Force and Violence.

Udall. It is true, that whoſoever doth unjuſtly is not ſafe in it, tho' all the Princes in the world ſhould defend him in it; and that is the Meaning of the Author: But to ſay, that Force and Violence is threatned them, is fartheſt doubtleſs from this Meaning; for it is known to all the World, that we deſire, by all good means, to commend this holy Cauſe of Reformation to her Majeſty and the State, and do not look for neither, that ever it ſhould by any force prevail, but that it would pleaſe God to honour her Highneſs with the advancement of the ſame.

Judge. No, no, theſe are but Excuſes; theſe malicious Speeches proceeded from thee, and were the Ground-work of all theſe Libels that have been diſperſed ſince, and thou art known to be the Ring-leader of this Faction.

Udall. There is no reaſon to charge me with other Men's doings, every Man muſt anſwer for himſelf; but as for me (alas!), I am no body: there are five hundred Miniſters in this Land of my judgement in theſe things, the meaneſt of which I acknowledge to be far better learned than I am. But by the way, my Lords, I pray your Lordſhips give me leave to ſay one thing, which I being about to ſpeak of before, was interrupted; and therefore ſeeing now it cometh into my Memory, I pray you to hear me, tho' it be out of time, concerning the Felony whereof I am accuſed; it maketh greatly for me.

Judge. What is it? Let us hear what you can ſay.

Udall. When I was before the Lords of her Majeſty's Council at the time of my Commitment, amongſt other things that I alledged againſt the taking of an Oath to accuſe my ſelf, I ſaid, that the thing was accounted criminal, and therefore by Law I was not to anſwer: My Lord *Anderſon* ſaid, that I ſaid true, if the caſe had concerned either the loſs of Life or Limb; whereby it is manifeſt, that then my Caſe was not eſteemed Felony.

Judge. Tho' the Judges had not then concluded it, yet it was Law before, or elſe it could not ſo be determined after; the violent courſe of others ſince, hath cauſed your Caſe to be more narrowly ſifted.

Then the Judge (having ſpoken to the like effect alſo) ſaid to the Jury, That they ſhould not need to trouble themſelves to find him Guilty of the Felony, but only it was ſufficient if they found him Guilty to be the Author of the Book: for, quoth he, it is already determined by all the Judges of the Land, that the Author of that Book was in the compaſs of the Statute of Felony; and this, quoth he, was concluded before we came hither: Therefore you being ignorant of the Law, and we being ſworn, as well as you are, you are to hear us, and to take our expoſition of the Law. And after many other Speeches, the Judges ſaid, Go thy way, we will hear thee no longer, get thee hence; and ſhaking his Hand, he called for the other Felons to hear their Cauſes.

Then the Jury ſaid, What can we find?

Judge. Find him Author of the Book, and leave the Felony to us.

And after ſome other Speeches, Mr. *Fuller* ſaid to the Jury, You are to find him Author of the Book, and alſo guilty of a malicious Intent in making it.

Whereat Mr. *Daulton* ſaid, What have you to do with the matter, Mr. *Fuller*, to ſpeak to the Jury?

Then there being ſome Noiſe at the Bar, Mr. *Udall* could not any more be heard: Yet as he was ready to depart, he ſaid to the Jury, You of the Jury, conſider this, that you have not to conſult about the Life of a Seminary and Popiſh Prieſt, but of a Miniſter of the Goſpel.

Then Judge *Clarke* ſhewed the Reaſons to the Jury, why they muſt find him Guilty; ſaying, The Evidences are manifeſt for the firſt Point, that he is the Author of the Book; and the ſecond is a Point in Law agreed upon by all the Judges, as I have ſaid.

So the Jury, after they had heard the Evidences of the other Felons at the Bar, departed to conſult about them; in which time of their Conſultation, there came two ſeveral Meſſages, exhorting him to ſubmit himſelf, and to yield unto the Judges before the Jury had given up their Verdict.

Unto whom Mr. *Udall* replied, willing them not to trouble him with any ſuch matter; for he was clear in his Conſcience, and therefore he was not to accuſe himſelf. In which time alſo the Jury divers times ſent and received Meſſages from the Judges; and at laſt, the Foreman of the Jury went himſelf unto them. Thus having debated of the Evidences of the reſt of the Felons with Mr. *Udall*, after the Judges had dined, the Jury brought in their Verdict that he was guilty of Felony.

After that Baron *Clarke* had finiſhed all other matters of Law, and that the Juries had given their Verdicts on the Felons, finding ſome Guilty, and ſome Not Guilty, the Judge commanded all the Priſoners to ſtand forth and to anſwer to their Names: who did ſo. And firſt, Mr. *Udall* was called, who ſtood forth at the Bar; but the Judge commanded him for that time to ſtand aſide, ſaying, That he would deal with him anon. Then ſome of the Priſoners which were ſaved by their Books, were burnt in their Hands; and for that Night there was nothing more done. Then the Judge commanding the Jailor to bring the Priſoners betimes in the morning, commanded them to depart: And ſo for that time every Man departed to his place.

The next morning, being the 25th of *July*, about four of the Clock, the Priſoners were brought to the Bar, who ſtayed till the coming of the Judges: who came thither by ſix of the Clock, or thereabouts, and called the Priſoners by their Names to receive Sentence of Death: And firſt, they began with Mr. *Udall*; who, after he was called, was commanded to ſtand aſide till anon. And then were ſeven Felons that received Sentence of Death; who being taken aſide, Mr. *Udall* was called the ſecond time; and the Clerk of the Aſſizes ſaid, *John Udall*, hold up thy Hand, what canſt thou alledge for thy ſelf, why thou ſhould'ſt not receive Judgment to die?

Udall. My Lords, notwithſtanding my earneſt pleading and proteſting of mine Innocency yeſterday, which I could and would have done more clearly, but that I was ſo much interrupted; yet it hath pleaſed the Jury, upon their Conſciences, to find me Guilty of that, which, I thank God, never entered into my heart: Now therefore muſt I plead another Plea, and therefore I crave of your Lordſhips to grant me the Benefit of the Pardon granted the laſt Parliament.

Judge. I think you can have no Benefit by it, for I am deceived if it be not excepted. Then ſaid he to the Clerk, or ſome other, Reach me the Statute-Book: And whilſt he looked in the ſame,

Mr. *Udall* ſaid, I pray your Lordſhips conſider the Ground of my Plea, albeit indeed it ſeems to be excepted: Your Lordſhips confeſſed yeſterday, and I ſhewed it by my Lord *Anderſon*'s Speeches to me, that it was not thought Felony till of late; and therefore the things that be excepted, be ſuch as be inquirable and puniſhable in the Eccleſiaſtical Courts.

Judge. That is nothing; for if the leſſer be excepted, much rather is the greater.

Udall. My Lords, I refer it to your Conſciences and favourable Conſiderations: The Words are theſe in the Pardon, which he repeated: And they finding it to be as he had ſaid, the Judge ſaid, Here is no help for you. And after other Speeches between them of the Meaning of the Words of the Pardon, the Judge ſaid, Mr. *Udall*, your Counſel hath deceived you.

Udall. My Lords, I have not received any Counſel herein, for I have been cloſe Priſoner this half year, and therefore could not attain to have any Counſel; but thus much have I gathered, which is my Judgment, out of the Book.

Judge. What can you alledge more for your ſelf? for this helpeth you not.

Udall. Nothing but mine own Innocency, but that your Lordſhips may roceed.

Judge. What ſay you? Are you contented to ſubmit your ſelf to the Queen?

Udall. Yea, or elſe I were not worthy to live in her Highneſs's Dominions.

Judge. But will you acknowledge your ſelf to have offended her Majeſty in making this Book? She is gracious and full of Mercy; it may be, that we, reporting your Submiſſion unto her Majeſty, may procure her Pardon for you.

Udall. May it pleaſe your Lordſhips to hear me; The Cauſe for which I am called in queſtion, I cannot forſake in any ſort, for I hold it to be the undoubted Truth of God; but, *&c.* And then he was interrupted by Judge *Puckering*, who ſaid:

Judge. Nay, ſtay there, you cannot go away with that Speech unanſwered, to buz into the People's ears ſuch a Conceit, that it is an undoubted Truth that you hold; for I hold it to be an undoubted Falſhood. And then he proceeded further in a large ſet Speech, the effect whereof was, That this Land having been governed by ſundry Nations, hath yet kept her antient Laws, which (he affirmed) would be overthrown, if this Government that theſe Men ſeek for, ſhould be eſtabliſhed: And then he further ſhewed, What Inconveniencies (as he thought) would come by the ſame, *viz.* That we having Laws and Judges appointed to decide all Controverſies, this Preſbytery which theſe Men ſeek for, would overthrow all, and bring to their Cenſure and Government all Men's Cauſes, or elſe they would excommunicate them from their Churches: yea, and they are ſo hot for this Government, that they will not ſtay for the Magiſtrate; and if the Magiſtrate will not, they will reform themſelves: and one of them writing in a Letter to a Friend of his, ſaith, Let us number our hot Brethren, that we may know who will ſtand to it, for it is high time. So that it is plain, that if they cannot have it with her Majeſty's Conſent, they will have it, tho' it make our Hearts to ake, as you ſay in your Book. And whereas her Majeſty hath Revenue belonging to her Crown out of the Church-Livings and Cathedral Churches, theſe Men would have her Majeſty give unto them thoſe Revenues, for the Maintenance of their Preſbytery, and they would allow her a Stipend at their Diſcretions; ſo that they would bring the Queen and the Crown under their Girdles.

And ſome of theſe men have gone ſo far, that they ſay plainly we have no Church, no Sacrament, no Miniſters, nor any Worſhip of God amongſt us. If theſe things be not look'd unto in time, what Confuſion ſhall we have in this Land ſhortly? Many other things he ſpake againſt the Cauſe of Reformation, which I cannot particularly lay down; but this is in effect the Subſtance of it: concluding, he ſaid, Thus much, Mr. *Udall*, have your Speeches enforced me to ſpeak, leſt the People here preſent (being deceived) ſhould be carried away by it. To which Mr. *Udall* anſwered briefly:

Udall. My Lords, it is bootleſs for me to enter Diſputation with you in this place touching this matter; only this I could wiſh you, to leave it to be firſt decided by the learned Divines, to whoſe Calling it belongeth. And altho' ſome weak Men wanting judgment have been headily carried in ſeeking the Furtherance of this Cauſe, and ſo for want of this Government have run into ſome Errors: yet it is no reaſon to charge us with them; for your Lordſhips know, that we have been the Men that have taken the greateſt pains to reclaim them to the joining of themſelves with the Church, from which they have ſeparated themſelves.

Judge Clarke. You are deceived; it is not a matter of Divinity only, but it is a matter of State, and within the compaſs of our Profeſſion; and it is not ſo greatly in controverſy, as you would have us to believe it is.

Udall. It is diverſly debated (my Lords), and the greateſt number of learned Men in Chriſtendom do maintain the ſame.

Judge. How do you know that? Have you been beyond the Seas to know the greateſt number of learned Men to be of this Judgment?

Udall. Your Lordſhips know, that all the Churches of *France*, the *Low-Countries*, and of *Scotland*, do maintain the ſame, beſides many hundred of learned Men in this Land.

Judge. Have you been in all theſe Churches, that you can tell ſo much?

Udall. I know it to be true (my Lords), for their Practice doth ſhew them to be of this Judgment.

Judge. Well, if you can alledge no more, neither will ſubmit your ſelf to the Queen's Mercy, then hear your Judgment.

Udall. My Lords, I was beginning to ſpeak, but you interrupted me; I pray you hear me what I will ſay, and then do as God ſhall move you.

Judge. Let us hear what you will ſay.

Udall. As I ſaid before, ſo I ſay now, I believe the Cauſe to be the undoubted Truth of God; and therefore in the Matter, I cannot by any means yield: yet ſeeing, by your order of Law, I am found to be guilty, neither can I (for the Reverence I bear to her Majeſty's Laws) take any Exceptions againſt you nor the Jury; but that which you have done, I acknowledge to be done in all Equity and Right. Seeing, I ſay, you have found me to be guilty, whereby I cannot live without her Majeſty's gracious and ſpecial Favour, I acknowledge, that whatſoever I have done to the advancement of the Cauſe, I may offend in the Manner; in which reſpect (if I have offended) ſeeing it hath pleaſed your Lordſhips and the Jury to find me guilty, I do willingly ſubmit my ſelf, and heartily crave her Majeſty's Pardon.

Judge. But are you ſorry that you have offended the Queen's Majeſty?

Udall. I am ſorry that the Courſe of the Law hath found me to have offended.

Judge. So is every Thief that is condemned ſorry, that his Offence is found out, but not for the Fact. This is a plain Fallacy.

Judge. My Lord, indeed if it were ſo as your Lordſhip doth underſtand it, it were a plain Fallacy; but I ſay farther, if in the Manner of handling ſo good a Cauſe, there be found in me any Offence againſt her Majeſty's Laws, I acknowledge, that in the Manner of handling it, her Majeſty may be juſtly offended, for which I am ſorry. And I proteſt that I have never gone about to advance it by any other means, than by manifeſting it to all Men, and tendering it to them in Authority; and that by ſuch means as might not be contrary to the Laws of this Land, that ſo it might be received by her Majeſty and the State: and this is the Care of us all, howſoever we be charged with Factions.

Judge. You ſay, If there be found any Offence; whereby you call in queſtion the Equity of dealing in this Court againſt you.

Udall. My Lords, I do not, neither will I; let it be looked into by you and the reſt whom it concerneth, I hope you would not deal otherwiſe than lawfully againſt me.

Judge Puck. You ſay, you ſeek no unlawful Means: What can be meant but unlawful Means in the words of your Book? *If it come in by that Means that will make all your Hearts to ake, blame your ſelves.* What good Means can be meant by theſe Words?

Udall. My Lords, yeſterday I ſhewed you what I took to be the meaning of the Author in ſome places of the Book alledged againſt me in the Indictment; and then I would have ſpoken unto all, but you cut me off: I pray you therefore let me ſhew you the Meaning of the Author in thoſe Words now.

Judge. Let us hear you how you expound it.

Udall. My Lords, your Lordſhips muſt underſtand, that the Author taketh it for granted, that the Cauſe is God's, and muſt prevail: and therefore, ſeeing God hath uſed all the means of his Mercy to bring it in, in giving us a gracious Prince, long Peace, and Abundance, and of ſtirring up ſome to exhibit Supplications to the Parliament; theſe things not prevailing in his Mercy, he will bring it in by ſome Judgment, as Plague or Famine, or ſome ſuch-like Puniſhment: and this is always the manner of God's dealing.

Judge. You cannot expound it ſo; for the Words import another thing.

Udall. My Lord, the Author himſelf expoundeth it ſo in the Words following; where he ſaith, *That it muſt prevail, for ſuch a Judgement will overtake this Land, as ſhall make the ears of all that hear thereof to tingle:* So that he meaneth nothing but this, That God will bring it in by his own Hand, by Judgment, if by Mercy he cannot prevail.

Judge. No, no; your Meaning was, that it ſhould be brought in by Force and Violence.

Udall. God forbid! Far be it from us to conceive any ſuch Imagination. The Author of that Book doth plainly ſhew, that he meant no ſuch thing; and the Words following, in the end of the Epiſtle, do declare the ſame; for there he ſheweth by whom it is to be brought in, namely, by her Majeſty and her honourable Counſellors, that they may ſee it, and eſtabliſh the ſame.

Judge. Nay, the meaning is, That if the Queen will not, yet you ſay, it ſhall come in; for ſo the Words are, *That it muſt prevail, maugre the Heads of all that ſtand againſt it.*

Udall. Nay, my Lords, the Words are, *Maugre the Malice of all that ſtand againſt it.* For there are many Heads that are not maliciouſly bent againſt it: There is great difference between Malice and Heads; for ſome are againſt the Cauſe through Ignorance.

Judge. It is all one in effect.

Udall. Nay, my Lords, there is great difference.

Judge Puck. Well, Mr. *Udall*, you were beſt to ſubmit your ſelf to the Queen's Mercy, and leave theſe Courſes; for I tell you, that your Book is moſt ſeditious and ſlanderous againſt her Majeſty and the State; and yet I aſſure you, that your Book had been paſſed over, if there had not come forth preſently after it ſuch a number of ſlanderous Libels, as *Martin Mar-Prelate*, *Martin*'s *Epitome*, *Martin Jun.* or *Theſes Martinianæ*, *Martin Sen.* and others ſuch-like; of which your Book was judged to be the Ring-leader.

Udall. My Lords, thoſe that are learned, and do maintain this Cauſe, do judge this book to be written very indifferently, howſoever it be hardly conſtrued. But for *Martin*, and the reſt of thoſe Books that you have named, they were never approved by the Godly Learned: And I am fully perſuaded, that thoſe Books were not done by any Miniſter; and I think there is never a Miniſter in this Land, that doth know who *Martin* is. And I for my part, have been inquiſitive, but I could never learn who he is.

Judge Clarke. You will not acknowledge your ſelf faulty in any thing, and therefore it is in vain to ſtand any longer with you.

Udall. I will eaſily confeſs, that in Manner the Author hath offended: for no Man can handle a Cauſe ſo well, but there will fault appear in it, as appeareth by *Job*, who having a good Cauſe, handled it weakly: It is eaſier to handle an ill Cauſe cunningly, than a good one well.

Judge. Nay, but you have maliciouſly offended in publiſhing this Book, which tendeth to the overthrowing of the State, and the moving of Rebellion.

Udall. My Lords, that be far from me; for we teach that, in reforming things amiſs, if the Prince will not conſent, the Weapons that Subjects are to fight withal, are Repentance and Prayers, Patience and Tears.

Judge. Yea, you had done well if you had uſed theſe Weapons, rather than to have made this Book.

Udall. God forbid but that we ſhould give unto her Majeſty that Honour which juſtly is due unto her! For we have not taught the People to reform the State without the Prince, and our Practice hath proved the ſame; for we never taught any of her Subjects to go before her, but to leave that Honour as belongeth to her Majeſty.

Judge. Well, will you ſubmit your ſelf or not? for elſe I muſt proceed to Judgment, and I have no Authority to favour you, neither will I ſtay Sentence of Death according to my Office: what my Brother hath I know not, and therefore ſhortly ſubmit your ſelf, or elſe I am to pronounce Sentence of Death.

Udall. And I am ready to receive it: for I proteſt before God (not knowing that I am to live an Hour) that the Cauſe is good, and I am contented to receive Sentence, ſo that I may leave it to Poſterity how I have ſuffered for the Cauſe. But, my Lords, the Cauſe excepted, I will ſubmit myſelf in any thing.

Judge. Let the Cauſe alone, and tell us no more of it, but acknowledge your ſelf to have offended the Queen's Majeſty.

Udall. I may not in any caſe yield in the Cauſe; I have almoſt ever ſince I was a Preacher of the Goſpel profeſſed it, and therefore I cannot be at this time changed.

Judge. Let (I ſay) the Cauſe alone, and ſay what you will do.

Udall. I muſt needs profeſs it and mention it, leſt it ſhould be thought that I have ſtarted from it; but for any thing that I have done in the Manner againſt Law, I am heartily ſorry for it: more than this I cannot ſay, do with me what you will.

Judge. But are you ſorry for offending her Majeſty and her Laws, and be you contented to amend, and to live in Obedience as becometh a good Subject?

Udall. I am content to ſeek the advancement of this Cauſe by no other means, than that which may ſtand with the Laws of this Land, and the Duty of a good Subject.

Judge. I come not here to intreat you to ſubmit your ſelf, but you ſhall do it willingly upon your Knees, and crave her Majeſty's Mercy.

Udall. Then Mr. *Udall* kneeling down, ſaid, I refuſe not any kind of Submiſſion to her Majeſty: And I intreat your Lordſhips to be a means to her Majeſty for me; and if I were worthy that my poor Papers might come unto her Majeſty, or to her honourable Council, I would write thus much unto them.

Judge. Nay, will you write thus much unto us, that we may firſt ſee it and commend it to her Majeſty?

Udall. I willingly do it.

Thus they diſmiſſed him.

And this is the Sum of that which I with the help of others could remember, having not any Intent to leave out or enlarge any thing further than the meaning of the Speakers did intend; notwithſtanding many more things were ſaid on both ſides, eſpecially the ſet Speeches of both the Judges, and of Mr. *Daulton*, to the diſgrace of the deſired Reformation, which could not well be expreſſed in particular, and therefore I have left them. Alſo many other things Mr. *Udall* purpoſed and begun to ſay, which they ſtopped, ſo that they could not be perceived.

The Aſſizes being thus ended, Mr. *Udall* was returned to the Priſon of the *White-Lion* again, where he continued till the Seſſions in *Southwark*, beginning the 18th Day of *February*, 1590; during which time he wrote a Supplication or Submiſſion to the Queen's Majeſty as followeth:

To the Queen's moſt Excellent Majeſty.

MOST gracious and dread Sovereign, the preſent lamentable Eſtate wherein I ſtand, being found guilty by Verdict, to be Author of a Book entitled, *A Demonſtration of Diſcipline*, and being, without your gracious Pardon, to die for the ſame; I humbly proſtrate myſelf at your Majeſty's Feet, ſubmitting my ſelf in moſt humble manner as becometh a dutiful Subject, to ſuch Order as it ſhall pleaſe your Highneſs to appoint, to whom God hath given ſo high and ſovereign a Power, as is able both to kill and to quicken, to bring to the Gates of Death, and to cauſe to return to the Comfort of Life again: Before whom ſtanding thus convict, I am not to plead my Innocency; yet I moſt humbly deſire it may not offend your Excellent Majeſty, that I proteſt (of the Truth whereof I call God to witneſs, who knoweth all Secrets, and will judge both the quick and the dead) that I had never any thought or imagination to publiſh, write, or do any thing maliciouſly, or tending to the diſhonour or ſlander of your Majeſty's Royal Perſon or Princely Eſtate, under whoſe gracious Government I have attained to ſo many Benefits and Bleſſings; amongſt which I moſt highly eſteem the true Knowledge and Fear of God; in regard whereof, I have been always ready even to adventure my Life, for the preſervation of your moſt Royal Perſon and defence of your Princely Eſtate, and the ſame have alſo taught unto others, as a thing ſpecially commanded by God: notwithſtanding, fearing the Severity of Juſtice unto Death, I fly for Life unto your Majeſty's moſt gracious Mercy, moſt humbly deſiring your Highneſs of your merciful Compaſſion, for relief of my poor and miſerable Eſtate, to grant me your gracious and comfortable Pardon, whereby I may be diſcharged, both of the Offence and Puniſhment, which the Law hath laid upon me. Other hope than this have I none, but the Truſt I have in God, (according to his Promiſes) that your Majeſty by a ſpecial Gift of God is gracious and merciful, and have vouchſafed to ſhew Mercy even unto ſuch as were not only by imputation of Law, but indeed malicious and mortal Enemies to your Highneſs; and therefore I hope that the ſame Goodneſs of ſo Princely a Nature may be moved, and will ſhew forth itſelf in like gracious Compaſſion on my behalf. Which gracious Pardon on my Knees I moſt humbly crave your excellent Majeſty to grant unto me, by which ſpecial Favour being raiſed as it were from the dead, I promiſe and vow to lead the reſt of my Life in all humble and dutiful Obedience unto your Majeſty; praying continually for the preſervation of your Highneſs's precious Life and happy Government, to the Honour of Almighty God, and the Comfort of all obedient and dutiful Subjects.

Further Proceedings againſt Mr. Udall, *at the Aſſizes in* Southwark, February 18, 19, 20. 1590. 33 Eliz.

BEING called the firſt Day of the Aſſizes in the Afternoon, Serjeant *Puckering* ſaid:

Puck. We do not mean now to deal with you, only I muſt put you in mind that you have made a Petition, wherein you promiſe to ſubmit your ſelf to ſuch Order as her Majeſty ſhall appoint; conſider of it, and look that you do it, for I can tell you, it is looked for at your hands.

Udall. I know not, my Lord, what you mean; I made a Petition to her Majeſty, and will willingly perform any thing promiſed therein.

Puck. Well, adviſe well with your ſelf, and look that you do it, I tell you aforehand.

Udall. Unleſs you mean that, I know not your meaning.

Juſtice *Fenner* dwelling in *Surry*, ſat on the Bench, and ſaid: Mr. *Udall*, I muſt needs ſay ſomething unto you; I have heard much good of you, and that you are learned; it were pity you ſhould do otherwiſe than well; I pray you take heed that thoſe good things which are in you be not marred for want of Humility: I tell you Humility is a ſpecial Virtue in a Man of your Calling, the want whereof marreth all in them that want it; I pray you ſtand not in your own Opinion too much: I have heard that you have done much good, let not Humility be wanting, *&c.*

Udall. My Lord, I acknowledge that Humility is a Virtue generally required in Men of my Calling, without which all other Gifts are nothing; for *God reſiſteth the Proud, and giveth Wiſdom to the Simple:* and I deſire that the ſame Virtue may be found in me. But I truſt your meaning is not thereby to perſuade me to deny the Truth, which I truſt the Lord will keep me from, whatſoever befall me.

Fen. I ſpeak to you of good-will, I would not have you ſtiff in your own Conceit.

Puck. Remember what I ſaid unto you.

And ſo I was carried into a Chamber to be conferred with by ſome of the Bench, *&c.* And when that Promiſe which the Judge ſo much ſpake of came to be examined, it was nothing but a Sentence in my Submiſſion to her Highneſs, the meaning whereof is (as the words going before it, and immediately following it, do declare) that I profeſſed my ſelf willing to live or die, according as that Power which God hath given to her Majeſty ſhall appoint.

I having been dealt withal to this effect the firſt Day of the Aſſizes (by certain of the Bench in private) as alſo the ſecond Day by ſome of them to this effect, that I would make ſuch a Submiſſion as would condemn the Book in queſtion, and juſtify the Hierarchy; and perceiving that I was not to be heard till the laſt day, I intreated Sir *William Moore* and Mr. *Bowyer* to be a mean to the Judges for me; that, foraſmuch as my Caſe was rare, and I had (as I was perſuaded) ſufficient to alledge, why (notwithſtanding the Verdict againſt me) Judgment ought to be ſtayed, I might be heard over Night, that ſo (according to that good Counſel given by them unto me, to adviſe with my ſelf, and to conſider what I would do) alſo they might have a Night to think of what I had to ſay, and the next Day to do with me as God ſhould move them.

Hereupon I was fetch'd forth before the Judges in private, immediately after Dinner; who uſing many Perſuaſions to draw me to relent (which being in private, I will not expreſs) told me that they ſent for me, for that they underſtood I deſired to be heard over-night, which they were willing then and there to do. I anſwered, My Lords, my meaning was not to deſire private, but publick hearing, ſeeing I have nothing to ſay, but ſuch as would prevent my ſelf, and diſappoint my publick Speech, if I ſhould utter it in private: yet becauſe they told me their other Affairs would not permit them to have any time with me till the latter end of the Aſſizes, I was rather willing that I ſhould be prevented, than they ſhould be conſtrained to determine on a ſudden upon ſo weighty a matter: whereupon I did draw out a Paper for each of them, containing theſe Reaſons following.

I humbly pray your Lordſhips to conſider, whether theſe Reaſons ought not in Conſcience to move you to ſtay the Sentence, notwithſtanding the Verdict againſt me, and to be means of my releaſe.

1. It ſeemeth that my Caſe is not eſteemed Felony by the Judges of the Land, ſeeing they do uſually ſit in the High-Commiſſion Court, where the printing and diſperſing of the ſame, and ſuch like Books, are uſually enquired after as Tranſgreſſions of another nature.

2. No Judgment in Law ought to be given in caſe of Felony, but upon a Party firſt found Guilty thereof by a Verdict of twelve Men; but I am not ſo: for proof whereof, I pray you it may be remembered, that your Lordſhip gave the Jury in Iſſue only for the Trial of the Fact, whether I were Author of ſuch a Book, and freed them from enquiring the Intent, without which there is no Felony.

3. I humbly pray you call to mind by what means the Jury was drawn to give that Verdict they did, whether they were left wholly to their own Conſciences, or were wrought unto it partly by Promiſe, aſſuring it ſhould be no further Danger unto me, but tend to my good; and partly by Fear, as appeareth in that it hath been an occaſion of great Grief unto ſome of them ever ſince. And then I pray you to conſider, whether upon ſuch a Verdict ſo drawn from twelve ſimple Men, Chriſtian Judges, in a good Conſcience, may proceed to Sentence of Death?

4. In caſe the Verdict was never ſo free, yet your Lordſhips being Men of Wiſdom and Knowledge, are to conſider, whether the Statute whereupon I am indicted, do agree to my Caſe in the

truth and meaning of it, there being nothing in that Book ſpoken of her Majeſty's Perſon, but in Duty and Honour; and whether the drawing of it from her Majeſty to the Biſhops (as being a part of her Body Politick) be not a violent depraving and wreſting of the Statute? which if it be, you being Chriſtian Judges, cannot in a good Conſcience upon ſuch a ground proceed to Sentence, contrary to your own Knowledge.

5. But if the Statute be to be taken ſo as it is urged, it ought to be conſidered that without a malicious Intent againſt her Majeſty's Perſon, the Statute itſelf maketh no Act forbidden by it to be felonious; wherein I appeal firſt to God, and then to all Men that have ſeen the whole Courſe of my Life, and to your Lordſhips own Conſciences, wherein I pray you to examine your ſelves in the ſight of God, Whether either by your ſelves, or the juſt Report of any other, you can find me guilty of any Act in all my Life, that ſavoured of any Malice or malicious Intent againſt her Majeſty, or of any other Behaviour than ſtandeth with the Allegiance and Duty of a moſt Dutiful and Chriſtian Subject. Of which Malice or malicious Intent againſt her Majeſty, if your Conſciences clear me before God, the Act wherewith I am charged being not Felony without ſuch an Intent; I hope you will conſider that you cannot with a good Conſcience proceed to Judgment.

6. Yet if the Statute and Intent were ſuch as it is ſaid, in caſe of Life the Evidences ought to be pregnant, and full living Witneſſes (I am ſure by the Word of God, and I truſt alſo by the Laws of this Land) were to have been produced Face to Face to charge me. But I have none ſuch againſt me, neither any other thing, ſaving only Papers and Reports of Depoſitions taken by Eccleſiaſtical Commiſſioners and others; which kind of Proof the Judges of the Land caſt away in caſe of Lands, and by no means allow to be ſufficient, and therefore are much leſs to be allowed in a Caſe of Life: which being ſo, your Lordſhips ought to have a Conſcience, that upon ſo weak Evidences Sentence of Death be not pronounced.

7. But if the ſame that hath been given in for Evidence in Writing, had been teſtified by Men living, ſtanding out in the preſence of the Court, and of me the Accuſed; I truſt your Lordſhips will conſider that no one of the Evidences do directly prove me to be the Author of the Book in Queſtion; which as it was, hath little Force in it, as appeareth by this, that the Author of the chiefeſt Teſtimony is ſo grieved, that he is aſhamed to come where he is known. Whereupon, howſoever the Jury have not diſcerned thereof, yet you being Men of Skill and Underſtanding, are to have regard of it, and not upon ſo weak and impertinent Proofs, to proceed to Judgment of Death.

8. If all theſe things were ſuch as they ought to be, yet your Lordſhips are to conſider (ſuppoſing me to be the Author of the Book in queſtion) that the ſaid Book for the Subſtance of it, containeth nothing but that which is taught and believed to be a part of the Goſpel of Chriſt, by all the beſt reformed Churches in *Europe*; wherein nothing being diverſe from them, I cannot be condemned, without condemning in me all ſuch Nations and Churches as hold the ſame Doctrine. In which (if there be no Error in them) the Offence commonly being in Form, Circumſtance and Manner of Writing, which ſome Men may think worthy an Admonition, ſome more ſevere worthy Correction and Amercement, the ſharpeſt cannot judge it to deſerve more than ſome ſhort time of Impriſonment. But Death for an Error of ſuch a kind, in terms and words not altogether dutiful of certain Biſhops, cannot be but extreme Cruelty: Which ſeeing it ought to be far from any Chriſtian Man that hath the Bowels of Chriſt in him, ſurely Chriſtian Judges profeſſing the Goſpel, for a Service of the Goſpel (ſaving ſome overſight in words and terms) ought not to proceed againſt me (who have endeavoured to ſhew my ſelf a dutiful Subject and faithful Miniſter of the Goſpel) to give Sentence of Death.

9. My Offence not being aggravated, but remaining as it was the laſt Aſſizes when my Submiſſion was accepted, and Judgment thereupon ſtaid; I truſt your Favour will be the ſame towards me now alſo, ſeeing I am ready to do the like.

If all this prevail not, yet my Redeemer liveth, to whom I commend my ſelf, and ſay as ſometime *Jeremy* ſaid in a Caſe not much unlike; *Behold I am in your hands, do with me what ſeemeth good unto you: but know you this, that if you put me to death, you ſhall bring innocent Blood upon your own Heads, and upon the Land.* As the Blood of *Abel*, ſo the Blood of *Udall* will cry to God with a loud Voice, and the righteous Judge of the World will require it at the hands of all thoſe that ſhall be guilty of it.

This is the Sum of that which I deliver'd to the Judges.

The Aſſizes being almoſt finiſhed, and the other Priſoners, that were called to the Bar to have Sentence of Death, ſtanding forth to hear the ſame; I was at the laſt called, and demanded what I could ſay for my ſelf why I ſhould not have Judgment to die. Hereupon I humbly craving Audience, began to this effect:

Udall. My Lords, I do acknowledge that I have been hitherto proceeded againſt by due Courſe of Law, and that a Verdict was given in againſt me the laſt Aſſizes as Guilty of Felony, *&c.* But I do not only (as heretofore) proteſt mine Innocence, but alſo think that I have ſufficient to alledge why (notwithſtanding the Verdict) Judgment ought not to be given; wherefore I intreat to be heard.

Judge Puck. I pray you ſtay, you ſeem in the beginning to ſpeak Contraries; for firſt you acknowledge the Courſe of Law to be due, and afterwards ſtand upon it that you are innocent. How can a due Courſe of Law condemn the Innocent?

Udall. Theſe things agree well enough, as I will ſhew, if it ſhall pleaſe you to give me leave: It is by due Courſe of Law that I have been indicted, arraigned, have had a Jury impannelled upon me, been accuſed, heard ſpeak for my ſelf, and Teſtimony produced againſt me: But in that the Proof by Witneſs was inſufficient, and the Jury either in Judgment or Affection miſled; thereupon it hath come to paſs, that (notwithſtanding the due Courſe of Law) Guiltineſs is laid upon a guiltleſs Perſon. But I pray you let me proceed to the Reaſons that I have to alledge for my ſelf.

Then I left the firſt Reaſon of purpoſe, ſeeing I did rather wiſh that they only ſhould underſtand it (which they did by my Papers over-night) than to blaze it to the World; ſo that I did begin to ſpeak according to the ſecond Reaſon mentioned before: whereupon Serjeant *Puckering* prayed Baron *Clarke* to ſpeak, ſeeing it did moſt concern him.

Judge Clarke. I muſt needs tell you, you do us and the Seat of Juſtice great wrong: indeed I told the Jury, what was the Law in the Opinion of all the Judges of the Land; for it was not my private Opinion, as I ſaid alſo at that time.

Udall. It is not material, my Lord, in this Caſe, what the Judges think; for tho' all the Judges in the World thought ſo, our Laws thought no Man a Felon, or capable of Sentence as a Felon, till he be convicted by the Verdict of twelve Men.

Clarke. You are ſo convicted, as the Record will teſtify.

Udall. I acknowledge the Record againſt me, but I appeal to your Lordſhip's Conſcience, whether you delivered not unto them Speeches to this effect: 'As for the Felony you are not ſo much to enquire, but only
'whether he made the Book, leaving the Felony to us.'

Clarke. You do me great wrong, I only told them the Law.

Udall. Well, I leave it to your Lordſhip's favourable Conſideration; you perceive my Reaſon.

Then I ſpake to the third Reaſon, whereupon it was ſaid:

Puck. All that you ſay tendeth to the diſgracing of the Court of Juſtice holden againſt you heretofore; the Jury were left to their own Conſciences, and did as they ſaw meet to do.

Udall. No, my Lords, I ſpeak not any thing to diſgrace the Court of Juſtice; for I acknowledge both this Courſe, and all others of the like nature, to be God's holy Ordinance, which I ought to reverence; neither do I ſpeak to defame the Jury, but only to give your Lordſhips occaſion why you may not proceed to Sentence thereupon: for if the Jury did well, why ſhould it grieve any of them? If they did ill, your Lordſhips may not proceed to Sentence thereupon.

Puck. We cannot remember the particular Circumſtances that then paſſed, neither are we to call in queſtion the Verdict; but it is our Office to give Sentence according to it.

Udall. I pray your Lordſhips tell me one thing, Muſt the Judges always give Sentence according to the Verdict, or may there not be cauſe to ſtay it?

Clarke. Yes, there may be cauſe to ſtay the Verdict, ſuch may the Caſe be.

Udall. And I deſire no other, but that my Reaſons may be well weighed, whether my Caſe be ſuch or no.

Then I prayed, for ſo much as they had the Subſtance of that in Writing aforehand which I meant to ſay, it would pleaſe them to give me leave to ſay at once what I could, leſt my Memory (being ſo much weakened and dulled by Impriſonment) ſhould fail me, and ſo I leave ſome material thing unſpoken. Then I ſpake according to the fourth and fifth Reaſons, whereunto little was replied, ſaving ſuch things as were mentioned at my Arraignment: Only Baron *Clarke* uſed a very long Speech, wherein he compared Mr. *Stubbs*'s Cauſe and mine together; and after the end of his Speech, Judge *Puckering* ſaid,

Puck. Who taught you ſuch Law? I tell you, you are much deceived and abuſed in it; one may be within the Compaſs of Felony, tho' he do not directly mean any ſuch thing.

Udall. Your Lordſhip knoweth I pleaded theſe Points the laſt Aſſizes, when I came from cloſe Impriſonment to the Bar: I underſtand *Engliſh*, which is the Language wherein the Statute was written, and I profeſs my ſelf a Scholar; and therefore to have (thro' God's Mercy) ſome Underſtanding of the Senſe of that I read. It ſeemeth to me the moſt direct, and no otherwiſe to be taken than I underſtand it.

Then I ſpake according to the ſixth and ſeventh Reaſons, whereunto it was replied thus:

Puck. You are deceived, in that you think the Witneſſes againſt you the leſs lawful, becauſe the Parties were not preſent. It is an ordinary thing to have Witneſſes examined in the Chancery, and other ſuch like Courts, which do remain there of as ſufficient Credit for ever, as they were when the Party's Oath was taken upon the ſame.

Udall. Then would I have anſwered that the Caſe was not alike, ſeeing the High-Commiſſion is no Court of Record; but I was not then ſuffered to ſpeak, for that it was ſaid by the other Judge.

Clarke. Where do you find that there muſt needs (by the Word of God) be two Witneſſes face to face?

Udall. It is ſo clear, as the Witneſſes were alſo to have the firſt hand in executing the Puniſhment upon the Party offending.

Puck. That was according to *Moſes*'s Law, which we are not ty'd unto.

Udall. It is the Word of God, which hath a perpetual Equity in it; for the Life of Man is ſo precious in the ſight of God, as he would not have it taken away without moſt evident and manifeſt Proof, ſuch as in his Law is ſet down.

Clarke. We are not now to call in queſtion the Proofs, ſeeing the Jury did think them ſufficient: This Speech of yours tendeth to prove the Jury perjured.

Udall. Not ſo, my Lord; I think of them, that they did according to their Conſciences: but being Men unlearned, and the Caſe being ſtrange unto them, they may have done their beſt; and yet you being Men of more Knowledge and Judgment, are to look further into the matter.

Puck. Whereas you ſay that none of the Witneſſes did directly prove you the Author of the Fact, that was not neceſſary; for if all laid together, and the Circumſtances conſider'd, do prove it, it is as good a Proof as if every Witneſs were direct.

Udall. But the Law of God, from which I truſt our Laws diſagree not, would that every Proof be direct.

Puck. And do you think indeed, that the Laws of this Land are agreeable to the Word of God?

Udall. I do not profeſs to know them; but ſurely I have ſo reverent an Opinion of them, that I truſt the Grounds of them are according to the Word of God, however in ſome Particulars the Proceedings may miſs thereof.

Puck. Then the Government by Arch-Biſhops, and Lord Biſhops, is according to the Word of God, ſeeing the Laws of the Land do allow them.

Udall. I pray you, my Lord, take me not ſo general; for that will not follow upon my Speeches.

Puck. Well, you may not now diſgrace the Witneſſes; you ſhould have done it at your Arraignment.

Udall. I neither meant then, nor purpoſe now to diſgrace the Witneſſes, but to ſhew the Inſufficiency of their Teſtimony in this caſe, that your Lordſhips may thereby ſee ſome reaſon to ſtay the Sentence.

The firſt Teſtimony that was alledged, was that of Mr. *Chatfield*, who affirmeth, that it was not given in againſt me upon his Oath; but only in his anger he ſet his hand to, but is now ſorry for it.

Puck. You ſhould have alledged this before; it is now too late.

Udall. It is alledged too late, to prevent the Verdict: but if there be any Force in it, it ought to be conſider'd to ſtay the Sentence: I could alledge it no ſooner, becauſe I knew it not till after the Verdict.

Puck. We may not ſuffer you to proceed ſo, to diſgrace that which is paſſed already: if you have any other thing to ſay, ſpeak on; otherwiſe we muſt do our Office.

Udall. It is not my Meaning, howſoever you take it, to diſgrace any thing paſſed heretofore; only I pray you further to conſider, that *Thompkins*, whoſe Teſtimony only carried ſome ſhew, proteſted before my Commitment, that he would not for all the World affirm me to be the Author of the Book.

Puck. Why did you not plead theſe things to the Jury?

Udall. I did ſo, and offer'd to produce ſufficient Proof for it; but your Lordſhips anſwer'd, that no Witneſſes might be heard in my behalf, ſeeing it was againſt the Queen: which ſeemeth ſtrange to me; for methinks it ſhould be for the Queen, to hear all things on both ſides, eſpecially when the Life of any of her Subjects is in queſtion.

Puck. The Witneſſes were then thought by the Jury ſufficient to prove the Matter, which we may not now call in doubt; therefore ſay on, if you have any more.

Udall. Then I ſpake according to the eighth Reaſon; whereupon it was ſaid,

Clarke. I tell you, you are not called in queſtion for the Cauſe (as you call it) nor for the Body of the Book; but only for ſlanderous things in the Preface, againſt her Majeſty's Government, and therefore you may let the Cauſe alone.

Udall. But it is for the Hatred borne to the Cauſe, that I am thus entreated; for had not it been handled in the Book, ſuch matter as is now made of the Preface, had never been objected againſt me, or any other.

Puck. Well, it is beſt for you to leave off all other Pleas, and ſubmit your ſelf to the Queen's Majeſty's Mercy.

Udall. I will do ſo with all my heart.

Puck. But will you do it as you did the laſt Aſſizes?

Udall. Yea, that I will: And ſo I ſpake according to the laſt Reaſon; whereupon it was ſaid,

Puck. You confeſſed that you were juſtly condemned.

Udall. I am not yet condemned.

Puck. I mean convicted by the Jury. Then you acknowledged that you had offended her Majeſty; that you were ſorry for it, and promiſed that you would never do the like again.

Udall. My Lord, it is not for me to oppoſe my Word and Credit (which is nothing) againſt yours; I refer it to them that heard it: only, I pray you, give me leave to ſpeak of it, as I take it that it was. Firſt, I did avow (and ſo I do now, and will do whilſt I live) that the Cauſe handled in that Book, is an undoubted Truth.

Clarke. How often ſhall we bid you leave the Cauſe, and tell you, that you are not troubled for it?

Udall. But it is the Cauſe that is ſought to be defac'd in my Perſon, and therefore I muſt and will ſtill profeſs it, and juſtify it, whatſoever Diſgrace I receive by it unto my ſelf. I pray you let me proceed. Secondly, I did proteſt that I never had any purpoſe to deface, but ever to ſeek to honour her Majeſty and her Government. Thirdly, I profeſſed that the Courſe of Law againſt me was due; whereby what I have meant, you have heard. Fourthly, I ſaid, that I never had any purpoſe to do any thing to the Advancement of this Cauſe, but keeping my ſelf (to the uttermoſt of my power) within the compaſs of the Law. Laſtly, I never confeſs'd my ſelf to be the Author of the Book. Then my Submiſſion was this, That if I had done any thing to the Advancement of ſo holy a Cauſe, which had brought me within compaſs of the Law, or might juſtly offend her Majeſty, I was heartily ſorry for it. If this be not it, let me have any other drawn, wherein the former Points are juſtify'd, and I will ſet my hand unto it.

Puck. But all this is nothing to your Book in particular; what ſay you to it?

Udall. I ſay this, That tho' I hold the Matter in it to be a moſt manifeſt Truth; yet I confeſs the Manner of handling, in ſome part, to be ſuch as might juſtly provoke her Majeſty's Indignation.

Puck. Becauſe you ſtand ſo much upon the Cauſe, as you call it, you provoke me ſo, as I muſt needs ſay ſomewhat of it, leſt the Audience ſhould think ſome Matter in it, more than is.

Udall. My Lord, you underſtand my Judgment therein: I beſeech you ſpeak not againſt it, unleſs you will give me leave to reply unto you.

Puck. I may not do ſo, you provoke me to it; your Diſcipline that you ſtand upon, whereupon is it grounded? Forſooth upon the Saying of Chriſt, *Tell the Church:* which never was expounded theſe fifteen hundred years, as you do within theſe few years.

Udall. My Lord, he did abuſe you that told you ſo: *Chryſoſtom* expounded it thus, *Tell the Church*, that is, the Governours of the Church.

Puck. He meant the Governours of the *Jewiſh* Synagogue.

Udall. How can that be, when he lived above four hundred years after Chriſt?

Puck. Was there never any that could find it out before now, if it were a Truth?

Udall. Yes; it hath Teſtimony ſufficient, if it might be receiv'd.

Puck. And leſt Men ſhould think that your Matter were as good as you pretend, I will tell you what I know; as it is written in one of your Books, that without an Elderſhip there is no Salvation.

Udall. I am perſuaded that cannot be ſhew'd.

Puck. Yes, it is in *Theſes Martinianæ*. One writ that it is time to number our hot Brethren; another (Mr. *Snape* of *Northampton* by name) wrote that the Biſhops ſhould be put down all in one day.

Theſe things he did diſcourſe of at large, in an invective Speech, moſt bitter, tending to perſuade the People that we meant to rebel, and ſet up the Diſcipline, and pull down the Biſhops by ſtrong hand; and went about to impair the Queen's Prerogative and Patrimony. After which, with much ado, I got audience to this effect.

Udall. My Lord, I proteſt in the preſence of God, and hearing of all this People, that neither I, nor any of my Brethren, that ever I was acquainted with, to my knowledge, did ſo much as ever purpoſe, or ſpeak of any ſuch means as your Lordſhip mentioneth to bring in the Diſcipline; but only by Prayer to God, Supplication to her Majeſty, and ſuch other peaceable Means: This is my Anſwer to your large Invective. And whereas, my Lord, you ſeem to be ſo hardly carried againſt the Cauſe, I would not doubt, but if I might privately confer with you, with the Bleſſing of God, to perſuade you to be a Friend unto it.

And after ſome other Speeches of other Books, and the aforeſaid Speeches in the Books mentioned already, Judge *Puckering* ſaid,

Puck. Nay, I tell you there are as foul things in your own Book: For, do you not ſay, that the Church is committed to the Miſtreſs of the Stews, and ruled by the Laws of a Brothel-Houſe?

Udall. It is ſpoken of the Popiſh Canon-Law; which is as unfit to rule the Church of Chriſt, as the laws of a Brothel-Houſe to govern an honeſt Woman.

Puck. And thoſe Laws are eſtabliſhed by her Majeſty's Laws.

Udall. It would trouble the learnedeſt Lawyer in *England* to prove that.

Then Baron *Clarke* began a Voice, tending again to compare my Caſe to that of Mr. *Stubbs*, and to perſuade me to ſubmit my ſelf, telling me what Good I might do; but becauſe he ſpake low, and I ſaid I did not well hear him, he gave over, and prayed the other to ſpeak, who told me his Meaning: And then ſaid,

Puck. We ſhall make ſhort work with you: Will you here acknowledge all the Laws Eccleſiaſtical and Temporal of this land, to be agreeable to the Word of God?

Udall. My Lord, I have Diſgrace enough upon me already: you may eaſily perceive what I think of the preſent Eccleſiaſtical Government. I pray you preſs me not with theſe things, I can yield no further than you have heard.

Puck. Then we muſt do our Office, and pronounce Sentence on you.

Udall. God's Will be done.

Puck. Yea, God's Will be done on you indeed.

Then he gave Sentence upon me and the reſt. After which I did purpoſe to ſpeak according to the laſt Sentence, after the Reaſons; but the Clamours of the other Priſoners, calling to the Judges to be good unto them, diſappointed me thereof. Thus was I returned to Priſon; what will be the Iſſue, I know not. *The Lord turn it to his Glory, the Good of his Church, and Shame of his Foes; and then welcome Life or Death.*

I being repriev'd (as the Sheriff ſaid, by her Majeſty's own Commandment), Dr. *Bond*, one of the Queen's Chaplains, came to me as from the Queen her ſelf, and from the Council, with the Submiſſion that was tendered unto me; to confer with me in general, but eſpecially to perſuade me to yield thereunto, or to take the Reaſons of my Refuſal. After two days conference, we agreed upon a Form of Submiſſion, as followeth.

The Form of that Submiſſion which was offered unto me, and I refuſed.

I *John Udall* have been hitherto, by due Courſe of Law, convicted of Felony, for penning and ſetting forth a certain Book, call'd, *A Demonſtration of Diſcipline*; wherein falſe, ſlanderous, and ſeditious Matters are contain'd, againſt her Majeſty's Prerogative-Royal, her Crown and Dignity, and againſt the Laws and Government Eccleſiaſtical and Temporal, eſtabliſhed by Law under her Highneſs, and tending to the erecting of a new Form of Government, contrary to her ſaid Laws: All which Points I do now, by the Grace of God, perceive to be very dangerous to the Peace of this Realm and Church, ſeditious in the Common-wealth, and juſtly offenſive to the Queen's moſt excellent Majeſty; ſo as thereby I now ſeeing the Grievouſneſs of this my Offence, do moſt humbly on my knees, before God and this preſence, ſubmit my ſelf to the Mercy of her Highneſs; being moſt ſorry, that ſo deeply and worthily I have incurred her Majeſty's Indignation againſt me: promiſing, if it ſhall pleaſe God to move her Royal Heart to have compaſſion on me, a moſt ſorrowful convicted Perſon, that I will for ever hereafter forſake all ſuch undutiful and dangerous Courſes, and demean myſelf dutifully and peaceably to all Authorities both Civil and Eccleſiaſtical, eſtabliſhed in this Realm; for I do acknowledge them to be both lawful and godly, and to be obey'd of every faithful Subject.

The Form of that Submiſſion whereunto I did conſent, and ſet my Hand.

With theſe three Proteſtations I do ſubmit my ſelf in manner as followeth:

I. I hold the Cauſe of Diſcipline debated in that Book, to be an undoubted Truth.

II. I never imagined any Evil againſt her Majeſty's Perſon or Eſtate; but have ſought to honour them both.

III. I never propoſed to do or perſuade any thing, whereby the Diſcipline might be advanc'd, but by peaceable means; endeavouring to keep within the compaſs of Law.

I *John Udall* have been by due Courſe of Law, convicted and condemned of Felony, for penning and publiſhing a certain Book, called *The Demonſtration of Diſcipline*; in the Preface whereof, ſome Matter, as alſo the Manner of writing, I confeſs to be in ſome part ſo bitter and undutiful, as deſerveth juſtly to be cenſur'd and puniſh'd, and juſtly offenſive to the Queen's moſt excellent Majeſty: Wherefore the Trial of the Law imputing unto me all ſuch Defaults as are in that Book, and laying the Puniſhment of the ſame, in moſt grievous manner, upon me; and I ſeeing the Grievouſneſs of this Offence, do moſt humbly on my knees, as in the preſence of God, ſubmit my ſelf to the Mercy of her Highneſs, being moſt ſorry that ſo deep and juſt Occaſions ſhould be given to procure her Majeſty's Diſpleaſure againſt me; promiſing that if it ſhall pleaſe God to move her Royal Heart to have compaſſion on me, a moſt ſorrowful condemned Perſon, that I will for ever hereafter forſake all undutiful and dangerous Courſes, and demean my ſelf dutifully and peaceably, as becometh a Miniſter of the Goſpel, and as a loyal Subject to the Queen's moſt Excellent Majeſty.

At the ſame time that Dr. *Bond* was with me, I receiv'd a Letter from a Friend of mine, that did ſollicit Sir *Walter Raleigh* for me; wherein were theſe words:

SIR *Walter Raleigh* willed me to let you underſtand, that her Majeſty is inform'd of you, that you hold that the Church of *England* is no Church, and the Sacraments of the ſame no Sacraments; and that all her Eccleſiaſtical Laws are againſt the Word of God, and ſo her Government; and that all Eccleſiaſtical Matters ought to be governed by a Preſbytery, and ſhe her ſelf to be ſubject to the Cenſures thereof: And that for theſe things, and ſuch-like, you are not worthy to live. But if you will write half a dozen Lines under your hand, unto Sir *Walter*, concerning theſe Opinions, that he may ſhew it to her Majeſty, he hopeth to obtain your Life. I know it is an eaſy thing for you to anſwer all theſe things; and therefore do it with ſpeed, and in your Writing to Sir *Walter*, take knowledge that he hath ſent you ſuch Word.

Hereupon I wrote a Letter to Sir *Walter Raleigh*, and what I hold in theſe Points, as followeth.

To the Right Honourable Sir Walter Raleigh *Kt. Lord Warden of the Stannary*.

MY Duty being remembred unto your Lordſhip, I humbly thank your Honour for your great and honourable Care over me, and for my Good; whereof I truſt you ſhall never be aſham'd: moſt humbly beſeeching your good Lordſhip to be a means to appeaſe her Majeſty's Indignation conceiv'd againſt me, by means of ſome Accuſations untruly ſuggeſted. For, God is my Witneſs, I have never had any earthly thing in ſo precious account, as to honour her Highneſs; and to draw her Subjects to acknowledge with all Thankfulneſs, the exceeding Bleſſings that God beſtoweth upon them by her Majeſty's happy Government, whereof I truſt mine Adverſaries will be Witneſſes, when I am dead. I have ſent unto your Lordſhip (as in perplexity I could upon the ſudden) what I hold concerning certain Points declared unto me, as from your Lordſhip; praying that it would pleaſe you to make known the Truth thereof unto her Highneſs: And if neither my Submiſſion, heretofore deliver'd, nor theſe things now ſet down, will be accepted to draw her Highneſs, of her gracious Compaſſion, to pardon me, that yet it would pleaſe her Majeſty (that the Land may not be charged with my Blood) to change my Puniſhment from Death to Baniſhment. Thus truſting your Lordſhip will vouchſafe me this Favour, and that it will pleaſe her Majeſty thereupon graciouſly to conſider of me, I humbly take my leave, from the *White-Lion*, *Feb.* 22, 1590.

Your Lordſhip's to command,
John Udall, Priſoner.

1. I do believe, and have often preach'd, that the Church of *England* is a Part of the true viſible Church of Chriſt; and that the Preaching of the Word and Adminiſtration of the Sacraments therein, are the holy Ordinances of God, profitable and comfortable to every one that rightly partakes thereof: In which regard I have been, and do yet deſire to be, a Preacher in the ſame Church; and have communicated in the Sacraments and Prayers therein, for the ſpace of ſeven Years at *Kingſton*, and about a year at *New-caſtle* upon *Tine*, immediately before mine Impriſonment: and therefore I do from my Heart utterly renounce the Schiſm whereinto the *Browniſts* have fallen, in condemning the Churches of *England*, and ſeparating themſelves from communicating in the publick Miniſtry thereof.

2. I know no other, but that the Statute-Laws of this Land do maintain the holy Miniſtry of the Word and Sacraments in ſuch Manner, as any Chriſtian may, with a ſafe Conſcience, both adminiſter therein, and communicate therewithal: Alſo that the Law which requireth a Subſcription to the Articles of Religion, ſo far as they contain the Doctrine of Faith and Sacraments, is agreeable to the Word of God.

3. I do believe, that by the Word of God, her Majeſty hath, and ought to have a ſupreme Authority over all Perſons, in all Cauſes, both Eccleſiaſtical and Civil, to inforce every Man to do his Duty, and to be obedient in every thing that is not contrary to the Word of God. And if the Prince ſhould command any thing contrary to God's Word, it is not lawful for the Subjects to rebel or reſiſt, no not ſo much as in Thought, but with Patience and Humility to bear all the Puniſhments laid upon them; ſeeking only by Prayer to God, and Supplication to Authority, and ſuch like peaceable means, to have Faults amended.

4. I do believe that by the Word of God, the Churches rightly reformed ought to be governed Eccleſiaſtically by the Miniſters, aſſiſted with Elders; and this is not my private Judgment, but ſuch as I have learned out of the Word of God, been confirmed in by the Writings of the moſt learned and godly Men of antient and latter Times, and have ſeen practiſed with much Peace and Comfort in the beſt reformed Churches in *Europe*, and even by thoſe Exiles which her Majeſty to her great Honour hath hitherto protected.

5. I do believe that the Cenſures of the Church ought merely to concern the Soul, and may not impeach any Subject, much leſs any Prince, in the Liberty of Body, Dominion, Goods, or any earthly Privilege whatſoever; and that therefore the Papal Excommunication that depoſeth Princes, and freeth their Subjects from their Allegiance, or any part of Chriſtian Obedience to Civil Authority, is blaſphemous againſt God, injurious to all Men, and directly contrary to God's Word: neither do I believe that a Chriſtian Prince ought otherwiſe to be ſubject to the Cenſures of the Church, than our gracious Queen profeſſeth her ſelf to be unto the Preaching of the Word, and Adminiſtration of the Sacraments, according to the Doctrine of our Church, in Mr. *Nowell*'s Catechiſm, and the Homilies of the right Uſe of the Church, at this day appointed publickly to be read.

If I underſtand of any other thing that I am charged to hold as a ſtrange and private Opinion, I would be willing to ſhew my Mind freely in it; for my deſire is, that her Highneſs might truly be informed of every thing that I hold: ſo ſhould I be ſure to obtain her gracious Favour, without which I do not deſire to live.

Theſe things thus paſſed, I remained as before, without any great hope of Liberty, or fear of Extremity, unto the next Aſſizes drew near: at laſt there came Mr. *Nowell*, Dean of *Pauls*, and Mr. Dr. *Andrews* with a new Submiſſion, yet containing nothing (one Clauſe excepted) which was not in the former; which I condeſcended unto; notwithſtanding I refuſed preſently to ſet my hand unto it (tho' they promiſed in the name of the Council, that in yielding to it I ſhould obtain Pardon and Liberty) becauſe I would do nothing without good Advice and Conſideration.

The Copy of the Submiſſion given me by Mr. Dean of Pauls, *with his name to it, as followeth.*

I *John Udall* have been heretofore, by due Courſe of Law, convicted and condemned of Felony, for penning and publiſhing a certain Book, called *The Demonſtration of Diſcipline*; in the Preface whereof, ſome Matter, as alſo the Manner of handling of it, I confeſs in ſome part to be ſo bitter and undutiful, as deſerveth juſtly to be cenſured and puniſhed according to the Laws of this Realm, eſtabliſhed under her Highneſs, and juſtly offenſive to the Queen's moſt Excellent Majeſty: wherefore I now ſeeing the Grievouſneſs of this Offence, do moſt humbly on my Knees, and in the Preſence of God, ſubmit my ſelf to the Mercy of her Highneſs, being moſt ſorry that ſo deep and juſt occaſion ſhould be given to procure her Majeſty's Diſpleaſure againſt me; promiſing that if it ſhall pleaſe God to move her Majeſty's Royal Heart to have compaſſion on me, a moſt ſorrowful condemned Perſon, I will ever hereafter forſake all undutiful, ſeditious and dangerous Courſes, and demean my ſelf dutifully and peaceably, as becometh a Miniſter of the Goſpel, and a loyal Subject of the Queen's moſt Excellent Majeſty.

This is the true Copy of the Submiſſion ſent unto me from her Majeſty's moſt Honourable Privy-Council.

Alexander Nowell.

When I had weighed with my ſelf, that the Clauſe which is added may admit a good Interpretation, and the omitting of that which is left out of my former Submiſſion, cauſeth no ill Senſe of that which is ſet down, I condeſcended (being alſo adviſed thereunto by my good and godly Friends) to ſet my hand unto it; and thereupon wrote a Letter unto Mr. *Nowell* as followeth.

Right Worſhipful Mr. Dean,

‘I Praiſe God with all my Heart, that Authority hath ſo good remembrance of my lamentable Eſtate, and yet more that by the ſame I am for my Form of Submiſſion to deal with a Man of that Piety and Wiſdom, that you have been worthily in the Church long agone eſteemed to be of, and ſo have continued to this reverend Age that you are come unto. It may pleaſe you, Sir, to underſtand, that I have conſidered of the Form of Submiſſion, that your Worſhip brought unto me, and find nothing in it, but that in a good Conſcience I can yield unto; for it requireth not of me any denial or diſallowance of the Cauſe of Diſcipline debated in the Book, for which I am in queſtion; the ſubſtance of which Doctrine I believe to be the undoubted Truth of God, and therefore ought never to deny or diſallow it: notwithſtanding with my perſuaſion I take God to witneſs, that I never purpoſed to do or perſuade any thing, whereby it might be advanced, but by peaceable means, endeavouring to keep within the compaſs of Law. Further alſo the ſaid Form of Submiſſion chargeth me not with any Malice againſt her Majeſty, from which likewiſe I acknowledge as in the preſence of our Saviour Chriſt, that is ready to come to judge the quick and the dead, that I have been always free, and have carried a chriſtian, loving and dutiful Affection to her Majeſty's Royal Perſon and Eſtate, as I know by the Word of God I ought to do; which being ſo, I have reſolved to ſatisfy the Authority from which you brought me the ſaid Form of Submiſſion, and at your Good-pleaſure without further Limitation ſimply to ſubſcribe it.

‘Good Mr. *Dean*, in the Bowels of Chriſt have Compaſſion of my Eſtate, more ways lamentable than I can in a few or many words expreſs, or (as I think) any other but only the Spirit that is taught to pray with groans that cannot be uttered: and in ſuch Chriſtian Compaſſion, by your favourable and earneſt mediation to the Authority that may relieve me, procure my Pardon and free Diſcharge, of the Dangers and Troubles wherein I am; that I may ſay with the Prophet, *I ſhall not die, but live, and declare the Works of the Lord.*

‘So ſhall not only my poor Wife and Children, but I hope many others praiſe God for you in that reſpect, and my ſelf as beholden unto you in a caſe of Life, continually pray for your good Eſtate to the Lord of Life bleſſed for ever. *Amen.*

After I had thus ſet my hand hereunto, I adviſed alſo to write unto certain of the Council, and other honourable Perſons beſides; partly to let them underſtand in what Senſe I had yielded hereunto, and partly to entreat their Favour, and furthermore for my Liberty: the Copy of which Letter (for it was the ſame word for word to every one, the Title of their ſeveral Eſtates excepted) here enſueth.

Right Honourable,

‘MY preſent lamentable Condition enforceth me, in moſt humble manner, to crave ſo much leiſure of your Lordſhips from the weighty Affairs of the State, as to conſider of theſe few Lines. The Reverend Mr. *Nowell*, Dean of *Pauls*, and Mr. Dr. *Andrews*, a few days ago brought me a Form of Submiſſion (as they ſaid) from Authority, with hope of Favour for my Life, if I would yield unto it. Whereof having conſidered, and finding nothing in it, but which I had heretofore yielded unto, when Mr. Doctor *Bond* was with me, one Clauſe excepted, to wit, That the faults do deſerve to be puniſhed according to the Laws of the Land; which yet hath no ſuch words, but may bear ſo good a Senſe, as I think I may in ſuch Form ſubmit my ſelf, without either condemning the Suit for a further Reformation, or my ſelf as juſtly deſerving by the Laws to die; I cannot diſcern ſufficient Cauſe to refuſe it, for by the hardeſt word that I have by due Courſe of Law been convicted and condemned; I underſtand the Form of Proceeding by Indictment, Arraignment, Jury, Witneſſes and ſuch like, as alſo by that Clauſe, That the manner of writing is in ſome part ſuch, as deſerveth juſtly to be cenſured and puniſhed by the Laws of this

‘Land; I mean of ſuch Cenſures as the good Laws of this Land, adminiſtred with Juſtice, do ordain for puniſhing of ſuch Offences in the manner of Writing; which cannot be of Death, without Malice againſt her Majeſty; ſrom which (I take Almighty God to witneſs) I have been always free. In regard whereof, I feared leſt I might be thought to ſtand too contentiouſly and undutifully with Authority, and to be too careleſs of mine own Eſtate, if I ſhould not yield to ſuch a Form of Submiſſion as they brought unto me. Wherein having yielded, as far as in Conſcience I may, and as Authority by their means requireth of me; my moſt humble Suit to your Lordſhips is, that in your Chriſtian and Honourable Compaſſion of my moſt lamentable Eſtate, that it may pleaſe your Lordſhips, by your favourable mediation to her excellent Majeſty, to further my moſt humble Suit, for my Pardon and free Diſcharge of theſe my grievous Troubles. So ſhall I be bound yet more heartily to praiſe God for your Honours, and to pray unto God for your proſperous Eſtate long to endure, to the Glory of Almighty God, and to your own everlaſting Comfort.’

Within four or five days after, Mr. Doctor *Andrews* returned unto me, ſignifying that all that was done was miſtaken, for that was not the Submiſſion that was meant of me, but another. Which when I had peruſed, I found it the ſame (only the laſt Clauſe left out) which was offered me by the Judges at the Aſſizes: And he ſaid, the Clerk to whom the making of the Letter to Mr. *Nowell* was committed, put in one for another. And becauſe I utterly refuſed to conſult of it, as having yielded before to ſo much as I might, he prayed me to underſtand what I took Exceptions againſt, and for what Reaſons. So we entred into many Diſcourſes; as firſt, how the Diſcipline could be ſaid to be againſt the Queen's Prerogative Royal, ſeeing it was (as I ſaid I did believe) expreſſed in the Scriptures, whereby all lawful Privileges of Princes are warranted. Then we debated whether the Supremacy of a Chriſtian Prince be the ſame with an Heathen, or diverſe from it. After that, whether the Authority of Princes in making Church-Laws, be *de jure*, or *de facto* only: and laſtly, of the moſt Points of Diſcipline. Thus we continued five or ſix hours, and at laſt he would have no anſwer of me then, but he prayed me to adviſe of it, for he would come again. I anſwered, that the oftner he came, the welcomer he ſhould be, but I told him I would not accept of it; yet he came twice after, and took my Reaſons of my Refuſal to yield thereunto; and promiſing me all the favour he could procure me, he departed.

After this the Aſſizes approaching, and the general Report being that it would go hard with me; I being deſirous to uſe any good means, did not only ſollicit the Earl of *Eſſex*, and Sir *Walter Raleigh*, who had heretofore dealt for me; but alſo I was adviſed to write again unto Mr. *Nowell*, earneſtly charging him to take my Caſe to heart, ſeeing he had promiſed to procure me Favour: whereupon I wrote unto him this Letter following.

Right Worſhipful Mr. Nowell,

‘AS I did rejoice when I perceived that you were imployed to deal with me about my Submiſſion, becauſe of that reverend Eſtimation that you have been ſo long, among the Worthies in the Church of God; hoping, that I ſhould have found thereby, ſome comfortable means of Mediation unto Authority for my releaſe: ſo I am now occaſioned to fear that all that Credit which you are of, ſhall be uſed as an Inſtrument to further and haſten Extremity upon me. For ſo much time being paſſed ſince I voluntarily yielded to that Submiſſion which you brought unto me, and no Liberty appearing from any place, but rather that being given out, that my Submiſſion ſhall be a ſpecial Means to haſten my Death, and no way to procure my Liberty; I am conſtrained to write unto you, to let you underſtand, that as I look for that end the next Week at the Aſſizes at *Kingſton* (where I have been a Preacher) which hath ſo long been threatned, but (to the doubling of my Torments) deferred; whereunto I doubt not the Lord will ſtrengthen me, as graciouſly he hath hitherto done: So I pray you, as you will anſwer unto God for my Blood, which I am perſuaded your Credit being imployed to the uttermoſt (as in the Word and Faith of a Chriſtian you promiſed) might have preſerved, that you would ſo take my Caſe to heart, as it may inforce you to leave no Stone unturn'd which may either further my Liberty, or at leaſt clear your Conſcience from being any way acceſſary to my Death. For it will one day be an heavy thing to your Heart, to think that you ſhould be ſet on work, and the account that is worthily made of you imployed under pretence, yea, and as it were with aſſurance of Life and Liberty, to draw that from a Preacher and Profeſſor of the Goſpel, which afterward ſhall be uſed to haſten his End: and you will ſay it had been better that you had never been of any reckoning, than to be made an Inſtrument to further ſuch an Action. This I write unto you, not in any troubled affection with the fear of Death, for I thank God I am willing to end my days, and (if it pleaſe the Lord) even in this manner; and hope that my Death ſhall further the Cauſe for which I ſuffer, more than my Life: but leſt I ſhould neglect any means which might ſeem to be a furtherance to prevent the ſame, or leave that Duty unperformed unto you, which I take my ſelf in Conſcience bound to diſcharge. The Lord make us willing and able to diſcharge every good Duty, that he enjoineth us, to his Glory, the Good of his Church, and our own Comfort, whether by Life or Death!’

About the ſame time came a Letter from the King of *Scotland* to a *Scotiſh* Merchant, one Mr. *Johnſon*, lying in *London*, to be delivered to her Majeſty (as was ſaid), being written in my behalf, as he had done once before when I was cloſe Priſoner; this Letter did the Merchant deliver to her Majeſty, and the Dean of *Paul*'s upon my Letter went to the Council; whereby whatſoever was wrought, as ſoon as the Judges heard that I was brought to *Kingſton*, where the Aſſizes were then kept, I was immediately returned unto the *White-Lion* in the Evening, before the firſt Day thereof. Afterward Mr. *Johnſon* had the Copy of the King's Letter ſent unto him, which then appeared to be written not for me alone, but alſo for the reſt of my Brethren the Miniſters in Priſon for the ſame Cauſe of Diſcipline; the Tenor of which Letter here followeth.

‘RIGHT Excellent, High and Mighty Princeſs, our deareſt Siſter and Couſin, in our heartieſt manner we recommend us unto you: Hearing of the Apprehenſion of Mr. *Udall*, and Mr. *Cartwright*, and certain other Miniſters of the Evangel within your Realm, of whoſe good Erudition and fruitful Travels in the Church, we hear a very credible Commendation; howſoever that their diverſity from the Biſhops and others of your Clergy, in matters touching them in Conſcience, hath been a mean by their dilation to work them your miſliking; at this preſent we cannot (weighing the Duty which we owe to ſuch as are afflicted for their Conſcience in that Profeſſion) but by our moſt effectuous and earneſt Letter interpone us at your hands, to any harder uſage of them for that Cauſe: requeſting you moſt earneſtly, that for our Cauſe and Interceſſion it may pleaſe you to let them to be relieved of their preſent ſtrait, and whatſoever further accuſation or purſuit depending on that ground, reſpecting both their former Merit, in ſetting forth of the Evangel, the Simplicity of their Conſcience in this Defence, which cannot well be their lett by Compulſion, and the great ſlander which could not fail to fall out upon their further ſtraiting for any ſuch occaſion: which we aſſure us your Zeal to Religion, beſides the Expectation we have of your Good-will to pleaſure us, will willingly accord to our Requeſt, having ſuch proofs from time to time of our like Diſpoſition to you, in any matters which you recommend unto us. And thus, right Excellent, right High and Mighty Princeſs, our dear Siſter and Couſin, we commit you to God's good Protection. From *Edinburgh* the 12th Day of *June*, 1591.

The juſt Copy of the King's Letter ſent to her Majeſty.

Preſently upon theſe things fell out that wretched matter of that leud fellow *Hacket*, whereby the Adverſary did take occaſion ſo to ſlander the Truth, and to diſgrace the Profeſſors of the ſame unto her Majeſty, that I thought it bootleſs to ſue. And ſo I did little till the Lord Chancellor was dead, and forgotten by ſuch as were ſorry for it; ſo that about *Eaſter* Term following, I ſued for Liberty to go to Church, which was denied me, being a condemned Man: but by the Lord Treaſurer's means, I got a Copy of my Indictment, which before I could not obtain.

Hereupon I getting a Pardon framed according to the Indictment, ſent it with a Petition by my Wife to the Council, who referred me to the Archbiſhop, unto whom I both had ſent divers Petitions, and dutiful Letters, and alſo got many of my Friends, both honourable Perſonages and others, to ſue him, yet could not his Good-will be gotten. At laſt the *Turkey* Merchants having my Conſent to go for a time into *Guinea* to teach their People that abide in that place, if they could procure my Liberty, ſent unto him for his Conſent, who promiſed his Good-will, ſo that they would be bound that I ſhould go indeed, when I had my Liberty. But when two of the Antients of the Company went unto him for his Hand thereunto, he would not yield it, unleſs they would be bound not only that I ſhould go (which they were willing unto) but alſo that I ſhould tarry there, till I had her Majeſty's Licence to come thence.

This Condition they could not yield unto, for that I denied to go upon any ſuch Ground; ſo was their Suit, and my hope of Liberty, at an end; ſaving that one Mr. *Cavell*, who had been the firſt beginner of it, and being to go into *Turkey* did moſt affect it, moved the Dean of *Paul*'s in it: who thereupon wrote to my Lord Keeper, perſuading him of the Conveniency of that Journey for me, and my Fitneſs thereunto. Which Letter when he received, he did ſo deal with the Archbiſhop, as they both promis'd at their next meeting at Court to deal with her Majeſty to ſign my Pardon, that ſo I might have Liberty to go the Voyage.

But her Majeſty never did ſign the Pardon, and the *Turkey* Ships going away without him, *Udall* died in the *Marſhalſea* Priſon about the end of the Year 1592, quite heart-broken with Sorrow and Grief.

XV. *The Trial of Sir* JOHN PERROT, *Lord Deputy of* Ireland, *at* Weſtminſter, *for* High-Treaſon, April 27, 1592. 34 Eliz.

The COMMISSIONERS were,

The Lord Chamberlain,
The Lord Buckhurſt,
Sir Robert Cecill,
Secretary Woolley,
Mr. Forteſcue,
The Maſter of the Rolls,
Sir Edmund Anderſon, *Lord Chief Juſtice of the* Common-Pleas.
Juſtice Periame,
Juſtice Gawdie,
Juſtice Fenner,
Mr. Rockeby, *one of the Maſters of her Majeſty's Court of Requeſt.*

SIR *John Perrot* being brought to the *King's-Bench-Bar*, accompany'd with the Lieutenant of the *Tower*, and Sir *Henry Lee*; and Proclamation for Silence being made, the Lieutenant was commanded to return his Writ of *Habeas-Corpus*.

Then was Sir *John* commanded to hold up his Hand. Here Sir *John Perrot* made low Obeyſance, and deſir'd he might be heard to ſpeak before he held up his Hand.

He proteſted that he never had thought of Treaſon againſt her Majeſty, and deſir'd that the Witneſſes might be good and ſufficient: He knew well the Place whereunto he was brought, and therefore he would ſubmit himſelf humbly to their Honours, and ſaid, Sithence it was God's Will, and her Majeſty's, he gave God hearty Thanks therefore.

Then was he bid to hold up his Hand again. Whereunto he anſwer'd, Look what is to be done; and here is as true a Man's Hand as ever came in this Place.

The Effect of the Indictment.

“ That the laſt of *January* 1587, in the 30th Year of the Queen's Majeſty, he the ſaid Sir *John Perrot* falſely and traitorouſly, *&c.* did imagine in his heart to deprive, depoſe, and diſinherit the Queen's moſt excellent Majeſty from the Royal Seat, to take her Life away, to make ſlaughter in her Realm, to raiſe Rebellion in *England* and *Ireland*; and that he did procure a foreign Power to invade the two Realms.

“ That one *James Euſtace*, Viſcount *Baltinglas*, being a falſe Traitor to her Majeſty and the State, ſent Letters of Treaſon from *Madrid* to the ſaid Sir *John Perrot* by one *Dennis Oroughan*, an *Iriſh* Prieſt.

“ That the ſaid Sir *John* ſent Letters of Treaſon to the ſaid Viſcount *Baltinglas* into *Spain*, by the ſaid *Dennis Oroughan.*

“ That whereas the Queen's Majeſty, in *April* the 27th of her Majeſty's Reign, did write her Letters to the ſaid Sir *John Perrot*, ſignifying unto him that her Pleaſure was, that the ſaid Sir *John* ſhould not proceed in any Matters of Government, without the Advice of ſome of her Majeſty's Council in *Ireland*, wherein ſhe graciouſly adviſed him not to murmur, but to take the ſame dutifully, and in good part; notwithſtanding he the ſaid Sir *John*, ſhortly after the Receipt of the ſaid Letters, did ſend for the Archbiſhop of *Dublin*, and reading the ſame Letters unto him, in a great fury ſaid theſe words, *If ſhe will uſe Men thus, ſhe will have cold Service, and ſome one Day ſhe will have need of me.*

“ That in the 29th Year of the Queen's Majeſty he did maintain horrible and unknown Traitors, not doing Juſtice upon them.

“ That Pope *Gregory* XIII. and the King of *Spain* prepared an Army to invade *England*; at which time the ſaid Sir *John* ſent Letters to the King of *Spain*, promiſing him Aid and Aſſiſtance in the Army: which Letters *Dennis Oroughan* carry'd into *Spain*, and received of the ſaid Sir *John* divers Sums of Money therefore.

“ That Sir *Bryan Orieke*, a notorious falſe Traitor, was procured and animated by the ſaid Sir *John* to move and ſtir up Rebellion in *Ireland*.”

Here again Sir *John* deſir'd to ſpeak, and ſaid that he was 64 Years old, and had been long impriſon'd, yet very honourably uſed at my Lord Treaſurer's, but found fault with his Lodging in the *Tower*; and ſaid he was by nature Cholerick, and knew not what imperfections his Impriſonment might work in him; and therefore if he ſhould happen to fall into any extraordinary Speeches in that honourable Place, he craved Pardon, alledging that the ſame ſhould not proceed for want of Duty or Obedience.

Then Mr. *Sands*, Clerk of the Crown, aſked him, if he were guilty of this firſt Indictment.

He anſwer'd, clapping his Hand upon the Bar, in theſe words; *I am not guilty of any Part of that which is laid down.*

Then was he willed to hold up his Hand again: Whereunto he ſaid, (holding up his Hand) *What again? Here is a true Man's Hand.*

The Effect of the ſecond Indictment.

“ That the 15th Day of *May*, in the 27th year of the Queen, Sir *John Perrot* being at *Dublin*, received Letters from *Alexander* Duke of *Parma*, craving his Furtherance in giving Aid to the King of *Spain*'s Power.

“ That the 20th of *June*, in the 28th year of the Queen, he ſent for Sir *William Stanley* to entreat and confer with him touching his traitorous Purpoſes; and that on the 30th of *June*, 28 *Eliz.* he talked with the ſaid Sir *William Stanley* to that effect.”

Then he was aſked if he were guilty of this Indictment: whereunto he anſwered theſe words, *viz. Even as guilty as you are in ſpeaking, Mr.* Sands.

Mr. *Sands* aſked him by whom he would be tried.

I will be tried, ſaid Sir *John*, by God and Good Men, and I ſhall not remember the moſt of the Points.

Serj. *Puckering*. Then ſaid Mr. Serjeant *Puckering* unto him; You ſhall be remembred of every matter piecemeal.

Sir *John Perrot* ſaid, I pray God the Lord be not angry with theſe Courſes; there is a Judge in Heaven who knoweth all.

Here the Sheriff was commanded to return the Precept directed unto him for the ſummoning of the Jury for our Sovereign Lady the Queen, and an O-yes made that every Juror ſhould anſwer to his Name.

The Names of the Jurors.

Richard Martyn Kt.
John Machell,
Henry Row,
Richard Weeks,
Robert Carr,
John Padge,
Henry Goodyer,
William Paggenton,
Hugh Offley Eſq;
John Hautrey,
William Meggee,
Henry Holford,
John Stone,
John Vavaſour,
William Hichcooke,
Richard Edlyn,
Chriſtopher Read,
William Kinton,
Thomas Fowler,
John Powell,
Bartholomew Quenye,
Humfrey Wylde,
Thomas Ruſſel,
George Millot.

Out of theſe twenty-four were twelve taken, whereof the Foreman was *Hugh Offley* Eſq;

Then Mr *Sands* willed Sir *John* to mark the Jurors well as they were called to be ſworn, to ſee if he knew Cauſe of Challenge to any of them, before they were ſworn between our Sovereign Lady the Queen and him.

Whereunto he anſwered: Woe is me that ſhe is made a Party againſt me! And then he demanded of my Lord Chief Juſtice of the Common Pleas how many he might challenge.

The Lord Chamberlain anſwer'd, that they of the Bench were not to give Counſel to the Priſoner.

Then ſaid my Lord *Buckhurſt* unto Sir *John*, If you have any juſt Cauſe of Challenge againſt any of them, you may challenge; if not, why ſhould you challenge?

Then he challenged two of the Jurors, and ſaid, Lord ſend me Juſtice, and for God's ſake let me have good Men; and wiſhed he might have Men of his own ſort, and ſuch as knew Service, and feared God; and deſired that none might go upon him that had any ſuit in Law with Sir *Thomas Perrot* his Son; and wiſhed for more good Aldermen: yet if they that were ſworn feared God, he cared not.

Here the Indictment was read unto the Jury, and after that an O-yes made, to know if any Man were there to give Evidence againſt the Priſoner at the Bar in behalf of her Majeſty.

Then Serjeant *Puckering* rehearſed to the Jury the principal Points contained in the Indictment aforeſaid. But before he handled the ſame, he opened unto the Jury, that the Original of his Treaſons proceeded from the Imagination of his Heart; which Imagination was in it ſelf High-Treaſon, albeit the ſame proceeded not to any overt Fact: and the Heart being poſſeſſed with the abundance of his traitorous Imagination, and not being able ſo to contain it ſelf, burſt forth in vile and traitorous Speeches, and from thence to horrible and heinous Actions; for Mr. Serjeant ſaid, *Ex abundantia Cordis Os loquitur.*

Then Sir *John* pray'd Serjeant *Puckering* to lay aſide words, and to proceed to the matter of the Indictment. Whereunto he anſwered, he would proceed by degrees; but would firſt begin with his contemptuous Words, which contained in them High-Treaſon.

Then Serjeant *Puckering* ſhewed, That Sir *Nicholas Bagnol*, Marſhal of *Ireland*, being with Sir *John Perrot* in his Houſe, and entering in Communication together, and falling into hot words, Sir *John* brake forth into theſe Speeches, *If it were not for yonder pild and paltry Sword that lieth in the Window, I would not brook theſe Compariſons:* Speaking of her Majeſty's Sword of Juſtice carried before him.

To this he anſwered, That he termed the ſame after that ſort, becauſe the Scabbard of the ſame Sword was old and worn; and within one Week after he cauſed a new Scabbard to be made. And then falling from that Point to other idle Diſcourſe, my Lord of *Buckhurſt* told him, he was before a Bench very wiſe and learned, and before a wiſe Jury; and therefore if he ſpoke not to purpoſe, it would but hurt his Cauſe, and give them all occaſion to think that he had nothing to ſpeak in his own Defence: for if he had, he would not go from the ſame, and follow other frivolous and unneceſſary matters.

Then it was ſhewed that the Queen's Majeſty having directed her Letters of Commandment to Sir *John Perrot* in the behalf of Sir *Tibert Butler*, for the placing of the ſaid Sir *Tibert Butler* in the Barony of *Kaire*, he the ſaid Sir *John* being moved therein by the ſaid Sir *Tibert Butler*, at the Council-Table in the Caſtle of *Dublin*, uſed theſe Speeches, *Stick not ſo much upon the Queen's Letters of Commandment, for ſhe may command what ſhe will, but we will do what we liſt.*

To this matter Sir *John* anſwered; he remembred not what Speeches he then uſed, and ſaid it might be he uſed ſome Speeches cholerickly, as naturally he uſed to do, for it was his Diſpoſition: but notwithſtanding any Speeches whatſoever, yet he ſaid he executed her Majeſty's Commandment therein; and added, that he did always from time to time execute her Majeſty's Commandments or Warrants in all things whatſoever.

Then ſaid my Lord Chamberlain, You are not charged with not executing her Majeſty's Commandment, but with contemptuous Speeches uſed againſt her Majeſty in the matter.

Then Sir *John* going from the matter, and ſpeaking more than was needful, my Lord *Anderſon* willed him to have patience to hear all, and then to anſwer all.

Then it was ſhewed, that Sir *John* calling a Parliament at *Dublin*, among other matters he moved to ſuppreſs the Cathedral Church of St. *Patrick* in *Ireland*; and her Majeſty then ſending Letters to the contrary, he uſed theſe words with a ſtern Countenance, *Nay, God's Wounds, I think it ſtrange ſhe ſhould uſe me thus.* With theſe words the Biſhop of *Meath* was moved, and found fault with his undutiful demeanour; and ſaid, he ſpoke as tho' the Kingdom were his own, and not the Queen's.

To this matter Sir *John* anſwered by way of Excuſe, and ſaid, that the Archbiſhop of *Dublin* was his mortal Enemy, and that the Reaſon why he was moved to ſuppreſs the ſaid Cathedral Church, was to have an Univerſity erected thereupon; but, he ſaid he was withſtood by the ſaid Archbiſhop, becauſe he and his Children received by the ſaid Cathedral Church 800 Marks a-year: And he ſaid further, that the ſaid Archbiſhop bare him the greater Malice, for that the Queen's Majeſty ſending her Letters unto him for the diſcharging of many idle and unneceſſary Penſions, he diſcharged among the reſt one of the Archbiſhop's Sons.

It was then declared, that whereas the Office of the Clerk of the Exchequer was void, and that Mr. *Errington* had made humble ſuit unto her Majeſty to be preferred to that Office, in conſideration of his good and dutiful Service; her Majeſty directing her Letters to Sir *John* for admitting the ſaid Mr. *Errington* into the ſaid Office, he the ſaid Sir *John Perrot* uſed theſe undutiful Speeches upon the Receipt of the ſaid Letters, *This fiddling Woman troubles me out of meaſure; God's Wounds, he ſhall not have the Office, I will give it to Sir* Thomas Williams. This was proved by the Oath of *Philip Williams.*

Againſt *Philip Williams* Sir *John* took exceptions; affirming the ſaid *Williams* to be his mortal Enemy; and ſaid he was a naughty leud Man, of no Credit, and had abuſed my Lord Treaſurer in a Letter; for the which he ſaid, he did beat him in his Chamber: And further he ſaid, he did write to the Maſter of the Rolls, and to Mr. *Powle*, touching the leud and undutiful behaviour of the ſaid *Williams.*

Then it was ſhewed that Sir *John Perrot* having received Letters from her Majeſty, wherein ſhe checked him for divers Complaints, having read the ſame Letter, he uſed theſe undutiful Speeches; *It is not ſafe for her Majeſty to break ſuch unkind and ſour Bread to her Servants*; he being Lord Deputy, and a Servant of Truſt. This was ſpoken to *Philip Williams.*

Afterwards *Philip Williams* being his Secretary writing to her Majeſty in Sir *John Perrot*'s Name, among other things he ſaid, *he would be ſacrificed for her*; which words Sir *John* reading, bad *Williams* put them out; ſaying, *he had little cauſe to be ſacrificed for her:* adding, *that he could not forget her*

her ever ſince the time he could not get Juſtice of her, againſt ſome of her Guard, for murdering ſome of his Men.

When it was bruited abroad that the *Spaniſh* Fleet was in preparation for the invading of *England*, Sir *John* entring into Communication with *Philip Williams* touching the ſaid army, *Philip Williams* ſaid, *he hoped God would bleſs us for her Majeſty's ſake:* whereunto Sir *John Perrot* anſwered, *God's Wounds, and why for her ſake? Never the more for her ſake.* This was proved by the Depoſition of *Williams*.

Here Sir *John* called for *Williams*, that they might ſpeak face to face: whereunto Mr. * Attorney ſaid, that *Williams* was in the Tower in the ſame State that he was, and was to anſwer to matters of his Treaſon as well as he.

* *Sir* John Popham.

Then it was ſhewed, how the Queen ſent him a Letter, wherein ſhe wrote very favourably unto him, adviſing him to look well unto his Charge, about the time the *Spaniards* ſhould come: whereupon he ſpake theſe words; *Ah ſilly Woman, now ſhe ſhall not curb me, ſhe ſhall not rule me; now, God's Lady dear, I ſhall be her white Boy now again; doth ſhe think to rule me now?*

Shortly after *John Garland* brought a Letter from her Majeſty to Sir *John Perrot*; whereat he conceived great diſcontentment, inſomuch that he broke forth into theſe undutiful Terms following: *God's Wounds, this it is to ſerve a baſe Baſtard Piſs-kitchin Woman; if I had ſerved any Prince in Chriſtendom, I had not been ſo dealt withal.* Here he prayed the Devil might take him Body and Soul, if ever he uttered ſuch words, and exclaimed againſt *Garland*. Sir *John* talking with *Nathaniel Dillan*, Clerk of the Council of *Ireland*, aſked him this Queſtion, viz. *If her Majeſty ſhould be diſtreſſed, doſt not thou think that I am the fitteſt Man in* England *to have the keeping of her Body?* This was verified by the Oath of *Nathaniel Dillan*.

Talking with the Archbiſhop of *Dublin* in his Chamber touching the coming of the *Spaniards*, Sir *John* ſaid, *God's Wounds, let them do in* England *what they can, we ſhall do well enough in* Ireland; *if her Majeſty were gone, we ſhould do here in* Ireland *better than they in* England *ſhould do.* This was juſtified by the Oath of the Archbiſhop of *Dublin*.

Whereunto he ſaid, he renounced God's Mercy if he ever ſpake any ſuch words.

And all this, Serjeant *Puckering* ſaid, did declare his malice againſt her Majeſty.

My Lord *Buckhurſt* told him that thoſe Speeches did ſhew a diſloyal mind.

Here Sir *John* exclaimed againſt the Witneſſes, calling them leud and wicked Men, and ſaying he was bought and ſold.

When Sir *John Perrot* ſaid, that he wrote his Letters to her Majeſty, deſiring to be revoked and called home, and made ſuit to Sir *Francis Walſingham* to that effect; Mr. *Popham* told him, that when he ſaw him curbed, as himſelf termed it, by the Council, and that he could do nothing without their privity; then he ſought to come away, with an intent to make himſelf a Ruler in *Wales*.

Here they proceeded to the Treaſons.

Mr. *Attorney* declared that Doctor *Craugh* being a known Traitor, and a Man that had maintained Religion from time to time, and had ſeduced many People in *Ireland*, and was a dangerous Inſtrument to be ſuffered in thoſe Parts; and Sir *John* being given hereof to underſtand, did not uſe that diligence in the apprehending of him, as became his place: for after he had given out Warrants for the ſeeking of him, then he gave out a countermand they ſhould uſe all diligence in apprehending of him in all places, except in the *White Knights* Country, where Sir *John* knew the ſaid *Craugh* to be; which did manifeſtly ſhew he would not have him taken.

My Lord *Buckhurſt* ſaid to Sir *John*, that he granted Warrants to take him where he was not.

Sir *John* ſaid, there was a God that knew all; marvelling that he having known Religion theſe forty-ſix Years, ſhould be charged with favouring of Prieſts and Maſſmongers.

Mr. *Attorney* willed him not to ſtand upon Religion; for then, ſaid he, we ſhall prove you irreligious. Will any Man of Religion ſeek to have Men murdered? Will any Man of Religion ſtab a Man in the Cheek, and after bring him to the Fire to be roaſted, to make him confeſs that he knoweth not, and afterwards hang him by martial Law?

Mr. *Attorney*, to prove Sir *John* of no Religion, further ſhewed, that Sir *John* being in his Chamber at the Caſtle of *Dublin* looked out at the Window, and eſpied Sir *Dennys Oroughan*, who knew all his ſecret Treaſons, and willed his Chamberlain to call unto him *Stephen Seager*; who being come, Sir *John* commanded away his Chamberlain, and locked the Chamber, and willed *Seager* to look out at the Window, and ſaid, Seeſt thou not one beneath in a black Mantle? *Seager* ſaid he ſaw none there; Sir *John* ſaid, There is one there: you ſee how I am croſt by ſome of the Council here, and he is going to the North with Letters from ſome of the Council to move them againſt me; I would have thee take theſe Letters from him, kill him, caſt him aſide, and bring thoſe Letters to me. *Stephen Seager* hereunto anſwered, that he would rob him of the Letters, but he would not kill him with his hands; or if he would give Commandment to hang him by martial Law, he would ſee it done. Whereupon Sir *John* ſaid, *Go thy ways, thou art a paltry Fellow; I did it but to prove thee.* This was proved by the Oath of *Seager*.

Sir *John* then called for *Seager*, to ſpeak with him Face to Face, who juſtified all that he had ſaid.

My Lord *Chamberlain* ſaid, Now you ſee you bad him kill one.

Then ſaid Sir *John*, Becauſe he hath ſworn it, I will not reprove him; it may be I ſpake ſuch words, but I remember it not.

Mr. *Attorney* ſaid, We have alledged theſe matters againſt you, to ſhew you to be a Man of no Religion.

Whereat Sir *John* ſtormed and was angry; ſaying, they went about not only to make him a Traitor to his Prince, but a Traitor to God; which, he ſaid, they ſhould never do.

† *Mr.* Egerton. † Mr. *Sollicitor* told him that all the Papiſts deſired his Government there.

Mr. *Attorney* then declared further, that one *Richard Morrice*, a Prieſt, a notorious Traitor, being a Paſſer from *Ireland* to Viſcount *Baltinglas* in *Spain*, and from thence to *Rome*, to confer of Rebellions and Invaſions for *England* and *Ireland*, Sir *John Perrot* knowing the ſaid *Morrice* to be a moſt dangerous Perſon to the State, would not give Order for the taking of the ſaid *Morrice*, as he ſhould have done: but the Biſhop of *Caſhell* cauſed him to be apprehended of his own Authority, and ſent him to Mr. *Poor*, the Sheriff, to be ſent to the Caſtle of *Dublin*; whereupon the Friends of the ſaid *Morrice* told them that *Morrice* had better Friends than all they had; and ſhortly after *Morrice* was diſcharged, and never called more in queſtion. And all this was affirmed by the Oath of the Archbiſhop of *Caſhell*, and of the ſaid *Poor*, *vivâ voce*.

Then ſaid Mr. *Attorney*, that *Halie* being a Man that converſed with *Craugh*, and dealt with him in his Treaſons, told him that *Poor* had a Warrant to apprehend him and others: Whereupon he told him, that he could be better truſted than twenty ſuch as *Poor* was that ſhould take him; preſuming upon the Favour of Sir *John Perrot*.

The Archbiſhop of *Caſhell* did complain to Sir *John* that the ſaid *Halie* was a notorious Traitor, and thereupon delivered to Sir *John* Articles againſt him and others, and deſired Sir *John* to grant him a Commiſſion for the apprehending of them; praying him in the mean time to keep the ſaid Articles ſecret until they were apprehended: Notwithſtanding, before they could be apprehended, within three days, the ſelf-ſame Articles were taken from one *Patrick Young*, being a Partner with the ſaid *Halie* in his Treaſons; and thereupon they all eſcaped.

Mr. *Sollicitor* then ſaid unto the Jury, You ſee, *Halie* was accuſed of Treaſons, and the Accuſations being delivered to Sir *John* in ſecret, he ſent them to *Halie* before he could be apprehended; which was plain Treaſon. And this was verified by the Biſhop of *Caſhell*'s Oath.

The Lord *Chamberlain* ſaid, You ought to have acquainted no body with the Cauſe, until they had been apprehended.

Sir *John* proteſted, and took God to his Record he was ignorant what was become of him.

Then Mr. *Attorney* turning to the Jury ſaid, By this which hath been proved, you may ſee how he hath always been a Confederate and Maintainer of notable Traitors againſt her Majeſty; namely theſe three, *Craugh*, *Morrice*, and *Halie*, with others their Confederates.

At what time a Rebellion was raiſed in the North part of *Ireland* divers of the ſaid Rebels made Rhymes of her Majeſty, wherein they ſhewed themſelves Rebels and Traitors, as concerning her Birth; Traitors, as concerning her Perſon; and Traitors to her Royal Dignity: which Rhymes came to the hands of Sir *Richard Bingham*, and the Rhymers taken and committed to Priſon, and one of the ſaid Rhymers ſent to Sir *John Perrot* by *Wooahouſe*. Sir *Richard Bingham* ſent them to Sir *John Perrot*, certifying him what he had done, and prayed Sir *John Perrot* to write his pleaſure what ſhould be done with them: whereupon Sir *John* ſent him word to diſcharge them all. Howbeit Sir *Richard* detained the chiefeſt of them in Priſon; but Sir *John* afterward ſent a ſpecial Warrant to the ſaid Sir *Richard* to diſcharge him, taking Bonds of him for his Appearance by a Day: All which he confeſſed to be true, ſaying, that by virtue of his Patent he might pardon them. This was proved to be true by *Marbury* and *Woodhouſe*, *vivâ voce*.

Whereunto Mr. *Attorney* anſwered, that he could pardon no Traitors to her Majeſty's Perſon, but ought rather to have proceeded in Juſtice againſt them. And here he willed the Jury to conſider upon this Point.

Sir *John* then ſaid to Mr. *Attorney*, By God, I never ſaw ſuch a Man ſince I was born. I pray you ſit down, and let me ſpeak; and ſo he turned his talk to *Woodhouſe*, and ſaid, he had ſpoiled the North part of *Ireland*; with other frivolous Speeches.

Sir *Brian Orurke*, a notable Traitor, and executed of late at *Tyburn*, about that time, in a *Chriſtmas*, diſpoſing himſelf to Villany, took down a Picture, and did write *Elizabeth* thereupon; and uſing the ſame in moſt contemptuous and deſpiteful manner, tied the ſame to a Horſe-tail, and he with others dragged it in the dirt, and hacked it with Gallow-glaſs Axes, ſignifying how they would have uſed her Majeſty if they had her in their power. This traitorous Act being made known to Sir *John Perrot*, he would not give Order for the apprehending of the ſaid *Orurke*, to do Juſtice upon him for ſo horrible a Treaſon; whereas he might have had him, if he had ſent but his Horſe-boy for him, and after he was known to be in Company with him. To this he ſaid little.

Sir *Dennis Oroughan* being called to teſtify againſt Sir *John Perrot*, and the Book being offered him to ſwear, Sir *John* ſaid it was no matter whether he were ſworn or not, for his Word and his Oath were all one; for there was neither Truth nor Honeſty in him.

My Lord *Buckhurſt* ſaid he muſt be ſworn, for it was for the Queen.

The ſaid *Dennis Oroughan* told Mr. *Poor*, that he had been in *Spain*, and had brought Letters from Viſcount *Baltinglas* to *Feugh Mackheugh* in *Ireland*, and divers others; and ſaid that he had News to tell the Lord Deputy, that would ſave the Queen one hundred thouſand Pounds. *Poor* diſcovered this to Sir *John Perrot*, and *Dennis* was committed to Priſon in the Caſtle of *Dublin*.

Sir *John* knowing that *Dennis* was in Priſon, ſent for him to come unto his Bed-chamber, where he had Conference with him, and told Sir *John* he had brought him a Letter from Viſcount *Baltinglas* in *Spain*.

Sir *John* demanding of *Dennis* why he gave him not the Letter at his firſt coming out of *Spain*? he anſwered, For fear of being executed, as one Doctor *Halie* late was: and he ſent a Letter and a Token to his Wife, that ſhe ſhould bring him the ſame which was in a Box; which Letter and Box *Margaret Leanard*, Wife of Sir *Dennis*, did ſhortly after deliver to Sir *John Perrot* in his Bed-chamber. For Proof whereof one *Rice Thomas* and *Margaret Leanard* both depoſed, that the ſaid Letter was delivered to Sir *John Perrot* as declared. *Feugh Mackheugh*'s Wife affirmed, that *Dennis* brought her Huſband a Letter from *Baltinglas* in *Spain*.

Now *Dennis* being known to have had Conference with a notable Traitor in *Spain*, and to bring two notable Traitors into *Ireland*, and committed to the Caſtle for Treaſon, was nevertheleſs ſet at liberty in the Caſtle, and had acceſs to Sir *John* early; and they ſat for a long time together, and he had his meat and drink in the Porter's Lodge in the withdrawing Chamber, next to his Bed-chamber, and other places, and commandment to have Wine and whatſoever he wanted, and had a private way to his Bed-chamber. This did Sir

Dennis teſtify himſelf; to whom Sir *John* ſaid, A miſchief on thee, I pray God! Woe be to the time that ever thou wert born, or that ever I ſaw thee! One *John London* alſo juſtified, that the ſaid *Dennis* had the favour and maintenance of Sir *John Perrot* for half a year together.

Here Sir *John Perrot* being preſſed by the Queen's Counſel, ſaid unto them, No one Man can anſwer ſuch three grave learned Men as you are; you cloy me now, I cannot ſpeak.

Then ſaid my Lord *Buckhurſt* unto him, Truth will anſwer it ſelf, and Innocency defend it ſelf.

Then my Lord *Chamberlain* ſaid, That never was any Man that came to that place dealt withal ſo favourably as he was: And greater Men than he have not had that favour, as to bring their Writings and Letters with them.

Then Sir *John* ſaid, He thanked God and the Nurſe of Mercy, the Queen's Majeſty, whom he called the Handmaid of *Jeſus*; and ſaid, he always carried ſo reverend an opinion of her, that had ſhe not been a Queen, he would have made her one, if it had lain in his power.

Then was touched the extreme Malice Sir *John* ſhewed againſt the *Cavener*: and the better to execute his purpoſe, Sir *John* found means that the *Cavener* ſhould offend the Law, by making an eſcape out of Priſon; and ſo being eſcaped, was after taken and hanged.

This matter being urged againſt Sir *John*, he ſaid, You win Men's Lives away with Words.

My Lord *Chamberlain* ſaid, I fear me the *Cavener*'s Blood will light upon you.

Now Sir *John Perrot* began to diſcredit the Teſtimony of *Dennis* the Prieſt, ſaying, he had changed his Religion five times in ſix years; and he did counterfeit himſelf a regiſh Biſhop.

The Queen's *Attorney* then ſaid, If he were ſo leud a Man of his Life, I marvel you would commerce with him, and repoſe your ſelf ſo much upon his honeſty.

A Man of no Religion can be no Witneſs, ſaid Sir *John*; he is a Sorcerer and a Witch.

To which he was anſwered, If he were ſo defamed, why did you favour him ſo much? How many Pardons have you given him? It was ſaid he had given him two.

Sir *John* proceeded againſt Sir *Dennis*, and ſaid he had counterfeited his Hand above eight times; was a common Drunkard, a common Lyar, and had been forſworn a thouſand times.

The *Attorney* then ſaid, If he were the worſt Man in the world, yet was he worſe for Sir *John Perrot*.

Dennis was then called again, and ſaid, that Sir *John* delivered him two Letters to carry to the King of *Spain*, ſignifying that he would be a Mean to help him to *England* and *Ireland*, ſo he might have *Wales*: but he would have it as the Princes of *Germany* have their Dukedoms, that is *jure regio*, to be a *Prince* and *Lord* himſelf, and not to depend on any other. And herewithal he delivered to the ſaid *Dennis* fifty Pounds, and ſo the ſaid *Dennis* departed to *Roſſe*.

The ſaid *Dennis* did farther ſwear, that Sir *John Perrot* and Sir *Brian Orurke* were Confederates together in the Parliament; and that each of them ſwore to other to further the King of *Spain* in the Action of *England*.

Here Sir *John Perrot* waxed hot againſt Sir *Dennis*, and ſaid, he was a louſy Villain, and a Rogue, and had the Pox upon him.

One *Francis White*, and others of *Roſſe*, ſaid, that true it was that the ſaid *Dennis* was at *Roſſe*, ready to go for *Spain*, and came to him to change Silver into Gold; but after fearing and ſuſpecting ſome body in the Ship, he would not go himſelf, but procured one *Davie* to carry the ſaid Letters into *Spain*, with great Charge for the ſafe delivery thereof, and gave him five pounds for his pains. It was further declared, that Sir *John* having Conference with Sir *William Stanley* in *Ireland*, Sir *John* wiſhed him to revolt, aſſuring him that the *Iriſh-men* would live and die with him.

Sir *William Stanley* going from *Ireland*, to have 1600 Men for the *Low-Countries*, *Feugh Mackheugh*, being a known Traitor, brought him certain Men, and bad his Men do as Sir *William Stanley* would have them to do, whether it were right or wrong; and thereupon they ſhook hands and parted.

To this Sir *John Perrot* ſaid, If *Stanley* be a Traitor, what is that to me?

It was proved that Sir *Thomas Williams* ſent Letters from *Ireland* into *England*, to Sir *John Perrot*, with ſtrict charge given to the Bearer that he ſhould deliver them ſafely to his own hands; and made them to be ſewed to the Lining of his Doublet within his Boſom: which Letters were delivered to Sir *John Perrot* at *York* Houſe.

John Burgh of *Abſon* had Conference with Sir *William Stanley* at the *Groine*, who amongſt other Speeches aſked him what places in *England* were fitteſt for Landing, if the King of *Spain* ſhould invade *England* again? *Burgh* anſwered, *Portſmouth*. Sir *William Stanley* diſliked of that, ſaying he knew nothing, but rather thought *Milford-haven* the fitteſt place; affirming they ſhould find better Friends in *Wales* than the Queen had, and ſome of them were near the Queen.

Letters were ſent from the Duke of *Parma* to Sir *John Perrot* by one *Browne*, and an Anſwer from the ſaid Sir *John* to the ſaid Duke by the ſaid *Browne*, to whom the Duke gave a Bark. It was likewiſe proved that he ſent Letters to Sir *William Stanley*.

When Sir *John Perrot* was to come to *England*, he went about to get a Pardon for all his Actions before he would come over, wherein he ſhewed his guilty Conſcience.

Here the Queen's learned Counſel prayed the Jury to conſider well of that which had been ſaid, and willed them to go together.

Then Sir *John Perrot* willed them to conſider their Charge, and have a Conſcience in the matter; and to remember that his Blood would be required at their hands, if they dealt further than their Conſcience did warrant them.

Then the Jury departed from the Bar, and within three quarters of an hour returned to the Bar; and being demanded whether the Priſoner were guilty or not of the ſeveral Treaſons compriſed in the Indictment, they anſwered, Guilty.

Then Serjeant *Puckering* in the Queen's Name began to pray Judgment; and Sir *John Perrot* deſired moſt humbly that he might ſpeak with ſome of their Honours before Sentence ſhould be pronounced.

Whereunto they condeſcended, and commanded he ſhould be brought to talk with them in the *Chancery*; where after ſome Communication had among them, they all repaired to their places, and Sir *John* came to the Court of *King*'s-*Bench* being with them, and Judgment was ſtayed, until her Majeſty's Pleaſure were further known.

Then was the Court adjourned to the *Tueſday* next, being the ſecond of *May*; and ſo the Court ended, and every Man ſaid, *God ſave the Queen.*

For the better underſtanding of the aforeſaid Arraignment of Sir *John Perrot* and the Judgment that followeth, it is to be known that at the time of his Arraignment, being the 27th of *April*, *Anno* 34 *Eliz.* Mr. *Puckering* was the Queen's Serjeant at Law, Mr. *Popham* the Attorney General, and Mr. *Egerton* Sollicitor.

But before the day he was brought to receive Judgment, her Majeſty's ſaid learned Counſel were removed as followeth; that is to ſay, Mr. *Puckering* was made Lord Keeper of the great Seal of *England*; Mr. *Popham* was made Lord Chief Juſtice of the *Queen*'s-*Bench*, and Mr. *Egerton* of Sollicitor was made Attorney General.

This making and removing of Officers was done at the Court of *Greenwich* on *Saturday* the 28th of *May* 1592.

My Lord Keeper went to *Weſtminſter* to take his Oath very honourably, with Lords, Knights and Gentlemen, on *Saturday* the 4th of *June* 1592. *Anno Eliz.* 34. and that Day took his Oath, and ſat firſt in the Chancery. On *Wedneſday* following he firſt ſat in the Star-chamber.

On *Friday* the 26th of *June* Sir *John Perrot* appeared before the Commiſſioners; who were,

The Lord Chamberlain,
The Lord *Buckhurſt*,
Sir *Robert Cecil*,
Secretary *Woolley*,
Mr. *Forteſcue*,
The Lord Chief Juſtice of the *Common-Pleas*,
Juſtice *Gawdie*,
Juſtice *Pennel*,
Mr. *Rookeſbie*, one of the Maſters of the Court of Requeſts.

Firſt the ſaid Sir *John Perrot* that Morning was brought in a Coach from the *Tower* to the *Old Swan*, and thence conveyed by Water to *Weſtminſter-bridge*.

Between the Hours of eight and nine of the Clock he landed at *Weſtminſter-bridge*, and was brought into *Weſtminſter-Hall*, being accompanied with Mr. *Crooke*, Son-in-Law to the Lieutenant of the *Tower*, on his right Hand, and Mr. *Blunt*, Son to the Lieutenant, on his left Hand, and being ſtrongly guarded by divers of the Yeomen of the Guard, with Halberds, and the Lieutenant's Men with Weapons all round about him: and in that ſort he was brought up to the *Queen*'s-*Bench* Bar, where he ſtood for a quarter of an hour bare-headed, expecting the coming of the Commiſſioners. But Mr. *Rookeſbie*, one of the Commiſſioners, was ſet, who had taken his place before the coming of Sir *John Perrot* into the Hall, and tarried for the coming of the reſt of his Aſſociates.

The ſaid Sir *John Perrot* was clothed in a Doublet and Hoſe of black Sattin plain, and a Gown of wrought Velvet furred, and a ſquare or flat crowned black felt Hat, with a ſmall Band, and a plain white Ruff.

The ſaid Mr. *Crooke* and Mr. *Blunt* ſupplied the room of the Lieutenant, for that he was ſick, and could not be there in Perſon.

Divers of the Queen's Commiſſioners, and her learned Counſel being come to the Hall, ſtaid until the coming of the Lord Chamberlain, at whoſe coming they all took their places and ſat in Judgment.

Then an O-yes was made, and the Lieutenant of the *Tower* called to return his Writ, or Warrant directed unto him for the bringing of the Priſoner forth.

Then Mr. *Crooke* having the ſaid Warrant, which was written in Parchment, and having four or five Seals of red Wax annexed to the ſame by ſlit Labels, delivered in the ſame to the Court; and humbly craved that the Lieutenant might be excuſed for his abſence, and declared the cauſe thereof.

Whereupon Mr. *Sands*, Clerk of the Crown, taking the ſaid Writ, and turning his Face to the Lord Chamberlain, read the return thereof, being in Latin, the common and ordinary Return of an *Habeas Corpus*.

Then Serjeant *Snagg* for the Queen, being one of her Majeſty's learned Counſel, moved the Lords to this effect, That whereas Sir *John Perrot* was before that time indicted of Treaſon and arraigned, pleaded not Guilty, and put himſelf on the Country, who found him guilty of High-Treaſon, therefore he prayed, on her Majeſty's behalf, that Judgment might be given accordingly.

Then *Sands*, Clerk of the Crown, ſpake unto Sir *John*, ſaying, Thou haſt been heretofore indicted of High-Treaſon by the Name of *John Perrot* late of *London* Knight, and being thereupon arraigned, thereunto didſt plead not Guilty; and didſt put thy ſelf upon the Country, who found thee guilty of High-Treaſon: what haſt thou now to ſay for thy ſelf, why thou ſhouldſt not have Judgment to die?

Sir *John* making low Obeiſance, anſwered; Firſt, whether he might be permitted to take any Exception againſt the Indictment, and if he might, then he requeſted he might be thereunto permitted.

To this the Lord Chief Juſtice *Anderſon* anſwered, he might not be permitted.

Then Sir *John* made a proteſtation of a quarter of an hour long, wherein he included the Mercy of her Majeſty toward him, extolling her to be the only Mirror of Mercy of all the Princes in the World; and ſaid, God forbid that ever his Heart ſhould imagine Treaſon, or utter ſuch unreverend Speeches of her ſacred Majeſty, who had exalted him ſo highly from the eſtate of a Gentleman, and of whoſe Bounty and gracious Favour he had ſo liberally taſted; but complained of the hard and falſe dealings of the Witneſſes towards him in theſe Cauſes, who, he ſaid, falſely, maliciouſly, and perjuriouſly accuſed him; but ſaid he found no fault in the Proceedings of the Law, but that he had good and orderly Proceeding therein: and then again extolling her Majeſty's great Mercy and Favour towards him, proteſted his Innocency in the Cauſe to be ſuch, that he forſook God's Mercy and his Saviour's Merits, if ever he meant any Treaſon or Treachery towards that gracious Queen *Elizabeth*; and ſaid, that he knew her Majeſty's great Clemency and Mercy towards him proceeded from her Majeſty's own Heart, by the mere Providence of God, who knew his Innocence in this Cauſe, in ſtaying him ſo long from Judgment, which he affirmed to be now ſix times; eſpecially after ſuch heinous matters being proved againſt him, but, as he ſaid, moſt falſely and untrue.

Whereupon my Lord Chamberlain conceiving theſe Words to tend, that her Majeſty had ſo long deferred Judgment, being perſuaded thereunto of his Innocency in the Fact, and that her Majeſty was perſuaded that he had been hardly dealt withal, and unworthily condemned; wherefore my Lord Chamberlain ſaid, he was much to blame to uſe any ſuch Speeches to that end or purpoſe; and ſaid, That the conceit of his Innocency was not the cauſe her Majeſty deferred his Judgment ſo long; and uſed very vehement Speeches againſt the ſaid Sir *John Perrot* in that point, ſaying his Treaſons were moſt manifeſt and apparent, and for his Trial he received more favour than any other Traitor that ever he ſaw, and there were more Witneſſes of his own Men and others than ever he ſaw againſt any other Traitor.

Whereupon Sir *John* ſaid, I pray your Lordſhip interrupt me not: for the Lord Chamberlain began theſe Speeches in the midſt of Sir *John*'s matter.

Then ſaid my Lord Chamberlain, You muſt be interrupted in this Point; and proceeded more vehement and earneſt againſt him than before.

Sir *John Perrot* pray'd his Lordſhip not to miſconſtrue his meaning, and ſaid, he meant no ſuch matter touching her Majeſty's conceit of his hard uſage, as his Lordſhip took his words to be; for, ſaid he, I can recite my words again, which in effect were, that her Majeſty being the only Prince of Mercy, had dealt with him moſt graciouſly, in forbearing thus long with him for his Judgment.

Mr. *Egerton*, now Attorney, then ſtood up, and directing his Speeches to my Lord Chamberlain and the reſt of the Bench, ſaid, he had thought to have moved their Lordſhips touching Sir *John Perrot*'s Speeches in that point, which, as he ſaid, were by proteſting his Innocency to ſeduce and deceive the Audience to think him innocent, and not guilty of Treaſon, and that he had been injuriouſly condemned; whereas it was moſt manifeſt that he was moſt juſtly condemned of moſt heinous Treaſons; and that in his Trial he received moſt favourable hearing.

Whereunto Sir *John Perrot* replied and ſaid, Mr. Attorney, You did me wrong now, as you did me before.

I never did you wrong, ſaid Mr. Attorney.

You did me wrong, ſaid Sir *John*.

Inſtance wherein I did you wrong, ſaid Mr. Attorney.

You did me wrong, ſaid Sir *John*.

I never did you wrong, ſaid Mr. Attorney.

All theſe Speeches were ſpoken with great vehemency each to the other.

My Lord *Buckhurſt* directed his Speeches towards Sir *John* to the like effect, touching his Guiltineſs and Trial, as my Lord Chamberlain had ſaid before; adding further, That whereas he went about to perſuade the Audience, that the Cauſe which moved her Majeſty to defer his Judgment, was her conceit of ſome hard Proceeding againſt him at his Arraignment, which was not the Cauſe indeed, that therein he did injury to the Judge, Jury and Witneſſes; and ſaid it was very evilly done of him, to utter any Speeches to any ſuch end: ſaying further, that my Lord himſelf had been at and upon the Trial of divers Traitors before that time, far Sir *John*'s Betters, and ſaid he had ſeen divers Traitors condemned of Treaſon upon a tenth part of the Evidence that was againſt him, and yet juſtly condemned of Treaſon; and you, Sir *John*, are condemned juſtly of a Maſs of Treaſons; and the ſaid Lord ſaid, in his Conſcience he thought him guilty of moſt heinous Treaſons, and that he was worthily condemned: and he ſaid alſo, that divers and ſundry Witneſſes very ſufficient had proved Treaſon againſt him moſt manifeſt; and ſaid withal, Sir *John*, would you have all theſe, being ſo many in number, as teſtified againſt you, to be all perjured, and you only believed? No, no, it is not poſſible to be true, neither will any Man believe it, Sir *John*.

My Lord Chamberlain ſpake again and ſaid, There had been thirty Witneſſes produced againſt him at his Arraignment, who proved Treaſon againſt him; and that he was a Traitor worthily condemned of Treaſon; and ſaid, he never ſaw any Traitor have ſuch indifferent Trial, and ſuch ſufficient Proofs produced againſt him: adding further, that he might ſpeak his Will, but no Man would believe him; and that he had ſpoken much already, but not a true word of all he ſpake.

Then Sir *John* alledged that the Matter was ſet forward and followed by his Enemies in *Ireland*, and that he was condemned by *Iriſh* Witneſſes all, and that no one *Engliſh* Witneſs had proved Treaſon againſt him.

My Lord *Buckhurſt* ſaid, He had both *Iriſh* and *Engliſh* Witneſſes, and thoſe his own Men.

Sir *John* ſaid, It was more than he knew.

Sands ſaid, *Philip Williams* was an *Engliſhman*.

Sir *John Perrot* ſaid, He proved no Treaſon: and further he ſaid, That the *Iriſh* Witneſſes had no reſpect of an Oath; and that for a ſmall value, a Man might procure a number to ſwear any thing. And for proof thereof, he appealed to ſome of the Bench that had been in *Ireland*, and threw his Hand towards Mr. *Rookeſby*, that they knew the ſame to be true; he alſo ſaid, that God would plague the Proſecutors of this Cauſe againſt him for their corrupt dealing therein.

He alſo, with great proteſtation in the midſt of his Speeches, utterly denied that ever he intended or meant to murder any Man, as he was falſely accuſed; and ſaid, that now lately he had found among his Writings a Letter of that wicked fellow's that accuſed him thereof, *Stephen Seager*, and ſaid he had that Letter about him to prove his Teſtimony falſe; and ſaid that that Matter grieved him more than any other Matter. He alſo with great proteſtation denied that he was ever a Papiſt in Heart or Soul, or ever favoured any of them, but was of a ſound Religion theſe 45 Years, ever ſince the ſecond Year of King *Edward*; and for trial thereof, he referred himſelf to divers there preſent, that were old Parliament-Men, of his Speeches touching Religion in divers Parliaments.

My Lord *Chamberlain* anſwered him, That he was not charged for murdering or intending to murder any Perſon, altho' the ſame was proved to his face by his own Man.

Sir *John* ſaid, Altho' the ſame was not objected to his Charge, it was laid open againſt him to make him infamous to the World, which grieved him moſt of all; and ſaid, that *Seager* in the end denied it again.

My Lord *Chamberlain* ſaid, he denied it not, but juſtified it to his face.

Sir *John* ſaid, that *Seager* ſaid Sir *John* told him that he did it but to prove him what he would do.

Then my Lord *Anderſon*, Chief Juſtice of the Common Pleas, aſked him whether he had any thing to ſay in Arreſt of Judgment?

Sir *John* anſwered, Seeing it pleaſed God and the Queen he ſhould come to that paſs, he had nothing to ſay, but humbly ſubmitted himſelf to the Law and their Lordſhips.

My Lord *Anderſon* then aſked if he had the Queen's Pardon? Then he ſaid, he had no Pardon.

Then my Lord *Anderſon* proceeding to pronounce Judgment, began with a long Diſcourſe, reciting divers good Bleſſings of God upon this Realm, namely, the eſtabliſhing of true Religion, and to be governed with ſo gracious a Prince, and many other good Bleſſings of God beſtowed upon us; yet notwithſtanding, divers wicked and traitorous Perſons, diſcontented with the State, had practiſed divers and ſundry Treaſons, which by the great and mighty Providence of God, had been from time to time revealed. And omitting divers foreign Treaſons, many Treaſons had been practiſed here at home; and ſaid, That he himſelf had been at the Arraignment of divers, as namely of *Babington*, *Abington*, with others; adding, that the Treaſons of Sir *John Perrot* far ſurpaſſed them all, moſt wickedly conſpiring her Majeſty's Death and Deprivation, and Invaſion of this Realm by foreign Enemies, and taking in the *Spaniards*, to the Deſtruction of ſo many thouſands of good and natural Subjects. Lord *Anderſon* conſented with the two other Lords, that he was worthily and juſtly condemned of Treaſon, of good and ſufficient Proof; and ſaid, that at his Arraignment he had Indifferency with Favour, and commended the Goodneſs and Subſtantialneſs of the Jury that tried him at his Arraignment. And then he proceeded to Judgment, which was by him pronounced to this effect:

That he ſhould be carried by the Lieutenant of the *Tower*, to the *Tower*, which was the place from whence he came, and from thence to be drawn upon a Hurdle thro' the City of *London* to the place of Execution, and there to be hanged, and to be cut down alive, and his Bowels and Privy-Members to be cut off, and caſt in the Fire in his ſight, his Head to be cut off, and his Body to be cut in four quarters, to be diſpoſed at the Queen's pleaſure, and God have Mercy upon thee.

Then ſaid Sir *John*, Seeing it pleaſed God and the Queen that he ſhould be thus judged, his Life ſtood in her Majeſty's merciful Hands, whoſe Life he wiſhed, and prayed God that it might be three times, yea five times as long as ſhe hath lived already; with divers other good and godly Wiſhes to her Majeſty: and he prayed God that among her Subjects the innocent Lambs might be known from the ſcabbed Goats; and if the living God who knew his Innocency would put it into her Princely Heart to be merciful unto him for his Life, that he would, as always heretofore he did, ſerve her Majeſty moſt faithfully againſt her malicious Enemies; yea and to ſtop the mouth of a Cannon, and fight againſt the Dogs the *Spaniards*; and ſaid he knew her Majeſty to be the Fountain of Mercy, and wiſhed that utter Deſtruction might enſue to him and his Progeny, if ever he meant Treaſon againſt Queen *Elizabeth*: which very words he uttered and wiſhed divers times before and after; and ſaid, that ſhortly God doubtleſs would make manifeſt his Innocency, and that to her Majeſty and the World.

He alſo ſaid, that he wiſhed not now to live, by reaſon of his Infamy in his Country, and that his Name and Blood was corrupted, which had been of antient continuance, and never before that time ſpotted: and ſaid, Wo be unto me that am the firſt of my Houſe and Name that ever was attainted or ſuſpected, and ſhook his Hand: and having a Carnation in his Hand, he ſaid, I care not for Death the value of this Flower, I fear it not; and wiſhed that he had never offended God more than he had offended the Queen's Majeſty. Which Words he pronounced contrary at the firſt, but preſently reformed them.

Then he declared he had certain Petitions, which he humbly deſired their Lordſhips to move her Majeſty in on his behalf.

The firſt Petition was, That it would pleaſe her Majeſty of her abundant Mercy to pardon his Life, that he might have a better Room, for his Lodging was a ſhort Chamber, only room for his Bed and a Table, and that he never went out of Doors, nor had any Air to comfort him.

To this my Lord *Chamberlain* anſwered, That the Room was ſuch as was fit for ſuch a Man as he was.

The ſecond Petition was, That he might have a Preacher appointed unto him, and that he might be permitted to receive the Sacrament, which he ſaid he did not ſince his Commitment to the *Tower*, but ſaid he received the ſame in my Lord Treaſurer's Houſe.

To this Petition my Lord *Chamberlain* anſwered, That he never heard that he deſired or wiſhed any ſuch thing before, which if he had, it might have been granted him. Sir *John Perrot* ſaid, that he had requeſted the Lieutenant for the ſame twenty times; and ſaid, Here is a Man that knoweth the ſame, meaning and pointing at Mr. *Crooke*, ſtanding next him on his Right Hand: which thing Mr. *Crooke* voluntarily and without aſking diſavowed; and ſaid he knew no ſuch thing. Then ſaid Sir *John*, Mr. Lieutenant well knoweth it, and will confeſs the ſame.

My Lord *Chamberlain* ſaid, he ſhould have his Petition herein granted: And that they, the Juſtices and Commiſſioners, had Authority to grant the ſame without moving her Majeſty therein.

The third Petition was, That if he ſhould ſuffer Death, that then their Lordſhips would be humble Suitors to her Majeſty, that ſeeing he was a Gentleman born, and that he had been advanced to Place and Calling by her Majeſty, and ſerved her Majeſty in place of Honour, he might die a Gentleman's Death, and be ſpared from drawing thro' the Streets, and the reſt of the Judgment; and ſaid, he was a Gentleman of antient Deſcent, and but a Gentleman.

The fourth Petition was, That they would move her Majeſty to be good and gracious to his Son, meaning Sir *Thomas Perrot*, and that they would put her Majeſty in remembrance of her gracious Promiſe made unto Sir *Philip Sidney* and Sir *Thomas Perrot*, that her Majeſty would be good to them; eſpecially that her Majeſty would be good to that virtuous and gracious Lady my Lady *Dorothy*: and then ſaid, that he never received any penny of her Marriage, nor ever aſſured her any Jointure, for which he was now very ſorry; and ſaid, that ſomething moved him ſo to do, which now grieved him very ſore.

He alſo ſaid, that he had made Eſtates of his Lands, a dozen, ſixteen, and twenty Years paſt; for that he had Children by divers Venters, and that he would have his Lands to remain in his Name, and now he had but one Son, the other having died in her Majeſty's Service. He ſaid, Peradventure Holes may be now found in the ſame; therefore he again requeſted that their Lordſhips would move her Majeſty to be good to his Son and his Wife, and as he heard to a little Son which they had, and which hereafter may do her Majeſty Service.

He alſo oftentimes proteſted with great proteſtation that he never meant evil, and wiſhed Confuſion to him and his Poſterity if he were guilty of Treaſon. And if he were, he utterly renounced the Merits and Mercy of his Saviour Jeſus Chriſt.

And then ſpeaking to my Lord *Chamberlain*, ſaid, he excepted his Lordſhip, for that he ſat Commiſſioner for her Majeſty, otherwiſe he was as true a Subject as any in *England* whoſoever; and herewith clapped his Hand upon the Bar mightily.

And as he was departing from the Bar, he returned again towards the Lords, and ſaid, he could not diſpend 1200*l.* a Year, altho' it was bruited he could diſpend many thouſands.

He alſo made mention he was in debt.

Then was he conveyed away from the Bar in the ſame manner he was brought thither, and brought by Water to the *Old Swan*, for that he could not ſhoot the Bridge, and all the Guard and others attending him in Wherrys; and from the *Old Swan* he was conveyed in a Coach into the *Tower*, as he was brought from the *Tower* to *Weſtminſter* that Morning.

He alſo ſeemed in his Speeches to refer all things to God, who, as he ſaid, beſt knew the ſecret of this Cauſe. Again and very zealouſly he wiſhed and hoped that all things ſhould be by him made manifeſt; and in all his Proteſtations and Speeches referred him and his to God alone.

Then the Lords and Commiſſioners ſitting a little ſpace after Sir *John*'s departure, and until he took Barge, an O-Yes was made, and the Commiſſion of Oyer and Terminer was determined by Proclamation made in theſe words following:

All manner of Perſons of *England* and *Ireland*, that had any thing to do before my Lords the Queen's Majeſty's Juſtices of Oyer and Terminer in this preſent Cauſe, may depart hence in God's Peace, and the Queen's Majeſty's, and keep their Day again upon a new Summons, for my Lords the Queen's Juſtices do determine their Commiſſion; and then they all cried, *God ſave the Queen. Amen.*

Then my Lords aroſe, and it was at the ſtroke of ten of the Clock at Night.

Afterwards the Queen began to be appeaſed towards him, and was often heard to applaud that Reſcript of *Theodoſius*, *Honorius*, and *Arcadius*: *If any Perſon ſpeak ill of the Emperor thro' a fooliſh raſhneſs and inadvertency, it is to be deſpiſed*; *if out of Madneſs, it deſerves Pity*; *if from Malice and Averſion, it calls for Mercy.* But while he thus had hopes of his Life, he fell ſick, and died in the Tower in *September* following; but the Queen granted his Deſire, in ſuffering his Eſtate to go to his Son, who had married the Earl of *Eſſex*'s Siſter.

XVI. *The Trial of* Robert *Earl of* Eſſex, *and* Henry *Earl of* Southampton, *before the Lords, at* Weſtminſter, *for* High-Treaſon, *the* 19*th of* February, 1600. 43 Eliz.

A SPACIOUS Court was made in *Weſtminſter-Hall*, where the Lord Treaſurer *Buckhurſt* ſat as High Steward of *England*, under a Canopy of State; where ſat alſo about the Table, the Earls, Barons, and Judges of the Land, according to their Degrees.

The Judges were theſe;

The Lord Chief Juſtice *Popham*, and the Lord Chief Juſtice *Anderſon*.

The Lord Chief Baron Sir *William Periam*.
Juſtice *Gawdie*.
Juſtice *Fenner*.
Juſtice *Walmeſley*.
Juſtice *Warburton*.
Juſtice *Kingſmill*.
Mr. Baron *Clarke*.

Theſe ſat all in the Court next the Bar, before the High Steward. Seven Serjeants at Arms came in with Maces before the High Steward, and laid them down before him in the Court. The King at Arms ſtood on the one ſide of the High Steward by his Chair of Eſtate, and one of her Majeſty's Gentlemen Uſhers with his white Rod in his Hand on the other ſide. The Clerk of the Crown and his Aſſiſtant ſat before him, to read the common Indictments and Examinations. The Captain of the Guard (Sir *Walter Raleigh*) and forty of the Queen's Guard were there to attend the Service. Then the Serjeant at Arms made three O-Yes! and Proclamation, That the Lord High Steward of *England* commanded Silence, and to hear the Commiſſion read, upon pain of Impriſonment. Then the Clerk of the Crown read the Commiſſion, whereunto the Earl of *Eſſex* was very attentive.

Another Proclamation was made, That the Lord High Steward of *England* commanded all Juſtices to whom any Writs had been directed for this Service, to bring them in, and certify the ſame.

Another Proclamation was made by a Serjeant at Arms, That the Lieutenant of the Tower of *London* ſhould return his Precept, and bring forth his Priſoners, *Robert* Earl of *Eſſex*, and *Henry* Earl of *Southampton*.

Then the Lord High Conſtable of the *Tower*, the Lieutenant of the *Tower*, and the Gentleman Porter, who carried the Ax before the Priſoners, came firſt in, and the Priſoners followed and made their appearance at the Bar, the Gentleman Porter with the Ax ſtanding before them, with the Ax's Edge from them; and ſo the Lieutenant delivered his Precept into the Court.

The two Earls (which were Priſoners) kiſſed one another's Hands, and embraced each other.

Another Proclamation was made, That the Serjeant at Arms to the Queen's Majeſty do return his Precept of the Names of all the Peers of *Robert* Earl of *Eſſex*, and *Henry* Earl of *Southampton*, the which he delivered into the Court accordingly.

Another Proclamation was made, That all Earls, Viſcounts, and Barons of the Realm of *England*, which were Peers of *Robert* Earl of *Eſſex*, and *Henry* Earl of *Southampton*, and ſummoned to appear this Day, do make anſwer to their Names, upon pain and peril that will fall thereon.

Then the Lords were called, and anſwered and appeared as followeth:

Edward Earl of *Oxford*.
Gilbert Earl of *Shrewſbury*.
William Earl of *Derby*.
Edward Earl of *Worceſter*.
George Earl of *Cumberland*.
Robert Earl of *Suſſex*.
Edward Earl of *Hertford*.
Henry Earl of *Lincoln*.
Charles Earl of *Nottingham*.
Thomas Viſcount *Bindon*.
Thomas Lord *Dela Ware*.
Edward Lord *Morley*.
Henry Lord *Cobham*.
Henry Lord *Stafford*.
Thomas Lord *Grey*.
Thomas Lord *Lumley*.
Henry Lord *Windſor*.
William Lord *Chandois*.
Robert Lord *Rich*.
Thomas Lord *Darcy*.
George Lord *Hunſdon*.
Oliver Lord *St. John* of *Bletſo*.
Thomas Lord *Burleigh*.
William Lord *Compton*.
Thomas Lord *Howard*, Baron of *Walden*.

Then the Earl of *Eſſex* deſired to know of my Lord Chief Juſtice, whether he might challenge any of the Peers or no; whereunto the Lord Chief Juſtice anſwered, No: and Mr. Attorney General alledged a Caſe in *Henry* VIII.'s Time, of my Lord *Darcy*. Whereupon the Earl bad them go on.

[When the Lord *Grey* was called, the Earl of *Eſſex* laughed upon the Earl of *Southampton*, and jogged him by his Sleeve.]

Then they were called to hold up their Hands at the Bar, which they did. And then the Clerk of the Crown read the Indictments. That being done, they were bid to hold up their hands again, which they did, and another Indictment was read, whereunto the Earl of *Eſſex* was attentive. After which, the Clerk of the Crown aſked them, whether they were Guilty, or not Guilty: they pleaded not Guilty: and for their Trials they put themſelves upon God and their Peers. They ſpake this ſeverally.

Then my Lord High Steward in a few words gave the Peers a Charge, requiring them to have a due regard of their Conſciences.

Serjeant Yelverton*'s Speech.*

Firſt he began to open the Evidence, and ſhewed the Effect of the Indictment, and held it in his Hand, and ſaid as followeth:

May it pleaſe your Grace (ſpeaking to the High Steward), about the 8th of *February* laſt, my Lord of *Eſſex* (there Priſoner at the Bar) went about with armed Men very rebelliouſly to diſinherit the Queen of her Crown and Dignity; which when it came to her Majeſty's Ear, ſhe of her abounding Mercy ſent to ſee if it were poſſible to ſtop Rebellion: and who did ſhe ſend? She ſent (my Lord) no worſe Perſons than my Lord Keeper, my Lord Chief Juſtice of *England*, the Earl of *Worceſter*, and Sir *William Knowles*; all which went in her Majeſty's Name, and commanded the Earls and their Adherents very ſtrictly to diſſolve their Aſſemblies, and to lay down their Arms. But he knowing it, very treacherouſly impriſoned the ſaid Lords and Counſellors by her Majeſty ſo ſent, and altogether refuſed her Majeſty's Authority: and divers of their Confederates cry'd out, Kill them, kill them! thereby putting her Majeſty's Council in fear of their Lives; and withal, left them with Sir *Jo. Davis* to keep ſafe, leſt they themſelves ſhould miſcarry in the City. But, my Lord, I muſt tell you this by the way, that my Lord of *Eſſex* can no way excuſe nor ſhadow this his rebellious Purpoſe, nor turn his Actions to any other intent: for the ſending of *Temple* his Secretary into *London* the night before, manifeſteth his determination, without Scruple or Queſtion; for by that means he was in hopes to have had the help of the Citizens, her Majeſty's moſt loyal and loving Subjects: and he uſed not only his beſt endeavours to ſtrengthen himſelf abroad, but alſo fortified his Houſe at home with ſtrong Defence and Ammunition; all which were Tokens of his Inclinations to a ſudden and unexpected Rebellion, and were confirmed in the opinion of all the World, when he withſtood divers of her Majeſty's Subjects ſtanding in her Highneſs's Right, and Defence of her Peace, againſt him and his Confederates. Good my Lord, I beſeech your Grace, and you my Lords that are the Peers, to underſtand, That if any Man do but intend the Death of the King, it is Death by the Law: for he is the Head of the Commonwealth, and all his Subjects as Members ought to obey and ſtand with him. But as for this Rebellion, being duly conſidered, it contains in it many Branches of Treaſon, which are and will be directly proved: which being found to be ſo, my Lords, who are their Peers, are to find them Guilty. Hereof need to be made no doubt, for it is more manifeſt than the Sedition of *Catiline* to the City of *Rome*, and conſequently *England* is in no leſs danger; for as *Catiline* entertained the moſt ſeditious perſons about all *Rome* to join with him in his Conſpiracy, ſo the Earl of *Eſſex* had none but Papiſts, Recuſants, and Atheiſts for his Adjutors and Abettors in their capital Rebellion againſt the whole Eſtate of *England*. My Lord, I much wonder that his Heart could forget all the Princely Advancements given him by her Majeſty, and be ſo ſuddenly beflinted, as to turn them all to rebellious Ends; but it ſeems this overweighing a Man's own Conceit, and an aſpiring Mind to wiſhed Honour, is like the Crocodile, which is ever growing as long as he liveth. Your Lordſhips know in what ſort they went into the City, with Armour and Weapons, and how they returned to *Eſſex-Houſe* again, as you my Lord Admiral, and my Lord of *Cumberland*, with others of their honourable Peers do know; which makes me wonder they do not bluſh to be ſo forward to ſtand upon their Trials without Confeſſion, when their intended Treaſons are in all Men's Judgments palpable. For my part, my Lord, I can conjecture nothing hereby; and it will not eaſily out of my own conceit, but that there is ſome further Matter in it than as yet appears;

but my hope is, that God of his Mercy, that hath revealed their Treaſons, will not ſuffer the reſt of his or any others to the hurt of the State, or prejudice to her Majeſty's moſt Royal Perſon, whom I pray God long to preſerve from the hands of her Enemies. *Amen*, cry'd the Earl of *Eſſex* and the Earl of *Southampton*, and God confound their Souls that ever withed otherwiſe to her ſacred Perſon.

[*] *Attorney Gen.* May it pleaſe your Grace, the Lords Chief Judges, which are the Fathers of the Law, do know that the Thought of Treaſon to the Prince, by the Law is Death; and he that is guilty of Rebellion, is guilty of an Intent (by the Laws of the Land) to ſeek the Deſtruction of the Prince, and ſo adjudged Treaſon: and I will prove this unto your Lordſhips by two ſeveral Caſes. Firſt, he raiſeth Power and Strength in a ſettled, Government, the Law will not ſuffer it, but it is conſtrued as in caſe of High-Treaſon; he that doth uſurp upon it, the Law doth intend that he hath purpoſed the Deſtruction of the Prince; he that doth aſſemble Power, if the King doth command him upon his Allegiance to diſſolve his Company, and he continue it, without any queſtion it is High-Treaſon: he that doth levy Forces to take any Town in the Prince's Dominions, it is ſo likewiſe. But my Lord of *Eſſex* hath levied Power to take the Tower of *London*, and to ſurprize the Queen's own Court; then this muſt needs be higher than the higheſt; and he that doth fortify himſelf againſt the Prince's Power, muſt needs be within the compaſs of Treaſon. And by your favour, my Lord of *Eſſex*, I will now ſpeak a word unto you, for I know you can ſpeak as well as any Man; That whereas you ſay the Law of Nature compelled you to do this, which in judgment you have, tho' moſt treacherouſly attempted, I will in a word diſprove your own Judgment, admitting you muſt make that freely your Argument. Firſt, I will open the Quality of your Rebellion; Secondly, the Manner of it; Thirdly, I will touch the Circumſtances; and, Laſtly, I will obſerve the Perſon. The Quality hath High-Treaſon; for which I think I ſhall not need to ſay any more. For the Manner of it, I hold it an unnatural Act for a natural Subject to commit Treaſon againſt his natural Sovereign; and methinks it cannot be by any probability denied, but that this High-Treaſon is, and muſt be, both againſt the Law of God, Nature, and Reaſon. And under your Grace's favour, my Lord, the manner of it being of ſo high a Nature as it is, muſt needs be High-Treaſon, which was not only carried in their Hearts, but, for a continual Remembrance, kept in a black Purſe, which my Lord of *Eſſex* wore on his Breaſt next to his Skin. Let me note unto you, my good Lord, that they being both born under the Government of this Princeſs, and ſo highly advanced by her Majeſty's Favour, ſhould have trembled once to think of ſuch a Rebellion as they have enterprized. Doth not my Lord of *Eſſex* now enjoy his Earldom of *Eſſex* by the Gift of *Henry* VIII. to his Father? Was not he made Maſter of her Majeſty's Horſe at twenty-two Years of Age? one of her Majeſty's Council? to be Earl Marſhal of *England?* General of her Majeſty's Forces in *Ireland*? And laſtly, hath he not received divers Gifts and Sums of Money, to his own uſe, of her Majeſty's Gracious and Princely Bounty, to the value of thirty thouſand Pounds? Yet all theſe were as cleverly forgotten, as if they had never been. Now ſhall I ſhew you the Perſon whom this concerns, even her Majeſty's ſacred Perſon, againſt whom their Attempts have been, only for the undertaking of God's Cauſe, and exerciſing of Juſtice with admirable Mercy; and tho' I cannot ſpeak without reverent Commendations of her Majeſty's moſt honourable Juſtice, yet I think her overmuch Clemency to ſome, turneth to overmuch Cruelty for herſelf: for tho' the rebellious Attempts were ſo exceeding heinous, yet out of her Princely Mercy, no Man was racked, tortured, or preſſed to ſpeak any thing farther, than of their own accord, and willing minds, for Diſcharge of their Conſciences they uttered; and then, to ſee the Mercy of God that will have the Truth known, it is admirable beyond the Conceit of Man's Capacity: for they being ſeverally examined, notwithſtanding, all agreed directly, without varying. But when her Majeſty ſent a Counſellor of State to have the Earl come before her, when ſhe heard of his Rebellion, for no other end or purpoſe but for his Admoniſhment, he refuſed to come; and having a guilty Conſcience, and ſuſpecting his Treaſons were laid open, took conſultation to ſurprize the Court and the Tower of *London*, all at one inſtant: and for this purpoſe, had appointed *Blunt* the Cuſtody of the Gates, Sir *Jo. Davis* of the Hall, Sir *Charles Davers* of the Preſence, and himſelf of her Majeſty's Perſon. Whereupon *Blunt* ſaid, Ah! what Humour ſhall we find them in at the Court? This was not all; for the Earl he muſt call a Parliament, and he would decide matters, not making for his purpoſe: but now in God's moſt juſt Judgment, he of his Earldom ſhall be *Robert* the laſt, that of a Kingdom thought to be *Robert* the firſt. And my Lord did not any whit amuſe himſelf to give order, that if he and his Complices ſhould miſcarry in *London*, then the Counſellors which he cauſed to be impriſoned in his Houſe, ſhould be ſlain. It was plain Treaſon in him to ſtand out, being by them charged to diſſolve his Company upon his Allegiance. What ſhall I need to ſtand upon further Proofs? It is ſo evident, and my Lord himſelf will not deny, but that he had a Schedule, containing in it divers of his Friends Names; which, as I conjecture, muſt needs contain ſome other matter, for he durſt not let it come to light, but burnt it: and as for *Owen*, *Saliſbury*, *Davis* and *Treſham*, they muſt have the guard of the Lords of the Council, to uſe them at their pleaſure.

Eſſex. Will your Lordſhips give us our turns to ſpeak, for he playeth the Orator, and abuſeth your Lordſhips Ears and us with Slanders; but they are but faſhions of Orators in corrupt States. Conſidering ſome Privileges which we might challenge, equal Anſwers and equal Hearing were indifferent; for unleſs it will pleaſe your Lordſhips that we might anſwer to every particular, we ſhall ſoon confound our own Memories, and give Liberty and Advantage to our Enemies whereupon to lay hold, for lack of preciſe Anſwer to each particular Objection. And ſeeing now, my Lord, you have undertaken the place of a Judge, I beſeech you, as you prove againſt us, we for our ſelves may anſwer what may fall out to be fit.

Here the Lord of *Eſſex* was interrupted, and not allowed to ſpeak, until *Henry Witherington*'s Examination was read, which imported thus much:

Witherington's *Examination.*

That upon the Sunday morning he was ſent for to *Eſſex-Houſe*, where he found the place guarded with many Gentlemen in Arms, who told his Uncle that came in his Company, that he feared they were come into an ill Action; my Lord of *Eſſex* bad them very welcome, and intreated him to go with him, for he feared hurt of ſome private Enemies. And when Mr. *Witherington* perceived the Council were ſtayed, he feared danger to them; for he heard ſome bid, *Stab them*; and others, *Let us make an end of them, we ſhall have the fewer to deal withal.* And he proves further, that order was left, That if the Earl ſhould miſcarry in *London*, then the Lord Keeper and the Lord Chief Juſtice ſhould be killed, and alſo when the Council had commanded him, upon his Allegiance, to diſſolve his Forces, he anſwered nothing: he likewiſe ſaw my Lord of *Bedford* brought in that morning; and Mr. *Witherington*, fearing he might be drawn on to his Deſtruction, prayed him only to follow him, for when opportunity ſerved in *London*, they would leave the Troop; and that they followed the Earl into *London*, and on a ſudden loſt him.

Eſſex. I will not (I proteſt to God) ſpeak to ſave my Life; for thoſe that proſecute it againſt me, ſhall do me a good turn to rid me of my Miſery, and themſelves out of Fear. As for Mr. *Witherington*, he does much diſparage himſelf if he ſaith ſo, for I proteſt to God upon my Salvation, I never heard ſuch Words as *Kill him*, *kill him*: and Mr. *Witherington* came voluntarily to my Houſe, unſent for, and in the forenoon did come into our Company, and took to heart as much as we did whatever we went about: and theſe are but Reports, for he that is the Witneſs, is now ſent into the Country about ſome Employments. But if it had been a Secret, Mr. *Witherington* being privy thereto, might have been a good Witneſs; but being ſo openly ſpoken, (as you ſay) a hundred more might have teſtified it, yet none ſpake it beſides. And as for locking up the Council, I proteſt to God it was done in Charity, and without Diſloyalty, but intending only to ſave them, leſt they ſhould take hurt; conſidering the People abroad in the Streets, with a great and ſudden Outcry, ſaid, *We ſhall be ſlain.* At which time we thought our Enemies had been come to beſet the Houſe, for my intent was no otherwiſe than Loyal to her Majeſty and them.

The Lord Keeper, the Earl of *Worceſter* and the Lord Chief Juſtice *Popham*, proved in Court upon their Honours, that they heard the words *Kill them*, *kill them*; but they would not charge my Lord of *Eſſex* that they were ſpoken either by his Privity or Command.

The Declaration of the Lord Keeper, *the Earl of* Worceſter, *and the Lord* Chief Juſtice *of* England.

Upon Sunday, being the 8th of *February* laſt paſt, about ten of the Clock in the forenoon, the Lord Keeper of the Great Seal, the Earl of *Worceſter*, Sir *William Knollis* Comptroller of her Majeſty's Houſhold, and the Lord Chief Juſtice of *England*, being commanded by direction from the Queen's Majeſty, did repair to the late Earl of *Eſſex*'s Houſe; and finding the Gate ſhut againſt them, after a little ſtay they were let in at the Wicket. And as ſoon as they were within the Gate, the Wicket was ſhut upon them, and all their Servants kept out.

At their coming thither, they found the Court full of Men aſſembled together in a very tumultuous ſort: The Earls of *Eſſex*, *Rutland* and *Southampton*, and the Lord *Sandys*; Maſter *Parker*, commonly called Lord *Mounteagle*, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and many other Knights and Gentlemen, and other Perſons unknown, which flock'd together about the Lord Keeper, *&c.* And thereupon the Lord Keeper told the Earl of *Eſſex*, that they were ſent from her Majeſty, to underſtand the cauſe of this their Aſſembly, and to let them know, That if they had any particular cauſe of grief againſt any perſons whatſoever, it ſhould be heard, and they ſhould have Juſtice.

Hereupon the Earl of *Eſſex* with a very loud Voice declared, That his Life was ſought, and that he ſhould have been murdered in his Bed; that he had been perfidiouſly dealt with; that his Hand had been counterfeited, and Letters written in his name; and that therefore they were aſſembled there together to defend their Lives: with much other Speech to like effect. Hereupon the Lord Chief Juſtice ſaid unto the Earl, That if they had any ſuch matter of grief, or if any ſuch matter were attempted or purpoſed againſt him, he willed the Earl to declare it; aſſuring him that it ſhould be truly related to her Majeſty, and that it ſhould be indifferently heard, and Juſtice ſhould be done, whomſoever it concerned.

To this the Earl of *Southampton* objected the Aſſault made upon him by the Lord *Gray*. Whereunto the Lord Chief Juſtice ſaid, that in his caſe, Juſtice had been done, and the Party impriſoned for it. And hereupon the Lord Keeper did eftſoons will the Earl of *Eſſex*, that whatſoever private Matter or Offence he had againſt any Perſon whatſoever, if he would deliver it unto them, they would faithfully and honeſtly deliver it to the Queen's Majeſty, and doubted not to procure him honourable and equal Juſtice, whomſoever it concerned: requiring him, that if he would not declare it openly, that he would impart it unto them privately, and doubted not but they would ſatisfy him in it.

Upon this there was a great Clamour raiſed among the multitude, crying, *Away, my Lord, they abuſe you, they betray you, they undo you, you loſe time.* Whereupon the Lord Keeper put on his Hat, and ſaid with a loud Voice, My Lord, let us ſpeak with you privately, and underſtand your griefs: and I command you all upon your Allegiance, to lay down your weapons, and to depart, which you ought all to do, being thus commanded, if you be good Subjects, and owe that duty to the Queen's Majeſty which you profeſs. Whereupon they all brake out into an exceeding loud ſhout and cry, crying, *All, all, all.*

And whilſt the Lord Keeper was ſpeaking, and commanding them upon their Allegiance, as is before declared, the Earl of *Eſſex* and the moſt part of that company did put on their Hats; and ſo the Earl of *Eſſex* went into the Houſe, and the Lord Keeper, *&c.* followed him, thinking that his purpoſe had been to ſpeak with them privately, as they had required. And as they were going, ſome of that diſordered Company cried, *Kill them.* And as they were going into the great Chamber, ſome cried, *Caſt the Great Seal out of the Window.* Some other cried there, *Kill them*; and ſome other ſaid, *Nay, let us ſhop them up.*

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[*] *Sir* Ed. Coke.

The Lord Keeper did often call to the Earl of *Eſſex* to ſpeak with them privately, thinking ſtill that his meaning had been ſo, until the Earl brought them into his back Chamber, and there gave order to have the farther door of that Chamber ſhut faſt. And at his going forth out of that Chamber, the Lord Keeper preſſing again to have ſpoken with the Earl of *Eſſex*, the Earl ſaid, *My Lords, be patient a while, and ſtay here, and I will go into* London, *and take order with the Mayor and Sheriffs for the City, and will be here again within this half hour.* And ſo departed from the Lord Keeper, *&c.* leaving the Lord Keeper, *&c.* and divers of the Gentlemen Penſioners in that Chamber, guarded by Sir *John Davis*, *Francis Treſham*, and *Owen Saliſbury*, with muſket-ſhot, where they continued until Sir *Ferdinando Gorges* came and delivered them, about four of the Clock in the afternoon.

In the mean time we did often require Sir *John Davis*, and *Francis Treſham*, to ſuffer us to depart, or, at the leaſt, to ſuffer ſome one of us to go to the Queen's Majeſty, to inform her where and in what ſort we were kept. But they anſwered, *That my Lord* (meaning the Earl of *Eſſex*) *had commanded that we ſhould not depart before his return, which* (they ſaid) *would be very ſhortly.*

Thomas Egerton, C. S.
Edward Worceſter.
John Popham.

All which the Lord Chief Juſtice *Popham* atteſted, *viva voce.*

Attorney Gen. Yea, my Lord, you had three hundred Men in Arms in your Houſe; why did you not diſſolve them, being commanded upon your Allegiance from the Queen to do it?

Eſſex. They hearing rumours of Men about my Houſe againſt them put them into ſuch a Fear and Extaſy, that it was not in my power ſuddenly to diſſolve them, or to quench their Paſſions; and the rather, for that Sir *Walter Raleigh* deſired Sir *Ferdinando Gorges* to leave their Company, or elſe they would be all loſt; ſo that they ſtood amazed, and knew not what to do.

Southampton. Mr. Attorney, you ſpeak all this as if it were as true as the Goſpel.

Eſſex. Good my Lord, let me intreat you to mark the Circumſtances: Word was brought that Men were ſent for into the Country, to take us in our own Houſes; then we conceiving the thirſty Appetite of our private Enemies, took our ſelves to our Arms, and were glad to ſtand upon our guard for our own Defence. But as for the Lords of the Council that came to my Houſe, we being before advertiſed that we ſhould be beſet, thought it the ſecureſt way for thoſe of the Council to keep them there, not knowing what Miſchief would enſue.

Attorn. Gen. My Lord, your Grace ſees that this is without Colour or Queſtion; for my Lord Chief Juſtice had proved it plain, that they would not diſſolve their Company that was up in Arms, being charged upon their Allegiance ſo to do.

Eſſex. Good my Lord, know whether it were in my Lord of *Southampton*'s power or in mine to withold their Purpoſes ſo ſuddenly: For, not long before Sir *Walter Raleigh* had ſent to my Houſe to have Sir *Ferdinando Gorges* to come to him to *Durham-Houſe*; and we fearing him to be a private Enemy, would not ſuffer Sir *Ferdinando* to go thither, but returned anſwer, that he would meet him on the Water upon equal Terms: where Sir *Walter Raleigh* uſed the former Speeches to Sir *Ferdinando Gorges*, wiſhing him to leave our Company, or elſe he would be undone. And whereas we are charged to have dealt with Papiſts, I aſſure your Lordſhip, and it is moſt true, that Papiſts have been hired and ſuborned to witneſs againſt me; as by the means of one *Sudall*, who was a Seminary Prieſt, and ſent into *Ireland* to deal with Sir *Chriſtopher Blunt*, whom he thought to be inward with me, to touch my Honour and Reputation. Then *Bales*, the Scrivener in the *Old Baily*, hath confeſſed under his hand to forge and counterfeit my Hand in at leaſt two Letters; and theſe two honeſt Gentlemen can witneſs it.

Attorney Gen. Ay, by my troth this is true, but it was by the Procurement of one of your own Men.

Eſſex. Thou ſweareſt it, but it is not on a Book; that Man thou ſayeſt I procured to do it, his name is *John Daniel*, an arrant Thief, one that broke a Standard of mine, and ſtole a Caſket of my Wife's, and many other things. It is very probable that I ſhould truſt him ſo far, that had before betrayed me, is it not? But it is well known who ſet him at work to attempt againſt me ſo much as he hath done, to procure my hand to be counterfeited; and yet this Man, by your Judgment, muſt be a Practiſer in ſuch Matters by my own Conſent *. Well, Mr. *Attorney*, I thank God you are not my Judge this Day, you are ſo uncharitable.

Attorney Gen. Well, my Lord, we ſhall prove you anon what you are, which your Pride of Heart, and aſpiring Mind, hath brought you unto.

Eſſex. Ah! Mr. *Attorney*, lay your Hand upon your Heart, and pray to God to forgive us both.

Raleigh. That Sir *Ferdinando Gorges* told me upon the Water, that my Lord of *Eſſex* had put himſelf into a ſtrong Guard at *Eſſex-Houſe*, and this is like to be the bloodieſt day's work that ever was, wiſhing him to go to Court with ſpeed for prevention thereof: Then Sir *Walter* wiſhed Sir *Ferdinando Gorges* to refuſe their Company, elſe he would be undone. To this Sir *Walter* was ſworn.

Eſſex. Whatſoever Sir *Walter Raleigh* hath ſaid, differeth altogether from that which Sir *Ferdinando* told us at *Eſſex-Houſe*, upon his return from the Water.

Attorn. Gen. Well, my Lord, what can you deviſe to ſay for Sir *John Davis*, another of your Adherents, that Papiſt? for he hath confeſſed that he is a Papiſt and a Catholick, and drawn in by Sir *Chriſtopher Blunt*, one of your chiefeſt Counſel, and that he called for a Seminary Prieſt upon his Convertment to abſolve him.

Eſſex. If Sir *John Davis* were ſuch a Man, it cannot be but ſtrange to me to hear it; altho' I cannot ſearch into the Secrets of his Heart to accuſe him inwardly, yet I have ſeen him dutifully come to Prayers, and to the Service of God in my own Houſe with me, and behaved himſelf very godlily; and of this I can be witneſs. And as for *Blunt* (God is my Witneſs) I have been ſo far from Popery, as I have ſo earneſtly dealt with him to reform himſelf, inſomuch that he hath told me, I have been very paſſionate. But whereas you ſay, we have committed Treaſon, firſt prove that true.

Serjeant Yelvert Why, my Lord, if you deny the raiſing the Power, why ſhould ſo many Men come to your Houſe that day?

Southampt. By your favour, Mr. Serjeant *Yelverton*, a word, I hope; for my coming thither, it was not ſtrange news; and when I came that ſame morning to *Eſſex-Houſe*, I proteſt I had not above ten or twelve men attending me, which was but my uſual Company, therefore far from purpoſing to raiſe a Tumult.

Attorn. Gen. Why, the reaſon of that was, for that you thought all *London* would have riſen with you; but, good my Lord, I beſeech your Grace to hear the Oath of Sir *Ferdinando Gorges*: whoſe Evidence was read, and himſelf there in perſon did juſtify the ſame.

Sir Ferdinando Gorges *his Confeſſion.*

He depoſeth, That in *January* laſt the Earl of *Eſſex* wrote to him a Letter, wherein he complained grievouſly of his Misfortunes, and the miſerable Eſtate he ſtood in, whereof he purpoſed ſhortly to free himſelf, and therefore prayed Sir *Ferdinando Gorges* to come up to *London* to him: who coming accordingly, the Earl told him how mightily he was croſſed and diſcredited by his private Enemies, which he could not endure; for, ſaith he, I have 120 Earls, Barons, and Gentlemen, that participate in my diſcontented Humour, and will join with me, and I deſire your Help and Counſel therein. One ſpecial Friend I have in the Court, whereby I have Intelligence from time to time: And I hold our ſelves indifferently affected by the Citizens of *London*, and hope to have a good Party in *Wales*. He confeſſed alſo, that they had two ſeveral Meetings at *Drury-Houſe*, to conſult of theſe Matters; and the Projects were, Whether it were better firſt to ſurprize the Court, or to take the Tower of *London*, or to ſtir in the City. But moſt agreed, firſt to ſurprize the Court. And then and there Sir *John Davis* took Pen, Ink, and Paper, and ſet down, That ſome ſhould keep the Hall, ſome the Court-Gates, ſome the Guard-Chamber, and ſome the Preſence-Chamber; ſaying, many of the Guard had been the Earl of *Eſſex*'s Servants, and were preferred to the Queen by him, and will be more indifferent to deal with than others; and ſo my Lord ſhall have a way thro' his own Guards to come to the Privy-Chamber, and the Preſence of the Queen. And Sir *Ferdinando Gorges* ſaid to the Earl of *Eſſex*, Alas! my Lord, what is ſo ſmall a number of Men able to do in ſo worthy an Action? and ſo diſſuaded the Earl from ſurprizing the Court, and rather bade him ſubmit himſelf to the Queen's Mercy, than proceed any further. And that the Earl of *Southampton* ſaid at *Eſſex-Houſe*, Is it not three months ſince this Plot began, and ſhall we reſolve on nothing? Then upon a ſudden they all agreed, firſt to ſtir in *London*, where they aſſured themſelves of great Favour: And after the Council was lock'd up, this Deponent followed the Troops into *London*; and after ſome advice the Earl of *Eſſex* ſent him back again with a Token to deliver to the Lord Chief Juſtice only, by colour of which Token he ſet at liberty the Lord Keeper and the reſt. Laſtly, he confirmed, that he told Sir *Walter Raleigh* firſt, upon the *Thames*, of my Lord of *Eſſex*'s making his Houſe a Guard, and putting his Friends into Arms, as it is delivered by Sir *Walter Raleigh*.

Queen's Counſel. We deſire, that the Examination of Sir *Charles Davers* may be read; *which being produced, was then read to this effect:*

Sir Charles Davers*'s Examination.*

He confeſſeth, That before *Chriſtmas* laſt the Earl of *Eſſex* entred into Conſideration, how he might ſecure himſelf to have acceſs to the Queen's Preſence without Reſiſtance; and that the Reſolution was agreeable to certain Articles written with the Earl of *Eſſex*'s own Hand, and ſent to the Earl of *Southampton* to ſurprize the Court; and that there were divers Conſultations about it, and the Points were theſe: Firſt, to take the *Tower*, for it would command *London*, then to ſurpriſe the Court; and after, the Court being taken and poſſeſſed, to have aſſembled the reſt of their Friends, and to have preſented themſelves to the Queen: and that being done, and the Guards ſecured, Sir *Chriſtopher Blunt* ſhould keep the outward Gates of the Court, Sir *John Davis* the Hall and Water-gate, Sir *Charles Davers* (this Deponent) ſhould keep the Preſence and Guard-Chamber, and ſeize upon the Halberts and Penſioners Battle-Axes. The Intent was to ſurprize the Captain of the Guard at the Court, or at his own Houſe, and ſome others; and then to ſurprize the Tower of *London*: And that the Earl of *Eſſex* reſolved (theſe things being accompliſhed) immediately to have called a Parliament to reform Diſorders and private Grievances. That this Deponent utterly diſliked of theſe Courſes; and after the Alarm was given at Court, he perſuaded the Earl rather to flee into *Wales*, or other parts beyond the Seas for his Security, and avoiding the imminent Danger he was fallen into, than to truſt to the City. And laſtly, he proteſted, for his own part, what he had done in the buſineſs, was merely for the Love he bore to the Earl of *Southampton*, and not for any Malice or private Diſcontent otherwiſe.

When this was read, Mr. *Attorney General* produced the Examination of Sir *John Davis*, which contained in effect as follows:

Sir John Davis*'s Examination.*

He ſaith, That the Earl's Purpoſe was, to poſſeſs himſelf of the Court, and to take the Tower of *London*; and that they had ſeveral

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* *The Matter here refer'd to, as it came out upon a ſtrict Enquiry, was thus. The Counteſs of* Eſſex *being apprehenſive, that in thoſe troubleſome times ſome Miſchiefs might befall her Husband and her ſelf, put ſome Letters which ſhe had receiv'd from him into a Cabinet, and intruſted it into the hands of a* Dutch *Woman call'd* Rihove, *who hiding them in her Houſe, they were accidentally diſcover'd by her Husband* John Daniel; *who reading them over, and obſerving ſome Paſſages in them, which might incenſe the Queen and endanger the Earl, cauſed them to be tranſcrib'd by a Perſon expert at counterfeiting Hands; and when the timorous Counteſs was near her time of Lying-in, he told her that unleſs ſhe would give him three thouſand Pounds, he would put them into the hands of her Husband's Enemies. The good Lady, to prevent that threatning Danger, immediately gave him eleven hundred and ſeventy Pounds, and ſtill the Impoſtor only gave her the counterfeit Copies, and kept the Originals to get another Sum for them from the Earl's Enemies; for which he was ſentenc'd in the Star-Chamber to perpetual Impriſonment, fined in three thouſand Pounds, two of which were to be paid to the Counteſs, and to ſtand with his Ears nail'd to the Pillory with this Inſcription,* A wicked Forger and Impoſtor.

Meetings of Conſultation, together with the Earl of *Southampton*, Sir *Ferdinando Gorges*, *Jo. Littleton*, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and this Deponent. And theſe Matters (he confeſſeth) the Earl of *Eſſex* ſet down all with his own Hand, *viz.* Sir *Chriſtopher Blunt* to keep the outward Gate of the Court himſelf, this Deponent the Hall and Water-gate, and Sir *Charles Davers* the Preſence and Guard-Chamber; then my Lord of *Eſſex* and his Forces would have come by Land, and ſo have poſſeſſed the Preſence of the Queen. The queſtion was aſked the Earl of *Eſſex* (as this Deponent ſaith), How he would deal with Offenders, and ſuch as reſiſted him, after he ſhould be poſſeſſed of theſe things? He reſolved them by way of Anſwer, That he meant to admit them all to an honourable Trial.

Then was produced the Confeſſion of Sir *Chriſtopher Blunt*, which was as follows.

Sir Chriſtopher Blunt'*s Examination.*

He confeſſeth that the Earl of *Eſſex* ſent *Wiſeman*, about the 20th of *January*, to viſit his Wife with Letters of Compliment, and to require him to come up unto him to *London*, to ſettle his Eſtate according as he had written unto him before ſome few days.

Being demanded to what End they went to the City, to join with ſuch ſtrength as they hoped for there; he confeſſeth, it was to ſecure the Earl of *Eſſex*'s Life, againſt ſuch Forces as ſhould be ſent againſt him. And being aſked, What, againſt the Queen's Forces? he anſwered, That muſt have been judged afterwards.

But being further aſked, Whether he did adviſe to come unto the Court over Night? he ſaith, No; for Sir *Ferdinando Gorges* did aſſure, that the Alarum was taken of it at the Court, and the Guards doubled.

Being aſked, Whether he thought any Prince could have endured to have any Subject make the City his Mediator? or, to gather force to ſpeak for him? he ſaith, He is not read in ſtories of former times; but he doth not know, but that in former times Subjects have uſed Force for their mediation.

Being aſked, What ſhould have been done by any of the Perſons that ſhould have been removed from the Queen? he anſwer'd, That he never found my Lord diſpoſed to ſhed Blood; but that any that ſhould have been found, ſhould have had indifferent Trial.

Being aſked upon his Conſcience, Whether the Earl of *Eſſex* did not give him Comfort, that if he came to Authority, there ſhould be a Toleration for Religion? he confeſſeth, he ſhould have been to blame to have denied it.

Counſel. There is another Examination of Sir *Chriſtopher Blunt*'s; I pray let that be read.

Sir Chriſtopher Blunt'*s ſecond Examination.*

He ſaith, That four or five days before the Inſurrection in *London*, the Earl of *Eſſex* ſet down divers Articles with his own Hand, with Petitions to the Earl of *Southampton*, Sir *Charles Davers*, Sir *John Davis*, Sir *Ferdinando Gorges*, *Jo. Littleton*, and this Deponent; which were to the effect before remembered. And further this Deponent remembereth, That the Earl of *Eſſex*'s Purpoſe was (after theſe things ſhould be over-paſſed and ſettled) to alter the State of Government: And further this Deponent confeſſeth himſelf to be reconciled to the Pope: And moreover ſaith, that the Earl of *Eſſex* ſaid, He looked not that any ſhould be troubled for Religion, and Liberty of Conſcience; that he received Letters from the Earl of *Eſſex* the 20th of *January*, to come to *London*, whereupon he came.

The Earl of Rutland'*s Examination.*

He ſaith, That being in *London*, with the Earl of *Eſſex*, he heard him cry out in the Streets, *England* is bought and ſold to the *Spaniard*: and confeſſeth, when they had been poſſeſſed of *London*, their Purpoſe was to have taken the Lord Keeper with them to the Court, with the Earl of *Eſſex*'s Company; and that the Earl of *Southampton* and Sir *John Davis* were in ſpecial Confederacy and Truſt with the Earl of *Eſſex* in theſe Cauſes. Laſtly, That the Earl of *Eſſex* ſaid, he was ſure of Sheriff *Smith*: and this Deponent ſpecially noted, the Earl of *Southampton* was very much diſcontented.

Lord Cromwel'*s Examination.*

He ſaith, He never heard of the Matter till the ſame Sunday-morning, when the Earl of *Eſſex* coming thro' *Fleet-ſtreet*, where this Deponent lay, and being ſent for by a Man of my Lord's, he came into the Street to him; where my Lord and divers of his Followers took him by the Hand, and bade him welcome, praying him to go along with him; and the Earl of *Eſſex* cried, It is for the good of the Queen, and of you all, my Maſters. Firſt, he went to the Mayor's Houſe, and then to Sheriff *Smith*'s Houſe; and being in *Grace-Church-Street*, and hearing of the Proclamation, the Earl of *Eſſex* ſaid, Where is the Sheriff? Let him bring Muſkets and Piſtols; for I am credibly informed out of *Ireland*, that the Kingdom of *England* is ſold to the *Spaniard*. And ſo upon the Proclamation the Deponent left him and his Company.

Lord Sandes'*s Examination.*

He ſaith, He was ſent for on Sunday-morning, the ſame day, by the Earl of *Eſſex*; and coming to *Eſſex-Houſe*, he found then but a few there: but in a ſhort time after, came the Earl of *Southampton* with the reſt. This Deponent agreeth in divers other Circumſtances with former Examinations: He confeſſeth, he went with the Earl into *London*, and came back with him to *Ludgate*; and there being repulſed, he heard my Lord of *Eſſex* cry, Charge, charge! and call for his Horſe. And he ſaith, that Sheriff *Smith* was as far in the Matter as the beſt of them.

Mr. Attorney. Here Mr. *Attorney* urged, that there was a Combination; and one *Paſhell* affirm'd the burning of a black Purſe by the Earl of *Eſſex*, which my Lord confeſſeth; but ſaith, that there was nothing in it, but a Key of an Iron-Cheſt, which he took out, and burnt a Paper in the ſame Purſe, which did not contain above five or ſix Lines of ſecret Matter: and, for that he would not have ſo much as their Names drawn into queſtion, which were altogether ignorant of theſe Occurrents, did throw the Purſe and Paper into the Fire. And alſo *Paſhell* confeſſeth further, that when the Earl of *Eſſex* came out of *London* to his Houſe, he told them, that he was beloved in the City.

Lord Monteagle'*s Examination.*

He ſaith, He had no Foreknowledge of theſe Matters; but confeſſeth, he followed the Earl of *Eſſex* down *Fleet-ſtreet*, intending to go to the Mayor, and ſo to his Houſe in *Seething-Lane*. And this Deponent being with the Earl of *Eſſex* in *Grace-Church-Street*, confeſſeth he did hear the Earl (when the Lord *Burleigh* came with the Herald at Arms) command ſome of his Followers to bid the Herald ſtay, for he would not hear him abuſe the Queen's Name. He ſaith alſo, he went back with the Earl to *Ludgate*, and they were repulſed.

Mr. Attorney. Now, my Lord, I beſeech your Grace, and you, my Lords, that be the Peers, let the due Conſideration of theſe ſeveral Examinations and Depoſitions enter into your Hearts; and do but note, they have all agreed and jumped together in each particular point, notwithſtanding they were all ſeverally examined: but I muſt needs think it the juſt Judgment of God, in his mere Mercy towards our Sovereign, to have the Truth ſo marvellouſly reveal'd; coming from them of their own accords, without Rack or Torture to any of them.

Eſſex. Mr. *Attorney*, I anſwer, then, this for that point; The ſelf-ſame Fear, and the ſelf-ſame Examiner, may make theſe ſeveral Examinations agree all in one, were they never ſo far diſtant; but, good my Lord, let me intreat your Lordſhip to conſider who they be that teſtify this againſt me: My Lord, they are Men within the Danger of the Law, and ſuch as ſpeak with a deſire to live; but I think they have much to anſwer for between God and their Souls and me. I ſee they charge me with the ſurprizing of the *Tower*; but upon what ground do they ſpeak? They had only ſome particular Notes of my Friends Names, but ever very ſcornfully daſhed at me: for when my Friends perſuaded me to any courſe, this was my purpoſe, to have come with eight or nine honourable Perſons, who had juſt Cauſe of Diſcontentment (tho' not equal with mine) unto her Majeſty, and ſo by Petition, proſtrating our ſelves at her Majeſty's feet, to have put our ſelves unto her Mercy. And the Effect of our Deſires ſhould have been, that ſhe would have been pleaſed to have ſever'd ſome from her Majeſty, who, by reaſon of their Potency with her, abuſed her Majeſty's Ears with falſe Informations; and they were *Cobham*, *Cecil* and *Raleigh*: For we thought my Lord *Cobham* carried himſelf in ſuch factious and dangerous Courſes, as he told her Majeſty many Untruths; which was a principal Cauſe (as I think) of withdrawing her Favour from us. And to that intent, to remove ſuch from her Highneſs (I confeſs) was the only deſire we had to preſent our ſelves in all Humility before her Majeſty, but without any purpoſe of Hurt to her Highneſs: for, I proteſt before God, I do carry as reverent and loyal Duty to her Majeſty, as any Man in the World. But now, my Lord, ſeeing that I have heard the Teſtimony of Sir *Ferdinando Gorges*, and himſelf here in Court to teſtify it, I will ſay no more, but that if it pleaſe her Majeſty to be merciful unto him, I will be glad, and pray for it; yet whatſoever he hath ſaid, let my Life and his Dealing teſtify the Truth: and, Sir *Ferdinando*, ſpeak nothing to touch thy ſelf, and ſpeak what thou wilt to me; for I ſee thou deſireſt to live, yet ſpeak like a Man.

Lord Admiral. I deſire, for the better Satisfaction of my ſelf and Fellow-Peers, that *Gorges* might unfold openly what other Secrets have paſſed between him and my Lord of *Eſſex*, touching the State.

Eſſex. Ah! my Lord Admiral, aſſure your ſelf, in faith, no Treaſon: But yet, I pray thee, good Sir *Ferdinando*, ſpeak openly whatſoever thou doſt remember; and with all my heart I deſire thee to ſpeak freely.

Gorges. All that I can remember, I have deliver'd in my Examination; and further, I cannot ſay.

Eſſex. Yes, *Ferdinando*, if ever you knew any other Matter, which contained any Thought of Treaſon or Diſloyalty, ſpeak it; for they are things not to be forgotten.

Southampton. Good Sir *Ferdinando*, ſatisfy the Court what was intended among all our Conferences, and Talk of our Enemies, and Diſcontentments, and Conſultations, and what was our beſt Courſe for our Defence againſt them.

Gorges. Some delivered their Minds one way, ſome another; but, by the Oath I have taken, I did never know or hear any Thought or Purpoſe of Hurt or Diſloyalty intended to her Majeſty's Perſon by my Lord of *Eſſex*.

Lord Admiral. I deſire to know, for the better Satisfaction of my Conſcience, whether my Lord of *Eſſex* did at any time deliver out any Articles in writing under his hand, therein laying open the Projects of his Purpoſe for ſurprizing the Court and *Tower*.

Southampton. It was a fooliſh Action, I muſt needs confeſs, the going thro' the Town, and that was ſuddenly paſſed over: But my Lord's purpoſe to have Men planted at the Court, was in regard he feared hindrance by private Enemies, that would have ſtopped his Paſſage to the Queen; which, I proteſt, he intended to no other end, but to proſtrate himſelf at her Majeſty's feet, and ſubmit to her Mercy, as ye have formerly heard.

Cobham. My Lord of *Eſſex* (quoth the Lord *Cobham*, ſtanding up), let me know, I intreat you, why you lay ſuch Imputations upon me, as you have deliver'd.

Eſſex. My Lord, I have forgiven all the World, and therefore you ſhall not need to inſiſt upon theſe Circumſtances; for I lay not my Cauſe upon aught that ſhall do your Lordſhip any harm for my ſake: For, I proteſt, my Heart bears you no Malice, but what I ſpake was freely, and in God's preſence, hoping her Majeſty would have heard us, and our Complaints being but true. And I do further aſſure your Lordſhip, that I never ſpake it out of fear of Death, or deſire of Life.

Bacon. My Lord, may it pleaſe your Grace, whatſoever my Lord of *Eſſex* hath here denied, in my conceit it ſeemeth to be ſmall. I ſpeak not to any ordinary Jury, but to prudent, grave and wiſe Peers: And this I muſt needs ſay, It is evident that you, my Lord of *Eſſex*, had planted a Pretence in your Heart againſt the Government; and now, under colour of excuſe, you muſt lay the Cauſe upon particular Enemies. You put me in remembrance of one *Piſiſtratus*, that was come into a City, and doting upon the Affections of the Citizens unto him (he having a purpoſe to procure the Subverſion of a Kingdom, and wanting Aid for the accompliſhing his Humour) thought it the ſureſt means for the winning of the Hearts of the Citizens unto him, and ſo in that hope entered the City, and cut his Body over-thwart, to the end they might conjecture he had been in danger: and ſo by this means held the ſame Conceit as you and your Complices did; entering the City of *London*, perſuading your ſelves, if they had undertaken your Cauſe, all would have gone well on your ſide. And now, my Lord, all you have ſaid, or can ſay, in anſwer to theſe Matters, are but Shadows; and therefore, methinks, it were your beſt courſe to confeſs, and not to juſtify.

Eſſex. May it pleaſe your Lordſhip, I muſt produce Mr. *Bacon* for a Witneſs; for when the Courſe of private Perſecution was in hand, and moſt aſſail'd me, then Mr. *Bacon* was the Man that proffer'd me Means to the Queen, and drew a Letter in my name, and in his Brother Sir *Nicholas Bacon*'s name; which Letter he purpoſed to ſhew the Queen, and *Goſnel* was the Man that brought them unto me: wherein I did ſee Mr. *Bacon*'s Hand pleaded as orderly, and appointed them out that were my Enemies, as directly as might be. Which Letters I know Mr. Secretary *Cecil* hath ſeen, and by him it will appear what Conceit he held of me, and no otherwiſe than he here coloureth and pleadeth the contrary.

Bacon. My Lord, I ſpent more hours to make you a good Subject, than upon any Man in the World beſides, but ſince you have ſtirred up this Point, my Lord, I dare Warrant you this Letter will not bluſh: for I did but perform the Part of an honeſt Man, and ever laboured to have done you good, if it might have been, and to no other end; for what I intended for your Good, was wiſhed from the Heart, without Touch of any Man's Honour.

Eſſex. Well, my Lord, I do here proteſt before the living God, that an honourable, grave, and wiſe Counſellor hath lamented and grieved at the Courſes he hath ſeen taken, and therewith hath wiſhed himſelf often dead; and this I ſpeak upon credible and honourable Information: But I can prove thus much from Sir *Robert Cecil*'s own Mouth; that he, ſpeaking to one of his Fellow-Counſellors, ſhould ſay, that none in the World but the Infanta of *Spain* had Right to the Crown of *England*.

Here Sir *Robert Cecil* ſtepped forth into the Court (having kept himſelf private till then) and humbly deſired leave to ſpeak to *Eſſex*.

Sir *R. Cecil*. The Difference between you and me is great; for I ſpeak in the Perſon of an honeſt Man, and you, my Lord, in the Perſon of a Traitor: ſo well I know, you have Wit at will. The Preheminence hath been yours, but I have Innocence, Truth of Conſcience, and Honeſty, to defend me againſt the Scandal of ſlanderous Tongues, and aſpiring Hearts; and I proteſt before God, I have loved your Perſon, and juſtified your Virtues: and I appeal to God and the Queen, that I told her Majeſty, your Afflictions would make you a fit Servant for her. And had not I ſeen your ambitious Affections inclined to Uſurpation, I could have gone on my Knees to her Majeſty to have done you good; but you have a Sheep's Garment in ſhow, and in appearance are humble and religious; but God be thanked, we know you: for indeed your Religion appears by *Blunt*, *Davis* and *Treſham*, your chiefeſt Counſellors for the preſent: and by promiſing Liberty of Conſcience hereafter. I ſtand for Loyalty, which I never loſt; you ſtand for Treachery, wherewith your Heart is poſſeſs'd: and you charge me with high things, wherein I defy you to the uttermoſt. You, my good Lords, Counſellors of State, have had many Conferences, and I do confeſs I have ſaid the King of *Scots* is a Competitor, and the King of *Spain* a Competitor, and you I have ſaid are a Competitor: you would depoſe the Queen, you would be King of *England*, and call a Parliament. Ah, my Lord, were it but your own Caſe, the Loſs had been the leſs; but you have drawn a number of noble Perſons and Gentlemen of Birth and Quality into your Net of Rebellion, and their Bloods will cry vengeance againſt you. For my part, I vow to God, I wiſh my Soul was in Heaven, and my Body at reſt, ſo this had never been.

Eſſex. Ah Mr. Secretary, I thank God for my Humbling; that you, in the Ruff of your Bravery, came to make your Oration againſt me here this day.

Cecil. My Lord, I humbly thank God that you did not take me for a fit Companion for you and your Humours; for if you had, you would have drawn me to betray my Sovereign, as you have done: but I would have you name the Counſellor you ſpeak of; name him, name him, name him if you dare, if you dare, I defy you; name him if you dare.

Eſſex. Here ſtands an honourable Perſon (meaning the Earl of *Southampton*) that knows I ſpeak no Fables; he heard it as well as I.

Cecil. Then, my Lord of *Southampton*, I adjure you by the Duty you owe to God, Loyalty and Allegiance you owe to your Sovereign, by all Tokens of true Chriſtianity, and by the antient Friendſhip and Acquaintance once between us, that you name the Counſellor.

Southampt. Mr. Secretary, if you will needs have me name the Counſellor, it was Mr. Comptroller.

Whereupon the Secretary falling down upon his Knees, ſaid, I thank God for this day; and upon his knee deſired the Lord High Steward, that a Gentleman of the Privy-Chamber (or one that might have acceſs to the Queen) might go, and humbly intreat her Highneſs to command Mr. Comptroller to come before his Grace.

Hereupon the Lord High Steward calling Mr. *Knevet* (a Gentleman of her Majeſty's Privy-Chamber) ſaid unto him, Go, Mr. *Knevet*, unto her Majeſty, and let her underſtand Mr. Secretary's Demand.

Cecil. Mr. *Knevet*, you ſhall have free acceſs unto her Majeſty; tell her, that I vow before the God of Heaven, that if ſhe refuſe to ſend Mr. Comptroller, whereby I may clear my ſelf of theſe open Scandals, I will rather die at her foot, (as her Subject and Vaſſal) than live to do her any more Service in this honourable degree, wherein her Highneſs employs me. And withal, let me adjure you, Mr. *Knevet*, that you do not acquaint Mr. Comptroller with the Cauſe why you come for him.

Mr. *Knevet* went, and not long after return'd with Mr. Comptroller, to whom the Lord High Steward repeated the Cauſe why he was ſent for, and deſir'd him to ſatisfy the Lords, whether Mr. Secretary did uſe any ſuch Speech in his Hearing, or to his Knowledge.

Mr. Comptroller. I remember that once in Mr. Secretary's Company, there was a Book read, that treated of ſuch matters; but I never did hear Mr. Secretary uſe any ſuch words, or to that effect.

Whereupon Mr. Secretary thanked God, that tho' the Earl ſtood there as a Traitor, yet he was found an honeſt Man, and a faithful Subject: withal ſaying, I beſeech God to forgive you for this open wrong done unto me, as I do openly pronounce I forgive you from the bottom of my Heart.

Eſſex. And I, Mr. Secretary, do clearly and freely forgive you with all my Soul; becauſe I mean to die in Charity.

Bacon. My Lord, you may now perceive that my Lord of *Eſſex* went about to procure matter, and to give over on the inſtant.

South. Well, I beſeech your Lordſhip, let me ſatisfy your Lordſhip and the reſt thus much, that for my own part, I did never know the Laws: Now to ſhew the Cauſes that made me adventure ſo far as I did: The firſt occaſion that made me adventure into theſe Courſes, was the Affinity betwixt my Lord of *Eſſex* and me, I being of his Blood, and marrying his Kinſwoman; ſo that for his ſake I ſhould have hazarded my Life: But what I have by my forwardneſs offended in Act, I am altogether ignorant, but in Thought I am aſſured never. And if thro' my ignorance in the Law I have offended, yet I humbly ſubmit my ſelf to her Majeſty, and from the bottom of my Heart do beg her gracious Pardon, if it pleaſe her: and I hope that neither your Lordſhip nor any of the Peers will hold any of the former Reſolutions ſpoken of by theſe Orators for any certainty, which depends no otherwiſe than one upon another. For if any fooliſh Speeches have paſſed, I proteſt, as I ſhall be ſaved, that they were never purpoſed by me, nor underſtood to be ſo purpoſed by me, to the hurt of her Majeſty's Perſon.

Eſſex. I beſeech your Lordſhip to underſtand me, and aſſure your ſelf, that what I now ſpeak, is not with any deſire (I proteſt) to ſpare one drop of my Blood; and becauſe ſome Honourable Perſons are intereſted in the Cauſe, I would (under favour) ſignify, becauſe the Point hath been ſo much urged by Mr. *Attorney*, that at our being in *London* when we were paſt *Pauls*, word was brought me, that the Chain was drawn at *Ludgate*, and that my Lord of *Cumberland* was there: which when I heard, I was right glad; for if there had been cauſe, I would have been glad to put my ſelf into ſo honourable a Perſon's hands as his: but it was a falſe Report, for my Lord was not then come thither. After which I went to Sheriff *Smith*'s Houſe, and after my coming thither, I ſent the Sheriff and Mr. Alderman *Watts* to my Lord Mayor, deſiring him to come to us; if he would not, to ſend four of his Aldermen to ſee if we demeaned our ſelves loyally, with intent to put our ſelves into their Hands to uſe us as they would, or to put us into any Priſon; yet in regard of our private Enemies, and the fear of their Treachery, we deſired them to ſhut their Gates: and this was the end for which we went into the City.

Attor. My Lord, if you had no other Purpoſe, why did you go into *Grace-Church-Street* and *Fen-Church-Street*, crying out all the way you went, *England* is bought and ſold to the *Spaniard!*

Southamp. Mr. *Attorney*, I proteſt (as I hope to have Mercy in Heaven) I never heard my Lord ſpeak any ſuch Word, neither did I hear of the Proclamation you ſpeak of, made by my Lord *Burleigh* and the Herald at Arms; neither did I ſee them: and I deny (my Soul and Conſcience bearing me Witneſs) that I ever knew of any Intent and Meaning, or did ever mean or intend any Treaſon, Rebellion, or other Action againſt my Sovereign or the State; but only what I did, was to aſſiſt my Lord of *Eſſex* in his private Quarrel; and therefore, Mr. *Attorney*, you have urged the matter very far, and you wrong me therein, my Blood be upon your Head. As for my Lord of *Rutland*, whereas he inferreth againſt me to be a perſuader and inviter of my Lord of *Eſſex* to theſe Actions, he wrongeth me exceedingly; for he was never the Man that ſaw me once diſcontented, and therefore had ſmall ground or reaſon ſo to ſay. And you, Mr. *Attorney*, whereas you charge me for a Papiſt, I proteſt moſt unfeignedly, I was never converſant with any of that ſort; I only knew one *White*, a Prieſt, that went up and down the Town, yet did I never converſe with him in all my Life.

Eſſex. My Lord, and you that be our Peers, I beſeech you give me hearing thus far; not that I will ſpeak it for the ſafeguard of my Life, but with this my deſire, I charge the Souls of all them that be our Cenſurers or Triers: becauſe out of a Form and Cuſtom of ſpeaking, theſe Orators would make them more odious that come to the Bar, that I may not be thought to have done this upon Revenge: for within theſe few days I purpoſed to have received the Communion, to be a Teſtimony that I was far from bearing of Malice to any, not ſo much as to my private Enemies. But the falling out between the Earl of *Southampton* and the Lord *Grey*, happening on a Sunday, hindered my Intent; for ſo ſoon as I knew of it, I found my Affections to ſtir on it exceedingly: yet I have ſince that time laboured, and by my Prayers to God earneſtly deſired, that I might be armed with Patience to endure all Afflictions. And here I proteſt before the ever-living God, as he may have Mercy on me, That my Conſcience is clear from any diſloyal Thought or Harm to her Majeſty; and my deſire ever hath been to be free from Bloodſhed, as Mr. *Dove* can witneſs. But if in all my Thoughts and Purpoſes I did not ever deſire the good Eſtate of my Sovereign and Country, as of my own Soul; I beſeech the Lord then ſhew ſome Mark upon me and my Soul in this place, for a juſt Vengeance of my Untruths to all the World. And God, which knoweth the Secrets of all Hearts, knoweth that I never ſought the Crown of *England*, nor ever wiſhed to be a higher degree than a Subject. I greatly endeavoured to have brought my Conſcience to peace, only by ſeeking to ſecure my Acceſs to the Preſence of the Queen, that I might ſpeedily have unfolded my Griefs unto her Majeſty againſt my private Enemies; but not to have ſhed one drop of their Blood: And this, my Lord, I ſpeak, to the end I might put off all imputation of being an Hypocrite, or an Atheiſt; for I was never Papiſt, neither did I ever favour any Sectary (as my Lord of *Canterbury* knoweth, and can teſtify): for my Religion, it is ſound, and as I live, I mean to die in it.

Bacon. Well, my Lord, may it pleaſe your Grace, you may ſee how weakly he hath ſhadowed his Purpoſe, and how ſlenderly he hath anſwered the Objections againſt him. But, my Lord, doubting that too much variety of Matter may miniſter occaſion of Forgetfulneſs; I will only trouble your Lordſhip's remembrance with this only Point, rightly comparing this Rebellion of my Lord of *Eſſex* to the Duke of *Guiſe*'s, that came upon the Barricadoes at *Paris* in his Doublet and Hoſe, attended upon with 8 Men; but his Confidence in the City was ſuch (even as my Lord's was), that when he had delivered himſelf ſo far, and that the ſhallowneſs of his own Conceit could not accompliſh what he expected, the King for his defence taking Arms againſt him, he was glad to yield himſelf, thinking to colour his Pretexts, turned his Practices, and alledged the occaſion thereof to be a private Quarrel.

Eſſex. My Lord, I muſt confeſs it was my fault to ſtand out, and to maintain my Houſe with defence and reſiſting; but I will not deny but that my Lord of *Southampton* and Sir *Charles Davers* did perſuade me to parley with my Lord General: which I hope your Lordſhip will remember I did yield upon ſome indifferent Terms and Conditions; which were,

Firſt, That I might have an honourable Trial.

Secondly, That I might deliver my Griefs my ſelf to the Queen.

Thirdly, That I might go in Safety.

Fourthly, That I might have my Miniſter with me. And,

Laſtly, (Which I chiefly beg of her Majeſty,) That ſhe would be pleaſed to redeem ſome that were with me in the Houſe, and guiltleſs, for Knowledge, Intent or Action, of what was by me purpoſed. All which I thought good to remember, and ſo humbly ſubmit the ſame to her Majeſty's gracious Pleaſure.

Serjeant at Arms. Then Proclamation was made, Lieutenant of the *Tower*, withdraw your Priſoners from the Bar. They being removed, the Lords and Peers went together into a private Place made of purpoſe, behind the Canopy and Chair of Eſtate; then the two Chief Judges and the Lord Chief Baron were ſent for in to them, to deliver their Opinions in Law, which they did upon two Points; the one, **That in caſe where a Subject attempteth to put himſelf into ſuch Strength, as the King ſhall not be able to reſiſt him, and to force and compel the King to govern otherwiſe than according to his own Royal Authority and Direction, it is manifeſt Rebellion.* The other, *That in every Rebellion the Law intendeth as a Conſequent the compaſſing the Death and Deprivation of the King, as foreſeeing that the Rebel will never ſuffer that King to live or reign, who might puniſh or take revenge of his Treaſon and Rebellion.* After half an hour they came all out again, and each Man took his place; which being done, the Serjeant at Arms begun at the puny Lord, and called *Thomas* Lord *Howard*, who ſtood up bare-headed; then ſaid the Lord High Steward,

*Poph. 122, Cr. Car. 583. Keel. 76. Mo. 621. 2 And. 5. 66. 3 Co. Inſt. 9. 3 Co. Inſt. 12.

L. *Steward.* My Lord *Thomas Howard*, Whether is *Robert* Earl of *Eſſex* guilty of this Treaſon whereupon he hath been indicted, as you take it upon your Honour, or no?

L. *Tho. Howard.* Whereupon the Lord *Thomas Howard* made anſwer, bending his Body, and laying his left Hand upon his right Side, ſaid, Guilty, my Lord, of High-Treaſon. After which manner all the Peers found him guilty one after another, from the puny to the higheſt, and ſo delivered in like ſort upon their Honours. Being called over a-new, they found *Henry* Earl of *Southampton* guilty of High-Treaſon alſo.

Serjeant at Arms. Then the Serjeant at Arms commanded the Lieutenant of the *Tower* to bring his Priſoners to the Bar again.

Clerk of the Crown. Then the Clerk of the Crown ſpeaking firſt to the Earl of *Eſſex*, ſaid; *Robert* Earl of *Eſſex*, you have been arraigned and indicted of High-Treaſon; you have pleaded not Guilty, and for your Trial you have put your ſelf upon God and your Peers; the Peers here (who have heard the Evidence, and your Anſwer in your Defence) have found you Guilty: Now what can you ſay for your ſelf, why you ſhould not have Judgment of Death?

Eſſex. I only ſay this, That ſince I have committed that which hath brought me within the compaſs of the Law, I may be counted the Law's Traitor in offending the Law, for which I am willing to die, and will as willingly go thereto as ever did any: But I beſeech your Lordſhip and the reſt of the Lords here to have Conſideration of what I have formerly ſpoken, and do me the right as to think me a Chriſtian, and that I have a Soul to ſave, and that I know it is no time to jeſt: Lying and Counterfeiting, my Soul abhorreth; for I am not deſperate nor void of Grace, now to ſpeak falſly. I do not ſpeak to ſave my Life, for that I ſee were vain: I owe God a death, which ſhall be welcome, how ſoon ſoever it pleaſeth her Majeſty. And to ſatisfy the opinion of the World, that my Conſcience is free from Atheiſm and Popery, howſoever I have been in this Action miſled to tranſgreſs the Points of the Law, in the Courſe and Defence of private Matters, and whatſoever thro' the Weakneſs of my Wit, and Dulneſs of Memory, or thro' violent Courſes (if there be any violent that ſeek either Life or Death); or if I have omitted or may have uttered any thing otherwiſe; yet I will live and die in the Faith and true Religion which here I have profeſſed.

Clerk of the Crown. Then the Clerk of the Crown demanded of *Henry* Earl of *Southampton*, What he could ſay for himſelf, why Judgment of Death ſhould not be pronounced againſt him?

Southampton. My Lords, I muſt ſay for my part, as I have ſaid before, That ſince the Ignorance of the Law hath made me incur the Danger of the Law, I humbly ſubmit my ſelf to her Majeſty's Mercy; and therefore, my Lord High Steward, and my Lord Admiral, I beſeech you both, that ſeeing you are Witneſſes I am condemned by the Letter of the Law, it would pleaſe you to let the Queen know that I crave her Mercy. I know I have offended her, yet if it pleaſe her to be merciful unto me, I may live, and by my Service deſerve my Life. I have been brought up under her Majeſty, I have ſpent the beſt part of my Patrimony in her Majeſty's Service with danger of my Life, as your Lordſhips know; if there were any that could challenge me, that I have ever heretofore committed or intended Treaſon, or any other thing prejudicial to her Majeſty or Eſtate, God let me never inherit his Kingdom, neither would I deſire Mercy: but ſince the Law hath caſt me, I do ſubmit myſelf to Death, and yet I will not deſpair of her Majeſty's Mercy; for that I know ſhe is merciful, and if ſhe pleaſe to extend it, I ſhall with all humility receive it.

L. *Steward.* My Lord of *Eſſex*, the Queen's Majeſty hath beſtowed many Favours on your Predeceſſors and your ſelf; I would wiſh therefore that you likewiſe would ſubmit your ſelf to her Majeſty's Mercy, acknowledging your Offences, and reconciling your ſelf inwardly to her Majeſty, by laying open all Matters that were intended to prejudice her Majeſty, and the Actors thereof; and thereby no doubt you ſhall find her Majeſty merciful.

Eſſex. My Lord, you have made an honourable Motion; do but ſend to me at the time of my Death, and you ſhall ſee how penitent and humble I will be towards her Majeſty, both in acknowledging her exceeding Favours to my Anceſtors, and to my ſelf: whereby I doubt not but the penitent ſuffering of my Death, and ſprinkling of my Blood, will quench the evil-conceited Thoughts of her Majeſty againſt me. And I do moſt humbly deſire her Majeſty, that my Death may put a period to my Offences committed, and be no more remembered by her Highneſs. If I had ever perceived any of my Followers to have harboured an evil thought againſt her Majeſty, I would have been the firſt that ſhould have puniſhed the ſame, in being his Executioner; and therefore I beſeech you, my good Lord, miſtake me not, nor think me ſo proud, that I will not crave her Majeſty's Mercy, for I proteſt (kneeling upon the very Knee of my Heart) I do crave her Majeſty's Mercy with all Humility: yet I had rather die than live in Miſery.

Then the Lord High Steward, after a few Exhortations unto the Earls to prepare themſelves for God, told them, Seeing the Law had found them Guilty, it followed of courſe that he muſt proceed to Judgment.

The Earl of *Eſſex* replied very cheerfully, and ſaid; Yea, my Lord, with a very good Will I pray you go on.

Then the Lord High Steward gave Judgment as followeth:

You muſt go to the place from whence you came, and there remain during her Majeſty's Pleaſure; from thence to be drawn on a Hurdle thro' *London* Streets, and ſo to the place of Execution, where you ſhall be hanged, bowelled, and quartered; your Head and Quarters to be diſpoſed of at her Majeſty's Pleaſure, and ſo God have Mercy on your Souls.

Eſſex. My Lord, I am not a whit diſmayed to receive this Sentence, for I proteſt Death is as welcome to me as Life; and I ſhall die as cheerful a Death upon ſuch a Teſtimony, as ever did Man. And I think it fit my poor Quarters that have done her Majeſty true Service in divers parts of the World, ſhould be ſacrificed and diſpoſed of at her Majeſty's Pleaſure; whereunto with all willingneſs of Heart I have ſubmitted my ſelf. But one thing I beg of you, my Lords, that have free acceſs to her Majeſty's Perſon, humbly to beſeech her Majeſty to grant me, that (during the ſhort time I ſhall live) I may have the ſame Preacher to comfort me, that hath been with me ſince my Troubles began; for as he that hath been long ſick, is moſt deſirous of the Phyſician which hath been, and is beſt acquainted with the Conſtitution of his Body; ſo do I moſt wiſh to have the Comfort and ſpiritual Phyſick from the Preacher which hath been and is acquainted with the inward Griefs, and ſecret Affections of my Soul. And my laſt Requeſt ſhall be only this; that it will pleaſe her Highneſs that my Lord *Thomas Howard* and the Lieutenant of the *Tower* may be partakers with me in receiving the Sacrament, and be a witneſs of it, in token of what I have proteſted to be true in this Life, for my Loyalty, Religion, and Peace of Conſcience: and then whenſoever it ſhall pleaſe her Majeſty to call me, I ſhall be ready to ſeal the ſame with my Blood.

The Lords promiſed they would move the Queen for his Requeſts.

Eſſex. I humbly thank your Lordſhips.

Then the Serjeant at Arms ſtood up with the Mace on his Shoulder, and after Proclamation was made, ſaid thus: All Peers that were ſummoned to be here this Day, may now take their Eaſe; and all other Perſons attending here this Service, may depart in her Majeſty's Peace, for my Lord High Steward is pleaſed to diſſolve this Commiſſion.

As the Lords were riſing, the Earl of *Eſſex* ſaid, My Lord *De la Ware*, and my Lord *Morley*, I beſeech your Lordſhips to pardon me for your two Sons that are in Trouble for my ſake: I proteſt upon my Soul they knew not of any thing that was or ſhould have been done, but came to me in the Morning, and I deſired them to ſtay, and they knew not wherefore. And ſo farewel, my Lords.

The Earl of *Southampton* obtained a Reprieve, but the Earl of *Eſſex* was ordered for Execution.

ON the 25th of *February*, 1601, which was the Day appointed for his Execution, *Thomas Mountford* and *William Barlow*, Doctors of Divinity, with *Aſhton*, the Miniſter of the Church in the *Tower*, were ſent unto him early in the Morning to adminiſter Chriſtian Conſolation to his Soul. In preſence of theſe Men he gave Thanks to Almighty God from the bottom of his Heart, that his Deſigns, which were ſo dangerous to the State, ſucceeded not. He told them, he had now look'd thoroughly and ſeriouſly into his Sin, and was heartily ſorry he had ſo obſtinately defended an unjuſt Cauſe at the Bar. He thank'd the Queen ſhe had granted he ſhould not be publickly executed, leſt his Mind, which was now ſettled and compoſed, might be diſturb'd by the Acclamations of the People, proteſting that he had now learned how vain a thing the Blaſt of popular Favour and Applauſe was. He acknowledg'd how worthy he was to be *ſpued out* (theſe were his Words) by the Common-wealth, for the Wickedneſs of his Enterprize, which he liken'd to a Leproſy ſpread far and near, and that had infected many.

Camd. Eliz. 621.

The Queen in the mean time waver'd in her Mind. One while relenting, ſhe ſent her Commands by Sir *Edward Carey* that he ſhould not be executed; but then remembering his perverſe Obſtinacy, that he ſcorn'd to aſk her Pardon, and had declared openly that his Life would be the Queen's Deſtruction, ſhe ſoon after ſent a freſh Command by *Darcy* that he ſhould be put to death.

Then he was brought forth between the Divines to a Scaffold erected within the Court-yard of the *Tower*: Near which ſat the Earls of *Cumberland* and *Hertford*, Viſcount *Howard* of *Bindon*, the Lord *Howard* of *Walden*, the Lord *Darcy* of *Chiche*, and the Lord *Compton*. There were preſent alſo ſome of the Aldermen of *London*, and Sir *Walter Raleigh*, who, if we may believe himſelf, came with an Intent to make Anſwer if any thing ſhould be objected againſt him by the Earl at his Death; but others thought he came to feed his Eyes with a Sight of the Earl's Sufferings, and to ſatiate his Hatred with his Blood. But being admoniſh'd not to preſs upon the Earl at his Death, which is the Part rather of ignoble Brutes, he withdrew himſelf further off, and beheld his Execution out of the Armory.

Moor, 622.

The Earl, as ſoon as he was come upon the Scaffold, uncover'd his Head, and lifting up his Eyes to Heaven, acknowledg'd that many and great had been the Sins of his Youth, for which, with moſt fervent Prayer (he beg'd Pardon of the Eternal Majeſty of God, thro' Chriſt his Mediator; eſpecially for this laſt Sin, which he term'd a bloody, crying, and contagious Sin, wherewith ſo many had been ſeduc'd to ſin againſt God, their Prince and Country. He beſought the Queen and her Miniſters to forgive him, praying for her long Life and proſperous Eſtate, proteſting withal that he never intended to lay violent Hands on her Perſon. He gave God Thanks that he had never been Atheiſt, or Papiſt, but had plac'd all his Hope and Confidence in the Merits of Chriſt. He pray'd God to ſtrengthen his Mind againſt the Terrors of Death; deſiring the Standers-by to join with him in a ſhort Prayer, which with broken Sighs, and fervent Affection of inward Devotion, he preſently uttered. Afterwards the Executioner aſking Forgiveneſs, he forgave him: He recited the Apoſtles Creed, and then laying himſelf down, placed his Neck upon the Block; and having repeated the firſt Verſes of the 51ſt *Pſalm*, he ſaid, *In Humility and Obedience I proſtrate myſelf to my deſerved Puniſhment: Thou, O God! have Mercy on thy proſtrate Servant: Into thy Hands, O Lord! I commend my Spirit.* His Head was taken off at the third Stroke, but the firſt took away all Senſe and Motion.

XVII. *The Trial of Sir* Chriſtopher Blunt, *Sir* Charles Davers, *Sir* John Davis, *Sir* Gilly Merrick, *and* Henry Cuffe, *for* High-Treaſon, March 5, 1600. 43 Eliz.*

The COMMISSIONERS were,

The Earl of Nottingham, *Lord High Admiral.*
The Lord Hunſdon, *Lord Chamberlain.*
Mr. Secretary Cecil.
The Lord Chief Juſtice Popham.
Sir John Forteſcue, *Chancellor of the Exchequer.*
Mr. Secretary Herbert, *and divers of the Judges.*

THE Commiſſion being read, the Court proceeded to the reading of the Indictment.

After which the Clerk aſked them if they were guilty of the Indictment, or not guilty.

Sir *Chriſtopher Blunt*. My Lords, we deſire to know whether we may not confeſs part of the Indictment, and plead guilty as to the reſt.

L. C. J. Your pleading muſt be general to the whole, either guilty or not guilty.

Whereupon they all pleaded *not Guilty*, and a ſubſtantial Jury was impannel'd, which conſiſted of Aldermen of *London*, and other Gentlemen of good Credit.

Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis*, confeſs'd, That it was their deſign to come to the Queen with ſo ſtrong a Force, that they might not be reſiſted, and to require of her divers Conditions and Alterations of Government; nevertheleſs they intended no perſonal harm to the Queen herſelf, and that was the reaſon why they could not confeſs the whole Indictment, becauſe the Indictment charges *that they intended and compaſſed the Death and Deſtruction of the Queen.*

L. C. J. Wherever the Subject rebelleth, or riſeth in a forcible manner to over-rule the Royal Will and Power of the King, the Wiſdom and Foreſight of the Laws of this Land maketh this Conſtruction of his Actions, that he intendeth to deprive the King both of Crown and Life; for the Law judgeth not of the Fact by the Intent, but of the Intent by the Fact.

Queen's Counſel. This Conſtruction is no Myſtery or Quiddity of Law, but an infallable Concluſion warranted by Reaſon and Experience: for the Crown is not a Garland, or mere outward Ornament, but conſiſts of Pre-eminence and Power; and therefore when the Subject will take upon him to give Law to the King, and to make the Sovereign and commanding Power become ſubject and commanded, ſuch Subject layeth hold of the Crown, and taketh the Sword out of the King's Hand. The Crown is ſo faſten'd upon the King's Head, that it cannot be pulled off, but Head and Life will follow, as all Examples both at home and abroad do manifeſt; and therefore when their words teſtify one thing, and their deeds another, they are but like the Proteſtations uſed by *Manlius* Lieutenant of *Catiline*, who conſpir'd againſt the State of *Rome*, and yet began his Letter, * *Deos hominеſque teſtamur, nos nihil aliud*, &c. denying they intended any thing againſt their Country, but only to provide for their own Safety.

* Salluſt.

But admitting that the Proteſtation of the Priſoners was ſo far true, that they had not at that time in their minds a form'd and diſtinct Cogitation to have deſtroy'd the Queen's Perſon, yet nothing is more variable and mutable than the mind of Man; and eſpecially *Honores mutant mores*; when they were once aloft, and had the Queen in their hands, and were Peers in my Lord of *Eſſex*'s Parliament, who could promiſe of what mind they would then be? eſpecially when it is conſidered that my Lord of *Eſſex* at his Arraignment defended his firſt Action of impriſoning the Privy Counſellors, by pretence that he was forced to it by his unruly company: ſo that if themſelves would not have had, or would not ſeem to have had that extreme and deviliſh wickedneſs of mind, as to lay violent Hands on the Queen's ſacred Perſon; yet what muſt be done to ſatisfy the Multitude and ſecure their Party, muſt then be the queſtion. The Example of *Richard* the Third may be remember'd, who (tho' he were King in Poſſeſſion, and the rightful Inheritors but Infants) could never ſleep quiet in his Bed till they were made away; much leſs is it to be expected, that a Catilinary Knot and Combination of Rebels (who have made an Inſurrection without ſo much as the fume of a Title) would ever indure, that a Queen, who had been their Sovereign, and had reigned ſo many years in ſuch Renown and Policy, ſhould continue longer alive, than ſhould make for their own turn.

After this the aforeſaid Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis* ſaid, That now they were better informed, and had entered into a deeper conſideration of the matter, they were ſorry they had given the Court ſo much trouble, and had not confeſſed the Indictment at firſt.

However, the Queen's Counſel produc'd their Evidence to the Jury, which conſiſted principally of their ſeveral Confeſſions, and the reſt of the Evidence uſed at the Trial of the Earls of *Eſſex* and *Southampton*, as mentioned before in the ſaid Trial.

Againſt *Henry Cuffe* was given in Evidence Sir *Charles Daver*'s Confeſſion, who charged him, when there was a debating of the ſeveral Enterprizes which they ſhould undertake, that he did ever bind firmly and reſolutely for attempting the Court.

Alſo the Earl of *Eſſex*'s Accuſation under his Hand avouched by him to his Face, that he was a principal Inſtigator of him in his Treaſons. But the chief Evidence was a declaration of Sir *Henry Nevil*, which deſcribed and ſet out the whole manner of his practiſing with him.

Cuffe. If my being within *Eſſex-Houſe* the day of the Rebellion be a Foundation to charge me with High-Treaſon, you may as well charge a Lion that is within a Grate with Treaſon: And for the Conſultation of *Drury-Houſe*, it is no more Treaſon than the Child in the Mother's Belly is a Child.

* *Sol. Gen.* As to his being in *Eſſex-Houſe*, he was not there by Force and Compulſion, but freely and voluntarily: There was a diſtribution in the Action, ſome were to make good the Houſe, and others to enter the City; and the one part held correſpondence with the other; and in Treaſons there can be no Acceſſaries, all are Principals.

* Fleming.

As to the Conſultation at *Drury-Houſe*, it was a perfect Treaſon in itſelf, becauſe the compaſſing the Queen's Deſtruction, which by Judgment of Law was concluded and implied in that Conſultation, was Treaſon in the very Thought and Cogitation, ſo as that Thought be proved by an overt Act: that ſame Conſultation was an overt Act, tho' it had not been upon a liſt of Names and Articles in writing, much more being upon matter in writing: and again, the going into the City was a purſuance and carrying on of the Enterprize againſt the Court, and not a deſiſting or departing from it.

L. C. J. If many do conſpire to execute Treaſon againſt the Prince in one manner, and ſome of them do execute it in another manner, yet their Act (tho' differing in the Manner) is the Act of all of them who conſpire, by reaſon of the general Malice of the Intent.

Againſt Sir *Gilly Merrick* the Evidence produc'd proved him guilty of open Rebellion; for that he was a Captain or Commander over the Houſe, and took upon him the Charge to keep it and make it good as a Place of Retreat, for thoſe who iſſued out into the City; and fortify'd and barricadoed the ſame Houſe, making Proviſion of Muſkets, Powder, Pellets, and other Ammuniton and Weapons for the holding and defending it; and was a buſy, forward and noted Actor in that defence and reſiſtance, which was made againſt the Queen's Forces brought againſt it by her Majeſty's Lieutenant. It was further proved, that ſome few days before the Rebellion, he had with great heat and violence diſplaced certain Gentlemen who were lodged in an Houſe cloſe by *Eſſex-Houſe*, and there poſted divers of my Lord *Eſſex*'s Followers and Accomplices.

It was alſo proved that the Afternoon before the Rebellion, *Merrick* with a great Company of others, who were all afterwards in the Action, had procured to be play'd before them the Play of depoſing King *Richard* the Second; neither was it caſual, but a play beſpoke by *Merrick*: and when it was told him by one of the Players, that the Play was old, and they ſhould have Loſs in playing it, becauſe few would come to it, there were forty Shillings extraordinary given for it, and ſo it was play'd.

Upon this Evidence the Jury went from the Bar, and after ſome time returned and brought them in all Guilty: and accordingly they received Sentence of Death; and were all executed at *Tyburn*, except Sir *Chriſtopher Blunt*, and Sir *Charles Davers*, who (being nobly deſcended) were beheaded upon *Tower-Hill.*

On the 13th of *March*, *Merrick* and *Cuffe* were drawn to *Tyburn*: when they were come to the Gallows, *Cuffe* ſpake as follows:

‘ I am brought hither to pay my laſt Debt to Nature, and to ſuffer for Crimes committed againſt God, my Prince and my Country; and as I cannot but diſcern the infinite Juſtice of God, when I reflect on the Multitude of my Offences, ſo can I as little doubt but the Severity of my Puniſhment will make way for my Admiſſion into the Embraces of his Mercy. We are expos'd here as ſad Spectacles and Inſtances of human Frailty; the Death we are to undergo carries a frightful Aſpect, (for even the beſt of Men deſire Life) beſides, that it is as full of Ignominy as Terror; however, 'tis the Portion of the beſt of Saints, with whom I aſſuredly hope to riſe again in Chriſt: not that I would be thought by any one to depend on my own Merits, which I abſolutely diſcard, but I place my entire Truſt and Dependance in the Atonement of my Saviour's Blood. I am fully perſuaded, that whoever feels a ſecret Conſolation within himſelf, whilſt he groans under the Infliction of any earthly Puniſhment, is chaſtis'd by God with a paternal Tenderneſs, and not in an angry and judicial Way.

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* *See a fuller Account of this Trial, in* State-Trials, Vol. VII. p. 47. *But as* Merrick *and* Cuffe*'s Speeches are at the End of this Trial, and not there; we choſe not to omit this, which introduces them.*

‘ But to come to the Cauſe of my Death; there is no body here can poſſibly be ignorant what a wild Commotion was rais’d on the 8th of *February*, by a particular great, but unadviſed Earl. I do here call God, his Angels, and my own Conſcience to witneſs, that I was not in the leaſt concerned therein, but was ſhut up that whole Day within the Houſe, where I ſpent the time in very melancholy Reflections.’

Here he was interrupted, and adviſed not to diſguiſe the Truth by Diſtinctions, nor palliate his Crime by ſpecious Pretences. Then he proceeded, ‘ I confeſs ’tis a Crime as black as Treaſon for a Subject who loſt his Prince’s Favour, to force his way to the Royal Preſence: for my own part, I never perſuaded any Man to take up Arms againſt the Queen, but am moſt heartily concerned for being an Inſtrument in bringing that worthy Gentleman, Sir *Henry Nevil*, into danger, and do moſt earneſtly intreat his Pardon. And whereas I ſaid that one-and-twenty Aldermen out of the twenty-four were devoted to the Earl’s Intereſt, I only meant that they were his Friends, and ready to ſerve him, but not in the way of open Rebellion.’

Here he was again interrupted, and ſo began to apply himſelf to his Devotions, which he manag’d with a great deal of Fervour: and then making a ſolemn Profeſſion of his Creed, and aſking pardon of God and the Queen, he was diſpatch’d by the Executioner.

After him Sir *Giles Merrick* ſuffer’d in the ſame way, and with a moſt undaunted Reſolution: for, as if he were weary of living longer, he once or twice interrupted *Cuffe*, and advis’d him to ſpare a Diſcourſe, which however rational was not very ſeaſonable, when he was taking leave of the World. He clear’d the Lord *Mountjoy* from having any acquaintance with the Deſign; and intreated thoſe Noblemen who ſtood by, to intercede with the Queen, that there might not be any farther Proceedings againſt ſuch, as had unwarily eſpouſed this unhappy Cauſe.

Five days after, *March* 18, Sir *Chriſtopher Blunt*, and Sir *Charles Davers* were executed on *Tower-Hill*. *Davers* bore his death with a moſt Chriſtian Calmneſs and Compoſure, having firſt craved God’s Pardon and the Queen’s, to whom he wiſh’d all Proſperity; as alſo the Lord *Grey*’s, who was there preſent, to whom he acknowledg’d he had been ill affected, not from any Injury he had ſuffer’d from him, but purely on the Earl of *Southampton*’s account, to whom the Lord *Grey* profeſt an abſolute Enmity.

When Sir *Chriſtopher Blunt* came upon the Scaffold, he expreſs’d himſelf in the following manner:

MY Lords, and you that be preſent, altho’ I muſt confeſs, that it were better fitting the little time I have to breathe, to beſtow the ſame in aſking God forgiveneſs for my manifold and abominable Sins, than to uſe any other Diſcourſe, eſpecially having both an Imperfection of Speech, and God knows, a weak Memory, by reaſon of my late grievous Wound: yet to ſatisfy all thoſe that are preſent what Courſe hath been held by me in this late Enterprize, becauſe I was ſaid to be an Inſtigator, and Setter on of the late Earl, I will truly, and upon the peril of my Soul, ſpeak the Truth.

It is true, that the firſt time that ever I underſtood of any dangerous Diſcontentment in my Lord of *Eſſex*, was about three Years ago at *Wanſted*, upon his coming one Day from *Greenwich*. At that time he ſpake many Things unto me, but deſcended into no Particulars, but in general Terms.

After which time he never brake with me in any matter tending to the Alteration of the State, (I proteſt before God) until he came into *Ireland*, other than I might conceive, that he was of an ambitious and diſcontented Mind. But when I lay at the Caſtle of *Thomas Lee*, called *Reban*, in *Ireland*, grievouſly hurt, and doubted of my Life; he came to viſit me, and then began to acquaint me with his Intent.

As he thus ſpake, the Sheriff began to interrupt him, and told him the Hour was paſt. But my Lord *Grey*, and Sir *Walter Raleigh* Captain of the Guard, called to the Sheriff, and requir’d him not to interrupt him, but to ſuffer him quietly to finiſh his Prayers and Confeſſions. Sir *Chriſtopher Blunt* ſaid, Is Sir *Walter Raleigh* there? Thoſe on the Scaffold anſwered, yea; to whom Sir *Chriſtopher Blunt* ſpake on this manner:

Sir *Walter Raleigh*, I thank God that you are preſent; I had an infinite deſire to ſpeak with you, to aſk your forgiveneſs ere I died, both for wrong done you, and for my particular ill intent towards you: I beſeech you forgive me. Sir *Walter Raleigh* anſwer’d, that he moſt willingly forgave him, and beſought God to forgive him, and to give him his divine Comfort; proteſting before the Lord, that whatſoever Sir *Chriſtopher Blunt* meant towards him, for his part, he never had any ill intent towards him: And further ſaid to Sir *Chriſtopher Blunt*, I pray you without offence, let me put you in mind that you have been eſteemed, not only a principal Provoker and Perſuader of the Earl of *Eſſex* in all his undutiful Courſes, but eſpecially an Adviſer in that which hath been confeſſed of his purpoſe to tranſport a great part of her Majeſty’s Army out of *Ireland* into *England*, to land at *Milford*, and thence to turn it againſt her ſacred Perſon. You ſhall do well to tell the Truth, and to ſatisfy the World. To which he anſwer’d thus:

Sir, if you will give me patience, I will deliver a Truth, ſpeaking now my laſt, in the preſence of God, in whoſe Mercy I truſt. And then he directed himſelf to my Lord *Grey*, and my Lord *Compton*, and the reſt that ſat on Horſeback near the Scaffold.

When I was brought from *Reban* to *Dublin*, and lodged in the Caſtle, his Lordſhip and the Earl of *Southampton* came to viſit me; and to be ſhort, he began thus plainly with me: *That he intended to tranſport a choice part of the Army of* Ireland *into* England, *and land them in* Wales, *at* Milford, *or thereabouts*; *and ſo ſecuring his Deſcent thereby, would gather ſuch other Forces, as might enable him to march to* London. To which I proteſt before the Lord God, I made this or the like anſwer; that I would that Night conſider of it, which I did.

And the next Day the Earls came again; I told them that ſuch an Enterprize, as it was moſt dangerous ſo it would coſt much Blood, and I could not like of it; beſides many hazards which at this time I cannot remember unto you, neither will the time permit it. But I rather adviſed him to go over himſelf with a good Train, and make ſure of the Court, and then make his own Conditions.

And altho’ it be true, that (as we all proteſted in our Examinations and Arraignments) we never reſolved of doing hurt to her Majeſty’s Perſon; (for in none of our Conſultations was there ſet down any ſuch purpoſe) yet, *I know, and muſt confeſs, if we had failed of our Ends, we ſhould (rather than have been diſappointed) even have drawn Blood from herſelf.* From henceforward he dealt no more with me herein, until he was diſcharged of his Keeper at *Eſſex Houſe*. And then he again aſked my Advice, and diſputed the Matter with me; but reſolved not. I went then into the Country, and before he ſent for me (which was ſome ten Days before his Rebellion) I never heard more of the Matter. And then he wrote unto me, to come up, upon pretence of making ſome aſſurances of Land, and the like. I will leave the reſt unto my Confeſſions, given unto that honourable Lord Admiral, and worthy Mr. Secretary, (to whom I beſeech you Sir *Walter Raleigh* commend me) I can requite their favourable and charitable dealing with me, with nought elſe but my Prayers for them. And I beſeech God of his Mercy to ſave and preſerve the Queen, who hath given Comfort to my Soul, in that I hear ſhe hath forgiven me all but the Sentence of the Law, which I moſt worthily deſerved, and do moſt willingly embrace, and hope that God will have Mercy and Compaſſion on me, who have offended him as many ways as ever ſinful Wretch did. I have led a Life ſo far from his Precepts, as no Sinner more. God forgive it me, and forgive me my wicked Thoughts, my licentious Life, and this right Arm of mine, which (I fear me) hath drawn Blood in this laſt Action. And I beſeech you all bear witneſs that I die a Catholic, yet ſo, as I hope to be ſaved only by the Death and Paſſion of Chriſt, and by his Merits, not aſcribing any thing to mine own Works. And I truſt you are all good People, and your Prayers may profit me. Farewel my worthy Lord *Grey*, and my Lord *Compton*, and to you all. God ſend you both to live long in Honour. I will deſire to ſay a few Prayers, and embrace my Death moſt willingly.

With that he turned from the Rail towards the Executioner; and the Miniſter offering to ſpeak with him, he came again to the Rail, and beſought that his Conſcience might not be troubled, for he was reſolved; which he deſired for God’s ſake. Whereupon Commandment was given, that the Miniſter ſhould not interrupt him any further. After which he prepared himſelf to the Block, and ſo died very manfully and reſolutely.

XVIII. *The Trial of Sir* WALTER RALEIGH, *Kt. at* Winton, *for* High-Treaſon, *the 17th of* November, 1603. 1 Jac. I.

The COMMISSIONERS were,

The Right Hon. Henry Howard, *Earl of* Suffolk, *Lord Chamberlain.*
Charles Blunt, *Earl of* Devon.
Lord Henry Howard, *afterward Earl of* Northampton.
Robert Cecil, *Earl of* Saliſbury.
Edward *Lord* Wotton *of* Morley.
Sir John Stanhope, *Vice Chamberlain.*
Lord Chief Juſtice of England, Popham.
Lord Chief Juſtice of the Common-Pleas, Anderſon.
Mr. Juſtice Gawdie.
Juſtice Warburton; and
Sir William Wade.

FIRST the Commiſſion of *Oyer* and *Terminer* was read by the Clerk of the Crown-Office; and the Priſoner bid to hold up his Hand.

And then preſently the Indictment, which was in effect as followeth:

THAT he did conſpire, and go about to deprive the King of his Government, to raiſe up Sedition within the Realm; to alter Religion, to bring in the Roman Superſtition, and to procure foreign Enemies to invade the Kingdom. That the Lord *Cobham*, the 9th of *June* laſt, did meet with the ſaid Sir *Walter Raleigh* in *Durham-Houſe*, in the Pariſh of *St. Martin’s in the Fields*, and then and there had Conference with him, how to advance *Arabella Stuart* to the Crown and Royal Throne of this Kingdom; and that then and there it was agreed, that *Cobham* ſhould treat with *Aremberg*, Embaſſador from the Archduke of *Auſtria*, to obtain of him 600,000 Crowns, to bring to paſs their intended Treaſon. It was agreed that *Cobham* ſhould go to the Archduke *Albert*, to procure him to advance the pretended Title of *Arabella:* from thence knowing that *Albert* had not ſufficient means to maintain his own Army in the *Low Countries*, *Cobham* ſhould go to *Spain* to procure the King to aſſiſt and further her pretended Title.

It was agreed, the better to effect all this Conſpiracy, that *Arabella* ſhould write three Letters, one to the Archduke, another to the King of *Spain*, and a third to the Duke of *Savoy*; and promiſe three things:

Firſt, To eſtabliſh a firm Peace between *England* and *Spain*.

Secondly, To tolerate the Popiſh and Roman Superſtition.

Thirdly, To be ruled by them in contracting of her Marriage.

And for the effecting of theſe traiterous Purpoſes, *Cobham* ſhould return by the Iſle of *Jerſey*, and ſhould find Sir *Walter Raleigh* Captain of the ſaid Iſle there, and take counſel of *Raleigh* for the diſtributing of the aforeſaid Crowns, as the Occaſion or Diſcontentment of the Subjects ſhould give cauſe and way.

And further, That *Cobham* and his Brother *Brook* met on the 9th of *June* laſt, and *Cobham* told *Brook* all theſe Treaſons: To the which Treaſons *Brook* gave his Aſſent, and did join himſelf to all theſe. And after, on the *Thurſday* following, *Cobham* and *Brook* did ſpeak theſe words; *That there would never be a good World in* England, *till the King* (meaning our Sovereign Lord) *and his Cubs* (meaning his Royal Iſſue) *were taken away*.

And the more to diſable and deprive the King of his Crown, and to confirm the ſaid *Cobham* in his Intents, *Raleigh* did publiſh a Book, falſly written againſt the moſt Juſt and Royal Title of the King, knowing the ſaid Book to be written againſt the juſt Title of the King; which Book *Cobham* after that received of him. Further, for the better effecting theſe traiterous Purpoſes, and to eſtabliſh the ſaid *Brook* in his Intent, the ſaid *Cobham* did deliver the ſaid Book unto him the 14th of *June*. And further, the ſaid *Cobham*, on the 16th of *June*, for Accompliſhment of the ſaid Conference, and by the traiterous Inſtigation of *Raleigh*, did move *Brook* to incite *Arabella* to write to the three forenamed Princes, to procure them to advance her Title; and that ſhe, after ſhe had obtained the Crown, ſhould promiſe to perform three Things, *viz.* 1. Peace between *England* and *Spain*. 2. To tolerate with Impunity the Popiſh and Roman Superſtitions. 3. To be ruled by them three in the contracting of her Marriage.

To theſe Motions the ſaid *Brook* gave his Aſſent. And for the better effecting of the ſaid Treaſons, *Cobham* on the 17th of *June*, by the Inſtigation of *Raleigh*, did write Letters to Count *Aremberg*, and did deliver the ſaid Letters to one *Matthew de Lawrency*, to be delivered to the ſaid Count, which he did deliver, for the obtaining of the 600,000 Crowns; which Money by other Letters Count *Aremberg* did promiſe to perform the Payment of; and this Letter *Cobham* received the 18th of *June*. And then did *Cobham* promiſe to *Raleigh*, that when he had received the ſaid Money, he would deliver 8000 Crowns to him, to which Motion he did conſent; and afterwards *Cobham* offered *Brook*, that after he ſhould receive the ſaid Crowns, he would give to him 10,000 thereof; to which Motion *Brook* did Aſſent.

To the Indictment, Sir *Walter Raleigh* pleaded Not Guilty.

The JURY.

Sir *Ralph Coniſby*,	Sir *Edward Peacock*,	Knights.
Sir *Thomas Fowler*,	Sir *William Rowe*,	
Henry Goodyer,	*Roger Wood*,	Eſquires.
Thomas Walker,	*Thomas Whitby*,	
Thomas Highgate.	*John Chawkey*,	Gentlemen.
Robert Kempton,	*Robert Bromley*,	

Sir *Walter Raleigh*, Priſoner, was aſked, Whether he would take exceptions to any of the Jury?

Raleigh. I know none of them; they are all Chriſtians, and honeſt Gentlemen, I except againſt none.

E. *Suffolk*. You Gentlemen of the King's Learned Counſel, follow the ſame courſe as you did the other day.

Raleigh. My Lord, I pray you I may anſwer the Points particularly as they are delivered, by reaſon of the Weakneſs of my Memory and Sickneſs.

L. C. Juſt. Popham. After the King's Learned Council have delivered all the Evidence, Sir *Walter*, you may anſwer particularly to what you will.

Heale, the King's Serjeant at Law. You have heard of *Raleigh*'s bloody attempts to kill the King and his Royal Progeny, and in place thereof, to advance one *Arabella Stuart*. The Particulars of the Indictment are theſe: Firſt, that *Raleigh* met with *Cobham* the 9th of *June*, and had Conference of an Invaſion, of a Rebellion, and an Inſurrection, to be made by the King's Subjects, to depoſe the King, and to kill his Children, poor Babes that never gave Offence. Here is Blood, here is a new King and Governor. In our King conſiſts all our Happineſs, and the true Uſe of the Goſpel; a thing which we all wiſh to be ſettled, after the Death of the Queen. Here muſt be Money to do this, for Money is the Sinew of War. Where ſhould that be had? Count *Aremberg* muſt procure it of *Philip* King of *Spain*, five or ſix Hundred Thouſand Crowns; and out of this Sum *Raleigh* muſt have Eight Thouſand. But what is that Count *Aremberg?* Though I am no good *Frenchman*, yet it is as much as to ſay in *Engliſh*, Earl of *Aremberg*. Then there muſt be Friends to effect this: *Cobham* muſt go to *Albert* Archduke of *Auſtria*, for whom *Aremberg* was Embaſſador at that time in *England*. And what then? He muſt perſuade the Duke to aſſiſt the pretended Title of *Arabella*. From thence *Cobham* muſt go to the King of *Spain*, and perſuade him to aſſiſt the ſaid Title. Since the Conqueſt, there was never the like Treaſon. But out of whoſe Head came it? Out of *Raleigh*'s, who muſt alſo adviſe *Cobham* to uſe his Brother *Brook* to incite the Lady *Arabella* to write three ſeveral Letters, as aforeſaid in the Indictment: all this was on the 9th of *June*. Then three Days after, *Brook* was acquainted with it. After this, *Cobham* ſaid to *Brook*, It will never be well in *England*, till the King and his Cubs are taken away. Afterwards, *Raleigh* delivered a Book to *Cobham*, treacherouſly written againſt the Title of the King. It appears that *Cobham* took *Raleigh* to be either a God, or an Idol. *Cobham* endeavours to ſet up a new King, or Governor: God forbid mine Eyes ſhould ever ſee ſo unhappy a Change. As for the Lady *Arabella*, ſhe, upon my Conſcience, hath no more Title to the Crown than I have, which before God I utterly renounce. *Cobham*, a Man bred in *England*, hath on Experience abroad; but *Raleigh*, a Man of great Wit, Military, and a Sword-Man. Now whether theſe things were bred in a hollow Tree, I leave to them to ſpeak of, who can ſpeak far better than myſelf. *And ſo ſat him down again.*

Sir Ed. Coke, the King's Attorney. I muſt firſt, my Lords, before I come to the Cauſe, give one Caution, becauſe we ſhall often mention Perſons of eminent Places, ſome of them great Monarchs: Whatever we ſay of them, we ſhall but repeat what others have ſaid of them; I mean the Capital Offenders in their Confeſſions. We profeſſing Law, muſt ſpeak reverently of Kings and Potentates. I perceive theſe honourable Lords, and the reſt of this great Aſſembly, are come to hear what hath been ſcattered upon the Wrack of Report. We carry a juſt Mind, to condemn no Man, but upon plain Evidence. Here is Miſchief, Miſchief *in ſummo gradu*, exorbitant Miſchief. My Speech ſhall chiefly touch theſe three Points; *Imitation*, *Supportation*, and *Defence*.

The Imitation of Evil ever exceeds the Precedent; as on the contrary, Imitation of Good ever comes ſhort. Miſchief cannot be ſupported but by Miſchief; yea, it will ſo multiply, that it will bring all to Confuſion. Miſchief is ever underprop'd by Falſhood or foul Practices: and becauſe all theſe things did concur in this Treaſon, you ſhall underſtand the Main, as before you did the Bye.

The Treaſon of the Bye conſiſteth in theſe Points: Firſt, that the Lord *Grey*, *Brook*, *Markham*, and the reſt, intended by Force in the Night to ſurprize the King's Court; which was a Rebellion in the Heart of the Realm, yea, in the Heart of the Heart, in the Court. They intended to take him that is a Sovereign, to make him ſubject to their Power, purpoſing to open the Doors with Muſquets and Caliveers, and to take alſo the Prince and Council: then under the King's Authority to carry the King to the Tower; and to make a Stale of the Admiral. When they had the King there, to extort three things from him: Firſt, A Pardon for all their Treaſons: Secondly, A Toleration of the Roman Superſtition; which their Eyes ſhall ſooner fall out than they ſhall ever ſee; for the King hath ſpoken theſe Words in the hearing of many, *I will loſe the Crown and my Life, before ever I will alter Religion.* And, Thirdly, To remove Counſellors. In the room of the Lord Chancellor, they would have placed one *Watſon* a Prieſt, abſurd in Humanity and ignorant in Divinity. *Brook*, of whom I will ſpeak nothing, Lord Treaſurer. The great Secretary muſt be *Markham*; *Oculus Patriæ*. A Hole muſt be found in my Lord Chief Juſtice's Coat. *Grey* muſt be Earl-Marſhal, and Maſter of the Horſe, becauſe he would have a Table in the Court; marry, he would advance the Earl of *Worceſter* to a higher Place. All this cannot be done without a Multitude: Therefore *Watſon* the Prieſt tells a reſolute Man, that the King was in Danger of *Puritans* and *Jeſuits*; ſo to bring him in blindfold into the Action, ſaying, That the King is no King till he be crown'd; therefore every Man might right his own Wrongs: But he is *Rex natus*, his Dignity deſcends as well as yours, my Lords. Then *Watſon* impoſeth a blaſphemous Oath, that they ſhould Swear to defend the King's Perſon; to keep ſecret what was given them in charge, and ſeek all Ways and Means to advance the Catholick Religion. Then they intend to ſend for the Lord Mayor and the Aldermen, in the King's Name, to the Tower, leſt they ſhould make any Reſiſtance, and then to take Hoſtages of them; and to enjoin them to provide for them Victuals and Munition. *Grey*, becauſe the King removed before *Midſummer*, had a further Reach, to get a Company of Sword-men to aſſiſt the Action: Therefore he would ſtay till he had obtained a Regiment from *Oſtend* or *Auſtria*. So you ſee theſe Treaſons were like *Sampſon*'s Foxes, which were joined in their Tails, tho' their Heads were ſever'd.

Raleigh. You Gentlemen of the Jury, I pray remember, I am not charged with the Bye, being the Treaſon of the Prieſt.

Attorney. You are not. My Lords, you ſhall obſerve three things in the Treaſons: Firſt, they had a Watch-word, (the King's Safety); their Pretence was *Bonum in ſe*; their Intent was *Malum in ſe*; Secondly, they avouched Scripture; both the Prieſts had *Scriptum eſt*; perverting and ignorantly miſtaking the Scriptures: Thirdly, They avouch'd the Common Law, to prove that he was no King 'till he was crowned; alledging a Statute of 13 *Eliz.* This, by way of Imitation, hath been the courſe of all Traitors.

In the 20th of *Edward* II. *Iſabella* the Queen, and the Lord *Mortimer*, gave out, that the King's Perſon was not ſafe, for the good of the Church and Commonwealth.

The Biſhop of *Carliſle* did preach on this Text, *My Head is grieved*, meaning by the Head, the King; that when the Head began to be negligent, the People might reform what is amiſs.

In the 3d of *Henry* IV. Sir *Roger Clarendon*, accompany'd with two Prieſts, gave out That *Richard* II. was alive, when he was dead.

Edward III. cauſed *Mortimer*'s Head to be cut off, for giving Counſel to murder the King.

The 3d of *Henry* VII. Sir *Henry Stanley* found the Crown in the Duſt, and ſet it on the King's Head: when *Fitzwater* and *Garret* told him, that *Edward* V. was alive, he ſaid, *If he be alive, I will aſſiſt him.* But this coſt him his Head.

Edmund de la Pole, Duke of *Suffolk*, killed a Man in the Reign of King *Henry* VII. for which the King would have him hold up his Hand at the Bar, and then pardoned him: Yet he took ſuch an Offence thereat, that he ſent to the Noblemen to help to reform the Commonwealth; and then ſaid, he would go to *France* and get Power there. Sir *Roger Compton* knew all the Treaſon, and diſcovered *Windon* and others, that were attainted.

He ſaid, there was another thing that would be ſtood upon, namely, that they had but one Witneſs. Then he vouched one *Appleyard's* Caſe, a Traitor in *Norfolk*, who ſaid, a Man muſt have two Accuſers. *Helms* was the Man that accuſed him; but Mr. Juſtice *Catlin* ſaid, that that Statute was not in force at that Day. His Words were, *Thruſt her into the Ditch.*

Then he went on ſpeaking of Accuſers, and made this difference: An Accuſer is a Speaker by Report, when a Witneſs is he that upon his Oath ſhall ſpeak his Knowledge of any Man.

A third ſort of Evidence there is likewiſe, and this is held more forcible than either of the other two; and that is, when a Man, by his Accuſation of another, ſhall, by the ſame Accuſation, alſo condemn himſelf, and make himſelf liable to the ſame Fault and Puniſhment: This is more forcible than many Witneſſes. So then ſo much by way of Imitation. Then he defined Treaſon: There is Treaſon in the Heart, in the Hand, in the Mouth, in Conſummation: comparing that *in Corde* to the Root of a Tree; *in Ore*, to the Bud; *in Manu* to the Bloſſom; and that which is *in Conſummatione*, to the Fruit.

Now I come to your Charge, you of the Jury: The Greatneſs of Treaſon is to be conſidered in theſe two things, *Determinatione finis*, and *Electione mediorum.* This Treaſon excelleth in both, for that it was to deſtroy the King and his Progeny. Theſe Treaſons are ſaid to be *Crimen læſæ Majeſtatis*; this goeth further, and may be term'd, *Crimen extirpandæ Regiæ Majeſtatis, & totius Progeniei ſuæ.* I ſhall not need, my Lords, to ſpeak any thing concerning the King, nor of the Bounty and Sweetneſs of his Nature, whoſe Thoughts are innocent, whoſe Words are full of Wiſdom and Learning, and whoſe Works are full of Honour; although it be a true Saying, *Nunquam nimis quod nunquam ſatis.* But to whom do you bear Malice? to the Children?

Raleigh. To whom ſpeak you this? You tell me News I never heard of.

Attorney. Oh Sir, do I? I will prove you the notorieſt Traitor that ever came to the Bar. After you have taken away the King, you would alter Religion: as you Sir *Walter Raleigh*, have followed them of the Bye in Imitation; for I will charge you with the Words.

Raleigh. Your Words cannot condemn me; my Innocency is my Defence. Prove one of theſe things wherewith you have charg'd me, and I will confeſs the whole Indictment, and that I am the horribleſt Traitor that ever lived, and worthy to be crucified with a thouſand thouſand Torments.

Attorney. Nay, I will prove all: Thou art a Monſter; thou haſt an *Engliſh* Face, but a *Spaniſh* Heart. Now you muſt have Money: *Aremberg* was no ſooner in *England* (I charge thee *Raleigh)* but thou incitedſt *Cobham* to go unto him, and to deal with him for Money, to beſtow on diſcontented Perſons, to raiſe Rebellion on the Kingdom.

Raleigh. Let me anſwer for myſelf.

Attorney. Thou ſhalt not.

Raleigh. It concerneth my Life.

Ld. Ch. Juſt. Sir *Walter Raleigh*, Mr. Attorney is but yet in the General; but when the King's Counſel have given the Evidence wholly you ſhall anſwer every Particular?

Attorney. Oh! do I touch you?

Lord Cecil. Mr. Attorney, when you have done with this General Charge, do you not mean to let him anſwer every Particular?

Attorney. Yes, when we deliver the Proofs to be read. *Raleigh* procured *Cobham* to go to *Aremberg* which he did by his Inſtigation: *Raleigh* ſupped with *Cobham* before he went to *Aremberg*; after Supper, *Raleigh* conducted him to *Durham-Houſe*; from thence *Cobham* went with *Lawrency*, a Servant of *Aremberg*'s, unto him, and went in by a back-way. *Cobham* could never be quiet until he had entertained this Motion, for he had four Letters from *Raleigh*. *Aremberg* anſwer'd, The Money ſhould be performed, but knew not to whom it ſhould be diſtributed. Then *Cobham* and *Lawrency* came back to *Durham-Houſe*, where they found *Raleigh*. *Cobham* and *Raleigh* went up, and left *Lawrency* below, where they had ſecret Conference in a Gallery; and after, *Cobham* and *Lawrency* departed from *Raleigh*. Your Jargon was Peace: What is that? *Spaniſh* Invaſion, *Scotiſh* Subverſion. And again, you are not a fit Man to take ſo much Money for procuring of a lawful Peace, for Peace procured by Money is diſhonourable. Then *Cobham* muſt go to *Spain*, and return by *Jerſey*, where you were Captain: And then, becauſe *Cobham* had not ſo much Policy, or at leaſt Wickedneſs, as you, he muſt have your Advice for the Diſtribution of the Money. Would you have depoſed ſo good a King, lineally deſcended of *Elizabeth*, eldeſt Daughter of *Edward* IV? Why then muſt you ſet up another? I think you meant to make *Arabella* a Titular Queen, of whoſe Title I will ſpeak nothing; but ſure you meant to make her a Stale. Ah! good Lady, you could mean her no good.

Raleigh. You tell me News, Mr. *Attorney.*

Attorney. Oh Sir! I am the more large, becauſe I know with whom I deal: For we have to deal to-day with a Man of Wit.

Raleigh. Did I ever ſpeak with this Lady?

Attorney. I will track you out before I have done. *Engliſhmen* will not be led by perſuaſion of Words, but they muſt have Books to perſuade.

Raleigh. The Book was written by a Man of your Profeſſion, Mr. *Attorney.*

Attorney. I would not have you impatient.

Raleigh. Methinks you fall out with your ſelf; I ſay nothing.

Attorney. By this Book you would perſuade Men, that he is not the lawful King. Now let us conſider ſome Circumſtances: My Lords, you know my Lord *Cobham* (for whom we all lament and rejoice; lament in that his Houſe, which hath ſtood ſo long unſpotted, is now ruinated; rejoice, in that his Treaſons are reveal'd:) he is neither Politician nor Sword-man; *Raleigh* was both, united in the Cauſe with him, and therefore Cauſe of his Deſtruction. Another Circumſtance is, the ſecret contriving of it. *Humphry Stafford* claimed Sanctuary for Treaſon. *Raleigh*, in his *Machiavelian* Policy, hath made a Sanctuary for Treaſon: He muſt talk with none but *Cobham*; becauſe, ſaith he, one Witneſs can never condemn me. For *Brook* ſaid unto Sir *Griffith Markham*, *Take heed how you do make my Lord* Cobham *acquainted*; *for whatſoever he knoweth*, Raleigh *the Witch will get it out of him.* As ſoon as *Raleigh* was examined on one point of Treaſon concerning my Lord *Cobham*, he wrote to him thus; *I have been examined of you and confeſſed nothing.* Further, you ſent to him by your truſty *Francis Kemiſh*, that one Witneſs could not condemn; and therefore bad his Lordſhip be of good Courage. Came this out of *Cobham*'s Quiver? No: but out of *Raleigh*'s *Machiavelian* and deviliſh Policy. Yea, but *Cobham* did retract it; why then did ye urge it? Now then ſee the moſt horrible Practices that ever came out of the bottomleſs Pit of the loweſt Hell. After that *Raleigh* had Intelligence that *Cobham* had accuſed him, he endeavour'd to have Intelligence from *Cobham*, which he had gotten by young Sir *John Payton:* But I think it was the Error of his Youth.

Raleigh. The Lords told it me, or elſe I had not been ſent to the *Tower.*

Attorney. Thus *Cobham*, by the Inſtigation of *Raleigh*, enter'd into theſe Actions: So that the queſtion will be, Whether you are not the principal Traitor, and he would nevertheleſs have enter'd into it? Why did *Cobham* retract all that ſame? Firſt, Becauſe *Raleigh* was ſo odious, he thought he ſhould fare the worſe for his ſake. Secondly, he thought thus with himſelf, If he be free, I ſhall clear my ſelf the better. After this, *Cobham* aſked for a Preacher to confer with, pretending to have Dr. *Andrews*; but indeed he meant not to have him, but Mr. *Galloway*; a worthy and reverend Preacher, who can do more with the King (as he ſaid) than any other; that he, ſeeing his conſtant Denial, might inform the King thereof. Here he plays with the Preacher. If *Raleigh* could perſuade the Lords, that *Cobham* had no intent to travel, then he thought all ſhould be well. Here is Forgery! In the *Tower Cobham* muſt write to Sir *Thomas Vane*, a worthy Man, that he meant not to go into *Spain:* which Letter *Raleigh* deviſed in *Cobham*'s Name.

Raleigh. I will waſh my hands of the Indictment, and die a true Man to the King.

Attorney. You are the abſoluteſt Traitor that ever was.

Raleigh. Your Phraſes will not prove it, Mr. *Attorney.*

Attorney. *Cobham* writeth a Letter to my Lord *Cecil*, and doth will *Mellis*'s Man to lay it in a *Spaniſh* Bible, and to make as tho' he found it by chance. This was after he had Intelligence with this Viper, that he was falſe.

Lord Cecil. You mean a Letter intended to me; I never had it.

Attorney. No, my Lord, you had it not. You, my Maſters of the Jury, reſpect not the Wickedneſs and Hatred of the Man, reſpect his Cauſe: if he be guilty, I know you will have care of it, for the Preſervation of the King, the Continuance of the Goſpel authorized, and the Good of us all.

Raleigh. I do not hear yet, that you have ſpoken one word againſt me; here is no Treaſon of mine done: If my Lord *Cobham* be a Traitor, what is that to me?

Attorney. All that he did was by thy Inſtigation, thou Viper; for I *thou* thee, thou Traitor.

Raleigh. It becometh not a Man of Quality and Virtue, to call me ſo: But I take comfort in it, it is all you can do.

Attorney. Have I anger'd you?

Raleigh. I am in no caſe to be angry.

C. J. Popham. Sir *Walter Raleigh*, Mr. Attorney ſpeaketh out of the Zeal of his Duty, for the Service of the King, and you for your Life; be valiant on both ſides.

Now they proceed to the Reading the Proofs.

The Lord Cobham's *Examination read.*

He confeſſeth, he had a Paſſport to go into *Spain*, intending to go to the Archduke, to confer with him about theſe Practices; and becauſe he knew the Archduke had not Money to pay his own Army, from thence he meant to go to *Spain*, to deal with the King for the 600,000 Crowns, and to return by *Jerſey*; and that nothing ſhould be done, until he had ſpoken with Sir *Walter Raleigh* for diſtribution of the Money to them which were diſcontented in *England*. At the firſt beginning, he breathed out Oaths and Exclamations againſt *Raleigh*, calling him Villain and Traitor; ſaying he had never entered into theſe Courſes, but by his Inſtigation, and that he would never let him alone.

Here Mr. *Attorney* willed the Clerk of the Crown-Office to read over theſe laſt Words again (*He would never let him alone.*)

The Lord Cobham'*s* Examination.

Beſides he ſpake of Plots and Invaſions; of the Particulars whereof he could give no Account, tho' *Raleigh* and he had conferred of them. Further he ſaid, he was afraid of *Raleigh*, that when he ſhould return by *Jerſey*, that he would have deliver'd him and the Money to the King. Being examined of Sir *Arthur Gorge*, he freed him, ſaying, They never durſt truſt him; but Sir *Arthur Savage* they intended to uſe, becauſe they thought him a fit Man.

Raleigh. Let me ſee the Accuſation: This is abſolutely all the Evidence can be brought againſt me; poor Shifts! You Gentlemen of the Jury, I pray you underſtand this. This is that which muſt either condemn, or give me Life; which muſt free me, or ſend my Wife and Children to beg their Bread about the Streets: This is that muſt prove me a notorious Traitor, or a true Subject to the King. Let me ſee my Accuſation, that I may make my Anſwer.

Clerk of the Council. I did read it, and ſhew you all the Examinations.

Raleigh. At my firſt Examination at *Windſor*, my Lords aſked me, what I knew of *Cobham*'s Practice with *Aremberg*, I anſwer'd negatively: And as concerning *Arabella*, I proteſt before God, I never heard one word of it. If that be proved, let me be guilty of ten thouſand Treaſons. It is a ſtrange thing you will impute that to me, when I never heard ſo much as the Name of *Arabella Stuart*, but only the Name of *Arabella*.

After being examin'd, I told my Lords, that I thought my Lord *Cobham* had Conference with *Aremberg*; I ſuſpected his viſiting of him: for after he departed from me at *Durham-Houſe*, I ſaw him paſs by his own Stairs, and paſſed over to *St. Mary Saviours*, where I knew *Lawrency*, a Merchant, and a Follower of *Aremberg*, lay, and therefore likely to go unto him. My Lord *Cecil* aſked my Opinion concerning *Lawrency*; I ſaid, that if you do not apprehend *Lawrency*, it is dangerous, he will fly; if you do apprehend him, you ſhall give my Lord *Cobham* notice thereof. I was aſked who was the greateſt Man with my Lord *Cobham*; I anſwer'd, I knew no Man ſo great with him as young *Wyat* of *Kent*.

As ſoon as *Cobham* ſaw my Letter to have diſcover'd his Dealing with *Aremberg*, in his Fury he accus'd me; but before he came to the Stair-foot he repented, and ſaid he had done me wrong. When he came to the end of his Accuſation, he added, that if he had brought this Money to *Jerſey*, he fear'd that I would have deliver'd him and the Money to the King. Mr. Attorney, you ſaid this never came out of *Cobham*'s Quiver; he is a ſimple Man. Is he ſo ſimple? no; he hath a Diſpoſition of his own, he will not eaſily be guided by others; but when he has once taken head in a Matter, he is not eaſily drawn from it: he is no Babe. But it is ſtrange for me to deviſe with *Cobham*, that he ſhould go to *Spain*, to perſuade the King to diſburſe ſo much Money, he being a Man of no Love in *England*, and I having reſigned my room of chiefeſt Command, the Wardenſhip of the *Stannaries*. Is it not ſtrange for me to make myſelf *Robin Hood*, or a *Kett*, or a *Cade?* I knowing *England* to be in better Eſtate to defend itſelf than ever it was. I knew *Scotland* united; *Ireland* quieted, wherein of late our Forces were diſperſed; *Denmark* aſſured, which before was ſuſpected. I knew, that having loſt a Lady whom Time had ſurpriz'd, we had now an active King, a lawful Succeſſor, who would himſelf be preſent in all his Affairs. The State of *Spain* was not unknown to me: I had written a Diſcourſe, which I had intended to preſent unto the King, againſt Peace with *Spain*. I knew the *Spaniards* had ſix Repulſes; three in *Ireland*, and three at Sea, and once in 1588, at *Cales*, by my Lord Admiral. I knew he was diſcourag'd and diſhonour'd. I knew the King of *Spain* to be the proudeſt Prince in Chriſtendom; but now he cometh creeping to the King my Maſter for Peace. I knew, whereas before he had in his Port ſix or ſeven ſcore Sail of Ships, he hath now but ſix or ſeven. I knew of twenty-five Millions he had from his *Indies*, he hath ſcarce one left. I knew him to be ſo poor, that the Jeſuits in *Spain*, who were wont to have ſuch large Allowance, were fain to beg at the Church-Door. Was it ever read or heard, that any Prince ſhould diſburſe ſo much Money without a ſufficient Pawn? I knew her own Subjects, the Citizens of *London*, would not lend her Majeſty Money, without Lands in Mortgage. I knew the Queen did not lend the States Money, without *Fluſhing*, *Brill*, and other Towns for a Pawn. And can it be thought, that he would let *Cobham* have ſo great a Sum?

I never came to the Lord *Cobham*'s, but about Matters of his Profit; as the ordering of his Houſe, paying of his Servants Board-Wages, &c. I had of his, when I was examin'd, four thouſand Pounds worth of Jewels for a Purchaſe; a Pearl of three thouſand Pound; and a Ring worth five hundred Pound. If he had had a fancy to run away, he would not have left ſo much to have purchas'd a Leaſe in Fee-Farm. I ſaw him buy three hundred Pounds worth of Books to ſend to his Library at *Canterbury*, and a Cabinet of thirty Pound, to give to Mr. Attorney, for drawing the Conveyances: and God in Heaven knoweth, not I, whether he intended to travel or no. But for that Practice with *Arabella*, or Letters to *Aremberg* framed, or any Diſcourſe with him, or in what Language he ſpake unto him; if I knew any of theſe things, I would abſolutely confeſs the Indictment, and acknowledge myſelf worthy ten thouſand Deaths.

Cobham's *ſecond Examination read.*

The Lord *Cobham* being requir'd to ſubſcribe to an Examination, there was ſhewed a Note under Sir *Walter Raleigh*'s hand; the which when he had perus'd, he paus'd, and after brake forth into theſe Speeches: Oh Villain! Oh Traitor! I will now tell you all the Truth; and then ſaid, His Purpoſe was to go into *Flanders*, and into *Spain*, for the obtaining the aforeſaid Money; and that *Raleigh* had appointed to meet him in *Jerſey* as he return'd home, to be adviſed of him about the Diſtribution of the Money.

L. C. J. Popham. When *Cobham* anſwer'd to the Interrogatories, he made ſcruple to ſubſcribe; and being urg'd to it, he ſaid, if he might hear me affirm, that a Perſon of his Degree ought to ſet his hand, he would: I lying then at *Richmond* for fear of the Plague, was ſent for, and I told he ought to ſubſcribe; otherwiſe it were a Contempt of a high nature: then he ſubſcribed. The Lords queſtion'd with him further, and he ſhew'd them a Letter, as I thought written to me, but it was indeed written to my Lord *Cecil:* he deſired to ſee the Letter again, and then ſaid, Oh Wretch! Oh Traitor! whereby I perceiv'd you had not perform'd that Truſt he had repoſed in you.

Raleigh. He is as paſſionate a Man as lives; for he hath not ſpared the beſt Friends he hath in *England* in his Paſſion. My Lords, I take it, he that has been examined, has ever been aſked at the time of his Examination, if it be according to his meaning, and then to ſubſcribe. Methinks, my Lords, when he accuſes a Man, he ſhould give ſome Account and Reaſon of it: It is not ſufficient to ſay, we talked of it. If I had been the Plotter, would not I have given *Cobham* ſome Arguments, whereby to perſuade the King of *Spain*, and anſwer his Objections? I knew *Weſtmoreland* and *Bothwell*, Men of other Underſtandings than *Cobham*, were ready to beg their Bread.

Sir Tho. Fowler, one of the Jury. Did Sir *Walter Raleigh* write a Letter to my Lord before he was examined concerning him, or not?

Attorney. Yes.

Lord Cecil. I am in great diſpute with myſelf to ſpeak in the Caſe of this Gentleman: A former Dearneſs between me and him, ty'd ſo firm a Knot of my Conceit of his Virtues, now broken by a Diſcovery of his Imperfections. I proteſt, did I ſerve a King that I knew would be diſpleaſed with me for ſpeaking, in this Caſe I would ſpeak, whatever came of it; but ſeeing he is compacted of Piety and Juſtice, and one that will not miſlike of any Man for ſpeaking a Truth, I will anſwer your Queſtion.

Sir *Walter Raleigh* was ſtaid by me at *Windſor*, upon the firſt News of *Copley*, that the King's Perſon ſhould be ſurprized by my Lord *Grey*, and Mr. *George Brook*; when I found *Brook* was in, I ſuſpected *Cobham*, then I doubted *Raleigh* to be a Partaker. I ſpeak not this, that it ſhould be thought I had greater Judgment than the reſt of my Lords, in making this haſte to have them examined. *Raleigh* following to *Windſor*, I met with him upon the Terrace, and willed him, as from the King, to ſtay; ſaying, the Lords had ſomething to ſay to him: then he was examined, but not concerning my Lord *Cobham*, but of the ſurprizing Treaſon. My Lord *Grey* was apprehended, and likewiſe *Brook*; by *Brook* we found, that he had given notice to *Cobham* of the ſurprizing Treaſon, as he deliver'd it to us; but with as much ſparingneſs of a Brother, as he might. We ſent for my Lord *Cobham* to *Richmond*, where he ſtood upon his Juſtification, and his Quality; ſometimes being froward, he ſaid he was not bound to ſubſcribe, wherewith we made the King acquainted. *Cobham* ſaid, if my Lord Chief Juſtice would ſay it were a Contempt, he would ſubſcribe; whereof being reſolv'd, he ſubſcrib'd. There was a Light given to *Aremberg*, that *Lawrency* was examined; but that *Raleigh* knew that *Cobham* was examined, is more than I know.

Raleigh. If my Lord *Cobham* had truſted me in the Main, was not I as fit a Man to be truſted in the Bye?

Lord Cecil. Raleigh did by his Letters acquaint us that my Lord *Cobham* had ſent *Lawrency* to *Aremberg*, when he knew not he had any Dealings with him.

Lord Hen. Howard. It made for you, if *Lawrency* had been only acquainted with *Cobham*, and not with you. But you knew his whole Eſtate, and were acquainted with *Cobham*'s Practice with *Lawrency*; and it was known to you before, that *Lawrency* depended on *Aremberg*.

Attorney. 1. *Raleigh* proteſted againſt the ſurprizing Treaſon. 2. That he knew not of the Matter touching *Arabella*. I would not charge you, Sir *Walter*, with a Matter of Falſehood: You ſay you ſuſpected the Intelligence that *Cobham* had with *Aremberg* by *Lawrency*.

Raleigh. I thought it had been no other Intelligence, but ſuch as might be warranted.

Attorney. Then it was but lawful Suſpicion. But to that whereas you ſaid, that *Cobham* had accuſed you in Paſſion, I anſwer three ways: 1. I obſerved when *Cobham* ſaid, Let me ſee the Letter again, he paus'd; and when he did ſee that Count *Aremberg* was touch'd, he cry'd out, Oh Traitor! Oh Villain! now will I confeſs the whole Truth. 2. The Accuſation of a Man on hearſay, is nothing: Would he accuſe himſelf on Paſſion, and ruinate his Caſe and Poſterity, out of malice to accuſe you? 3. Could this be out of Paſſion? Mark the Manner of it; *Cobham* had told this at leaſt two Months before to his Brother *Brook*, *You are Fools, you are on the Bye,* Raleigh *and I are on the Main; we mean to take away the King and his Cubs:* this he deliver'd two Months before. So mark the Manner and the Matter; he would not turn the Weapon againſt his own Boſom, and accuſe himſelf to accuſe you.

Raleigh. Hath *Cobham* confeſſed that?

Ld. Ch. Juſt. This is ſpoken by Mr. Attorney, to prove that *Cobham*'s Speech came not out of Paſſion.

Raleigh. Let it be proved that *Cobham* ſaid ſo.

Attorney. Cobham ſaith, he was a long time doubtful of *Raleigh*, that he would ſend him and the Money to the King. Did *Cobham* fear leſt you would betray him in *Jerſey?* Then of neceſſity there muſt be Truſt between you. No Man can betray a Man, but he that is truſted, in my underſtanding. This is the greateſt Argument to prove that he was acquainted with *Cobham*'s Proceedings. *Raleigh* has a deeper Reach, than to make himſelf, as he ſaid, *Robin Hood*, a *Kett*, or *Cade*; yet I never heard that *Robin Hood* was a Traitor; they ſay he was an Outlaw. And whereas he ſaith that our King is not only more wealthy and potent than his Predeceſſors, but alſo more politick and wiſe, ſo that he could have no hope to prevail; I anſwer, There is no King ſo potent, wiſe and active, but he may be overtaken thro' Treaſon. Whereas you ſay *Spain* is ſo poor, diſcourſing ſo largely thereof; it had been better for you to have kept in *Guiana*, than to have been ſo well acquainted with the State of *Spain*. Beſides, if you could have brought *Spain* and *Scotland* to have joined, you might have hoped to prevail a great deal the better. For his ſix Overthrows, I anſwer, he hath the more Malice, becauſe Repulſes breed Deſire of Revenge. Then you ſay you never talked with *Cobham*, but about Leaſes, and letting Lands, and ordering his Houſe; I never knew you Clerk of the Kitchen, &c. If you had fallen on your knees at firſt, and confeſſed the Treaſon, it had been better for you. You ſay, He meant to have given me a Cabinet of thirty Pound; perhaps he thought by thoſe means to have anticipated me therewith. But you ſay all theſe are Circumſtances: I anſwer, all this Accuſation in Circumſtance is true. Here now I might appeal to my Lords, that you take hold of this, that he ſubſcribed not to the Accuſation.

Lord Hen. Howard. Cobham was not then preſſed to ſubſcribe.

Attorney. His Accuſation being teſtify'd by the Lords, is of as great force, as if he had ſubſcrib'd. *Raleigh* ſaith again, If the Accuſer be alive, he muſt be brought face to face to ſpeak; and alledges 25 *Edward* III. that there muſt be two ſufficient Witneſſes, that muſt be brought face to face before the Accuſed; and alledgeth 10 and 13 *Elizabeth*.

Raleigh. You try me by the *Spaniſh* Inquiſition, if you proceed only by the Circumſtances, without two Witneſſes.

Attorney. This is a treaſonable ſpeech.

Raleigh. Evertere Hominem juſtum in Cauſa ſua injuſtum eſt. Good my Lords, let it be proved, either by the Laws of the Land, or the Laws of God, that there ought not to be two Witneſſes appointed; yet I will not ſtand to defend this Point in Law, if the King will have it ſo: it is no rare thing for a Man to be falſely accuſed. A Judge condemn'd a Woman in *Sarum* for killing her Huſband on the Teſtimony of one Witneſs; afterwards his Man confeſſed the Murder, when ſhe was executed: who after being touch'd in Conſcience for the Judgment, was uſed to ſay, *Quod nunquam de hoc facto animam in vita ſua purgaret.* It is alſo commanded by the Scripture; *Allocutus eſt Jehova Moſen, In Ore duorum aut trium Teſtium, &c.*

If Chriſt requireth it, as it appeareth, *Mat.* 18. if by the Canon, Civil Law, and God's Word, it be required, that there muſt be two Witneſſes at the leaſt; bear with me if I deſire one.

I would not deſire to live, if I were privy to *Cobham*'s Proceedings. I have been a Slave, a Villain, a Fool, if I had endeavour'd to ſet up *Arabella*, and refus'd ſo gracious a Lord and Sovereign. But urge your Proofs.

Ld. Ch. Juſt. You have offer'd Queſtions on diverſe Statutes, all which mention two Accuſers in caſe of Indictments: you have deceiv'd yourſelf, for the Laws of 25 *Edward* III. and 5 *Edward* VI. are repeal'd. It ſufficeth now if there be Proofs made either under Hand, or by Teſtimony of Witneſſes, or by Oaths; it needs not the Subſcription of the Party, ſo there be Hands of credible Men to teſtify the Examination.

Raleigh. It may be an Error in me; and if thoſe Laws be repeal'd, yet I hope the Equity of them remains ſtill; but if you affirm it, it muſt be a Law to Poſterity. The Proof of the Common Law is by Witneſs and Jury; let *Cobham* be here, let him ſpeak it. Call my Accuſer before my Face, and I have done.

Attorney. Scientia Sceleris eſt mera Ignorantia. You have read the Letter of the Law, but underſtand it not. Here was your Anchor-hold, and your Rendezvous: you truſt to *Cobham*, either *Cobham* muſt accuſe you, or no body; if he did, then it would not hurt you, becauſe he is but one Witneſs; if he did not, then you are ſafe.

Raleigh. If ever I read a Word of the Law or Statute, before I was Priſoner in the Tower, God confound me.

Attorney. Now I come to prove the Circumſtances of the Accuſation to be true. *Cobham* confeſſed he had a Paſs-port to travel, hereby intending to preſent Overtures to the Arch-Duke, and from thence to go to *Spain*, and there to have conference with the King for Money. You ſay he promiſed to come home by *Jerſey*, to make merry with you and your Wife.

Raleigh. I ſaid in his return from *France*, not *Spain*.

Attorney. Further, in his Examination he ſaith, nothing could be ſet down for the Diſtribution of the Money to the Diſcontented, without Conference with *Raleigh.* You ſaid it ſhould have been for Procurement of Peace, but it was for raiſing Rebellion. Further, *Cobham* ſaith, he would never have enter'd into theſe Courſes, but by your Inſtigation, and that you would never let him alone. Your Scholar was not apt enough to tell us all the Plots; that is enough for you to do, that are his Maſter. You intended to truſt Sir *Arthur Savage,* whom I take to be an honeſt and true Gentleman, but not Sir *Arthur Gorge.*

Raleigh. All this is but one Accuſation of *Cobham*'s, I hear no other thing; to which Accuſation he never ſubſcribed nor avouched it. I beſeech you, my Lords, let *Cobham* be ſent for, charge him on his Soul, on his Allegiance to the King; if he affirm it, I am guilty.

Lord Cecil. It is the Accuſation of my Lord *Cobham,* it is the Evidence againſt you: muſt it not be of force without his Subſcription? I deſire to be reſolv'd by the Judges, whether by the Law it is not a forcible Argument of Evidence.

Judges. My Lord, it is.

Raleigh. The King at his Coronation is ſworn *In omnibus Judiciis ſuis æquitatem, non rigorem Legis, obſervare.* By the Rigour and Cruelty of the Law it may be a forcible Evidence.

Ld Ch. Juſt. That is not the Rigour of the Law, but the Juſtice of the Law; elſe when a Man hath made a plain Accuſation, by Practice he might be brought to retract it again.

Raleigh. Oh my Lord, you may uſe Equity.

Ld. Ch. Juſt. That is from the King; you are to have Juſtice from us.

Lord Anderſon. The Law is, if the Matter be proved to the Jury, they muſt find you guilty; for *Cobham*'s Accuſation is not only againſt you, there are other things ſufficient.

Lord Cecil. Now that Sir *Walter Raleigh* is ſatisfy'd, that *Cobham*'s Subſcription is not neceſſary, I pray you, Mr. Attorney, go on.

Raleigh. Good Mr. Attorney, be patient, and give me leave.

Lord Cecil. An unneceſſary Patience is a Hindrance; let him go on with his Proofs, and then refel them.

Raleigh. I would anſwer particularly.

Lord Cecil. If you would have a Table and Pen and Ink, you ſhall.

Then Paper and Ink was given him.

Here the Clerk of the Crown read the Letter, which the Lord *Cobham* did write in *July,* which was to the effect of his former Examination; further ſaying, I have diſclos'd all: To accuſe any one falſely, were to burden my own Conſcience.

Attorney. Read *Copley's* Confeſſion the 8th of *June*; he ſaith, He was offer'd 1000 Crowns to be in this Action.

Here *Watſon*'s Additions were read.

The great Maſs of Money from the Count was impoſſible, &c.

Brook's Confeſſion read.

There have Letters paſſed, ſaith he, between *Cobham* and *Aremberg,* for a great Sum of Money to aſſiſt a ſecond Action, for the ſurprizing of his Majeſty.

Attorney. It is not poſſible it was of Paſſion; for it was in talk before three Men, being ſeverally examined, who agreed in the Sum to be beſtow'd on diſcontented Perſons; That *Grey* ſhould have 12,000 Crowns, and *Raleigh* ſhould have 8000, or 10,000 Crowns.

Cobham's Examination, *July* 18.

If the Money might be procur'd (ſaith he) then a Man may give Penſions. Being aſked if a Penſion ſhould not be given to his Brother *Brook,* he deny'd it not.

Lawrency'*s Examination.*

Within five Days after *Aremberg* arrived, *Cobham* reſorted unto him. That Night that *Cobham* went to *Aremberg* with *Lawrency, Raleigh* ſupped with him.

Attorney. Raleigh muſt have his Part of the Money, therefore now he is a Traitor. The Crown ſhall never ſtand one Year on the Head of the King (my Maſter) if a Traitor may not be condemn'd by Circumſtances: For if A. tells B. and B. tells C. and C. D. &c. you ſhall never prove Treaſon by two Witneſſes.

Raleigh's *Examination was read.*

He confeſſeth *Cobham* offered him 8000 Crowns, which he was to have for the furtherance of the Peace between *England* and *Spain*; and that he ſhould have it within three Days. To which he ſaid, he gave this Anſwer; When I ſee the Money, I will tell you more: For I had thought it had been one of his ordinary idle Conceits, and therefore made no Account thereof.

Raleigh. The Attorney hath made a long Narration of *Copley,* and the Prieſts, which concerns me nothing, neither know I how *Cobham* was alter'd. For he told me if I would agree to further the Peace, he would get me 8000 Crowns. I aſked him, Who ſhall have the reſt of the Money? He ſaid I will offer ſuch a Nobleman (who was not named) ſome of the Money. I ſaid, he will not be perſuaded by you, and he will extremely hate you for ſuch a Motion. Let me be pinched to Death with hot Irons, if ever I knew there was any Intention to beſtow the Money on diſcontented Perſons. I had made a Diſcourſe againſt the Peace, and would have printed it: If *Cobham* changed his Mind, if the Prieſts, if *Brook* had any ſuch Intent, what is that to me? They muſt anſwer for it. He offered me the Money before *Aremberg* came, that is difference of time.

Serj. Philips. Raleigh confeſſeth the Matter, but avoideth it by diſtinguiſhing of Times. You ſaid it was offered you before the coming of *Aremberg,* which is falſe. For you being examined whether you ſhould have ſuch Money of *Cobham,* or not; you ſaid, yea, and that you ſhould have it within two or three Days. *Nemo moriturus præſumitur mentiri.*

Ld. Henry Howard. Alledge me any Ground or Cauſe, wherefore you gave ear to my Lord *Cobham* for receiving Penſions, in Matters you had not to deal with.

Raleigh. Could I ſtop my Lord *Cobham*'s Mouth?

Ld. Cecil. Sir *Walter Raleigh* preſſeth, that my Lord *Cobham* ſhould be brought Face to Face. If he aſks things of Favour and Grace, they muſt come only from him that can give them. If we ſit here as Commiſſioners, how ſhall we be ſatisfied whether he ought to be brought, unleſs we hear the Judges ſpeak?

Ld. Ch. Juſt. This thing cannot be granted, for then a Number of Treaſons ſhould flouriſh: The Accuſer may be drawn by Practice, whilſt he is in Perſon.

Judge Gawdy. The Statute you ſpeak of concerning two Witneſſes in Caſe of Treaſon, is found to be inconvenient, therefore by another Law it was taken away.

Raleigh. The common Trial of *England* is by Jury and Witneſſes.

Ld. Ch. Juſt. No, by Examination: If three conſpire a Treaſon, and they all confeſs it; here is never a Witneſs, yet they are condemned.

Judge Warburton. I marvel, Sir *Walter,* that you being of ſuch Experience and Wit, ſhould ſtand on this Point; for ſo many Horſe-ſtealers may eſcape, if they may not be condemned without Witneſſes. If one ſhould ruſh into the King's Privy-Chamber, whilſt he is alone, and kill the King (which God forbid) and this Man be met coming with his Sword drawn all bloody; ſhall not he be condemned to Death? My Lord *Cobham* hath, perhaps, been laboured withal; and to ſave you, his old Friend, it may be that he will deny all that which he hath ſaid.

Raleigh. I know not how you conceive the Law.

Ld. Ch. Juſt. Nay, we do not conceive the Law, but we know the Law.

Raleigh. The Wiſdom of the Law of God is abſolute and perfect, *Hæc fac, & vives, &c.* But now by the Wiſdom of the State, the Wiſdom of the Law is uncertain. Indeed where the Accuſer is not to be had conveniently, I agree with you; but here my Accuſer may; he is alive, and in the Houſe. *Suſanna* had been condemned, if *Daniel* had not cried out, *Will you condemn an Innocent* Iſraelite, *without Examination or Knowledge of the Truth?* Remember, it is abſolutely the Commandment of God: If a falſe Witneſs riſe up, you ſhall cauſe him to be brought before the Judges; if he be found falſe, he ſhall have the Puniſhment which the accuſed ſhould have had. It is very ſure, for my Lord to accuſe me is my certain Danger, and it may be a Means to excuſe himſelf.

Ld. Ch. Juſt. There muſt not ſuch a Gap be opened for the Deſtruction of the King, as would be if we ſhould grant this. You plead hard for yourſelf, but the Laws plead as hard for the King. I did never hear that Courſe to be taken in a Caſe of Treaſon, as to write one to another, or ſpeak one to another, during the time of their Impriſonment. There hath been Intelligence between you; and what under-hand Practices there may be, I know not. If the Circumſtances agree not with the Evidence, we will not condemn you.

Raleigh. The King deſires nothing but the knowledge of the Truth, and would have no Advantage taken by Severity of the Law. If ever we had a gracious King, now we have; I hope, as he is, ſuch are his Miniſters. If there be but a Trial of five Marks at Common Law, a Witneſs muſt be depoſed. Good my Lords, let my Accuſer come Face to Face, and be depoſed.

Ld. Ch. Juſt. You have no Law for it: God forbid any Man ſhould accuſe himſelf upon his Oath!

Attorney. The Law preſumes, a Man will not accuſe himſelf to accuſe another. You are an odious Man: For *Cobham* thinks his Cauſe the worſe that you are in it. Now you ſhall hear of ſome Stirs to be raiſed in *Scotland.*

Part of Copley'*s Examination.*

'Alſo *Watſon* told me, that a ſpecial Perſon told him, that *Aremberg*
'offer'd to him 1000 Crowns to be in that Action; and that *Brook* ſaid,
'the Stirs in *Scotland* came out of *Raleigh*'s Head.

Raleigh. Brook hath been taught his Leſſon.

Ld. Hen. Howard. This Examination was taken before. Did I teach him his Leſſon?

Raleigh. I proteſt before God, I meant it not by any Privy-Counſellor; but becauſe Money is ſcant, he will juggle on both ſides.

Raleigh'*s Examination.*

'The way to invade *England,* were to begin with Stirs in *Scotland.*'

Raleigh. I think ſo ſtill: I have ſpoken it to divers of the Lords of the Council, by way of Diſcourſe and Opinion.

Attorney. Now let us come to thoſe Words, *of deſtroying the King and his Cubs.*

Raleigh. O barbarous! If they, like unnatural Villains, ſhould uſe thoſe Words, ſhall I be charged with them? I will not hear it; I was never any Plotter with them againſt my Country, I was never falſe to the Crown of *England.* I have ſpent 4000 Pounds of my own againſt the *Spaniſh* Faction, for the Good of my Country. Do you bring the Words of theſe helliſh Spiders, *Clark, Watſon,* and others, againſt me?

Attorney. Thou haſt a *Spaniſh* Heart, and thyſelf art a Spider of Hell; for thou confeſſeſt the King to be a moſt ſweet and gracious Prince, and yet haſt conſpired againſt him.

Watſon'*s Examination read.*

'He ſaid, that *George Brook* told him twice, That his Brother, the
'Lord *Cobham,* ſaid to him, that you are but on the Bye, but *Raleigh*
'and I are on the Main.'

Brook'*s Examination read.*

'Being aſk'd what was meant by this Jargon, the Bye and the Main?
'he ſaid, That the Lord *Cobham* told him, that *Grey* and others were in
'the Bye, he and *Raleigh* were on the Main. Being aſked, what Expo-
'ſition his Brother made of theſe Words? He ſaid, he is loth to repeat
'it. And after ſaith, by the Main was meant the taking away of the King
'and his Iſſue; and thinks on his Conſcience, it was infuſed into his
'Brother's Head by *Raleigh.*'

Cobham'*s Examination read.*

'Being aſk'd, if ever he had ſaid, *It will never be well in* England, *till*
'*the King and his Cubs were taken away*; he ſaid, he had anſwered before,
'and that he would anſwer no more to that Point.'

Raleigh. I am not named in all this: There is a Law of two ſorts of Accuſers; one of his own Knowledge, another by Hear-ſay.

E. of Suffolk. See the Caſe of *Arnold.*

Ld. Ch. Juſt. It is the Caſe of Sir *Will. Thomas,* and Sir *Nicholas Arnold.*

Raleigh. If this may be, you will have any Man's Life in a Week.

Attorney. Raleigh ſaith, that *Cobham* was in a Paſſion when he ſaid ſo.

Would he tell his Brother any thing of Malice againſt *Raleigh*, whom he lov'd as his Life?

Raleigh. *Brook* never loved me; until his Brother had accuſed me, he ſaid nothing.

Ld. Cecil. We have heard nothing that might lead us to think that *Brook* accuſed you, he was only in the ſurprizing Treaſon; for by accuſing you he ſhould accuſe his Brother.

Raleigh. He doth not much care for that.

Ld. Cecil. I muſt judge the beſt. The Accuſation of his Brother was not voluntary; he pared every thing as much as he could to ſave his Brother.

Cobham'*s Examination read.*

'He ſaith, he had a Book written againſt the Title of the King, which 'he had of *Raleigh*, and that he gave it to his Brother *Brook*: and *Ra*-'*leigh* ſaid it was fooliſhly written.'

Attorney. After the King came within 12 miles of *London*, *Cobham* never came to ſee him; and intended to travel without ſeeing the Queen and the Prince. Now in this Diſcontentment you gave him the Book, and he gave it his Brother.

Raleigh. I never gave it him, he took it off my Table. For I well remember a little before that time I received a Challenge from Sir *Amias Preſton*, and for that I did intend to Anſwer it, I reſolved to leave my Eſtate ſettled, therefore laid out all my looſe Papers, amongſt which was this Book.

Ld. Howard. Where had you this Book?

Raleigh. In the old Lord Treaſurer's Study, after his Death.

Ld. Cecil. Did you ever ſhew or make known the Book to me?

Raleigh. No, my Lord.

Ld. Cecil. Was it one of the Books which was left to me or my Brother?

Raleigh. I took it out of the Study in my Lord Treaſurer's Houſe in the *Strand*.

Ld. Cecil. After my Father's deceaſe, Sir *Walter Raleigh* deſired to ſearch for ſome Coſmographical Deſcriptions of the *Indies*, which he thought were in his Study, and were not to be had in Print; which I granted, and would have truſted Sir *Walter Raleigh* as ſoon as any Man: tho' ſince for ſome Infirmities, the Bands of my Affection to him have been broken; and yet reſerving my Duty to the King my Maſter, which I can by no Means diſpenſe with, by God, I love him, and have a great Conflict within myſelf: But I muſt needs ſay, Sir *Walter* uſed me a little unkindly to take the Book away without my knowledge; nevertheleſs, I need make no Apology in behalf of my Father, conſidering how uſeful and neceſſary it is for Privy-Counſellors and thoſe in his Place to intercept and keep ſuch kind of Writings; for whoſoever ſhould then ſearch his Study, may in all likelihood find all the notorious Libels that were writ againſt the late Queen; and whoſoever ſhould rummage my Study, or at leaſt my Cabinet, may find ſeveral againſt the King, our Sovereign Lord, ſince his Acceſſion to the Throne.

Raleigh. The Book was in Manuſcript, and the late Lord Treaſurer had wrote in the beginning of it with his own Hand, theſe Words, *This is the Book of* Robert Snagg. And I do own, as my Lord *Cecil* has ſaid, that I believe they may alſo find in my Houſe almoſt all the Libels that have been writ againſt the late Queen.

Attorney. You were no Privy-Counſellor, and I hope never ſhall be.

Ld. Cecil. He was not a ſworn Counſellor of State, but he has been called to Conſultations.

Raleigh. I think it a very ſevere Interpretation of the Law, to bring me within Compaſs of Treaſon for this Book, writ ſo long ago, of which nobody had read any more than the Heads of the Chapters, and which was burnt by *G. Brook* without my Privity; admitting I had delivered the ſame to the Lord *Cobham*, without allowing or approving, but diſcommending it, according to *Cobham*'s firſt Accuſation: And put the Caſe, I ſhould come to my Lord *Cecil*, as I have often done, and find a Stranger with him, with a Packet of Libels, and my Lord ſhould let me have one or two of them to peruſe: This I hope is no Treaſon.

Attorney. I obſerve there was Intelligence between you and *Cobham* in the *Tower*; for after he ſaid it was againſt the King's Title, he denied it again.

Sir Will. Wade. Firſt, my Lord *Cobham* confeſſeth it, and after he had ſubſcribed it, he revoked it again: To me he always ſaid, that the Drift of it was againſt the King's Title.

Raleigh. I proteſt before God, and all his Works, I gave him not the Book.

Note, Sir *Robert Wroth* ſpeaketh, or whiſpereth ſomething ſecretly.

Attorney. My Lords, I muſt complain of Sir *Robert Wroth*; he ſays this Evidence is not material.

Sir Rob. Wroth. I never ſpake the Words.

Attorney. Let Mr. Serjeant *Philips* teſtify whether he heard him ſay the Words or no.

Ld. Cecil. I will give my Word for Sir *Robert Wroth*.

Sir Rob. Wroth. I will ſpeak as truly as you, Mr. Attorney, for by God I never ſpake it.

Ld. Ch. Juſt. Wherefore ſhould this Book be burnt?

Raleigh. I burned it not.

Serjeant Philips. You preſented your Friend with it when he was diſcontented. If it had been before the Queen's Death, it had been a leſs Matter; but you gave it him preſently when he came from the King, which was the time of his Diſcontentment.

Raleigh. Here is a Book ſuppoſed to be treaſonable; I never read it, commended it, or delivered it, nor urged it.

Attorney. Why, this is cunning.

Raleigh. Every thing that doth make for me is cunning, and every thing that maketh againſt me is probable.

Attorney. Lord *Cobham* ſaith, that *Kemiſh* came to him with a Letter torn, and did wiſh him not to be diſmay'd, for one Witneſs could not hurt him.

Raleigh. This poor Man hath been cloſe Priſoner theſe eighteen Weeks; he was offered the Rack to make him confeſs. I never ſent any ſuch Meſſage by him; I only writ to him, to tell him what I had done with Mr. Attorney; having of his at that time a great Pearl and a Diamond.

Ld. H. Howard. No Circumſtance moveth me more than this. *Kemiſh* was never on the Rack, the King gave Charge that no Rigour ſhould be uſed.

Commiſſioners. We proteſt before God, there was no ſuch Matter intended to our Knowledges.

Raleigh. Was not the Keeper of the Rack ſent for, and he threatened with it?

Sir W. Wade. When Mr. Solicitor and myſelf examined *Kemiſh*, we told him he deſerved the Rack, but did not threaten him with it.

Commiſſioners. It was more than we knew.

Cobham'*s Examination read.*

He ſaith, *Kemiſh* brought him a Letter from *Raleigh*, and that Part which was concerning the Lords of the Council was rent out; the Letter contained that he was examined, and cleared himſelf of all; and that the Lord *H. Howard* ſaid, becauſe he was diſcontent, he was fit to be in the Action. And further, that *Kemiſh* ſaid to him from *Raleigh*, that he ſhould be of good Comfort, for one Witneſs could not condemn a Man for Treaſon.

Ld. Cecil. Cobham was aſk'd, whether, and when, he heard from you? He ſaid, every Day.

Raleigh. *Kemiſh* added more, I never bade him ſpeak thoſe Words.

Note, Mr. Attorney here offered to interrupt him.

Ld. Cecil. It is his laſt Diſcourſe; give him leave, Mr. Attorney.

Raleigh. I am accuſed concerning *Arabella*, concerning Money out of *Spain*. My Lord Chief Juſtice ſaith, a Man may be condemned with one Witneſs, yea, without any Witneſs. *Cobham* is guilty of many things, *Conſcientia mille Teſtes*; he hath accuſed himſelf, what can he hope for but Mercy? My Lords, vouchſafe me this Grace: Let him be brought, being alive, and in the Houſe; let him avouch any of theſe things, I will confeſs the whole Indictment, and renounce the King's Mercy.

Ld. Cecil. Here hath been a touch of the Lady *Arabella Stuart*, a near Kinſwoman of the King's. Let us not ſcandal the Innocent by Confuſion of Speech: She is as innocent of all theſe things as I, or any Man here; only ſhe received a Letter from my Lord *Cobham*, to prepare her; which ſhe laugh'd at, and immediately ſent it to the King. So far was ſhe from Diſcontentment, that ſhe laugh'd him to ſcorn. But you ſee how far the Count of *Aremberg* did conſent.

The Lord Admiral *(Nottingham)* being by in a Standing, with the Lady *Arabella*, ſpake to the Court.

The Lady doth here proteſt upon her Salvation, that ſhe never dealt in any of theſe things; and ſo ſhe willed me to tell the Court.

Ld. Cecil. The Lord *Cobham* wrote to my Lady *Arabella*, to know if he might come to ſpeak with her, and gave her to underſtand, that there were ſome about the King that laboured to diſgrace her; ſhe doubted it was but a Trick. But *Brook* ſaith, his Brother moved him to procure *Arabella* to write Letters to the King of *Spain*; but he ſaith, he never did it.

Raleigh. The Lord *Cobham* hath accuſed me, you ſee in what manner he hath forſworn it. Were it not for his Accuſation, all this were nothing. Let him be aſked, if I knew of the Letter which *Lawrency* brought to him from *Aremberg*. Let me ſpeak for my Life, it can be no hurt for him to be brought; he dares not accuſe me. If you grant me not this Favour, I am ſtrangely uſed: *Campian* was not denied to have his Accuſers Face to Face.

Ld. Ch. Juſt. Since he muſt needs have Juſtice, the acquitting of his old Friend may move him to ſpeak otherwiſe than the Truth.

Raleigh. If I had been the Infuſer of all theſe Treaſons into him; you Gentlemen of the Jury, mark this, he ſaid I have been the Cauſe of all his Miſeries, and the Deſtruction of his Houſe, and that all Evil hath happened unto him by my wicked Counſel: If this be true, whom hath he Cauſe to accuſe and to be revenged on, but on me? And I know him to be as revengeful as any Man on Earth.

Attorney. He is a Party, and may not come; the Law is againſt it.

Raleigh. It is a Toy to tell me of Law; I defy ſuch Law, I ſtand on the Fact.

Ld. Cecil. I am afraid my often ſpeaking (who am inferior to my Lords here preſent) will make the World think I delight to hear myſelf talk. My Affection to you, Sir *Walter Raleigh*, was not extinguiſhed, but ſlaked, in regard of your Deſerts. You know the Law of the Realm (to which your Mind doth not conteſt), that my Lord *Cobham* cannot be brought.

Raleigh. He may be, my Lord.

Ld. Cecil. But dare you challenge it?

Raleigh. No.

Ld. Cecil. You ſay that my Lord *Cobham*, your main Accuſer, muſt come to accuſe you. You ſay he hath retracted: I ſay, many particulars are not retracted. What the Validity of all this is, is merely left to the Jury. Let me aſk you this, If my Lord *Cobham* will ſay you were the only Inſtigator of him to proceed in the Treaſons, dare you put yourſelf on this?

Raleigh. If he will ſpeak it before God and the King, that ever I knew of *Arabella*'s Matter, or the Money out of *Spain*, or of the ſurpriſing Treaſon; I put myſelf on it, God's Will and the King's be done with me.

Ld. H. Howard. How! if he ſpeak things equivalent to that you have ſaid?

Raleigh. Yes, in the main Point.

Ld. Cecil. If he ſay, you have been the Inſtigator of him to deal with the *Spaniſh* King, had not the Council cauſe to draw you hither?

Raleigh. I put myſelf on it.

Ld. Cecil. Then, Sir *Walter Raleigh*, call upon God, and prepare yourſelf; for I do verily believe my Lords will prove this. Excepting your Faults (I call them no worſe), by God, I am your Friend. The Heat and Paſſion in you, and the Attorney's Zeal in the King's Service, makes me ſpeak this.

Raleigh. Whoſoever is the Workman, it is reaſon he ſhould give an account of his Work to the Work-maſter. But let it be proved that he acquainted me with any of his Conferences with *Aremberg*: he would ſurely have given me ſome Account.

Ld. Cecil. That follows not: If I ſet you on work, and you give me no account, am I therefore innocent?

Attorney. For the Lady *Arabella*, I ſaid ſhe was never acquainted with the matter. Now that *Raleigh* had Conference in all theſe Treaſons, it is manifeſt: The Jury hath heard the matter. There is one *Dyer*, a Pilot, that being in *Liſbon*, met with a *Portugal* Gentleman who aſk'd him if the King of *England* was crown'd yet? To whom he anſwered, *I think not yet, but he ſhall be ſhortly.* Nay, ſaith the *Portugal*, that ſhall never be, for his Throat will be cut by *Don Raleigh* and *Don Cobham* before he be crowned.

Dyer *was called and ſworn, and deliver'd this Evidence.*

Dyer. I came to a Merchant's Houſe in *Liſbon*, to ſee a Boy that I had there; there came a Gentleman into the Houſe, and enquiring what Countryman I was, I ſaid, an *Engliſhman*. Whereupon he aſked me, if the King was crowned? And I anſwered, No, but that I hoped he ſhould be ſo ſhortly. Nay, ſaith he, he ſhall never be crowned; for *Don Raleigh* and *Don Cobham* will cut his Throat ere that Day come.

Raleigh. What infer you upon this?

Attorney. That your Treaſon hath Wings.

Raleigh. If *Cobham* did practiſe with *Aremberg*, how could it not but be known in *Spain?* Why did they name the Duke of *Buckingham* with *Jack Straw*'s Treaſon, and the Duke of *York* with *Jack Cade*, but that it was to countenance his Treaſon?

Conſider, you Gentlemen of the Jury, there is no Cauſe ſo doubtful which the King's Counſel cannot make good againſt the Law. Conſider my Diſability, and their Ability: They prove nothing againſt me, only they bring the Accuſation of my Lord *Cobham*, which he hath lamented and repented as heartily, as if it had been for an horrible Murder: for he knew that all this Sorrow which ſhould come to me, is by his means. Preſumptions muſt proceed from precedent or ſubſequent Facts. I have ſpent 40000 Crowns againſt the *Spaniard*. I had not purchaſed 40 Pound a Year. If I had died in *Guiana*, I had not left 300 Marks a Year to my Wife and Son. I that have always condemned the *Spaniſh* Faction, methinks it is a ſtrange thing that now I ſhould affect it! Remember what St. *Auſtin* ſays, *Sic judicate tanquam ab alio mox judicandi*; *unus judex, unum Tribunal.* If you would be contented on Preſumptions to be delivered up to be ſlaughtered, to have your Wives and Children turned into the Streets to beg their Bread; if you would be contented to be ſo judged, judge ſo of me.

Serj. Philips. I hope to make this ſo clear, as that the Wit of Man ſhall have no Colour to anſwer it. The Matter is Treaſon in the higheſt Degree, the End to deprive the King of his Crown. The particular Treaſons are theſe: Firſt, to raiſe up Rebellion, and to effect that, to procure Money; to raiſe up Tumults in *Scotland*, by divulging a treaſonable Book againſt the King's Right to the Crown; the purpoſe, to take away the Life of his Majeſty and his Iſſue. My Lord *Cobham* confeſſeth Sir *Walter Raleigh* to be guilty of all theſe Treaſons. The Queſtion is, whether he be guilty as joining with him, or inſtigating of him? The Courſe to prove this, was by my Lord *Cobham*'s Accuſation. If that be true, he is guilty; if not, he is clear. So whether *Cobham* ſay true, or *Raleigh*, that is the Queſtion. *Raleigh* hath no Anſwer but the Shadow of as much Wit, as the Wit of Man can deviſe. He uſeth his bare Denial; the Denial of a Defendant muſt not move the Jury. In the Star-Chamber, or in the Chancery, for matter of Title, if the Defendant be called in queſtion, his Denial on his Oath is no Evidence to the Court to clear him, he doth it *in propria cauſa*; therefore much leſs in Matters of Treaſon. *Cobham*'s Teſtification againſt him before them, and ſince, hath been largely diſcourſed.

Raleigh. If Truth be conſtant, and Conſtancy be in Truth, why hath he forſworn that that he hath ſaid? You have not proved any one thing againſt me by direct Proofs, but all by Circumſtances.

Attorney. Have you done? The King muſt have the laſt.

Raleigh. Nay, Mr. Attorney, he which ſpeaketh for his Life, muſt ſpeak laſt. Falſe Repetitions and Miſtakings muſt not mar my Cauſe. You ſhould ſpeak *ſecundum allegata & probata.* I appeal to God and the King in this Point, whether *Cobham*'s Accuſation be ſufficient to condemn me.

Attorney. The King's Safety and your Clearing cannot agree. I proteſt before God, I never knew a clearer Treaſon.

Raleigh. I never had intelligence with *Cobham* ſince I came to the *Tower*.

Attorney. Go to, I will lay thee upon thy Back, for the confidenteſt Traitor that ever came at a Bar. Why ſhould you take 8000 Crowns for a Peace?

Ld. Cecil. Be not ſo impatient, good Mr. *Attorney*, give him leave to ſpeak.

Attorney. If I may not be patiently heard, you will encourage Traitors, and diſcourage us. I am the King's ſworn Servant, and muſt ſpeak: If he be guilty, he is a Traitor; if not, deliver him.

Note, Here Mr. *Attorney* ſat down in a Chafe, and would ſpeak no more, until the Commiſſioners urged and intreated him. After much ado, he went on, and made a long Repetition of all the Evidence, for the Direction of the Jury; and at the repeating of ſome things, Sir *Walter Raleigh* interrupted him, and ſaid, he did him wrong.

Attorney. Thou art the moſt vile and execrable Traitor that ever lived.

Raleigh. You ſpeak indiſcreetly, barbarouſly and uncivilly.

Attorney. I want Words ſufficient to expreſs thy viperous Treaſons.

Raleigh. I think you want Words indeed, for you have ſpoken one thing half a dozen Times.

Attorney. Thou art an odious Fellow, thy Name is hateful to all the Realm of *England* for thy Pride.

Raleigh. It will go near to prove a meaſuring Caſt between you and me, Mr. *Attorney*.

Attorney. Well, I will now make it appear to the World, that there never lived a viler Viper upon the face of the Earth than thou. And therewithal he drew a Letter out of his Pocket, ſaying further, My Lords, you ſhall ſee, this is an Agent that hath writ a Treatiſe againſt the *Spaniard*, and hath ever ſo deteſted him; this is he that hath ſpent ſo much Money againſt him in Service; and yet you ſhall all ſee whether his Heart be not wholly *Spaniſh*. The Lord *Cobham*, who of his own Nature was a good and honourable Gentleman, till overtaken by this Wretch, now finding his Conſcience heavily burdened with ſome Courſes which the Subtilty of this Traitor had drawn him into; my Lords, he could be at no reſt with himſelf, nor quiet in his thoughts, until he was eaſed of that heavy Weight: out of which Paſſion of his Mind, and diſcharge of his Duty to his Prince, and his Conſcience to God, taking it upon his Salvation that he wrote nothing but the Truth, with his own Hands he wrote this Letter. Now, Sir, you ſhall ſee whether you had Intelligence with *Cobham*, within four days before he came to the *Tower*. If he be wholly *Spaniſh*, that deſired a Penſion of 1500 l. a Year from *Spain*, that *Spain* by him might have Intelligence, then *Raleigh* is a Traitor: He hath taken an Apple, and pinned a Letter unto it, and threw it into my Lord *Cobham*'s Window; the Contents whereof were this, *It is doubtful whether we ſhall be proceeded with or no, perhaps you ſhall not be tried.* This was to get a Retractation. Oh! it was *Adam*'s Apple, whereby the Devil did deceive him. Further, he wrote thus, *Do not as my Lord of* Eſſex *did*; *take heed of a Preacher*; *for by his Perſuaſion he confeſſed, and made himſelf guilty.* I doubt not but this day God ſhall have as great a Conqueſt by this Traitor, and the Son of God ſhall be as much glorified, as when it was ſaid, *Viciſti, Galilæe*; you know my Meaning. What tho' *Cobham* retracted, yet he could not reſt nor ſleep till he confirmed it again. If this be not enough to prove him a Traitor, the King my Maſter ſhall not live three Years to an End.

Nota, Here Mr. Attorney produced the Lord *Cobham*'s Letter, and as he read it, inſerted ſome Speeches.

‘ I Have thought fit to ſet down this to my Lords, wherein I proteſt on
‘ my Soul to write nothing but the Truth. I am now come near
‘ the period of my time, therefore I confeſs the whole Truth before God
‘ and his Angels. *Raleigh*, four days before I came from the *Tower*, cau-
‘ ſed an Apple *(Eve*'s *Apple)* to be thrown in at my Chamber-Window;
‘ the effect of it was, to intreat me to right the Wrong that I had done
‘ him, in ſaying, *that I ſhould have come home by Jerſey*; which under my
‘ hand to him I have retracted. His firſt Letter I anſwered not, which
‘ was thrown in the ſame manner; wherein he prayed me to write him
‘ a Letter, which I did. He ſent me word, that the Judges met at Mr.
‘ Attorney's Houſe, and that there was good hope the Proceedings againſt
‘ us ſhould be ſtayed: He ſent me another time a little Tobacco. At
‘ *Aremberg*'s coming, *Raleigh* was to have procured a Penſion of fifteen
‘ hundred Pounds a Year, for which he promiſed, that no Action ſhould
‘ be againſt *Spain*, the *Low-Countries*, or the *Indies*, but he would give
‘ knowledge before-hand. He told me, the States had Audience with
‘ the King. (Attorney, *Ah! is not this a* Spaniſh *Heart in an* Engliſh
Body?) ‘ He hath been the original Cauſe of my Ruin; for I had no
‘ dealing with *Aremberg*, but by his Inſtigation. He hath alſo been the
‘ cauſe of my Diſcontentment; he adviſed me, not to be overtaken with
‘ Preachers, as *Eſſex* was; and that the King would better allow of a
‘ conſtant Denial, than to accuſe any.’

Attorney. Oh damnable Atheiſt! He hath learned ſome Text of Scripture to ſerve his own purpoſe, but falſely alledg'd. He counſels him not to be counſelled by Preachers, as *Eſſex* was: He died the Child of God, God honoured him at his Death; thou waſt by when he died: *Et Lupus & turpes inſtant morientibus Urſæ.* He died indeed for his Offence. The King himſelf ſpake theſe Words; *He that ſhall ſay,* Eſſex *died not for Treaſon, is puniſhable.*

Raleigh. You have heard a ſtrange Tale of a ſtrange Man. Now he thinks, he hath Matter enough to deſtroy me; but the King and all of you ſhall witneſs, by our Deaths, which of us was the Ruin of the other. I bid a poor Fellow throw in the Letter at his Window, written to this purpoſe; *You know you have undone me, now write three lines to juſtify me.* In this I will die, that he hath done me wrong: Why did not he acquaint him with my Diſpoſitions?

Ld. Ch. Juſt. But what ſay you now of the Letter, and the Penſion of 1500 l. *per annum?*

Raleigh. I ſay, that *Cobham* is a baſe, diſhonourable, poor Soul.

Attorney. Is he baſe? I return it into thy Throat on his behalf: But for thee, he had been a good Subject.

Ld. Ch. Juſt. I perceive you are not ſo clear a Man, as you have proteſted all this while; for you ſhould have diſcovered theſe Matters to the King.

Nota, Here *Raleigh* pulled a Letter out of his Pocket, which the Lord *Cobham* had written to him, and deſired my Lord *Cecil* to read it, becauſe he only knew his Hand; the effect of it was as follows:

Cobham'*s Letter of Juſtification to* Raleigh.

‘ Seeing myſelf ſo near my End, for the diſcharge of my own Conſcience,
‘ and freeing myſelf from your Blood, which elſe will cry Vengeance
‘ againſt me; I proteſt upon my Salvation I never practiſed with *Spain*
‘ by your Procurement; God ſo comfort me in this my Affliction, as
‘ you are a true Subject, for any thing that I know. I will ſay as *Da-*
‘ *niel, Purus ſum a ſanguine hujus.* So God have mercy upon my Soul, as
‘ I know no Treaſon by you.’

Raleigh. Now I wonder how many Souls this Man hath! He damns one in this Letter, and another in that.

Here was much ado: Mr. *Attorney* alledged, that his laſt Letter was politickly and cunningly urged from the Lord *Cobham*, and that the firſt was ſimply the Truth; and that leſt it ſhould ſeem doubtful that the firſt Letter was drawn from my Lord *Cobham* by promiſe of Mercy, or hope of Favour, the Lord Chief Juſtice willed that the Jury might herein be ſatisfied.

Whereupon the Earl of *Devonſhire* delivered, that the ſame was meer voluntary, and not extracted from the Lord *Cobham* upon any Hopes or promiſe of Pardon.

Nota, This was the laſt Evidence: whereupon a Marſhal was ſworn to keep the Jury private. The Jury departed, and ſtaid not a quarter of an hour, but returned, and gave their Verdict, Guilty.

Serj. Heale demanded Judgment againſt the Priſoner.

Clerk of the Crown. Sir *Walter Raleigh*, Thou haſt been indicted, arraigned, and pleaded not Guilty, for all theſe ſeveral Treaſons; and for Trial thereof, haſt put thy ſelf upon thy Country; which Country are theſe, who have found thee Guilty. What canſt thou ſay for thy ſelf, why Judgment and Execution of Death ſhould not paſs againſt thee?

Raleigh. My Lords, the Jury have found me Guilty: They muſt do as they are directed. I can ſay nothing why Judgment ſhould not proceed. You ſee whereof *Cobham* hath accuſed me: You remember his Proteſtations, that I was never Guilty. I deſire the King ſhould know of the Wrongs done unto me ſince I came hither.

Ld. Chief Juſt. You have had no Wrong, Sir *Walter*.

Raleigh. Yes, of Mr. Attorney. I deſire my Lords to remember three things to the King. 1. I was accuſed to be a Practiſer with *Spain*: I never knew that my Lord *Cobham* meant to go thither; I will aſk no Mercy at the King's hands, if he will affirm it. 2. I never knew of the Practice with *Arabella*. 3. I never knew of my Lord *Cobham*'s Practice with *Aremberg*, nor of the ſurprizing Treaſon.

Ld. Ch. Juſt. In my Conſcience, I am perſuaded that *Cobham* hath accuſed you truly. You cannot deny, but that you were dealt with to have a Penſion to be a Spy for *Spain*; therefore you are not ſo true to the King as you have proteſted your ſelf to be.

Raleigh. I ſubmit my ſelf to the King's Mercy; I know his Mercy is greater than my Offence. I recommend my Wife, and Son of tender years, unbrought up, to his Compaſſion.

Ld. Ch. Juſt. I thought I ſhould never have ſeen this Day, to have ſtood in this Place to give Sentence of Death againſt you; becauſe I thought it impoſſible, that one of ſo great Parts ſhould have fallen ſo grievouſly. God hath beſtowed on you many Benefits. You had been a Man fit and able to have ſerved the King in good Place. You had brought your ſelf into a good State of Living; if you had entered into a good Conſideration of your Eſtate, and not ſuffered your own Wit to have intrapped your ſelf, you might have lived in good Comfort. It is beſt for Man not to ſeek to climb too high, leſt he fall: nor yet to creep too low, leſt he be trodden on. It was the Poeſy of the wiſeſt and greateſt Counſellor of our time in *England*, *In medio ſpatio mediocria firma locantur.* You might have lived well with 3000l. a Year, for ſo I have heard your Revenues to be. I know nothing might move you to be diſcontented; but if you had been down, you know Fortune's Wheel, when it is turned about, riſeth again. I never heard that the King took away any thing from you, but the Captainſhip of the Guard, which he did with very good reaſon, to have one of his own Knowledge, whom he might truſt, in that Place. You have been taken for a wiſe Man, and ſo have ſhewed Wit enough this day. Again, for Monopolies for Wine, *&c.* if the King had ſaid, It is a Matter that offends my People, ſhould I burden them for your private Good? I think you could not well take it hardly, that his Subjects were eaſed, tho' by your private Hindrance. Two Vices have lodged chiefly in you; one is an eager Ambition, the other corrupt Covetouſneſs. Ambition, in deſiring to be advanced to equal Grace and Favour, as you have been before-time; that Grace you had then, you got not in a Day or Year. For your Covetouſneſs, I am ſorry to hear that a Gentleman of your Wealth ſhould become a baſe Spy for the Enemy, which is the vileſt of all other; wherein on my Conſcience *Cobham* hath ſaid true: by it you would have increaſed your Living 1500*l.* a Year. This Covetouſneſs is like a Canker, that eats the Iron Place where it lives. Your Caſe being thus, let it not grieve you, if I ſpeak a little out of Zeal, and Love to your Good. You have been taxed by the World, with the Defence of the moſt heatheniſh and blaſphemous Opinions, which I liſt not to repeat, becauſe Chriſtian Ears cannot endure to hear them, nor the Authors and Maintainers of them be ſuffered to live in any Chriſtian Commonwealth. You know what Men ſaid of *Harpool*. You ſhall do well, before you go out of the World, to give Satisfaction therein, and not to die with theſe Imputations on you. Let not any Devil perſuade you to think there is no Eternity in Heaven: for if you think thus, you ſhall find Eternity in Hell-Fire. In the firſt Accuſation of my Lord *Cobham*, I obſerved his Manner of ſpeaking; I proteſt before the living God, I am perſuaded he ſpoke nothing but the Truth. You wrote, that he ſhould not in any caſe confeſs any thing to a Preacher, telling him an Example of my Lord of *Eſſex*, that noble Earl that is gone; who, if he had not been carried away with others, had lived in Honour to this Day among us: He confeſſed his Offences, and obtained Mercy of the Lord; for I am verily perſuaded in my Heart, he died a worthy Servant of God. Your Conceit of not confeſſing any thing, is very inhuman and wicked. In this World is the time of confeſſing, that we may be abſolv'd at the Day of Judgment. You have ſhewed a fearful Sign of denying God, in adviſing a Man not to confeſs the Truth. It now comes in my mind, why you may not have your Accuſer come face to face: for ſuch an one is eaſily brought to retract, when he ſeeth there is no hope of his own Life. It is dangerous that any Traitors ſhould have Acceſs to, or Conference with one another; when they ſee themſelves muſt die, they will think it beſt to have their Fellow live, that he may commit the like Treaſon again, and ſo in ſome ſort ſeek Revenge.

Now it reſteth to pronounce the Judgment, which I wiſh you had not been this day to have received of me: For if the Fear of God in you had been anſwerable to your other great Parts, you might have lived to have been a ſingular good Subject. I never ſaw the like Trial, and hope I ſhall never ſee the like again.

The Judgment.

But ſince you have been found guilty of theſe horrible Treaſons, the Judgment of this Court is, That you ſhall be had from hence to the Place whence you came, there to remain until the day of Execution; and from thence you ſhall be drawn upon a Hurdle thro' the open Streets to the Place of Execution, there to be hanged and cut down alive, and your Body ſhall be opened, your Heart and Bowels pluck'd out, and your Privy Members cut off, and thrown into the Fire before your Eyes; then your Head to be ſtricken off from your Body, and your Body ſhall be divided into four Quarters, to be diſpoſed of at the King's Pleaſure: And God have Mercy upon your Soul.

Sir *Walter Raleigh* beſought the Earl of *Devonſhire*, and the Lords, to be Suitors on his behalf to the King; that in regard of Places of Eſtimation he did bear in his Majeſty's time, the Rigour of his Judgment might be qualified, and his Death be honourable, and not ignominious.

Wherein after they had promiſed him to do their utmoſt Endeavours, the Court roſe, and the Priſoner was carried up again to the Caſtle.

FOurteen Yeats Sir *Walter* had ſpent in the *Tower*, and being weary of a State wherein he could be only ſerviceable by his Pen, but not in a Capacity of ſerving and enriching his Country any other way, (of whom Prince *Henry* would ſay, that no King but his Father would keep ſuch a Bird in a Cage;) at length he fell upon an Enterprize of a Golden Mine in *Guiana* in the Southern Parts of *America*.

The Propoſition of this was preſented and recommended to his Majeſty by Sir *Ralph Winwood* Secretary of State, as a Matter not in the Air, or Speculative, but Real, and of Certainty; for that Sir *Walter* had ſeen of the Ore of the Mine, and tried the Richneſs of it, having gotten a Pound from thence by the Hands of Captain *Kemiſh*'s ancient Servant.

Sir *Ralph Winwood*'s Recommendations of the Deſign, and the earneſt Solicitations for his Enlargement by the Queen and Prince, and the *French* Leiger, (with much affection to his Deſerts, not without ſome politick Deſigns on *Spain*) together with the Aſſeverations of Sir *Walter* of the Truth of the Mine, work'd upon his Majeſty, who thought himſelf in honour obliged, nay, in a manner ingaged (as the Declaration which he publiſhed after the Death of Sir *Walter* tells us) not to deny unto his People the Adventure and Hope of ſo great Riches to be ſought and atchieved at the Charge of Voluntiers, eſpecially ſince it ſtood ſo well with his Majeſty's Politick and Magnanimous Courſes in theſe his flouriſhing times of Peace, to nouriſh and encourage noble and generous Enterprizes for Plantations, Diſcoveries, and opening of a new Trade.

Count *Gondomar* (an active and ſubtle Inſtrument to ſerve his Maſter's ends) took alarm at this, and repreſented to his Majeſty the Enterprize of Sir *Walter* to be hoſtile and predatory, intending a breach of the Peace between the two Crowns. But notwithſtanding, Power at laſt is granted to Sir *Walter* to ſet forth Ships and Men for that Service. However, the King commanded him, upon pain of his Allegiance, to give him under his hand (promiſing, on the Word of a King, to keep it ſecret) the Number of his Men, tbe Burden and Strength of his Ships, together with the Country and River which he was to enter: Which being done accordingly by Sir *Walter*, that very original Paper was found in the *Spaniſh* Governor's Cloſet at *St. Thomas*'s. So active were the *Spaniſh* Miniſters, that Advertiſement was ſent to *Spain*, and thence to the *Indies*, before the *Engliſh* Fleet got out of the *Thames*.

But as we have juſt Cauſe to admire the more than uſual Activity of the *Spaniſh* Agents, ſo may we wonder no leſs at the Miſcarriage of his Majeſty's preſent Miniſters, who, notwithſtanding he had paſs'd his Royal Word to the contrary, yet they did help Count *Gondomar* to that very Paper; ſo much both King and Court were at *Gondomar*'s Service.

A Commiſſion ‡ indeed is granted, but by *Gondomar*'s means is limited, That the Fleet ſhould commit no Outrages upon the King of *Spain*'s Subjects by Land, unleſs they began firſt.

With this Commiſſion, and the Company of ſeveral brave Captains, and other Knights and Gentlemen of great Blood and Worth, he ſet out in queſt of the Mine, with a compleat Fleet of twelve Sail; letting fall a Speech at his Departure, which was rather an Argument of his Wit than his Wiſdom; *That his whole Hiſtory of the World had not the like Precedent, of a King's Priſoner to purchaſe Freedom, and his Boſom-Favourite to have the Halter, but in Scripture,* Mordecai *and* Haman; meaning himſelf and the Earl of *Somerſet*. To which he was told, that the King replied, *He might die in that Deceit.* Which he did, for *Somerſet* was ſaved. Of whom was made good what Sir *Walter* uſed to ſay of Favourites, That Minions were not ſo happy as vulgar Judgments thought them, being frequently commanded to uncomely, and ſometimes to unnatural Employments.

On the 17th of *November*, he arrived at *Guiana*, having been much retarded by contrary Winds, and having loſt ſeveral of his Voluntiers in the Voyage, by a violent Calenture.

When Sir *Walter* was returned to *Plymouth*, Sir *Lewis Steukly*, Vice-Admiral of the County of *Devon*, ſeized him, being commiſſioned by his Majeſty to bring him to *London*; which could add no Terror to a Perſon who could expect nothing leſs.

When he was brought to *London*, he was permitted the confinement of his own Houſe: But finding the Court wholly guided by *Gondomar*, he could hope for little Mercy; therefore he wiſely contriv'd the deſign of an Eſcape into *France*; which Sir *Lewis Steukly* betrayed.

The Voyage proving unſucceſsful, King *James* was willing to ſacrifice the Life of * Sir *Walter* to the advancement of Peace with *Spain*, but not upon ſuch grounds as the Embaſſador had deſigned: for he deſired a Judgment upon the pretended Breach of Peace, that by this Occaſion he might ſlily gain from the *Engliſh* an Acknowledgment of his Maſter's Right in thoſe Places, and hereafter both ſtop their Mouths, and quench their Heat and Valour.

* Ruſh. Col. Vol. 1. p. 9.

Hence they reſolv'd to proceed againſt him upon his old Condemnation †, for having had Experience upon a former Trial, they cared not to run the hazard of a ſecond. Accordingly upon *Wedneſday*, the 28th of *October*, *Anno Dom.* 1618, the Lieutenant of the *Tower*, in purſuance of a Writ of *Habeas Corpus* to him directed, brought Sir *Walter Raleigh* from the *Tower* to the *King's-Bench* Bar at *Weſtminſter*. Where

† *See the Order for his Execution* Rym. Fœd. Vol. 17. p. 115.

Cr. Jac. 495.
Hut. 21.

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‡ *This Commiſſion bears Date* Aug. 26, 1616, *and is to be found in* Rymer's Fœdera, Vol. 16. p. 789. *wherein no mention is made of the King of* Spain, *or his* Subjects, *notwithſtanding it is ſo inſinuated in the King's Proclamation againſt Sir* Walter Raleigh, June 11. 1618. *which is extant in* Rym. Fœder. Vol. 17. p. 92.

* *Mr.* Henry Yelverton.

* Mr. Attorney ſpake in effect thus†: My Lords, Sir *Walter Raleigh*, the Priſoner at the Bar, was, fifteen Years ſince, convicted of High-Treaſon, by him committed againſt the Perſon of his Majeſty, and the State of this Kingdom, and then received the Judgment of Death to be hang'd, drawn, and quartered: His Majeſty, of his abundant Grace, hath been pleaſed to ſhew Mercy upon him 'till now, that Juſtice calls unto him for Execution.

Sir *Walter Raleigh* hath been a Stateſman, and a Man, who, in regard of his Parts and Quality, is to be pitied: He hath been as a Star, at which the World hath gazed; but Stars may fall, nay, they muſt fall, when they trouble the Sphere wherein they abide. It is therefore His Majeſty's Pleaſure now to call for Execution of the former Judgment, and I now require Order for the ſame.

Then Mr. *Fanſhaw*, Clerk of the Crown, read the Record of the Conviction and Judgment, and called to the Priſoner, to hold up his Hand, which he did. Then was the Priſoner aſk'd, What he could ſay for himſelf, why Execution ſhould not be awarded againſt him?

Sir *Walter Raleigh.* My Lords, my Voice is grown weak, by reaſon of my late Sickneſs, and an Ague, which I now have; for I was even now brought hither out of it.

* *Sir* Henry Mountague.

Lord Chief Juſtice.* Sir *Walter*, your Voice is audible enough.

Sir *Walter.* Then, my Lord, all that I can ſay is this; That the Judgment which I received to die ſo long ſince, I hope it cannot now be ſtrain'd to take away my Life; for that ſince it was His Majeſty's Pleaſure to grant me a Commiſſion to proceed in a Voyage beyond the Seas, wherein I had Power as Marſhal, on the Life and Death of others, ſo, under Favour, I preſume I am diſcharged of that Judgment: For, by that Commiſſion I departed the Land, and undertook a Journey, to honour my Sovereign, and to enrich his Kingdom with Gold, of the Ore whereof this Hand hath found and taken in *Guiana*; but the Voyage, notwithſtanding my Endeavour, had no other Succeſs, but what was fatal to me, the Loſs of my Son, and waſting of my whole Eſtate.

Being about to proceed, he was by the Lord Chief Juſtice interrupted, who ſpake:

Lord Chief Juſtice. Sir *Walter Raleigh*, this which you now ſpeak, touching your Voyage, is not to the purpoſe, neither can your Commiſſion any way help you, by that you are not pardon'd; for by words of a ſpecial Nature, in Caſe of Treaſon, you muſt be pardon'd, and not implicitly. There was no Word tending to Pardon in all your Commiſſion, and therefore you muſt ſay ſomething elſe to the purpoſe; otherwiſe, we muſt proceed to give Execution.

Sir *Walter Raleigh.* If your Opinion be ſo, my Lord, I am ſatisfied, and ſo put myſelf on the Mercy of the King, who I know is gracious; and, under Favour, I muſt ſay I hope he will be pleaſed to take Commiſeration upon me. As concerning that Judgment which is ſo long paſt, and which, I think, here are ſome could witneſs, nay, his Majeſty was of Opinion, that I had hard Meaſure therein.

Lord Chief Juſtice. Sir *Walter Raleigh*, you muſt remember yourſelf; you had an honourable Trial, and ſo were juſtly convicted; and it were Wiſdom in you now to ſubmit yourſelf, and to confeſs your Offence did juſtly draw upon you that Judgment which was then pronounced againſt you; wherefore I pray you attend what I ſhall ſay unto you. I am here called to grant Execution upon the Judgment given you Fifteen Years ſince; all which Time you have been as a dead Man in the Law, and might at any Minute been cut off, but the King in Mercy ſpared you. You might think it heavy, if this were done in cold Blood, to call you to Execution, but it is not ſo; for new Offences have ſtirred up his Majeſty's Juſtice, to remember to revive what the Law hath formerly caſt upon you. I know you have been valiant and wiſe, and I doubt not but you retain both theſe Virtues, for now you ſhall have Occaſion to uſe them. Your Faith hath heretofore been queſtioned, but I am reſolved you are a good Chriſtian; for your Book, which is an admirable Work, doth teſtify as much. I would give you Counſel, but I know you can apply unto yourſelf far better than I am able to give you; yet will I, with the good Neighbour in the Goſpel, who finding one in the Way, wounded and diſtreſs'd, pour'd Oil into his Wounds, and refreſh'd him, I give unto you the Oil of Comfort; though, in reſpect that I am a Miniſter of the Law, mixed with Vinegar. Sorrow will not avail you in ſome kind: For, were you pain'd, Sorrow would not eaſe you; were you afflicted, Sorrow would not relieve you; were you tormented, Sorrow could not content you; and yet, the Sorrow for your Sins would be an everlaſting Comfort to you. You muſt do as that valiant Captain did, who perceiving himſelf in danger, ſaid, in defiance of Death; *Death, thou expecteſt me, but maugre thy Spite, I expect thee.* Fear not Death too much, nor fear not Death too little: not too much, leſt you fail in your Hopes; not too little, leſt you die preſumptuouſly. And here I muſt conclude with my Prayers to God for it; and that he would have mercy on your Soul. And ſo the Lord Chief Juſtice ended with theſe Words; *Execution is granted.*

Sir *Walter Raleigh.* My Lord, I deſire thus much Favour, that I may not be cut off ſuddenly; for I have ſomething to do in Diſcharge of my Conſcience, and ſomething to ſatisfy his Majeſty in, ſomething to ſatisfy the World in; and I deſire I may be heard at the Day of my Death. And here I take God to be my Judge, before whom I ſhall ſhortly appear, I was never diſloyal to his Majeſty, which I will juſtify where I ſhall not fear the Face of any King on Earth: And ſo I beſeech you all to pray for me.

The Court having awarded Execution, the Sheriffs of *Middleſex* were commanded for that Purpoſe to take him into their Cuſtody, who preſently carried him to the *Gatehouſe*.

But all Perſons have wonder'd how that old Sentence, that had lain dormant ſixteen Years and upwards againſt Sir *Walter*, could have been made uſe of to take off his Head afterwards: Conſidering the then Lord Chancellor *Verulam* told him poſitively, (as Sir *Walter* was acquainting him with that Proffer of Sir *William St. Geon* for a Pecuniary Pardon, which might have been obtained for a leſs Sum than his *Guiana* Preparations amounted to) in theſe words: ‘ Sir, the Knee-Timber of your Voyage
‘ is Money; ſpare your Purſe in this Particular, for upon my life you
‘ have a ſufficient Pardon for all that is paſſed already, the King having,
‘ under his Broad-Seal, made you Admiral of your Fleet, and given you
‘ power of the Martial Law over the Officers and Soldiers.’

It was the Opinion of moſt Lawyers, That he, who by his Majeſty's Patent had Power of Life and Death over the King's Liege People, ſhould be eſteemed or judged *Rectus in Curia*, and free from all old Convictions.

But Sir *Walter* hath made the beſt Defence for his *Guiana* Actions, in his Letter to his Majeſty, which is here inſerted.

May it pleaſe your moſt excellent Majeſty,

‘ IN my Journey outward-bound, I had my Men murdered at the
‘ Iſland, and yet ſpared to take Revenge: If I did diſcharge ſome
‘ *Spaniſh* Barques taken without Spoil; if I did forbear all parts of the
‘ *Spaniſh Indies*, wherein I might have taken twenty of their Towns on
‘ the Sea-Coaſts, and did only follow the Enterprize I undertook for
‘ *Guiana*, where, without any Directions from me, a *Spaniſh* Village was
‘ burnt, which was new ſet up within three Miles of the Mine; by your
‘ Majeſty's Favour, I find no reaſon why the *Spaniſh* Embaſſador ſhould
‘ complain of me. If it were lawful for the *Spaniards* to murder twenty-ſix
‘ *Engliſhmen*, binding them back to back, and then cutting their
‘ Throats, when they had traded with them a whole month, and came
‘ to them on the Land without ſo much as one Sword; and that it may
‘ not be lawful for your Majeſty's Subjects, being charged firſt by them,
‘ to repel Force by Force; we may juſtly ſay, O miſerable *Engliſh!* If
‘ *Parker* and *Metham* took *Campeach* and other Places in the *Honduraes*,
‘ ſeated in the Heart of the *Spaniſh Indies*, burn'd Towns, killed the
‘ *Spaniards*, and had nothing ſaid to them at their Return, and myſelf
‘ forbore to look into the *Indies* becauſe I would not offend; I may juſtly
‘ ſay, O miſerable Sir *Walter Raleigh!* If I ſpent my poor Eſtate, loſt
‘ my Son, ſuffered by Sickneſs, and otherwiſe, a world of Miſeries; if I
‘ have reſiſted with the manifeſt hazard of my Life, the Robberies and
‘ Spoils which my Company would have made; if when I was poor, I
‘ might have made my ſelf rich; if when I had gotten my Liberty, which
‘ all Men, and Nature itſelf do ſo much prize, I voluntarily loſt it; if,
‘ when I was ſure of my Life, I rendered it again; if I might elſewhere
‘ have ſold my Ship and Goods, and put five or ſix thouſand Pounds in
‘ my Pocket, and yet have brought her into *England*: I beſeech your
‘ Majeſty to believe, that all this I have done, becauſe it ſhould not be
‘ ſaid to your Majeſty, that your Majeſty had given Liberty and Truſt to
‘ a Man whoſe end was but the recovery of his Liberty, and who had betrayed
‘ your Majeſty's Truſt. My Mutineers told me, that if I returned
‘ for *England* I ſhould be undone; but I believed in your Majeſty's Goodneſs,
‘ more than in all their Arguments. Sure I am, that I am the firſt
‘ that being free, and able to enrich my ſelf, have embraced Poverty and
‘ Peril: And as ſure I am, that my Example ſhall make me the laſt.
‘ But your Majeſty's Wiſdom and Goodneſs I have made my Judge;
‘ who have ever been, and ſhall ever be,

Your Majeſty's moſt humble Vaſſal,

Walter Raleigh.’

But this Apology, tho' never ſo perſuaſive, could not ſatisfy *Gondomar's* Rage, who was reſolved to ſacrifice the only Favourite left of Queen *Elizabeth*, to the *Spaniſh* Intereſt: And who, as *Oſburn* remarks, was the only Perſon of *Eſſex's* Enemies that died lamented; and the only Man of Note left alive, that had help'd to beat the *Spaniard* in the Year 1588.

The Night before the Execution, Sir *Walter Raleigh* wrote the following Letters, the one to the *King*, the other to his *Wife*.

Sir WALTER RALEIGH'*s Letter to the* KING.

T*HE Life which I had,* moſt mighty Prince, *the Law hath taken from me, and I am now but the ſame Earth and Duſt, out of which I was made. If my Offence had any Proportion with your Majeſty's Mercy, I might deſpair, or if my Deſerving had any Quantity with your Majeſty's unmeaſureable Goodneſs, I might yet have Hope; but it is you that muſt judge, and not I. Name, Blood, Gentility, or Eſtate, I have none; no not ſo much as a Being, no not ſo much as a* Vitam plantæ: *I have only a penitent Soul in a Body of Iron, which moveth towards the Loadſtone of Death, and cannot be withheld from touching it, except your Majeſty's Mercy turn the Point towards me that expelleth. Loſt I am for hearing of vain Man, for hearing only, and never believing nor accepting: And ſo little Account I made of that Speech of his, which was my Condemnation (as my forſaking him doth truly witneſs) that I never remembered any ſuch thing, till it was at my Trial objected againſt me. So did he repay my Care, who cared to make him good, which I now ſee no care of Man can effect. But God (for my Offence to him) hath laid this heavy Burden on me, miſerable and unfortunate Wretch that I am! But for not loving you (my Sovereign) God hath not laid this Sorrow on me; for he knows (with whom I am not in caſe to lye) that I honoured your Majeſty by Fame, and loved and admired you by Knowledge; ſo that whether I live or die, your Majeſty's loving Servant I will live and die. If now I write what ſeems not well-favoured* (moſt merciful Prince) *vouchſafe to aſcribe it to the Counſel of a dead Heart, and to a Mind that Sorrow hath confounded. But the more my Miſery is, the more is your Majeſty's Mercy, (if you pleaſe to behold it) and the leſs I can deſerve, the more liberal your Majeſty's Gift ſhall be: Herein you ſhall only imitate God, by giving free Life; and by giving it to ſuch a one, from whom there can be no Retribution, but only a deſire to pay a lent Life with the ſame great Love, which the ſame great Goodneſs ſhall beſtow on it. This being the firſt Letter that ever your Majeſty receiv'd from a dead Man: I humbly ſubmit myſelf to the Will of God, my ſupreme Lord, and ſhall willingly and patiently ſuffer whatſoever it ſhall pleaſe your Majeſty to afflict me withal.*

WALTER RALEIGH.

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† *See* State-Trials, Vol. VIII. p. 568. *and* p. 569. *for the Warrant to behead Sir* Walter.

Sir WALTER RALEIGH's *Letter to his* WIFE.

YOU *ſhall now receive* (my dear Wife) *my laſt Words in theſe my laſt Lines. My Love I ſend you, that you may keep it when I am dead; and my Counſel, that you may remember it when I am no more. I would not by my Will preſent you with Sorrows* (Dear Beſſe) *let them go into the Grave with me, and be buried in the Duſt. And ſeeing that it is not God's Will that I ſhould ſee you any more in this Life, bear it patiently, and with a Heart like thy ſelf. Firſt, I ſend you all the Thanks which my Heart can conceive, or my Words can rehearſe, for your many Travails, and Care taken for me; which though they have not taken Effect as you wiſhed, yet my Debt to you is not the leſs; but pay it I never ſhall in this World. Secondly, I beſeech you, for the Love you bare me living, do not hide your ſelf many Days, but by your Travels ſeek to help your miſerable Fortunes, and the Right of your poor Child. Thy Mourning cannot avail me, I am but Duſt. Thirdly, you ſhall underſtand that my Land was conveyed* bona fide *to my Child: The Writings were drawn at* Midſummer *was twelve Months, my honeſt Couſin* Brett *can teſtify ſo much, and* Dolberry *too can remember ſomewhat therein. And I truſt my Blood will quench their Malice that have cruelly murdered me, and that they will not ſeek alſo to kill thee and thine with extreme Poverty. To what Friend to direct thee I know not, for all mine have left me in the true time of Trial. And I perceive that my Death was determin'd from the firſt Day. Moſt ſorry I am, God knows, that being thus ſurprized with Death I can leave you in no better Eſtate. God is my Witneſs, I meant you all my Office of Wines, or all that I could have purchaſed by ſelling it, half my Stuff, and all my Jewels, but ſome one for the Boy; but God hath prevented all my Reſolutions, that great God that ruleth all in all: but if you can live free from Want, care for no more, the reſt is but Vanity. Love God, and begin betimes to repoſe your ſelf upon him, and therein ſhall you find true and laſting Riches, and endleſs Comfort: For the reſt, when you have travelled and wearied your Thoughts over all ſorts of worldly Cogitations, you ſhall but ſit down by Sorrow in the end. Teach your Son alſo to love and fear God whilſt he is yet young, that the Fear of God may grow with him; and then God will be a Huſband to you, and a Father to him; a Huſband and a Father which cannot be taken from you.* Baily *oweth me* 200l. *and* Adrian 600l. *in* Jerſey. *I alſo have much owing me beſides. The Arrearages of the Wines will pay your Debts. And howſoever you do, for my Soul's ſake, pay all poor Men. When I am gone, no doubt you ſhall be ſought to, for the World thinks that I was very rich. But take heed of the Pretences of Men, and their Affections, for they laſt not but in honeſt and worthy Men; and no greater Miſery can befall you in this Life than to become a Prey, and afterwards to be deſpiſed. I ſpeak not this (God knows) to diſſuade you from Marriage, for it will be beſt for you both in reſpect of the World and of God. As for me, I am no more yours, nor you mine, Death hath cut us aſunder; and God hath divided me from the World, and you from me. Remember your poor Child for his Father's ſake, who choſe you, and loved you in his happieſt Times. Get thoſe Letters (if it be poſſible) which I writ to the Lords, wherein I ſued for Life: God is my Witneſs, it was for you and yours that I deſired Life; but it is true that I diſdain'd my ſelf for begging of it: For know it (my dear Wife) that your Son is the Son of a true Man, and who, in his own reſpect, deſpiſeth Death, and all his miſhapen and ugly Forms. I cannot write much, God he knows how hardly I ſteal this Time while others ſleep, and it is alſo time that I ſhould ſeparate my Thoughts from the World. Beg my dead Body, which living was denied thee; and either lay it at* Sherburne *(and if the Land continue) or in* Exeter-*Church by my Father and Mother. I can ſay no more, Time and Death call me away; the everlaſting, powerful, infinite, and omnipotent God, that Almighty God, who is Goodneſs it ſelf, the true Life and true Light, keep thee and thine, have Mercy on me, and teach me to forgive my Perſecutors and Accuſers, and ſend us to meet in his glorious Kingdom. My dear Wife, farewell. Bleſs my poor Boy. Pray for me, and let my good God hold you both in his Arms. Written with the dying Hand of ſometime thy Huſband, but now alas overthrown*

WALTER RALEIGH.

UPON *Thurſday* the 29th of *Octob.* 1618. Sir *Walter Raleigh* was conveyed by the Sheriffs of *London* to a Scaffold in the Old Palace-Yard at *Weſtminſter*, about nine of the Clock in the morning of the ſame day.

Whereupon, when he came, with a chearful Countenance he ſaluted the Lords, Knights and Gentlemen there preſent.

After which, a Proclamation was made for Silence, and he addreſſed himſelf to ſpeak in this manner.

I deſire to be borne withal, for this is the third Day of my Fever; and if I ſhall ſhew any Weakneſs, I beſeech you to attribute it to my Malady, for this is the Hour in which it is wont to come.

Then pauſing a while, he ſat, and directed himſelf towards a Window, where the Lords of *Arundel*, *Northampton*, and *Doncaſter*, with ſome other Lords and Knights, ſate, and ſpake as followeth:

I thank God, of his infinite Goodneſs, that he hath brought me to die in the Light, and not in Darkneſs; *(but by reaſon that the Place where the Lords,* &c. *ſat, was ſome diſtance from the Scaffold, that he perceived they could not well hear him, he ſaid)* I will ſtrain my Voice, for I would willingly have your Honours hear me.

But my Lord of *Arundel* ſaid, Nay, we will rather come down to the Scaffold, *which he and ſome others did.*

Where being come, he ſaluted them ſeverally, and then began again to ſpeak as followeth, viz.

As I ſaid, I thank God heartily, that he hath brought me into the Light to die, and that he hath not ſuffer'd me to die in the dark Priſon of the *Tower*, where I have ſuffer'd a great deal of Miſery and cruel Sickneſs; and I thank God that my Fever hath not taken me at this time, as I prayed to God it might not.

There are two main Points of Suſpicion that his Majeſty, as I hear, hath conceived againſt me.

To reſolve your Lordſhips wherein his Majeſty cannot be ſatisfy'd, which I deſire to clear, and to reſolve your Lordſhips of:

One is, That his Majeſty hath been inform'd that I have often had Plots with *France*, and his Majeſty had good Reaſon to induce him thereunto.

One Reaſon that his Majeſty had to conjecture ſo was, that when I came back from *Guiana*, being come to *Plymouth*, I endeavoured to go in a Bark to *Rochel*, which was, for that I would have made my Peace before I had come to *England*.

Another Reaſon was, That upon my Flight, I did intend to fly into *France*, for the ſaving of my ſelf, having had ſome Terror from above.

A third Reaſon, that his Majeſty had Reaſon to ſuſpect, was the *French* Agent's coming to me; beſides, it was reported that I had a Commiſſion from the *French* King at my going forth: Theſe are the Reaſons that his Majeſty had, as I am inform'd, to ſuſpect me.

But this I ſay, for a Man to call God to Witneſs to a Falſhood at the Hour of Death, is far more grievous and impious, and that a Man that ſo doth cannot have Salvation, for he hath no time of Repentance; then what ſhall I expect, that am going inſtantly to render up my Account? I do therefore call God to Witneſs, as I hope to be ſaved, and as I hope to ſee him in his Kingdom, which I hope I ſhall within this Quarter of an Hour, I never had any Commiſſion from the *French* King, nor never ſaw the *French* King's Hand-writing in all my Life; neither knew I that there was a *French* Agent, nor what he was, till I met him in my Gallery at my Lodging unlook'd for: If I ſpeak not true, O Lord! let me never enter into thy Kingdom.

The ſecond Suſpicion was, That his Majeſty had been inform'd, that I ſhould ſpeak diſhonourably and diſloyally of my Sovereign; but my Accuſer was a baſe *Frenchman*, and runnagate Fellow, one that hath no Dwelling, a kind of a Chymical Fellow, one that I knew to be perfidious; for being by him drawn into the Action of fearing myſelf at *Wincheſter*, in which I confeſs my Hand was toucht, he being ſworn to Secrecy over-night, revealed it the next Morning.

But this I ſpeak now, what have I to do with Kings? I have nothing to do with them, neither do I fear them; I have only now to do with my God, in whoſe Preſence I ſtand; therefore to tell a Lye, were it to gain the King's Favour, were vain: Therefore, as I hope to be ſav'd at the laſt Judgment-day, I never ſpoke diſhonourably, diſloyally, or diſhoneſtly of his Majeſty in all my Life; and therefore I cannot but think it ſtrange that that *Frenchman*, being ſo baſe and mean a Fellow, ſhould be ſo far credited as he hath been.

I have dealt truly, as I hope to be ſav'd, and I hope I ſhall be believed; I confeſs I did attempt to eſcape, I cannot excuſe it, but it was only to ſave my Life.

And I do likewiſe confeſs, that I did feign myſelf to be ill-diſpoſed and ſick at *Saliſbury*; but I hope it was no Sin, for the Prophet *David* did make himſelf a Fool, and ſuffered Spittle to fall down upon his Beard, to eſcape from the Hands of his Enemies, and it was not imputed unto him: So, what I did, I intended no Ill, but to gain and prolong time till his Majeſty came, hoping for ſome Commiſeration from him.

But I forgive this *Frenchman* and Sir *Lewis Steukley*, with all my heart, for I have receiv'd the Sacrament this Morning of Mr. Dean of *Weſtminſter*, and I have forgiven all Men; but that they are perfidious, I am bound in Charity to ſpeak, that all Men may take heed of them.

Sir *Lewis Steukley*, my Keeper and Kinſman, hath affirmed that I ſhould tell him, that my Lord *Carew*, and my Lord of *Doncaſter* here, did adviſe me to eſcape; but I proteſt before God, I never told him any ſuch thing, neither did the Lords adviſe me to any ſuch Matter, neither is it likely that I ſhould tell him any ſuch thing of two Privy Counſellors; neither had I any Reaſon to tell him, or he to report it; for it is well known, he left me ſix, ſeven, eight, nine and ten days together alone, to go whither I liſted, whilſt he rode himſelf about the Country.

He further accuſed me, that I ſhould ſhew him a Letter, whereby I did ſignify unto him that I would give him ten Thouſand Pounds for my Eſcape; but God caſt my Soul into everlaſting Fire, if I made any ſuch Proffer of ten Thouſand Pounds, or one Thouſand: but indeed I ſhewed him a Letter, that if he would go with me, there ſhould be Order taken for his Debts when he was gone; neither had I ten Thouſand Pounds to give him; for if I had had ſo much, I could have made my Peace better with it other way, than in giving it to *Steukley*.

Further, When I came to Sir *Edward Pelham*'s Houſe, who had been a Follower of mine, and who gave me good Entertainment; he gave out that I had there receiv'd ſome Dram of Poiſon, when I anſwer'd him that I feared no ſuch thing, for I was well aſſur'd of them in the Houſe, and therefore wiſht him to have no ſuch Thought. Now God forgive him, for I do, and I deſire God to forgive him: I will not only ſay, God is a God of Revenge; but I deſire God to forgive him, as I do deſire to be forgiven of God.

Then looking over his Note of Remembrance, Well, ſaid he, thus far I have gone; a little more, a little more, and I will have done by and by.

It was told the King that I was brought *per* Force into *England*, and that I did not intend to come again; but Sir *Charles Parker*, M. *Treſham*, M. *Leake*, and divers know how I was dealt withal by the common Soldiers, which were 150 in Number, who mutiny'd, and ſent for me to come into the Ship to them, for unto me they would not come, and there I was forced to take an Oath that I would not go into *England* till that they would have me; otherwiſe they would have caſt me into the Sea, and therewithal they drove me into my Cabbin, and bent all their Forces againſt me.

Now after I have taken this Oath, with Wine and other things, ſuch as I had about me, I drew ſome of the chiefeſt to deſiſt from their Purpoſes; and at length I perſuaded them to go into *Ireland*, which they were willing unto, and would have gone into the North Parts of *Ireland*, which I diſſuaded them from, and told them that they were *Red-Shankes* that inhabited there: and with much ado I perſuaded them to go into the South Parts of *Ireland*, promiſing them to get their Pardons, and was forc'd to give them 125*l.* at *Kinſale*, to bring them home, otherwiſe I had never got from them.

I hear likewiſe there was a Report that I meant not to go to *Guiana* at all, and that I knew not of any Mine, nor intended any ſuch Thing or

Matter, but only to get my Liberty, which I had not the Wit to keep.

But I proteſt it was my full Intent, and for Gold; for Gold, for the Benefit of his Majeſty and my ſelf, and of thoſe that ventur'd and went with me, with the reſt of my Countrymen: But he that knew the Head of the Mine would not diſcover it, when he ſaw my Son was ſlain, but made away himſelf.

And then turning to the Earl of *Arundel*, he ſaid, My Lord, being in the Gallery of my Ship, at my Departure, I remember your Honour took me by the Hand, and ſaid, You would requeſt one thing of me, which was, That whether I made a good Voyage or a bad, I ſhould not fail, but to return again into *England*; which I then promiſed you, and gave you my Faith I would; and ſo I have.

To which my Lord anſwer'd, and ſaid, It is true, I do very well remember it, they were the very laſt Words I ſpake unto you.

Another Slander was raiſed of me, That I would have gone away from them, and left them at *Guiana.*

But there were a great many worthy Men that accompanied me always; as my Serjeant-Major, *George Raleigh*, and divers others, which knew my Intent was nothing ſo.

Another Opinion was held of me, that I carried with me to Sea 16000 Pieces, and that was all the Voyage I intended, only to get Money into my Hands.

As I ſhall anſwer it before God, I had not in all the World in my Hands, or others to my Uſe, either directly or indirectly, above a hundred Pounds, whereof, when I went, I gave my Wife twenty-five Pounds thereof; but the Error thereof came, as I perceived, by looking over the Scrivener's Books, where they found the Bills of Adventure ariſing to a great Sum, ſo raiſed that falſe Report.

Only I will borrow a little time of Mr. Sheriffs to ſpeak of one thing, that doth make my Heart to bleed to hear that ſuch an Imputation ſhould be laid upon me; for it is ſaid, that I ſhould be a Perſecutor of the Death of the Earl of *Eſſex*, and that I ſtood in a Window over-againſt him when he ſuffer'd, and puffed out Tobacco in diſdain of him. God I take to Witneſs, I ſhed Tears for him when he died; and as I hope to look God in the Face hereafter, my Lord of *Eſſex* did not ſee my Face when he ſuffer'd, for I was afar off in the Armory, where I ſaw him, but he ſaw not me.

I confeſs indeed I was of a contrary Faction, but I know my Lord of *Eſſex* was a noble Gentleman, and that it would be worſe with me when he was gone; for I got the Hate of thoſe which wiſhed me well before, and thoſe that ſet me againſt him, afterwards ſet themſelves againſt me, and were my greateſt Enemies, and my Soul hath many times been grieved that I was not nearer him when he died; becauſe, as I underſtood afterwards, that he aſked for me at his Death, to have been reconciled unto me.

And theſe be the material Points I thought good to ſpeak of, and I am now at this Inſtant to render up an Account to God; and I proteſt, as I ſhall appear before him, this that I have ſpoken is true, and I hope I ſhall be believed.

Then a Proclamation being made, that all Men ſhould depart the Scaffold, he prepared himſelf for Death; giving away his Hat, his Cap, with ſome Money, to ſuch as he knew, that ſtood near him.

And then taking his leave of the Lords, Knights, Gentlemen, and others of his Acquaintance, and amongſt the reſt, taking his leave of my Lord of *Arundel*, he thanked him for his Company, and intreated him to deſire the King that no ſcandalous Writing to defame him might be publiſhed after his Death; ſaying further unto him, I have a long Journey to go, and therefore I will take my leave.

And then putting off his Doublet and Gown, deſired the Headſman to ſhew him the Ax; which not being ſuddenly granted unto him, he ſaid, I prithee let me ſee it, doſt thou think that I am afraid of it? So it being given unto him, he felt along upon the Edge of it, and ſmiling, ſpake unto Mr. Sheriff, ſaying, This is a ſharp Medicine, but it is a Phyſician that will cure all Diſeaſes.

Then going to and fro upon the Scaffold on every Side, he intreated the Company to pray to God to give him Strength.

Then having ended his Speech, the Executioner kneeled down and aſked him Forgiveneſs; the which laying his Hand upon his Shoulder he forgave him.

Then being aſked which Way he would lay himſelf on the Block, he made Anſwer and ſaid, So the Heart be ſtraight, it is no matter which way the Head lieth: So laying his Head on the Block, his Face being towards the Eaſt, the Headſman throwing down his own Cloak, becauſe he would not ſpoil the Priſoner's Gown, he giving the Headſman a Sign when he ſhould ſtrike, by lifting up his Hands, the Executioner ſtruck off his Head at two Blows, his Body never ſhrinking nor moving. His Head was ſhewed on each Side of the Scaffold, and then put into a red Leather Bag, and his wrought Velvet Gown thrown over it, which was afterwards conveyed away in a Mourning Coach of his Lady's.

XIX. *The Trials of* Robert Winter, Thomas Winter, Guy Fawkes, John Grant, Ambroſe Rookwood, Robert Keyes, Thomas Bates, *and Sir* Everard Digby, *at* Weſtminſter *for* High-Treaſon, *being Conſpirators in the* Gunpowder-Plot. 27 Jan. 1605. 3 Jac. I.

The COMMISSIONERS were,

The Earl of Nottingham.
The Earl of Suffolk.
The Earl of Worceſter.
The Earl of Devonſhire.
The Earl of Northampton.
The Earl of Saliſbury.
The Lord Chief Juſtice of England, *Sir* John Popham.
The Lord Chief Baron of the Exchequer, Thomas Fleming.
Sir Peter Warburton, *Knight, one of the Juſtices of the* Common-Pleas.

The Effect of the Indictment.

THAT whereas our Sovereign Lord the King had, by the Advice and Aſſent of his Council, for divers weighty and urgent Occaſions concerning his Majeſty, the State, and Defence of the Church and Kingdom of *England*, appointed a Parliament to be holden at his City of *Weſtminſter*; That *Henry Garnet*, Superior of the Jeſuits within the Realm of *England*, (called alſo by the ſeveral names of *Wally*, *Darcy*, *Roberts*, *Farmer*, and *Henry Philips*) *Oſwald Teſmond* Jeſuit, otherwiſe called *Oſwald Greenwell*, *John Gerrard* Jeſuit, (called alſo by the ſeveral names of *Lee* and *Brooke*) *Robert Winter*, *Thomas Winter*, Gentlemen, *Guy Fawkes* Gent. otherwiſe called *Guy Johnſon*, *Robert Keyes* Gent. and *Thomas Bates* Yeoman, late Servant to *Robert Cateſby* Eſquire; together with the ſaid *Robert Cateſby*, and *Thomas Percy* Eſquires, *John Wright* and *Chriſtopher Wright* Gentlemen, in open Rebellion and Inſurrection againſt his Majeſty, lately ſlain, and *Francis Treſham* Eſq; lately dead; as falſe Traitors againſt our ſaid Sovereign Lord the King, did traitorouſly meet and aſſemble themſelves together; and being ſo met, the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, and other Jeſuits, did maliciouſly, falſly, and traitorouſly move and perſuade as well the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, That our ſaid Sovereign Lord the King, the Nobility, Clergy, and whole Commonalty of the Realm of *England*, (Papiſts excepted) were Hereticks; and that all Hereticks were accurſed and excommunicate; and that none Heretick could be a King; but that it was lawful and meritorious to kill our ſaid Sovereign Lord the King, and all other Hereticks within this Realm of *England*, for the Advancing and Enlargement of the pretended and uſurped Authority and Juriſdiction of the Biſhop of *Rome*, and for the reſtoring of the ſuperſtitious *Romiſh* Religion within this Realm of *England*. To which traitorous Perſuaſions, the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, *Thomas Bates*, *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, traitorouſly did yield their Aſſents: And that thereupon the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, and divers other Jeſuits; *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as alſo the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, traitorouſly amongſt themſelves did conclude and agree, with Gunpowder, as it were with one Blaſt, ſuddenly, traitorouſly and barbarouſly to blow up and tear in pieces our ſaid Sovereign Lord the King, the excellent, virtuous, and gracious Queen *Anne*, his deareſt Wife, the moſt noble Prince *Henry*, their eldeſt Son, and future Hope and Joy of *England*; and the Lords Spiritual and Temporal, the Reverend Judges of the Realm, the Knights, Citizens and Burgeſſes of Parliament, and divers other faithful Subjects and Servants of the King in the ſaid Parliament, for the Cauſes aforeſaid to be aſſembled in the Houſe of Parliament; and all them, without any reſpect of Majeſty, Dignity, Degree, Sex, Age or Place, moſt barbarouſly, and more than beaſtly, traitorouſly and ſuddenly to deſtroy and ſwallow up. And further did moſt traitorouſly conſpire and conclude among themſelves, That not only the whole Royal Iſſue-Male of our ſaid Sovereign Lord the King ſhould be deſtroyed and rooted out; but that the Perſons aforeſaid, together with divers other falſe Traitors, traitorouſly with them to be aſſembled, ſhould ſurprize the Perſons of the noble Ladies *Elizabeth* and *Mary*, Daughters of our ſaid Sovereign Lord the King, and falſly and traitorouſly ſhould proclaim the ſaid Lady *Elizabeth* to be Queen of this Realm: And thereupon ſhould publiſh a certain traitorous Proclamation in the name of the ſaid Lady *Elizabeth*; wherein, as it was eſpecially agreed by and between the ſaid Conſpirators, That no mention ſhould be made at the firſt, of the alteration of Religion eſtabliſhed within this Realm of *England*; neither would the ſaid falſe Traitors therein acknowledge themſelves to be Authors, or Actors, or Deviſers of the aforeſaid moſt wicked and horrible Treaſons, until they had got ſufficient Power and Strength for the aſſured Execution and Accompliſhment of their ſaid Conſpiracy and Treaſon; and that then they would avow and juſtify the ſaid moſt wicked and horrible Treaſons, as Actions that were in the number of thoſe, *Quæ non laudantur, niſi peracta*, which be not to be commended before they be done: but by the ſaid feign'd and traitorous Proclamation they would publiſh, That all and ſingular Abuſes and Grievances within this Realm of *England*, ſhould, for ſatisfying of the People, be reform'd. And that as well for the better concealing, as for the more effectual accompliſhing of the ſaid horrible Treaſons, as well the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, by the traitorous Advice and Procurement of the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, and other Jeſuits, traitorouſly did further conclude and agree, that as well the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, thereupon ſeverally and traitorouſly ſhould receive ſeveral corporal Oaths upon the holy Evangeliſts, and the Sacrament of the Euchariſt, That they the Treaſons aforeſaid would traitorouſly conceal and keep ſecret, and would not reveal them, directly or indirectly, by Words or Circumſtances, nor ever would deſiſt from the Execution and final Accompliſhment of the ſaid Treaſons, without the conſent of ſome three of the aforeſaid falſe Traitors firſt in that behalf traitorouſly had: And that thereupon as well the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſt*, *Wright*, and *Francis Treſham*, did traitorouſly take the ſaid ſeveral corporal Oaths ſeverally, and did receive the Sacrament of the Euchariſt aforeſaid, by the Hands of the ſaid *Henry Garnet*, *John Gerrard*, *Oſwald Teſmond*, and other Jeſuits. And further, that the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, together with the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, by the like traitorous Advice and Counſel of the ſaid *Henry Garnet*, *John Gerrard*, *Oſwald Teſmond*, and other Jeſuits, for the more effectual compaſſing and final Execution of the ſaid Treaſons, did traitorouſly among themſelves conclude and agree to dig a certain Mine under the ſaid Houſe of Parliament, and there ſecretly, under the ſaid Houſe, to beſtow and place a great Quantity of Gunpowder; and that according to the ſaid Traitorous Concluſion, the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, together with the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, and *Chriſtopher Wright*, afterwards ſecretly, not without great labour and difficulty, did dig and make the ſaid Mine unto the midſt of the Foundation of the Wall of the ſaid Houſe of Parliament, the ſaid Foundation being of the thickneſs of three yards, with a traitorous Intent to beſtow and place a great Quantity of Gunpowder in the Mine aforeſaid, ſo as aforeſaid traitorouſly to be made for the traitorous accompliſhing of their traitorous Purpoſes aforeſaid. And that the ſaid *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, together with the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, and *Chriſtopher Wright*, finding and perceiving the ſaid Work to be of great difficulty, by reaſon of the Hardneſs and Thickneſs of the ſaid Wall; and underſtanding a certain Cellar under the ſaid Houſe of Parliament, and adjoining to a certain Houſe of the ſaid *Thomas Percy*, then to be letten to farm for a yearly Rent, the ſaid *Thomas Percy*, by the traitorous Procurement, as well of the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, and other Jeſuits, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as of the ſaid *Robert Cateſby*, *John Wright*, and *Chriſtopher Wright*, traitorouſly did hire the Cellar aforeſaid for a certain yearly Rent and Term: and then thoſe Traitors did remove twenty Barrels full of Gunpowder out of the ſaid Houſe of the ſaid *Thomas Percy*, and ſecretly and traitorouſly did beſtow and place them in the Cellar aforeſaid, under the ſaid Houſe of Parliament, for the traitorous effecting of the Treaſon, and traitorous Purpoſes aforeſaid. And that afterwards the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, and other Jeſuits, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, together with the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, and *Chriſt. Wright*, traitorouſly did meet with *Robert Winter*, *John Grant*, and *Ambroſe Rookwood*, and *Francis Treſham*, Eſquires; and traitorouſly did impart to the ſaid *Robert Winter*, *John Grant*, *Ambroſe Rookwood*, and *Francis Treſham*, the Treaſons, traitorous Intentions and Purpoſes aforeſaid; and did require the ſaid *Robert Winter*, *John Grant*, *Ambroſe Rookwood*, and *Francis Treſham*, to join themſelves as well with the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as with the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, and *Chriſtopher Wright*, in the Treaſons, traitorous Intentions and Purpoſes aforeſaid; and traitorouſly to provide Horſe, Armour, and other Neceſſaries, for the better Accompliſhment and effecting of the ſaid Treaſons. To which traitorous Motion and Requeſt, the ſaid *Robert Winter*, *John Grant*, *Ambroſe Rookwood*, and *Francis Treſham*, did traitorouſly yield their Aſſents, and as well with the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, *Robert Winter*, *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, and *Thomas Bates*, as with the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, in the ſaid Treaſons, traitorous Intentions and Purpoſes aforeſaid, traitorouſly did adhere and unite themſelves: And thereupon ſeveral corporal Oaths, in form aboveſaid, traitorouſly did take, and the Sacrament of the Euchariſt, by the hands of the ſaid Jeſuits did receive, to ſuch Intent and Purpoſe, as is aforeſaid; and Horſes, Armour, and other Neceſſaries for the better effecting of the ſaid Treaſons, according to their traitorous Aſſents aforeſaid, traitorouſly did provide. And that afterwards all the ſaid falſe Traitors did traitorouſly provide, and bring into the Cellar aforeſaid ten other Barrels full of Gunpowder, newly bought, fearing leſt the former Gunpowder, ſo as aforeſaid beſtow'd and placed there, was become dankiſh; and the ſaid ſeveral Quantities of Gunpowder aforeſaid, with Billets and Faggots, leſt they ſhould be ſpy'd, ſecretly and traitorouſly did cover. And that afterwards the ſaid falſe Traitors traitorouſly provided, and brought into the Cellar aforeſaid, four Hogſheads full of Gunpowder, and laid divers great Iron Bars and Stones upon the ſaid four Hogſheads, and the aforeſaid other Quantities of Gunpowder: And the ſaid Quantities of Gunpowder, Bars, and Stones, with Billets and Faggots, leſt they ſhould be eſpy'd, ſecretly and traitorouſly did likewiſe cover. And that the ſaid *Guy Fawkes*, afterwards, for a full and final Accompliſhment of the ſaid Treaſons, traitorous Intentions and Purpoſes aforeſaid, by the traitorous Procurement, as well of the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, and other Jeſuits, *Robert Winter*, *Thomas Winter*, *Robert Keyes*, *Thomas Bates*, *John Grant*, and *Ambroſe Rookwood*, as of the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, and *Francis Treſham*, traitorouſly had prepared, and had upon his Perſon Touchwood and Match, therewith traitorouſly to give fire to the ſeveral Barrels, Hogſheads, and Quantities of Gunpowder aforeſaid, at the time appointed for the Execution of the ſaid horrible Treaſons. And further, that after the ſaid horrible Treaſons, were, by the great Favour and Mercy of God, in a wonderful manner diſcover'd, not many hours before it ſhould have been executed, as well the ſaid *Henry Garnet*, *Oſwald Teſmond*, *John Gerrard*, *Robert Winter*, *Thomas Winter*, *Robert Keyes*, *Thomas Bates*, *John Grant*, and *Ambroſe Rookwood*, as the ſaid *Robert Cateſby*, *Thomas Percy*, *John Wright*, and *Chriſtopher Wright*, traitorouſly did fly and withdraw themſelves, to the intent traitorouſly to ſtir up and procure ſuch Popiſh Perſons, as they could, to join with them in actual, publick, and open Rebellion againſt our ſaid Sovereign Lord the King; and to that end did publiſh divers feigned and falſe Rumours, that the Papiſts Throats ſhould have been cut; and that thereupon divers Papiſts were in Arms, and in open, publick, and actual Rebellion againſt our ſaid Sovereign Lord the King, in divers Parts of this Realm of *England*.

To this Indictment they all pleaded, Not guilty; and put themſelves upon God and the Country.

Then did Sir *Edward Philips*, Kt. his Majeſty's Serjeant at Law, open the Indictment to this effect, as followeth.

The matter that is now to be offer'd to you my Lords the Commiſſioners, and to the Trial of you the Knights and Gentlemen of the Jury, is Matter of Treaſon; but of ſuch Horror, and monſtrous Nature, that before now,
The Tongue of Man never deliver'd,
The Ear of Man never heard,
The Heart of Man never conceited,
Nor the Malice of helliſh or earthly Devil ever practiſed.
For, if it be abominable to murder the leaſt;
If to touch God's Anointed be to oppoſe themſelves againſt God;
If (by Blood) to ſubvert Princes, States and Kingdoms, be hateful to God and Man, as all true Chriſtians muſt acknowledge:
Then, how much more than too too monſtrous ſhall all Chriſtian Hearts judge the Horror of this Treaſon; to murder and ſubvert
Such a King,
Such a Queen,
Such a Prince,
Such a Progeny,
Such a State,
Such a Government,
So complete and abſolute,
That God approves,
The World admires,
All true *Engliſh* Hearts honour and reverence,
The Pope and his Diſciples only envies and maligns?
The Proceeding wherein, is properly to be divided into three general Heads.
Firſt, Matter of Declaration.
Secondly, Matter of Aggravation.
Thirdly, Matter of Probation.
My ſelf am limited to deal only with the Matter of Declaration, and that is contain'd within the Compaſs of the Indictment only.
For the other two, I am to leave to him to whoſe Place it belongeth.
The Subſtance of which Declaration conſiſteth in four Parts.
Firſt, In the Perſons and Qualities of the Conſpirators.
Secondly, In the Matter conſpired.
Thirdly, In the Mean and Manner of the Proceeding and Execution of the Conſpiracy.
And fourthly, Of the End and Purpoſe why it was ſo conſpired.
As concerning the firſt, being the Perſons; they were, *Garnet*, *Gerrard*, *Teſmond*, Jeſuits not then taken. *Thomas Winter*, *Guy Fawkes*, *Robert Keyes*, *Thomas Bates*, *Everard Digby*, *Ambroſe Rookwood*, *John Grant*, *Robert Winter*, at the Bar. *Robert Cateſby*, *Thomas Percy*, *John Wright*, *Chriſtopher Wright*, ſlain in Rebellion. *Francis Treſham*, lately dead. All grounded Romaniſts and corrupted Scholars of ſo irreligious and traitorous a School.
As concerning the ſecond, which is the Matter conſpired; it was
Firſt, To deprive the King of his Crown.
Secondly, To murder the King, the Queen, and the Prince.
Thirdly, To ſtir Rebellion and Sedition in the Kingdom.
Fourthly, To bring a miſerable Deſtruction amongſt the Subjects.
Fifthly, To change, alter, and ſubvert the Religion here eſtabliſhed.
Sixthly, To ruinate the State of the Commonwealth, and to bring in Strangers to invade it.
As concerning the third, which is the Mean and Manner how to compaſs and execute the ſame; they did all conclude,
Firſt, That the King, and his People (the Papiſts excepted) were Hereticks.
Secondly, That they were all curſed, and excommunicated by the Pope.
Thirdly, That no Heretick could be King.
Fourthly, That it was lawful and meritorious to kill and deſtroy the King, and all the ſaid Hereticks.
The Mean to effect it, they concluded to be, that,
Firſt, The King, the Queen, the Prince, the Lords Spiritual and Temporal, the Knights and Burgeſſes of the Parliament, ſhould be blown up with Powder.
Secondly, That the whole Royal Iſſue Male ſhould be deſtroy'd.
Thirdly, That they would take into their Cuſtody *Elizabeth* and *Mary* the King's Daughters, and proclaim the Lady *Elizabeth* Queen.
Fourthly, That they ſhould feign a Proclamation in the name of *Elizabeth*, in which no mention ſhould be made of Alteration of Religion,

nor that they were Parties to the Treaſon, until they had raiſed Power to perform the ſame; and then to proclaim, All Grievances in the Kingdom ſhould be reformed.

That they alſo took ſeveral Oaths, and receiv'd the Sacrament; Firſt, for Secrecy; Secondly, for Proſecution; except they were diſcharg'd thereof by three of them.

That after the Deſtruction of the King, the Queen, the Prince, the Royal Iſſue Male, the Lords Spiritual and Temporal, the Knights and Burgeſſes, they ſhould notify the ſame to foreign States; and thereupon Sir *Edmund Baynam* an attainted Perſon of Treaſon, and ſtyling himſelf Prime of the damned Crew, ſhould be ſent and make the ſame known to the Pope, and crave his Aid: an Embaſſador fit both for the Meſſage and Perſons, to be ſent betwixt the Pope and the Devil.

That the Parliament being prorogued till the 7th of *February*, they in *December* made a Mine under the Houſe of Parliament, purpoſing to place their Powder there; but the Parliament being then further adjourned till the 3d of *October*, they in Lent following hired the Vault, and placed therein 20 Barrels of Powder.

That they took to them, *Robert Winter*, *Grant*, and *Rookwood*, giving them the Oaths and Sacrament as aforeſaid, as to provide Munition.

July 20. They laid in more ten Barrels of Powder, laying upon them divers great Bars of Iron, and pieces of Timber, and great maſſy Stones, and covered the ſame with Faggots, *&c.*

September 20. They laid in more 4 Hogſheads of Powder, with other Stores and Bars of Iron thereupon.

November 4. (The Parliament being prorogued to the 5th) at 11 a clock at Night, *Fawkes* had prepared (by the procurement of the reſt) Touchwood and Match, to give fire to the Powder the next Day.

That the Treaſon being miraculouſly diſcovered, they put themſelves, and procured others to enter into open Rebellion; and gave out moſt untruly, It was for that the Papiſts Throats were to be cut.

* Sir Edward Coke.

* *Attor. General.* It appeareth to your Lordſhips, and the reſt of this moſt honourable and grave Aſſembly, even by that which Mr. Serjeant hath already opened, that theſe are the greateſt Treaſons that ever were plotted in *England*, and concern the greateſt King that ever was of *England*. But when this Aſſembly ſhall further hear, and ſee diſcovered the Roots and Branches of the ſame, not hitherto publiſhed, they will ſay indeed, *Quis hæc poſteris ſic narrare poterit, ut facta non ficta eſſe videantur?* That when theſe things ſhall be related to Poſterity, they will be reputed matters feigned, not done. And therefore in this ſo great a Cauſe, upon the Carriage and Event whereof the Eye of all Chriſtendom is at this day bent; I ſhall deſire that I may with your Patience be ſomewhat more copious, and not ſo ſuccinct, as my uſual manner hath been; and yet will I be no longer than the very matter it ſelf ſhall neceſſarily require. But before I enter into the particular Narration of this Cauſe, I hold it fit to give Satisfaction to ſome, and thoſe well affected amongſt us, who have not only marvelled, but grieved, that no ſpeedier Expedition hath been uſed in theſe Proceedings, conſidering the Monſtrouſneſs and continual Horror of this ſo deſperate a Cauſe.

1. It is, *Ordo Naturæ*, agreeable to the Order of Nature, that things of great weight and magnitude ſhould ſlowly proceed, according to that of the Poet, *Tarda ſolet magnis rebus adeſſe fides.* And ſurely of theſe things we may truly ſay, *Nunquam ante dies noſtros talia acciderunt*; neither hath the Eye of Man ſeen, nor the Ear of Man heard the like things to theſe.

2. *Veritas temporis filia*, Truth is the Daughter of Time; eſpecially in this Caſe, wherein by timely and often Examinations, *Firſt*, Matters of greateſt moment have been lately found out. *Secondly*, Some known Offenders, and thoſe capital, but lately, apprehended. *Thirdly*, Sundry of the principal Arch-Traitors before unknown, now manifeſted, as the Jeſuits. *Fourthly*, Heretical, treaſonable and damnable Books lately found out; one of Equivocation, and another, *De officio Principis Chriſtiani*, of *Francis Treſham*'s.

3. There have been already twenty and three ſeveral days ſpent in Examinations.

4. We ſhould otherwiſe have hanged a Man unattainted, for *Guy Fawkes* paſſed for a time under the name of *John Johnſon*: So that if by that name greater expedition had been made, and he hanged, though we had not miſſed of the Man, yet the Proceeding would not have been ſo orderly or juſtifiable.

5. The King out of his Wiſdom and great Moderation, was pleaſed to appoint this Trial in time of Aſſembly in Parliament, for that it concerned eſpecially thoſe of the Parliament.

Now touching the Offences themſelves, they are ſo exorbitant and tranſcendant, and aggregated of ſo many bloody and fearful Crimes, as they cannot be aggravated by an Inference, Argument or Circumſtance whatſoever; and that in three reſpects:

Firſt, Becauſe this Offence is *Primæ impreſſionis*, and therefore *ſine Nomine*, without any name which might be *adæquatum*, ſufficient to expreſs it, given by any Legiſt, that ever made a writ of any Laws. For the higheſt Treaſon that all they could imagine, they called it only *Crimen læſæ Majeſtatis*, the violating of the Majeſty of the Prince. But this Treaſon doth want an apt name, as tending not only to the Hurt, but to the Death of the King; and not the Death of the King only, but of his whole Kingdom, *Non Regis ſed Regni*, that is, to the Deſtruction and Diſſolution of the Frame and Fabrick of this antient, famous, and ever-flouriſhing Monarchy; even the Deletion of our whole Name and Nation: *And therefore hold not thy Tongue, O God, keep not ſtill ſilence, refrain not thy ſelf, O God; for lo thine Enemies make a murmuring, and they that hate thee have lift up their Heads: They have ſaid, Come, and let us root them out, that they be no more a People, and that the Name of* Iſrael *may be no more in remembrance.* Pſal. 83. 1, 2, 3, 4, 5.

Secondly, It is, *Sine exemplo*, beyond all Examples, whether in Fact or Fiction, even of the Tragick Poets, who did beat their Wits to repreſent the moſt fearful and horrible Murders.

Thirdly, It is, *Sine modo*, without all meaſure or ſtint of Iniquity; like a Mathematical Line, which is, *diviſibilis in ſemper diviſibilia*, infinitely diviſible.

It is Treaſon to imagine or intend the Death of the King, Queen, or Prince.

For Treaſon is like a Tree whoſe Root is full of Poiſon, and lieth ſecret and hid within the Earth, reſembling the Imagination of the Heart of Man, which is ſo ſecret as God only knoweth it.

Now the Wiſdom of the Law provideth for the blaſting and nipping, both of the Leaves, Bloſſoms, and Buds which proceed from this Root of Treaſon; either by Words, which are like to Leaves, or by ſome overt Act, which may be reſembled to Buds or Bloſſoms, before it cometh to ſuch Fruit and Ripeneſs, as would bring utter Deſtruction and Deſolation upon the whole State.

It is likewiſe Treaſon to kill the Lord Chancellor, Lord Treaſurer, or any Juſtice of the one Bench or other; Juſtices of Aſſize, or any other Judge mentioned in the Statute of 25 *Edw.* III. ſitting in their Judicial Places, and exerciſing their Offices. And the Reaſon is, for that every Judge ſo ſitting by the King's Authority, repreſenteth the Majeſty and Perſon of the King; and therefore it is *Crimen læſæ Majeſtatis*, to kill him, the King being always in Judgment of Law preſent in Court. But in the high Court of Parliament, every Man by virtue of the King's Authority, by Writ under the Great Seal, hath a judicial Place; and ſo conſequently the killing of every of them had been a ſeveral Treaſon, and *Crimen læſæ Majeſtatis*. Beſides that to their Treaſons were added open Rebellion, Burglary, Robbery, Horſe ſtealing, *&c.* So that this Offence is ſuch, as no Man can expreſs it, no Example pattern it, no Meaſure contain it.

Concerning foreign Princes; there was here a Proteſtation made for the clearing of them from all Imputation and Aſperſion whatſoever.

Firſt. For that whilſt Kingdoms ſtood in Hoſtility, hoſtile Actions are holden honourable and juſt.

Secondly, It is not the King's Serjeant, Attorney, or Sollicitor, that in any ſort touch or mention them: For we know that great Princes and Perſonages are reverently and reſpectfully to be ſpoken of; and that there is *Lex in ſermone tenenda.* But it is *Fawkes*, *Winter*, and the reſt of the Offenders, that have confeſſed ſo much as hath been ſaid: And therefore the King's Counſel Learned doth but repeat the Offender's Confeſſion, and charge or touch no other Perſon. They have alſo ſlander'd unjuſtly our great Maſter King *James*, which we only repeat, to ſhew the Wickedneſs and Malice of the Offenders.

Thirdly, So much as is ſaid concerning foreign Princes, is ſo woven into the matter of the Charge of theſe Offenders, as it cannot be ſever'd or ſingled from the reſt of the matter; ſo as it is inevitable, and cannot be pretermitted.

Now as this Powder-Treaſon is in itſelf prodigious and unnatural, ſo it is in the Conception and Birth moſt monſtrous, as ariſing out of the dead Aſhes of former Treaſons. For it had three Roots, all planted and watered by Jeſuits, and *Engliſh* Romiſh Catholicks: The firſt Root in *England*, in *December* and *March*; the ſecond in *Flanders*, in *June*; the third in *Spain*, in *July*. In *England* it had two Branches, one in *December* was twelve Months before the death of the late Queen of bleſſed Memory; another in *March* wherein ſhe died.

Firſt in *December Anno Dom.* 1601. do *Henry Garnet* Superior of the Jeſuits in *England*, *Robert Teſmond* Jeſuit, *Robert Cateſby* (who was *bono ſubacto & verſuto ingenio & profunda perfidia)* together with *Francis Treſham* and others, in the names, and for the behalf of all the *Engliſh* Romiſh Catholicks, imploy *Thomas Winter* into *Spain*, as for the general good of the Romiſh Catholick Cauſe; and by him doth *Garnet* write his Letters to Father *Creſwell*, Jeſuit reſiding in *Spain*, in that behalf. With *Thomas Winter* doth *Teſmond*, alias *Greeneway* the Jeſuit, go as an Aſſociate and Confederate in that Conſpiracy. The Meſſage (which was principally committed unto the ſaid *Winter)* was, that he ſhould make a Propoſition and Requeſt to the King of *Spain*, in the behalf and names of the *Engliſh* Catholicks, That the King would ſend an Army hither into *England*, and that the Forces of the Catholicks in *England* ſhould be prepared to join with him, and do him Service: And further, that he ſhould move the King of *Spain* to beſtow ſome Penſions here in *England*, upon ſundry Perſons Catholicks, and devoted to his Service: And moreover, to give Advertiſement, that the ſaid King of *Spain*, making uſe of the general Diſcontentment that young Gentlemen and Soldiers were in, might no doubt, by relieving their Neceſſities, have them all at his Devotion.

And becauſe that in all Attempts upon *England*, the greateſt Difficulty was ever found to be the Tranſportation of Horſes; the Catholicks in *England* would aſſure the King of *Spain* to have always in readineſs for his Uſe and Service, 1500 or 2000 Horſes, againſt any occaſion or enterprize. Now *Thomas Winter* undertaking this Negociation, and with *Teſmond* the Jeſuit coming into *Spain*, by means of Father *Creſwell* the Legier Jeſuit there, as hath been ſaid, had readily Speech with *Don Pedro Franceſa* ſecond Secretary of State, to whom he imparted his Meſſage, as alſo to the Duke of *Lerma*; who aſſured him, that it would be an Office very grateful to his Maſter, and that it ſhould not want his beſt Furtherance.

Concerning the Place for landing of the King of *Spain*'s Army, which from the *Engliſh* Romiſh Catholicks he deſired might be ſent to invade the Land; it was reſolved, that if the Army were great, then *Eſſex* and *Kent* were judged fitteſt, (where note by the way, who was then Lord Warden of the Cinque Ports:) If the Army were ſmall, and truſted upon Succour in *England*, then *Milford-haven* was thought more convenient.

Now there being at that time Hoſtility betwixt both Kingdoms, the King of *Spain* willingly embraced the Motion, ſaying, that he took the Meſſage from the Catholicks very kindly, and that in all things he would reſpect them with as great Care as his proper *Caſtilians*. But for his further anſwer, and full diſpatch, *Thomas Winter* was appointed to attend the Progreſs. In the end whereof, being in Summer time, Count *Miranda* gave him this anſwer in the behalf of his Maſter, That the King would beſtow 100000 Crowns to that uſe, half to be paid that Year, and the reſt the next Spring following; and withal required that we ſhould be as good as our Promiſe, for the next Spring he meant to be with us, and ſet foot in *England*. And laſtly, he deſired on the King's behalf, of *Winter*, that he might have certain Advertiſement and Intelligence, if ſo it ſhould in the mean time happen that the Queen did die. *Tho. Winter* laden with theſe Hopes, returns into *England* about a Month before *Chriſtmas*, and delivered anſwer of all that had paſſed, to *Henry Garnet*, *Robert Cateſby*, and *Francis Treſham*. But ſoon after ſet that glorious Light, her Majeſty died: *Mira cano*; *Sol occubuit, Nox nulla ſecuta eſt.*

Presently after whoſe Death was *Chriſtopher Wright*, another Meſſenger ſent over into *Spain* by *Garnet*, (who likewiſe did write by him to *Creſwell*, for the furtherance of the Negociation) *Cateſby* and *Treſham*, in the name and behalf of all the Romiſh Catholicks in *England*; as well to carry News of her Majeſty's Death, as alſo to continue the aforeſaid Negotiation for an Invaſion and Penſions, which by *Tho. Winter* had before been dealt in. And in the *Spaniſh* Court, about two Months after his arrival there, doth *Chriſtopher Wright* meet with *Guy Fawkes*; who upon the 22d of *June* was employed out of *Flanders* from *Bruſſels* by Sir *William Stanley*, *Hugh Owen*, (whoſe Finger hath been in every Treaſon which hath been of late Years detected) and *Baldwyn* the Legier Jeſuit in *Flanders*; from whom likewiſe the ſaid *Fawkes* carried Letters to *Creſwell* in *Spain*, for the countenancing and furtherance of his Affairs.

Now the End of *Fawkes*'s imployment was, to give Advertiſement to the King of *Spain*, how the King of *England* was like to proceed rigorouſly with the Catholicks, and to run the ſame courſe which the late Queen did; and withal to intreat that it would pleaſe him to ſend an Army into *England* to *Milford-haven*, where the Romiſh Catholicks would be ready to aſſiſt him: and then the Forces that ſhould be tranſported in *Spinola*'s Gallies, ſhould be landed where they could moſt conveniently. And theſe their ſeveral Meſſages did *Chriſtopher Wright* and *Guy Fawkes* in the end intimate and propound to the King of *Spain*. But the King as then very honourably anſwered them both, that he would not in any wiſe further liſten to any ſuch Motion, as having before diſpatched an Embaſſy into *England*, to treat concerning Peace. Therefore this Courſe by foreign Forces failing, they fell to the Powder-Plot, *Cateſby* and *Treſham* being in at all; in the Treaſon of the Earl of *Eſſex*, in the Treaſon of *Watſon* and *Clarke* Seminary Prieſts, and alſo in this of the Jeſuits; ſuch a greedy Appetite had they to practiſe againſt the State.

The reſt of that which Mr. Attorney then ſpake continuedly, was by himſelf divided into three general Parts. The firſt containing certain Conſiderations concerning this Treaſon. The ſecond Obſervations about the ſame. The third a Compariſon of this Treaſon of the Jeſuits, with that of the Seminary Prieſts, and that other of *Raleigh* and others.

For the Conſiderations concerning the Powder-Treaſon, they were in Number eight: That is to ſay, 1. The Perſons by whom. 2. The Perſons againſt whom. 3. The Time when. 4. The Place where. 5. The Means. 6. The End. 7. The ſecret contriving. And laſtly, the admirable Diſcovery thereof.

1. For the Perſons offending, or by whom, they are of two ſorts; either of the Clergy, or Laity: and for each of them there is a ſeveral Objection made. Touching thoſe of the Laity, it is by ſome given out, that they are ſuch Men, as admit juſt Exception, either deſperate in Eſtate, or baſe, or not ſettled in their wits; ſuch as are *Sine Religione*, *Sine Sede*, *Sine Fide*, *Sine Re*, *&* *Sine Spe*; without Religion, without Habitation, without Credit, without Means, without Hope. But (that no Man, tho' never ſo wicked, may be wronged) true it is, they were Gentlemen of good Houſes, of excellent Parts, howſoever moſt perniciouſly ſeduced, abuſed, corrupted, and jeſuited, of very competent Fortunes and States. Beſides that *Percy* was of the Houſe of *Northumberland*, Sir *William Stanley*, who principally imployed *Fawkes* into *Spain*, and *John Talbot* of *Grafton*, who at the leaſt is in Caſe of Miſpriſion of High-Treaſon, both of great and honourable Families. Concerning thoſe of the Spiritualty, it is likewiſe falſly ſaid, That there is never a religious Man in this Action. For I never yet knew a Treaſon without a Romiſh Prieſt; but in this there are very many Jeſuits, who are known to have dealt and paſſed thro' the whole Action: Three of them are Legiers and Stateſmen, as *Henry Garnet* alias *Walley*, the Superior of the Jeſuits, Legier here in *England*; Father *Creſwell* Legier Jeſuit in *Spain*, Father *Baldwyn* Legier in *Flanders*, as *Parſons* at *Rome*; beſides their curſory Men, as *Gerrard*, *Oſwald*, *Teſmond*, alias *Greeneway*, *Hammond*, *Hall*, and other Jeſuits. So that the principal Offenders are the ſeducing Jeſuits; Men that uſe the Reverence of Religion, yea, even the moſt ſacred and bleſſed Name of Jeſus, as a Mantle to cover their Impiety, Blaſphemy, Treaſon and Rebellion, and all manner of Wickedneſs; as by the help of Chriſt ſhall be made moſt apparent to the Glory of God, and the Honour of our Religion. Concerning this Sect, their Studies and Practices principally conſiſt in two D D's, to wit, in Depoſing of Kings, and Diſpoſing of Kingdoms: their Profeſſion and Doctrine is a Religion of Diſtinctions, the greateſt part of them being without the Text, and therefore in very deed, idle and vain conceits of their own Brains: not having *Membra dividentia*, that is, all the parts of the diviſion warranted by the Word of God; and *ubi lex non diſtinguit, nec nos diſtinguere debemus*. And albeit that Princes hold their Crowns immediately of and from God, by Right of lawful Succeſſion and Inheritance inherent by Royal Blood; yet think theſe Jeſuits with a Gooſe-quill, within four diſtinctions to remove the Crown from the Head of any King chriſtened, and to deal with them, as the old *Romans* are ſaid to have done with their Viceroys, or petty Kings, who in effect were but Lieutenants unto them, to crown and uncrown them at their pleaſures. Neither ſo only, but they will proſcribe and expoſe them to be butchered by Vaſſals, which is againſt their own Canons, for Prieſts to meddle in cauſe of Blood. And by this means they would make the Condition of a King far worſe than that of the pooreſt Creature that breatheth. Firſt ſaith *Simanca*; *Hæretici omnes ipſo jure ſunt Excommunicati, & à Communione fidelium diris proſcriptionibus ſeparati, & quotannis in cœna Domini excommunicantur à Papa:* So then every Heretick ſtands and is reputed with them as excommunicated and accurſed, if not *de Facto*, yet *de Jure*, in Law and Right, to all their Intents and Purpoſes: therefore may he be depoſed, proſcribed and murdered. I, but ſuppoſe he be not a profeſſed Heretick, but dealeth reſervedly, and keepeth his Conſcience to himſelf: how ſtands he then? *Simanca* anſwers, *Quæri autem ſolet an Hæreticus occultus excommunicatus ſit ipſo Jure, & in alias etiam pœnas incidat contra Hæreticos ſtatutas? Cui quæſtioni ſimpliciter Juriſperiti reſpondent, quod etſi hæreſis occulta ſit, nihilominus occultus Hæreticus incidit in illas pœnas.* Whether he be a known or a ſecret Heretick all is one, they thunder out the ſame Judgment and Curſe for both; whereas Chriſt ſaith, *Nolite judicare*, Judge not, which is, ſaith *Auguſtine*, *Nolite judicare de occultis*, of thoſe things which are ſecret. But ſuppoſe that a Prince thus accurſed and depoſed, will eftſoons return and conform himſelf to their Romiſh Church, ſhall he then be reſtored to his State, and again receive his Kingdom? Nothing leſs: For ſaith *Simanca*, *Si Reges aut alii Principes Chriſtiani facti ſint Hæretici, protinus ſubjecti & vaſſalli ab eorum dominio liberantur; nec jus hoc recuperabunt, quamvis poſtea reconcilientur Eccleſiæ.* O but, *Sancta Mater Eccleſia nunquam claudit gremium redeunti*; our Holy Mother the Church never ſhuts her Boſom to any Convert. It is true, ſay they, but with a Diſtinction, *Quoad Animam:* Therefore ſo he may, and ſhall be reſtored; that is, ſpiritually, in reſpect of his Soul's health. *Quoad Animam*, he ſhall again be taken into the Holy Church; but not *Quoad Regnum*, in reſpect of his Kingdom or State Temporal, he muſt not be reſtored. The reaſon is, becauſe all hold only thus far, *Modo non ſit ad damnum Eccleſiæ*, ſo that the Church receive thereby no detriment. I, but ſuppoſe that ſuch an unhappy depoſed Prince have a Son, or lawful and right Heir, and he alſo not to be touched or ſpotted with his Father's Crime, ſhall not he at the leaſt ſucceed, and be inveſted into that princely Eſtate? Neither will this down with them; Hereſy is a Leproſy and hereditary Diſeaſe: *Et ex leproſis parentibus leproſi generantur filii*; Of leprous Parents, come leprous Children. So that ſaith *Simanca*, *Propter Hæreſim Regis, non ſolum Rex regno privatur, ſed & ejus filii a regni ſucceſſione pelluntur, ut noſter Lupus* (who is indeed, *Vir ſecundum nomen ejus*, a Wolf as well in Nature as Name) *luculenter probat.* Now if a Man doubt whom they here mean by an Heretick, *Creſwell* in his Book called *Philopater*, gives a plain Reſolution; *Regnandi jus amittit* (ſaith he) *qui Religionem Romanam deſerit*, he is the Heretick we ſpeak of; even whoſoever forſakes the Religion of the Church of Rome, he is accurſed, deprived, proſcribed, never to be abſolved but by the Pope himſelf, never to be reſtored either in himſelf, or his Poſterity.

One place amongſt many out of *Creſwell*'s *Philopater*, ſhall ſerve to give a Taſte of the jeſuitical Spirits and Doctrine; which is, *Sect.* 2. *pag.* 109. *Hinc etiam infert univerſa Theologorum ac Juriſconſultorum Eccleſiaſticorum, ſchola (& eſt certum & de fide) quemcunque Principem Chriſtianum, ſi à Religione Catholica manifeſto diflexerit, & alios avocare voluerit, excidere ſtatim omni poteſtate ac dignitate, ex ipſa vi juris tum humani tum divini, hocque antedictam ſententiam ſupremi paſtoris ac judicis contra ipſum prolatam, & ſubditos quoſcunque liberos eſſe ab omni Juramenti obligatione, quod de obedientia tanquam Principi legitimo præſtitiſſent; poſſeque & debere (ſi vires habeant) iſtiuſmodi hominem tanquam Apoſtatam, Hæreticum, ac Chriſti Domini Deſertorem, & Reipub. ſuæ inimicum hoſtemque ex hominum Chriſtianorum dominatu ejicere, ne alios inficiat, vel ſuo exemplo aut Imperio à fide avertat. Atque hæc certa, definita & indubitata virorum doctiſſimorum ſententia.* That is, this inference alſo doth the whole School both of Divines and Lawyers make, (and it is a Poſition certain, and to be undoubtedly believed) that if any Chriſtian Prince whatſoever, ſhall manifeſtly turn from the Catholic Religion, and deſire or ſeek to reclaim other Men from the ſame, he preſently falleth from all princely Power and Dignity; and that alſo by virtue and force of the Law itſelf, both divine and human, even before any Sentence pronounced againſt him by the ſupreme Paſtor and Judge. And that his Subjects, of what Eſtate or Condition ſoever, are freed from all bond of Oath of Allegiance, which at any time they had made unto him as to their lawful Prince. Nay, that they both may and ought (provided they have competent Strength and Force) caſt out ſuch a Man from bearing Rule amongſt Chriſtians, as an Apoſtate, an Heretick, a Backſlider and Revolter from our Lord Chriſt, and an Enemy to his own State and Commonwealth, leſt perhaps he might infect others, or by his Example or Command turn them from the Faith. And this is the certain, reſolute, and undoubted Judgment of the beſt learned Men. But *Treſham* in his Book, *De Officio Principis Chriſtiani*, goeth beyond all the reſt; for he plainly concludeth and determineth, that if any Prince ſhall but favour, or ſhew countenance to an Heretick, he preſently loſeth his Kingdom. In his fifth Chapter, he propoundeth this Problem, *An aliqua poſſit ſecundum Conſcientiam ſubditis eſſe Ratio, cur legitimo ſuo Regi bellum ſine ſcelere moveant?* Whether there may be any lawful Cauſe, juſtifiable in Conſcience, for Subjects to take Arms without Sin, againſt their lawful Prince and Sovereign? The Reſolution is, *Si Princeps hæreticus ſit & obſtinate ac pertinaciter intolerabilis, ſummi Paſtoris divina poteſtate deponatur, & aliud caput conſtituatur, cui ſubditi ſe jungant, & legitimo ordine & authoritate tyrannidem amoveant. Princeps indulgendo hæreticos non ſolum Deum offendit, ſed perdit & regnum & gentem.* Their Concluſion therefore is, that for Hereſy, as above is underſtood, a Prince is to be depoſed, and his Kingdom beſtowed by the Pope at pleaſure; and that the People, upon pain of Damnation, are to take part with him whom the Pope ſhall ſo conſtitute over them. And thus whilſt they imagine with the Wings of their light-feathered Diſtinctions to mount above the Clouds and Level of vulgar Conceits, they deſperately fall into a Sea of groſs Abſurdities, Blaſphemy, and Impiety. And ſurely the Jeſuits were ſo far ingaged in this Treaſon, as that ſome of them ſtick not to ſay, that if it ſhould miſcarry, that they were utterly undone, and that it would overthrow the State of the whole Society of the Jeſuits: And I pray God that in this, they may prove true Prophets, that they may become like the Order of *Templarii*, ſo called for that they kept near the Sepulchre at *Jeruſalem*, who were by a general and univerſal Edict in one Day throughout Chriſtendom quite extinguiſhed, as being *Ordo Impietatis*, an Order of Impiety. *And ſo from all Sedition and privy Conſpiracy, from all falſe Doctrine and Hereſy, from Hardneſs of Heart, and Contempt of thy Word and Commandment, Good Lord, deliver us.* Their Proteſtations and Pretences, are to win Souls to God; their Proofs weak, light, and of no value; their Concluſions falſe, damnable, and damned Hereſies: The firſt mentioneth God, the ſecond ſavoureth of weak and frail Man, the laſt of the Devil; and their Practice eaſily appeareth out of the Dealing of their Holy Father.

Henry III. of *France* for killing a Cardinal was excommunicated, and after murdered by *James Clement* a Monk: That Fact doth *Sixtus Quintus* then Pope, inſtead of orderly cenſuring thereof, not only approve, but commend in a long Conſiſtory Oration. That a Monk, a religious Man, ſaith he, hath ſlain the unhappy *French* King in the midſt of his Hoſt, it is *rarum inſigne, memorabile Facinus*, a rare, a notable, and a memorable Act; yea further, it is *Facinus non ſine Dei optimi Maximi particulari providentia & diſpoſitione, &c.* A Fact done not without the ſpecial Providence and Appointment of our good God, and the Suggeſtion and Aſſiſtance of his Holy Spirit; yea, a far greater work than was the ſlaying of *Holofernes* by Holy *Judith*.

Verus Monachus fictum occiderat, A true Monk had killed the falſe Monk; for that, as was reported, *Henry* III. ſometimes would uſe that Habit when he went in Proceſſion: And for *France*, even that part thereof which entertaineth the Popiſh Religion, yet never could of ancient time brook this uſurped Authority of the See of *Rome*; namely, that the Pope had Power to excommunicate Kings, and abſolve Subjects from their Oath of Allegiance: which Poſition is ſo directly oppoſite to all the Canons of the Church of *France*, and to all the Decrees of the King's Parliament there, as that the very Body of *Sorbonne*, and the whole Univerſity at *Paris* condemn'd it as a moſt ſchiſmatical, peſtilent and pernicious Doctrine of the Jeſuits; as may appear in a Treatiſe made to the *French* King, and ſet out 1602. intitled, *Le franc Diſcours*. But to return to the Jeſuits, *Cateſby* was reſolved by the Jeſuits, that the fact was both lawful and meritorious; and herewith he perſuaded and ſettled the reſt, as they ſeemed to make doubt.

Concerning *Thomas Bates*, who was *Cateſby's* Man, as he was wound into this Treaſon by his Maſter, ſo was he reſolved, when he doubted of the Lawfulneſs thereof, by the Doctrine of the Jeſuits. For the Manner, it was after this ſort: *Cateſby* noting that his Man obſerv'd him extraordinarily, as ſuſpecting ſomewhat of that which he the ſaid *Cateſby* went about, called him to him at his Lodging in *Puddle-wharf*; and in the Preſence of *Thomas Winter*, aſked him what he thought the Buſineſs was they went about, for that he of late had ſo ſuſpiciouſly and ſtrangely marked them. *Bates* anſwer'd, that he thought they went about ſome dangerous Matter, whatſoever the Particular were: whereupon they aſked him again what he thought the Buſineſs might be; and he anſwered that he thought they intended ſome dangerous Matter about the Parliament-houſe, becauſe he had been ſent to get a Lodging near unto that Place. Then did they make the ſaid *Bates* take an Oath to be ſecret in the Action; which being taken by him, they then told him that it was true, that they were to execute a great Matter; namely, to lay Powder under the Parliament-Houſe to blow it up. Then they alſo told him that he was to receive the Sacrament for the more aſſurance, and thereupon he went to Confeſſion, to the ſaid *Teſmond* the Jeſuit; and in his Confeſſion told him, that he was to conceal a very dangerous piece of work, that his Maſter *Cateſby* and *Thomas Winter* had imparted unto him, and ſaid he much feared the Matter to be utterly unlawful, and therefore therein deſired the Counſel of the Jeſuit; and revealed unto him the whole Intent and Purpoſe of blowing up the Parliament-Houſe upon the firſt Day of the Aſſembly; at what time the King, the Queen, the Prince, the Lords Spiritual and Temporal, the Judges, the Knights, Citizens and Burgeſſes, ſhould all have been there convented and met together. But the Jeſuit being a Confederate therein before, reſolved and incouraged him in the Action; and ſaid that he ſhould be ſecret in that which his Maſter had imparted unto him, for that it was for a good Cauſe. Adding moreover, that it was not dangerous unto him, nor any Offence to conceal it: and thereupon the Jeſuit gave him Abſolution, and *Bates* received the Sacrament of him, in the Company of his Maſter *Robert Cateſby* and *Thomas Winter*. Alſo when *Rookwood* in the Preſence of ſundry of the Traitors (having firſt received the Oath of Secrecy) had by *Cateſby* imparted unto him the Plot of blowing up the King and State; the ſaid *Rookwood* being greatly amazed thereat, anſwered, that it was a Matter of Conſcience to take away ſo much Blood: but *Cateſby* replied, that he was reſolved, and that by good Authority (as coming from the Superior of the Jeſuits) that in Conſcience it might be done, yea, tho' it were with the Deſtruction of many Innocents, rather than the Action ſhould quaile. Likewiſe Father *Hammond* abſolved all the Traitors at *Robert Winter*'s Houſe, upon *Thurſday* after the Diſcovery of the Plot, they being then in open Rebellion: And therefore, *Hos O Rex magne, caveto*; and let all kings take heed, how they either favour or give Allowance or Connivance unto them.

2. The ſecond Conſideration reſpecteth the Perſons againſt whom this Treaſon was intended; which are, 1. The King, who is God's Anointed. Nay, it hath pleaſed God to communicate unto him his own Name; *Dixi, Dii eſtis*, not ſubſtantially or eſſentially ſo, neither yet on the other ſide *Uſurpativè*, by unjuſt Uſurpation, as the Devil and the Pope; but *Poteſtativè*, as having his Power derived from God within his Territories. 2. Their natural Liege Lord, and dread Sovereign, whoſe juſt Intereſt and Title to this Crown may be drawn from before the Conqueſt; and if he were not a King by Deſcent, yet deſerved he to be made one for his rare and excellent Endowments and Ornaments both of Body and Mind. Look into his true and conſtant Religion and Piety, his Juſtice, his Learning above all Kings chriſtened, his Acumen, his Judgment, his Memory; and you will ſay that he is indeed, *Solus præteritis major, meliorque futuris*. But becauſe I cannot ſpeak what I would, I will forbear to ſpeak what I could. Alſo againſt the Queen, a moſt gracious and graceful Lady, a moſt virtuous, fruitful, and bleſſed Vine, who hath happily brought forth ſuch Olive-branches, as that *in benedictione erit Memoria ejus*, her Memory ſhall be bleſſed of all our Poſterity. Then againſt the Royal Iſſue Male, next under God, and after our Sovereign the future Hope, Comfort, Joy, and Life of our State. And as for preſerving of the good Lady *Elizabeth* the King's Daughter, it ſhould only have been for a time to have ſerved for their Purpoſes, as being thought a fit Project to keep others in Appetite for their own further Advantage; and then God knoweth what would have become of her. To conclude, againſt all the moſt honourable and prudent Counſellors, and all the true-hearted and worthy Nobles, all the Reverend and Learned Biſhops, all the grave Judges and Sages of the Law, all the principal Knights, Gentry, Citizens and Burgeſſes of Parliament, the Flower of the whole Realm. *Horret Animus*, I tremble even to think of it: Miſerable Deſolation! no King, no Queen, no Prince, no Iſſue Male, no Counſellors of State; no Nobility, no Biſhops, no Judges! O barbarous, and more than *Scythian* or *Thracian* Cruelty! No mantle of Holineſs can cover it, no pretence of Religion can excuſe it, no ſhadow of good Intention can extenuate it; God and Heaven condemn it, Man and Earth deteſt it, the Offenders themſelves were aſhamed of it; wicked People exclaim againſt it, and the Souls of all true Chriſtian Subjects abhor it: miſerable, but yet ſudden had their Ends been, who ſhould have died in that fiery Tempeſt, and Storm of Gunpowder. But more miſerable had they been that had eſcaped; and what horrible Effects the blowing up of ſo much Powder and Stuff would have wrought, not only amongſt Men and Beaſts, but even upon inſenſible Creatures, Churches, and Houſes, and all places near adjoining; you who have been martial Men beſt know. For my ſelf, *Vox faucibus hæret*: So that the King may ſay with the kingly Prophet *David*; *O Lord, the Proud are riſen againſt me, and the Congregation, even* Synagoga, *the Synagogue of naughty Men have ſought after my Soul, and have not ſet thee before their Eyes*, Pſal. 86. 14. *The Proud have laid a Snare for me, and ſpread a Net abroad, yea, and ſet Traps in my Way*, Pſal. 140. 5. *But let the Ungodly fall into their own Nets together, and let me ever eſcape them*, Pſal. 141. 11. We may ſay, *If the Lord himſelf had not been on our ſide; yea, if the Lord himſelf had not been on our ſide, when Men roſe up againſt us, they had ſwallowed us up quick, when they were ſo wrathfully diſpleaſed at us: But praiſed be the Lord, which hath not given us over for a Prey unto their Teeth. Our Soul is eſcaped even as a Bird out of the Snare of the Fowler, the Snare is broken, and we are delivered; our Help ſtandeth in the name of the Lord which hath made Heaven and Earth*. Pſalm 124.

3. The third Conſideration reſpects the Time when this Treaſon was conſpired; wherein note that it was *Primo Jacobi*, even at that time when his Majeſty uſed ſo great Lenity towards Recuſants, in that by the ſpace of a whole Year and four Months, he took no Penalty by Statute of them. So far was his Majeſty from Severity, that beſides the benefit and grace before ſpecified, he alſo honoured all alike with Advancement and Favours; and all this was continued until the Prieſts Treaſon, by *Watſon* and *Clarke*. But as there is *Miſericordia puniens*, ſo is there likewiſe *Crudelitas parcens*: For they were not only by this not reclaimed, but (as plainly appeareth) became far worſe. Nay, the Romiſh Catholicks did at that very time certify that it was very like, the King would deal rigorouſly with them, and the ſame do theſe Traitors now pretend, as the chiefeſt Motive; whereas indeed they had Treaſon on foot againſt the King, before they ſaw his Face in *England*: Neither afterwards, for all the Lenity he uſed towards them, would any wit deſiſt or relent from their wicked Attempts. Nay, (that which cometh next to be remembred in this part of their Arrangement) they would pick out the time of Parliament for the Execution of their hideous Treaſons, wherein the Flower of the Land being aſſembled, for the Honour of God, the Good of his Church, and this Commonwealth; they might as it were with one Blow, not wound, but kill and deſtroy the whole State: So that with theſe Men, *Impunitas continuum affectum tribuit peccandi*, Lenity having once bred a hope of Impunity, begat not only Inſolency, but Impenitency and Increaſe of Sin.

4. We are to conſider the Place, which was the ſacred Senate, the Houſe of Parliament. And why there? For that, ſay they, unjuſt Laws had formerly been there made againſt Catholicks: Therefore that was the fitteſt place of all others to revenge it, and to do Juſtice in. If any aſk who ſhould have executed this their Juſtice, it was Juſtice *Fawkes*, a Man like enough to do according to his Name. If by what Law they meant to proceed; it was Gunpowder-Law, fit for Juſtices of Hell. But concerning thoſe Laws which they ſo calumniate as unjuſt, it ſhall in few words plainly appear, that they were of the greateſt both Moderation and Equity that ever were any. For from the Year 1 *Elizabeth*, unto 11. all Papiſts came to our Church and Service without ſcruple. I my ſelf have ſeen *Cornwallis*, *Beddingfield*, and others at Church: ſo that then for the ſpace of 10 Years, they made no Conſcience nor doubt to communicate with us in Prayer. But when once the Bull of Pope *Pius Quintus* was come and publiſhed, wherein the Queen was accurſed and depoſed, and her Subjects diſcharged of their Obedience and Oath, yea curſed if they did obey her; then did they all forthwith refrain the Church, then would they have no more Society with us in Prayer: So that Recuſancy in them is not for Religion, but in an acknowledgment of the Pope's Power, and a plain manifeſtation what their Judgment is concerning the Right of the Prince in reſpect of Regal Power and Place. Two years after, *viz.* 13 *Elizabeth*, was there a Law made againſt the bringing in of Bulls, *&c.* *Anno* 18. came *Mayne* a Prieſt to move Sedition. *Anno* 20. came *Campion* the firſt Jeſuit, who was ſent to make a Party here in *England*, for the Execution of the former Bull: Then follow treaſonable Books. *Anno* 23 *Elizabeth*, after ſo many years Sufferance, there were Laws made againſt Recuſants, and ſeditious Books: The Penalty or Sanction for Recuſancy, was not loſs of Life, or Limb, or whole State, but only a pecuniary Mulct and Penalty, and that alſo until they would ſubmit and conform themſelves, and again come to Church, as they had done for 10 years before the Bull. And yet afterwards the Jeſuits and Romiſh Prieſts both coming daily into, and ſwarming within the Realm, and infuſing continually this Poiſon into the Subjects Hearts, that by Reaſon of the ſaid Bull of *Pius Quintus*, her Majeſty ſtood excommunicated and deprived of her Kingdom, and that her Subjects were diſcharged of all Obedience to her, endeavouring by all means to draw them from their Duty and Allegiance to her Majeſty, and to reconcile them to the Church of *Rome*; then 27 *Eliz.* a Law was made, that it ſhould be Treaſon for any (not to be a Prieſt and an *Engliſhman*, born the Queen's natural Subject, but for any) being ſo born her Subject, and made a Romiſh Prieſt, to come into any of her Dominions, to infect any of her loyal Subjects with their treaſonable and damnable Perſuaſions and Practices: yet ſo, that it concerned only ſuch as were made Prieſts ſithence her Majeſty came to the Crown, and not before.

Concerning the Execution of theſe Laws, it is to be obſerved likewiſe, that whereas in the Quinquenny, the five years of Queen *Mary*, there were cruelly put to death about 300 Perſons for Religion; in all her Majeſty's time by the ſpace of 44 years and upwards, there were for treaſonable Practices executed, in all not 30 Prieſts, nor above five Receivers and Harbourers of them; and for Religion not any one. And here by the way, I deſire thoſe of Parliament to obſerve, that it is now queſtioned and doubted, whether the Law of Recuſants and Reconcil'd Perſons do hold for *Ireland* alſo, and the parts beyond the Seas: that is, whether ſuch as were there reconciled be within the compaſs of the Statute or not, to the end it may be cleared and provided for.

Now againſt the uſurped Power of the See of *Rome*, we have of former times about 13 ſeveral Acts of Parliament: So that the Crown and the King of *England* is no ways to be drawn under the Government of any foreign Power whatſoever, neither oweth Duty to any, but is immediately under God himſelf. Concerning the Pope, for 33 of them, namely unto *Sylveſter*, they were famous Martyrs. But *Quicunque deſiderat primatum in terris, inveniet confuſionem in cœlis:* He that deſires Primacy upon Earth, ſhall ſurely find Confuſion in Heaven.

5. The fifth Conſideration is of the End, which was to bring a final and fatal Confuſion upon the State. For howſoever they ſought to ſhadow their Impiety with the Cloke of Religion, yet they intended to breed a Confuſion fit to get new Alterations; for they went to join with Romiſh Catholicks, and diſcontented Perſons.

6. Now the ſixth Point, which is the Means to compaſs and work theſe Deſigns, were damnable; by Mining, by 36 Barrels of Powder, having Crows of Iron, Stones and Wood laid upon the Barrels, to have made the Breach the greater. Lord, what a Wind, what a Fire, what a Motion and Commotion of Earth and Air would there have been! But as it is in the Book of *Kings*, when *Elias* was in the Cave of the Mount *Horeb*, and that he was called forth to ſtand before the Lord, behold a mighty ſtrong Wind rent the Mountains, and brake the Rocks; *ſed non in vento Dominus, but the Lord was not in the Wind.* And after the Wind, came a Commotion of the Earth and Air; *Et non in Commotione Dominus, the Lord was not in that Commotion:* And after the Commotion came Fire; *& non in igne Dominus, the Lord was not in the Fire.* So neither was God in any part of this monſtrous Action. The Authors whereof were in this reſpect worſe than the very damned Spirit of *Dives*, who, as it is in the Goſpel, deſired that others ſhould not come *in locum tormentorum.*

7. The next Conſideration is, the ſecret Continuing and Carriage of this Treaſon; to which purpoſe there were four means uſed:

Firſt, *Cateſby* was commended to the Marquiſs for a Regiment of Horſe in the *Low-Countries*, (which is the ſame that the Lord *Arundel* now hath) that under that pretence he might have furniſhed this Treaſon with Horſes without Suſpicion.

The Second means was an Oath, which they ſolemnly and ſeverally took, as well for Secrecy, as Perſeverance and Conſtancy in the execution of their Plot. The Form of the Oath was as follows:

Y*OU ſhall ſwear by the bleſſed Trinity, and by the Sacrament you now purpoſe to receive, never to diſcloſe directly nor indirectly, by Word or Circumſtance, the matter that ſhall be propoſed to you to keep ſecret, nor deſiſt from the Execution thereof, until the reſt ſhall give you leave.*

This Oath was, by *Gerrard* the Jeſuit, given to *Cateſby*, *Percy*, *Chriſtopher Wright*, and *Thomas Winter* at once; and by *Greenwell* the Jeſuit, to *Bates*, at another time, and ſo to the reſt.

The Third, was the Sacrament; which they impiouſly and deviliſhly prophaned to this end.

But the Laſt, was their perfidious and perjurious Equivocating, abetted, allowed, and juſtified by the Jeſuits, not only ſimply to conceal or deny an open Truth, but religiouſly to aver, to proteſt upon Salvation, to ſwear that which themſelves know to be moſt falſe; and all this, by reſerving a ſecret and private Senſe inwardly to themſelves: whereby they are, by their ghoſtly Fathers, perſuaded, That they may ſafely and lawfully elude any Queſtion whatſoever.

And here was ſhewed a Book written not long before the Queen's death, at what time *Thomas Winter* was employed into *Spain*, entituled, *A Treatiſe of Equivocation.* Which Book being ſeen and allowed by *Garnet*, the Superior of the Jeſuits, and *Blackwel* the Archprieſt of *England*, in the beginning thereof, *Garnet* with his own hand put out thoſe words in the Title *of Equivocation*, and made it thus; *A Treatiſe againſt Lying and fraudulent Diſſimulation.* Whereas in deed and truth it makes for both, *Specioſaque nomina Culpæ imponis, Garnette, tuæ.* And in the end thereof, *Blackwel* beſprinkles it with his Bleſſing, ſaying, *Tractatus iſte, valde doctus & vere pius, & Catholicus eſt; certe S. Scripturarum, Patrum, Doctorum, Scholaſticorum, Canoniſtarum & optimorum Rationum præſidiis pleniſſime firmat æquitatem æquivocationis; ideoque digniſſimus eſt qui Typis propagetur, ad conſolationem afflictorum Catholicorum, & omnium piorum inſtructionem.* That is, *This Treatiſe is very learned, godly, and Catholick, and doth moſt fully confirm the Equity of Equivocation, by ſtrong Proofs out of holy Scriptures, Fathers, Docters, Schoolmen, Canoniſts, and foundeſt Reaſons; and therefore worthy to be publiſhed in Print, for the Comfort of afflicted Catholicks, and Inſtruction of all the godly.*

Now, in this Book there is *Propoſitio mentalis, virbalis, ſcripta,* and *mixta*; diſtinguiſhing of a mental, a verbal, a written, and a mixed Propoſition; a very Labyrinth to lead Men into Error and Falſhood.

For example, to give you a little taſte of this Art of Cozening: A Man is aſked upon Oath this Queſtion, Did you ſee ſuch a one to-day? He may by this Doctrine anſwer, No, tho' he did ſee him, *viz.* reſerving this ſecret Meaning, not with purpoſe to tell my Lord Chief Juſtice: Or, I ſee him not *viſiona beatifica*, or, not in *Venice*, &c. Likewiſe to anſwer thus; I was in the Company; reſerving and intending ſecretly as added, this word *Not*: As *Strange* the Jeſuit did to my Lord Chief Juſtice and myſelf. Take one or two of theſe out of that very Book, as for purpoſe: A Man cometh unto *Coventry* in time of a ſuſpicion of Plague, and at the Gates the Officers meet him, and upon his Oath examine him, Whether he came from *London* or no, where they think certainly the Plague to be: This Man knowing for certain the Plague not to be at *London*, or at leaſt knowing that the Air is not there infectious, and that he only rid thro' ſome ſecret place of *London*, not ſtaying there, may ſafely ſwear, he came not from *London*; anſwering to their final Intention in their Demand, that is, whether he came ſo from *London*, that he may endanger their City of the Plague, although their immediate Intention were to know, whether he came from *London* or no. That Man (ſaith the Book) the very Light of Nature would clear from Perjury.

In like manner, One being convented in the Biſhop's Court, becauſe he refuſeth to take ſuch a one to his Wife, as he had contracted with, *per verba de præſenti*, having contracted with another privily before, ſo that he cannot be Huſband to her that claimeth him; may anſwer, That he never contracted with her *per verba de præſenti:* underſtanding, that he did not ſo contract that it was a Marriage; for that is the final Intention of the Judge, to know whether there were a ſufficient Marriage between them or no.

Never did Father *Cranmer*, Father *Latimer*, Father *Ridley*, thoſe bleſſed Martyrs, know theſe Shifts, neither would they have uſed them to have ſaved their Lives. And ſurely let every good Man take heed of ſuch Jurors or Witneſſes, there being no Faith, no Bond of Religion or Civility, no Conſcience of Truth in ſuch Men; and therefore the Concluſion ſhall be that of the Prophet *David, Domine libera Animam meam a labiis iniquis & à lingua doloſa; Deliver me, O Lord, from lying Lips, and from a deceitful Tongue.*

S. P. Q. R. was ſometimes taken for theſe Words, *Senatus Populuſque Romanus; the Senate and People of Rome:* but now they may truly be expreſſed thus, *Stultus Populus quærit Roman; A fooliſh People that runneth to* Rome. And here was very aptly and delightfully inſerted and related the Apologue or Tale of the Cat and the Mice: The Cat having a long time preyed upon the Mice, the poor Creatures at laſt, for their Safety, contained themſelves within their Holes; but the Cat finding his Prey to ceaſe, as being known to the Mice, that he was indeed their Enemy and a Cat, deviſeth this Courſe following, *viz.* Changeth his Hue, getteth on a Religious Habit, ſhaveth his Crown, walks gravely by their Holes: And yet perceiving that the Mice kept their Holes, and looking out, ſuſpected the worſt, he formally, and father-like, ſaid unto them, *Quod fueram non ſum, frater; caput aſpice tonſum! Oh Brother, I am not as you take me for, no more a Cat; ſee my Habit and ſhaven Crown!* Hereupon ſome of the more credulous and bold among them, were again, by this Deceit, ſnatched up; and therefore, when afterwards he came as before to entice them forth, they would come out no more, but anſwered, *Cor tibi reſtat idem, vix tibi præſto fidem; Talk what you can, we will never believe you, you have ſtill a Cat's Heart within you.* You do not watch and pray, but you watch to prey. And ſo have the Jeſuits, yea, and Prieſts too, for they are all joined in the Tails like *Sampſon*'s Foxes, *Ephraim* againſt *Manaſſes*, and *Manaſſes* againſt *Ephraim*, but both againſt *Judah.*

8. The laſt Conſideration is concerning the admirable Diſcovery of this Treaſon, which was by one of themſelves, who had taken the Oath and Sacrament, as hath been ſaid, againſt his own will: The Means was by a dark and doubtful Letter ſent to my Lord *Mounteagle.*

And thus much as touching the Conſiderations: the Obſervations follow, to be conſidered in this Powder-Treaſon, and are briefly thus:

1. If the Cellar had not been hired, the Minework could hardly, or not at all have been diſcovered; for the Mine was neither found nor ſuſpected until the Danger was paſt, and the capital Offenders apprehended, and by themſelves, upon Examination, confeſſed.

2. How the King was divinely illuminated by Almighty God, the only Ruler of Princes, like an Angel of God, to direct and point as it were to the very place, to cauſe a Search to be made there, out of thoſe dark Words of the Letter concerning a terrible Blow.

3. Obſerve a miraculous Accident which befel in *Stephen Littleton*'s Houſe, called *Holbach*, in *Staffordſhire*, after they had been two days in open Rebellion, immediately before the Apprehenſion of theſe Traitors: For ſome of them ſtanding by the Fire-ſide, and having ſet two pound and an half of Powder to dry in a Platter before the Fire, and underſet the ſaid Platter with a great Linen Bag full of other Powder, containing ſome fifteen or ſixteen pounds; it ſo fell out, that one coming to put more Wood into the Fire, and caſting it on, there flew a Coal into the Platter, by reaſon whereof the Powder taking fire and blowing up, ſcorched thoſe who were neareſt, as *Cateſby*, *Grant*, and *Rookwood*, blew up the Roof of the Houſe; and the Linen-Bag which was ſet under the Platter being therewith ſuddenly carried out thro' the Breach, fell down in the Court-yard whole and unfired: which if it had took fire in the Room, would have ſlain them all there, ſo that they never ſhould have come to this Trial: and *Lex juſtior nulla eſt, quam necis artifices arte perire ſua?*

4. Note, that Gunpowder was the Invention of a Fryar, one of the *Romiſh* Rabble, as Printing was of a Soldier.

5. Obſerve the ſending of *Bainham*, one of the damned Crew, to the High-Prieſt of *Rome*, to give ſignification of this Blow, and to crave his Direction and Aid.

6. That for all their ſtirring and riſing in open Rebellion, and notwithſtanding the falſe Rumours given out by them, That the Throats of all Catholicks ſhould be cut; ſuch is his Majeſty's bleſſed Government, and the Loyalty of his Subjects, as they got not any one Man to take their parts beſides their own Company.

7. Obſerve, the Sheriff, the ordinary Miniſter of Juſtice, according to the Duty of his Office, with ſuch Power as he on a ſudden by Law collected, ſuppreſſed them.

8. That God ſuffered their intended Miſchief to come ſo near the Period, as not to be diſcovered, but within few hours before it ſhould have been executed.

9. That it was in the entring of the Sun into the Tropick of *Capricorn*, when they began their Mine; noting, that by Mining, they ſhould deſcend; and by Hanging, aſcend.

10. That there never was any Proteſtant Miniſter in any Treaſon and Murder as yet attempted within this Realm.

I am now come to the laſt part, which I propoſed in the beginning of this Diſcourſe; and that is, touching certain Compariſons of this Powder-Treaſon of the Jeſuits, with that of *Raleigh*, and the other of the Prieſts *Watſon* and *Clarke.*

1. They had all one End, and that was the Romiſh Catholick Cauſe.

2. The ſame Means, by Popiſh and diſcontented Perſons, Prieſts and Lay-men.

3. They all plaid at hazard: The Prieſts were at the Bye, *Raleigh* at the Main, but theſe in at all; as purpoſing to deſtroy all the King's Royal Iſſue, and withal the whole Eſtate.

4. They were all alike obliged by the ſame Oath and Sacrament.

5. The ſame Proclamations were intended (after the Fact) to be publiſhed for Reformation of Abuſes.

6. The like Army provided for invading, to land at *Milford-Haven*, or in *Kent.*

7. The ſame Penſions of Crowns promiſed.

8. The agreeing of the Times of the Treaſon of *Raleigh* and theſe Men, which was when the Conſtable of *Spain* was coming hither: and *Raleigh* ſaid, there could be no Suſpicion of any Invaſion, ſeeing that the Conſta-

ble of *Spain* was then expected for a Treaty of Peace ; and the Navy might be brought to the *Groyn* under pretence of the Service in the *Low Countries.* And *Raleigh* further ſaid, That many more were hanged for Words, than for Deeds. And before *Raleigh*'s Treaſon was diſcovered, it was reported in *Spain*, that Don *Raleigh* and Don *Cobham* ſhould cut the King of *England*'s Throat.

I ſay not, that we have any Proofs, that theſe of the Powder-Plot were acquainted with *Raleigh*, or *Raleigh* with them : but as before was ſpoken of the Jeſuits and Prieſts, ſo they all were joined in the Ends, like *Sampſon*'s Foxes in the Tails, howſoever ſever'd in their Heads.

The Concluſion ſhall be from the admirable Clemency and Moderation of the King, in that howſoever theſe Traitors have exceeded all others their Predeceſſors in Miſchief, and ſo *Creſcente Malitia*, *creſcere debuit & Pœna* ; yet neither will the King exceed the uſual Puniſhment of *Law*, nor invent any new Torture or Torment for them ; but is graciouſly pleaſed to afford them as well an ordinary Courſe of Trial, as an ordinary Puniſhment, much inferior to their Offence. And ſurely worthy of Obſervation is the Puniſhment by Law provided and appointed for High-Treaſon, which we call *Crimen læſæ Majeſtatis*. For firſt, after a Traitor hath had his juſt Trial, and is convicted and attainted, he ſhall have his Judgement to be drawn to the place of Execution from his Priſon, as being not worthy any more to tread upon the Face of the Earth whereof he was made : Alſo for that he hath been retrograde to Nature, therefore is he drawn backward at a Horſe-Tail. And whereas God hath made the Head of Man the higheſt and moſt ſupreme Part, as being his chief Grace and Ornament, *Pronaque cum ſpectent Animalia cætera terram, Os homini ſublime dedit* ; he muſt be drawn with his Head declining downward, and lying ſo near the Ground as may be, being thought unfit to take benefit of the common Air. For which Cauſe alſo he ſhall be ſtrangled, being hanged up by the Neck between Heaven and Earth, as deemed unworthy of both, or either ; as likewiſe, that the Eyes of Men may behold, and their Hearts contemn him. Then is he to be cut down alive, and to have his Privy Parts cut off and burnt before his Face, as being unworthily begotten, and unfit to leave any Generation after him. His Bowels and inlay'd Parts taken out and burnt, who inwardly had conceived and harboured in his heart ſuch horrrible Treaſon. After, to have his Head cut off, which had imagined the Miſchief. And laſtly, his Body to be quartered, and the Quarters ſet up in ſome high and eminent Place, to the View and Deteſtation of Men, and to become a Prey for the Fowls of the Air.

And this is a Reward due to Traitors, whoſe Hearts be hardened : For that it is Phyſic of State and Government, to let out corrupt Blood from the Heart. But, *Pœnitentia vera nunquam, ſera ſed pœnitentia ſera raro vera :* True Repentance is indeed never too late ; but late Repentance is ſeldom found true : Which yet I pray the merciful Lord to grant unto them, that having a Senſe of their Offences, they may make a true and ſincere Confeſſion both for their Souls Health, and for the Good and Safety of the King and this State. And for the reſt that are not yet apprehended, my Prayer to God is, *Ut aut convertantur ne pereant, aut confundantur ne noceant* ; that either they may be converted, to the End they periſh not, or elſe confounded, that they hurt not.

After this by the Direction of Maſter Attorney-General, were their ſeveral Examinations (ſubſcribed by themſelves) ſhewed particularly unto them, and acknowledged by them to be their own, and true, wherein every one had confeſſed the Treaſon. Then did Maſter Attorney deſire, That albeit that which had been already done and confeſſed at the Bar, might he all-ſufficient for the Declaration and Juſtification of the Courſe of Juſtice then held, eſpecially ſeeing we have *Reos confitentes*. the Traitors own voluntary Confeſſions at the Bar ; yet for further Satisfaction to ſo great a Preſence and Audience, and their better Memory of the Carriage of theſe Treaſons, the voluntary and free Confeſſions of all the ſaid ſeveral Traitors in writing ſubſcribed with their own proper Hands, and acknowledged at the Bar, by themſelves to be true, were openly and diſtinctly read ; By which, amongſt other things, it appeared that *Bates* was abſolved for what he undertook concerning the Powder-Treaſon, and being therein warranted by the Jeſuits. Alſo it appeared, that *Hammond* the Jeſuit, after that he knew the Powder-Treaſon was diſcovered, and that theſe Traitors had been in actual Rebellion, confeſſed them, and gave them Abſolution : And this was on Thurſday the 7th of *November*.

Here alſo was Mention made by Maſter Attorney of the Confeſſions of *Watſon* and *Clarke*, Seminary Prieſts, upon their Apprehenſion ; who affirmed, that there was ſome Treaſon intended by the Jeſuits, and then in Hand ; as might appear.

1. By their continual negotiating at that Time with *Spain*, which they aſſured themſelves tended to nothing but a preparation for a foreign Commotion.

2. By their collecting and gathering together ſuch great Sums of Money, as then they had done, therewith to levy an Army when Time ſhould ſerve.

3. For that ſundry of the Jeſuits had been tampering with Catholicks, as well to diſſuade them from Acceptance of the King at his firſt coming, ſaying, That they ought rather to Die, than to admit of any Heritick (as they continually termed his Majeſty) to the Crown ; and that they might not, under pain of Excommunication, accept of any but a Catholick for their Sovereign ; as alſo to diſſuade Catholicks from their Loyalty after the State was ſettled.

Laſtly, In that they had both bought up ſtore of great Horſes throughout the Country, and conveyed Powder and Shot, and Artillery ſecretly to their Friends ; wiſhing them not to ſtir, but keep themſelves quiet until they heard from them.

After the reading of their ſeveral Examinations, Confeſſions, and voluntary Declaration as well of themſelves, as of ſome of their dead Confederates, they were all by the Verdict of the Jury found guilty of the Treaſons contained in their Indictment.

And then being ſeverally aſked, What they could ſay, wherefore Judgment of Death ſhould not be pronounced againſt them ; there was not one of theſe (except *Rookwood)* who would make any continued Speech, either in Defence or Extenuation of the Fact.

Thomas Winter only deſired, that he might be hanged both for his Brother and himſelf.

Guy Fawkes being aſked, Why he pleaded Not Guilty, having nothing to ſay for his Excuſe : anſwered, That he had ſo done in reſpect of certain Conferences mention'd in the Indictment, which he ſaid that he knew not of : Which were anſwered to have been ſet down according to Courſe of Law, as neceſſarily pre-ſuppoſed before the Reſolution of ſuch a Deſign.

Keys ſaid, That his Eſtate and Fortunes were deſperate, and as good now as at another time, and for this Cauſe rather than for another.

Bates craved Mercy.

Robert Winter, Mercy.

John Grant was a good while mute ; yet after, ſubmiſſively ſaid, He was guilty of a Conſpiracy intended, but never effected.

But *Ambroſe Rookwood* firſt excuſed his denial of the Indictment, for that he had rather loſe his Life than give it. Then did he acknowledge his Offence to be ſo heinous, that he juſtly deſerved the Indignation of the King, and of the Lords, and the Hatred of the whole Commonwealth ; yet could he not deſpair of Mercy at the Hands of a Prince, ſo abounding in Grace and Mercy : And the rather, becauſe his Offence, tho' it were incapable of any Excuſe, yet not altogether incapable of ſome Extenuation, in that he had been neither Author nor Actor, but only perſuaded and drawn in by *Cateſby*, whom he loved above any worldly Man : And that he had concealed it not for any Malice to the Perſon of the King, or to the State, or for any ambitious Reſpect of his own, but only drawn with the tender Reſpect, and the faithful and dear Affection he bare to Mr. *Cateſby* his Friend, whom he eſteem'd dearer than any thing elſe in the World. And this Mercy he deſired not for any fear of the Image of Death, but for grief that ſo ſhameful a Death ſhould leave ſo perpetual a blemiſh and blot unto all Ages, upon his Name and Blood. But howſoever that this was his firſt Offence, yet he humbly ſubmitted himſelf to the Mercy of the King, and prayed that the King would herein imitate God, who ſometimes doth puniſh *corporaliter, non mortaliter*, corporally, yet not mortally.

Then was related how that on the Friday immediately before this Arraignment, *Robert Winter* having found opportunity to have Conference with *Fawkes* in the *Tower*, in regard of the nearneſs of their Lodgings, ſhould ſay to *Fawkes*, as *Robert Winter* and *Fawkes* confeſſed, That he and *Cateſby* had Sons, and that Boys would be Men, and that he hoped they would Revenge the Cauſe ; nay, that God would raiſe up Children to *Abraham* out of Stones : Alſo that they were ſorry, that nobody did ſet forth a Defence or Apology of their Action, but yet they would maintain the Cauſe at their Deaths.

Here alſo was reported *Robert Winter*'s Dream, which he had before the blaſting with Powder in *Littleton*'s Houſe, and which he himſelf confeſſed and firſt notified, *viz.* That he thought he ſaw Steeples ſtand awry, and within thoſe Churches ſtrange and unknown Faces. And after, when the foreſaid Blaſt had the Day following ſcorched divers of the Confederates, and much disfigured the Faces and Countenances of *Grant*, *Rookwood*, and others ; then did *Winter* call to Mind his Dream, and to his Remembrance thought, that the Faces of his Aſſociates ſo ſcorched, reſembled thoſe which he had ſeen in his Dream.

Then was Sir *Everard Digby* arraigned, and after his Indictment was read ; wherein he was charged, not only to have been acquainted with the Powder-Treaſon, and concealed it, and taken the double Oath of Secrecy and Conſtancy therein, but likewiſe to have been an Actor in this Conſpiracy ; and laſtly to have expoſed, and openly ſhewed himſelf in the Rebellion in the Country amongſt the reſt of the Traitors. All which after he had attentively heard and marked, knowing that he had confeſſed it, and the ſtrength and Evidence of the Proofs againſt him, and convicted with the Teſtimony of his own Conſcience, ſhewed his Diſpoſition to confeſs the principal Part of the ſaid Indictment, and ſo began to enter into a Diſcourſe. But being advertiſed that he muſt firſt plead to the Indictment directly, either Guilty, or not Guilty ; and that afterwards he ſhould be licenſed to ſpeak his Pleaſure ; he forthwith confeſſed the Treaſon contained in the Indictment, and ſo fell into a Speech, whereof there were two Parts, *viz.* Motives, and Petitions. The firſt Motive which drew him into this Action, was not Ambition or Diſcontentment of his Eſtate, neither Malice to any in Parliament, but the Friendſhip and Love he bare to *Cateſby*, which prevailed ſo much, and was ſo powerful with him, as that for his ſake he was ever contented and ready to hazard himſelf and his Eſtate. The next Motive, was the Cauſe of Religion, which alone, ſeeing (as he ſaid) it lay at the ſtake, he entered into Reſolution to neglect in that behalf, his Eſtate, his Life, his Name, his Memory, his Poſterity, and all worldly and earthly Felicity whatſoever ; tho' he did utterly extirpate, and extinguiſh all other hopes for the reſtoring of the Catholick Religion in *England.* His third Motive was, that Promiſes were broken with the Catholicks. And laſtly, That they generally feared harder Laws from this Parliament againſt Recuſants, as that Recuſants Wives, and Women ſhould be liable to the Mulct as well as their Huſbands and Men. And further, that it was ſuppoſed, that it ſhould be made a *Præmunire*, only to be a Catholick.

His Petitions were, That ſithence his Offence was confined and contained within himſelf, that the Puniſhment alſo of the ſame might extend only to himſelf, and not to be transferred either to his Wife, Children, Siſters, or others : And therefore for his Wife he humbly craved, that ſhe might enjoy her Jointure ; his Son the benefit of an Entail made long before any thought of this Action ; his Siſters, their juſt and due Portions, which were in his Hands ; his Creditors their rightful Debts, which that he might more juſtly ſet down under his Hand, he requeſted that before his Death, his Man (who was better acquainted both with the Men, and the Particulars than himſelf) might be licenſed to come unto him. Then prayed he Pardon of the King and Lords for his Guilt. And laſtly he entreated to be beheaded ; deſiring all Men to forgive him, and that his Death might ſatisfy them for his Treſpaſs.

To this Speech forthwith anſwered Sir *Edward Coke* Attorney-General, but in reſpect of the time (for it grew now dark) very briefly :

1. For his Friendſhip with *Cateſby*, that it was mere Folly and wicked Conſpiracy.

2. His Religion, Error, and Hereſy.

3. His Promiſes, idle and vain Preſumptions, as alſo his Fears, falſe

Alarms, Concerning Wives that were Recuſants, if they were known ſo to be before their Huſbands (though they were good Proteſtants) took them, and yet for outward and worldly Reſpects whatſoever, any would match with ſuch; great reaſon there is, that he or they ſhould pay for it, as knowing the Penalty and Burden before: for *volenti & ſcienti non fit Injuria*; No Man receives Injury in that, to which he willingly and knowingly agreeth and conſenteth. But if ſhe were no Recuſant at the time of Marriage, and yet afterwards he ſuffer her to be corrupted and ſeduced, by admitting Prieſts and Romaniſts into his Houſe; good reaſon likewiſe that he, be he Papiſt or Proteſtant, ſhould pay for his Negligence and Miſgovernment.

4. Concerning the Petitions for Wife, for Children, for Siſters, *&c.* O how he doth now put on the bowels of Nature and Compaſſion, in the peril of his private and domeſtical Eſtate! But before, when the publick State of his Country, when the King, the Queen, the tender Princes, the Nobles, the whole Kingdom were deſigned to a perpetual Deſtruction; where was then this Piety, this religious Affection, this Care? All Nature, all Humanity, all Reſpect of Laws both divine and human, were quite abandoned; then was there no Conſcience made to extirpate the whole Nation, and all for a pretended Zeal to the Catholick Religion, and the Juſtification of ſo deteſtable and damnable a Fact.

Here did Sir *Everard Digby* interrupt Mr. Attorney, and ſaid that he did not juſtify the Fact, but confeſſed that he deſerved the vileſt Death, and moſt ſevere Puniſhment that might be: But he was an humble Petitioner for Mercy, and ſome Moderation of Juſtice. Whereupon Mr. *Attorney* replied, that he ſhould not look by the King to be honoured in the manner of his Death, having ſo far abandoned all Religion and Humanity in his Action: But that he was rather to admire the great Moderation and Mercy of the King, in that for ſo exorbitant a Crime, no new Torture anſwerable thereunto was deviſed to be inflicted upon him. And for his Wife and Children, whereas he ſaid that for the Catholick Cauſe he was content to neglect the Ruin of himſelf, his Wife, his Eſtate, and all; he ſhould have his deſire as it is in the *Pſalm, Let his Wife be a Widow, and his Children Vagabonds, let his Poſterity be deſtroyed, and in the next Generation let his Name be quite put out.* For the paying of your Creditors, it is equal and juſt; but yet fit the King be firſt ſatisfied and paid, to whom you owe ſo much, as that all you have is too little: yet theſe things muſt be left to the Pleaſure of his Majeſty, and the Courſe of Juſtice and Law.

Earl of *Northamp.* You muſt not hold it ſtrange, Sir *Everard Digby*, though at this time being preſſed in Duty, Conſcience and Truth, I do not ſuffer you to wander in the Labyrinth of your own idle Conceits, without oppoſition, to ſeduce others, as yourſelf have been ſeduced, by falſe Principles, or to convey yourſelf by Charms of Imputation, by Clouds of Error, and by Shifts of lately deviſed Equivocation, out of that ſtraight wherein your late ſecure and happy Fortune hath been unluckily entangled, but yet juſtly ſurprized by the Rage and Revenge of your own raſh Humours. If in this Crime (more horrible than any Man is able to expreſs) I could lament the Eſtate of any Perſon upon Earth, I could pity you; but thank yourſelf and your bad Counſellors for leading you into a Crime of ſuch a kind, as no leſs benumbeth in all faithful, true and honeſt Men, the Tenderneſs of Affection, than did in you the Senſe of all Humanity.

That you were once well thought of and eſteemed by the late Queen, I can witneſs, having heard her ſpeak of you with that Grace, which might have encouraged a true Gentlemen to have run a better Courſe. Nay, I will add further, that there was a time wherein you were as well affected to the King our Maſter's Expectation, though perhaps upon falſe Rumours and Reports, that he would have yielded Satisfaction to your unprobable and vaſt Deſires; but the Seed that wanted moiſture (as our Saviour himſelf reporteth) took no deep Root: that Zeal which hath no other End or Object than the pleaſing of itſelf, is quickly ſpent; and *Trajan*, that worthy and wiſe Emperor, had reaſon to hold himſelf diſcharged of all Debts to thoſe that had offended more by Prevarication, than they could ever deſerve by Induſtry.

The Grace and Goodneſs of his Majeſty in giving Honour at his firſt coming unto many Men of your own Affection, and (as I think) unto yourſelf; his Facility in admitting all without diſtinction of *Trojan* or of *Tyrian*, to his Royal Preſence, upon juſt occaſions of Acceſs; his Integrity in ſetting open the Gate of civil Juſtice unto all his Subjects equally and indifferently, with many other Favours that ſucceeded by the Progreſſion of Peace; are ſo palpable and evident to all Men, that have either Eyes of Underſtanding, or Underſtanding of Capacity, as yourſelf and many others have been driven of late to excuſe and countenance your execrable Ingratitude with a falſe and ſcandalous Report of ſome further Hope and Comfort yielded to the Catholicks for Toleration or Connivance, before his coming to the Crown, than ſince hath been performed, made good or ſatisfied.

I am not ignorant, that this ſeditious and falſe Alarm hath awaked and incited many working Spirits to the prejudice of the preſent State, that might otherwiſe have ſlept as before with ſilence and ſufferance; it hath ſerved for a Shield of Wax againſt a Sword of Power: it hath been uſed as an Inſtrument of Art to ſhadow falſe Approaches, till the *Trojan* Horſe might be brought within the Walls of the Parliament, with a Belly ſtuffed, not as in old time with armed *Greeks*, but with helliſh Gunpowder. But howſoever God had blinded you and others in this Action, as he did the King of *Egypt* and his Inſtruments, for the brighter Evidence of his own powerful Glory; yet every Man of Underſtanding could diſcern, that a Prince whoſe Judgment had been fixed by Experience of ſo many Years upon the Poles of the *North* and the *South*, could not ſhrink upon the ſudden: no nor ſince with fear of that Combuſtion which *Cateſby* that Arch-Traitor, like a ſecond *Phaeton*, would have cauſed in an inſtant in all the Elements. His Majeſty did never value Fortunes of the World, in leſſer Matter than Religion, with the Freedom of his Thoughts: he thought it no ſafe Policy (profeſſing as he did, and ever will) to call up more Spirits into the Circle than he could put down again; he knew, that *omne regnum in ſe diviſum deſolabitar*, Philoſophy doth teach, that whatſoever any Man may think in ſecret thought, that where one doth hold of *Cephas*, another of *Apollo*, openly Diſſenſion enſues, *Quod inſitum alieno ſolo eſt, in id quo alitur natura vertente degenerat*; and the World will ever apprehend, that *Quorum eſt commune ſymbolum, facillimus eſt tranſitus.*

Touching the Point itſelf of promiſing a kind of Toleration to Catholicks, as it was divulged by theſe two Limbs of *Lucifer*, *Watſon* and *Percy*, to raiſe a ground of Practice and Conſpiracy againſt the ſtate and Perſon of our dear Sovereign, let the Kingdom of *Scotland* witneſs for the ſpace of ſo many Years before his coming hither, whether either Flattery or Fear (no, not upon that Enterprize of the 17th of *November*, which would have put the patience of any Prince in *Europe* to his proof) could draw from the King the leaſt Inclination to this diſpenſative Indifference, that was only believed, becauſe it was eagerly deſired.

Every Man doth know how great Art was uſed, what ſtrong Wits ſublimed, and how many Miniſters ſuborned and corrupted many Years both in *Scotland* and in foreign Parts, to ſet the King's Teeth an edge with fair Promiſes of future Helps and Supplies, to that happy End of attaining his due Right in *England*, when the Sun ſhould ſet, to riſe more gloriouſly in the ſame Hemiſphere, to the wonder both of this Iſland and of the World. But all in vain; for *jacta erat alea*, the King's Compaſs had been ſet before, and by a more certain Rule, and they were commonly caſt off as forlorn Hopes in the King's Favour, that ran a Courſe of ranking themſelves in the foremoſt Front of foreign Correſpondency.

Upon notice given to his Majeſty from hence ſome Years before the Death of the late Queen, that many Men were grown ſuſpicious of his Religion, by Rumours ſpread abroad, that ſome of thoſe in foreign Parts, that ſeemed to be well-affected to his future Expectation, had uſed his Name more audaciouſly, and ſpoken of his Favour to the Catholicks more forwardly than the King's own Conſcience and unchangeable Decree could acknowledge or admit (either with a purpoſe to prepare the Minds of foreign Princes, or for a practice to eſtrange and alienate Affections at home) not only utterly renounced and condemned theſe Encroachments of blind Zeal, and raſh Proceedings, by the Voices of his own Miniſters, but was careful alſo for a Caution to ſucceeding Hopes, ſo far as lay in him, that by the Diſgrace of the Delinquents in this kind, the Minds of all *Engliſh* Subjects chiefly might be ſecured, and the World ſatisfied.

No man can ſpeak in this Caſe more confidently than myſelf, that received in the Queen's time, for the ſpace of many Years, Directions and Warnings to take heed, that neither any further Comfort might be given to Catholicks, concerning future Favours, than he did intend, which was to bind all Subjects in one Kingdom to one Law, concerning the Religion eſtabliſhed, howſoever in Civil Matters he might extend his Favour as he found juſt cauſe: nor any Seeds of Jealouſy and Diffidence ſown in the Minds of Proteſtants by *Semcis* and *Achitophels*, to make them doubtful of his Conſtancy, to whom he would confirm with his deareſt Blood, that Faith which he had ſucked from the Breaſt of his Nurſe, apprehended from the Cradle of his Infancy, and maintained with his uttermoſt Endeavour, Affection and Strength: ſince he was more able out of reading and diſputing, to give a reaſon of thoſe Principles which he had now digeſted and turned to Nutriment.

He that wrote the Book of Titles before the late Queen's Death, declares abundantly by ſeeking to poſſeſs ſome Foreign Prince of the King's Hereditary Crowns, when the Cauſe ſhould come to the proof, and may witneſs inſtead of many; what hope there was of the King's Favour or Affection to Catholicks in the caſe of Toleration or Diſpenſation, with Exerciſe of Conſcience. For every Man may gueſs that it was no ſlight or ordinary degree of Deſpair, that made him and other of his Suit renounce their Portion in the Son and Heir of that renowned and rare Lady, *Mary* Queen of *Scotland*, a Member of the Roman Church; as ſome did in *David*, *Nulla nobis pars in David, nec hæreditas in filio Iſai:* For hereof by Letters intercepted in their Paſſage into *Scotland*, the Records and Proofs are evident. His Majeſty, ſo long as he was in expectation of that which by the Work and Grace of God he doth now poſſeſs, did ever ſeek to ſettle his Eſtabliſhment upon the Faith of Proteſtants in generality, as the moſt aſſured Sheet-Anchor. For tho' he found a number on the other ſide, as faithful and as well-affected to his Perſon, Claim and Intereſt, as any Men alive, as well in reſpect of their dependency upon the Queen his Mother, as for the taſte which they had of the ſweetneſs of himſelf; yet finding with what ſtrength of Blood many have been over-carried out of a Fervency in Zeal in former Times, obſerving to what Cenſures they were ſubject, both in Points of Faith, and Limitation of Loyalty: And laſt of all, forcaſting to what end their former Proteſtation would come, when preſent Satisfaction ſhould ſhrink; he was ever fearful to embark himſelf for any further Voyage and Adventure in this Strait, than his own Compaſs might ſteer him, and his Judgment level him.

If any one green Leaf for Catholicks could have been viſibly diſcerned by the Eye of *Cateſby*, *Winter*, *Garnet*, *Fawkes*, &c. they would neither have entred into Practice with foreign Princes during the Queen's time for prevention of the King's Lawful and Hereditary Right, nor have renewed the ſame both abroad and at home by Miſſions and Combinations, after his Majeſty was both applauded and entred.

It is true, that by Confeſſions we find, that falſe Prieſt *Watſon*, and Arch-Traitor *Percy*, to have been the firſt Deviſers and Divulgers of this ſcandalous Report, as an accurſed Ground, whereon they might with ſome Advantage, as it was conceived, build the Caſtles of their Conſpiracy.

Touching the firſt, no Man can ſpeak more ſoundly to the point than myſelf: for being ſent into the Priſon by the King to charge him with this falſe Alarm, only two days before his Death, and upon his Soul to preſs him in the preſence of God, and as he would anſwer it at another Bar, to confeſs directly whether at either of both theſe times he had acceſs unto his Majeſty at *Edinborough*, his Majeſty did give him any Promiſe, Hope or Comfort of Encouragement to Catholicks concerning Toleration; he did there proteſt upon his Soul that he could never win one Inch of Ground, or draw the ſmalleſt Comfort from the King in thoſe degrees, nor further than that he would have them apprehend, that as he was a Stranger to this State, ſo till he underſtood in all Points how thoſe matters ſtood, he would not promiſe Favour any way; but did proteſt that all the Crowns and Kingdoms in this World, ſhould not induce him to change any jot of his Profeſſion, which was the Paſture of his Soul, and Earneſt of his eternal Inheritance. He did confeſs that in very deed, to keep up the Hearts of Catholicks in Love and Duty to the King, he had imparted the King's words to many, in a better Tune, and a higher kind of Deſcant, than his Book of plain Song did direct; becauſe he knew that others like ſly Bargemen looked that way, when their ſtroke was bent another way. For this he craved Pardon of the King in humble Manner, and for his main Treaſons of a higher Nature than theſe Figures of Hypocriſy; and ſeemed penitent, as well for the Horror of his Crime, as for the Falſhood of his Whiſperings.

It hindered not the Satisfaction which may be given to *Percy*'s Shadow (the moſt deſperate *Boutefeu* in the Pack), that as he died impenitent, for any thing we know; ſo likewiſe he died ſilent in the Particulars. For firſt, it is not ſtrange that ſuch a Traitor ſhould deviſe ſo ſcandalous a Slander out of the Malice of his Heart, intending to deſtroy the King by any Means, and to advance all Means that might remove Obſtructions and Impediments to the Plot of Gunpowder. The more odious that he could make him to the Party Malecontent, and the more ſharply that he could ſet the Party Malecontent upon the Point and Humour of Revenge; the ſtronger was his Hope at the giving of the laſt Blow, to be glorified and juſtified. But touching the Truth of the Matters, it will be witneſſed by many, that this Traitor *Percy* after both the firſt and ſecond return from the King, brought to the Catholicks no ſpark of Comfort, of Encouragement, of Hope; whereof no ſtronger Proof of Argument doth need, than that *Fawkes* and others were employed both into *Spain* and other Parts, for the reviving of a Practice ſuſpended and covered, after *Percy*'s coming back; as in likelihood they ſhould not have been, in caſe he had returned with a Branch of Olive in his Mouth, or yielded any Ground of Comfort to reſolve upon.

Therefore I thought it thus far needful to proceed, for the clearing of thoſe Scandals that were caſt abroad, by theſe forlorn Hopes and graceleſs Inſtruments. It only remains that I Pray for your Repentance in this World for the Satisfaction of many, and Forgiveneſs in the next World, for the ſaving of yourſelf; having had by the King's Favour ſo long a Time to caſt up your Account, before your Appearance at the Seat of the great Auditor.

Then ſpake the Earl of *Saliſbury*, eſpecially to that Point, of his Majeſty's breaking of Promiſe with Recuſants, which was uſed and urged by Sir *Everard Digby*, as a Motive to draw him to participate in this ſo hideous a Treaſon. Wherein his Lordſhip, after Acknowledgement that Sir *Everard Digby* was his Ally, and having made a zealous and religious Proteſtation concerning the Sincerity and Truth of that which he would deliver; ſhortly and clearly defended the Honour of the King herein, and freed his Majeſty from all Imputation and Scandal of Irreſolution in Religion, and in the conſtant and perpetual maintaining thereof; as alſo from having at any time given the leaſt Hope, much leſs Promiſe of Toleration. To which purpoſe he declared how his Majeſty, as well before his coming to this Crown, as at that very Time, and always ſince, was ſo far from making of Promiſe, or giving Hope of Toleration, that he ever profeſſed he ſhould not endure the very Motion thereof from any.

And here his Lordſhip ſhewed what was done at *Hampton-Court* at the time of *Watſon*'s Treaſon, where ſome of the greater Recuſants were convented: And being found then not to have their Fingers in Treaſon, were ſent away again with Encouragement to perſiſt in their dutiful Carriage, and with Promiſe only of thus much Favour, That thoſe mean Profits which had accrued ſince the King's time to his Majeſty for their Recuſancy, ſhould be forgiven to the principal Gentlemen, who had both at his Entry ſhewed ſo much Loyalty, and had kept themſelves ſo free ſince from all Conſpiracies.

Then did his Lordſhip alſo (the rather to ſhew how little Truth Sir *Everard Digby*'s Words did carry in any thing which he had ſpoken) plainly prove, that all his Proteſtations wherein he denied ſo conſtantly to be privy to the Plot of Powder, were utterly Falſe, by the Teſtimony of *Fawkes* (there preſent at the Bar) who had confeſſed, that certain Months before that Seſſion, the ſaid *Fawkes* being with *Digby* at his Houſe in the Country, about what time there had fallen much wet; *Digby* taking *Fawkes* aſide after Supper, told him that he was much afraid that the Powder in the Cellar was grown dank, and that ſome new muſt be provided, leſt that ſhould not take Fire.

Next, the ſaid Earl did juſtly and greatly commend the Lord *Mounteagle* for his Loyal and honourable Care of his Prince and Country, in the ſpeedy bringing forth of the Letter ſent unto him; wherein he ſaid, that he had ſhewed both his Diſcretion and Fidelity. Which Speech being ended, *Digby* then acknowledged, that he ſpake not that of the Breach of Promiſe out of his own Knowledge, but from their Relation whom he truſted; and namely from Sir *Tho. Treſham*.

Now were the Jury returned, who having delivered their Verdict, whereby they jointly found thoſe ſeven Priſoners, arraigned upon the former Indictment, Guilty; Serjeant *Philips* craved Judgment againſt thoſe ſeven upon their Conviction, and againſt Sir *Everard Digby* upon his own Confeſſion.

Then the Lord Chief Juſtice of *England*, after a grave and prudent Relation and Defence of the Laws made by Queen *Elizabeth* againſt Recuſants, Prieſts, and Receivers of Prieſts, together with the ſeveral Occaſions, Progreſſes and Reaſons of the ſame; and having plainly demonſtrated and proved that they were all neceſſary, mild, equal, moderate, and to be juſtified to all the World; pronounced Judgment.

Upon the riſing of the Court, Sir *Everard Digby* bowing himſelf towards the Lords, ſaid, If I may but hear any of your Lordſhips ſay, you forgive me, I ſhall go more chearfully to the Gallows. Whereunto the Lords ſaid, God forgive you, and we do.

And ſo according to the Sentence, on Thurſday following being the 30th of *January*, Execution was done upon Sir *Everard Digby*, *Robert Winter*, *John Grant*, and *Thomas Bates*, at the Weſt End of *Paul*'s Church; and on Friday following, upon *Thomas Winter*, *Ambroſe Rookwood*, *Robert Keyes*, and *Guy Fawkes*, within the old *Palace-Yard*, at *Weſtminſter*, not far from the Parliament-Houſe.

XX *The Trial of* HENRY Garnet, *Superior of the Jeſuits in* England, *at the* Guild-Hall *of* London, *for* High-Treaſon, *being a Conſpirator in the* Gunpowder-Plot. 28 March 1606. 4 Jac. I.

The COMMISSIONERS preſent were.

Sir Leonard Holyday, *Lord Mayor.*
The Earl of Nottingham.
The Earl of Suffolk.
The Earl of Worceſter.
The Earl of Northampton.
The Earl of Saliſbury.

Lord Chief Juſtice of England, *Sir* John Popham.
The Lord Chief Baron of the Exchequer.
Sir Chriſtopher Yelverton *Kt. one of his Majeſty's Juſtices of the* King's-Bench.

THE Subſtance and Effect of the Indictment of *Henry Garnet*, Superior of the Jeſuits in *England*, appeareth before in the Relation of the former Arraignment, and therefore unneceſſary to be repeated again; which Indictment was ſummarily and effectually repeated by Sir *John Croke* Kt. his Majeſty's Serjeant at Law, in this Manner:

3 Co. Inſt. 27.

Sir John Croke. This Perſon and Priſoner here at the Bar, this Place, and this preſent Occaſion and Action do prove that true, which the Author of all Truth hath told us; That *nihil eſt occultum, quod non manifeſtabitur; & nihil eſt ſecretum, quod non revelabitur & in palam veniet:* There is nothing hid that ſhall not be made manifeſt, there is nothing ſecret that ſhall not be revealed and come in publick. And that God by whom Kings do reign, *Conſilium pravorum diſſipat*, doth ſcatter and bring to nought the Counſel of the Wicked.

That he ſpake with fear and trembling, and with horror and amazedneſs, againſt that rotten Root of that hideous and hateful Tree of Treaſon, and of that deteſtable and unheard-of Wickedneſs, he did crave Pardon for it; affirming that no Fleſh could Mention it without Aſtoniſhment.

He ſhewed that *Henry Garnet* of the Profeſſion of the Jeſuits, otherwiſe *Wally*, otherwiſe *Darcy*, otherwiſe *Roberts*, otherwiſe *Farmer*, otherwiſe *Philips* (for by all thoſe Names he called himſelf) ſtood indicted of the moſt barbarous and damnable Treaſons, the like whereof was never heard of: That he was a Man *multorum Nominum*, but not *boni Nominis*; of many Names, as appeared by the Indictment, but of no good Name; adorned by God and Nature, with many Gifts and Graces, if the Grace of God had been joined with them: But that wanting, *quanto ornatior in other Gifts, tanto nequior.*

That this *Garnet* (his Majeſty ſummoning his Parliament to be holden at *Weſtminſter* the 19th of *March*, in the firſt Year of his Reign, and by divers Prorogations continuing it till the 3d of *October* laſt) together with *Cateſby* lately Slain in open Rebellion, and with *Oſwald Teſmond* a Jeſuit, otherwiſe *Oſwald Greenwell*, as a falſe Traitor againſt the moſt mighty and moſt renowned King our Sovereign Lord King *James*; the 9th of *June* laſt, traitorouſly did conſpire and compaſs,

To depoſe the King, and to deprive him of his Government;

To deſtroy and kill the King, and the noble Prince *Henry* his eldeſt Son: Such a King, and ſuch a Prince, ſuch a Son of ſuch a Father, whoſe Virtues are rather with amazed Silence to be wondered at, than able by any Speech to be expreſſed.

To ſtir Sedition and Slaughter throughout the Kingdom.

To ſubvert the true Religion of God, and whole Government of the Kingdom.

To overthrow the whole State of the Commonwealth.

The Manner how to perform theſe horrible Treaſons, the Serjeant ſaid *Horreo dicere*, his Lips did tremble to ſpeak it, but his Heart praiſed God for his mighty Deliverance. The Practice ſo inhuman, ſo barbarous, ſo damnable, ſo deteſtable, as the like was never read nor heard of, or ever entered into the Heart of the moſt wicked Man to imagine. And here he ſaid, he could not but Mention that religious Obſervation ſo religiouſly obſerved by his religious Majeſty, wiſhing it were engraven in Letters of Gold, in the Hearts of all his People; the more helliſh the Imagination, the more Divine the Preſervation.

This *Garnet*, together with *Cateſby* and *Teſmond*, had Speech and Conference together of theſe Treaſons, and concluded moſt traitorouſly, and deviliſhly.

That *Cateſby*, *Winter*, *Fawkes*, with many other Traitors lately arraigned of High-Treaſon, would blow up with Gunpowder in the Parliament-Houſe, the King, the Prince, the Lords Spiritual and Temporal, the Judges of the Realm, the Knights, Citizens and Burgeſſes, and many other Subjects and Servants of the King aſſembled in Parliament, at one Blow, traitorouſly and deviliſhly to deſtroy them all, and piecemeal to tear them in ſunder, without reſpect of Majeſty, Dignity, and Degree, Age or Place.

And for that purpoſe, a great Quantity of Gun-powder was traitorouſly and ſecretly placed, and hid by theſe Conſpirators under the Parliament-Houſe.

This being the Subſtance and the Effect of the Indictment, *Garnet* did plead, Not guilty to it; and a very diſcreet and ſubſtantial Jury, with allowance of Challenges unto the Priſoner, were ſworn at the Bar for the Trial of him.

3 *Co. Inſt.* 27.

To whom the Serjeant ſhew'd that they ſhould have Evidences to prove him Guilty, that ſhould be *Luce clariores*, that every Man might read them running.

They ſhould have *Teſtimonia Rerum*, and *Loquentia ſigna*, Witneſſes and Teſtimonies of the things themſelves.

Reum confitentem, or rather *Reos confitentes*, *accuſantes invicem.*

That every one may ſay unto him, *Serve nequam*, thou wicked Subject, thou wicked Servant, *ex ore tuo te judico*, of thine own Mouth I judge thee, of thine own Mouth I condemn thee.

And this ſhall be made ſo manifeſt by him that beſt can do it, as ſhall ſtop the Mouth of all Contradiction.

* Sir *Ed. Coke.*

* *Attor. Gen.* Your Lordſhips may perceive by the parts of the Indictment which have been ſuccinctly open'd, that this is but a latter Act of that heavy and woful Tragedy, which is commonly called the Powder-Treaſon; wherein ſome have already play'd their Parts, and according to their Demerits ſuffer'd condign Puniſhment and Pains of Death. We are now to proceed againſt this Priſoner for the ſame Treaſon; in which reſpect the neceſſary Repetition of ſome things before ſpoken, ſhall at the leaſt ſeem tolerable: for that, *Nunquam nimis dicitur, quod nunquam ſatis dicitur*; *It is never ſaid too often, that can never be ſaid enough.* Nay, it may be thought juſtifiable to repeat in this Caſe; for that in reſpect of the Confluence and Acceſs of People at the former Arraignment, many could not hear at that time: And yet, becauſe I fear it would be tedious; for that moſt of all my Lords Commiſſioners, and of this honourable and great Aſſembly, were preſent at the Arraignment, and for that I am now to deal with a Man of another Quality, I will only touch, and that very little, of the former Diſcourſe or Evidence; and that little alſo ſhall be mingled with ſuch new Matter, as ſhall be worth the hearing, as being indeed of weight and moment: and all this with very great brevity.

But before I further proceed to the opening of this ſo great a Cauſe, I hold it fit and neceſſary to give Satisfaction to two divers and adverſe ſorts of Men, who, according to the divers Affections of their Hearts, have divined and conjectur'd diverſly of the Cauſe of the Procraſtination and Delay of Proceeding, eſpecially againſt this Perſon; the Matter wherewith he ſtands charged being ſo tranſcendent and exorbitant as it is. The firſt ſort of theſe, out of their hearty Love and Loyalty to their natural Liege Lord and King, and to their dear Country and this State, have feared the Iſſue of this Delay, leſt that others might be animated by ſuch Protraction of Judgment, to perpetrate the like: for they ſay (and it is moſt true) *Quia non profertur cito contra malos ſententia, abſque timore ullo filii hominum perpetrant mala*; *Becauſe ſpeedy Juſtice is not executed againſt wicked Men, the People without all Fear commit Wickedneſs.* And pity it were that theſe good Men ſhould not be ſatisfy'd. The other ſort are of thoſe, who in reſpect no greater Expedition hath been uſed againſt this Priſoner at the Bar, fall to excuſing of him, as gathering theſe Preſumptions and Conjectures: Firſt, that if he, or any of the Jeſuits, had indeed been juſtly to be touched with this moſt damnable and damned Treaſon, ſurely they ſhould have been brought forth and try'd before this time. Secondly, That there was a Bill exhibited in Parliament concerning this Treaſon, and this Traitor, but that it was deferred and proceeded not, for want of juſt and ſufficient Proofs. Nay, Thirdly, There was a particular Apology ſpread abroad for this Man, and another general for all Jeſuits and Prieſts, together with this Imputation, That King-killing and Queen-killing was not indeed a Doctrine of theirs, but only a Fiction and Policy of our State, thereby to make the Popiſh Religion to be deſpiſed and in diſgrace.

Now for theſe Men, pity it were that the Eye of their Underſtanding ſhould not be enlightened and cleared, that ſo being by demonſtrative and luculent Proofs convinced, they may be to their Prince and Country truly converted. Firſt therefore concerning the Delay, (tho' it be true, *Quod flagellatur in corde, qui laudatur in ore)* yet muſt I remember the great Pains of my Lords the Commiſſioners of his Majeſty's Privy Council in this Cauſe: for *Garnet* being firſt examin'd upon the 13th of the laſt month, hath ſithence been again examin'd and interrogated above twenty ſeveral times, which laſted to the 26th of *March*, within two days of this Arraignment. Touching the Bill in Parliament, it was indeed exhibited before *Garnet* was apprehended; but his Majeſty's gracious Pleaſure was, that albeit this Treaſon be without all Precedent and Example, yet they ſhould quietly and equally be indicted, arraigned, publickly heard, and proceeded withal in a moderate, ordinary, and juſt Courſe of Law. Concerning their Apologies, and the Fictions of State (as they term them), anſwer ſhall be made, by God's Grace, in the proper Place, when I come to lay open the Plots and Practices of the Jeſuits, to the Satisfaction of all this honourable and great Aſſembly. But firſt I have an humble Petition to preſent to your Lordſhips, and the reſt of this grave Auditory for myſelf, in reſpect that I am neceſſarily to name great Princes, yet with Proteſtation and Caution, that no Blot is intended to be laid upon any of them. I know there is *Lex in ſermone tenenda*, *A Law and Rule to be obſerved in ſpeaking*, eſpecially in this kind; and that Kings and great Princes, and the mighty Men of this Earth are to be reverently and reſpectfully dealt withal: and therefore I humbly recommend unto you theſe Conſiderations, concerning this Point of mentioning foreign States.

1ſt, That the Kingdoms were at thoſe times in open Enmity and Hoſtility, and that might be honourable at one time which was not ſo at another: ſo that hoſtile Actions were then juſtifiable and honourable, as being in times of Hoſtility and War.

2dly, In theſe things it is not the King's Attorney that ſpeaks, but *Garnet* the Jeſuit: As alſo that it proceedeth from an inevitable Neceſſity; for that the Examinations as well of this, as of the reſt of the Traitors, cannot otherwiſe be open'd and urged againſt them: ſo is the mention of great Men, by the Impudency of theſe wicked Traitors, woven into their Confeſſions, as they cannot be ſever'd.

And with this Comfort I conclude the Preface, That I hope in God this Day's Work, in the Judgment of ſo many as ſhall be attentive and well diſpoſed, ſhall tend to the Glory of Almighty God, the Honour of our Religion, the Safety of his moſt excellent Majeſty and his royal Iſſue, and the Security of the whole Commonwealth.

For Memory and Method, all that I ſhall ſpeak may be contracted to two general Heads.

First, I will conſider the Offences, together with certain Circumſtances,
Precedent before the Offence,
Concurrent with the Offence,
Subſequent after the Offence.

Secondly, I will lay down ſome Obſervations concerning the ſame.

For the proper Name of this Offence, becauſe I muſt ſpeak of ſeveral Treaſons, for diſtinction and ſeparation of this from the other, I will name it the Jeſuits Treaſon, as belonging to them both *ex congruo & condigno*; they were the Proprietaries, Plotters and Procurers of it: and in ſuch Crimes *plus peccat Author, quam Actor*; *The Author, or Procurer, offendeth more than the Actor or Executor*: as may appear by God's own Judgment given againſt the firſt Sin in Paradiſe, where the Serpent had three Puniſhments inflicted upon him, as the original Plotter; the Woman two, being as the mediate Procurer: and *Adam* but one, as the Party ſeduced.

Circumſtances precedent and ſubſequent ſo termed here, are indeed in their proper Natures all High Treaſons; but yet in reſpect of the Magnitude, nay Monſtrouſneſs of this Treaſon, may comparatively, without any diſcountenance to them in this Caſe, be uſed as Circumſtances. And becauſe I am to deal with the Superior of the Jeſuits, I will only touch ſuch Treaſons, as have been plotted and wrought by the Jeſuits, of whom this Man was Superior; and thoſe Treaſons alſo ſithence this *Garnet* his coming into *England*; whereof he may truly ſay, *Et quorum pars magna fui.*

The coming of this *Garnet* into *England* (which very Act was a Treaſon) was about twenty Years paſt, *viz.* in *July* 1586. in the twenty-eighth Year of the Reign of the late Queen, of famous and bleſſed Memory: whereas the Year before, namely the twenty-ſeventh Year of *Elizabeth*, there was a Statute made, whereby it was Treaſon for any, who was made a Romiſh Prieſt by any Authority from the See of *Rome*, ſithence the firſt Year of her Reign, to come into her Dominions: which Statute the Romaniſts calumniate as a bloody, cruel, unjuſt, and a new upſtart Law, and abuſe that Place of our Saviour, *O Jeruſalem, Jeruſalem, thou that killeſt the Prophets, and ſtoneſt them that are ſent unto thee*, &c. *Mat.* 23. 37. to that purpoſe: But indeed it is both mild, merciful and juſt, and grounded upon the antient fundamental Laws of *England.* For (as hath already in the former Arraignments been touched) before the Bull of *Impius Pius Quintus*, in the eleventh Year of the Queen, wherein her Majeſty was excommunicated and depoſed, and all they accurſed who ſhould yield any Obedience unto her, *&c.* there were no Recuſants in *England*, all came to Church (howſoever popiſhly inclin'd, or perſuaded in moſt Points) to the ſame divine Service we now uſe; but thereupon preſently they refuſed to aſſemble in our Churches, or join with us in publick Service, not for Conſcience of any thing there done, againſt which they might juſtly except out of the Word of God, but becauſe the Pope had excommunicated and depoſed her Majeſty, and curſed thoſe who ſhould obey her: and ſo upon this Bull enſued open Rebellion in the North, and many Garboils. But ſee the Event: Now moſt miſerable in reſpect of this Bull, was the State of Romiſh Recuſants; for either they muſt be hanged for Treaſon, in reſiſting their lawful Sovereign, or curs'd for yielding due Obedience unto her Majeſty. And therefore of this Pope it was ſaid by ſome of his own Favourites, that he was *Homo pius & doctus, ſed nimis credulus*; *a holy and a learned Man, but over-credulous*; for that he was inform'd and believed that the Strength of the Catholicks in *England* was ſuch, as was able to have reſiſted the Queen. But when the Bull was found to take ſuch an effect, then was there a Diſpenſation given, both by *Pius Quintus* himſelf, and *Gregory* the Thirteenth, That all Catholicks here might ſhew their outward Obedience to the Queen, *ad redimendam vexationem, & ad oſtendendam externam obedientiam*; but with theſe Cautions and Limitations: 1. *Rebus ſic ſtantibus, Things ſo ſtanding as they did.* 2. *Donec publica Bullæ executio fieri poſſet*; that is to ſay, *They might grow into Strength, until they were able to give the Queen a Mate, that the publick Execution of the ſaid Bull might take place.* And all this was confeſſed by *Garnet* under his own hand, and now again openly confeſſed at the Bar.

In the twentieth Year of Queen *Elizabeth*, came *Campion* the Jeſuit and many others of his Profeſſion with him, purpoſely to make a Party in *England* for the Catholick Cauſe, to the end that the Bull of *Pius Quintus* might be put in execution. And tho' all this while Recuſancy, being grounded upon ſuch a diſloyal Cauſe, were a very dangerous and diſloyal thing; yet was there no Law made in that behalf until the twenty-third Year of her Majeſty's Reign; and that alſo impoſing only a Mulct or Penalty upon it, until Conformity were offer'd and ſhew'd. *Anno* 26 *Eliz.* came *Parry* with a Reſolution from Cardinal *de Como*, and others, that it was lawful to kill her Majeſty, as being excommunicated and depoſed. Whereupon her Majeſty entring into Conſultation how (together with her Safety, and the Protection of her Subjects) ſhe might avoid the imminent Dangers, and yet draw no Blood from theſe Prieſts and Jeſuits, found out this moderate and mild Courſe, as the beſt Means to prohibit their coming at all into her Land; there never being any King who would endure, or not execute any ſuch Perſons, within their Dominions, as ſhould deny him to be lawful King, or go about to withdraw his Subjects from their Allegiance, or incite them to reſiſt or rebel againſt him. Nay, the bringing in of a Bull by a Subject of this Realm againſt another, in the time of *Edward* I. was adjudged Treaſon. But by the way, for that *Garnet* had exclaim'd, ſaying, Shew us where was your Church before *Luther*, deſign the Place, name the Perſons, and ſo forth; it is anſwer'd by a Compariſon of a Wedge of pure Gold, which coming into the hands of Impoſtors, is by their Sophiſtications and Mixtures, for Gain and worldly Reſpects, increaſed and augmented into a huge Body and Maſs, and retaining ſtill an outward fair Shew and Tincture of Gold. Where is now the pure Gold, ſaith one, ſhew me the Place? I anſwer, in that Maſs; but for the extracting thereof, and purifying it from Droſs, that muſt be done by the Art of the Workman, and the Trial of the Touchſtone. So the true Religion and Service of Almighty God, being for human Reſpects and worldly Pomp, mixed and overladen with a Number of ſuperſtitious Ceremonies and Inventions of Man; yet ever had God his true Church, holding his Truth, which hath been by ſkilful Workmen, with the Touchſtone of the Word of God, refined and ſeparate from the Droſs of Man's Inventions.

But to proceed: In the twenty-eighth Year of Queen *Elizabeth*, being the Year 1586, in *June*, came *Garnet* into England, breaking through the Wall of Treaſon; being in Truth, *Totus compoſitus ex proditione:* And this was at that Time when the great Armada of *Spain*, which the Pope bleſſed, and chriſten'd by the Name of *The Invincible Navy*, was by the Inſtigation of that High-Prieſt of *Rome*, preparing and collecting together of many Parcels, out of divers Parts, where they could be bought, or hired, or borrowed; and therefore may be called a compounded Navy, having in it 158 great Ships. The Purveyors and Fore-runners of this Navy and Invaſion, were the Jeſuits; and *Garnet* among them being a Traitor, even in his very Entrance and Footing in the Land. But the Queen with her own Ships, and her own Subjects, did beat this Armada, God himſelf (whoſe Cauſe indeed it was) fighting for us againſt them, by Fire, and Seas, and Winds, and Rocks and Tempeſts, ſcattering all and deſtroying moſt of them: For *offenſo Creatore, offenditur omnis Creatura*; *The Creator being offended, every Creature is readily armed to Revenge his Quarrel:* In which Reſpect he is called the Lord of Hoſts. So that of 158, ſcarce 40 of their Ships returned to the Bar of their own Haven; and as it is reported, moſt of them alſo periſhed: Inſomuch, that in this Reſpect, we may ſay of Queen *Elizabeth*, as the Poet writeth of the Chriſtian Emperor:

O nimium dilecta Deo, cui militat æther,
Et conjurati veniunt ad claſſica venti.

Obſerve here, that about the Time of this Invaſion, there being in *Spain* met in Conſultation about that Buſineſs, the Cardinal of *Auſtria*, the Duke of *Medina*, Count *Fuentes*, two *Iriſh* Biſhops, with ſundry Military Men, and amongſt others *Winſlade*, an *Engliſhman*; the *Iriſh* Biſhops perceiving that they expected a Party of Catholicks in *England*, reſolved that true it was, that it was not poſſible to do any good here in *England*, unleſs there were a Party of Catholicks made before-hand. But ſuch, ſaid they, was the Policy of *England*, as that could never be effected: for if any Suſpicion or Fear aroſe, the Catholicks ſhould quickly be either ſhut up, or quite cut off. Oh, ſaith an old Soldier there preſent, *Hoc facit pro nobis*, *That makes for us*; for by that Means their Souls ſhall go to Heaven for their Religion, their Bodies to the Earth for their Treaſon, and their Lands and Goods to us as Conquerors: This was indeed that they principally aim'd at.

Note here, that ſithence the Jeſuits ſet foot in this Land, there never paſſed four Years without a moſt peſtilent and pernicious Treaſon, tending to the Subverſion of the whole State.

After that hoſtile Invaſion in 88, the Jeſuits fell again to ſecret and treaſonable Practices: For in the Year 92, came *Patrick Cullen*, who was incited by Sir *William Stanley*, *Hugh Owen*, *Jaques Fraunces*, and *Holt* the Jeſuit, and reſolved by the ſaid *Holt* to kill the Queen; to which purpoſe he received Abſolution, and then the Sacrament, at the Hands of the ſaid Jeſuit, together with this ghoſtly Counſel, That it was both lawful and meritorious to kill her. Nay, ſaid *Jaques*, that baſe Laundreſs's Son, (who was a continued Practiſer both with this *Cullen* and others, to deſtroy her Majeſty) The State of *England* is and will be ſo ſettled, that unleſs Miſtreſs *Elizabeth* be ſuddenly taken away, all the Devils in Hell will not be able to prevail againſt it, or ſhake it.

Now *Cullen*'s Treaſon was accompany'd with a Book called *Philopater*, written for the abetting and warranting of ſuch a deviliſh Act in general, by *Creſwell* the Legier Jeſuit in *Spain*, under the Name of *Philopater*.

Anno 94, came *Williams* and *Yorke* to the ſame End, *viz.* to kill the Queen; being wrought to undertake ſo vile and deteſtable a Fact by Father *Holt* the Jeſuit, and other his Complices: And thereupon the ſaid *Williams* and *Yorke* in the Jeſuits College received the Sacrament together of Father *Holt*, and other Jeſuits, to execute the ſame. And that Treaſon likewiſe was accompany'd with a Book written by the Legier Jeſuit and Rector of *Rome*, *Parſons*, under the Name of *Doleman*, concerning Titles, or rather Tittles; a leud and a lying Book, full of Falſhood, Forgery, and Malediction.

Anno 97, came *Squire* from *Spain*, to poiſon her Majeſty, incited, directed, and warranted by *Walpole* a Jeſuit, then reſiding there; at whoſe Hands likewiſe, after Abſolution, he received the Sacrament, as well to put the Practice in Execution, as to keep it Secret. All theſe Treaſons were freely and voluntarily confeſſed by the Parties themſelves under their own Hands, and yet remain extant to be ſeen.

In the Year 1601, when Practices fail'd, then was foreign Force again attempted; for then (as in the former Arraignment hath been declared) was *Thomas Winter* employ'd to the King of *Spain*, together with *Teſmond* the Jeſuit, by this *Garnet*, who wrote his Letters to *Arthur*, *alias Joſeph Creſwell*, (the only Man whom I have heard of, to change his Chriſtian Name) the Legier Jeſuit in *Spain*, for the furtherance of that Negotiation; which was, as hath been ſaid, to offer the Services of the *Engliſh* Catholicks to the King, and to deal further concerning an Invaſion, with Promiſe from the Catholicks here of Forces, both of Men and Horſes, to be in readineſs to join with him. This Negotiation, by the Means of *Creſwell*, to whom *Garnet* wrote, took ſuch Effect, that the two Kingdoms ſtanding then in Hoſtility, the Propoſition of the *Engliſh* Romiſh Catholicks was accepted and entertain'd; an Army to invade (as hath been ſpecify'd in the former Arraignment) promiſed, and 100,000 Crowns to be diſtributed amongſt Romaniſts and diſcontented Perſons, making of a Party in *England*, and for the furtherance of the ſaid Service, granted. In the mean Time the King earneſtly deſired, That if the Queen of *England* ſhould happen to die, he might receive preſent and certain Advertiſement thereof.

Now this Treaſon was accompany'd with the Pope's own writing: For now doth the Holy Father cauſe to be ſent hither to *Garnet* two Briefs or Bulls, one to the Clergy, and another to the Laity; wherein obſerve the Title, the Matter, the Time. The Title of the one was, *Dilectis Filiis, Principibus, & Nobilibus Catholicis Anglicanis, Salutem & Apoſtolicam Benedictionem:* that is, *To our beloved Sons the Nobles and Gentlemen of* England, *which are Catholicks, Greeting and Apoſtolical Benediction.* The Title of the other was, *Dilectis Filiis, Archipreſbytero, & reliquo Clero Anglicano*, &c. *To our beloved Sons, the Archprieſt, and the reſt of the Catholick Clergy.* The Matter was, that after the Death of her Majeſty, whether by Courſe of Nature, or otherwiſe, whoſoever ſhould lay Claim or Title to the Crown of *England*, tho' never ſo directly and nearly intereſted therein by Deſcent and Blood Royal; yet unleſs he were ſuch an one as would not only tolerate the Catholic (Romiſh) Religion, but by all his beſt Endeavours and Force promote it, and according to the ancient Cuſtom would, by a ſolemn and ſacred Oath, religiouſly promiſe and undertake to perform the ſame, they ſhould admit or receive none to be King of *England*: His Words are theſe, *Quantumcunque propinquitate ſanguinis niterentur, niſi ejuſmodi eſſent qui fidem Catholicam non modo tolerarent, ſed omni ope ac ſtudio promoverent, & more Majorum Jurejurando ſe id præſtituros ſuſciperent*, &c.

As for King *James* (at whom the Pope aimed) he hath indeed both *Propinquitatem* and *Antiquitatem Regalis Sanguinis*, Propinquity and Antiquity of Blood Royal, for his juſt Claim and Title to this Crown, both before and ſince the Conqueſt. To inſiſt upon the Declaration and Deduction of this Point, and paſs along through the Series and Courſe of ſo many Ages and Centuries, as it would be over long for this Place, ſo further I might herein ſeem as it were to gild Gold: Only in a Word, His Majeſty is lineally deſcended from *Margaret* the Saint, Daughter of *Edward*, Son of King *Edmund*, Grandchild of Great *Edgar* the *Britain* Monarch. Which *Margaret*, ſole Heir of the *Engliſh-Saxon* King, was married to *Malcolme* King of *Scotland*; who by her had Iſſue *David the Holy* their King, from whom that Race Royal at this Day is deduced; and *Maud the Good*, Wife of the firſt and learned *Henry* King of *England*, from whom his Majeſty directly and lineally proceedeth, and of whom a Poet of that Time wrote:

Nec decor effecit fragilem, non ſceptra ſuperbam,
Sola potens humilis, ſola pudica decens.

And laſtly, his Majeſty cometh of *Margaret* alſo the eldeſt Daughter of *Henry* VII. who was deſcended of that famous Union of thoſe two fair Roſes, the White and the Red, *York* and *Lancaſter*; the effecting of which Union coſt the Effuſion of much *Engliſh* Blood, over and beſides fourſcore or thereabouts of the Blood Royal. But a more famous Union is by the Goodneſs of the Almighty perfected in his Majeſty's Perſon of divers Lions, two famous, ancient, and renowned Kingdoms, not only without Blood, or any Oppoſition, but with ſuch an univerſal Acclamation and Applauſe of all Sorts and Degrees (as it were with one Voice) as never was ſeen or read of. And therefore moſt Excellent King, for to him I will now ſpeak:

Cum triplici fulvum conjunge leone leonem,
Ut varias Atavus junxerat ante Roſas:
Majus opus varios ſine pugna unire leones,
Sanguine quam varias conſociâſſe Roſas.

Theſe four noble and magnanimous Lions, ſo firmly and individually united, are able, without any Difficulty or great Labour, to ſubdue and overthrow all the Letters and Bulls (and their Calves alſo) that have been, or can be ſent into *England*.

Now for the Time, obſerve that theſe Bulls or Briefs came upon the aforeſaid Negotiation of *Thomas Winter* into *Spain*, at what Time an Army ſhould ſhortly after have been ſent to invade the Land: And this was to be put in Execution, *Quandocunque contingeret miſeram illam fœminam ex hac vita excedere*; Whenſoever it ſhould happen that that miſerable Woman (for ſo it pleaſed the High Prieſt of *Rome* to call great Queen *Elizabeth*) ſhould depart this Life. Was Queen *Elizabeth* miſerable? It is ſaid that *Miſeria conſtat ex duobus contrariis, ſcilicet, Copia & Inopia*; *ex Copia tribulationis, & Inopia conſolationis.* Was ſhe, I ſay, miſerable, whom Almighty God ſo often and ſo miraculouſly protected, both *from the Arrow that flieth by Day*, their great *Armada*, and *from the Peſtilence that walketh in the Darkneſs*, their ſecret and treacherous Conſpiracies? that did beat her moſt potent Enemies? that ſet up a King in his Kingdom? that defended Nations, and harboured and protected diſtreſſed People? that protected her Subjects in Peace and Plenty, and had the Hearts of the moſt and the beſt of her Subjects? that reigned Religiouſly and Glorioſly, and died Chriſtianly and in Peace? Oh bleſſed Queen, our late dear Sovereign, *ſemper honos nomenque tuum laudeſque manebunt.* But Queen *Elizabeth* of famous Memory, (for *Memoria ejus ſemper erit in benedictione*) as a bright Morning-Star, in fulneſs of Time loſt her natural Light, when the great and glorious Sun appeared in our *Horizon.*

And now ſithence the coming of our great King *James*, there have not paſſed, I will not ſay four, nay not two Months, without ſome Treaſon.

Firſt, in *March* 1603, upon the Death of her Majeſty, and before they had ſeen his Majeſty's Face, was *Chriſtopher Wright* employed into *Spain*, by *Garnet*, *Cateſby*, and *Treſham*, to give Advertiſement of the Queen's Death, and to continue the former Negotiation of *Thomas Winter*: and by him alſo doth this *Garnet* write to *Creſwell* the Jeſuit, in Commendation, and for Aſſiſtance and Furtherance of his Buſineſs.

As alſo on the 22d of *June* following, was *Guy Fawkes* ſent out of *Flanders*, by *Baldwin* the Jeſuit, by Sir *William Stanley* and *Hugh Owen*, about the ſame Treaſon; and by Letters from *Baldwin* directed and commended to *Creſwell* the Legier Jeſuit in *Spain*, for the procuring of his Diſpatch, as in the former Arraignment hath been declared.

In the ſame *June* doth *Garnet* the Superior, together with *Gerrard* and other Jeſuits and Jeſuited Catholicks, labour not only in providing of Horſes, which by *Thomas Winter* and *Chriſtopher Wright*, upon their ſeveral Negotiations, they, in the Names of all the Catholicks in *England*, had promiſed the King of *Spain*, to aſſiſt and do him Service withal, at ſuch Time as the ſaid King ſhould ſend his Forces to invade, either at *Milford-Haven*, or in *Kent*, as hath before been ſhewed; but alſo did, by Force of the ſaid two Bulls or Briefs, diſſuade the Romiſh Catholicks from yielding their due Obedience to his Majeſty, for that he was not of the Roman Religion: contrary to the Practice of the true Church and Churchmen, that undergo Wars, *ferendo, non feriendo, with Patience, not with Strokes*; their Weapons being properly *Orationes & Lachrymæ, Prayers and Tears.*

On the ſame *June* 9, which was in 1603, *primo Jacobi*, brake out likewiſe the Treaſon of the Romiſh Prieſts, *Watſon* and *Clarke*, as alſo that other of Sir *Walter Raleigh* and others. But the Jeſuits ſeeing that the Peace was now in great forwardneſs, and having Advertiſement alſo, that the King of *Spain* did now diſtaſte their Propoſitions, ſo that there was no further hope left for Force; then fell they again to ſecret Practice. As for the Bulls or Briefs before-mention'd, when *Cateſby* had informed *Garnet* that King *James* was proclaimed, and the State ſettled, they were by *Garnet*, as himſelf hath affirmed, burnt. But to proceed:

In *March* 1603. *Garnet* and *Cateſby* (a peſtilent Traitor) confer together, and *Cateſby* in general telleth him (tho' moſt falſly), That the King had broken Promiſe with the Catholicks, and therefore aſſuredly there would be Stirs in *England* before it were long. In *September* following, meets *Cateſby* and *Thomas Percy*: and after an unjuſt, but a grievous Complaint made by *Cateſby* of the King's Proceedings, for that contrary to their Expectations, his Majeſty both did hold, and was like continually to run the ſame Courſe, which the Queen before had held; *Percy* preſently breaks forth into this deviliſh Speech, That there was no way but to kill the King, which he the ſaid *Percy* would undertake to do. But *Cateſby*, as being *verſuto ingenio & profunda perfidia*, a cunning, a wily, and a deep Traitor, intending to uſe this ſo furious and fiery a Spirit to a further Purpoſe, doth as it were ſtroke him for his great forwardneſs, yet with ſage and ſtayed Counſel tells him; No, *Tom*, thou ſhalt not adventure thyſelf to ſo ſmall purpoſe: If thou wilt be a Traitor, there is a Plot to greater advantage, and ſuch a one as can never be diſcovered, *viz.* the Powder-Treaſon.

In *January*, in the firſt Year of his Majeſty, *Garnet* took out a General Pardon under the Great Seal of *England*, of all Treaſons, (which Pardon his Majeſty of his Grace granted to all Men at his firſt entrance into his Kingdom) under the name of *Henry Garnet* of *London*, Gent. but therein he never uſed any of his *alias dictus Walley*, *Farmer*, or any other of his feigned names. But *Cateſby* fearing leſt any of thoſe whom he had or ſhould take into Confederacy, being touched in Conſcience with the horror of ſo damnable a Fact, might give it over, and endanger the Diſcovery of the Plot, ſeeks to *Garnet*, (as being the Superior of the Jeſuits, and therefore of high Eſtimation and Authority amongſt all thoſe of the Romiſh Religion) to have his Judgment and Reſolution in Conſcience, concerning the Lawfulneſs of the Fact, that thereby he might be able to give Satisfaction to any who ſhould in that behalf make doubt or ſcruple to go forward in that Treaſon. And therefore *Cateſby* coming to *Garnet*, propounded unto him the Caſe, and aſketh, Whether for the Good and Promotion of the Catholick Cauſe againſt Hereticks, (the neceſſity of Time and Occaſion ſo requiring) it be lawful or not, amongſt many *Nocents* to deſtroy and take away ſome *Innocents* alſo. To this Queſtion *Garnet* adviſedly and reſolvedly anſwered, That if the Advantage were greater to the Catholick Part, by taking away ſome *Innocents* together with many *Nocents*, then doubtleſs it ſhould be lawful to kill and deſtroy them all. And to this purpoſe he alledged a Compariſon of a Town or City which was poſſeſſed by an Enemy, if at the time of taking thereof there happen to be ſome few Friends within the place, they muſt undergo the Fortune of the Wars in the general and common Deſtruction of the Enemy. And this Reſolution of *Garnet*, the Superior of the Jeſuits, was the ſtrongeſt, and the only Bond, whereby *Cateſby* afterwards kept and retained all the Traitors in that ſo abominable and deteſtable a Confederacy: For in *March* following, *Cateſby*, *Thomas Winter*, and others, reſolve upon the Powder-Plot; and *Fawkes*, as being a Man unknown, and withal a deſperate Perſon and a Soldier, was reſolved upon as fit for the executing thereof; to which purpoſe he was in *April* following by *Thomas Winter* ſought and fetched out of *Flanders* into *England*.

In *May*, in the 2d Year of his Majeſty, *Cateſby*, *Percy*, *John Wright*, *Thomas Winter*, and *Fawkes* meet: And having, upon the Holy Evangeliſts, taken an Oath of Secrecy and Conſtancy to this effect:

YOU ſhall ſwear by the bleſſed Trinity, and by the Sacrament you now purpoſe to receive, never to diſcloſe directly or indirectly, by Word or Circumſtance, the matter that ſhall be propoſed to you to keep ſecret, nor deſiſt from the Execution thereof, until the reſt ſhall give you leave:

They all were confeſſed, had Abſolution, and received thereupon the Sacrament, by the hands of *Gerrard* the Jeſuit then preſent.

In *June* following, *Cateſby* and *Greenwell* the Jeſuit confer about the Powder-Treaſon. And at *Midſummer*, *Cateſby* having ſpeech with *Garnet* of the Powder-Treaſon, they ſaid, That it was ſo ſecret, as that it muſt prevail before it could be diſcovered. Then *Garnet* ſeemed to deſire that the Pope's Conſent might be obtained: but *Cateſby* anſwered, That he took that as granted by the Pope in the two Bulls or Briefs before; for that, ſaid he, if it were lawful not to receive, or to repel him, as the ſaid Bulls or Briefs did import, then is it lawful alſo to expel or caſt him out.

Upon the 7th of *July*, 1604, was the Parliament prorogued until the 7th of *February*. And in *November* following, *Thomas Bates*, being (as hath been declared more at large in the former Arraignment) fetched in by *Cateſby*, his Maſter, to participate in the Powder-Treaſon, for better Aſſurance of his Secrecy, and Proſecution thereof, is by *Greenwell* the Jeſuit confeſſed, encouraged, and told, That being for a good Cauſe, he might and ought, not only conceal it, as committed unto him in ſecret by his Maſter; but further ſaid, That it was no offence at all, but juſtifiable and good.

About this time was *Robert Keyes* taken into the Confederacy, and by *Cateſby* reſolved of the Lawfulneſs thereof from the Jeſuits.

On the 11th of *December*, they enter'd the Mine: and in *March* following, which was in 1605, was *Guy Fawkes* ſent over to Sir *William Stanley*, with Letters from *Garnet*, to *Baldwin* the Legier Jeſuit there, to take order, That againſt the time of the Blow, the Forces might be brought near to the Sea-ſide, to the end that they might ſuddenly be tranſported into *England*. And there doth *Fawkes*, by conſent of the Confederates, give *Owen* the Oath of Secrecy and Perſeverance, and then acquaints him with the whole Treaſon: Who having been a moſt malicious and inveterate Traitor, greatly applauded it, and gave his Conſent and Counſel for the furtherance thereof.

In *May* 1605, fell out certain Broils in *Wales* by the Romiſh Catholicks; at what time alſo *Rookwood* was by *Cateſby* acquainted with the Powder-Treaſon, and reſolv'd of the Lawfulneſs of the Fact by him as from the Jeſuits.

Now doth *Garnet* write to the Pope, That Commandment might come from his Holineſs, or elſe from *Aquaviva* the General of the Jeſuits, for the ſtaying of all Commotions of the Catholicks here, in *England*, intending indeed to ſet their whole reſt of the Catholick Romiſh Cauſe upon the Powder-Plot, and in the mean time to lull us aſleep in Security, in reſpect of their diſſembled Quietneſs and Conformity; as alſo leſt Impediment might be offer'd to this main Plot by reaſon of any ſuſpicion of the ſtirring of Papiſts, or of inquiry after them upon occaſion of any petty Commotions or Broils. But when he further deſired, that it might be ſo enjoin'd upon Cenſures, that latter Requeſt was not granted, leſt it might indeed be an Impediment to the Powder-Plot.

In *June* following doth *Greenwell* the Jeſuit conſult with *Garnet* his Superior, of the whole Courſe of the Powder-Treaſon at large; wherein obſerve the politick and ſubtle Dealing of this *Garnet*. Firſt, he would not (as he ſaith) confer of it with a Layman, (other than *Cateſby* whom he ſo much truſted) Why ſo? Becauſe that might derogate from the Reverence of his Place, That a Jeſuit and a Superior of them, ſhould openly join with Laymen in cauſe of ſo much Blood. And therefore, Secondly, as he would conſult of it with a Prieſt and a Jeſuit, one of his own Order, and his Subject; ſo for his further ſecurity, he would conſult thereof with *Greenwell* the Jeſuit, as in a diſguiſed Confeſſion. And being inform'd that the Diſcourſe would be too long to repeat kneeling, he anſwer'd that he would conſult with him of it in Confeſſion walking; and ſo accordingly in an ambulatory Confeſſion, he at large diſcourſed with him of the whole Plot of the Powder-Treaſon; and that a Protector (after the Blow given) ſhould be choſen out of ſuch of the Nobility as ſhould be warned and reſerved.

In this Month likewiſe was there a great Conference and Conſultation betwixt *Garnet*, *Cateſby*, and *Francis Treſham*, concerning the Strength of the Catholicks in *England*, to the end that *Garnet* might by Letters ſend direct Advertiſement thereof to the Pope; for that his Holineſs would not be brought to ſhew his Inclination concerning any Commotion or Riſing of the Catholick Party, until ſuch time as he ſhould be certainly inform'd that they had ſufficient and able Force to prevail.

And in *Auguſt* following, *Garnet* in a Conference had about the acquainting of the Pope with the Powder-Treaſon, named and appointed Sir *Edmund Baynam* for to carry that Meſſage to the Pope; yet not to him as Pope, but to him as a temporal Prince: and by him doth *Garnet* write Letters in that behalf; as alſo for ſtaying of Commotions, under pain of Cenſures, well knowing that before his Letters could be anſwer'd, the Houſe of Parliament (according to their Deſigns) ſhould have been blown up, and the whole State overthrown. But this Trick he uſed like a Thief, that going to ſteal and take Partridges with a Setting-Dog, doth rate his Dog for queſting, or going too near, until he hath laid his Net over them, for fear the Game ſhould be ſprung, and the Purpoſe defeated.

In this Month alſo doth *Garnet* write to *Baldwin* the Legier Jeſuit in the Low Countries, in the behalf of *Cateſby*, that *Owen* ſhould move the Marquiſs for a Regiment of Horſes for him the ſaid *Cateſby*; not with any intent, as it was agreed, that *Cateſby* ſhould undertake any ſuch charge, but that under colour of it, Horſes and other Neceſſaries might be provided without ſuſpicion to furniſh the Traitors.

In *September* following doth *Parſons* the Jeſuit write to *Garnet*, to know the Particulars of the Project in hand, for the Journey to St. *Winifred*'s Well in this Month. It was but a Jargon, to have better opportunity, by colour thereof, to confer and retire themſelves to thoſe parts.

In *October* doth *Garnet* meet the other Traitors at *Coughton* in *Warwickſhire*, which was the Place of Rendezvous, whither they reſorted out of all Countries.

Upon the firſt of *November*, *Garnet* openly prayeth for the good Succeſs of the great Action, concerning the Catholick Cauſe in the beginning of the Parliament: and Prayer is more than Conſent; for *Nemo orat, ſed qui ſperat & credit.* He in the Prayer uſed two Verſes of a Hymn, *Gentem auferte perfidam credentium de finibus, ut Chriſto laudes debitas perſolvamus alacriter.*

Now was the Letter with the Lord *Monteagle*, whoſe Memory ſhall be bleſſed, on the fourth of *November*; by the Providence of the Almighty, not many hours before the Treaſon ſhould have been executed, was it fully diſcover'd.

On the fifth of *November*, being the time when the Traitors expected that their deviliſh Practice ſhould have taken effect, they convented at *Dunchurch*, under colour of a great Hunting-Match, appointed by Sir *Everard Digby*, as being a Man of Quality and Account thereabout; purpoſing by this means to furniſh themſelves with Company for their intended Inſurrection and Rebellion: for that Men being gathered together, and a Tumult ſuddenly raiſed, the Traitors thought that every or moſt of them would follow the preſent Fortune, and be eaſily perſuaded to take part with them; and that they might eaſily ſurprize the Perſon of the Lady *Elizabeth*, then being in thoſe Parts, in the L. *Harrington*'s Houſe.

Upon the ſixth of *November*, early in the Morning, *Cateſby* and the ſaid Confederates diſpatch'd *Tho. Bates* with a Letter to *Garnet* the Superior of the Jeſuits, who was (as they well knew) then ready at *Coulton*, near unto them, earneſtly entreating his Help and Aſſiſtance for the raiſing of *Wales*, and putting ſo many as he could into open Rebellion. At what time *Garnet*, and *Greenwell* (who then of purpoſe was there with *Garnet*) then certainly perceiving that the Plot was indeed diſcover'd, and knowing themſelves to be the chiefeſt Authors thereof, propheſy'd the Overthrow of the whole Order of the Jeſuits; ſaying, That they feared that the Diſcovery and Miſcarrying of this Practice, would utterly undo and overthrow the whole Society of the Jeſuits. But *Greenwell* the Jeſuit being carry'd with a more violent and fiery Spirit, poſteth up and down to incite ſuch as he could to riſe up in open Rebellion: And meeting in Maſter *Abington*'s Houſe with *Hall*, another Jeſuit, adviſeth him the ſaid *Hall* likewiſe to loſe no time, but forthwith to ſeek to raiſe and ſtir up ſo many as he could: But *Hall* ſeeming to deliberate thereof, whether ſeeing no end of ſo raſh an Attempt, or fearing by that means to be himſelf apprehended, *Teſmond* told him that he was a flegmatick Fellow; and ſaid, A Man may herein ſee the difference betwixt a flegmatick Man (ſuch as he meant *Hall* was) and a cholerick, as he ſaid himſelf was: And further added, that he was reſolv'd to do his beſt Endeavours for the raiſing of a Rebellion, under this falſe Pretext and Colour, That it was concluded that the Throats of all the Catholicks in *England* ſhould be cut; ſo perſuad-

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ding himſelf to incite them to take Arms for to ſtand upon their guard and Defence : And with this Device he poſted away into the County of *Lancaſter*. Afterwards *Hall* the Jeſuit, otherwiſe called *Oldcorn*, being urged by *Humphrey Littleton* with the evil Succeſs of their intended Treaſon, that ſurely God was diſpleaſed and offended with ſuch bloody and barbarous Courſes, inſtead of an humble Acknowledgement of the Juſtice of God, and a Senſe of the Wickedneſs of the Treaſon, fell rather ſatanically to argue for the Juſtification of the ſame : and ſaid, Ye muſt not judge the Cauſe by the Event; for the eleven Tribes of *Iſrael* were by God himſelf commanded to go and fight againſt *Benjamin*, yet were they twice overthrown : So *Lewis* of *France* fighting againſt the *Turk*, his Army was ſcatter'd, and himſelf died of the Plague : And laſtly, the Chriſtians defending of *Rhodes*, were by the *Turks* overcome. And theſe he apply'd to the Powder-Treaſon, and perſuaded *Littleton* not to judge it ungodly or unlawful by the Event.

Obſerve here a double Conſequent of this Powder-Treaſon. Firſt, open Rebellion, as hath been ſhewed both immediately before, and more at large in the former Arraignment; and ſince that, Blaſphemy in *Garnet* the Superior of the Jeſuits: for, he having liberty in the *Tower* to write, and ſending a Letter (which Letter was openly ſhewed in the Court before him) to an Acquaintance of his in the *Gate-Houſe*, there was nothing therein to be ſeen but ordinary Matter, and for certain Neceſſaries : But in the Margin, which he made very great and ſpacious, and underneath, where there remained clean Paper, he wrote cunningly with the Juice of an Orange, or of a Lemon, to publiſh his Innocency, and concerning his Uſage; and there denieth thoſe things which before he had freely and voluntarily confeſſed : And ſaid, that for the *Spaniſh* Treaſon, he was freed by his Majeſty's Pardon; and as for the Powder Treaſon, he hoped for want of Proof againſt him, to avoid that well enough : But concludeth blaſphemouſly, applying the Words which were ſpoken of our bleſſed Saviour, to himſelf in this damnable Treaſon, and ſaith, *Neceſſe eſt ut Homo moriatur pro Populo*; *It is neceſſary that one Man die for the People:* Which Words *Caiaphas* ſpake of Chriſt. Wherein note his Prevarication and Equivocation ; for before the Lords Commiſſioners he truly and freely confeſſed his Treaſons, being (as himſelf under his own Hand confeſſeth) overwhelm'd *tanta nube teſtium* ; and yet *ad faciendum populum*, in his Letters which he wrote abroad, he cleareth himſelf of the Powder-Treaſon. And thus much concerning the two Circumſtances ſubſequent, which were Rebellion and Blaſphemy.

The Circumſtances concurring, are concerning the Perſons both offending and offended. For the principal Perſon offending, here at the Bar, he is, as you have heard, a Man of many Names, *Garnet*, *Wally*, *Darcy*, *Roberts*, *Farmer*, *Philips:* And ſurely I have not commonly known and obſerved a true Man, that hath had ſo many falſe Appellations: He is by Country an *Engliſhman*, by Birth a Gentleman, by Education a Scholar, afterwards a Corrector of the Common Law Print, with Mr. *Tottle* the Printer; and now is to be corrected by the Law. He hath many Gifts and Endowments of Nature, by Art learned, a good Linguiſt, and by Profeſſion a Jeſuit, and a Superior, as indeed he is ſuperior to all his Predeceſſors in deviliſh Treaſon; a Doctor of Jeſuits, that is, a Doctor of five DD's, as Diſſimulation, Depoſing of Princes, Diſpoſing of Kingdoms, Daunting and Deterring of Subjects, and Deſtruction.

Their Diſſimulation appeareth out of their Doctrine of Equivocation: Concerning which it was thought fit to touch ſomething of that which was more copiouſly delivered in the former Arraignment, in reſpect of the Preſence of *Garnet* there, who was the Superior of the Jeſuits in *England*, concerning the Treatiſe of Equivocation ſeen and allowed by *Garnet*, and by *Blackwell* the Archprieſt ; wherein, under the Pretext of the Lawfulneſs of a mixt Propoſition to expreſs one Part of a Man's Mind, and retain another, People are indeed taught not only ſimple Lying, but fearful and damnable Blaſphemy. And whereas the Jeſuits aſk, why we convict and condemn them not for Hereſy ; it is for that they will equivocate, and ſo cannot that way be try'd or judg'd according to their Words.

Now for the Antiquity of Equivocation, it is indeed very old, within little more than three hundred Years after Chriſt, uſed by *Arius* the Heretick, who having in a General Council been condemned, and then by the Commandment of *Conſtantine* the Emperor ſent into Exile, was by the ſaid Emperor, upon inſtant Interceſſion for him, and Promiſe of his future Conformity to the *Nicene* Faith, recalled again: Who returning home, and having before craftily ſet down in Writing his heretical Belief, and put it into his Boſom, when he came into the Preſence of the Emperor, and had the *Nicene* Faith propounded unto him, and was thereupon aſked, Whether he then did indeed, and ſo conſtantly would hold that Faith, he (clapping his Hand upon his Boſom where his Paper lay) anſwered and vowed that he did, and ſo would conſtantly profeſs and hold that Faith (laying his Hand on his Boſom where the Paper of his Hereſy lay) meaning fraudulently (by way of Equivocation) that Faith of his own, which he had written and carried in his Boſom.

For theſe Jeſuits, they indeed make no Vow of ſpeaking Truth, and yet even this Equivocating and Lying is a kind of Unchaſtity, againſt which they vow and promiſe : For as it hath been ſaid of old, *Cor linguæ fœderat naturæ ſanctio, veluti in quodam certo Connubio : ergo cum diſſonent cor & loquutio, Sermo concipitur in Adulterio :* That is, The Law and Sanction of Nature, hath (as it were) married the Heart and Tongue, by joining and knitting of them together in a certain kind of Marriage; and therefore when there is Diſcord between them two, the Speech that proceeds from them, is ſaid to be conceived in Adultery, and he that breeds ſuch Baſtard-Children offends againſt Chaſtity.

But note the heavy and woeful Fruit of this Doctrine of Equivocation: *Francis Treſham* being near his natural Death in the *Tower*, had of charity his Wife permitted (for his Comfort) to come unto him : Who underſtanding that her Huſband had before directly and truly accuſed *Garnet* of the *Spaniſh* Treaſon, leſt belike her Huſband ſhould depart this Life with a Conſcience that he had revealed any thing concerning the Superior of the Jeſuits, a very little before he died, drew him to this ; that his own Hand being ſo feeble as that he could not write himſelf, yet he cauſed his Servant then attending on him, to write that which he did dictate, and therein proteſted upon his Salvation, That he had not ſeen the ſaid *Garnet* of ſixteen Years before, and thereupon prayed that his former Confeſſion to the contrary might in no wiſe take place; and that this Paper of his Retractation which he had weakly and dyingly ſubſcribed, might, after his Death, be delivered to the Earl of *Saliſbury*: Whereas Maſter *Garnet* himſelf hath clearly confeſſed the *Spaniſh* Treaſon, and now acknowledged the ſame at the Bar; and he and Mrs. *Fawkes*, and others, directly confeſs and ſay, That *Garnet* and *Treſham* had, within two Years ſpace, been very often together, and alſo many times before : But, *Qualis vita, finis ita.* And *Garnet* himſelf, being at the Bar afterwards urged to ſay what he thought of ſuch the Departure of *Francis Treſham* out of this Life, anſwered only this; I think he meant to equivocate.

Thus were they ſtained with their own Works, and went a Whoring with their own Inventions, as it is in the Pſalm. So that this is indeed *Gens perfida*, according to the Hymn, *a perfidious People* ; and therefore *Jurat? crede minus* ; *non Jurat? credere noli. Jurat, non jurat hoſtis, ab hoſte cave.*

For their Doctrine of depoſing of Princes, *Simanca* and *Philopater* are plain (as hath in the former Arraignment been more amply declared, and was now again at large to *Garnet*'s Face repeated): If a Prince be an Heretick, then is he excommunicated, curſed, and depoſed ; his Children deprived of all their Right of Succeſſion, himſelf not to be reſtored to his Temporal Eſtate upon Repentance. And by an Heretick, they profeſs, that he is intended and meant, namely, whoſoever doth not hold the Religion of the Church of *Rome*. Nay, there is an eaſier and more expedite way than all theſe to fetch off the Crown from off the Head of any King chriſten'd whatſoever; which is this, That *Princeps indulgendo hæreticis, amittit Regnum*; *if any Prince ſhall but tolerate or favour Hereticks, he loſeth his Kingdom.* Nay, whereas *Garnet*, in defence of this uſurped Power of the High-Prieſt of *Rome*, alledged, *Nos Sanctorum, &c.* out of the Decretals; in the very next Title before that, there is another Decree that paſſeth all we have recited; wherein it is ſhewed, that *Zachary* the Pope depoſed *Childerick* of *France*, for nothing elſe there ſpecified, *ſed quia inutilis*, but only for that he was reputed unprofitable to govern.

Now as concerning their Daunting and Deterring of Subjects, which is a Part of the Jeſuits Profeſſion ; it were good that they would know and remember, how that the moſt noble and famous Kings of *England* never were afraid of Popes Bulls, no not in the very Midnight of Popery, as *Edward the Confeſſor*, *Henry* I. *Edward* I. *Richard* II. *Henry* IV. *Henry* V. *&c.* And in the Time of *Henry* VII. and in all their Times, the Pope's Legate never paſſed *Calais*, but ſtaid there, and came not to *England*, until he had taken a ſolemn Oath to do nothing to the detriment of the Crown or State.

For the Perſons offended, they were theſe :

Firſt, The King, of whom I have ſpoken often, but never enough : A King of high and moſt noble ancient Deſcent, as hath been briefly declared; and in himſelf full of all Imperial Virtues, Religion, Juſtice, Clemency, Learning, Wiſdom, Memory, Affability, and the reſt.

Secondly, The Queen ; and ſhe, in reſpect of her happy Fruitfulneſs, is a great Bleſſing, inſomuch that of her, in that reſpect, may be ſaid, ſhe is *Ortu magna, Viro major, ſed maxima Prole* ; great in Birth, greater in her Marriage, but to all Poſterity greateſt, in the bleſſed Fruit of her Womb, as having brought forth the greateſt Prince that ever *England* had.

Thirdly, The noble Prince, of whom we may ſay, with the Poet, *Quæ te tam læta tulere ſecula? Qui tanti talem genuere parentes?* Never Prince, true Heir-Apparent to the Imperial Crown, had ſuch a Father, nor ever King had ſuch a Son.

Fourthly, Then the whole Royal Iſſue, the Council, the Nobility, the Clergy, nay our Religion itſelf, and eſpecially this City of *London*, that is famous for her Riches, more famous for her People, (having above five hundred thouſand Souls within her and her Liberties) moſt famous for her Fidelity, and more than moſt famous of all the Cities in the World for her true Religion and Service of God : Hold up thy Head, noble City, and advance thyſelf, for that never was thy Brow blotted with the leaſt taint or touch, or ſuſpicion of Diſloyalty : Thou mayſt truly ſay with the Prophet *David*, *I will take no wicked thing in hand, I hate the ſin of unfaithfulneſs, there ſhall no ſuch cleave unto me.* Therefore for thy Fidelity thou art honoured with the Title of *The King's Chamber*, as an inward place of his greateſt Safety : And for thy Comfort and Joy this Day, hath *Britain*'s great King honoured thee with the Proceeding upon this great and honourable Commiſſion : after the heavy and doleful Rumours this other Day, when it was certainly known that King *James* was in Safety, well did the Fidelity of this City appear, (whereof I was an Eye-witneſs) *Una voce conclamaverunt omnes, Salva Londinum, ſalva Patria, ſalva Religio, Jacobus Rex noſter ſalvus*; *our City, our Country, our Religion is ſafe, for our King* James *is in Safety.*

The Obſervations are many, and only in a Word to be touched :

1. That in the *Spaniſh* Treaſon before-mention'd, and this Powder-Treaſon, there was the ſame Order, Cauſe and End. The Order was, firſt, to deal by ſecret Practice and Treaſon, and then by Force and Invaſion. The Cauſe which they pretend, was the Romiſh Catholick Religion. The End was the final Deſtruction of the Royal Succeſſion, yea, even *occidere Regnum*, to overthrow and diſſolve the whole Kingdom.

2. Note, that even the Enemy hath acknowledged, that our State is ſo ſettled and eſtabliſhed, as neither Strength nor Stratagem can prevail, unleſs there be a Party made in *England*.

3. We ſhall never have Bull more to come from *Rome* to *England*, becauſe they ſhall never have a Party ſtrong enough to encounter with ſo many Lions.

4. All their Canons, Decrees, and new-found Doctrines tend to one of theſe two Ends ; either worldly Pride, or wicked Policy ; for the amplitude and enlargement of the Pope's Authority, and for the Safety of the Jeſuits, Prieſts, *&c.*

5. Obſerve that *Baynam*, a Layman, and one of the damned Crew, and ſo naming himſelf, was ſent to inform the Pope as a Temporal Prince.

6. I conceive their fall to be near at Hand, both by Divinity and by Philoſophy. For the firſt, there are now in *England* about four hundred Prieſts : So many were there in *Iſrael* in the Days of *Ahab*; *Who*, ſaith God, *ſhall go and deceive* Ahab, *that he may fall?* A lying Spirit in the Mouths of his four hundred Prophets undertook and effected it; their Fall was near, when once a lying Spirit had poſſeſſed the Prieſts, according to the Viſion of *Micheas*, as it now hath poſſeſſed the Jeſuits. 2*dly*, The Imitation of good for the moſt Part comes ſhort

of the Pattern; but the Imitation of Evil ever exceeds the Example. Now no Imitation can exceed this Fact, and therefore their time is at an end.

7. Many condemn it now, that would have commended it, if it had taken effect; for this, ſay they, is *E numero eorum quæ non laudantur niſi peracta.*

8. They and their Adherents ſpread abroad falſe Rumours; as that the King ſhould have broken Promiſe with them concerning Toleration: which mixture of God's Service, rather than he would ſuffer, he would loſe Children, Crown, Life, and all. Nay, they may ſee there is no ſuch hope left, for that his Majeſty bringeth up his Royal Iſſue in the true Religion and Service of the Almighty.

Laſtly, Obſerve the wonderful Providence of God in the admirable Diſcovery of this Superior Jeſuit to be party to this Treaſon; and that in two reſpects:

1. In reſpect of the means of Secrecy, uſed by him in conference only with *Cateſby* of the Laity. (2.) They had a ſtrong and a deep Oath given them both for Secrecy and Perſeverance. (3.) They hereupon received the holy Sacrament. (4.) They were allowed and taught by the Jeſuits, to equivocate upon Oath, Salvation or otherwiſe: And how then ſhould it be diſcovered? (5.) Their ſecret Intelligence was ſuch, as that it was impoſſible by the Wit of Man to be found out. And therefore,

2. The ſecond thing is, How this Treaſon being long ſithence plotted, the Providence of God did continually from time to time divert and put off the executing thereof, by unexpected putting off the times of aſſembly in Parliament. For the Parliament began the 19th of *March*, in the firſt Year of his Majeſty's Reign, and continued till the 7th of *July* following, before which time the Conſpirators could not be ready: from thence it was prorogued until the 7th of *February*, againſt which time they could not make the Mine ready, in reſpect that they could not dig there, for that the Commiſſioners of the Union ſat near the place, and the Wall was thick, and therefore they could not be provided before the 7th of *February*; and on the 7th of *February* the Parliament was prorogued until the 5th of *October*. After this, they found another Courſe, and altered the place from the Mine to the Cellar. O bleſſed Change of ſo wicked a Work! Oh! but theſe fatal Engineers are not yet diſcovered, and yet all things are prepared. Oh prorogue it once more! And accordingly, God put it into his Majeſty's heart (having then not the leaſt ſuſpicion of any ſuch matter) to prorogue the Parliament; and further, to open and enlighten his Underſtanding, out of a myſtical and dark Letter, like an Angel of God, to point to the Cellar, and command that to be ſearched; ſo that it was diſcovered thus miraculouſly, but even a few hours before the Deſign ſhould have been executed.

The Concluſion thereof ſhall be this; *Qui cum Jeſu itis, non itis cum Jeſuitis:* For, *They encourage themſelves in miſchief, and commune among themſelves ſecretly, how they may lay ſnares, and ſay, that no man ſhall ſee them. But God ſhall ſuddenly ſhoot at them with a ſwift arrow, that they ſhall be wounded: inſomuch that whoſo ſeeth it ſhall ſay, This hath God done; for they ſhall perceive that it is his work.*

Then were repeated the Proofs for every of the particular Accuſations aforeſaid, by the expreſs and voluntary Confeſſions of *Garnet*, and of his Complices themſelves, and of two credible Witneſſes ſworn at the Bar, and openly heard *viva voce*, and acknowledged by *Garnet* himſelf to be Men without exception.

Then Mr. *Garnet* having Licence of the Court to anſwer what he could for himſelf, ſpake, and divided all which had been objected, to his remembrance, into four parts, *viz.*

Containing matter of,
1ſt, Doctrine.
2dly, Recuſants.
3dly, Jeſuits in general.
4thly, Himſelf in particular.

1ſt, In Doctrine, he remembered two points:

1. Concerning Equivocation: whereunto he anſwered, That their Church condemned all Lying, but eſpecially if it be in Cauſe of Religion and Faith, that being the moſt pernicious Lye of all others, and by S. *Auguſtine* condemned in the *Priſcillianiſts:* Nay, to lye in any cauſe is held a Sin and Evil; howſoever of eight degrees which St. *Auguſtin* maketh, the loweſt indeed is to lye for to procure the Good of ſome, without hurting of any. So then our Equivocation is not to maintain Lying, but to defend the uſe of certain Propoſitions: For a Man may be aſked of one, who hath no Authority to interrogate, or examined concerning ſomething which belongeth not to his Cognizance who aſketh, As what a Man thinketh, *&c.* So then no Man may equivocate, when he ought to tell the Truth, otherwiſe he may. And ſo St. *Auguſtine* upon *John* ſaith, That Chriſt denied he knew the Day of Judgment, *viz.* with purpoſe to tell it to his Diſciples; and ſo St. *Thomas* and others who handle this Matter, chiefly under the Title of Confeſſion.

2. For the ſecond Point, which was the Power of the Pope in depoſing of Princes, his Anſwer was threefold. (1.) That therein he only propounded and followed the general Doctrine of the Church. (2.) That this Doctrine of the Power of the Pope, was by all other Catholick Princes tolerated without Grievance. (3.) That yet for his own part, he always made a Difference in the matter of Excommunicating and Depoſing of Princes, betwixt the Condition and State of our King and of others, who having ſometimes been Catholicks, did or ſhall afterwards fall back. As for *Simanca*, and other Writers, whatſoever they ſet down of the depoſing of Hereticks, it is to be underſtood of thoſe Princes, who having ſometimes profeſſed the Faith of the Church of *Rome*, do afterwards make a Defection from the ſame.

2dly, For Recuſants; 1. I deſire them not to impute any Offence or Crime of mine, to the Prejudice of the Cauſe of Religion. 2. Concerning their not going to Church; whereas it was urged by Mr. *Attorney*, that the ground of their not going to Church, was the Excommunication and Bull of *Pius Quintus*; and that now they may go, for that his Majeſty is not denounced Excommunicate: I anſwer, That it followeth not; for the *Arians* and Catholicks had the ſame Service in their Churches, yet came they not together; and I know divers my ſelf, who, before that Bull, refuſed to go to Church all the time of Queen *Elizabeth*, though perhaps moſt Catholicks did indeed go to Church before. It was about the end of the Council of *Trent*, where this matter was diſcuſſed by twelve learned Men, and concluded not lawful. And this was occaſioned, for that *Calvin* himſelf held it not lawful for any Proteſtant to be preſent, not only at our Maſs, wherein perhaps they may ſay there is Idolatry, but not at our Even-Song, being the ſame with theirs.

3dly, Concerning the Jeſuits, he ſaid, That if any were privy to ſuch horrible Treaſons, it was impious, eſpecially in Men of their Profeſſion: But ſaid, that he talked with ſome of them about it, and that they denied it.

4thly, Touching myſelf, The Negotiation into *Spain* was indeed propounded unto me, and I was alſo acquainted with the Negotiation for Money, but ever intended it ſhould be beſtowed for the Relief of poor Catholicks: But when they were there, they moved for an Army; which when they afterwards acquainted me withal, I miſliked it, and ſaid, it would be much diſliked at *Rome:* only I muſt needs confeſs I did conceal it after the Example of Chriſt, who commands us, when our Brother offends, to reprove him, for if he do amend, we have gained him; yet I muſt needs confeſs, that the Laws made againſt ſuch Concealing, are very good and juſt, for it is not fit the Safety of a Prince ſhould depend upon any other Man's Conſcience. So that I am verily perſuaded, if they yielded to me, it had been good: but what their Intent and Meaning was, in deſiring an Army, I knew not, and I was charged not to meddle therein, no not with the Money which was to be ſent for Penſions, though it was to maintain the Title of the King.

The Earl of *Saliſbury* then demanded, To maintain whoſe Title?

Garnet anſwered, The Title of the King of *Spain.*

The Earl of *Northampton* aſked him, Why he did not oppoſe himſelf againſt it, and forbid it, as he might have done? *For, Qui cum poſſit non prohibet, jubet.*

Whereupon *Garnet* anſwered, That he might not do it: and for ſending of Letters, and commending ſome Perſons thereby, he confeſſed he did it often, as they were commended to him without knowing either their Purpoſes, or ſome of their Perſons; for he never knew Mr. *Wright*, for whom he writ.

The Earl of *Saliſbury* then replied to *Garnet*, I muſt now remember you, how little any of your Anſwers can make for your Purpoſe, when you would ſeek to colour your dealing with *Baynam*, by profeſſing to write to *Rome* to procure a Countermand of Conſpiracies; and yet you know, when he took his Journey towards *Rome*, the Blow muſt needs have been paſſed, before the time he could have arrived to the Pope's Preſence, (ſuch being your Zeal and his Haſte for any ſuch Prevention) as it was about the 20th of our *October* when he paſſed by *Florence* towards *Rome.*

To which *Garnet* made no great anſwer, but let it paſs: and then went on with his Defence of ſending Letters in Commendation of many of thoſe with which he had been formerly charged, and ſo confeſſed that he had written Commendation of *Fawkes*, thinking that he went to ſerve as a Soldier, not knowing then of any other Purpoſe he had in hand. And as for Sir *Edmund Baynam*, what he or Mr. *Cateſby* intended, he knew not in particular; only Mr. *Cateſby* aſked him in general, the Queſtion of the Lawfulneſs to deſtroy Innocents with Nocents, as had been before objected againſt him; which at firſt, I thought, ſaid *Garnet*, had been an idle Queſtion, though afterwards I did verily think, he intended ſomething that was not good. Whereupon having ſhortly after this, received Letters from *Rome*, to prohibit all Inſurrections intended by Catholicks, which might perturb this State; *Garnet* informed *Cateſby* thereof, and told him, That if he proceeded againſt the Pope's will, he could not prevail: but *Catesby* refuſed and ſaid, he would not take notice of the Pope's pleaſure by him. Notwithſtanding, he ſhewed to *Cateſby* the general Letter which he had received from *Rome*, but ſaid he would inform the Pope, and tell *Garnet* alſo in particular, what Attempt he had in hand, if he would hear it; which afterwards he offered to do, but *Garnet* refuſed to hear him, and at two ſeveral times requeſted him to certify the Pope what he intended to do.

And when Sir *Edmund Baynam* (as he pretended) was to go over into *Flanders* for a Soldier, *Garnet* thought good to ſend him to the Pope's Nuncio, and to commend him to other Friends of his, That they ſhould ſend him to inform the Pope of the diſtreſſed Eſtate of Catholicks in *England:* The rather, that the Pope having a Lay-man there, might be acquainted with all their Proceedings; and that *Baynam* might then learn of the Pope, what courſe he would adviſe the Catholicks in *England* to take for their own Good: but wiſhed *Baynam* in no caſe to uſe *Garnet*'s name to the Nuncio in that behalf.

Then were the two Witneſſes called for; both of them Perſons of good Eſtimation, that over-heard the Interlocution betwixt *Garnet* and *Hall* the Jeſuit, *viz.* Mr. *Fauſet* a Man learned and a Juſtice of Peace, and Mr. *Lockerſon.* But Mr. *Fauſet* being not preſent, was ſent for to appear; and in the mean time Mr. *Lockerſon*, who being depoſed before *Garnet*, delivered upon his Oath, that they heard *Garnet* ſay to *Hall*, They will charge me with my Prayer for the good Succeſs of the great Action, in the beginning of the Parliament, and with the Verſes which I added in the end of my Prayer:

Gentem auferte perfidam
Credentium de finibus,
Ut Chriſto Laudes debitas
Perſolvamus alacriter.

It is true indeed (ſaid *Garnet*) that I prayed for the good Succeſs of that great Action; but I will tell them, that I meant it in reſpect of ſome ſharper Laws, which I feared they would then make againſt Catholicks: and that anſwer ſhall ſerve well enough.

Here *Garnet* replied, That for the two Gentlemen that heard the Interlocution, he would not charge them with Perjury, becauſe he knew them to be honeſt Men; yet he thought they did miſtake ſome things, though in the ſubſtantial parts, he confeſſed, he could not deny their Relation. And for the main Plot, he confeſſed, that he was therewithal acquainted by *Greenwell* particularly; and that *Greenwell* came perplexed unto him to open ſomething, which Mr. *Cateſby* with divers others intended: to whom he ſaid, He was contented to hear by him what it was, ſo as he would not be acknown to Mr. *Cateſby*, or to any other, that he was made privy to it. Whereupon Father *Greenwell* told him the whole Plot, and all the Particulars thereof, with which he proteſted that he was very much diſtempered, and could never ſleep quietly afterwards, but ſometimes prayed to God, that it ſhould not take effect.

To that the Earl of *Saliſbury* replied, That he ſhould do well to ſpeak clearly of his Devotion in that point; for otherwiſe he muſt put him in remembrance, that he had confeſſed to the Lords, that he had offered Sacrifice to God for ſtay of that Plot, unleſs it were for the good of the Catholick Cauſe; and in no other faſhion (ſaid his Lordſhip) was this State beholden to you for your Maſſes and Oblations. Adding thus much farther, That he wonder'd why he would not write to his Superior *Aquaviva*, as well of this particular Powder-Treaſon, as to procure Prohibition for other ſmaller Matters.

Garnet faintly anſwered, he might not diſcloſe it to any, becauſe it was matter of ſecret Confeſſion, and would endanger the Life of divers Men.

Whereunto the Earl of *Northampton* replied, That that Matter of Confeſſion, which before he refuſed to confeſs, becauſe he would ſave Lives, he confeſſed it now to endanger his own Life; and therefore his former Anſwer was idle and frivolous.

Then *Garnet* told the Lords, That he commanded *Greenwell* to diſſuade *Catesby*, which he thought he did; and if *Catesby* had come to him upon *Alhallow-day*, he thought he could ſo far have ruled him, as he would have been perſuaded to deſiſt.

Then ſaid the Earl of *Salisbury*, Why did you refuſe to hear *Catesby* tell you all the Particulars, when he would have told you, if you had been deſirous to prevent it?

Garnet replied, That after *Greenwell* had told him what it was which *Catesby* intended, and that he called to mind what *Catesby* ſaid to him, at his firſt breaking with him in general Terms, his Soul was ſo troubled with miſlike of that Particular, as he was loth to hear any more of it.

Well then (ſaid the Earl of *Salisbury*) you ſee his Heart: and then turning to the Lords Commiſſioners, he deſired leave of them, that he might uſe ſome Speech concerning the Proceeding of the State in this great Cauſe, from the firſt beginning until that hour; and ſo began to this effect: That although the Evidence had been ſo well diſtributed and opened by Mr. Attorney, as he had never heard ſuch a Maſs of Matter better contracted, nor made more intelligible to the Jury, to whom it was not his part to ſpeak, nor his purpoſe to meddle with Mr. *Garnet* in Divinity, or in the Doctrine of Equivocation, in which latter he ſaw how he had played his Maſter-prize; yet becauſe he had been particularly uſed in this Service with other of the Lords Commiſſioners, by whom nothing was more deſired, next the Glory of God, than to demonſtrate to the World, with what Sincerity and Moderation his Majeſty's Juſtice was carried in all Points, he would be bold to ſay ſomewhat of the Manner of this Arraignment, and of the Place where it was appointed. For the firſt, he ſaid, That ſeeing there was nothing to which this State might more attribute the infinite Goodneſs and Bleſſings of God, than to the Protection of the true Religion, which had groaned ſo long under the bitter Perſecutions of Men of his Profeſſion; he confeſſed, that he held himſelf greatly honoured, to be an Aſſiſtant amongſt ſo many great Lords at the Seat of Juſtice, where God's Cauſe ſhould receive ſo much Honour, by diſcrediting the Perſon of *Garnet*, on whom the common Adverſary had thought to confer the Uſurpation of ſuch an eminent Juriſdiction: For otherwiſe, who did not know, that the Quality of poor *Henry Garnet* might have undergone a more ordinary Form of Trial, and haply in ſome other Place of leſs Note and Obſervation? And ſo his Lordſhip took an Occaſion to declare, That the City of *London* was ſo dear to the King, and his Majeſty ſo deſirous to give it all Honour and Comfort, as when this Opportunity was put into his hands, whereby there might be made ſo viſible an Anatomy of Popiſh Doctrine, from whence theſe Treaſons have their Source and Support, he thought he could not chuſe a fitter Stage than the City of *London*, which was not only rightly termed, *The Chamber of his Empire*, but was by his Majeſty eſteemed as his greateſt and ſafeſt Treaſury; who accounteth no Riches comparable to his Subjects Hearts, and acknowledgeth that ſuch a Circuit did never contain ſo many faithful Subjects within the Walls: A Matter well appearing to his own Eyes amongſt others, upon the deceaſe of the late Queen of precious Memory, when he attending moſt of the Peers and Privy-Counſellors of this Kingdom, who were accompanied with no ſmall number of noble and faithful Gentlemen, had ſeen them all ſtayed from entry within the Gates of this City, until they had publickly declared with one Voice, that they would live and die with the King our Sovereign Lord. To you therefore, Mr. *Garnet* (ſaid the Earl of *Salisbury*) muſt I addreſs my ſelf, as the Man in whom it appeareth beſt what horrible Treaſons have been covered under the Mantle of Religion, which heretofore had been Petty Treaſon for a Proteſtant to have affirmed. Such hath been the Iniquity of falſe Tongues, who have always ſought to prove the Truth a Lyar. Of which impudent Calumnies the State is ſo tender, as you do beſt know, (Mr. *Garnet*) that ſince your Apprehenſion, even till this Day, you have been as chriſtianly, as courteouſly, and as carefully uſed, as ever Man could be, of any Quality, or any Profeſſion: yea, it may truly be ſaid, that you have been as well attended for Health or otherwiſe, as a Nurſe-Child. Is it true or no, ſaid the Earl?

It is moſt true (my Lord) ſaid *Garnet*, I confeſs it.

Well then (ſaid the Earl) if your ſtrange Doctrine of Equivocation be obſerved, and your Hardneſs of Heart to deny all things; let it not be forgotten, that this Interlocution of yours with *Hall*, over-heard by others, appears to be *digitus Dei:* for thereby had the Lords ſome light, and proof of Matter againſt you, which muſt have been diſcovered otherwiſe by Violence and Coercion, a matter ordinary in other Kingdoms, though now forborn here: but it is better as it is, for the Honour of the State, for ſo were your own Words, that you thought it beſt to tell the truth at laſt, when you ſaw you were confounded *tanta nube teſtium.* In which I proteſt, that I do confidently aſſure my ſelf, that you would as eaſily have confeſſed your ſelf to be Author of all the Action, as the Concealer, but that his Majeſty and my Lords were well contented to draw all from you without Racking, or any ſuch bitter Torments.

Then ſpeaking to *Garnet*, he ſaid; I pray you, Mr. *Garnet*, what encouraged *Catesby* that he might proceed, but your reſolving him in the firſt Propoſition? What warranted *Fawkes*, but *Catesby*'s Explication of *Garnet*'s Arguments? as appears infallibly by *Winter*'s Confeſſion, and by *Fawkes*, that they knew the Point had been reſolved to Mr. *Catesby*, by the beſt Authority.

Then *Garnet* anſwered, That Mr. *Catesby* was to blame to make ſuch Application.

To that the Earl replied, That he muſt needs be bold with him, to drive him from the Truſt he had, to ſatisfy the World by his Denials, by putting him in mind, how after the Interlocution betwixt him and *Hall*, when he was called before all the Lords, and was aſked, not what he ſaid, but whether *Hall* and he had Conference together, deſiring him not to equivocate; how ſtiffly he deny'd it upon his Soul, reiterating it with ſo many deteſtable Execrations, as the Earl ſaid, it wounded their Hearts to hear him: and yet aſſoon as *Hall* had confeſſed it, he grew aſhamed, cried the Lords Mercy, and ſaid, he had offended, if Equivocation did not help him.

To this *Garnet* anſwered, That when one is aſked a Queſtion before a Magiſtrate, he was not bound to anſwer before ſome Witneſſes be produced againſt him, *Quia nemo tenetur prodere ſeipſum.* Then *Garnet* falling into ſome Profeſſions of his well-wiſhing to his Majeſty, and being put in mind of the Anſwer he made concerning the Excommunication of Kings, wherein he referred himſelf to the Canon of *Nos Sanctorum*, he anſwered, that his Majeſty was not yet excommunicated.

Then the Earl of *Saliſbury* bade him deal plainly, for now was the time, Whether in caſe the Pope, *per Sententiam Orthodoxam*, ſhould excommunicate the King's Majeſty of *Great Britain*, his Subjects were bound to continue their Obedience.

To this *Garnet* denied to anſwer, by which the Hearers might ſee his Mind.

From that Matter he began to make requeſt, That where he had confeſſed the receiving of two Briefs or Bulls from the Pope, in the Queen's time, by which all Catholicks were forbidden to adhere to any Succeſſor that was not obedient to the Church of *Rome*, his Majeſty would be pleaſed to make a favourable Interpretation, becauſe he had ſhewed them to very few Catholicks in *England*, in the Queen's time; and when he underſtood that the Pope had changed his Mind, then he burnt the Bulls.

To that it was ſaid, That belike the Pope changed his Mind, when the King was ſo ſafely poſſeſſed of his Eſtate, and *Garnet* with his Complices began to feel their own Impiety, and ſo as *Cateſby* ſaid to *Percy*, did reſolve roundly of that Treaſon, which would ſpeed all at once.

Then *Garnet* began to uſe ſome Speeches, that he was not conſenting to the Powder-Treaſon.

Whereupon the Earl of *Salisbury* ſaid, Mr. *Garnet*, give me but one Argument that you were not conſenting to it, that can hold in any indifferent Man's Ear or Senſe, beſides your bare Negative. But *Garnet* replied not.

Then Mr. Attorney-General ſpake in anſwer to *Garnet* more particularly, to this effect:

1. For Equivocation, it is true indeed, that they do outwardly to the World condemn Lying and Perjury, becauſe the contrary were too palpable, and would make them odious to all Men: But it is open and broad Lying and Forſwearing, not ſecret and cloſe Lying and Perjury, or ſwearing a Falſhood, which is moſt abominable, and without Defence or Example. And if they allow it not generally in others, yet at leaſt in themſelves, their Confederates and Aſſociates in Treaſonable Practices, they will both warrant and defend it, eſpecially when it may ſerve their turn for ſuch Purpoſes and Ends as they look after.

2. Concerning the uſurped Power of the Pope in Depoſing of Princes; neither is it the general Doctrine of the Church, as he falſly ſaid, neither allowed or tolerated by all Princes, who are otherwiſe of their Religion, as may appear out of the *French* Diſcourſe written to the *French* King againſt the re-admitting of the Jeſuitical Faction. And whereas he would pick-a-thanke in ſeeming to ſpare and exempt King *James* our Sovereign, it is not poſſible to avoid their Diſtinction of being excommunicated *de Jure*, if not *de Facto*, howſoever it be true alſo, that the Pope doth *de Facto* curſe all Hereticks. For Recuſants not going to Church, the Example of the Catholicks not joining in Service and Prayer with the *Arians*, who denied a main Article of the Chriſtian Creed, doth no ways hold, neither can it agree to us, of whom no ſuch impious Blaſphemy can be ſhewed or imagined. That *Garnet* ſaid, he knew ſome, who before the Bull came, went not to Church, it may be true perhaps in ſome one or two perverted and perverſe Men like himſelf; but whereas he produced the Council of *Trent*, as if there the Matter had been determined, and thereupon inferreth, that after that all Romiſh Catholicks refuſed to meet with us at Church in time of Prayer, it is a groſs Error: for the laſt Seſſion of that Council was in the Year of our Lord 1563, which was in the fifth Year of Queen *Elizabeth*; whereas I ſhewed, and am able to juſtify and prove, That their Romiſh *Engliſh* Catholicks came to our Service in our Churches until the nineteenth Year of her Majeſty, which was many Years after that Council was ended.

Concerning *Garnet* himſelf; *1ſt*, For that Anſwer of his, That he knew of the Powder-Treaſon by Confeſſion, it is true which before was ſpoken, that ſuch Acts as this is, *Non laudantur niſi peracta*, are then only commended, when they are performed: but otherwiſe, Firſt, *Greenwell*'s was no Sacramental Confeſſion, for that the Confitent was not penitent: nay, himſelf hath clearly delivered under his hand, That the Powder-Treaſon was told him, not as a Fault, but by way of Conſultation and Advice. *2dly*, It was a future thing to be done, and not already then executed. *3dly*, *Greenwell* told it not of himſelf, that he ſhould do it, but of *Fawkes*, *Percy*, *Catesby*, *Winter*, and others; and therefore he ought to have diſcovered them, for that they were no Confitents. *4thly*, He might and ought to have diſcovered the Miſchief, for Preſervation of the State, though he had concealed the Perſons. *5thly*, *Catesby* told it unto him *extra Confeſſionem*, out of Confeſſion; ſaying, They might as well turn him out, as have kept him out. *Laſtly*, By the common Law, howſoever it were (it being *crimen læſæ Majeſtatis*) he ought to have diſcloſed it.

Now for that *Garnet* denied that he was a principal Author and Procurer of this Treaſon, but only that he had received Knowledge thereof; the contrary is clear and manifeſt, both out of his own Confeſſions, by himſelf acknowledged, and apparently proved, in that he reſolved *Catesby* concerning the Lawfulneſs and Merit thereof, and that he prayed for the good Succeſs of the Powder-Treaſon, which is more than either Conſultation or Conſent. Beſides, he muſt remember him of the old Verſicle, *Qui non prohibet quod prohibere poteſt conſentire videtur. Garnet* might have commanded *Greenwell*, that told him of the Powder-Treaſon, to have deſiſted, but did not: But *Greenwell* went ſtill on with the Treaſon, and when it was diſcloſed, went into the Country to move Rebellion, which doubtleſs he would never have done, if *Garnet* had forbidden him; therefore he ſaid, he might ſay with the Orator *Tully*, *Cui adſunt teſtimonia rerum, quid opus eſt verbis?* Moreover, Mr. Attorney added, How *Garnet* writ firſt for *Thomas Winter*, then for *Kit Wright*, after that for *Guy Fawkes*, then for Sir *Edward Baynam*, and afterwards for *Cateſby*, for a Regiment of Horſe; and that *Garnet* was for the *Infanta*, and by his Briefs intended to keep out the King, except he ſhould tolerate and ſwear to maintain the Romiſh Religion.

Then Mr. Attorney ſpake of the Interlocution betwixt *Garnet* and *Hall*, and ſaid, That in all their Speeches they never named God, nor confeſſed their Innocency: But as ſoon as they ſpake together, *Hall* ſpake firſt; and then *Garnet* ſaid, he ſuſpected one, whoſe Name they that were ſet to overhear them, could not hear, to have diſcloſed ſomething againſt them: But it may be otherwiſe, for he ſaid he was much ſubject to that Frailty of Suſpicion. He ſaid he received a Note from *Rookwood*, that *Greenwell* was gone over Seas; and another, that *Gerrard* was gone to Father *Parſons*, and that Miſtreſs *Anne* was in Town (meaning Miſtreſs *Anne Fawkes)* and many other things were by them uttered in that Conference.

By this time came in Mr. *Forſet*, who being depoſed, affirmed likewiſe, that their Examination, and the Matter therein contained, were true: ſaying further, that both of them took Notes of that which they heard from *Garnet* and *Hall*, as near as poſſibly they could, and ſet down nothing in their Examinations, but thoſe things, wherein both their Notes and perfect Memories agreed and aſſented; and that many things that were very material, and of great moment, were left out of their Examinations, becauſe both their Notes and Memories did not perfectly agree therein.

And now one of the Letters, which were written with Sack, was ſhewed to the Court; by which appeared that *Hall* and *Garnet* had Interlocution together. Mr. Attorney here inferred that the neceſſary End of Juſtice was, *ut pœna ad paucos, metus ad omnes perveniat*; and urged the Examination of *Garnet*, wherein he confeſſed that when *Teſmond* alias *Greenwell*, made relation to him of the great Blow by the Powder-Treaſon, who ſhould have the Protection, *Greenwell* ſaid, the Lords that ſhould be left alive ſhould chuſe a Protector. And further, Mr. Attorney urged the writing of another Letter, written with Sack to *Sayer* alias *Rookwood*, a Prieſt in the *Gatehouſe:* But of this Point much is formerly mentioned.

Here Mr. Attorney ending, my Lord of *Northampton* ſpake to the Priſoner this Speech following.

Earl of *North.* Though no Man alive can be leſs apt or willing than my ſelf, to add the leaſt grain or ſcruple of Improvement to the weight of any Man's Calamity, that groans under the heavy burden of a diſtreſſed State, *Vel gravatis addere gravamina*, whereof I have as many Witneſſes as the World hath Eyes; yet as the Caſe ſtands now in this Trial, Mr. *Garnet*, between my dear Sovereign, *ex cujus ſpiritu*, as one ſaid of *Alexander*, *nos omnes Spiritum ducimus*; and you that were ſo well content, to let the courſe of Conſpiracy run forward to the ſtopping of this Breath before the time, which God by Nature doth preſcribe between his Honour and your Error, his juſt Proceedings and your painted Shews, his Sincerity and your Hypocriſy; I could wiſh it poſſible that in any Perſon of ſome other Quality, you might hear the Echoes of your unperfect and weak Anſwers, and thereupon judge more indifferently and evenly of the true ſtate of the Cauſe than you have done hitherto; being diſtracted with Fear, or foreſtall'd by Prejudice, or, to borrow your own Phraſe, which is more proper to the Point than any I can uſe, oppreſſed *tanta nube teſtium*, with ſo thick a Cloud of Witneſſes, as concur with one Voice, Heart and Spirit, for the Confuſion of your Audacity.

I confeſs that never any Man in your State gave leſs hold or advantage to Examiners, than you have done in the whole courſe of Proceeding to us that were in Commiſſion; ſometime by forſwearing, as upon the Confeſſion of *Hall* your Fellow; ſometime by diſſembling, as about the places of your Rendezvous, which was the Lapwing's Neſt; ſometimes by earneſt Expoſtulation; ſometime by artificial Equivocation; ſometime by ſophiſticating true Subſtances; ſometime by adding falſe Qualities: yet *ſat ſupereſt*, as may appear, to the defeat of your Inventions, and the defence of the King's Majeſty, *quia magna eſt veritas, & prævalet.*

Your Parts by Nature ſimply conſidered, and in another Perſon, would rather move Compaſſion, than exaſperate Humanity; for whom would not the Ruin of ſuch a Perſon touch, as is in Appearance temperate, and in Underſtanding ripe? But our End at this time is the ſame with *Decius* in *Livy*, *ut quem vos obrutum reliquiſtis ignem*, &c. that we may quench that Fire by prevention, which you have only raked up in Aſhes; *ut novum daret incendium*, that it might cauſe a new Combuſtion ſo ſoon as it might hit upon matter that were fit and ſuitable. Wherefore I muſt rather draw your Anſwers to the true touch for diſcharge of Rumors, than *verberare äerem*, beat the Air: For the ſubſtance of all your Evaſions and fly Shifts, is as the Inn-keeper of *Chalcus* confeſſed of his Diſhes to his Gueſts, admiring *tantam ferculorum diverſitatem*, that they were only compounded of Pork, howſoever your fine Cookery may vary them.

The two Bulls that in the late Queen's time entered the Land (with a purpoſe by their loud Lowing to call all their Calves together, for the making of a ſtrong Party, at the ſhutting up of the Evening, againſt your dread Sovereign) were grazed in your Paſtures, Mr. *Garnet*; or to ſpeak more properly (becauſe they durſt neither endure the Light, nor admit the Air) they were ſtall-fed at your Crib, as your ſelf confeſs; and therefore, *Serve nequam, ex ore tuo te judico.* And what anſwer make you to this? Marry that the Purpoſe was imparted to very few; ſo much the worſe: For out of Publication grows Diſcovery; and yet Experience hath juſtified, that thoſe very few were the very Souls and Spirits of that pack of Conſpirators, and ſuch as for want of Patience and Temperance to tarry the time, when the Game had been brought to bearing, ſhould have played the chiefeſt parts in the late ſmoaking Tragedy. You ſay the Bulls were after ſacrificed in the Fire by your ſelf: But not before the King's good Angel had cut their Throats, and the beſt part of their Proof were paſt, and your Hopes dead of that good which in likelihood they ſhould have brought with them. For to what uſe could theſe dumb Beaſts ſerve, in ſeeking to prevent that lawful and undoubted Right, which Heaven had now proclaimed, and Earth acknowledged? But let the proof be what it will, I look into the Root. I wonder, Mr. *Garnet*, what Apoſtle warrants you in undertaking wicked Plots, in hope that good may follow; neglecting what all Laws (and the Laws of *England* above all) what all States and Nations conclude of Men, that ſlily practiſe and combine for Anticipation of the future Rights of lawful Succeſſors.

In excuſe of Letters written with your own Hand by *Thomas Winter* to Father *Creſwell*, when he was employed about the procurement of an Army to invade with ſupplies of Treaſure proportionable for the quicker Execution of ſo deſperate an Enterprize; you anſwer, that the Perſons were commended in your Letters, not the Plot: *ſpectatum admiſſi, riſum teneatis, amici?* as tho' the Miniſter had any other Errand or Inſtruction, than the main Plot itſelf: as tho' you, Mr. *Garnet*, being then *Magiſter in Iſrael* and *Rector Chori*, could or would be ignorant of their prefixed End; as tho' ſo grave a Perſon as your ſelf, were likely to ſet his hand to Blanks like a Baby, and to leave the reſt to the diſpoſition of a Man wholly tranſported with fiery Humours: Or, as tho' in this very point other Mens Confeſſions in particular, beſide your own in generality, had not left us Marks and Traces evident and plain enough to deſcry doubleneſs with diverſity. You confeſs privity to a Practice, but not for an Army; Foreknowledge of a Courſe for getting Treaſure, but with a purpoſe, as you conceived, to employ it wholly for the relief of Catholicks. So as the reaſon of the reſervedneſs of *Cateſby*, *Winter*, and the reſt toward you, muſt be undoubtedly their Suſpicion of your over great Affection and Duty to the Queen: For otherwiſe it is certain they would have truſted you as well with their Intention, as with their Means; with their Hopes, as with their Inſtruments; eſpecially conſidering how hard it was for them to compaſs their own vaſt Deſires, without help both of your Credit, and of your Induſtry.

Wright was in like manner, and with like expedition, commended by you afterward for the quickening of *Winter*'s Project, if any Life were in it, upon the ſlacking of the Paſſions of *Spain*, with the Propoſitions of Peace, that no Time might be loſt, no Stone left unremoved that might give a knock to the Peace of our Policy; your Head wrought upon all Offers, your Head walked in all Regions, your Spirit ſteered all Attempts and Undertakings: and yet if Proteſtations, qualified and protected by Equivocations, may carry weight, all this while your mind was, as good Paſtors ought to be, patient, your Thoughts were obedient, and your Counſels innocent. But now to ſearch your Cunning ſomewhat nearer to the quick, we muſt obſerve, that when your Hopes of Invaſion began to cool by likelihood of Peace, your Deſires of Supplies by the cold Anſwers that came from *Spain*, your Expectation of new Miſchief, to be wrought at home without Complots abroad; when Malice itſelf was caſt into ſo deſperate a Swoon, as neither *Roſaſolis* when *Spain* relented, nor *Iſcobah* when *Tyrone* ſubmitted, nor Diſſenſion within the Kingdom when Diſcontentments ended, could put it by any freſh adventure into Life; when you for your own part, Mr. *Garnet*, having been once waſhed and regenerated in the Fountain of the King's free Pardon, from the leprous Spots of former Treaſons, were determined to begin upon another Stock, and return as a Dog to the Vomit: tho' waſhing can avail no Man (as the Preacher warns) that *iterum tangit mortuum*, toucheth the dead the ſecond or third time after he hath been made clean; for ſecretly *Cateſby* reſorts to you, as *Mahomet* might to *Sergius*, (for now I ſpeak according to the matter, and not the Men) to enquire whether it were lawful, conſidering the neceſſity of the time, to undertake an Enterprize for the Advancement of the Catholick Religion, tho' it were likely that among many that were Nocent, ſome ſhould periſh that were Innocent. A Man that is religious in any kind, or but morally honeſt in his own kind, would expect that a Prieſt, a Jeſuit, (which Title doth imply Salvation, and not Deſtruction; nay, the Superior of *Engliſh* Jeſuits) upon this raſh demand, ſhould have reſorted for a ſafe Reſolution to God's own Book; where he ſhould have found that God was pleaſed to withdraw his wrathful Hand from *Sodom*, ſo as there had been only *decem juſti*, ten juſt Men within that Town, and for their ſakes; that the wiſe Houſholder in St. *Matthew*, marking how hard it would be before the Corn was ripe to make Separation, gave Order to his Servants to abſtain from plucking up the Tares, *ne ſimul eradicarent triticum*, leſt withal they plucked up the Wheat by the Roots. Ye ſhould have found in the Stories of the Church, that the godly Biſhops in the firſt Spring of Religion, ſuſpended proceſs againſt the *Priſcillian* Hereticks, *ne Catholici cum illis perirent*, leſt the Catholicks might alſo periſh with them. And the Church of *Milan* taxed *Theodoſius* the Emperor, *quod inſontes una cum ſontibus trucidaſſet*, that he had proceeded both againſt the Guilty and the Guiltleſs with one Stroke, and in one meaſure of Severity. But far beſide the warrant either of Holy Writ, or Holy Precedents, your Anſwer, Mr. *Garnet*, was ſuch, as I both abhor to think, and quake to utter; that if any great advantage were to grow to the Church this way, they might deſtroy them all.

Tantæne animis cæleſtibus iræ? O Mr. *Garnet*, be not offended tho' I aſk of you, as a worthy Emperor did once of a Traitor in a Caſe by many degrees inferior to this, *Quid facit in pectore humano lupi feritas, canis rabies, ſerpentis venenum?* But that which ought moſt to torture and afflict the Spirit (if you be the Child of him whoſe Name and Badge you bear) is, that your Doctrine was confidently delivered, and ſo ſpeedily digeſted, and converted to Nutriment from ſuch a Mouth as yours, conſidering that (according to the Prophet) Knowledge ſhould depend upon the Lips of a Prieſt, as *Rookwood*, *Bates*, and others, that did ſhrink at the horror of the Project when it was firſt laid down, received Satisfaction upon the very ſound of your Aſſent, tho' maſked with the Title of a Man, as grave and learned as any in the Land. And *Cateſby* doubting of the fickleneſs of Men's Affections, in Caſes that concern the Soul, uſed your admittance as a Charm or Spell, to keep quick Spirits within the Circle of combined Faith; which otherwiſe perhaps, when Hell brake looſe, would have ſought Liberty. Your Charter only (whereupon I beſeech you for your own Soul's Health, to meditate for the time you tarry in this World) for the Baſe whereon ſome grounded their bad Conſcience in proceeding with this Plot, not only to the Deſtruction of their Bodies, but to the Peril of their Souls, without ſound and true Repentance, which by the merit of Chriſt's Paſſion will ſerve *in quacunque hora peccator ingemuerit.* For tho' Chriſt were joyful that he had not loſt one of thoſe whom his Father gave him in charge, and came to ſave and not to deſtroy; yet your Advice was to deſtroy them all: Such was your burning Charity!

Some Man ſurprized with a Queſtion upon the ſudden, might anſwer ſharply and ſhreudly at ſome time, I confeſs, without thinking or intending ill: But this Man, Mr. *Garnet*, cannot be you, that have confeſſed clearly under your own Hand, your ſuſpicion and fear of ſome Miſchief purpoſed and intended in their Hearts, by this quick Queſtion of Nocents and Innocents: and therefore *quod dubitas ne feceris.* It ſeems the Heart of *Catesby* was a fertile Soil for ſprouting of ſtinking Weeds haſtily, into which the Seed of your ſecuring Confidence was caſt. For the Powder-Plot, which in *January* was barely *embryo*, became *formatus fœtus* in the *March* next following; it quickened the next *December*, when the Pioneers began to dig in the thick Wall: *Catesby* not long after imparted his Conceit ſecretly to you of the great likelihood he foreſaw of a lucky time of Birth; and thereupon was *Guy Fawkes* ſent over by your Knowledge and Encouragement, to deal with Sir *William Stanley*, about the drawing down of Forces ſomewhat nearer to the Sea-ſide for ſpeedy Tranſport, which if need were, might carry Torches at the Solemnity. But what is your anſwer to this Employment of *Guy Fawkes?* Forſooth, that your purpoſe was only to commend him as a Soldier, but not as a Conſpirator. O unlucky Treaſon, that comes to be excuſed by ſo poor an Advocate! when *Fawkes* himſelf meant nothing leſs than to be a Soldier, having ſo ſtrange a part to play ſoon after in the Powder Train, but uſed this Retreat as a Colour to diſguiſe the ſecret Purpoſe that did only tarry time, and to eſchew thoſe watchful Eyes, that nearer hand would have obſerved both his Inlets and his Outlets in that place more narrowly. The Point is clear, the Confeſſions are direct, the purpoſe is palpable. All the Lines of your Level are drawn to the Center of the Powder-Mine. All Letters are either drawn or interlined *manu Scorpionis*, to uſe the word of *Hierome*; and yet under pain of Cenſure we muſt believe, That all this while you were in Charity, becauſe all this while (which it grieves me to remember) you were not afraid to communicate.

But now to weigh your Anſwers that concern the Powder-Plot it ſelf; which is *paramount* in reſpect of the Longitude and Latitude to all that have been, or ever ſhall be: Your ſelf cannot deny, Mr. *Garnet*, that *Greenwell*'s Overture, as you ſay in Confeſſion, coming after the notice which you took of *Catesby*'s Queſtion about Innocents, was but a Fruit of your own Doctrine, an Effect of your own Inſtruction, and a Concluſion drawn wholly out of your own Propoſitions and Principles. Now when we preſs to know what Reaſon drew you to the concealment of a Project ſo pernicious both to Prince and State, without revealing it either to the King himſelf, *tanquam præcellenti*, to uſe St. *Peter*'s Term, or to his Miniſters ſubordinate; you ſtart to the ſhift of Confeſſion for a formal help, which comes too ſhort in reſpect of *Cateſby*'s firſt Diſcovery, which your own words aver plainly to have wrought with you. I will not argue in this place what Courſe a Confeſſor ſhould take, or how far he ought to ſtrain for the ſecuring of a Prince's Life, that otherwiſe is ſure to periſh by the Rage and Ignorance invincible of a baſe Villain, (whoſe Life anſwers not in value the leaſt hair of a Prince's Head) becauſe time ſuffers not: But I am ſure that for a matter of leſs weight than this, and a Crime of leſs Importance than the Life both of Prince and State; Confeſſion received a deep wound for a long time, more than a thouſand Years paſt, in the Church of *Conſtantinople.* For God forbid that matters of ſuch weight, ſhould hang by ſuch feeble Threads. But to this excuſe of tenderneſs in the point of Confeſſion, I would anſwer, by making a great doubt, Whether this courſe of Conference were a Confeſſion or not; for againſt your bare words, which Equivocation ſupports, I object ſome likelihood, That ſince you kneeled ſometimes, and ſometimes walked up and down; ſince matter of Conſpiracy were interlaced with matter of Confeſſion, not for eaſe of Conſcience as ſhould appear, but for advice in Execution; ſince *Greenwell* was abſolved inſtantly, which excludes the ſhift of Reference: and *Greenwell* ſhould be found to lye to the Holy Ghoſt in caſe this were a true Confeſſion: in promiſing (Mr. *Garnet)* as you ſay, to diſſuade the Project which he proſecuted even to the laſt Point, as is evident, and after the Powder Camp brake up: I conclude that tho' this diſcovery were by Confeſſion, yet it was no *Superſedeas* to your former knowledge from *Cateſby* your truſty Friend; and if it were none, then it can be no Protection for Faith putrified. What need we ſeek Light thro' Cobweb-Lawns, when the drift of your whole Device in ſeeking to conclude from one, what you learned of another, and from all what you affected and abetted in your Heart, doth evidently prove your Counſels to have been carried along with ſuch a temper of reſervedneſs, as whenſoever Miſchief ſhould be brought to light, the World might rather wonder at your Caution, than commend your Fidelity?

By ſhaping ſuch weak Anſwers to Demonſtrations ſo manifeſt, you muſt either work by the Ring of *Gyges*, in making your Audacity and Preſumption inviſible, or hold a very weak Conceit of our Capacities, in ſuppoſing that they can be either dazzled or deluded by ſuch poor Sophiſtry. For tho' you pretend to have received a deep Wound in Conſcience at the firſt revealing of the Plot, to have loſt your Sleep with vexation of Spirit, to have offered and prayed to God for his preventing Grace, to have required *Greenwell*'s help and furtherance in croſſing and diverting the deſign; yet all this while you ſuffered the Project to proceed, you helped and aſſiſted their Endeavours that were Labourers, you wrote earneſt Letters both to *Baldwin* and to *Creſwell* for their furtherance of ordinary Means; you gave order for a Prayer to be ſaid by Catholicks for their proſperous Succeſs; you kept meaſure with the two firſt Dimenſions of Fryar *Bacon*'s Brazen-head; Time is, Time was, till (thanks be to God) the third Time was paſt: you had ever an Ear open to liſten for the Crack, and were in the ſame Agony for the Powder-Plot, that *Charles* V. was for the Pope's Dureſs, giving order in all his Dominions, that Prayers ſhould be made for his releaſe, when in the mean time he kept and held him in his own hand Priſoner. The leaſt Word of your Mouth, or Labour of your Pen, might have ſecured both Prince and State, while you pretend to have broken both your Sleeps and your Brains, and that with a greater advantage to the Cauſe which you would advance, than can ever grow by Combuſtion and Conſpiracy. But your tenderneſs herein was ſuitable with another dutiful deſire of yours to diſſuade *Cateſby* from the Plot, at his coming into *Warwickſhire*, who never meant to come thither, but as to the Rendezvous, when the Parliament had been blown up, and the Storm had been blown over. It may be that your Mind was perplexed and diſquieted upon the meditation of ſtrange Events; for ſo was the Mind of *Cain*, *Achitophel*, and *Judas* that betrayed his Maſter; the Reaſon is very pregnant in the Word of God it ſelf, That *cum ſit timida nequitia dat teſtimonium condemnationis*, ſince Wickedneſs is cowardly and timorous, it gives Evidence of Condemnation againſt it ſelf; *& ſemper præſumit ſæva perturbata Conſcientia:* but Satan prevailing, his Angels execute.

I will now conclude this Addreſs to you, Mr. *Garnet*, by obſerving ſome ſpecial Points how ſtrangely and prepoſterouſly the Devil in his laſt Project of Powder hath altered his old Properties. For the Curſe that God laid upon the Serpent after the firſt Tranſgreſſion, was *ut gradiretur ſuper pectus ſuum*, to creep upon his Breaſt: but now we find him mounted upon the Wings of an *Eſpraie* to the higheſt Region of the Air, and among the Fire-works. The other part of his Curſe was, that he ſhould eat *Pulverem*; that is, Duſt or Powder: but now ſince *Sodom* was deſtroyed by Sulphur, and the Wife of *Lot* tranſmuted into Salt, the proper Materials of that mean by which Satan wrought in this hot Fire; it appears that the Serpent from eating Powder (which was a plain device) fell, for a worſe purpoſe, to ſnuff Gunpowder. Then the Serpent did *inſidiari calcaneo*, now *capiti*, from which the Body draweth both Senſe and Influence. Then he began to *Eve*, with a modeſt queſtion, *Cur præcepit Deus?* Why hath God commanded? now with a Reſolution, *Præcepit Deus*, God hath commanded. His words in thoſe carried a flouriſh of great Comfort, *Nequaquam moriemini*, but now Terror, *Moriemini:* For a great Advantage deſtroy them all. The Devil at that time did only nibble about the Text of Holy Writ, *tanquam mus ponticus*, as *Tertullian* terms *Marcion:* but now he draws the grounds of Equivocation concerning Princes Lives out of the very Scripture, and by ſcholaſtical Authority. Satan tempted Chriſt with a fair offer, *dandi omnia*, of giving all upon the top of the Pinnacle: But now he ſets upon the great Lieutenant of God's Authority and Dignity, with an *auferam tibi omnia*, both Life and Crown, *ex penetralibus ubi Chriſtus non eſt*, as we are taught by his Evangeliſt. The Dragon's Ambition extended no further than the ſweeping away with his Tail of the third part of the Stars in the Firmament: But now the Plot of him and his Diſciples, was to ſweep away the Sun, the Moon, and the Stars, both out of Star-Chamber and Parliament, that no Light be given in this Kingdom to the beſt Labourers. In the time of *Saul*, the Devil was ſo modeſt, as to ſuſpend his Illuſions and Oracles till the Viſions of the Prophets began to ceaſe: But now tho' we have both *Moſes* and the Prophets, *& firmiorem ſermonem propheticum*, yet he ruſtles among the Robes, *& inaudita fundit oracula.* In the beginning of the Chriſtian Church, the very Name of Chriſt was ſufficient to make Satan pack, and to quit the Poſſeſſion of tormented Men; but he hath learned a more cunning Trick of late, under the Banner of Chriſt to fight againſt the Lieutenants of his Imperial Majeſty. In one point I find no Change; that is, in labouring and working by all means to draw Men from their Truſt in God's Direction, to a tickle kind of Confidence in themſelves, and their own weak knowledge of Good and Ill. And as that Error was the Cauſe of *Adam*'s Exile from Paradiſe, which was *hortus concluſus*; ſo had ſuch another almoſt divided us and our Heirs both from our Lives and Eſtates: *Et penitus toto diviſos orbe Britannos.*

I have ſtood the longer on this Point, to let you know how idly, and yet how wilfully you ſtrive both againſt the Providence of God, and the Juſtice of the Land, *Quæ tuo te jugulavit gladio:* The more you labour to get out of the Wood, having once loſt the right way, the further you creep in. For the Wiſdom of the World is Folly before God; and unpoſſible it is, that thoſe Counſels or Proceedings ſhould either have good Proof in this World, or Reward in the next, that are embrued with Blood, and purſued with Tyranny. If then there be no other way to Heaven, than by the Deſtruction of God's Anointed and their Heirs, I will conclude with you, Mr. *Garnet*, as *Conſtantius* did with *Aſceſius*, *Erigito tibi ſcalam, & in cœlum ſolus aſcendito*; Set up a Ladder for your ſelf, and climb up to Heaven alone; for loyal Minds will not ſuit themſelves with ſuch bad Company. The worſt I wiſh to your Perſon, ſtanding now to be convicted at the Bar, is Remorſe and Repentance for the ſafeguard of your Soul; and for the reſt, *Fiat juſtitia, currat lex, & vincat veritas.*

Hereunto *Garnet* ſaid, That he had done more than he could excuſe, and he had dealt plainly with them, but he was bound to keep the Secrets of Confeſſion, and to diſcloſe nothing that he heard in Sacramental Confeſſion.

Whereupon the Earl of *Nottingham* aſked him, if one confeſſed this day to him, that to-morrow Morning he meant to kill the King with a Dagger, if he muſt conceal it?

Whereunto *Garnet* anſwered, that he muſt conceal it.

Then the Earl of *Saliſbury* deſired Liberty of him to aſk him ſome queſtions of the nature of Confeſſion.

Garnet ſaid, His Lordſhip might, and he would anſwer him as well as he could.

Why then (ſaid he) muſt there not be Confeſſion and Contrition before Abſolution?

Yes (ſaid *Garnet.)*

Then he demanded whether *Greenwell* were abſolved by him, or no?

Garnet ſaid, He was.

The Earl then aſked him, What *Greenwell* had done, to ſhew that he was ſorry for it, and whether did he promiſe to deſiſt?

Garnet anſwered, that *Greenwell* ſaid, He would do his beſt.

To that the Earl replied, that it could not be ſo; for as ſoon as *Cateſby* and *Percy* were in Arms, *Greenwell* came to them from *Garnet*, and ſo went from them to *Hall* at Mr. *Abington*'s Houſe, inviting them moſt earneſtly to come and aſſiſt thoſe Gentlemen in that Action. Hereby, ſaith he, it appears, that either *Greenwell* told you out of Confeſſion, and then there needs no Secrecy; or if it were in Confeſſion, he profeſſed no Penitency, and therefore you could not abſolve him. To which the Earl added, That this one Circumſtance muſt ſtill be remembered, and cannot be cleared; That when *Greenwell* told you what *Cateſby* meant in particular, and you then called to mind alſo what *Cateſby* had ſpoken to you in the general before, if you had not been ſo deſirous to have the Plot take effect, you might have diſcloſed it out of your general knowledge from *Cateſby:* but when *Cateſby* offered to deliver you the particulars himſelf, as he had done to *Greenwell*, you refuſed to hear him, leſt your Tongue ſhould have betrayed your Heart.

To this *Garnet* weakly replied, That he did what he could to diſſuade it, and went into *Warwickſhire* with a purpoſe to diſſuade Mr. *Cateſby*, when he ſhould have come down. And for Mr. *Greenwell*'s going to Father *Hall*, to perſuade him to join, *Garnet* ſaid he did very ill in ſo doing.

To that the Earl of *Saliſbury* replied, That his firſt Anſwer was moſt abſurd, ſeeing he knew *Cateſby* would not come down till the ſixth of *November*, which was the Day after the Blow ſhould have been given, and *Garnet* went in the Country ten days before. And for the ſecond, he ſaid, That he was only glad, that the World might now ſee, that Jeſuits were condemned by Jeſuits; and Treaſon and Traitors laid naked by the Traitors themſelves: yea, Jeſuits by that Jeſuit, that governs all Jeſuits here, and without whom no Jeſuit in *England* can do any thing.

Garnet (as it ſhould ſeem) being here mightily touched with Remorſe of his Offence, prayed God and the King, that other Catholicks might not fare the worſe for his ſake.

Then the Earl of *Salisbury* ſaid, Mr. *Garnet*, is it not a lamentable thing, that if the Pope, or *Claudius Aquaviva*, or your ſelf, command poor Catholicks any thing, that they muſt obey you, tho' it be to endanger both Body and Soul? And if you maintain ſuch Doctrine among you, how can the King be ſafe? Is it not time therefore, the King and the State ſhould look to you, that ſpend your time thus in his Kingdom?

Garnet ſaid very paſſionately, My Lord, I would to God I had never known of the Powder-Treaſon.

L. C. J. Garnet, you are Superior of the Jeſuits; and if you forbid, muſt not the reſt obey? Was not *Greenwell* with you half an hour at Sir *Everard Digby*'s Houſe, when you heard of the Diſcovery of your Treaſon? And did you not there confer and debate the Matter together? Did you not ſend him to *Hall*, to Mr. *Abington*'s Houſe, to ſtir him up to go to the Rebels, and encourage them? yet you ſeek to colour all this; but that's but a mere ſhift in you. And notwithſtanding all this, you ſaid, No Man living, but one, did know that you were privy to it: then belike ſome that are dead did know it. *Catesby* was never from you (as the Gentlewoman that kept your Houſe with you confeſſed) and by many apparent Proofs, and evident Preſumptions, you were in every particular of this Action, and directed and commanded the Actors: nay, I think verily you were the chief that moved it.

Garnet ſaid, No, my Lord, I did not.

Then it was exceedingly well urged by my Lord Chief Juſtice, how he writ his Letters for *Winter*, *Wright*, *Fawkes*, *Baynam*, and *Catesby*, principal Actors in this matchleſs Treaſon. Beſides, his Lordſhip told him of his keeping the two Bulls to prejudice the King, and to do other miſchief in the Realm; which, when he ſaw the King peaceably to come in, then being out of hope to do any good, he burnt them.

Here Mr. Attorney cauſed to be read the Confeſſion of *Hall, alias Oldcorne*, the Jeſuit, under his own hand (which he ſaid was *Omni exceptione majus)* againſt him; wherein he confeſſed, that *Humphry Littleton* told him, that *Catesby* and others were ſore hurt with Powder, and ſaid that he was exceeding ſorry that things took no better effect; whereat *Hall* wiſhed him not to be diſcouraged, nor to meaſure the Cauſe by the Event: For tho' the eleven Tribes of *Iſrael* went twice by the ſpecial Commandment of God againſt the Tribe of *Benjamin*, yet they both times received the Overthrow. So *Lewis* the *French* King, in his Voyage into the Holy Land againſt the Infidels, was overthrown, and his whole Army diſcomfited, though his Cauſe were good. And ſo likewiſe the Chriſtians, when they defended *Rhodes* againſt the *Turks*, loſt the City, and the *Turks* had the upper-hand. And this he confeſſed, and apply'd to the Fact of *Catesby* and others for the Powder-Treaſon; and ſaid, It would have been commendable when it had been done, tho' not before.

After this, Mr. Attorney opened, how *Francis Treſham*, a delinquent Romaniſt, even *in articulo mortis* (a fearful thing) took it upon his Salvation, That he had not ſeen *Garnet* in ſixteen years before, when *Garnet* himſelf had confeſſed he had ſeen him often within that time; and likewiſe, that *Garnet* knew not of the *Spaniſh* Invaſion, which *Garnet* himſelf confeſſed alſo, and which two things *Treſham* himſelf had formerly confeſſed to the Lords; yet for a Recantation of theſe two things upon his Death-bed, he commanded *Vavaſor*, his Man, whom I think (ſaid Mr. Attorney) deeply guilty in this Treaſon, to write a letter to the Earl of *Salisbury*. And to ſhew this his deſperate Recantation, Mr. *Treſham*'s Letter was offered to be read.

But before the reading thereof, my Lord of *Saliſbury* ſaid, becauſe there was Matter incident to him, and to that which ſhould be read, he thought fit to ſay ſomething. To which purpoſe he ſaid his Deſire was, truly to lay open what cauſe there was for any faith to be given to theſe Men's Proteſtations; when they, to colour their own Impieties, and to ſlander the King's Juſtice, would go about to excuſe all Jeſuits, how foul ſoever, out of an Opinion that it is meritorious ſo to do, at ſuch time as they had no hope of themſelves. Such is it to be doubted, that Sir *Everard Digby*'s Proteſtations might be at the Bar, who ſought to clear all Jeſuits of thoſe Practices which they themſelves have now confeſſed *ex ore proprio.* That ſuch was alſo *Treſham*'s Labour, who being viſited with Sickneſs, and his Wife in Charity ſuffered to come to him, this Letter was hatch'd by them, and ſign'd by himſelf ſome few hours before his death, wherein he taketh that upon his Salvation, which ſhall now by *Garnet* be diſprov'd.

Then the Letter was read, being to this effect: That whereas ſince the King's time he had had his Pardon, and that to ſatisfy the Lords who heretofore examined him, he had accuſed *Garnet*; that now, he being weak, deſired that his former Examinations might be called in, becauſe they were not true; and ſet down upon his Salvation, that he had not ſeen *Garnet* in ſixteen years before.

Then my Lord of *Saliſbury* ſhewed and ſaid, it was a lamentable thing; for within three hours after he had done this, he died: and aſked *Garnet* what Interpretation he made of this teſtamental Proteſtation?

Garnet anſwered, It may be, my Lord, he meant to equivocate. Here was the Examination and Confeſſion of Mrs. *Anne Fawkes* offer'd to be read, alſo to confirm *Treſham*'s Perjury, who confeſſed that ſhe had ſeen Mr. *Treſham* with *Garnet* at her Houſe three or four times ſince the King's coming in, and divers times before, and that he had dined with him; and that *Garnet* always gave him good Counſel, and would ſay ſometimes to him, and others, Good Gentlemen, be quiet; for we muſt obtain that which you deſire by Prayer. She confeſſed alſo, that they were at *Erith* together the laſt Summer.

After all this, *Garnet* being demanded if theſe Examinations were true, he affirmed they were. And then were his own Examinations likewiſe read to the ſame effect; wherein he both confeſſed the ſeeing of Mr. *Treſham*, and his ſending into *Spain* about an Invaſion.

Here my Lord of *Saliſbury* concluded, That that which was ſaid of Mr. *Treſham*, and others, was not done againſt Charity to the Dead, but upon inevitable neceſſity, to avoid all their ſlanderous Reports and Practices; for he ſaid that even now there was current throughout the Town, a Report of a Retractation under *Bates*'s hand, of his Accuſation of *Greenwell*, which are ſtrange and grievous Practices to think upon. But this Day ſhall witneſs to the World, that all is falſe, and your ſelf condemned not by any but your ſelf, your own Confeſſions and Actions. Alas! Mr. *Garnet*, why ſhould we be troubled all this day with your poor Man, were it not to make the Cauſe appear as it deſerveth? wherein God ſend you may be ſuch an Example, as you may be the laſt Actor in this kind.

Hereupon my Lord Admiral ſaid to *Garnet*, that he had done more good this day in that Pulpit which he ſtood in (for it was made like unto a Pulpit wherein he ſtood) than he had done all the days of his Lifetime in any other Pulpit.

Then was another Examination of Mrs. *Anne Fawkes* read, wherein ſhe confeſſed that Mr. *Garnet* and ſhe were not long ſince with Mr. *Treſham*, at his Houſe in *Northamptonſhire*, and ſtayed there.

After this, my Lord of *Saliſbury* ſaid, Mr. *Garnet*, if you have not yet done, I would have you to underſtand, that the King hath commanded, that whatſoever made for you, or againſt you, all ſhould be read, and ſo it is; and we take of you what you will. This Gentlewoman that ſeems to ſpeak for you in her Confeſſions, I think would ſacrifice her ſelf for you to do you good, and you likewiſe for her: Therefore, good Mr. *Garnet*, whatſoever you have to ſay, ſay on in God's Name, and you ſhall be heard.

Then *Garnet* deſired the Jury, that they would allow of, and believe thoſe things he had denied and affirmed; and not to give credit unto thoſe things whereof there was no direct Proof againſt him, nor to condemn him by Circumſtances or Preſumptions.

The Earl of *Salisbury* demanded of him, ſaying, Mr. *Garnet*, is this all you have to ſay? if it be not, take your time, no Man ſhall interrupt you.

To whom *Garnet* anſwer'd, Yea, my Lord.

Mr. Attorney humbly deſired all the Lords Commiſſioners, that if he had forgotten to ſpeak of any thing material, that their Lordſhips would be pleaſed to put him in mind of it; who was aſſured by my Lord of *Salisbury*, that he had done very well, painfully, and learnedly.

Then Mr. Attorney deſired the Jury might go together, who upon his Motion going together forth of the Court, within leſs than a quarter of an hour return'd, and found *Henry Garnet* guilty.

Whereupon Mr. Serjeant *Crooke* pray'd Judgment.

Then Mr. *Waterhouſe*, the Clerk of the Crown, demanding what he could ſay for himſelf, why Judgment ſhould not be given againſt him?

Garnet made anſwer, that he could ſay nothing, but referred himſelf to the Mercy of the King, and God Almighty.

E. of North. ** THO' ſome of *Plato*'s Followers, and thoſe not of the meaneſt Rank, have rather apprehended in Conceit, than demonſtrated by ſtreight Lines, that nothing is which hath not been before: If it were poſſible to take right Obſervations out of true Records, and that all Counſels and Attempts as well as Configurations and Aſpects, return as it were *ex poſtliminio*, by Revolution to the Point from whence they firſt began: Yet if my *Ephimerides* fail me not in ſetting up the Figure of this late intended Plot, I may confidently pronounce with a grave Senator, *Repertum eſſe hodierno die facinus, quod nec Poeta fingere, nec Hiſtrio ſonare, nec Mimus imitari poterit:* So deſperately malicious, and ſo unkindly and unſeaſonably fruitful is our Age in producing Monſters, when the force and heat of Charity decays, and ſo violent are the damned Spirits of Satan's black Guard now before the winding up of the laſt bottom of terreſtrial Affairs, in ſpinning finer Threads of Practice and Conſpiracy under the Maſk of Piety and Zeal, which the Spirit of Truth termeth moſt ſignificantly, *Spiritualis nequitia in cœleſtibus.*

Upon this Ground I am moved at this Inſtant, Mr. *Garnet*, to addreſs my Diſcourſe to you, not ſo much in reſpect of your own Perſon, *aut quia te noſtra ſperem prece poſſe moveri* (tho' from my heart I pity the ſhameful Shipwreck of your Obedience and Conſcience upon ſo falſe a Sand) as for their ſakes that have not yet learned in our Saviour, that in one Element a Man cannot *duobus ſervire dominis:* and withal in the King our Sovereign's behalf, to exact at your hands (that hold the Hearts of many Followers by Leaſe for Life) a preciſe Account of the Lives of all thoſe Caſt-aways, *Quos vel apud te perditos invenit vel per te perdidit.* For either you that are an Object unto many watching Eyes, may be drawn by God's Grace working with my charitable Wiſhes, to lament, not the bad Succeſs (for ſo do Men that are deſperate) but the wicked purpoſe and intent of this crying Sin (which is proper only to the Penitent) or be brought ſo far at the leaſt out of the black Deeps of Induration, with the Mother of *Petrus Lombardus*, as to be ſorry that you cannot be ſorry.

** *This Speech exceeds the Proportion wherein it was firſt uttered, and is inſerted as it was afterwards amplified and enlarged by the Earl, when he delivered it to the Bookſeller.*

The ſtreights of Time, the length of the Trial, and the wearineſs of the Auditors, may be and are great Diſcouragements to ſuch a Diſcourſe as craves Time, and were better not begun at all, than not perfected. But ſince the Law and Prophets in this Caſe in hand, ſtand chiefly as the Ground-work of depoſing Kings, and abſolving Subjects from the Right which they owe to their own natural and lawful Sovereigns by the Laws of God and Man; I ſhall be forced in diſcharge of my Duty at this Inſtant, to borrow ſo much Time of theſe attentive Hearers, as muſt be payed again forthwith to the Service of the State: for otherwiſe, *væ mihi*, as the Prophet threatens, *quia tacui:* and yet we may conclude with another of the ſame Rank, that *Etiamſi ego tacuero, clamabunt lapides.*

But firſt I am to let both you and the whole World know, that you are not called this Day to the Bar for any Matter of your Conſcience, as ſome perhaps may publiſh out of Rancour or Perverſity of heart, to ſet a fairer gloſs upon the ground of your Profeſſion. Since the firſt time of your coming to the Council-board, you have not been ſo much as aſked any Queſtion about the places of your Reſort, the ſupporters of your Employment, or the means of your Maintenance, before the Powder-Project, which hath no kind of Affinity with Religion or Caution, but with Fury and Implacability came to be reſolved on by a Pack of *Boutefeux:* tho' you cannot be ignorant what the Parliament hath decreed, and ſome Perſons of your Society have ſuffer'd in the late Queen's time, for preſuming to exerciſe a kind of Juriſdiction within this Realm, that neither Policy of State can admit, nor Allegiance can juſtify. I will add ſomewhat more for the greater Improvement of the King's Mercy, and the more juſt Aggravation of your Ingratitude: You are not preſſed to any Peril of your Life, with publiſhing thoſe Bulls, which in the Queen's time neither had (as by Confeſſion appears) nor could have other End than the Foreſtalment of the King's lawful Claim, when the Fruit ſhall fall from the waſted Tree, and the fainting Sun (whoſe Beams about that time begun to wax both dim and wateriſh) muſt of neceſſity ſet in our Hemiſphere.

The King's free Pardon (which, as the Times ſtood then, ſhould have called for a *melius inquirendum*, before it had found paſſage without obſtruction of any doubt) was applied by you, and other of your ghoſtly Complices, to many feſtered and filthy Ulcers of this kind. By this free Pardon (ſo far as you have not ſince relapſed into worſe Attempts) even your ſelf Mr. *Garnet*, ſtand at this preſent, *rectus in Curia:* wherein tho' it become me not to deſcant about the meaſures and proportions of my Maſter's infinite Grace, yet I may tax you, for the bad Requital of ſo high a Benefit, and lament the King's Misfortune, that like an Eagle was in ſo great peril of receiving Wounds (almoſt to the Death) by the Quills of his own Clemency. Theſe are not the true Grounds, nor proper Motives of your ſtanding-forth; but your Art in cheriſhing, your Malice in encouraging, your Impiety in ſtrengthening a kind of Practice, never heard nor thought upon before in any Age, againſt the Life of the moſt gracious and juſt King, that ever reigned on either ſide of *Trent*; of a Queen renowned both for her own Worth, and for her happy Fruit; and of a Prince, whom without Oſtentation I may be bold to call, the ſweeteſt and the faireſt Bloſſom that ever budded, either out of the white or the red Roſary. God's Law forbids a Man that would live long and ſee chearful days, to deſtroy *matrem cum filiis*, even in thoſe Creatures that are not Images of the Deity: But you, Mr. *Garnet*, out of your anointed Influence of ſuperabundant Grace, endeavoured your beſt and uttermoſt to bruiſe the very Neſt-Egg of this royal and high-flying Airey, if it had been poſſible: Peers, Biſhops, Knights, Burgeſſes, Judges, Serjeants, and all ſorts of Officers were drawn in by a Writ of *Corpus cum cauſa* to this *feu de joy*, that it might blaze more gallantly. It is not the wearing of a Crucifix, which you compare to the ſign of *Tau*, that could have ſecured any of your own Affection, if they had been left unwarned, tho' it had been hallowed at *Rome*. No Relique (inſtead of the red Liſt that was a Token of Protection to *Rahab* and her Family) could have diſtinguiſhed a Catholick from a Proteſtant, when *Guy Fawkes* had the Match in his hand. No kind of holy Grains could have added the weight of one Grain to the Reputation of any *Romaniſt*, after once the hand of *Greenwell* had written the Senſe of the *Hebrew* word *Thekell* upon the Wall, (that is) *Appenſi in ſtatera, inventi ſunt minus habentes*, being weighed in the Scales of your Schools, ſhould have been found over-light in the Balance. Your end, as I imagine, was according to the Threats of the Stoicks to purge this World by Fire, or in ſome way with *Democritus*, to create a new World *ex atomis:* or becauſe *Cateſby* did ſet *Thomas Percy*'s Offer light, which was *tollere unum*, your Deſire was by this one Act *Tollere*, not the Man but Humanity, not *Unum* but Unity. The Plot whereof *Livy* ſpeaks, of diſpatching the whole Senate of *Rome* in an hour; the Device at *Carthage*, to cut off one whole Faction, by one Enterprize: the Conſpiracy of *Brutus* and *Caſſius* to kill *Cæſar* in the Senate: the Project of deſtroying one Conclave, the greateſt part of the Cardinals: the *Sicilian* Evenſong, and the *Pariſian* Mattins: Nay, the Wiſh of *Nero*, that *Rome* had but one Head, which he might cut off at one Blow, came far ſhort to the Miſchief of this Invention, which ſpared neither Age, Sex, nor Degree. And therefore I confeſs, if *Catesby* your Diſciple were alive, thus far he might vaunt, and without Exception, that he had ſurmounted and tranſcended *Catiline* in the Sphere of his own Treachery. But thus we learn by *Tertullian*, that *favos etiam veſpæ faciunt*, Waſps as well as Bees make Combs, tho' inſtead of Honey, we find Gunpowder.

Surely this was not the Fire that appeared unto *Moſes* in the burning Buſh: It was not the Fire that ſhould purge the Sons of *Levi*, tho' your *Levites* conceived ſo: It was not that Fire which was caſt into the World by Chriſt, with a Purpoſe that it might burn: It was not that, by which Men ſhould be ſaved that build over weakly upon the true Foundation of Faith. But it reſembles more lively that falſe Fire which began to glimmer; *Poſt commotionem, quando in commotione non erat Dominus.* It is like to that ſtrange Fire which *Nadab* and *Abihu* would have offered upon God's Altar, with a Zeal that was prepoſterous: it hath the waſting quality of that Wildfire, which iſſuing *ex Rhamno*, out of the Bramble, would have deſtroyed the ſtately Cedars of *Libanus*. Nay, to ſpeak properly, or draw neareſt to the Nature of that quick diſpatching Fire, which you and your Diſciples, Mr. *Garnet*, utterly deſpairing to draw down from Heaven (becauſe you know that ſuch a like Demand received a Repulſe, whilſt Chriſt was converſant on Earth among your Betters) ſought by a trick to obtain at the hand of Satan (the great Maſter of the Fire-works) and as the Poet writeth, *Flectere cum nequeas ſuperos Acheronta movebas.* But God wrought ſo, that by this Fire (ſince, *per illum fides proborum collucet*) the Faith of Subjects that are dutiful doth ſhine more brightly, and the State wins Honour. Look not now therefore that the Ladies of *Iſrael* ſhall meet you with their Timbrels in the honour of this Attempt: for all Actions are not praiſe-worthy, which ſome Perſons of your Profeſſion ſtudy to enamel with pretence of Godlineſs. In thinking of *Telemachus*, we ſet little by *Aſtyanax:* Eaſily may Affections wander, where the Rules of Conſcience do ſhift: and we find, that *umbra* is not ever *eo major quo ſerior:* But if bloody Paſſions can thus far prevail *in arido*, what hope is there of better Proof *in viridi*, which in compariſon is but *linum fumigans?* You ſeek to raiſe your Glory out of your Sin, but *quæ eſt gratia?* What thank is it to you, according to the demand of an Apoſtle, if for your evil Deſerts you ſuffer Stripes? for what the Jews objected to our Saviour (tho' impudently) we dare ſpeak truly and confidently to all thoſe that were privy to this Pack with you, that *Non de bono opere lapidantur, ſed de blaſphemia.* Saint *Auguſtine* ſpeaketh of ſome hot-headed Fellows in his Time, that notwithſtanding their Life led in this World, *more latronum*, yet in their Ends affected *cultum & honorem Martyrum:* among whom I ſhall ever rank (with juſt cauſe) theſe Powder-men. But if as Saint *Peter* ſaith, *Bene facientes patienter ſuſtinetis*, (which is far from the Rage of your hot Spirits) *hæc eſt apud Deum gratia*, which your Projects merit not. Theſe are perhaps the days which *Nabal* meant, complaining *hodie increbuiſſe ſervos qui fugiunt*; nay, which is worſe, *qui perſequuntur Dominos:* and therefore if you will not learn of *Balaam*, to beware of ſpeaking more than that which God putteth into your Mouth; yet howſoever Paſſions may ſpur you forward, learn of *Balaam*'s Aſs to ſhrink when you find the Angel of God's Wrath oppoſed, leſt as *Abigal* ſpake religiouſly and wiſely to King *David*, *Cùm mors advenerit*, when Death ſhall approach, who ſtands upon the Threſhold and begins to knock at the Door of your Heart, *Sit tibi in ſingultum*, it cauſe you to ſigh inwardly, not *quòd effuderis, ſed quòd effundere volueris*, not for having ſhed, but becauſe you would have ſhed Blood that is moſt innocent.

How well the Project of ſupplanting Princes, and ſubverting States, agrees either with the title of a Jeſuit, or the duty of a Prieſt, who ſhould rather temper Paſſion, than diſclaim Charity; the Phariſees themſelves expreſs in teaching *non licere*, that it was not lawful for them to kill any Man; much leſs would they, as it is more than probable in the warp of Youth, when their Hair began to wax as white as Snow, have taken Eyes into their Heads like Burning-glaſſes to give fire to this Train: And yet Truth itſelf hath ſaid (which both ſides muſt believe) that unleſs our Righteouſneſs exceeds theirs, we muſt not expect to be Heirs of Eternity. It will be long before ſome of you can proteſt with *Paul*, that you are *mundi*, clean and pure from all Men's Blood, or with *Gregory* to *Mauritius* the Emperor, that he would never *miſcere ſe in cujuſquam mortem*, or call to mind either the Piety of that godly Biſhop in a better time, that would not ſuffer thoſe Hands to be impoſed on his Head by Ordination, that were *reſperſæ ſanguine*, or the miſhap of *David* that might not rear the Temple, for the ſtaining and embruing of his hands with Blood. Reſort to the very Text it ſelf, (or if it pleaſe you, to your own Canons) to enquire whether *Paul*'s Reſtraint of intermeddling with ſecular Affairs were injoined with a *non obſtante*, ſo far only as concerned Projects and Plots for Gunpowder. Your ſafeſt Courſe, Mr. *Garnet*, as I ſuppoſe, is to ſtay your Judgment with that Staff of old *Jacob*, whereof mention is made in *Geneſis*, in theſe break-neck Paſſages, that is, with that adviſed Sentence which he pronounced againſt *Levi* the Father of ſucceeding Prieſts, for killing the Sons of *Hemor* after Circumciſion, the ſame being in that caſe as well a Bond of Promiſe, as a Seal of Faith; ſince I do verily believe that the Proteſtants accord with the Catholicks in more points of Faith and grounds of Doctrine at this day, than thoſe of *Sichem* did with *Jacob* and his Family. By reſolving this Paſſage into Parts, we ſhall find a great reſemblance both in the point of Fact, and in the reſolution of Right with this preſent Caſe, upon which we have reaſon to fix both our Eyes and Obſervation. For firſt, *Jacob* out of Conſcience and Humanity reſolves, *Non ituram animam ſuam in conſilio Levi*, that his Soul ſhould never march in the Council of *Levi*, *Nec in cœtu illorum futuram gloriam*, nor his Honour ſhine in their Society: What is the reaſon? Becauſe in their Rage they have ſlain a Man (much leſs than the deſtruction of a Prince with his Poſterity and whole Eſtate) *Et in malitia ſuffoderunt murum*, and in their Malice digged down a Wall; which in my Opinion either miſſeth hardly one Hair, or very narrowly your Project's Invention, in digging at the Wall of the Parliament. What is *Jacob*'s Sentence upon the Fact? *Maledictus illorum furor quia pertinax, & indignatio quia dura:* which Curſe in a more lively manner (if poſſible it be) than the very Fact it ſelf, ſuits the Compariſon. For who knoweth not, that when Malice taketh hold of Humour only, as Fire doth of Straw, tho' it cauſe a great blaze at the firſt kindling, yet it is quickly ſpent, and only the Smoke remains? but when it taketh hold of Conſcience, as Fire doth of Steel, *Quod tardè acquiſivit diu retinet*, then ſuch Marks are Monuments. Touching the title which *Jacob* beſtoweth for their Labours, calling them *Vaſa iniquitatis bellantia*, I may proteſt that both you and *Greenwell*, and all they that were privy to this accurſed Plot, deſerve this ſtyle upon better ground than *Simeon* and *Levi*; by ſo much as your Indignation compared with theirs by due Circumſtances, was by infinite degrees *durior*, more hard than theirs. For tho' the Feat (God's name be praiſed) were not fully wrought, yet you know, Mr. *Garnet*, who it is that compriſeth our Conſent both within the compaſs and the cenſure of a deadly Sin, and what Father ſaith that, *Quod deeſt operi ineſt voluntati.* The common Law would puniſh Treaſon in the very heart, if the eye of Inquiſition could extend ſo far; and therefore the Providence of God in preventing by his Mercy this Deſtruction, is no diſcharge to your Intention in contriving it. By the courſe and recourſe of Times and Accidents, wiſe Men obſerve, that very ſeldom hath any miſchievous Attempt been undertaken for diſturbance of a State, without the Counſel and Aſſiſtance of a Prieſt in the firſt, in the middle, or laſt Act of the Tragedy; and that all along with ſuch a Chorus of Confederates to entertain the Stage, while the Lives and Fortunes of great Princes being ſet upon the Tenterhooks, have put all in hazard. For while *Moſes* ſtood in conference with God upon the Mount, his Brother *Aaron* impatient (as for the moſt part Churchmen are in their Deſires) of Pauſes or Delays, fell inſtantly to mould and worſhip the Golden Calf, to their Commander's Vexation and God's Diſhonour. *Abiathar* was condemned for complotting with the *Shunamite*, and *Joab* Lieutenant-General againſt his Sovereign. With what Diſtemper and Diſorder ſome Prieſts have rock'd the Cradle of the Churches Infancy in raiſing Hereſies (the Seeds of Factions) only to that end, no man can be ignorant, that hath run over the Churches Hiſtories.

Odo, Biſhop of *Bayonne*, was impriſoned by his Brother the firſt *William*, as a ſtirrer of Sedition, and after conſpired with *Robert* Earl of *Mortaigne*, to depoſe his Son, againſt whom alſo *Geffrey*, Biſhop of *Conſtance*, fortify'd in actual Rebellion the Caſtle of *Briſtol*. The Captivity of the Lion-hearted *Richard*, Champion of the holy Wars, was by the Practice of *Savaricus*, Biſhop of *Bath*. *Gervas* the great Preacher enter'd with *Lewis* the *French* King's Son, purpoſing to root out the Race of our Kings, and to plant himſelf and his Progeny. Of the rebellious Army that uſurped againſt *Henry* III. the Title of *Exercitum Dei* (altho' by the Pope's Legate, *reputati ſunt filii Belial) Clerici fautores erant*, ſaith the Monk of *Cheſter*. For Conſpiracy againſt the firſt *Edward* was the Archbiſhop of *Canterbury* exiled the Kingdom. And before that *Iſabel*, the Wife of the ſecond, durſt undertake the Plot of Depoſing her Huſband by a damnable Device, for the raiſing of her Son, ſhe ſent in a Pack of Preachers, poiſoned with Prejudice againſt the preſent State, to prepare the People's Minds by falſe Suggeſtions, to the Change which was intended to follow. And *Adam de Orleton*, Biſhop of *Hereford*, that was the firſt Deviſer, continued the chiefeſt Feeder of that Diſſenſion between the Huſband and the Wife, taking occaſion in a Sermon preached at *Oxford*, in the preſence of the Queen, and all the Rebels, upon that Text of the Scripture, *Caput meum doleo*, to expreſs by Depravation of his lawful Sovereign, how many Miſchiefs grew to the Commonwealth by a corrupted Head that governed them. For aiding the Enemies of *Edward* III. was the Biſhop of *Hereford* arraigned. And the Chaplain of *Wat Tyler*, that adviſed his Chieftain (as you Mr. *Garnet* did your Followers) to deſtroy all the Clergy and Nobility, was *Ball* a Maſs-Prieſt. With *Glocester*'s Duke againſt his Sovereign *Richard*, was *Oſwald*, Biſhop of *Gallaway*, the chief Complotter. Prieſts and Friers they were that ſuborned a falſe *Richard* againſt the fourth *Henry*, whereof eight being *Minors*, were hanged at *Tyburn*: And *Maudelen* himſelf, that took upon him the Habit and Perſon of the King, was a Prieſt alſo, to keep them company. *Scroope*, the Archbiſhop of *York*, for complotting a Conſpiracy with the Earl of *Northumberland* againſt the ſame King, loſt his Head for his labour. *Beverly*, an anointed Prieſt, not to be behind ſome other of his Fellows in theſe ſeditious Attempts, conſpired againſt the fifth *Henry*, with the Lord *Cobham*, Sir *John Oldcaſtle*.

I have ſeen the copy of a learned and wiſe Letter, written by Biſhop *Chicheley*, a Prelate of your own, Chancellor to that King, gravely adviſing him to beware of admitting a Legate Reſident in the Realm, in reſpect of the ſharp effects by ſtirs that have been raiſed in former times by Perſons of that Habit; pointing as it were to *Henry Beauford*, who afterwards was both Author and Actor of more Miſchief than almoſt could be expected or feared.

They were Prieſts and Friers that in the firſt of *Edward* the Fourth, conſpired with *Jaſper*, Earl of *Pembroke*, and were afterward attainted and executed by Act of Parliament.

Doctor *Shaw* was a Prieſt, whom *Richard* III. made the Trumpet at *Paul*'s Croſs of his wrongful Claim againſt the rightful Poſſeſſion of his innocent Nephews.

That Impoſtor that ſuborned *Lambert*, to take upon him the Perſon, and uſurp the Right of the Duke of *York*, againſt the bleſſed Union of the two Roſes, was a Prieſt in *Ireland*. Wherein I note, that as a Prieſt would then have foreſtalled, ſo now two Prieſts, *Greenwell* and *Garnet*, would have cut off the Union. He was a Monk of *Henton* that inticed the Duke of *Buckingham* by ſeducing hopes, to the Ruin of as great a Houſe as any Subject in *Europe* (bearing not the ſurname of a King) can demonſtrate: whereof both I receive a wound, and all that deſcend of him.

I ſpeak not of thoſe Popes, that exerciſing more the Sword of *Paul* with Paſſion, than the Keys of *Peter* with Inſtruction, have been kindlers of great Broils: nor of the three powerful Cardinals, *York*, *Lorraine*, and *Arras* in our Age, that during their times were not much anſwerable for ſloth or idleneſs, whatſoever they are otherwiſe for time ill employed, being Perſons of great Spirit and too great Activity: nor of thoſe Churchmen, that by their Doctrine in the Pulpit, and Subſcription of Hands to traitorous Decrees, embaſed the two Daughters of King *Henry* the eighth, both before and after the Death of King *Edward* the ſixth, for ſatisfaction to the Pride and Ambition of an aſpiring Humour.

I paſs over the brainſick oppoſition of *Knox* and *Goodman*, againſt the two renowned *Marys*, both Queens of *Scotland*, Regent and Inheritrice in our days: nor of the fiery Triplicity of *Ballard*, *Clarke*, and *Watſon*, of which number, the firſt practiſed the ſlaughter of the Queen deceaſed, the other two of the King our Sovereign. I rip not up the Complots of *Sergius* the Monk, to bring the *Turk* into the Empire of the Eaſt: nor of thoſe falſe Prophets, that eſtabliſhed the Race of *Xerif* in *Barbary*. My only drift and purpoſe is, to compare former Practices with the late Attempt, (tho' far exceeding and ſurmounting all that went before) to make true Subjects ſee for the better Trial and Examination of Spirits, that as well ſome Prieſts in Chriſtendom, as thoſe *Salii* that were Chaplains to *Mars* at *Rome* in the reign of Idolatry, took delight by fits in toſſing Firebrands from Camp to Camp, for the Inflammation of evil Affections and worſe Practices. But the Circle of a Crown Imperial cannot be ſoldered, if it once receive the ſmalleſt crack. Sinews that are cut in ſunder, can never knit: neither is it poſſible that there ſhould be *integralis, unitas in ſolutione continui*. I will therefore conclude this Point with the grave and learned Judgment of *Sozomen*, an ancient Writer of the Church Primitive, *Univerſim accidere in ſacerdotum diſſidiis, ut reſpublica motibus & turbis agitetur*: that it happens generally in the Diſſenſions of Prieſts, that the Commonwealth it ſelf is ſhaken with the Convulſions of Conſpiracy.

It is very probable, Mr. *Garnet*, that the late Queen, in caſe the thread of her worn Life could have been ſpun further on toward theſe miſty Days, (that have ſomewhat overcaſt the brightneſs of your enticing hopes upon the ſettling of this State in the ſucceſſion of ſo rare a King) ſhould have run ſome ſtrange hazard both of her State and Perſon, among your Mines and Powder Trains (having indeed imbrued her Sword in the blood of ſome choice Perſons of your Society by the warrant of her Laws;) ſince this ſweet Prince our Sovereign, that before his coming always wrote his Laws in Milk, and ever ſince hath been very careful not to write in Blood, can thus hardly either by his own gracious Deſerts, or his Council's inceſſant Care, be ſecured from the Shambles. I have not read, neither do I believe, that the Murder of any anointed King hath been accounted in any religious or juſt Age, either an Act of Prowеſs, or a Step to Martyrdom. I could not have thought, without this demonſtration of Proof, that any Man had been left in the world, ſince the death of *George Buchanan*, to proclaim Prizes for the ſlaughter as well of Kings as of Tygers. But if it were not unpoſſible (which now I find with grief of Heart) for any one ſpark of Loyalty to live in an Ocean of immoderate and exorbitant Affections; ſurely I ſhould have expected from you and your friends, Mr. *Garnet*, effects of better inclinations toward ſo mild and gracious a Prince, as never ſearcheth Ulcers but with a ſhaking hand, and in ſearching all, hath a more earneſt deſire, *non invenire quod quærit, quàm invenire quod puniat*. For, to ſpeak truth without Flattery, (which I abhor as the Canker of all generous and worthy Minds) have not both you and yours received and enjoyed many favours from the King, which in all likelihood were not in the laſt time to be look'd for? Would the late Queen, think you, have beſtowed honour, by laying the Sword of Knighthood upon the heads of ſo many *Catholicks*, as the King hath done ſince his entrance? Would the Queen have allowed unto all, or any of the *Recuſants*, that free kind of acceſs both to her Perſon, or to her Court, which the King hath done (not only upon juſt Occaſions, but for their comfort) and in effect, at their pleaſure, without making any ſeparation between thoſe, that before his coming ſaluted the fair promiſe of his hopeful day, and others that would have prevented it? Was not the gate of Juſtice opened *Trojano Tyrióque* to Proteſtants and Catholicks alike, with that indifferent and equal regard, that it hath been ſince to the ſhutting up of thoſe Mouths that were moſt mutinous? Was the late Queen ſo confident in the fidelity of any Catholicks, as to employ them without diſtruſt to foreign Princes in Embaſſy? Would the Queen have called the chief Catholicks to her Council-board, that upon the laying open of their juſt Complaints, they might have redreſs with favour? Might the Recuſants of beſt Behaviour and Countenance in the late Queen's time, live in their own Countrys, diſpoſe of their Eſtates and Tenants, and enjoy their Pleaſures, without any other mulct than the former Laws had laid on them? Was it free for Recuſants in thoſe days, that had been caſt behind in arrearages (for want of anſwering their Payments in due time to the Crown) to compound with a Commiſſion directed only to that end, almoſt for what Term and at what Rates he might beſt ſatisfy? Did the Compaſſion of the late Queen extend ſo far in favour of Recuſants, as to put them in poſſeſſion of their whole Eſtates, drawn out of the Farmers hands upon due proof made of Spoil, without further demand of any other Contribution or Taxation than the Law limited? Was it any part of the late Queen's care, to give order for the chaſtiſement of Informers and Meſſengers, that preyed upon the proſtrate Fortunes of Recuſants with harder meaſure than the Juſtice of the State warranted? Was it free for Subjects of all Affections and Religions (during the late Queen's Life) that delighted in the Wars, to ſerve what Prince or State it pleaſed them, without either Exception or Puniſhment? Did the late Time leave it to the choice of young Gentlemen that had Licence to travel, during the time of their abode in foreign Parts, to frequent what Places, Courts or Companies they would, without yielding an Account at their return of their Adventuring? Had it been poſſible to have drawn from the late Queen either Reſtitutions or Penſions for the Maintenance of Recuſants, in reſpect of Service done to Anteceſſors or Anceſtors? Was the late Queen as cautious and tender in forbearing to take the Lives of Prieſts and Jeſuits upon the Point of *Summum Jus*, before ſhe were made acquainted by the Judges thorowly with the State of their Evidence? Was any Magiſtrate ever called to his anſwer for proceeding in cold Blood againſt a Prieſt, that for want of means to procure a Pardon had been kept in Priſon ſince the time of the Queen deceaſed? Was the late Queen ever pleaſed, that in the Pardon general at the cloſing up of the Parliament, Prieſts and Jeſuits ſhould be compriſed in the Liſt, and among others you and *Greenwell*, that at the firſt opening of the Spring reſorted thither with as violent a thirſt as ever you did to *Jubilee*; and yet in recompenſe thereof ſince that time, have been well content that the diſtributer of ſo great a portion of Grace and Bounty, ſhould be blown up by your *Boutefeux*? A Man would think in likelihood, that both you, and all they that were encouraged and warranted in this Attempt by you, having received at the Hands of ſo gracious a King ſo many Talents in a Royal Kind of Truſt, ſhould rather have ſtudied by your beſt endeavours to encreaſe the Stock, than to leſſen the Principal, by burying your Talent under Ground among the Powder-Works; eſpecially conſidering that our King is not like the other mentioned in St. *Luke, homo auſterus, qui tollit quod non poſuit, et metit quod non ſeminat*: but rather deſirous with *Moſes* to be raſed out of the Book of Life; with *Paul* to be made *Anathema* for the common good of thoſe Subjects that live under him. Our royal Maſter travels not as the other did, *in longinquam regionem ut accipiat regnum*, into a foreign Region to obtain a Kingdom, but brought a Kingdom with him out of the next Region to ours, that hereafter we may live *unanimes*, that have been ſo long ſever'd and divided in Fraternity. But ſuch are the qualities of many Men, and eſpecially of you and your Complices in this Complot, that as one ſaith, *Non tam agant gratias de Tribunatu, quam queruntur quod non ſunt evecti in Conſulatum*. But when you, or any Man of your Affection and Humour, ſhall be able out of Quinteſſence of Wit, or Poſitions of State, or Grounds of common Senſe, to prove, that a Prince as oppoſite to your Religion as you are to his, and that vows to ſet up his whole Reſt and Adventure not only of all his Crowns, but of his Life and Succeſſion,

ceſſion, upon thoſe Principles of Faith (which he hath ſucked from his Infancy with his Nurſes Milk) to take a milder courſe with the Catholicks than he hath hitherto done, without offence or ſcandal to the tender Conſcience of his own Church, which he doth chiefly regard, I will acknowledge that you had more Reaſon to bemoan your ſelves (which is the furtheſt Period of a Subject's Power) than (as your caſe is now) I can admit, looking into ſundry Circumſtances of Peril with a ſingle Eye, which is neither dazzled with Self-love, nor diſtracted by ſlight Appearance. For tho' you may perhaps conceive, that there wanted ſomewhat to the full Meaſure of your vaſt deſires; yet all Men know that you prevailed far above the likelihood of any reaſonable Hope: which may move you to call to mind with more evenly poiſed Thoughts, that judgment of a wiſe Author, that *inter voluptates tam numeratur id quod habes, quàm id quod ſperas*: a good Rule for a perverſe Interpreter.

The Quickſand upon which you plant the great Artillery of your Sentences and Decrees againſt the States and Perſons of all Princes that ſquare not with your Rules, I take to be that idle Impreſſion, rather than true Suppoſition of a certain kind of Prerogative, thought to be left by our Saviour to his Spouſe the Church *in depoſito*, for the depoſing of Princes, upon conviction of Contumacy, from their Seat of Government. For as the great Philoſophers conclude the whole World to be compoſed of three certain concurrent Principles, that is, Matter, Form, and Privation, holding the laſt of the three to be rather a Principle of Tranſmutation than of Eſtabliſhment: So likewiſe the Schoolmen within theſe laſt ſix hundred Years, have dragged into the diſcipline a new kind of Privation alſo beſide the Matter, (which is the Flock) and the Form which is the Government. And this Privation hath undoubtedly metamorphoſed as many States and Policies as the other hath done Shapes and Figures, if either the Complaints of Majeſty, or the Smart of Patience may be accounted of in our Audit. I confeſs with the Woman of *Samaria*, that this Well is not only deep, but that I want the Bucket, which from ſuch a Well may be fit to draw: for every Plummit is not for every Sound, nor every Line for every Level; neither is it poſſible out of every Block to carve *Mercury*; but yet ſince it is confeſſed by *Robert Winter*, *Rookwood*, *Guy Fawkes*, and others, that their Error in believing this concluſion upon the Warrant of a learned Man (which as appeareth now, was your ſelf) hath been the greateſt Cauſe, and the ſtrongeſt Motive of their fatal Fault; ſince in like ſort, it agreeth fitly with my deſire to reduce as many of thoſe ſilly erring Sheep that followed *Abſalom, ſed corde ſimplice & penitus cauſam ignorantes*, as I can from your *acheldama*, or *ager ſanguinis*, (conſidering how many Prieſts have practiſed in theſe late Years to found Points of War) it were as meet that ſomewhat were ſet down for Confutation, as for Caution: and therefore I have been the more willing to engage my Zeal and Duty, tho' perhaps above the meaſure of my Strength, upon this Argument, *et quantum in me eſt*, to ſhake the whole foundation of future Conſpiracys.

But before that I prepare my ſelf to this Encounter, or that I enter into this narrow Liſt, (wherein I expect as many Adverſarys as there be Men that have Humours to limit or to conquer Kings) I hold my ſelf bound in Duty as well as drawn by Method, to wipe away that weak Excuſe which you make of your diſloyal Heart, in publiſhing this Doctrine of curbing, ſuſpending, or depoſing Princes of high Eſtate, upon this ground only, that in foreign Parts you found it neither ſeverely taxed, nor capitally puniſhed. To let go that Maxim which binds all ſorts of Subjects to frame their Actions rather to the Law of the Country wherein they live, than wherein they wander; and likewiſe the great Improbability of ſo groſs ignorance in your ſelf, and your Friends, as not to take notice of a point of State ſo deeply riveted in all the Courts of Juſtice within the Realm; I muſt tell you further alſo, that Princes fear not thoſe Fires which are kindled in foreign States, before that ſome ſpark light either upon their Neighbours Houſes, or their own Palaces. Idle Lookers-on, and frank Adventurers have not an equal ſenſe of the danger, which the Ships and Veſſels richly freighted endure at the Sea, either by falſe Pirates or foul Weather. *Qui ſani ſunt*, according to your Conſtruction of *Sanitas, M. Garnet, nec medicis egent, nec metuunt medicinam.* Their Ears are very dull, and unapt to Muſick, that cannot keep Time when Fortune plays, and all ſorts of Inſtruments are ſet in one Key to make full Harmony. So long doth the great Brood-Hen cluck her Chickens, as ſhe takes them to be hers: but if once they fly from the protection and ſafe defence of her Wings, ſhe leaveth them as a Prey to the Puttock. I will ſearch no further than our own time for ſatisfaction in this Point, how far Princes would be patient in caſe they were as violently purſued and plied as the King our Sovereign hath been; than by obſerving what kind of Obedience hath been performed by ſome of that Rank when they were ſhot with the ſame Arrow. For many Men are very ſlack in making a Hue-and-Cry after the Thief that ſtealeth their Neighbours Goods, which are very forward to fly with the wings of an Eagle, when they find themſelves preſſed in their own particular. *Et hic ſi fuerint ſentient aliter*, and in like caſes wiſe Men out of experience reſort to like Remedies.

But if there be no Drugs in your Shop to purge that ſharp Humour, that hath been the cauſe of ſo many burning Fevers, and Diſtempers in this State, than your Diacatholicon, I may tell you plainly, that it ſtrives ſo much againſt the Stomach of the King, and worketh upon Nature with that violence and loathſomneſs, as he doth rather chuſe to feel the Pain, than take the Pill, and to endure the worſt of the Diſeaſe, than to make the beſt uſe of that Remedy. In this caſe he will truſt his own Receipts that are made familiar by time and uſe, leaving other Princes to their own free Choice, which may make all Drugs to taſte in their Mouths like Manna, that is agreeable to their own Appetite. Princes cannot be too ſuſpicious when their Lives are ſought, and Subjects cannot be too curious when the State brandles. I remember that when *Joſhua* took notice of a ſingle Man that came from *Jericho*, ſtanding with a Sword in his hand ready drawn, he aſked inſtantly, *Noſter es, an Adverſariorum?* Art thou of our Side, or of our Adverſaries? Directing us that are now in Commiſſion, as it were by Line and Level, in what manner and with what caution we ſhould examine you and *Hall*, (ſince *Greenwell* is out of our reach) for you draw not one Sword (as the other did) but two at once, that is, both the Spiritual and the Temporal, againſt our Sovereign, and to enquire withal at what time, and in what place, and upon what advantage you and your ſuborned Confederates intend to wound his Royal Majeſty.

For ſince we find, that to ſecure litigious Poſſeſſions, that lie ſubject to Surprize, it is uſual and ordinary, even among Perſons merely private (ſo long as they live in fear) to ſound the Diſpoſitions and Affections of their own Dependents, Followers and Tenants, upon ſuſpicion of a falſe Trick: At a dead-lift, it much more behoveth great Princes (upon whom whole States and Succeſſions depend) to take the ſureſt hold that is poſſible of their Subjects Affections and Hearts, leſt if they ſhould chance, in the Day of Trial, not to be *noſtri ſed adverſariorum*, and thereby draw their Swords of another ſide, and deceive the Truſt that is repoſed in their Faith, we might with *Rachel, Plorare filios noſtros quia non ſunt*, and call for Help too late, when Deſtruction were in the Door of Deſolation.

This Doctrine, Mr. *Garnet*, is not drawn out of the fuſty Veſſels, as ſome call them, nor from the Lees of the latter Times which you ſuſpect: It carries not the leaſt taſte of Prejudice or feſter'd Suſpicion upon Particulars. It knew no difference either of Name or Reputation, between Catholick and Proteſtant, when it was firſt ſet on broach by thoſe Princes, States, and Divines, which are accounted Catholicks, and ſome of them canonized for Saints in the Rubricks of your own Regiſter. For proof whereof you ſhall find a Patent in the Records of *Rich.* II. granted to one *Waleton*, for the ſearching of all Ships and Veſſels inward or outward-bound in the Port of *London*, and for the ſifting of all Perſons likewiſe, *qui bullas, vel alia Papalia inſtrumenta deferebant.* In the ſame Prince's Reign, Sir *William Brian* was ſent to the *Tower*, only for procuring the Pope's Bull againſt certain Burglarers that robbed his own Houſe, *quamvis abundans cautela non noceat* by the civil Law, and the Bulls themſelves were adjudged prejudicial to the King's Prerogative. With theſe I match *Stephanus de Malolacu*, ſharply fined in the Reign of *Edward* I. for putting a Bull in execution againſt a certain Knight his Adverſary, without acquainting firſt the King or the Counſellors. *Roger Sherbrook* was called in queſtion for procuring Bulls from *Rome*, in *contemptum Regis & Coronæ exhæredandæ periculum*, which was the beſt Conſtruction that was then made of theſe Traverſes. *Edward* II. ſent a Commiſſion, as appeareth by Records, to enquire of any Proceſs or Sentence brought over from *Rome* into this Land *ſe inconſulto*, without his Privity. It appeareth again in the time of *Edward* III. all the Ports were laid for Interception of Bulls by the King's Order. To the Archbiſhop of *Ravenna* was granted a ſafe Conduct at his coming into *England*, by the ſame King, with this Proviſo, that he ſhould only report *Sanctas Papæ exhortationes*, but neither ſend out Proceſs, nor give Sentence, *in Coronæ & Regni præjudicium.* It was not lawful in thoſe days to bring in any Letters either from the Pope, or any foreign Prince, without imparting them firſt to the Chancellor, or the Warden of the *Quinque Portuum*, which in time of the beſt Correſpondence, as it ſeems to me, implies weak Confidency. *Edward* III. gave Inſtructions to certain noble Men that were to treat of a Peace with *France*, in the Preſence of the Pope, to proceed with great caution, that is, not *tanquam coram Judice, ſed coram privata perſona*; and not as *in figura judicii, ſed amicabiliter.* When the *Scots* would have had all Differences between both Kingdoms referr'd to the Conſcience and Diſcretion of the Pope, the Peers of *England* utterly refuſed to give their Aſſent, tho' the King's own Facility ſhould incline ſo far, becauſe their King, as they vouched, was not to make his Anſwers in matters of that quality before any Judge whatſoever, *vel Eccleſiaſtico vel Seculari*, either Eccleſiaſtical or Secular. To be ſhort, theſe Sparks of Jealouſy were ſo far kindled between the Church of *Rome* and our Anceſtors in former Times, altho' they were no *Lutherans* nor *Hugenots*, (as our Countrymen are termed in theſe days) but Catholicks according to the *Roman* Catechiſm, that an Order was ſet down by the Wiſdom of the State, that the Pope's Collector at his firſt Arrival on our Coaſt, ſhould ſwear ſolemnly to be faithful to his Crown, to attempt nothing to the King's Prejudice, or in diſgrace of the Laws eſtabliſh'd, to put none of the Pope's Orders in execution, to the weakening of the King's Prerogative; to deliver no Mandates or Letters from the Pope, before they had been viewed and allowed by the Council of the King; to write nothing to the Pope from hence, without the King's leave; to deal no further in the buſineſs of Benefices than the Privy-Council ſhould allow; nor without the King's Privy-Seal to depart out of the Kingdom.

Theſe Points are tender, and ſuch as during Peace were never offer'd by the Kings of *England* to the Miniſters of any other foreign Prince; and yet we read of no ſuch Invectives or Decrees againſt Prince and State, as in our days are ordinary. Other Princes in like manner ſtood upon their guard, and with like Circumſpection, as is evident by *Philip le Beau* the *French* King; who being advertiſed of the Pope's peremptory Proceeding upon the committing of a Biſhop for evil words againſt himſelf, inquired of all his Peers both Eccleſiaſtical and Temporal, at a publick Convention, how far he might reſt aſſured of their Fidelity and Loyalty notwithſtanding that Decree; who anſwered, *Unanimi conſenſu ſe illius tantummodo eſſe beneficiarios*; and that what Pope or Potentate ſoever durſt adventure to put out his Horns, or to raiſe his Creſt by oppoſition to his royal Prerogative, they would live and die with him.

If Princes that were abſolutely Catholicks, according to the Roman Liſt, that were directed by one Canon, tuned by one Wreſt, obedient to the Voice of one high Shepherd, and between whom and the Pope there was but *cor unum & anima una*, found ſo juſt cauſe and ſo great reaſon (notwithſtanding Union in points of Conſcience, and Orders of Conformity) to be tender and ſuſpicious of their temporal Prerogative, and to caſt a watchful Eye upon the Pope's encroaching Steps, in quarters that pertained neither to the Churchyard, nor the Church: How much more jealous ought true Subjects and ſworn Servants in our days to be of that Prince's State, who being, as the caſe ſtandeth now, ſuſtained and fed by another Root, directed by the Voice of other Paſtors, and as careful to reform, as his Anteceſſors to conform, while they failed by another Compaſs, and upon another Coaſt? And whoſoever will not be inſtructed by the Records, let him ſearch in the Vaults and the Powder-trains of the

Parliament. If in the time of *Henry* II. (who, touching point of Conſcience, was *obedientiſſimus eccleſiæ filius) Vivian*, the Pope's Legate, was preciſely ſifted and examined by the Biſhops of *Ely* and *Wincheſter*, (that were of his own Profeſſion, and wore the ſame Badge) by what warrant he durſt preſume to land without ſpecial Licence from the King; and therefore gave Oath *in verbo veritatis*, to do nothing againſt the King's Authority: How much more watchful and reſerv'd ought this State to be, in admitting *Greenwell*, *Hall*, and *Garnet* with their Bulls or Cenſures, *in Regis & Coronæ præjudicium*, without Inquiſition or Search, ſince their end is not as before, *implere manum*, to fill the Hand, but to repleniſh the Church-yard, and to ſtir up all conceited or diſcontented Men, to the taking of Arms againſt their lawful and redoubted Sovereign King *James?* And tho' the Pope ſhewing himſelf (in this Point) more moderate and diſcreet than other of his Predeceſſors, hath not as yet cut off the King formally as a withered or unfruitful Branch; yet to their precipitate and brainſick Giddineſs it was thought ſufficient, as *Guy Faux* and others did confeſs, that the Pope on *Maundy Thurſday* cenſures *Schiſmaticks* in general, (tho' the moſt judicious among the Schoolmen, Divines and Canoniſts, of their part, hold directly *ad oppoſitum*, and dare not warrant any Conſcience according to the Rules of their own Diſcipline) by that Cenſure which we may probably conceive to be more narrative than active, in reſpect the Proceſs follows not. This Record concerning *Henry* II. draws to my Memory a Meſſage of the ſame effect, ſent to a *Scotiſh* Legate by *Alexander* the King of *Scotland* after that time: For it is true, that Legate propoſing to ſeſs every Pariſh at four Marks of Silver, and every Monaſtery in that Kingdom at twenty times ſo much, for the ſupply of Maintenance to the Wars in the Holy Land, was commanded by King *Alexander*, *intra Regni fines conſiſtere*, to ſtay upon the Border of the Realm, *& per literas mandata exponere*, and by Letter to deliver his Inſtructions; for neither *Scotland* could forbear or ſpare ſo great a Sum as the Legate would exact, neither (albeit the Realm could) yet his Meaning was, to ſend it by ſo unlucky a Meſſenger as the Legate was; complaining that he had been robbed of the Money gather'd in foreign States before, to the loſs both of his own Labour, and of the Charities of other Catholicks. In concluſion, a fair Offer was made of Men for increaſe of Strength, which was not the Legate's aim, but of no treaſure to fill Coffers, which was the chiefeſt end; and a thouſand Marks were ſent to the Pope as a mere Benevolence, which ſealed up the drift and purpoſe of this Embaſſy. This Anſwer was exceedingly commended by the King of *England*, *qui idem expertus ſapiebat*; who having taſted of the ſame Cup, grew wiſe, as I find by *Hector Boetius*, a Roman Catholick. I mean not in this place to inſert or add the Judgment of a *Scotiſh* Biſhop, that theſe kind of Exactions were Tyranny; adviſing further all that State in a full Convention, that the Legate might not only be ſent away empty-handed, (and with like Succeſs to thoſe, which, as the Prophet ſays, *Dormierunt ſomnum ſuum, & nihil invenerunt viri divitiarum in manibus ſuis)* but further, that an Act might paſs in that Aſſembly, to cut off all ſuch Errands by proviſional Accord, as might *in futuro* tend to the State's Impoveriſhment: which was univerſally agreed and determined.

I did very well approve, and was glad to hear the diſtinction and difference which you made in one part of your Speech, between the King our Sovereign (that was never ſwathed in the Bands, nor danced in the Lap of the *Roman* Church) and other Princes Roman Catholicks, that were firſt incorporated by Union, and after caſt off for their Contumacy: For this is ſomewhat, tho' I hold it not to be ſufficient. And beſide that, every Grain in meaſure is well gotten at your hand, that held the Ballance ſo unevenly and unſteadily: that Paſſage alſo of St. *Paul*, prohibiting the Church, or at the leaſt confeſſing himſelf prohibited to judge thoſe *qui foris ſunt*, as you repute the King inclined to that ſide, which your own admiſſion and expoſition doth bear. But as it is impoſſible for any Man that is not a perfect *Gileadite*, without liſping to pronounce *Shibboleth*, howſoever otherwiſe they drank Water *curvatis genibus*: ſo the miſchief is, that you flee too ſuddenly from that foundation which your own hands had faſtened; and upon the queſtion aſked, What you would think of any Sentence privative, proceeding from the Pope againſt our King, in caſe either this Man, or any Succeſſor of his ſhould hereafter take any Courſe differing from that Moderation which hath been uſed hitherto, your *Vocales* or Vowels were changed into Mutes, your Demonſtrations into Doubts, and your Eloquence into ſo deep Silence, as the Paſſing-bell might have been tolled for a Man ſo quickly ſtricken ſpeechleſs with one demand, to make your laſt Teſtament, *Ut unuſquiſque Theophraſti diſcipulum te poſſet agnoſcere.*

It now remains, that in diſcharge of Promiſe, and for ſatisfaction to Curioſity, I make it clear by the faireſt Evidence, the moſt pure and uncorrupted Witneſſes, and with the ſhorteſt Cut that my Compaſs in ſo vaſt an Ocean will admit, that none of the Patriarchs before the Law, none of the Prieſts and Prophets under the Law, nor Chriſt or his Apoſtles at the laſt expiring of the old Law, nor any of the godly Biſhops that govern'd the Church of God for the ſpace of one Thouſand Years *in auditu novo* by the new Law, did ever exerciſe, approve, or claim that kind of Juriſdiction or any Branch of it that is extended to deprivation of Right, ſuſpenſion from Rule, or ſequeſtration from Royalty. For this I take to be that Ball of Wildfire, which hath cauſed ſo great loſs of Lives and States by combuſtion in Monarchies.

Before the Law, tho' it pleaſed God upon the breach of his Decree to drive *Adam* out of Paradiſe (the lively Figure of the Church) that *in pœnam culpæ*, he might work for that *ſudore vultus*, which before ſprung up naturally, *beneficio Creatoris*, yet he left him Monarch of the univerſal World; a Courſe far different from the manner of proceeding among many of thoſe *Roman* Paſtors, which claiming the Diſpenſation and Diſtribution of St. *Peter*'s Keys, κατ' ἐξοχὴν, have only by the ſtrength and virtue of that ſuppoſed Warrant, ſought upon Diſpleaſure, and ſometimes *cauſa inaudita*, not only to expel great Princes out of the ſtate of Grace, but very often alſo to ſtrip them out of the Robes of Majeſty.

In the Sequeſtration of ungodly *Cain*, *à Dei facie*, from the face or preſence of God, (which is in effect the ſame Cenſure which the Church uſeth at this day, *tradendo Sathanæ*, becauſe theſe two Lords are in one Regiment incompatible) we read not that immediately upon the Sentence this grievous Sinner was ſet up for a reproachful Mark, whereat either Juſtice might ſhoot, or Error might aim, as the King our Sovereign, who hath been roaved and prick'd at of late: for ſo far was the Providence of God from arming any Creature in this World to the leaſt harm, much leſs the Diſinheriſon of *Cain*, as for ſo much as concerned Life, he ſet upon him his own mark of ſure Defence, with a ſeven-fold Curſe againſt any that ſhould rid him out of the way; and beſide, left him a large Scope wherein to walk upon his own ground almoſt all the world over. To theſe two I will only add a third, which is *Eſau* the loſt Child, whom (notwithſtanding Deprivation of that heavenly Bleſſing, by which all Nations ſhould by the Merit of the bleſſed Seed, and holy Covenant, *in plenitudine temporis*, prefixed by his Providence, be reconciled to himſelf) yet we find that he was inlarged in his temporal Poſſeſſion, ſecured in his Perſon, and increaſed far and near in the wide ſpread of his Poſterity. Nay, that which maketh more to the Blemiſh and Reproof of our raſh *Empiricks*, that can hit upon no other way to cure Diſeaſes than by letting blood, I infer, and that upon a ſure Foundation, that *Jacob*, *Eſau*'s younger Brother, but yet by Mercy the true and lawful Heir to the Promiſe, and the chief Commander after *Eſau*'s Fall, among the Saints of God, did a long time after, not only call him *Dominum*, his Lord, which the Holy Ghoſt approveth, by the Title which is given by *Sarah* to her Huſband, to be a word of Power; but falling proſtrate in an humble manner at his feet, with words expreſſing as great Love as Reverence, did reſpectfully and truly honour him: for *nondum venit hora*, nor many thouſand years after, wherein Perſons excommunicated muſt *ex conſequente* be deprived of Dominion, rather than left to God's Chaſtiſement.

Between the Roots of *Judah* and of *Levi*, by the Law of *Moſes*, the Separations and Diſtances are ſo wide, as neither need to croſs another's Walk, to intermeddle with another's Office, or to eclipſe another's Dignity. Beſide, I obſerve, that among all the Conditions affirmative and negative, poſitive and privative, religious and politick, that are enjoined by the firſt Inſtitution to Kings, this kind of Tenure holden of *Aaron* or his Succeſſors *ad placitum*, is neither expreſſed in the Grant, embroider'd on the Skirt, nor engraven in the Seat of his Office; unleſs ſome will argue that the Kings of *Judah* were as well bound to ſubmit their Scepter to the Prieſts Direction, as to receive the Book of the Law at their hands: tho' we find that it was entailed by ſtrong words to the Tribe of *Judah*, without any Reſervation of Superintendency. Beſide, the Plague which God doth threaten with his own Mouth, to ſend Princes in his Anger, and Hypocrites *propter peccata populi* for the People's Sin, were merely idle, if it were free for us at all times, upon theſe Viſitations and ſharp Corrections, by the Pope's help, either to abate our Penance, or to end our Puniſhment. It is expreſſed and improved in the Scriptures, as a Portion of the divine Prerogative to chaſtiſe Kings; then belike no part of a Prieſt's Juriſdiction, that is conſigned to another Element. *Per Deum regnant Reges*, by God they reign: then not at the Pope's pleaſure. Of God only they hold their Crowns and Dignities; then not bound by divine Laws to yield up their Crowns *in manus Papales*, in fear of Proceſs, as ſome more fearfully than royally have done in other Ages, when the Popes ſummoned them. From his Mouth they receive their Charge; therefore to him only and no other, they are bound to yield a juſt Account of their Stewardſhip. It is ſaid by holy *Job*, that God places Kings in their Thrones *in perpetuum*, then far from theſe weak Tenures by Copy of Court-Roll, at Will, or in Courteſie. But ſuppoſe they wax violent, and apt to quarrel upon the Pride of their own Strength, who ſhall cenſure them with any Prejudice to their Eſtates? not the Paſtor by Commiſſion, but God by Prerogative. It is the Property of God himſelf *Regna transferre, & conſtituere*, if we believe the Prophet *Daniel*; and of no Paſtor upon Earth. And he will take it for as great Preſumption in any mortal Man that carries *ſpiritum in naribus*, and is but Earth and Duſt, to call his Vicegerents to account, as any earthly Prince would eſteem in any ordinary Subject, to oppoſe or ſtrive againſt his Deputies. God giveth no Commandment in his Law, for Obſervation whereof we need to aſk leave of any Deputy ſubordinate; for then were Men more abſolute in his Election, than God in his Ordinance. The reverend Regard which *Aaron* had of *Moſes* in reſpect of the civil Stroke, may tender unto all the Sons of *Adam* (how high or how great ſoever) that live under Kings, a Scale whereby to take the true Latitude of a Paſtor's Liberty, ſo far as concerns this Compariſon. For no Man ſhall aver, that God did ever give a State to any Prince (ſo as the ſame were merely independent upon the Challenge of any ſuperior Command) but he made him likewiſe free from Check in the ſcope of his Sovereignty. If then the Queſtion be put in this ſort, as it ought, (before it work that effect which you deſire) whether the Crown of *England* remain free from dependency upon ſuperior Command or not; if *Simancha*, *Navarre*, *Sylveſter*, or any of the ſcholaſtical Divines will either examine our Records, or reſort to our Parliament, where Matters of like quality ought to be argued and decided, (becauſe according to the Rules of all Divines, Religion alters not the Forms of civil Governments) or ſearch the Reports of the Pope's own Rolls; undoubtedly they would receive the ſame Anſwer which Popes in former times have had, and with the ſame quick diſpatch that our Anteceſſors in this caſe have thought to be requiſite.

By obſerving with careful heed the reſpective manner which was uſed to the Kings of *Iſrael* and *Judah*, by the legal Prieſts, upon their Tranſgreſſion in thoſe Matters and Degrees which are now drawn within the compaſs of the Cenſures of the Church, it will appear that within the five Books of *Moſes*, and all the Stories of the Kings, no one Decree, Reaſon, or Example can be found to make good the formal Proceſs which within ſome few hundreds of Years have been raſhly put in practice againſt Kings and Emperors, upon ſuppoſition of Contumacy. For tho' I grant that many of them did err, and in the ſame degrees, yet not one Flower of their Crowns was blaſted; no not one Hair of their Heads ruffled, nor one Grain of their royal Dignity diminiſhed. I doubt not, but if for many Prieſts that were depoſed during the Practice of the legal Cenſures by anointed Kings, and thoſe of the beſt kind alſo, as *David*, *Solomon*, *Joas*, *Ezechias*, and *Joſias*, there could be drawn but one Example of a King depoſed by a *Levitical* anointed Prieſt, all the Schools and Pulpits of *Italy* would ring of it: but it falls out happily, *ut quod præcepto non jubetur, exemplo careat.*

It were hard to pick out any grievous Sin againſt the firſt Table of the Law, whereof *Saul* was not guilty in his declining days: for he deſpaired of God's Protection, he conſulted with Satan's Inſtruments, he ſlew the Prophets; and yet it is clear, that *ex ſolo indelebili unctionis charactere*, only by the Character of regal Unction uncancellable, he was ſo far privileged and ſecured, as well againſt Lay-practices as Levitical Decrees, that *David* himſelf entitles him *Chriſtum Domini*, God's anointed (which may ſeem ſtrange, even after God had appointed *David* himſelf to be anointed in his place.) And the ſame King and Prophet likewiſe forbears at two ſundry times to take thoſe Advantages againſt him upon fit occaſion, which the Laws of God and Man allow againſt an unlawful Uſurper to a lawful Magiſtrate, without a *non obſtante* from above to moderate.

But one Inſtance above all cloſeth up the Mouth of Contradiction it ſelf, and unlooſeth the hardeſt Knot, that the *Gordians* of our Age can deviſe to tie upon ſo ſmooth and plain a Thread: for God himſelf by his own Injunction, lays a heavy Charge upon his own Elect, without all ſhifts of Equivocation, or Oppoſition, during the time of their Diſtreſs, while they ſat mourning by the Streams of *Babylon*, and hanged their Harps upon the Willows, that they ſhould not only *quærere pacem illius Civitatis*, ſeek the Peace of that State, which was the Seat of their Exile by divine Direction; but (which is much more pregnant to this purpoſe) that they ſhould pray for it, *Et in pace illius civitatis ſuam ſtabilirent pacem*, and in the Peace of that State politick, enfold, ſettle, and eſtabliſh their own Peace and Tranquillity. So hard it is for the Policies or Paſſions of Men either to work or to diſpenſe againſt the Directions of God: and ſo far is the Purpoſe and Providence of God, from leaving the reins of Order looſe in the neck of precipitate Audacity.

Now Mr. *Garnet*, whether your Scope and Drift hath been to pray for the Peace and Proſperity of the King's Eſtate, (which of neceſſity muſt enjoy the privilege of *Babylon*, if you will needs account it *Babylon*) I will not appeal to your own ſeared Conſcience, but to that Hymn, *Gentem auferto perfidam*, foully wreſted and abuſed by your wreckful Rage.

And touching the ſecond Point, whether you have ſought to enwrap the peace of your Profeſſion in the peace of the State, or not, I will be tried by the Powder-works. But to be ſhort, theſe Reaſons and Examples drawn out of the Law of *Moſes* maketh the Matter clear, how far the *Levites* might undertake to deal in cenſuring the Crimes of Kings, their Office conſiſting altogether in Humility and Piety. For tho' I grant, that Aſſaults were made in thoſe days upon the Perſons of ſome Kings, ſometime by expreſs direction from God (which ceaſeth in our days) and ſometimes by the practice and preſumption of Traitors, which are no more to be juſtified, than the Robberies that are committed daily at *Stangate-hole*, or at *Shooters-hill*: yet for our Inſtruction it ought to ſuffice, that no ſuch plain Songs are ſet out in the Books of divine Tablature, and therefore upon falſe Grounds no State ought to ſuffer, either any kind of new deſcant to make new Diviſion in old Integrity, or ſuch a conceited kind of Voluntary, as only ſerveth to pleaſe factious Humours. Sure I am, that tho' the Rod of *Moſes* were once only turned into a Serpent to give Terror, yet the Rod of *Aaron* was preſerved ever, not *in campo Martio*, but *in Teſtimonii tabernaculo*, ſprouting forth green Leaves and ſweet Bloſſoms.

But now to draw nearer to the life of that Diſcipline, which among Chriſtians ought rightly to be reputed Regular, to examine Principles, and enter into the School of Chriſt orderly; we muſt refreſh your Memory, Mr. *Garnet*, in putting you in mind, that our Saviour himſelf (who ought to be the higheſt Object of your Imitation) lived obediently to the Laws of the State in which he was born, tho' perverted by Phariſaical Conſtructions and Gloſſes *in ſenſum reprobum*, and *ex diametro*, repugnant to that ſcope of Reformation which he only aimed at, without practiſing with diſcontented Perſons againſt the *Roman* Tyranny, either to diſplace the Governors, or to change the Government. He commanded his Diſciples to give unto *Cæſar* what is due to *Cæſar*, reſerving unto God what of right belongs to him. Chriſt would not take upon him to divide a temporal Inheritance, tho' preſſed earneſtly by the Party that was in ſuit: much leſs is it poſſible that out of Paſſion he would have diſturb'd Monarchies, or transform'd Monarchies.

To prove further that his Kingdom is not of this World, he reaſons *à conſequenti*, becauſe his Followers did not put themſelves in arms in his Defence, as otherwiſe undoubtedly (in caſe his Empire had been ſquared by the common rules of ſecular Affections and Devotions) they would have done; tho' in our days that Argument was eaſily diſcharged, and that Want powerfully ſupply'd by others of that Suit, that account it a Breach of the Church's liberty to diſſolve or forbid Gariſons. It is true that change of Accidents may breed a change of Temper, as well in Bodies Eccleſiaſtical as Natural; for the Church may be at one time more quiet, ſafe, and proſperous, as we may be better or worſe diſpoſed, more hot or cold, more ſick or whole at one time than another. But as it were a ſtrange kind of Fit that could transform a Man with *Apuleius* into an Aſs; ſo were it as ſtrange a Variation in the compaſs of the Church, to alter Patience into Power, the Spirit into the Fleſh, and Humility into Cruelty. For Philoſophy doth teach, that external Accidents change inward Qualities: but without an abſolute Tranſmutation *ipſius ſpeciei*, of the very kind itſelf, they change no Subſtances. Therefore I wonder how *Gregory* VII. and after him *Boniface* VIII. durſt adventure to claim the Exerciſe of two Swords (like wary Fencers) in one Scabbard, out of a Text pitifully ſet upon the Rack for the Countenance of a two-fold Juriſdiction, the Purſuit whereof hath and will coſt many Lives, *priuſquam ſententia Judicis* (touching that Particular) *in rem judicatam tranſeat.* Yet I am ſure that Chriſt the Law-maker gives them over in the plain Field, when they fall to dealing Blows, and inſtead of ſounding a Point of War, cries out to all his own Followers, *Cur non potiùs patimini?* Since it is certain, that *in patientia poſſidentur animæ*, Souls are poſſeſſed in patience: A Maxim far more ſound and honeſt, than that other of the School-men, *præcipitantur Principes*, by cenſuring and ſkirmiſhing. From the Conſiſtory of our Saviour cometh a direct Prohibition, that his Diſciples ſhould not *dominari ſicut Reges gentium*, domineer in that faſhion or manner that the Kings of the *Gentiles* did: but if thoſe Biſhops (that derive their painted and pretended Right of depoſing Kings, from the Power of Chriſt) might be juſtify'd according to the nature of the Plea which they put in, they ſhould *dominari pluſquam Reges*, more than Kings, both by ſetting themſelves above all Kings in their temporal Eſtates, and preſuming by Cenſure to deprive them of their Dominions; which (ſetting aſide the due Homage by ſuch Kings as owe Suit and Service to Superiors) none could expect, much leſs demand of other: nor did ever ſet their foot ſo hard in the necks of their Peers, as Pope *Alexander* did in the neck of *Frederick*. For, is it likely, that when Chriſt not only commanded *Peter* to put up his Sword, drawn with greater zeal in Paſſion, than judgment upon Deliberation, but added alſo to that Charge a Commination in generality, that whoſoever drew the Sword, ſhould periſh by the Sword; his Purpoſe was to bind the Hands of his Apoſtles? but yet to leave the Paſſions of thoſe that ſhould ſucceed them, at full liberty. Chriſt paid tribute unto *Cæſar*, as appeareth, as well for *Peter* as for himſelf; thereby moulding the Meaſures and Proportions of the Churches Conformity. For ſtrange it were, that *hæres ſuccedens in defuncti locum*, the Heir ſucceeding in the place of the Deceaſed, ſhould by any Law be ſtrengthen'd and enabled to do more than the Teſtator himſelf might have done; or the Party to whom Delegation is tranſmitted, than the Principal that did delegate. One Rule can never fail, That *diſcipulus* is not *ſupra Magiſtrum*, becauſe he can never fail that gave out that Rule: and if a Man obſerve it well between the Function of Chriſt which was *Magiſterium*, and the Scope now ſhot at which is *Imperium*, the difference is infinite. Our Saviour acknowledged to *Pilate*, that the Power which he both had and exerciſed over him, was not terreſtrial, nor temporary, but it was from Above: to which Doctrine nothing can be more repugnant, than the Schoolmen's Dream, that our Princes having at this Day the like Juriſdiction with Piety, to that which *Cæſar* held with Pride, ſhould be ſubject touching their Eſtates and Dignities, to the Cenſure of his Diſciples, who in Perſon (whilſt his Converſation was here on Earth) renounced that Prerogative out of diſparity to the ſcope and end of his Office. For as our Saviour doth prove *à minori* in another place, that his Diſciples ought in reaſon to waſh one another's Feet, becauſe he that was their Maſter had vouchſafed out of humility to waſh theirs; by the ſame conſequence I prove, that whoſoever profeſſeth to be *Imitator Petri*, (as *Peter* was *Imitator Chriſti*) ought to deſiſt from forcible intruſion upon theſe undue Claims of more than Imperial Prerogatives, which were neither challeng'd by any Levitical Predeceſſor, nor poſſeſs'd by the Teſtator, nor conveyed by the Teſtament. For the Grant which was conveyed by God the Father to his Son, *omnis judicii*, of univerſal Judgment both in Heaven and Earth, is abſolute; whereas the Charter which the Church of Chriſt receiveth of her Spouſe, is limited and tied to the validity of the Evidence, and the ſtrength of Witneſſes, with the Preſcription of Antiquity. When Chriſt knew that ſome would even in Paſſion make him a King perforce, and maugre his Affection and Reſolution, *fugit in montem ſolus*; whereas they themſelves, as *Succeſſores Chriſti, & hæredes Apoſtolorum*, deſcend from the Mount of Contemplation into the Valleys of ſecular Agitation, to make a Party for their Advancement *ad regalia Chriſti*, made a difference between his Diſciples (following a Maſter that had not ſo much as the Fox, a Hole wherein to put his Head) and thoſe that dwell in *Regum domibus*; whereas now the difference (if there be any) is on the other ſide. This orderly and modeſt manner of proceeding, recommended by the *Lycurgus* of the Goſpel, which is Chriſt, was continued by the reverend Apoſtles during their time; and likewiſe by the godly Biſhops that ſucceeded them, for the ſpace of a thouſand Years: for further than the Cenſure of eſteeming thoſe as Ethnicks and Publicans that wilfully refuſed to give ear to the Doctrine of the Church, I find not that the Church preſumed, the Popes challenged, nor Princes acknowledged.

St. *Peter* (from whoſe Prerogative many ſeek to derive this Privilege of depoſing Kings upon Conviction, or rather Suppoſition, as it happened for the moſt part, of Contumacy) commands the Faithful to obey even that Prince that was a Butcher of the Flock, and a bloody Tyrant in his Time, (becauſe he was Superexcellent) and all Magiſtrates that were ſubordinate in Charges and Employments under him. He forbiddeth all good Paſtors alſo, which ought to be *forma gregis*, the Pattern of the Flock, *providere coactè*, to provide by compulſion, or *in Cleris dominari*, to domineer among the Clergy, (tho' that be within the compaſs of their own ſquare) much leſs meant he to ſet them over Emperors and Kings, that are fixed in the higheſt Element; nay, which is more, he denies flatly (if we may give any Credit to that Author which bears the Title of Saint *Clement*) that any of his Succeſſors were ordained by God, to be *cognitores negotiorum ſecularium*, Examiners or Judges of Cauſes that are ſecular, which is now become the chiefeſt Scope and Object of your Primacy.

Wherefore, if *Peter* were commanded to put up his Sword, when Chriſt was at his Elbow to heal (as he did) the greateſt Wound that it could make; how much more ought his Succeſſors to keep the Sword within the Scabbard, ſince it is ſoberly and orderly put up, and that they may do more hurt in their Paſſion, than they can help by their Privilege? St. *Paul*, his Fellow Martyr and Apoſtle, would never have ſubjected *omnem animam*, every Soul, whether they were Biſhops or Monks, Regular or Secular (as *Chryſoſtom* notes) to ſuperior Authority, in caſe he had been privy to an exemption of ſome Souls by expreſs Warrant. The Quality of evil Princes ought not in reaſon to extenuate the force of the Inhibition, tending to the Peace and Order both of Church and State: for then St. *Peter* would not have commanded Servants to be ſubject to their Lords, *non ſolùm bonis & modeſtis, ſed etiam dyſcolis*, not only to thoſe that are good and modeſt, but alſo to thoſe that are perverſe: *Non propter metum, ſed propter conſcientiam*, not for Fear but for Conſcience, ſaith God's Spirit. Neither would St. *Jude* have cenſured thoſe Malecontents ſo ſharply that do *ſpernere poteſtatem, blaſphemare majeſtatem*, not in reſpect of their Glory, but of their Lieutenancy. This is not the readieſt and beſt Reſolution, *manendi in vocatione*, of continuing in our Vocation without Impatience or Strife, to wind our Obedience out of that Obligation wherein the Goſpel found us, and God hath elected us. The Servants of God had recourſe in all times to lawful Remedies, upon the Offer of unlawful Wrongs: and tho' there could not be a worſe Prince, or rather a more ugly Monſter upon Earth, than he that held the place of *Cæſar* in the time of *Paul*; yet *Paulus appellavit Cæſarem*, and being taken at his word, was ſent thither to be tried orderly. It was lawful for the Prophet *Nathan* to reprove *David* for his Sin, tho' he did not pluck him out of his

Chair of State. Our Saviour deſcribing *Herod*'s Quality, in crafty Circumvention of God's Saints, did properly and aptly term him, *Vulpem*, a Fox, tho' he did not undertake to hunt him out of his Earth. And tho' to warn, admoniſh, and aſſure the *Tetrarch*, *non licere*, that it was not lawful for him to keep his Brother's Wife, were an Office fit for a *John Baptiſt*, and a worthy Paſtor of a holy Church; yet he neither would nor durſt adventure to releaſe his Subjects of their Faith which they ought him by their Homage. *Polycarpus* the Diſciple of St. *John*, as we find him reported by *Euſebius*, diſpenſed with no Breach of any Bond, tho' in caſes that intend peril to Salvation, as Idolatry, and the like. The Chriſtians of the firſt Age were neither *Albinians* nor *Negrians*, ſayeth *Tertullian*; that is, ſtained with no Faction either to thoſe aſpiring Parties, or Affections of the Time, but devoted to the Service of the Sovereign, *quomodo licuit & ipſis expedierit*, ſo far as it was lawful for the Perſon, and expedient for the Prince himſelf. How far is that? Even ſo far as they honour him, *ut hominem a Deo ſecundum, & ſolo Deo minorem*, as the next Perſon to God, and inferior to him alone, without making him (as ſome did) a Competitor with the Omnipotent.

Honeſt Men will ſtart and ſhrink at thoſe loud Alarms, when they read with how great Obedience and Humility, that bleſſed Father *Athanaſius* (upon whoſe Shoulders our aged Mother the Church of God leaned, in the time of ſharpeſt Perſecution, to take her reſt) cleared himſelf of the falſe Suſpicions and wrongful Aſperſions, that were caſt on him by device of ſpeaking evil of *Conſtantius* the great Arian Emperor: his dutiful Reſpect was grounded upon that Warning of the Holy Ghoſt, not to curſe the King in the ſecret of our Conſcience, nor in the moſt private and inward Corner of our Cabinet to wiſh evil to him. St. *Hilary* would not ſo much as moderate or ſtint himſelf, but leaves it wholly to the diſcretion of a wicked Emperor, *quatenus & quomodo eum loqui jubeat*, how and how far he would bid him ſpeak. St. *Ambroſe* acknowledgeth no Weapons of Defence to be ſo proper to the Prieſt, as Tears and Prayers: for I can pray, ſaith he, I can ſigh and weep, but I cannot reſiſt any other way. And therefore St. *Jerome* to *Heliodorus* ſaith, a King ruleth Men whether they will or no; a Biſhop thoſe that are willing. *Ille terrore ſubjecit, hic ſervituti donatur.*

To that Queſtion moved by *Donatus* out of Faction and Scorn, *Quid Imperatori cum Eccleſia?* What hath the Emperor to deal or intermeddle with the Church? *Optatus* a learned Father, anſwers tunably to the Note and Ditty of *Tertullian* that is mentioned before, that (ſince God only is above the Sovereign) *Donatus* in extolling himſelf above the Emperor (as Antichriſt out of Pride ſhall above all that is called God) *jam hominum exceſſit metas*, hath now tranſcended the bounds of humanity. The Patience and Piety of thirty Popes laying down their Heads upon the Block ſucceſſively, (at the firſt planting of the Church) to ſeal the Bond of Conſcience with the Blood of Innocency, may teach thoſe that come after, as well to follow their Example, as to claim their Primacy. For tho' *Liberius*, a Paſtor of that Rank, was unjuſtly baniſhed and exiled from his Church; yet he never ſought to right himſelf by the bloody Sword, but rather by that golden rule of Obedience, and Patience, which our Saviour left to his Diſciples *ſub ſigillo*, and they to the Church *in depoſito*. *Simancha* with his Fellows may perhaps anſwer to theſe Paſſages, that the Church was ſwathed all this while in the bands of Weakneſs, that the Sickle carried not at that time an edge ſharp enough for thoſe ſtubborn Weeds, and that the faithful had not as yet raiſed themſelves to that height of Credit, that might give life to their Execution. But if the conſtancy of Obedience had been ſquared by the liberty of Men's Election, and this had been the Latitude of Loyalty in thoſe well diſpoſed times, when Biſhops only ſought God's Honour, not their own Prerogatives; ſurely the Church of Chriſt had wanted a great part of thoſe Martyrs and Confeſſors, which are ranked at this day in the Roman Calendar. They that take this ſcope, may conceive and publiſh when it pleaſeth them, that Lay Subjects in like manner are no longer bound to Obedience and Loyalty, than they find themſelves over-weak to make powerful Oppoſition to ungodly Magiſtrates; and ſo confound all Laws of Juſtice in the State, and all degrees of Subjects that in private are bound to live orderly. *Tertullian* doth notably convince this Paradox, as well of Falſhood as Levity, by making a clear Demonſtration of the Strength and Potency of godly Chriſtians in his own time, (which was among the firſt) in caſe they would have put their Forces to the ſtrongeſt Proof, ſince all publick places, as Courts, Conſiſtories, Camps, and Forts, were ſtored and furniſhed with Men of that Profeſſion and Quality.

The Legions that were entertained by faithleſs Princes in Pay, and proſpered in the greateſt Actions they undertook, might have purchaſed a far better Fortune at an eaſier rate, in caſe they could have ſatisfied their own Conſciences, by oppoſing againſt Order. If the godly Chriſtians that lived under *Conſtantius* an Arian, would have ſought their eaſe, by ſtepping over to the ſervice of *Conſtance* and *Gratian* that were religious; they might have cauſed their own Sovereign to ſhrink at their Tranſport, that before made advantage of their Humility. If any Man will take upon him more in theſe days, ſaith *Chryſoſtome*, than was granted heretofore to Subjects that were under Infidels, *Quod majora ſibi concredita eſſe dixerint*, becauſe they ſay that more is committed unto them; they muſt be taught, *non nunc honoris ſui tempus eſſe*, that it is not the time and place of their Preferment, ſince they are as Pilgrims in this World, but they ſhall in another ſhew appear more bright and glorious to all Men, *quando Chriſtus apparuerit, & tunc cum Chriſto comparebunt in gloria*, when Chriſt appears, and they with him then ſhall appear in Glory. Tho' St. *Gregory* confeſſeth himſelf to have been ſo powerful in *Italy*, that he needed not to have left among the *Lombards* either Duke or Count, in caſe he would have oppoſed confidently his Endeavour againſt their Rage; yet finding *Theodolinda* the Queen to have been ſeduced ſlily by ſome Serpent of that ſort from the ſincerity of her Profeſſion, and dangerouſly withdrawn from God to *Belial*, from Piety to Hereſy; took no harder courſe than by forewarning her with a fatherly Affection, and in humble terms to take heed in time, that ſhe tainted not the ſweet Bread of many moral Virtues (worthy to be ſerved in the Supper of the Lamb) with the Leaven of the Falſhood and Impiety of thoſe miſbelieving Teachers that abuſed her Credulity.

It had not been hard for *Chryſoſtom* (in reſpect of the tender Love which was borne him by his Flock, not *ad aras* only, but *ultra aras*, if his Patience had been pliant to their Deſires) to have wearied that ungodly Princeſs *Eudoxia*, that would never give him reſt nor breath in the crooked ways of her own Wickedneſs. But if the Doctrine of ſome Schoolmen in this Age be found to differ ſo much from the former Demonſtrations of Obedience and Truth, why ſhould I not complain, That *nunc deſinit eſſe remedio locus, ubi quæ fuerant olim vitia, nunc mores ſint?* It is true that long after this, the Officers of the *French* King, *Philip* the Fair, complained, and upon juſt Cauſe, *augenda ſacerdotum jura, jura Regia minui*, that the King's Rights or Liberties were appaired by raiſing the Rights and Privileges of the Prieſts. It may be likewiſe true that is written by a Countryman of ours, that *Gregory* the ſeventh confeſſed on his Death-bed, (but with what Remorſe or touch of Conſcience God knows) *Ex minutione laicorum ſe ſacerdotum promoviſſe gloriam*, which in divers words is of one effect: but yet all Biſhops were not of that mind, but keeping faſt in Memory that Obſervation of the Prophet *David*, That to drink of Waters drawn from the Springs of *Bethel*, with peril and hazard of Men's Lives, was *ſanguinem bibere*, to drink Blood, were as cautious in quenching ſparks of Diſſenſion and Strife by Charity, as others were to kindle them out of Ambition and Vain-glory. For in caſes of this nature, *Non eſt opus ſævientis animæ, ſed medentis ſtudio*: for Charity is patient and courteous, *Nec inflatur nec eſt ambitioſa.* *Peter* hath two Keys, one of Knowledge, another of Power: theſe are prepared and fitted alſo to two Locks, that is, Induration and Ignorance: and hardly ſhall we find, that without both, and a ſure Uſe of both, any ſtrong Locks of Oppoſition or Obſtruction, have been opened. Wherefore no Man need to doubt, but that among ſo many godly, grave, and learned Biſhops, (as will ever rank themſelves, *tanquam in acie ordinata*, to diſcourage and affright the forlorn Hopes of *Simancha*'s School) theſe Poſitions will ſink: and ſome that have been loth to yield out of Humour, yet will be forced to faint out of Cowardice.

The godly Learned never once vouchſafed to lend their Ears to the deceitful Tunes of bewitching Charms; rather grounding their Opinions upon the fourth Council of *Toledo*, by which all ſorts of Perſons are condemned without Diſtinction or Exception, *Qui fidem regibus ſuis Sacramento promiſſum obſervare contemnerent*, that contemned or ſcorned to keep the Faith which they promiſed by Oath to their Sovereign: taking by this firſt part, all perfidious Traitors in general.

But that which follows, pincheth *Navarre* and his Diſciples at the very Heart: *Ut ore ſimularent juramenti profeſſionem, cum mente retinerent perfidiæ impietatem*, and with their Mouth diſſembled a Profeſſion by Oath, when in their Minds (or mentally, to uſe the very word of our School-men at this day) they retained ſtill the wicked purpoſe of Treaſon. Indeed *Pythagoras* imprinted nothing in the minds of his Scholars more deeply, than that profane Verſe,

Jura, perjura, ſecretum prodere noli.

The Epicure on the other ſide was ſatisfied *modo mentem injuratam gereret, etiamſi lingua juraret.* And you, *M. Garnet*, (to make up ſuch a Triangle as can never be reduced to a Cube, that is, a perfect Square) divulge and publiſh to your Auditory (which thoſe blind Philoſophers durſt not profeſs beyond the compaſs of their Schools) that it is lawful to draw Words to the Senſe of Thoughts, to caſt a miſt of Error before an Eye of ſingle Truſt, and to deceive your Brother for your own Security. I am very ſure the learned Fathers neither knew the Way, nor had the Will to eſcape by ſuch a kind of *deceptio viſus*, as directly tends *ad deſtructionem animæ*. For when *Athanaſius* was overtaken by a Purſuivant, and aſked *Quantùm inde abeſſet Athanaſius?* how far *Athanaſius* was from thence? tho' it ſtood upon his Life in a time (as you make of this) of Perſecution, and he a Perſon far more choice and dainty for the defence of God's own Quarrel, (as appear'd by his quick and ſharp Encounters with the profeſſed Enemies of Truth in that holy *Nicene* Council) than you are in this Kingdom for the Juſtification of thoſe bad Attempts and impious Actions, which you take in hand, yet he anſwer'd as freely without Fraud as Fear, *non longè abeſſe Athanaſium*: which was very true, becauſe he was the Man for whom the Party ſought, and cared little, as appears, how ſoon they met him. A Man of weak Conceit may apprehend how far our Saviour himſelf was from theſe chymical Conſtructions, and Evaſions ſophiſtical, by that univerſal Propoſition, *Quicunque me negaverit*, whoſoever denied him before Men, ſhould be denied by him before his Father, *&c.* For to put out cautious Equivocators from all hope of Succour in this Streight by their diſtinction of verbal and mental Negatives, I urge the precedent Warning in that very Text before, *Non timere eos qui occidunt corpus, & animam non poſſunt occidere*; not to fear thoſe which have power only to kill the Body, and not the Soul. For if our Saviour had left his Diſciples ſuch a ſtrength of Surety for retreat upon Purſuit, as verbal Flouriſhes, (whatſoever were conceived or reſolved in the Mind) he needed not ſo carefully to arm them with encouragement and hope againſt Aſſaults of Cruelty.

The Paſſages which both you and other of your Complices wreſt from the Mouth of Chriſt himſelf for a fair countenance of Cozenage in this Labyrinth, would rather *commovere nauſeam quàm bilem*: tho' I muſt tell you, that ſingular Examples drawn from our Saviour, that was both God and Man, (and not only knew by his eternal Wiſdom, but was alſo by his matchleſs Power to rectify whatſoever ſeemed to our dull Conceits obſcure) are neither Rules of our Encouragement, nor Warrants for our Imitation. I make no doubt for my part, but theſe Eggs of Equivocation and mental Reſervation (never engendered nor covered by fairer Birds in better Times) were hatch'd (as the Poets feign) of Oſprays with a Thunderclap. For among the Martyrs and Paſtors primitive, their Praiſes were reſounded with the loudeſt and ſweeteſt Cries, that were moſt reſolute (without Evaſions or Tricks) to lay down a tranſitory Life in a Moment, to the Purchaſe of a better in Eternity; ſo far they were from forcing Wit, or ſtraining Craft to ſecure Cowardice. But to paſs over this juſt Motive of Digreſſion, I will conclude the chief Point, which is the Care beſt Men have ever had, to prefer Obedience before Security, Loyalty before Life, with a diſcreet Anſwer of a Pope to a King of ours, which may ſerve you for a better Precedent in the Courſe of Patience, than that either of *Gregory* VII. *Boniface* VIII. or *Alexander* VI. in their Practices of Extremity, if it ſo ſtand with your Pleaſure. *Richard* the holy Warrior, having committed a *Norman* Biſhop Priſoner, whom he took in field againſt him with his Coat-armour upon his back, received within a while after an urgent requeſt (if not a powerful Inſtance) from the Pope, at the earneſt deſire of other Biſhops, for the Priſoner's enlargement; whom it pleaſed his Fatherhood in the Letter, by a word of Indulgency (but yet without that ground of equity which moved the Apoſtle *obſecrare pro filio ſuo, quem genuit in vinculis*, to preſs *Philemon* for his ſon *Oneſimus*, whom he begat to Chriſt and his Church in dureſs) to call his Son. The King wittily alluding by his anſwer to that place in *Geneſis*, where *Joſeph*'s parti-coloured and pied Coat was offered to the aged Father ſtained and ſprinkled with Blood, ſent not the Priſoner who remained faſt, but the Coat-armour (which was looſe) to the Pope, inquiring *à beatiſſimo Patre* (by this mild Queſtion) *an hæc eſſet filii ſui tunica?* whether this were the Coat of his Son? The Pope ſurprized with a Demonſtration, and obſerving heedfully the Marks which could not lye, returned a grave anſwer to the King, *Nec hanc eſſe filii ſui tunicam*, That neither this was the Attire of his Son, nor he purpoſed ſo to acknowledge the Party that was taken in that Coat, and therefore left him wholly to civil Juſtice, and the King's gracious Pleaſure. For it is true, that Ambition, which is moſt bold upon advantage, is moſt cowardly upon ſurprize: and howſoever Humours may ſometimes urge Minds that are not evenly ballanced with Diſcretion and Conſcience, to undertake Attempts ever above Duty, and oftentimes above their Strength; yet ſecond Wits obſerve the Slips and Errors of the firſt, and thereupon concluding at more leiſure out of judgment, that *vis expers conſilii mole ruit ſua*, they begin likewiſe to fear that vaſt Deſires as well as Buildings, where Foundations are not firm, ſink by their own magnitude. It is not poſſible that Humours ſhould be durable, (conſidering that *materia prima*, the firſt Matter, out of which they ſpring, like *Proteus*, is capable of as many Shifts and Forms as the World hath Variations and Accidents) wearing and conſuming like a Garment with inceſſant uſe: but the moral Virtues which have their Root in the Deity itſelf, and derive their Influence from Grace, muſt of neceſſity be co-eternal with their Author, who doth not only plant, but water, and produce out of his own Goodneſs, correſpondent Fruits that ſuit their original.

By theſe Demonſtrations we learn what Laws were current, what Bounders kept, and what courſe and manner of proceeding was obſerved towards Princes by modeſt Biſhops, which either lived very near, or imitated thoſe that lived next to the Precedents of apoſtolick Humility. Now therefore it ſhall not be impertinent (the Subject moving in due place and with due circumſtance) to deſcry (not by idle Imaginations, but by evident Impreſſions) how covertly, and as it were by ſtealth, Incroachments crept upon the Carpet, before they durſt by any forcible attempt invade the Seat of Power: *et cùm dormirent homines*, *venit homo inimicus*; and when Men were in ſleep, the Devil came, *& ſuperſeminavit zizania*. It is confeſſed indifferently by all Perſons of all ſorts, that are either judicious or ſenſitive, that thoſe *Maxims* which pierce to the Center, and touch the very life of Conſcience, ought rather to be fixed upon the Poles of Conſtancy, than carried upon the Wheels of Change; and that not *Iſrael* alone, but all moral and indifferent Affections ought to anſwer *Amen* to the Curſe which God pronounced with his own Mouth againſt all Men of whatſoever quality, that dare preſume to remove or put aſide Land-marks, or Bounders of Juriſdiction, which preſerve Peace: and yet by tract of time and long experience, we ſee that *ab illo motu trepidationis*, ever ſince that trepidation or quivering (as it is termed by *Aſtrologers*) which prevailed in the minds of fearful Princes, under powerful ſtrains, there have been many variations of Degrees and Diſtances in the concluſions of Church-government, eſpecially within theſe laſt ſix hundred Years; which moves wiſe Men to reſort to the judgment of a grave Philoſopher, (diſcourſing of diverſity of Times and Perſons that did ſway thoſe Times, either by Predominance or Art) *quo minùs ob ortu aberant*, the leſs diſtant they were from the firſt Original, the more perfectly they diſcerned Truth: and of the ſame mind is *Tertullian*, *perfectiora prima*, the nearer the Spring-head, the purer Streams: which is the Scope of our Induſtry.

To rip up matters therefore from the very Root, without obſtruction or paſſion, we may obſerve, that ſo long as the Plough of Perſecution did not only make deep furrows on the backs of godly Biſhops by Torture, (which the Prophet by the Text in the Pſalm, *Super dorſum meum fabricaverunt peccatores*, ſeemeth to touch) but by Vexation and Anguiſh alſo in their very Souls, which thoſe humble Spirits feel that are moſt ſenſitive of the leaſt ſcratch given to Loyalty; it rent up by the roots all thoſe Weeds of Ambition and Emulation which in calm ſeaſons are apt to ſpring out of the rank grounds of original Infirmity: For till the bleſſed Reign of *Conſtantine*, wherein the rage of Perſecution began to ceaſe, I find almoſt univerſally no other kind of ſtrife among the godly Fathers, than whoſe counſel or endeavour, by a religious and modeſt kind of emulation, might be of beſt uſe to the propagation of the Church's limits, and of God's Glory. The Church itſelf (which is the Body myſtical of Chriſt) might by Analogy be properly reſembled to the Stomach of a Body natural, which though it receive much, yet makes equal diſtribution, by dividing and diſperſing that which it receives, to the uſe and ſuſtenance of all the other parts, which would otherwiſe decay, and by degrees waſte and periſh.

If all this while a Tribune had ſtood up to complain againſt the Church of *Rome*, as *Menenius Agrippa* did againſt the Senate, comparing it to the Belly, (which devoured all, and did no good) the pooreſt and the weakeſt Member would have utterly diſclaimed and diſavowed the leaſt ſenſe of ſuch a wrong: But if the Belly afterwards by caring only how to feed itſelf, did pine the other Parts, (as the Populars did then ſuggeſt) and by transforming the orderly and well compacted Body of the State politick into a Monſter, by ſo great diſproportion of nouriſhment, did violate the Laws of Nature, and diſſolve the Bonds of Union, we muſt confeſs, that both *Menenius* with them, and (if the caſe be like) all faithful Patriots and Members among us, have reaſon to require remedy.

It is certain, that the end of theſe firſt Biſhops was then to feed the Flock, not to fill the Pail; to ſpread the Faith, not to extend the Line; to draw Kings to perfection, not to depoſe them from their States; to ſettle Peace, not to raiſe Diſſenſion; to prepare the Subjects hearts to Obedience, not to inflame it with Prejudice; to be at peace with all the World, holding peace of Conſcience to be all in all, ſo they might gain to Chriſt, and in no caſe to ſhew themſelves *percurſores*, or *violentes*, which the Canons of the Church (beſide the Prohibition of *Paul* himſelf) will not ſuffer.

Some of the latter (but beſt learned) Writers, finding by the curious Examination of ſundry Paſſages, and infinite Interpreters, how hard, or rather how unpoſſible it is to prove their Title to this high Prerogative of depoſing Kings, by direct Evidence out of the Word of God, and ſuch Witneſſes of Record as are above exception; reſort to prove by Charter, Grant, and Privilege from Princes Pieties: As for example, from *Conſtantine* the firſt and beſt, *Phocas* the firſt and worſt, *Ina* King of the Weſt *Saxons* that was religious, and King *John* that was impious, as well *ſans foye*, as his Title was *ſans terre*. In which Crew, ſome intending ſerious Devotion, others pretending feigned Satisfaction to other Ends; and all, as the Times then taught, that no Seeds ſpring up more ſpeedily than thoſe which are ſown *in area Dominica*, for redemption of Souls, left them better earneſt of their Hopes by Gift, than our Saviour did in his Teſtament by Legacy. Againſt the pretended Charter or Donation, which ſome of the Canoniſts more zealous than judicious ſeek to derive from *Conſtantine* to *Sylveſter*, tho' I need ſay little, becauſe the beſt grounded Judgments and moſt modeſt Spirits of that ſort, have torn away the painted Viſard from that warped Face; yet becauſe in matters of this moment too much cannot be ſaid, I mean, more ſuccinctly than the nature of that Subject (being once undertaken) doth permit, to preſs ſome ſhort Arguments. Firſt, how unlike it is that *Sylveſter* (the next Biſhop but one to that worthy and renowned Rank of Martyrs that loſt their Lives for the Profeſſion of *Chriſt*) ſhould upon the firſt Pauſe of Reſpiration to take breath, (after ſo many manful Combats againſt God's Enemies) abuſe the favour of ſo gracious a time, by hunting after the vain Tenures of Principality. The Biſhops that have kept themſelves above Water all this while, by the ſtrength and favour of that powerful Hand, which ſupported *Peter* on the Seas when he was at the point to ſink, by learning now to ſwim ſuddenly with the Bladders of the World's Ambition, might have caſt themſelves into greater danger of drowning in the Rivers of *Damaſcus*, than in the *Red-Sea* that the Saints paſſed over.

Platina reports out of the Pope's own Records, that *Sylveſter* refuſed at the hand of *Conſtantine diadema gemmis diſtinctum*, a Crown or Diadem ſet with precious Stones, as an Ornament not convenient nor agreeable to a Paſtor in his place. Tho' godly *Neſtor* calls it only *ſignum ſuperbiæ*, a ſign or badge of Pride; *Sylveſter* ſhould have been found guilty not of a Sign, but of Pride itſelf, and that in the higheſt kind, by the grand Jury of all his Predeceſſors Saints in Heaven, in caſe he had accepted what theſe Men certify to have been offered. Among the Fathers and Hiſtories of the Church (how copious and large ſoever in expreſſing the great Favours which the Spouſe of Chriſt received by the Piety and Bounty of this Emperor in other kinds) appears no ſcrip of Evidence to make good this Grant; which were an Argument of great ingratitude, if they had either heard of any Diſpoſition in the Prince to give it, or in the Pope to accept it. Neither is it like that ſo religious a Prince would have left that to his Son, that he gave to the Church, nor from thence his godly Succeſſors, as *Theodoſius*, would have detained it. Beſides, all Writers prove how powerful the Lieutenants of the *Greekiſh* Empire, whom they called *Exarchs*, were long after the date of this Pretence, which could not ſtand with the ſtrength wherein hereby they ſtrive to plant the Papacy. I find by direct acknowledgement, *veniſſe proventus*, *&c.* that Revenues came from certain places for the maintainance of the Church of St. *Paul*, erected at the humble ſuit of *Sylveſter* by *Conſtantine*; and from *Sardinia*, by the Report of ſome, to that Church which his holy Mother built. Again, that the Tributes were conferred on the Churches, which ſome Cities payed into the Exchequer in former times: and theſe I take to be the Shadows and Colours of this idle Dream. For of the Charter it ſelf, (which exceedeth ten times in value all that is recorded touching Churches in particular, and in reſpect of a greater Eminency and Prerogative, ſhould have carried a far greater Reputation, and made a fairer ſhew) there is not ſo much as a mark whereby they may take their Aim that are moſt ambitious. How little credit, ſtrength or honour any Church can gain by deriving Charters from *Phocas*, a laſcivious faithleſs Tyrant, wickedly embrued with the ſlaughter of *Mauritius* his Maſter, Wife, and Heirs, and uſurping that Eſtate unjuſtly, (by the Countenance whereof he was bold to give more than either of Right he ought or could) I leave to their Opinions that love to meaſure Claims and Titles rather by the line of Equity, than by the laſt of Ambition. But yet to make more of a Tyrant by vouchſafing a ſhort anſwer to his Shadow, than in Conſcience is requiſite; I firſt infer that ſuch Charters granted chiefly upon ground of Cunning, and with a purpoſe to maintain the Plot by Party, which was undertaken and begun by Fraud, might either have been afterward revoked by himſelf, or annulled and repealed by his Succeſſors: And further ſay, by judgment of the beſt Civilians, that no Prince's Act is warrantable, without the publick Aſſent, according to that Maxim, *Quod omnes tangit, ab omnibus approbari debet*, that tendeth to the State's prejudice.

Laſt of all, I prove that our Country in particular could take no Copper by this Tranſpoſition, admitting it to have been ſound and abſolute, becauſe we were excluded from the Care, Protection and Providence of the *Roman* Empire, very near two hundred Years before that *Phocas* with his bloody Hand began to ſteer that Monarchy. For after that, *Ætius*, Lieutenant for the *Roman* Emperor in the parts of *France*, did only ſend Inſtructions and Orders to the waſted *Britons* how to range their Battles, and diſpoſe their Fights, with a careful, and yet a final Anſwer, not to look for any more Supplies or Aids for that Eſtate, which then fell into Faction, and was no longer able to ſupport itſelf; the *Britons* holding themſelves abandoned, (in which caſe all Laws free them both of Duty, and Dependency) after many bloody Battles under their own Kings againſt the *Scots* and *Picts*, fell into the *Saxons* hands, who like a *Pharaoh* that never knew *Joſeph* or his Father's Houſe, erected a brave Monarchy (tho' ſometimes quartered and divided into many Parts among themſelves) and maintained it in abſolute Authority, without acknowledgment of any foreign or ſuperior Command, till by a ſecond or third Relapſe, it became a Prey to the *Norman* Conqueſt. Wherefore *Phocas* having neither Poſſeſſion nor Right in this State (left by Negligence, or abandoned by Neceſſity ſo many Years before,) could convey no more to the Church, than he either had, or ought to have, which was *accidens ſine ſubjecto, Individuum vagum*, and a *nihil indeclinabile*. The Contribution of *Peter-Pence* to *Rome* by *Ina*, being called in the *Saxon* Hiſtories the King's *Almeſon*, in the Laws of *Canutus*, *Larga Regis benignitas*, and in that Abſtract which is left of the Confeſſor's and Conqueror's Decrees, *Regis eleemoſyna*, proceeded (as the words import) not of Duty but of Charity; and in reſpect of any temporal Prerogative (which is the Key of theſe aſpiring Claims) doth rather prove the Pope then ſitting to have been King *Ina*'s Beadſman, than King *Ina* then reigning, to have been the Pope's Homager.

I could alledge alſo an allowance of a ſpecial Manſion for *Engliſh* Pilgrims that were drawn to *Rome* about Affairs, bearing that Title to this day, in reſpect of the great Piety and Bounty of the *Saxon* Kings; which falling within the compaſs of that natural Contract *Do ut des*, copiouſly handled by the Civil Laws, and compared with the Contribution, may rather prove an Exchange than an Impoſition.

To the colour of King *John*'s Donation, who was as likely to have parted with his Soul as with his Crown, and upon the ſame Conditions, if Neceſſity had preſſed him; I could give Satisfaction by that ſound note of a Monk of *Saint Albans*, according tunably with that former concerning *Phocas* out of the Civil Laws, that, *Regis non eſt dare regnum, quod eſt reſpublica, ſine aſſenſu Baronum qui tenentur regnum defendere:* and therefore he cannot give away the Ports and Cities, which are Branches and Members of the Main. But I will take it up a ſtreighter Link, and avow by *Matthew Paris*, that ſo far was the Parliament, which he termeth *Regni univerſitatem*, from aſſenting *deteſtandæ obligationi* to this deteſtable and hateful Band (as it is fitly called by the Monk of *Weſtminſter*) that the Metropolitate himſelf, *pro univerſitate contradixit*, contradicted and withſtood it in the behalf of the whole Parliament.

The Judgment of *Philip* the *French* King upon the Publication of this Charter is much commended by a Writer of that Age, for the defence of this Paradox, which he thought would prove *pernicioſum Regibus & Regnis exemplum*, a dangerous Example, and fearful Precedent both to Kings and Kingdoms. He would have Men reſort to *Peter*'s Succeſſors about matters that concern the Soul, and not *de regnis, guerris, vel militia*, which do not belong to him. Laſt of all, the Saying which was luckily inſerted in this Charter or Donation, namely, *Salvis nobis & hæredibus noſtris juſtitiis, libertatibus & regalibus noſtris*, makes it abſolutely void and of no effect: the main Prerogative being ſafely preſerved, by God's Providence, which the King would otherwiſe have let ſlip, by a circumvented and over-awed Facility. It is reported by the Monk of *Weſtminſter*, a Witneſs (according to the State of thoſe Times) of beſt Regard, that the Pope reſiding and abiding at *Lions*, this deteſtable Grant was burnt. The Author of *Eulogium* addeth further, that it was releaſed *cum omni fidelitate & homagio*, by the Pope's Direction to the *Engliſh* Parliament. And Sir *Thomas More*, that loſt his Life in defence of the Pope's Primacy, deſerves beſt of any to be credited in my Conceit, avowing, Firſt a Weakneſs in the King ſeeking to ſubject his Crown to ſuperior Commands; and next, in the Grant a Nullity. Beſides, not only Sir *Thomas More* affirms, that the Pope's Impoſition, with the King's Conceſſion, was never paid; but it is further fortified by Addition out of the Rolls of Parliament, in the fiftieth Year of *Edward* the Third, that when the King was threatned with a Citation from *Rome* for detaining Dues upon this Grant, with large Arrearage, the whole Body Spiritual and Temporal of the Kingdom there aſſembled, after grave Deliberation and long Adviſement, *reſiſterent & contradicerent, avec toute leur puiſſance*; and upon theſe Grounds, that the Charter was againſt the King's Oath at his Coronation, and without the Voice of his Parliament.

Since therefore *Phocas, Ina, John*, nor *Conſtantine*, add any further Weight to the Pretence of a depoſing Intereſt, than was in charge before; Diſcretion and Obſervation will judge whether the State of the *Roman* Biſhops were not had in greater Reverence while they ſought to win by Piety, than to ſtrain in Paſſion, to bow than to break, and to temper than to exaſperate. Religion and Humility then were the Corner-ſtones of that ſtately Front which the World ſo much at the firſt admired in the Church of *Rome*, tho' afterward by the change of Biſhops in that See, and of Humours in thoſe Biſhops, ſo great alteration was found, as *Minerva* coming afterward to *Athens*, could hardly take notice of her own Ship, nor *Conſtantine* at *Rome* of his own Nurſe; nor (as St. *Hierome* notes of painted Women, that caſt up their Eyes to Heaven) if we conſider how many falſe Colours have been ſet upon the Pillars of Church Government, hardly Chriſt of his own Creature in the time of Pope *Alexander* the VIth, if he had been put in mind to call on him. In the beginning it agreed with *Daniel*'s Image in the Head of Gold for godly Government, in the Breaſt of Silver for unſpotted Conſcience, and in the Legs of Braſs for inceſſant Induſtry. But afterward in ſucceeding Ages, the Heads of many Popes grew humourous, their Breaſt avaricious, and their Legs idle.

That holy *Nicene* Council (whereof I never ſpeak without Reverence and due Regard) in that great Diviſion which was made of the Patriarchal Juriſdictions according to the State of the Church in thoſe days, for eſtabliſhment of Diſcipline and preſervation of Unity, ſpeaks not one word of any Temporal Command, much leſs of any Right in ſuſpending or depoſing Kings, or abſolving Subjects from their Oaths of Obedience and Loyalty, to be left in the Nature of an Hierlome to the *Roman* Biſhops by primitive Acknowledgment. But as *Salluſt*, very gravely and like a faithful Patriot, complains touching the State Politick of *Rome* in his own time, that *poſtquam divitiæ honori eſſe cœpere, & eas gloria, imperium, potentia ſequerentur*; Faction and Pride began to creep up to the Seats of Senators, and the publick Juſtice of the State to ſhake: So likewiſe in the Church we find, that upon like Corruption like Diſorders grew, and many Weakneſſes began daily more and more to diſcloſe themſelves in thoſe bright Sun-ſhine days which the Saints enjoyed by the Bounty of a better Prince (as Cockle ſtarts up when Corn grows ripe) which before was either ſhadowed with Diſcouragement, or ſuppreſſed by Diſcipline. I ſpeak not this, becauſe ſome ſuch kinds of Heats and quick Diſtempers have not ſometimes happened, and may not by occaſions fall out again between God's own Elect, as *Peter* and *Paul*, *Paul* and *Barnabas*, and the godly Biſhops in this very Council, which I preſs (tho' with that Meaſure which becomes the Miniſters of God and his Apoſtles Succeſſors) becauſe it pleaſeth him ſometimes out of our Error to raiſe his own Honour, and to make Virtue perfect and compleat by Infirmity: but to make it plain, that Plenty is the Daughter of Proſperity, Ambition of Plenty, and Corruption of Ambition. For after that Biſhops were admitted to appeal from civil Courts by the Emperor himſelf, and their Sentences by Imperial Authority were made equal to his own; they began to raiſe their Creſt, and within a while, as it is teſtified by one of the moſt antient approved Writers of the Church, *Epiſcopatus Romanus, non aliter quam Alexandrinus quaſi extra ſacerdotii fines egreſſus, ad ſecularem principatum jam antè delapſus eſt:* The See of *Rome*, in the ſame manner as that of *Alexandria*, as it were exceeding the Limits and Bounds of Prieſthood, had ſlid into ſecular Principality; tho' the Biſhops of neither of thoſe Sees, as we may aſſure our ſelves, were ignorant of *Paul*'s Prohibition to all degrees of Paſtors, that they ſhould not intermeddle with ſecular Affairs, ſo far as concerns an over-dropping of the regal Plants; becauſe a Biſhop ſhould no more live out of the Element of the Church; nor a Monk out of a Deſart, than a Fiſh out of Water. For Chriſt fled into the Mountains when the People would have made him King: and Biſhops ought with *Joſeph* rather to leave their Cloaks behind them, than to conſent to the Charms and vain Enticements of the World, which like the wanton Wife of *Potiphar* ſtretcheth forth her Arms, and (with the *Syrenes*) ſtraineth her Voice to draw them within the compaſs of Tentation, and then taketh hold to drown them in Senſuality.

Now whereas it is ſaid by *Socrates*, *Jam antè delapſus eſt*, that the See of *Rome* did ſlip before that time (whereof he ſpeaks) into ſecular Principality, I am induced by the Report of *Ammianus Marcellinus*, a grave Writer, tho' no Chriſtian, to take my Level ſomewhat higher for the finding of my Mark: for he living in that time about the Court (and obſerving as it were from the main top of the temporal Eſtate, what courſe was kept among all ſorts and qualities of Perſons in divers Elements) makes mention of a bloody Slaughter in a Church of *Rome*, where the Chriſtians were wont to meet for the Celebration of their Myſteries, about the violent Competition and Contention between *Damaſus* and *Urſicinus* for the Papacy; and taketh notice of one hundred and thirty-ſeven Carcaſes drawn out of that Church where they met about Election: and further writeth, that *Vivianus* then Lieutenant to the Emperor, was glad to make Retreat into the Suburbs, till the Rage were tempered, or the Strife ended. After this, as a Man partial to neither Part, and therefore in all likelihood the more indifferent and juſt in deeming rightly of the true ſtate of the Cauſe, he gathers the chiefeſt motive of Contention and Emulation about the means of compaſſing this Height, to proceed from the great Eaſe, Wealth and Honour that prevailed and were ſurely ſettled and eſtabliſhed in that Dignity. His Reaſons are, for that *Matronarum oblationibus ditabantur*, they were enriched with the offerings of Matrons or great Ladies: they rode in Coaches publickly; they were choicely ſuited in their Apparel; their Diet dainty, and ſometimes above the rate and uſe of Princes in the times of their Banqueting. That *Damaſus* a Competitor was one of theſe, *Ammianus* doth not affirm; much leſs do I believe, finding with what Reſpect and Reverence St. *Hierom* that had been himſelf a Prieſt of *Rome* doth ſpeak of him: yet the manner of his climbing and aſpiring to the Seat was ſcandalous, not only unto ſuch as were religiouſly devout, but even to *Ammianus Marcellinus* that was but morally preciſe; as doth appear by that grave Judgment which he gives of the bleſſed State, which as he thinks the Biſhops of *Rome* might enjoy, in caſe they lived in that ſober manner, with that bare Diet, mean Apparel, and humble Looks caſt to the ground, which other Biſhops in the Country did, neither taſting nor eſteeming thoſe choice Pleaſures and Delights which the delicacy and great abundance of that Place afforded them.

This paſſion of a Writer whom we account prophane, in reſpect he was unregenerate to Chriſt, nor nurſed by the breaſt of his Spouſe the Church, puts me in mind of a zealous Paſſion in *Hector Boetius*, a great *Roman* Catholick, upon this very Subject in the *Scotiſh* Hiſtory, *Hujuſmodi antiſtites quàm ſunt illorum diſſimiles, quia diverſa ingrediuntur via cùm locum illorum occupent, &c.* He wonders at the Difference between thoſe Biſhops, and others at this day, which ſucceeding in their Places, take another Courſe: they gliſtered not in gold, they were not reſiant in Princes Courts, they were not attended by Guards, nor ſkilful in the Art of diſſembling, more gainful by many degrees than that of Poetry, which the Univerſities uſe to crown with Laurel. This moved *Boniface* (I mean the Martyr, not the Challenger) to prefer the Devotion of the golden Biſhops, that in the Church's Poverty adminiſtred with greater fervency in wooden Chalices, before the vanity of many blockiſh Biſhops that in a richer State, with more Solemnity and leſs Zeal, adminiſter in Chalices of Gold; becauſe, as *Hierom* notes, external Riches add not to the worth of him, *qui corpus Domini in caniſtro vimineo, ſanguinem in vitro portat*; that carries the Body of our Lord in a wicker Baſket, and his Blood in a Glaſs. I would not be conceived by this Speech, to favour their ridiculous Conceits, that labour to draw the ſubſtance or the value of thoſe Veſſels in which Sacraments are adminiſtrated, to the firſt Simplicity: for, the reaſon of *David*'s judging it indecent for him to lodge *in domo cedrina cùm arca Dei eſſet ſub pellibus*, draws me to a greater eſtimation of Veſſels appertaining to ſo high a Myſtery. For ſure I am, that the Value of the Content, doth infinitely ſurmount the Continent; and *in adiaphoris*, that is, things indifferent, we are left to the rule of Decency.

My only purpoſe is but to obſerve and tax the declination of Piety, together almoſt at one inſtant with multiplication of Metals and Minerals, the labour which is made for Charges and Employments for Commodity alone without Conſcience; and to limit thoſe exceſſive Grants *in manu viva*, which our Anteceſſors did *in manu mortua*, and the ranging of internal Piety to external Pomp, tho' of both it were better, that we wanted means that are ſuperfluous, than the moderation that is neceſſary. For *Chryſoſtom* notes two great Abſurdities in cramming Churches till Satiety conſtrain them to regorge; the one, that Laymen are deprived of occaſion to ſhew Charity; the other, that the Paſtors themſelves often neglect their Duties, to become Collectors. This is no ground for gleaning from the Church, which at this day doth rather need *Largitore hilari, quàm interprete maledico:* but to prove that Arguments againſt Exceſs and Height, are the ſureſt Tenures, and the ſtrongeſt Pillars of Stability; for *in ſe magna ruunt*, *ſummiſque negatum eſt ſtare diu.* In defence of *Ammianus Marcellinus* from exception either of partiality or ignorance in that which he ſpeaketh of the Matrons, I vouch a manifeſt Decree ſet forth, (not by the Leeches and Blood-ſuckers of the Church, but by *Valentinian* and *Gratian*, religious and worthy Princes) againſt any gain to be made by the Prieſts of the Church by Ladies Offerings; and this Decree was publiſhed by *Damaſus* himſelf, according to direction of State: which proves that *Ammianus* in the judgment which he gave touching the motives of Diſſenſion, and Oppoſition, ſpake not idly.

To make the Caſe more plain, Whoſoever raiſeth any further doubt, may learn of St. *Hierom*, That ſome ſuch exceſs (or at the leaſt overſight) was cenſured about that time: where he ſeems not to be ſo much grieved and perplexed with the publiſhing of ſuch a Law lighting upon juſt deſert, as with the motive of that Law, which was greedineſs. Therefore our *Engliſh* Biſhops in the time of *Edward* III. aſſented (tho' unwillingly) to the limiting of Church Revenues, when the State's Neceſſity put in a Caveat. And the Pope himſelf pretended neither Quarrel nor Unkindneſs to St. *Lewis* of *France*, for inhibiting the Grant of any more Lands or Revenues, than had been converted in former times to Churches without his privity.

The ground of this reſpective Caution and Moderation, I take to be derived from the Courſe which *Moſes* held, being a Perſon as well publickly Wiſe, as ſpiritually Devout, in commanding all the Peoples Offerings of Benevolence and Piety to ceaſe, after he had drawn in that proportion which was ſufficient for the Furniture of the Tabernacle, where God was to be ſerved and honoured. For the leaſt Exceſs in things (which with moderation are laudable) doth eaſily degenerate into Vice, and all turns to humour that tranſcends the due proportion of Nouriſhment. We may ſoon be taught in *Geneſis*, That they which could be ſatisfied with no moderate degrees of Altitude, in ſeeking to build Caſtles in the Air, before their Spires and Battlements might touch the Clouds, were confounded in their own idleneſs.

You have heard how the Churches of *Rome* and *Alexandria* were ingulfed in the Depths of ſecular Principality to the wound of Monarchy, altho' *Spiritualis poteſtas non ideo præſidet, ut terrenæ in ſuo jure præjudicium faciat*, ſaith a learned Schoolman. But how hardly in the mean time the Civil State did brook theſe Slips, let us learn (if we deal indifferently) of *Oreſtes*, who was then Lieutenant for the Emperor, and complaineth bitterly of ſome Biſhops, *Quod per eos non nihil de auctoritate eorum detractum eſſet, qui ad magiſtratus gerendos deſignati eſſent*, that they drew much from the Authority of thoſe Perſons, which were appointed to bear office. This gallant Gentleman began very early to diſcover (and by the break of day) by what degrees the Myſtery of Ambition began to mine into the ſtrength of Monarchy: he feared (and not without great likelihood) leſt Princes ſeeking to reſume their Rights, might in time be dealt withal, as the Badger was by the Hedge-hog: For being wounded with the Prickles of his offenſive Gueſt, whom at the firſt he welcomed and entertained in his Cabin as an inward Friend, he mannerly deſired him to depart in Kindneſs as he came, but yet could receive no other Satisfaction to his juſt Expoſtulation, than, That he for his own part found himſelf to be very well at eaſe, and they that were not, had reaſon to ſeek out another Seat that might like them better. He foreſaw by this forerunning Light, That Miſſletoe and Ivy ſucking by their ſtrait Embraces, the very Sap that only giveth Vegetation from the Roots of the Oak and Hawthorn, muſt bloom and flouriſh of neceſſity, when the Trees ſhould wither.

I know that Civil Juriſdiction in that good meaſure which is compatible with a Paſtor's Charge, is ſo far from that inconvenience of hindering the growth of Piety (as ſome conceive) as it rather ripens the Fruits which in a further diſtance from the Sun, are either nipped by the Froſt, or blaſted by ſome bitter Wind: So as according to that of *Nahum*, *Reſiduum locuſtæ Brucus devoret.* I tax thoſe only that preſume by forged Evidence to contend and ſtrive with mighty Princes for their Seats, or attempt to ſet them beſides their Thrones, which the bleſſed Virgin makes a Portion of God's own Prerogative. Otherwiſe I ſay with *Paul* of all the faithful, *Si in illis mundus judicabitur, indigni ſunt qui de minimis judicent?* If the World ſhall be judged by them, are they unworthy to decide matters of leaſt Accompt? And again, *Si Angelos judicent, quanto magis ſecularia?* And therefore *Epiphanius* the Biſhop of *Cyprus* is highly commended in the Stories of the Church, for the diſcreet Temper and decent Order he held in managing Affairs both Eccleſiaſtical and Temporal. The Council of *Carthage* underſtood very perfectly the way to moderate between both Extremes, and in fanning away the ſmoke of Pride, to preſerve the gloſs of unſoiled Modeſty. But the Patriarch of *Conſtantinople* finding by careful obſervation of Times and Accidents, what ſtrange Effects the Church of *Rome* had wrought in raiſing Patriarchal Juriſdiction as high as the jealouſy of Government and incompatibility of Imperial Prerogative would endure, adventured upon the wings of Pride, to mount ſo far above the pitch of his other Partners, as if St. *Gregory* himſelf had not abated this preſumption more by the ſtrength of Arguments than the edge of Power, it is not unlike but he would have made himſelf in the end by faction of Adherents *ſimilem altiſſimo.*

Thus eaſy it is for many grains of Sand by *Neptune*'s Bleſſing to make a Shelf; for many *Peter* Pence by *Ina*'s Bounty to make a Bank; and by gathering a great heap of Sticks together by *Minerva*'s Providence, to make a Neſt high and wide enough for long winged Hawks to breed in the proportion of their own earneſtly affected, and long labour'd Sublimity. Such were the Drifts and Devices for the ſpace of many Years of certain *Roman* Biſhops, often ſtraining, but never reaching to their End, which was, to make a Riſe ſo high, as might carry them over the Heads of Emperors, till more than three hundred Years after the Succeſſion of *Conſtantine* and his Succeſſors into the Eaſt; their Lieutenants wanting now that *Gorgon*'s Head of univerſal Regiment and united Strength, whereof they had diſpoſed formerly; till that unlucky diviſion of one Eagle's Neck into two, which made the faireſt Bird a Monſter, as according to that one noted Maxim of our Saviour, *Omne regnum in ſe diviſum deſolabitur*, gave way, tho' much againſt their Wills, to that improvement of the Juriſdiction of *Peter*'s Keys, which hath not ſince that time been leſs feared, than at the firſt it was favoured. The firſt motive of the tranſlating of the Weſtern Empire into the Eaſt, as *Socrates* reports, was chiefly to this end, *ut vulnera quæ erant à tyrannis inflicta, illis jam ſublatis tollerentur*, for the Cure of thoſe Wounds which were given by Tyrants, now that they were rid out of the way. Men liked of this, and commended the Diſcourſe that urged it, till Experience, together with their own Diſaſters, made them find, that, of both Extremes, it is better to admit an outward Diſtemper, than an inward Combuſtion. The Ebb hath not been greater by the waining of the Empire, than the Flood hath been *ex conſequente* by the waxing of the Church: which finding that the Beams are brighteſt, and her Glory greateſt while the Sun is under our Horizon, from whence ſhe borrows and derives her Light, hath ſought ever ſince with her beſt Diligence to quit her ſelf to thoſe Rays Imperial which by Vicinity may weaken, or by Conjunction may darken her. It is true that *Conſtantine* upon the Change did at the firſt exempt Biſhops only, but not Prieſts from Convention in Civil Courts; the firſt ſtep to that Greatneſs (which was *in objecto)* to the Papacy. *Gratian* in the Year three Hundred and eighty, and *Honorius* in the Year four Hundred and ſix, confirmed it, *Theodoſius* and *Valentinian* were pleaſed for increaſe of Favour, that Prieſts alſo in lieu of Civil Judges, might take their Trial before Biſhops, if the Parties intereſted in the Cauſe could be ſatisfied. *Juſtinian* more reſervedly than his Anteceſſors, expounds the meaning of the grant of matters only appertaining to the Church, not otherwiſe, and for his Labour receiveth a wipe at the hands of *Bellarmine*. *Heraclius* exempteth Biſhops and Prieſts abſolutely from all Courts, excepting only that of Delegates from the Emperor. But *Guicciardine*, no *Lutheran* or *Zuinglian*, as many term Perſons of a diverſe Judgment in our days, but a Roman Catholick; no *German* or *Helvetian*, but an *Italian*; no Simpleſt, but a Man as deeply Learned, as diſcreetly Judicious, obſerveth, That tho' ſome dark Cloud had overcaſt a Portion of the Beams Imperial in the higheſt Sphere, yet till this time of the Tranſlation of the Seat to *Conſtantinople*, and a good ſpace after, many Tokens both of humble Reverence, and reſpective Regard to the Civil State, were evident. For the Popes without admittance either of the Emperors themſelves, or of their Lieutenants called *Exarchs*, aſcend not to the Throne. The Popes in all their Grants and publick Diſpatches, ſet down the Date by theſe words, *Regnante domino noſtro*, ſuch or ſuch an Emperor. Tho' by variation of Times (which breeds a Change in all Bodies, States or Governments beneath the Moon) this good manner began to be firſt abated, and in time determined. After this unlucky Separation of the *Greek* Head from the *Latin* Body, firſt, it fell into a kind of Giddineſs; after, into Imbecillity, the cauſe of dangerous Convulſions in thoſe Eſtates; and like top Branches that are not duly fed and nouriſhed with the lively Sap of their own native Root, they fell afterward to warp and wither both in Beauty and Glory. The Princes grew daily more and more into Contempt, either out of want of Deſire, or Ability, or both, to defend *caput Imperii* from incurſions of Infidels, oppreſſions of Uſurpers, and attempts of Conſpirators. Then fell the Grands of *Italy* to renounce all Duty, Contributions, or Reliefs to the far diſtant Parallel; from which as from a Gulf they found no relax. They drew back Obedience from Lieutenant-Governors, who gaſping (almoſt at the very laſt point) for Breath, could light upon no true Cordial to comfort them; Poſts could not ply ſo faſt between *Rome* and *Conſtantinople*, as occaſion of State did urge; and beſide, which is the moſt deſperate effect of a declining Fortune, Meſſengers were employed oftentimes with Interceſſion, but returned ever without Remedy; Diſputations were lame, Expectations idle, Affections mutinous. And tho' I find by the beſt Writers, that during this time of ſtaggering, ſo long as any ſpark of hope could live, either of ſecure Defence, or timely and ſufficient Supplies, the Biſhops endeavoured their beſt to preſerve the Life of Loyalty in the Breaſt of Fear; yet at the laſt the Civil State declining, the Church fainting, and all Hope languiſhing, when both Peers and Biſhops waſted like Images of Wax *à petit feu*, felt the Fury as well of the domeſtical as the foreign Sword, and waxed weary of the fruitleſs Comforts that were ſent out of the Eaſt; they reſolved jointly to call in their next Neighbours the *French* for Protection, who were able to defend them with a ſtronger Arm, a quicker Diſpatch, and a better Purſe than this ſunk Eſtate ſurrounded with an Ocean of incurable Extremities. That there wanted in the Pope both then and ever ſince, Affection, Invention, or Expedition, to raiſe *Rome* once again, tho' in another Element, *ex Albæ ruinis*, to draw their Generation of Greatneſs out of the Corruption of Power, and to make their beſt advantage of their Errors that were wont to give them a commanding check, they may believe that find no grounds of Judgment, of Experience and Truth to conceive otherwiſe. For being put into poſſeſſion, by this long deſired and lately planted Emperor, of a ſatisfaction, both for Profit and for Power, proportionable to the pains which they had taken, *Cum ſudore vultûs & tremore cordis*, about the new Eſtabliſhment, they found other means to multiply their Strength and Credit every day, by taking ſure hold of opportunity, which being loſt with idleneſs, returns no more to Expectation. They began then to eſtabliſh their Eſtates in that height of Security, from the Frowns of predominant Commands, which many of their Predeceſſors had eagerly apprehended, *Tanquam ſpado mulierem amplexans, & ſuſpirans*, (as the Prophet ſpeaks ſignificantly in another point) but yet failed of the final Scope and Reward of their Induſtry.

The ſtrongeſt Adamant that drew Reverence and Love to the Church of *Rome*, in the firſt ſpring of Religion, was the Conſtancy of ſo many godly Biſhops, as with the ſtreams of their Blood watered the Plants of their Profeſſion, deſiring rather to die with Honour, than to deny with Infamy. Beſides, it is certain, that during the ſhort time of their ſitting in that Seat, their chiefeſt End was to bind Subjects to Superiors with ſo great Obedience, and Superiors to Subjects with ſo great Conſcience, as thoſe men were eſteemed both moſt godly and moſt happy, that were either inſpir'd with their Pity, or grounded upon their Principles. St. *Peter*'s Galley might very well hold on a conſtant and happy courſe for a-while after the main ſtroke of Oars did ceaſe, that was ſet out at the firſt with the Force and Induſtry of ſo many worthy Mariners, as made for no other Port than Heaven: which Obſervation cannot be thought ſtrange, by Men that underſtand how hard, or almoſt impoſſible it is for one Prince that is humorous, ſucceeding many that were godly and judicious, to work upon the ſudden any dangerous Effect, by Countermotion or Oppoſition to the Spheres of the former Government.

For to the raiſing of this height upon the Foundation of Religion and Integrity, ſome brought Stone, ſome Timber, ſome Lime, ſome Sand, and ſome gave their own Labour and Direction *gratis*; every one affording ſupplies and helps according to the meaſure of their Strength, or the proportion of his Ability. But after that the Biſhops began to find the ſtrength of their own Eſtates by removes of Emperors, and that inſtead of little eaſe, they got Elbow-room; it was a means to make them ſtretch their Arms, and extend their Forces into Elements, which like *Terra Incognita*, were before unknown to them.

Some of the moſt artificially and refinedly ambitious, finding by the *Roman* Hiſtories (as it is probable) that *Cæſar* was never abſolute in Power, *Priuſquam poteſtatem pontificiam cum Cæſarea potentia conjunxiſſet*, hold it as found a courſe for them, ſeeking the like in another Climate, *Cæſaream cum pontificia conjungere*: making no doubt but as *in Abſtracto* they had been regarded with Reverence; ſo *in Concreto*, they might be feared with Obſervation. The neceſſity which inforced all *Italians* after the departure of *Charlemaine*, to rely upon the Pope's Aid for common Defence: the Bond of Conſcience, which moved the greater part of the World in thoſe days to reſort to *Rome*, either for ſatisfaction to Souls, or for preſervation of Unity: the confidence of Emperors and Kings in compromitting Cauſes of Unkindneſs or Diſſenſions to ſuch a Biſhop, as profeſſing like a Father equal Affection and Tenderneſs, was not ſuſpected of halting on either ſide: the Strife and Emulation of mighty Potentates to aſſure themſelves of the Love and Friendſhip of that Party, whom the greater number regarded as a Judge, and few or none for many Years ſuſpected as an oppoſite: the Fear and Peril into which ſome Emperors were drawn of hazarding their own Fortunes, by diſputing his Prerogative: the Contribution of all States, Qualities and Degrees of Chriſtians (according to the Cuſtom and Manner of thoſe Times) to the Maintenance of St. *Peter*'s Succeſſor: the ſecret Intereſt which the Pope had in many Kingdoms, by the Merit of his Predeceſſors, that did firſt ſend learned Paſtors and Doctors to preach unto them Redemption by Chriſt crucified: the exerciſe of St. *Peter*'s Keys, by binding and looſing Sins in a kind of Excellency, and Supereminency above other Biſhops in all parts of Chriſtendom: the Conceit which was holden of a Biſhop's Conſcience, whom the Canons will not ſuffer to be *Solicitus de iis quæ ſunt mundi*, in compariſon of any Secular Authority, whoſe only Object is the ſeal of Longitude and Latitude: the danger of offending one, whom the greateſt part endeavoured with ſtudious Affections to pleaſe: the ſubtle Union of St. *Peter*'s Keys with St. *Paul*'s Sword to this end, that while the one did open Locks, the others (like that of *Nehemias*) might cut off Impediments: the great Revenue and Demain, which was annexed to St. *Peter*'s Chair, firſt by the Charter of *Charlemaine*, and then by the great Counteſs *Maude*'s Legacy: the Pope's art in contriving the manner of the Choice of Emperors by the Corueſters of *Germany*, rather than by Occaſion of making their Returns to *Rome*, their Teeth might be ſet on edge with a freſh Appetite, to taſte of the forbidden Fruit which grows *in Horti medio*, and thereby compaſſing the Tree of the Knowledge of Good and Evil, covered with the Leaves of Limitation for ſo many Years, to make their Eſtates once again Abſolute: the Pope's Caution in reſerving to Himſelf as it were *in depoſito*, a ſpecial Intereſt (only for pretence) of Crowning and Confirming Emperors at *Rome*, even after they had been Elected and Crowned in *Germany*, tho' when they ſought it, they ſeldom compaſſed it: the Pope's Eye to the retaining of thoſe Rights and Royalties in the Princes Electors hands, which were mortgaged by precedent Emperors, leſt the bruiſed Feathers of the Eagle, imped once with theſe hard Quills, might again be able to carry her up to the ſpire of the Capitol: the long laſting, and ſtrongly working Faction in *Italy* of the *Guelphes* and *Gibellines*, Imperial and Pontifical: the faſt League between the Pope and the *French* Kings, ever labouring to maintain the ſtrength of the holy Arms, againſt all violent and ſturdy Storms, as a Plant of his own Policy: the Rule which hath been ever providently obſerved and kept by the Popes, in eſchewing Quarrel or Contention with any powerful Prince in *Europe*, before he make himſelf ſure of a Party oppoſite in the ſame degree, and likely ſo far as the Wit or Aim of any mortal Creature is able to extend to make the match too hard for him: the ſure hold which the Pope hath of the Hearts and Services of all the Clergies, in as many Kingdoms as are Romanly Catholique, by exerciſing the Intereſt either of Inveſting or Confirming *Metropolitans*, that have the higheſt Charge in the Church, and draw the Conſciences and Devotions of Lay Souls after them, by direct Dependency: the Pope's Cuſtom of ſorting Cardinals and Officers for the Church out of ſuch powerful and worthy Families, as may make both them and all their Allies and Friends to be in their Devotion and Gratitude more faſt to them: the reſervation of certain Caſes, wherein the Pope only will give himſelf Commiſſion of Oyer and Terminer, thereby preſſing the greateſt Bell-weathers of the Flock, without an expreſs Relaxation, *ab ipſo ore apoſtolico*, to appear perſonally: the device of ſending Princes to the Holy-Land, ſo ſoon as ever they began either to pick Quarrels with the Church of *Rome*, or might be made by their Abſence of better uſe to it: the Local Interdictions of Prieſts by Warrant from the Pope, to celebrate for the ſatisfaction of Souls, which (ſo far as I have read) was firſt ſet on broach among our *Engliſh* Biſhops by *Alexander* the third, about the Year 1170, but not very luckily to thoſe that by obſerving them with a ſtricter kind of Obedience and Awe, than the Laws of the Realm would admit, were in great peril of their own Poſſeſſions, with loſs of Liberties.

Laſt of all, the Gariſons and Forts which have been erected and maintained in Defence of St, *Peter*'s Patrimony, were high ſteps to carry and convey the Pope to that height of cruſhing Princes in their own Element, which many quarrel, ſome tolerate; but in very truth (if the Caſe once come to be their own) none favour. So long (ſaith a grave and learned Writer, and a Roman Catholick) as the Popes attended thoſe Charges only that concerned the Soul, their chiefeſt Care, Deſire, and Study was to be protected under the Wings of the Secular Eſtate: but the State of the Emperors declining faſter than they roſe, the Popes began to neglect both their Arms and Amity; then fell they to defend by Writing and Diſcourſe, that it belonged rather to the Church to give Laws to the Empire, than to receive from the Emperor; preſſing forward ſtill without looking back, for fear perhaps of being transformed with the Wife of *Lot*, *in ſtatuam ſalis*, and abhorring nothing more than the very ſound of a Remitter to the creeping State of their firſt ſimplicity, the wreſted Cenſures of the Church, either to the Paſſions of Humour, or proportion of State: they ſtudied more induſtriouſly the ways of making Wars and heaping Treaſure, than of ſteering *Peter*'s Ship, or inſtructing Souls; they ſought more ſlily than ſincerely to make their Conſiſtory ſtrong by the ſupport of Tyrants and Uſurpers, which having caſt off *Cæſar*'s Yoke with Contempt of diſarmed Oſtentation, found no means ſo proper as the Countenance of the Church of *Rome*, for their Eſtabliſhment both in Dignity of Security. For proof whereof, I wiſh it may be tried by Inquiſition, whether *Robert Guiſcard* having filched *Puglie* from the ſacred Empire, that is a fair Feather from a feeble Bird, ſought not after that to hold it of the Pope in Fee; and whether *Roger* King of *Sicily* in the Year 1130, poſſeſſed not himſelf of that Kingdom by ſuch a trick of Legerdemain, (for all was Fiſh that came to *Peter*'s Net about that time) and many his Succeſſors in that Corruption both of Conſcience and Converſation, became now rather *Piſcatores imperiorum quam hominum*; tho' the Cenſure of St. *Paul* extended only *ad interitum carnis*, but not *poſteritatis vel diadematis*.

After this ſome of them mounted to that Point of Challenge, as they were not aſhamed to take upon them the Prerogative of depoſing Emperors. For *Boniface* the 8th after he had preſented himſelf (as the *German* Catholiques report) to the Eye of the World in his Habit merely Secular, that is with a Crown on his Head, a Sword girt by his ſide, and with Profeſſion that he was as well a *Cæſar* as a Pope, at the next Leap gave a greater ſtrain, claiming Precedency of *Philip* the *French* King, *Tam in ſpiritualibus quam in temporalibus*, tho' ſome of the moſt learned among the Schoolmen oppoſe abſolutely to this Paradox; and might as fitly wonder at this armed Pope, as the Prior of *Dureſme* did of his Earled Biſhop, *O quam manifeſte jam exorbitat noſter Epiſcopus transformatus a veſtigiis ſancti Cuthberti! Urban* withdrew not only the Perſons, but *bona* the Goods of the Clergy from the Trials of Civil Courts. In caſe of Treaſon the Popes would oftentimes have exempted Biſhops from the Bar, tho' Princes Abſolute would never yield to this Demand as a right by Acknowledgment: howſoever at the *Pope*'s Requeſt ſome of them have been pleaſed to remit Wrongs out of Indulgency. Let *Platina* give Evidence concerning ſtrange Deviſes vented, and Plots undertaken, to bring all the Princes of the World to hold their Crowns *ad placitum*, and in effect at the will of *Peter*'s Succeſſor: Some being called in queſtion for perſonal Tranſgreſſions, ſome for idle Words, ſome for taking part with Princes whom Popes hated, ſome for refuſing to participate in Actions which the Pope favoured; ſome that the Pope might prefer his own Friends to their Seats, ſome for ſtanding ſtiffly againſt Humours out of Suſpicion, ſome to make the Pope himſelf more ſtrong, ſome to make his Enemies more weak. And ſure I am by Confeſſion of thoſe that in Religion were ever conſonant to the *Roman* Canons, that after once the Rule of *Gregory* was riveted into the Conſcience of Chriſtians (which in thoſe days were more fearful to offend, than ſtudious to learn) *Sententiam judicis quamvis injuſtam timendam eſſe*, that the Sentence of a Judge is to be feared, tho' unjuſt: howſoever all the Laws of *Europe* in this Caſe by the grounds of Nature grant Appeals, what Quarrel ſoever it pleaſed the Pope out of Diſpleaſure, juſt or unjuſt, to pretend, himſelf being ever (for the moſt part) both Judge and Party, that muſt be ſatisfied to the full, tho' it coſt an Emperor his Crown.

And becauſe *Homo ſpiritualis judicatur à nemine*, ſome of the Canoniſts proceeded ſo far in flattery after theſe Encouragements, as to exempt the Pope's cenſure from examination, tho' they carry with them heaps of Souls to Hell: which tho' the wiſer and the better ſort reject, as a Doctrine fitter for the School of *Mahomet* than a Scholar of the Church; yet it will be ever reckoned and reputed probably as well *error prædicationis*, as *converſationis*, ſo long as it ſhall paſs the print without reproof; and to uſe the phraſe of St. *Hierom* upon like occaſions, *priuſquam Aſteriſco juguletur*. *Emmanuel* the *Greek* Emperor craving earneſtly of *Alexander* III. that both Empires of the Eaſt and Weſt might be re-united for a greater ſtrength and a more aſſured ſupport againſt the Enemies of the Faith, his anſwer was, *Se nolle id unire quod majores ſui de induſtria disjunxiſſent*; that he would not unite that which his Predeceſſors had of ſet purpoſe ſever'd; tho' in very truth it may be proved a worſe part in thoſe that laid their Heads, and ſet their Hands together, being as they were, but Men *ad illud ſeparandum quod Deus conjunxit*, to make a ſeparation in that which God had conjoined and faſtened. Tho' *Alexander* the Pope had modeſtly forborn to anſwer the Requeſt of *Emmanuel* in ſo plain language as might move the World to ſay to him as the Maid did to St. *Peter*, in the Palace of the High-Prieſt, *Verè tu ex illis es, nam & loquela tua te manifeſtum facit*: yet by the courſe which this Pope's Predeceſſors took in planting *Sedem Imperii*, the Seat of the Empire rather among the *Germans*, where by larger diſtance he might leſs offend, than *in Romana Metropoli*, than in *Rome* itſelf, where he might eclipſe the Glory of the Pope, we might eaſily have apprehended both what was the Object, and where would be the end of that Policy. Hereunto I add an Indenture made by another of that rank, with *Charles* Duke of *Anjou* before his eſtabliſhment in the Kingdom of *Sicily*, That neither he during his own time, nor any of his Heirs and Succeſſors after him, ſhould accept of any offer which the *German* Princes might be drawn to make to him of the Empire; much leſs that he or they ſhould hunt after it: his fear was (after an Experiment) by the long buſtling between the Pope and *Frederick*, (who was by right both Emperor and King of *Sicily)* that the Vicinity and Neighbourhood of ſo great a State as that Kingdom to *Rome*, in caſe it fell into the hand of an evil Neighbour, (with the leaſt colour or advantage of a Title) might ſtir up eaſily in the diſpoſition of a Prince that were courageous, an earneſt deſire of a diſcontinued Eſtate: becauſe howſoever Queſtions be over-ruled among private perſons upon the ground of Preſcription in point of Law, yet where the Sword muſt flouriſh for the Maſter's Prize, *Præſcriptio nulla, quantumvis diuturni temporis, occurrit Cæſari.* I need not at this preſent to name that provident and diſcreet Cardinal, who in one of the late Conclaves, put in a timely Caution to the reſt of his Fellows at the choice of a Pope, to beware of too ſervile a regard of the Partialities and Paſſions of potent Princes, that *Sede vacante* recommended their chiefeſt Favourites to St. *Peter*'s Chair, to no other end than that they might again, by Quinteſſence of Craft, reduce the modern Majeſty of the Church of *Rome* to that bare *Jus patronatus*, wherein it ſtood during the Reigns of domineering Emperors; and while they were able to free themſelves of that ſervile Yoke, which by the loſs of many Lives, by the waſte of great Treaſure, and the higheſt Improvement of their Predeceſſors Art, (that ſet their own Lives light in reſpect of the Churches liberty) was caſt off. Theſe are the ſteps by which ſo far as I can gather, either by obſerving the Current of Time, the Reports of Hiſtories, or the deep Impreſſions of Experience, the Popes have aſcended ſometime warily, ſometime confidently, but almoſt ever (after the tranſlation of the Empire into the Eaſt) powerfully to this height of Prerogative, which have made them ſufficiently ſtrong, as it is ſaid of *David* in the Scripture, *Cum leonibus tanquam cum agnis ludere*, and to tread upon the *Aſp* and the *Baſiliſk*. What *Soto*, *Sylveſter*, *Simancha*, *Navarre*, or *Bellarmine*, either think or publiſh in their *chymical* Diſtinctions of *directè* and *indirectè*, *propriè* and *impropriè*, *ſimpliciter* and *ſecundùm quid*, *abſolutè* and *tantummodo in ordine ad ſpiritualia*, it much matters not; becauſe in this point they do merely tranſgreſs *mandata Dei propter traditionem ſuam*, leaping like Sheep that are frighted with their own Shadow, over Hedges one in the Neck of another, without fore-thinking of the Ditch on the other ſide, vouching no one Tittle rightly to this purpoſe out of the Word of God, regarding nothing that is ancient, nor adding any reaſon of Importance that is new; filling the Schools with Clamours, the Church with Errors, and all chriſtian Eſtates with Tragedies. Yet in diſproof of their Diſtinctions, which are only circles and ſharp angles of ſcholaſtical Conceits; beſide the grounds of ſober Judgment formerly ſet down, I will produce a learned Jury of thoſe Biſhops whom theſe School-men repute firmly and completely Catholick, (whom they emblaſon by deſcent of Pedigree the only true and lawful Heirs of *Chriſt*, and whom they reverence as his Apoſtles Succeſſors) that did abſolutely refuſe in the moſt ſervile times to ſubſcribe the Pope's privative and peremptory Cenſures againſt their own Sovereigns. They did obſerve their Oaths of Loyalty out of the Bond of Conſcience, without regard of Canonical Abſolution; and never ſhrunk upon Threats or Terrors that thundered at *Rome*, from the poſitive Laws and Duties of their own Countries. They were not ignorant that the High-Prieſt in the Law was *circundatus infirmitate*, and bound by the Law to offer Sacrifice as well for his own private Sins as for the Sins of the Multitude. They had read that St. *Peter* the firſt Founder of the Church of *Rome* was called *Sathan*, for giving counſel (that was not ſound) to our Saviour, after the beſtowing of thoſe Titles of Prerogative which many urge. They find him pinched not behind his back, but reproved to his Face by St. *Paul*, for that he did not hold a ſtrait courſe for the Propagation of the Faith. They learned of an Apoſtle, ſo far only to follow others, as they were found to follow Chriſt. They heard that many Popes had revoked their firſt Cenſures upon better information: that *Alexander* III. gave free liberty to the Archbiſhop of *Ravenna* of abſtinence from Satiſfaction to his own Directions, ſo as withal he gave the reaſon which moved him to abſtain; and that *Adrian* himſelf enforceth not Obedience *manente dubio*, ſo long as the Point was in queſtion, or traverſed. They were greatly moved with the Precedents of thoſe religious and faithful Auditors at *Theſſalonica*, that examined the Paſſages of holy Writ alledged by St. *Paul*, for the better trial of the Doctrine *an ita ſe haberent*, whether they were vouched in a right and proper Senſe or no. Laſt of all, becauſe they found the Privilege of not Erring in the Pope to be limited by the School-men themſelves to matter of Faith, not of Policy, and to be rather Cathedral than Perſonal; it was a courſe familiar and uſual among many grave Biſhops of that Age, to examine papal Cenſures as well by the Standard of God's Word, as by the Weights of the Conſiſtory; and ſo far only to give way to inſurgent Juriſdiction, as it might not at the iſſue of their Lives unhappily fall out to them *in ſingultum cordis*, that they had run counter. If they have either Cauſe or Colour to challenge any one or more of this Jury that is impanelled, *ex hominibus legalibus*, for Trial of this Point in queſtion, as prejudicial either to the Cauſe, or to the Church, I will undertake to ſet him *rectum* upright, *in ipſa Curia Romana*, by the Warrant of their own Records, tho' that be greater pain than I need againſt any of the Schoolmen, that mould daily new Diſtinctions out of the Quinteſſence of their own conceited and ſelf-pleaſing Wits, without the right Stamp of Antiquity.

I have touched by diſcourſe precedent, how far *Philip* the *French* King, ſurnamed for his Perſonage *Le Beau*, was ſecur'd by the whole Clergy of his Realm, ſo far as concerned the Bond of their Allegiance and Loyalty, *non obſtante* the raſh Proceedings and peremptory Cenſures of Pope *Boniface*. To this I add the Anſwer which was made by *Hincmar*, Archbiſhop of *Rhemes*, to Pope *Adrian*, (forbidding him under Pain of Cenſure to yield either Reverence or Service to the King, as to his lawful Sovereign) that Perſons of all Qualities, as well Eccleſiaſtical as Secular within the Realm of *France* (aſſembled upon the Publication of the Pope's Cenſure) had ſet down this Concluſion with a kind of Aſtoniſhment, *nunquam ulli prædeceſſorum ſuorum*, that no ſuch Injunction was ever ſent to any of their Predeceſſors before that time. A ſtrong Evidence in my Conceit, as well of Novelty as of Injury.

By another grave Report touching the Kingdom of *Sicily*, I find in an Epiſtle of the Archbiſhop's of *Panormum*, how ſtrange the Biſhops of that State held an Oath of Obedience to the See of *Rome*, tender'd by the Pope's Nuncio to one of them at the receiving of the Pall, and with this ſtrong Exception, *Non inveniri de hujuſmodi juramento ſtatuta in Conciliis*, that in the Councils no Canon could be found, whereby to preſs the taking of ſuch an Oath by an Archbiſhop. Yet can I not deny, that *Sicily* did more depend upon the Directions of the Pope, by the Condition of ſome former Contract between that Kingdom and the Church of *Rome*, than many other Provinces.

When *Gregory* IV. had a purpoſe in his head peremptorily to proceed againſt *Lewis le Debonaire*, the *French* Biſhops in flat Terms anſwer'd, *Se nolle, &c.* that they would not ſubmit their Judgments to that Offer; but the Ground thereof being both weak and unjuſt, he ſhould well know, that *Si excommunicaturus veniret excommunicatus diſcederet:* If he came with a Purpoſe to excommunicate. he ſhould depart excommunicated. Add unto this out of a *French* Record, an Inſtance of one *John Tanquerell*, condemned by the Divines of *Paris*, for labouring to defend that the Pope in ſome Caſes might depoſe the King. So ſtrange was the Doctrine of depoſing Princes, and tranſpoſing Crowns, eſteem'd ever in thoſe very Times which are thought to carry the ſtrongeſt Tincture of Affection, which many call Servitude. But if Hereſy and Infidelity were the proper Cauſes, as they are made the ordinary Motives of theſe brave attempting and undertaking Cenſures againſt crown'd Potentates, there might be ſome better Colour of Excuſe, tho' no better Ground of Juſtification (becauſe neither we have any ſuch Cuſtom, nor the Church of God:) But we know that Prerogative is the *Magna Charta* which they ſtudy that purſue this Point; and let the Prince (againſt whom the Pope intends or pretends a Quarrel) be as Catholick in all Points of Profeſſion as the Pope himſelf, yet he cannot ſave his Stake in ſeeking to ſave his Soul; for the Challenge being once on foot, until the Suppoſition be acknowledged, the Cenſure qualified, or the Pope ſatisfy'd, there ſhall be no other ground nor object of the Proceſs than Hereſy. This moved many Biſhops (notwithſtanding their Obedience to the High-Prieſt) yet to examine the Condition, and whether the Direction were *ab initio ſecundum legem Dei*, as *Moſes* limited. The beſt learned among the Schoolmen make not Obedience either an Abſtract in the Clouds, or an *individuum vagum*, or (as ſome do the Prerogative of Princes) a *nemo ſcit*, but they conceive it as a Duty ranged by Preſcription *ad leges Evangelicas*.

Upon this ground of Reaſon, Equity and Conſcience, *Gerbartus* Archbiſhop of *Rhemes* was drawn to an abſolute Renunciation of any Grant that can be made to any mortal Man in particular, of ſo large Capacity, *ut quicquid libet liceat*; leſt that Perſon being foreſtalled, corrupted, or ſeduced by Fear, Gain, or Ignorance, might put all Courſes out of frame: with this further Advice, that in Limitation of Power, the holy Goſpels, the Prophets and Apoſtles, and the Canons of the Church indited by God's Spirit, and obſerved in all Ages by thoſe Paſtors whom the Holy Ghoſt appointed to direct and govern the Church of God, might be *Lex communis Eccleſiæ Catholicæ*. This Rule gives a round *ſuperſedeas* to Mr. *Garnet*, and his Schoolmaſters: and further we find *Ino*, the learned Biſhop of *Chartres*, ſo far a Friend (how hardly ſoever the *French* King dealt with him in reſpect of his Abſence from that Convention, wherein the Pope's Proceedings againſt the King were ſharply cenſured by all the States) as to deny the Subjection or Subordination of a King to any Superior in his temporal Eſtate. And tho' the King ſhould refuſe out of Contumacy to give ear to the Counſel of the godly Biſhops, (which was the Caſe as he conceived at that time, being infinitely addicted to the Pope) *Divino tamen judicio relinquendum eſſe*, yet he muſt be left only to the divine Chaſtiſement. And as *Bracton* ſaith, *Sufficit ei ad pœnam quòd Deum expectat ultorem*. How confidently and how often the Synods, Parliaments, and Schools of *France* have run upon the Pikes of papal Cenſures, in defence of the King's Eſtate *paramounte*, ſometime by their Decrees provincial, ſometime by their Sanctions pragmatical, and ſometime by Prohibitions, which cut the Sinews of all ſuperlative Commands with ſo ſharp an Edge, as after that they were never able either to march or move, I need not amplify, but only point with my Finger to the Coronation of the King now regnant at his firſt Entrance, by Biſhops, *Roman* Catholicks, (without either awe of Superior, or fear of Cenſure, or conceit of Irregularity) while he ſtood within the danger of the Curſe; and conclude this Point with one Example very pregnant, as I imagine, of St. *Lewis*, inſerted by the Pope himſelf into the Liſt of holy Confeſſors and Saints in the *Roman* Calendar, notwithſtanding his ſevere Decree, that no kind of Levies or Taxations ſhould be made in *France* by the Pope's Inſtruments, without the knowledge of his Privy-Council or himſelf; nor then alſo, but in Caſes of evident Neceſſity.

But now leſt Mr. *Garnet* or his Complices ſhould except againſt the State of *France*, as over-tickle in the Seat of Satisfaction, when the Scope of the Church is Gain; tho' we muſt add ſome greater weight of Credit to theſe Courſes, in reſpect the Biſhops were both Orthodoxal and Canonical that aſſented to their Publication with the other Peers: I will prove further, that in Tenderneſs of Care to preſerve the Prerogative of Monarchy within the Bounds and Limits of itſelf, the Kings of *England* have neither been inferior, nor leaſt ſenſitive. May it therefore pleaſe Mr. *Garnet*, and ſo many other of that Suit as hold the Subject bound to follow whatſoever is decreed at *Rome* upon ſuppoſition of Hereſy, or ſuggeſted Shews of Infidelity againſt their Sovereign, to take notice of the Titles, Names, and Judgments of theſe Perſons which I ſhall preſent to their Conſideration; not from the Preſbyteries, which may diſtaſte their Reliſh, but out of the Liſt of *Engliſh* Authors, limned among Catholicks with golden Characters.

I will begin with the firſt of our Kings *poſt Conqueſtum*, and proceeded to others as they fall into the Circle of exception in their Courſes, and proceeding orderly. *Quid papæ cum Imperii vel regni libertate?* What hath the Pope to do with the Liberty of an Empire or Kingdom (ſaith *William* the Conqueror) to whom it rather belongeth to take care of Souls, and of the Church's Security? Afterwards, in that quick Contention that fell out between *William* II. and *Anſelme* the Archbiſhop about the Pope, (tho' I will never avow this King to have been an holy Confeſſor, nor all his Expoſtulations to have been regular Demands) yet they muſt give me leave to note with what Affection and Reſolution, notwithſtanding the Pope's intercoming to make himſelf a Party in the Quarrel, the Biſhops did adhere to their own Sovereign. *Notum habeat ſanctitas veſtra*, Your Holineſs, ſaith *Henry* I. muſt underſtand, that by God's help the

Dignities and Liberties of this Kingdom ſhall receive no wipe of Abatement during my Reign: for tho' I had an Humour of embaſing myſelf ſo much, as to ſhrink upon ſo ſure a Ground; *tamen optimates mei, imò totius Angliæ populi id nullo modo paterentur*; yet my Peers, nay, all the Commons of my Realm would never ſuffer it. And after this, the Biſhop of *Exeter* ſent to *Rome*, received a very gracious and mild Anſwer of the Pope, touching the Kingdom's Liberties. *Henry* II. would admit no Legate from thence, nor Repair of any his Subjects to that See, before they gave Security, *quòd malum ſuum vel regno ſuo non quærerent.*

The Suffragan of *Canterbury* in very modeſt and humble manner adviſed *Thomas*, his Archbiſhop, rather to appeaſe the King's Wrath by a ſubmiſſive Letter, which had ever been the courſe of Proceedings among the Paſtors primitive, than by heaping Coals to inflame his Paſſions, in ſo violent and deſperate a kind, as might perhaps cauſe a Revolt from the *Roman* Hierarchy.

Nubrigenſis, another Countryman of ours, compareth the Archbiſhop's Oppoſition at that time to the King, to St. *Peter*'s Zeal, in the Queſtion between him and St. *Paul*. For tho' no Man denies, ſaith he, that the Archbiſhop in this Particular was *zelo fervidus*; yet *an plenè & ſecundùm juſtitiam, Deus novit*, whether ſufficiently, and according to the Right, God knoweth; ſince it is written in the *Proverbs*, That *prudens in tempore tacebit, quia tempus malum*; A wiſe Man will hold his peace in time, becauſe the Time is evil, as he thought that to be. The Speech is modeſt, and yet declareth, that even in thoſe Times Men that were void of Paſſion, tho' of one and the ſame Profeſſion, coming to ſcan the Point of Conſcience, judged indifferently, without either ſmart to the Subject, or wrong to the Sovereign: which makes me the more to praiſe the Wiſdom of that Canon of the Church, which (with great reaſon) diſſuades over-rough ſearching of Sores deeply feſter'd, or over-quickly proceeding in a time when Cenſures are ſet light; for Experience hath taught, that this were but to caſt Pearls before Swine, and to give that which is *ſanctum, canibus.*

The whole Reign of King *John*, being in effect nothing but a Tragedy acted in the Eye, and to the Scorn of *England* over all the World, between the Pope and him, our Biſhops ſkirmiſhing ſometimes (out of Conſcience) on the King's ſide againſt the Pope in this Fraction of the politick Eſtate, and ſometimes (out of Faction) on the Pope's ſide againſt the King; yet the greateſt part of them at *Windſor*, as one of our Authors writes, *Non obſtante ſententiâ quâ Rex erat innodatus*, did communicate and religiouſly receive with him.

Henry III. ſuſpecting ſome hard meaſure (as it ſeems upon the ſmart and horror of Examples paſt) expected a formal Oath of his Biſhops that repaired to the Council of *Lions* before their ſetting forth, that they ſhould aſſent to nothing there debated, or to be decreed to his or his Crown's prejudice. At the ſame Council the King complained (not by the Virtue of his Letters, but by the Voice of his Biſhops) of a wrongful Claim pretended by the Pope of an Impoſition, under the maſk and colour of Epiſcopal Aſſent; which in the behalf of all the reſt, was roundly contradicted by the Metropolitan. Upon notice taken of this Complaint, the Pope alluding to the Spleen of *Frederick* the Emperor againſt his Predeceſſor, ſaid that the King of *England* began to *Frederize:* but it ſkills not much, ſaid he; for, *habet Rex Angliæ ſuum concilium, & ego meum*; as he might very well, and yet be no Gainer.

Edward I. ſent Sir *John Lexington* to all the Biſhops as they were aſſembled in the Houſe of Convocation, with an expreſs *Caveat*, that they ſhould in no ways yield to the Pope's earneſt Inſtance for ſatisfaction in a Demand: To which Prohibition, as my Author writes, *& ipſi paruerunt*, they obeyed accordingly.

Edward II. ſtood reſolutely upon the Maintenance of his Gift of the Treaſurerſhip of *York* againſt the Pope's *Breves*, ſtriving forcibly by the Colour of a former Grant, to prefer a Nephew of his own; and upon what Ground? Becauſe (ſaith the King) the Peers of this Kingdom are bound by their Oath of Homage, to maintain the Rights and Liberties of this State, whereof Collation of Dignities hath ever been reputed a ſpecial Branch, and therefore cannot *ſalvâ conſcientiâ*, admit or indure the leaſt Blemiſh of an inveſted Honour. For if it were not lawful for the Biſhops of thoſe Ages, as appeareth by Record, *Feodum Laicum Romanæ Eccleſiæ obligare*, to tie a Lay-fee upon the Church of *Rome*; how much leſs is it reaſonable, lawful or convenient at this day, to engage either the Prince's Right, or the Subjects Loyalty?

To theſe I add a very earneſt Letter written to the Pope by the ſame Prince, in ſuch a Style, and with Ink tempered with ſo ſharp Ingredients, as *ex unguibus leonem:* for he doth there proteſt, and that with ſome Fervency, *Se jus regni ſui contra papam, & omnes defenſurum*; that he would defend the Right and Title of his Crown againſt all Perſons whatſoever, without Diſtinction or Diverſity. I note by this Occaſion the Temperance of the Pope at that time, who neither replies with Paſſion, nor thunders in Heat. For tho' it be true that *England* by Poſition and Sight hath a great Advantage of many other States and Kingdoms of *Europe*, that are neither ſo well fenced, nor ſo compleatly compaſſed by Sea, propoſing to ſtand reſolutely in defence of itſelf, tho' the Cauſe were good, and the Prince martial; yet it appeareth, that the Pope for his part alſo was more patient than ſome of his Succeſſors (impeached by more Difficulties and ſtronger Impediments) have been ſince that time; or elſe conſidering the Claim which he pretended to Collations and Inveſtitures in many other Eſtates, where he found Princes more afraid, he might at the leaſt have made an Offer (tho' to ſmall effect) of his virulent Exceptions, which being uſed without Diſcretion, are indeed but the Veſſels of an undiſcreet Paſtor, to take the Words of *Zachary*.

Neither Law nor Nature do allow to any Agent, *poteſtatem operandi*, for the Maintenance of itſelf, *ſine præparatione mediorum*, without the preparation of Means proportionable to that Faculty which it affords: and therefore in this Caſe we muſt infer, that either the Pope wanted Paſſion or Power, or Inſtruments to further his Ends (according to the ſcope of his Deſire) powerfully. The Abbot of *Taveſtock* was fined at five hundred Marks, for receiving a Bull from *Rome*, wherein there were but *aliqua verba regi, & coronæ ſuæ præjudicialia.* The whole Court of Parliament, wherein the Party of the Biſhops and Abbots among the Lay-Peers, for the number was not weak, gave their Promiſe to King *Richard* II. with Proteſtation to defend his regal Rights and Immunities againſt all Oppoſition, tho' it were made by the Pope himſelf. And herewithal I note the Reaſon in the Record, ſuitable to the Reſolution (which was ſpoken of before) leſt the Crown of *England*, which had been ever free from the Reſtraint of any ſuperior Command, might on a ſudden ſlip unawares into the Snare of Servitude; and therefore the main Article in Parliament inforced for the Deprivation of *Richard* II. was, That he had by admitting Bulls from *Rome*, inthralled the Crown of *England*, which was free from the Pope and all other foreign Power.

The Pope's ignorance in the ſtate of *Engliſh* Affairs, was the Motive by which the Wiſdom of the State was drawn during the Reign of the ſame Prince and all that ſucceeded, to condemn, diſable, and reject all Bulls or Breves of Direction from *Rome*, that ſtood upon no Warrant of Certificate from ſome Biſhop in the Land to guide his Aim; and thoſe Biſhops (as we find by the Reports of Hiſtory and Record) were ever the worſe eſteem'd, and the leſs regarded by their own Prince and Country, that poſted over to ſeek foreign Aid, when they might have found greater Eaſe, by reſorting to their home-bred Oracles, and *non ad tranſmarina judicia*; which they ought to do by the Council of *Carthage*.

They that deſire to be more particularly informed of the proſperous Succeſs of ſome Biſhops, that were forward in execution of the Pope's Orders without Licence from the King, may find a Seizure made upon all the Temporalities of thoſe Biſhops of *Ely* and *Norwich*, for the Publication of a Bull againſt *Hugh* Earl of *Cheſter:* and further obſerve alſo, that the Biſhop of *Ely* was condemned of Felony by a Jury at the King's Bench, notwithſtanding his bold Challenge to be *unctus Domini & frater Papæ*, the Pope's Brother; but a younger it ſeems, by bearing his Dignity with ſo great a Difference. The Biſhop of *Carliſle* in like manner (notwithſtanding the Privilege of Unction) was condemned of High-Treaſon at the Bar, (though not in the Pope's Cauſe) in the Time of *Henry* IV. and that worthily. For tho' *Solomon* ſpared the Life of *Abiathar* out of a ſpecial Favour, and a kind of Reverence to Religion, *Quia portavit arcam Domini*, becauſe he had once carried the Ark of God; yet by that he calls him *virum mortis*, I may lawfully conclude, what in Juſtice he might have done concerning Life: but of his Deprivation the Text itſelf gives clear Evidence.

I add to this Example the learned Judgment of *Baptiſta Baiardus*, a profound Civillian, That a Biſhop offending in caſe of Treaſon, cannot be exempted by his Function from Trial before a Judge merely Secular: and for Proof hereof no Man can witneſs better than *Philip de Comines*, what ſlight anſwer was given by the *French* King his Maſter, to the Pope's inceſſant Suit by the *Nuncio*, for the Releaſe of a Cardinal, whoſe Place and Dignity was more eminent.

In *Spain* itſelf, which ſeems in this Age to be moſt preciſe and tender of that Point which is termed the Church's Liberty, (tho' neither circumſcribed within any certain Limits of Admittance, nor defined till this day by any Doctor of either Law) their own Writers avow, That the Biſhop of *Coimbra* was conſtrained by the State to recall a Sentence againſt the King, which the Pope himſelf hath both encouraged and juſtified. *Don Pedro* King of *Arragon*, in ſcorn of the Pope's Charge, under pain of Cenſure not to take upon him any longer the Title of that Crown; which, out of his own particular Affection he had ſettled before upon another Prince's Head, intitled himſelf *Imparatorem maris, & regnorum dominum*; meaning rather to advance than diſmiſs his Style by the Pope's Ladder.

Many of their King's, as I could expreſs at better Leiſure, have withſtood peremptory Cenſures of the Church of *Rome*, almoſt *ad deliquium animæ:* ſometime upon Suppoſition of Incontinency; ſometime upon the ſtay of the main ſtroke of that Oar in their Eſtate; ſometime about Collations, Tranſpoſitions, Inveſtitures, without any inward Gall or Vexation of Conſcience, for exaſperating a Pope's Humour in defence of their own Prerogative. Let the Walls and Battlements of the Caſtle *Saint Angelo* in *Rome*, bear record of the Piety, Patience and Humility of *Charles* the Fifth, Grandfather to the King of *Spain* now regnant, when the Pope in Paſſion overſtrained both the Duty of a Child, and the Patience of ſo great a Potentate. I think Mr. *Garnet* will admit, that theſe thouſand Years there was not a more obedient Daughter to the Church of *Rome* than Queen *Mary*, that could never reſt in quiet, till ſhe had reduced the ſtraying Sheep of her Dominions, as ſhe conceived, to St *Peter*'s Fold: and yet without regard or awe of the Pope's ſharp Cenſures againſt the King her Huſband, ſhe never gave over aiding him with Money, and aſſiſting him with Force, till he was perfectly reconciled to the Church, and the Strife determined. For as by the Law of God ſhe found herſelf preciſely bound in cleaving to her Huſband, with whom by Union ſhe became *una caro*, to forſake all the World: ſo in the ſame Law ſhe finds in point of fact no ſtraighter Bond, nor ſtronger Warrant of Obedience to the Sentence of the Prieſt, than ſhe obſerves the Prieſt to ground himſelf upon the Law of God; that is, *quem ipſe ſecundum Legem docuerit*; which Reſt is indeed that *Lapis Lydius* to which we ought all to reſort for the Trial of all Coins that are current among Chriſtians, whoſe Image or Stamp ſoever they ſeem to bear, in caſe we find them oftentimes embaſed by an Allay, and apt to mine into the Foundations of Equity and Piety. For till I ſee it clear either by Doctrine or Experience, that God created all Men Stoicks, or rather as void of Senſe as Stocks, and inſtituted Popes not only *diſpenſatores myſteriorum*, Diſtributors of his Myſteries, but *tanquam angelos lucis*, as Angels of Light, or more than Angels of Light, becauſe in thoſe, as *Job* records, *invenit pravitatem*; I muſt borrow leave in diſcerning matters of this Quality, to make uſe of the little Reaſon, and the great Reſpect I have: leaving thoſe that are of another Mind, to borrow ſuch Diſcretion by Obſervation, which in this World all Perſons at all times neither ever had, nor can ever have.

By theſe Precedents and many more, which time ſerves not to dilate or to enlarge, I hold it very clear, that both Princes and their Biſhops have obeyed theſe Papal Cenſures in matters touching their Prerogative and State, neither longer nor oftner than Debility or Neceſſity enforced them to abate their Sails, in a ſtorm of Diſtreſs: Tho' Decrees privative have been often ſquared by Laws poſitive; and that albeit many Kings have made a ſhew to be mild Spectators of their Neighbours Harms, yet if the caſe came once to touch either their own Affection or their Right, they were content to read without the ordinary Conſonants of the *Roman* Alphabet. If then the Weapons with which our Anteceſſors fought againſt Ambition and Wrong, have been eaten into by the Cankers of ſuperſtitious Fears, or overawed by wretchleſs Sloth; let us ſcour them with the Powder of Experience, (ſince theſe hot Alarms begin to ſound) before we be ſurprized in over-great Security; and by reſorting often to the rule of God's direction, which is *verus Judex & ſui & obliqui*, we ſhall the better underſtand, according to the Quality of ſuperior Commands, either to lay down our Lives, or ſubmit our Conformity. It was in my conceit a Pain well taken of late Years to reduce the Feaſt of our Saviour's Nativity as near to the right Term or Period, as Art and Induſtry could deviſe, by taking up the looſe Minutes which by tract of Time and multiplication of Degrees had drawn out a wider Diſtance by certain Days, than was conſonant to the firſt Calendar: and therefore the like Labour in another kind might worthily reduce the Challenge which Popes have pretended in ſome caſes above Kings, to the ſame proportion which it held under *Gregory* the Firſt, *Leo*, and all other Biſhops of that See before that Date, by cutting off Encroachments, which by fractions of Time have brought the Church into Scandal, and the greateſt part of Princes into Jealouſy: For all this while Boldneſs undertakes, Wit contrives, Aſſiſtance furthers, Conſcience prepares, Scrupuloſity conſents, Strength prevails, and Majeſty ſuffers.

Now muſt I begin either by Mr. *Garnet*'s Leave or againſt his Leave, to rip up the falſe Stitches of the Canon, *Nos ſanctorum prædeceſſorum*, confidently vouched at his firſt approach to the Council-board, after juſtified before the Lords in Commiſſion, and at this inſtant ſtood upon (as our own Ears can witneſs) in defence of that ſuppoſed Intereſt of depoſing or diſpatching lawful Kings, which is the binding Knot of the late *Gordian* Conſpiracy. For tho' wiſe Men that either follow learned Conſcience, or any certainty of Direction or Rule, will tax Mr. *Garnet*'s haſte in preſuppoſing Cenſures, which the Pope did never yet pronounce, in dealing worſe with his own Sovereign, than any other Prince in his Condition, running without an Errand, and rebelling without a Colour; yet I will take this Canon for the time *de bene eſſe* as it lies, *ut concuſſo fundamento arx ipſa concidat*. This only Principle (if I err not) hath more afflicted, diſcredited, and diſabled the Pope's Means and Inſtruments, in working his own Ends, than all the Batteries that have been bent againſt the Vatican for the ſpace of five hundred Years. For what Prince under Heaven can repute his State ſecure, ſo long as every ſmall diſtaſte to the Pope's deſire may ground a Challenge, the Challenge may procure a Citation, the Citation may produce a Sentence, the Sentence either neglected or not ſatisfied, infers Contumacy, and Contumacy deprives the ſuppoſed Delinquent of that Honour which Nature gives, Conſcience avows, and Conſent fortifies? ſo as in this Caſe either *Gregory* the Seventh in reſpect of his ill hap, or no other Perſon upon Earth, hath reaſon to acknowledge that Rule of the Holy Ghoſt, that *in quo peccamus, in eodem plectimur.* The words of the Canon ſtrongly bent againſt the Crown Imperial of *Henry* IV. are not many, but yet heavy, and in *Engliſh* thus: *We obſerving the Statutes of our holy Predeceſſors, do abſolve thoſe that are bound by Fidelity and Oath to Perſons excommunicated, from their Oaths, and do forbid them to obſerve or keep their Fealty toward them,* quouſque ipſi ad ſatisfactionem veniant, *till they come to yield Satisfaction.*

Thus far the Text of the Canon *expreſſis verbis:* but ſince this is that *pillula aurea* (or rather *deaurata*) that Pill not of Gold but Guilt, which is preſerved in the Cabinet of the Church of *Rome* to purge Princes of their Choler *in morbis acutis*, in hot Fevers; that is, whenſoever they begin to ſquare with the Pope about any point of Eccleſiaſtical Prerogative: and ſince Mr. *Garnet* for his own part likes the Compoſition ſo well, as that he ſhrinks not in defence thereof to hazard the Life and State of his matchleſs Sovereign, and his Royal Iſſue, ſuppoſing them to be more ſick (God be thanked) than they find themſelves; it behoveth me out of Affection and Duty to my dear Sovereign (tho' otherwiſe unworthy ſo much as to gather *herbas agreſtes* with that Child of the Prophet, *in die critico*, upon this day critical) to examine the firſt *recipe* as I find it formally ſubſcribed by the Pope's own Hand, that by more heedful looking into the quality of particular Ingredients, I may the better underſtand, by Underſtanding judge, and out of Judgment reſolve how well it agrees with the Precepts *melioris ævi*, both in Proportion and Property.

The firſt Ingredient (of obſerving Statutes) I confeſs to be of great effect in working the Cure of any Grievance to the Church or Commonwealth: but yet I find it not of uſe among the Canoniſts, that exempt the Pope from the regular Obſervation of any Law or Statute, that out of his own Election he likes not to follow. But to the matter, I would learn whoſe Statutes they are, or by whom enacted, or in what Parliament, that *Gregory* VII. intending to depoſe an Emperor, (eſtabliſhed by the Providence of God, and taking God's own Office into his hand, by making himſelf in this point *Similem Altiſſimo*) will obſerve thus tenderly. Surely the Prophet *David* was never in the number of thoſe Predeceſſors that promulged any ſuch Decree, condemning Perſons with all kinds of Preſumption or Diſcontent, that ſhall induce a Subject to lift up his Hand *contra Unctum Domini.* Our Saviour was none of them, commanding his Diſciples to give unto *Cæſar* what is *Cæſar*'s, and rather to endure, than offer violence to any Man, much leſs to Magiſtrates. St. *Peter*, that ought to be the firſt in reſpect of the Deſcent which the Popes derive, gave never any Voice to any ſuch Decree: for he enjoins Obedience even to Tyrants, whoſe Authority was abſolute. Saint *Paul* was none: for he commandeth Prayers to be made by the Faithful, *proregibus, & omnibus qui in ſublimitate conſtituti ſunt*, for Kings, and all thoſe that are placed in Sublimity, as at that inſtant *Nero* the Tyrant was; and to what end? that under them the Chriſtians might peaceably live.

Out of the rank of theſe Predeceſſors, he muſt exclude Pope *Xiſtus*, who touching the Rule of Conſcience, reſolved rather to obey God than Man: but touching the point of Obedience, made no kind of reſiſtance nor oppoſition to Tyranny. And *Origen*'s Opinion was, That *omnia crimina quæ vindicari vult Deus, non per Antiſtites, & Principes Eccleſiarum, ſed per mundi Judices voluit vindicari.* He muſt exclude *Marcellinus*, that offended no Magiſtrate any further, than to make the Church of God know that *Cæſar*'s Decrees were no lawful Warrants, as ſome taught, for Idolatry. He muſt exclude *Cornelius*, who being charged with a Courſe of entertaining Intelligence by Letter with St. *Cyprian* the Biſhop of *Carthage* (at that time) proteſted at his Death, that the contents of thoſe Letters had no other end or drift, than preſervation of Souls. So far were they from derogation of Obedience to Authority, as St. *Gregory* had never read this Statute: for unleſs they will avow that *Servus* may be *ſupra Dominum*, which Chriſt denies, they muſt confeſs that *Gregory* acknowledging himſelf a Servant to *Mauritius*, he could neither overtop him, nor reign over him.

Neither is it probable that Pope *Anaſtaſius* to an Emperor of that Name would have written, That the breaſt of his Clemency was the ſhrine of publick Happineſs, and that his height carried the place of that Lieutenancy, which God commanded to rule and govern upon Earth, if he had held him a Tenant of his Crown to the See Apoſtolick; and therefore with our venerable Countryman I muſt conclude, that the Maſter-rule of our Life, is *Eccleſiæ primitivæ actus imitari*, to imitate the Examples of the Church Primitive.

But if (notwithſtanding this Obedience) they will enforce a Man to reign, who with his own Mouth doth profeſs the contrary, which is to ſerve; let them call to mind that Obſervation of the wiſeſt King that ever was, That one of the chief Inſtruments, *Per quæ movetur terra*, by which the Earth is ſhaken, is *Servus cùm regnaverit.* I know not what Pope can pretend a better Title to the Prerogative of making Laws and Statutes, than all or ſome of theſe which had their Courſe, and held that Chair; and yet we find not that all this while the Caſe was put (much leſs ruled) by ſuch Laws or Statutes, as might either countenance the Pope's Challenge, or excuſe his Intruſion. But why ſhould we thus puzzle or afflict our Spirits in turning over both the Teſtaments, in ranſacking the Volumes of the Councils, or in ſounding the Judgment of the learned Fathers about the Names of thoſe holy Predeceſſors which are only recorded in their Library? In ſingling ſome of the Principals from the body of the Herd, and hearing them expreſs their own Conceits in their own Words, it may perhaps be found that their Reputations in this point have been further charged, than they can be blemiſhed: bare Words are not to be recorded without demonſtrations of Right, or impreſſions of Acknowledgment. But in the courſe of my own reading (which were ſufficient to find out a black Swan if any were, tho' not ſo well able to reſolve a Doubt as many are) I may proteſt that I could never light upon a Precedent of any Pope before *Gregory* VII. that took notice of any Statute, much more enacted or approved any for the maintenance of this depoſing Challenge; altho' in caſe there had been ſuch, I would hardly have preferred the Practice of any Sinner that may ſwerve, before the Precepts of a Saviour that derives Doctrine from Deity.

The Civil Laws decree, That *Si princeps cauſam inter partes audierit & ſententiam dixerit, eſt lex in omnibus ſimilibus.* If a Prince have heard a Cauſe among the Parties and pronounced Sentence, in all like Caſes it ſhall ſtand for Law; much more in Caſes of Obedience and Sufferance, which *Rex Regum*, the King of all Kings hath both heard and determined. For if the Schoolmen have reſolved truly and adviſedly, that the Pope cannot remit Sins without Sacramental Miniſtration, nor alter Forms eſſential, nor *ad placitum* releaſe Vows; becauſe this abſolute Prerogative only appertains to the Key of him which opens and no Man ſhuts; much leſs can any Pope out of the ſtrength of Paſſion (tho' warped and involved within many folds of fair Appearances) deprive Magiſtrates.

Whether the Chair of *Gregory* VII. brake or not (as one Writer notes) at the pronouncing of the Sentence (becauſe the Pope or the Sentence, or both Pope and Sentence were too heavy for a Chair that had not been ſo far preſſed or ſurcharged for the ſpace of a thouſand Years) it is not my purpoſe at this preſent to diſpute; but I am very ſure, that the Policy, the Diſcipline, and Order of the Church received a great Crack, when the force of the Spirit was perverted and abuſed to the ſatisfaction of inordinate Deſires, which Mortification ſhould rather ſuppreſs, than Ambition execute. For St. *Bernard* writeth with great Judgment to Pope *Eugenius*, that *Epiſcopi & miniſtri Eccleſiæ cùm tractant politica*, when Biſhops and Paſtors of the Church intermeddle with Civil Policy, (I mean ſo far as may put Princes to their plunge) they invade the Limits, they diſturb the Functions, and thruſt their Sickle into the Harveſt of other Men. If none of the Predeceſſors of *Gregory* VII. (in which many were Religious, regarding more internal Piety, than external Pomp) were privy to the Reaſon or Promulgation of ſuch a Law, but *Gregory* himſelf firſt undertook the Exerciſe *duorum gladiorum*, of two Swords upon a weak Text in St. *Luke*, (which is not taken in that Senſe by any of thoſe Fathers whom *Thomas Aquinas* voucheth *in catena aurea.*) Is it not then more than probable, that this Law was both enacted and proclaimed in one day, without any former Precedent or Record, either *in albo Prætorum*, or *in rubrica Martyrum?*

Trithemius a grave and learned Writer, living in the Year 1005, who was about the time wherein the Pope was put into this Heat, affirms, That this Queſtion was then argued, but not determined: and where? not *inter Epiſcopos*, but *inter Scholaſticos*, among the Schoolmen, Whether it belonged to the ſpiritual Juriſdiction of the Pope, to depoſe an Emperor from Sovereign Dignity.

The Church of *Liege* in like manner in the ſame Quarrel, and ſoon after the ſame time, avow by Letter to Pope *Paſchal*, that none of thoſe holy Predeceſſors of which *Gregory* VII. ſpeaks, ever drew the Sword againſt any Emperor, before himſelf, commanding that great Lady the Counteſs *Maud* (that in her Life depended wholly upon his Direction, and on her Death-bed left a rich Legacy to the Church) and that *in remiſſionem peccatorum*, to perſecute this Prince: whereas Chriſt himſelf, whom *Gregory* ſhould imitate upon the ſame Condition *peccatorum remiſſionis*, that is, as we forgive the Treſpaſſes, enjoineth his Diſciples to forgive their Enemies, and that not ſeven times only (which agrees well with the number of *ſeptimus Gregorius*) but ſeventy times ſeven, uſing the number of finite for infinite, which agrees better with the Duty of *Gregorius Epiſcopus.*

Otho Friſingenſis, another Author of thoſe times, concurring formally with the two precedent Witneſſes, affirms, that *legendo & relegendo*, in reading and reading over again the Lives and Actions of Emperors, he could not hit upon any one in that Rank, that before *Henry* IV. was expelled or depoſed by the Papacy. Wherefore the Proof ſtanding very clear and pregnant, as I take it on this ſide, as well *Quia probatur manifeſtum*, as *Quia non probatur contrarium*; that this Act of *Gregory* found no Right antecedent whereupon to ground a reaſonable Conſequent; I would gladly learn for my own Inſtruction of any Writer, modern or ancient, whether it were a juſt Part in a Judge to condemn an Emperor, *cauſâ inauditâ*, or a wiſe part in an Emperor, to put his Crown *in manus Papales*, into the Pope's Hands without ſurer hold; or a religious Part in a Pope, to vouch ſuch Records as are not any where ſet down, if they be not in Tables of Ice, *Idque flantibus auris*, the Winds blowing Southerly. But it may be I have miſtaken by Error, or overſhot with Haſte, or omitted by Prejudice ſome ſuch Predeceſſor to *Gregory*, as was Author of ſome ſuch Act, without any kind of Exception made in the behalf of the Prince, either of Invalidity of the Sentence, or of Peril in the Precedent. For this Pope voucheth *Zachary* a Predeceſſor of his own, that depoſed *Childerick* the King of *France*; tho', as *Galaſius* reports to *Anaſtaſius*, this heavy Sentence fell not on him, ſo much for any Crime committed by himſelf, as becauſe he was reputed *Inutilis*, unprofitable, or of no uſe to ſo great a Monarchy.

I would be loth that any Man ſhould hold me ſo preſumptuous or undiſcreet, as to carry over a Queſtion of this Importance, with a peremptory Strain, as if no Author had reported this Suppreſſion of *Childerick* to have been in very deed the powerful Act and Execution of *Zachary*. For I acknowledge that ſome ſuch there are (tho' earneſtly tranſported with a deſire to raiſe and improve the Reputation of *Rome*, by an effect of ſo forcible Authority.) My deſire is therefore only to be heard in a Word or two, and ſo far to be credited, as the weight of Reaſons may demonſtrate, that only the Peers of *France* deprived *Childerick* by uniform Conſent, howſoever they were providently careful afterward, that their Proceeding upon tickle Terms, might paſs more currently the Voice and Cenſure of the World, by Approbation of ſo grave an Oracle. But herein firſt I note, That *Gregory* gives Evidence with his own Mouth *in cauſa propria*, in a Cauſe that concerns himſelf, which *Iſaiah* did not, appealing *ad Legem & teſtimonium*; nor our Saviour excluding any Man's Report, *Qui de ſeipſo perhibet teſtimonium*; nor St. *Peter* upon Advantage *Sermonis prophetici*. The Civilians allow not this Prerogative to *Cæſar*, nor the Biſhops of *Africa* to *Zozimus*, nor *Johannes de Pariſiis* to any Pope, *niſi ſcripturæ fulciatur authoritate*, unleſs he be ſupported by the Warrant of Holy Writ; nor the Canons themſelves to any mortal Man that may be ſubject to Affections. But I will let this Advantage paſs, tho' it may ſeem ſtrange, that whereas the Figure of St. *Peter*'s Perſon was ſufficient whilſt he converſed upon Earth, to cure private Men of their Infirmities, it happens after his Tranſlation into the Mount, that the ſhadow of his Function ſhould prevail ſo far as to the Suppreſſion of Monarchies.

Firſt therefore, in diſproof of Abſolution from Oath, and Deprivation of regal Juriſdiction aſcribed to this Pope, I take hold of the Gloſs itſelf, expounding this Word *depoſuit*, for *deponentibus conſenſit*: For hereby it appears, that this honeſt Man being far from their Ambition and Preſumption, that hold it a great Honour for a Pope to depoſe a King, ſought carefully and modeſtly to acquit that Chair of an imputed Crime, (or Error at the leaſt) applying the Text of his own Record to the Teſtimony of the beſt Hiſtories. For in a Story found in the Library of the Abbey of *Fulda* among the *Germans* it is plain, and by the Report of a *French* Writer very ancient, that King *Pepin* of *France* was ſurrogated into the place of *Childerick* by the whole Nation of the *Franks*, *relatione tantummodo miſſâ ad ſedam Apoſtolicam*, report being only made to the See Apoſſtolick.

It is likewiſe evident by the ſame Author, that before any Ambaſſador was ſent to *Rome* from *France*, this ſilly Cypher of a King, *non re ſed nomine tantummodo regnabat*, was a King in Title, not in Truth, and did only fill the place of Royalty upon the Stage of Scorn: And therefore when the Reals were all converted into Nominals, let no Man wonder at the Voice of Ratification, but rather note the Reproof of Imbecility. The whole ſway and ſtroke of Affairs in the State reſted at that Time in the Hand of one Perſon only, that was *Maire du Palais*, his ſole Act was authentical, his Word was Law: to him they reſorted for Reſolution; to him they gave thanks for Satisfaction: And therefore if it be true that *privatio præſupponit habitum*, it muſt likewiſe be true that *Childerick* could not be deprived of a State whereof he was not poſſeſſed at that inſtant, without new Grounds of Philoſophy. Another Author writes *miſiſſe Baronis ad Zachariam Papam*, that the Barons of *France* ſent to Pope *Zachary* as it were to conſult, whether *ignavum pecus* a Drone that devours, or a Bee that labours, were more ſufficient to command ſo great a State; and that *Zachary*, not unlike in this to *Alexander* the Great, beſtowed his Voice of Approbation on him that ſhould be reputed *digniſſimus*. *Gagwin* makes a Queſtion to be moved to Pope *Zachary* from the whole Eſtate of *France*, by this kind of Compariſon, Whether of theſe two Perſons, *datâ electione*, free Choice being given, were more capable of Government, he that ſpends his Time at Home *nihil agens* idlely, or he that bending his whole endeavours to Affairs *induſtriâ virtuteque publica negotia moderaretur*. But the Pope's Anſwer being (by the Report of this Author) as was teſtified before, *hoc adducti reſponſo Proceres ſibi Regem delegerunt*, the Peers induced by the ſame, choſe *Pepin* King. But as we know, that a Queſtion in Point of Fact ſubmits no Claim of Right, ſo the Pope's Anſwer out of Diſcretion, implies no Bond or Obligation of Neceſſity. With this Opinion concurs another Writer of that State, proving by an expreſs Deduction of the whole Cauſe, that the Choice of *Pepin* proceeded originally from the free Conſent of the *French* Peers; tho' for Prevention of all Doubts and Scruples, leſt Malecontents might aſcribe the Proceſs rather to reſpective Faction than to ſingle Faith, there was great Uſe of the Pope's Authority *diſponentis in dubio Procerum*, reſolving the Doubt which cauſed the Peers to ſtagger. This would have been the end, whatſoever Clouds were caſt, or the Pope had ſaid: But *abundans cautela non nocet*, and the Perſons that either are not at all, or very little intereſted by their own particular in the Point in Queſtion, are preſumed by the Law to regard the Matters with Eyes of greateſt Equity. This Manner of proceeding is not ſtrange; for *Joab* fearing at the height of his Fortune the ſhot of Envy, preſſed *David* with a powerful Argument, to come in Perſon, and receive the Honour of giving up of the Fort of *Rabbath*, that by his Induſtry was brought to the laſt pinch, leſt his own Glory in the World might ſwell too much by the fortunate Addition of ſo proſperous an Accident. We count that Doctor happy, that reſorts to the ſick Patient *in declinatione morbi*: And it hath ever been accounted an effect of Skill, to wind in the Conſcience of an upright Judge for the Countenance of a Cauſe humorouſly undertaken by the firſt Author, that works under the Reputation of unſuſpected Truth. Wherefore tho' this *Major du Palais*, or Superintendant-General over all the *French* Affairs, held in his beſt Courſe to maſk Religion with the Veil of Holineſs; tho' *Zachary* were not unwilling in the End to take hold of this offer for the grounding of a Precedent of Challenge, and Advantage in like Cauſes at another Time; tho' the Peers were willing to leave *Speciem* to *Zachary*, reſerving *Vim* the Strength and Execution only to themſelves, let this be neither Rule nor Inſtrument of curbing Princes of better Underſtanding, or emboldening Popes of ſtronger Minds. For as well might the poor Fly ſitting on the Cart-wheel while it was in moving, wonder at the great cloud of Duſt which ſhe raiſed in the beaten way, as *Gregory* or *Zachary* draw Counſel to Power, or make that Act their own, which was hammered in the Forge of Ambition, countenanced with a Colour of Neceſſity, and executed by a Miniſter, that being weary of Subordination, reſolved by this Trick, when the Means were fitted and prepared to the Plot, to make himſelf abſolute. The Caſe of Kings were pitiful, if *ex factis ſingularibus* out of ſpecial Facts and Practices, as the Chapter of *Liege* writeth gravely to Pope *Paſchal*, it were lawful to draw leaden Rules in their diſgrace. For ſome Men undertake too much out of Preſumption; ſome yield too much out of Cowardice; the greater Part ſtrain farther than they ought of Right; and thoſe weak Rules lighting by miſhap into the Hand of Power, not tempered with Conſcience, are ſometime forced by Affection, ſometime bent with Corruption, and for the greateſt Part applied with Subtilty. It ſeemeth not (by the Report of *Paulus Æmilius*) that this Manner of proceeding againſt Princes by the chief Paſtors of the Church (tho' without Paſſion, and at the Requeſt of publick States) was uſual or ordinary in thoſe Days; much leſs humorous, violent, or voluntary Decrees. For *Zachary* himſelf was at the firſt ſo moderate and mannerly, *ut non auderet tam magni momenti cogitationem ſuſcipere*, ſo much as apprehend a Conceit or Thought of ſo great a Buſineſs. And therefore tho' we ſhould diſpenſe with *Gregory* VII. in vouching this Predeceſſor in the Point; yet the Predeceſſor himſelf by Daintineſs, doth in a ſort diſclaim the Charter which he ſhould pretend, without either enforcing or urging (in ſo plain a Sphere) any external Traverſe of Obliquity.

By this Author it is manifeſt, with what Tenderneſs, Advice, and Caution the Pope opened a Vein that is apt to bleed above the Meaſure which the Doctor's Art preſcribes: For finding by Equity, that *Childerick* was the laſt Branch (tho' ſear and wither'd) of *Clouis* the firſt Chriſtian Prince among the *French*, that he was *ſine liberis*, *ſine ingenio*, without either Iſſue or Diſcretion, (the ſtrongeſt Sinews both of Succeſſion and Government) that he was ſo benumbed with Sloth and Senſuality, that he could not feel the taking off his Crown from his Head, that his Suppreſſion was not only ſought by *France*, but applauded by the World: The Pope proceeded, having perhaps in his Eye the Bond whereby he might engage the Kindneſs of King *Pepin* to the Church of *Rome*, againſt the *Greekiſh* Emperors, (tranſported with Jealouſy.) This makes *Kranſius* in his Hiſtory of *Saxe* to wonder at the faſtneſs between the *French* Kings and the Popes (like Hands that waſh and help one another by mutual Support) in attaining thoſe high Objects which both aimed at. *Antoninus* joins with others in expreſſing the Demand Comparative between a Prince of Judgment, and a *faict-neant*, an Image, and a Man; between a King indeed, and one *qui ſolo nomine regio tegeretur*, that was only maſked with the Name and Title of a King; adding, that the States aſſembled upon the firſt Return of the Pope's Anſwer, ſuppreſſed *Childerick*, and raiſed his Competitor. *Zachary* was ſo far from levelling at the Perſon or the Crown of *Childerick in hypotheſi*, (if we give credit to our own Countryman *Polychronicon*) as he only meant *in theſi* to ſet down his Judgment of the difference which a wiſe State ought to make between two Princes qualified, not only in a kind of Diſproportion, but of a direct Oppoſition of Gifts and Properties. *Gotefridus Viterbienſis*, ſtriking rather at the Root, than at the Branches of this Enterprize, affirms not *Francos Zachariæ paruiſſe decreto, ſed acquieviſſe conſilio*: tho' the Difference be as great as between an abſolute Injunction and a politick Advice. *Sabellicus*, without ſo much as dreaming of a Donative, avows a Counſel by theſe words, *conſulto prius pontifice*. *Nauclere* yet more roundly if it be poſſible, that after the Peers had firſt elected, the Pope ratified: And with him agrees *Blondus* in one Tune, without either reſt of Violence, or inducement of Affection.

Out of *Aventine* I draw two Reaſons of Concluſion againſt the Juriſdiction of Pope *Zachary*. The firſt, That being moved by the *French* Peers as before, he takes his ground of Anſwer from the revolt of the ten Tribes, (tho' as aptly as a Man might avow the riſing of *Jack Cade* againſt his anointed Sovereign.) For, the Sins of that ungodly Race, the Curſes that were pronounced againſt the Rebels themſelves, and the Cenſures of God's Prophets, evidently prove, that the Fact was exorbitant. The ſame Reaſon may be drawn from *Zachary*'s own Paradox at the ſame Return, defending, that ſince Princes hold their Crowns and Governments of the Peoples Choice, in whom it reſteth abſolutely *conſtituere & deſtituere*, to conſtitute and deſert; tho' the Doctrine be as dangerous as it is damnable, yet hereby it is evident (for me) that the Right of Depoſition (being as the Pope himſelf avows, inveſted in the People) was not in himſelf, and by Conſequent, that he was a Counſellor, but no Commander; an Aſſiſtant, not a Judge; and that he did only approve by Admittance, not enjoin by Prerogative.

I know that Mr. *Garnet* and the reſt will as unwillingly admit the Judgment of the Centuries in this Circumſtance concerning *Childerick*, (as other would Barons of another ſide) further than the Warrant of their Proof makes way; which moves me with a better Will to let them paſs, and leave the Judgment of this Point upon the Credit of ſuch Authors as had no reaſon to ſpeak more than Truth for Advantage of either Part, becauſe in thoſe Days not the Manner, but the Matter; not the Circumſtance, but the Subſtance; not *quo jure*, but *ad quem finem*, came to be decided between the Pope and the Parliament.

But touching the Pope's Proceſs againſt *Henry*, the Chapter of the Church of *Liege* doth unfeignedly proteſt, that in their exact peruſal of both Teſtaments, they could find no Precedent *hujuſmodi præcepti Apoſtolici*, of any ſuch Injunction or Writ Apoſtolick. A good Caution to make us tender in miſdeeming of their Reports and Teſtimonies, which (living in the Time of this Diſtemper void of Paſſion, and qualify'd with Modeſty, being learned both in the Scriptures and Civil Laws, and regarding more the Peace and Quiet of the Church, than the Partialities or Humours of either ſide) affirms ſoundly out of Knowledge, and confidently upon their Credit, that this *Gregory* VII. was the firſt Pope that depoſed any Prince by the Warrant of St. *Peter*'s Keys; or, to uſe their own Phraſe, that ever lifted up the prieſtly Launce againſt *Cæſar*'s Sword, not dreaming of any formal Proceſs ſent out by Pope *Zachary* againſt King *Childerick*.

The very Circle of a Crown Imperial (ſo far as any State or Fortune beneath the Moon can reach) implies a Perpetuity of Motion: For according to that Principle of the Mathematicks, as it begins from all Parts alike, ſo *in ſeipſa deſinit*, and ends abſolutely in itſelf, without any other Point or Scope objectual to move unto. That the Pope hath ſometimes ſet the Crown Imperial upon *Cæſar*'s Head, ſince the crowning of King *Pepin*, (whom I take to be the firſt) ought to be no reaſon of his toſſing Crowns from Head to Head like Tennis-Balls; for this were the way by Signs to deſtroy Subſtances, and to oppoſe Formality to Neceſſity, and Occaſion to Inſtitution. The Metropolitan of every Kingdom, may do as much in Form, *Non conferendo jus, ſed implendo juſtitiam*, not conferring Right, but doing what is Juſt and Right, as it is aptly ſaid by one of their own Partners. For tho' the Pope reſerve unto himſelf this final Intereſt of crowning an elected Emperor at *Rome*, and ſome Flatterers would derive a kind of Neceſſity for Conſummation and Eſtabliſhment from thence; yet many Emperors of an elder Date, and *Charles* V. in our Time, have been ready with their Swords in their Hands to prove (notwithſtanding *filial* regard and Reverence to the Mother-Church) that the ſtroke of Power is abſolute without relative Formality. I conclude this Queſtion concerning *Childerick*, with an Argument inevitable either by Invention or Sophiſtry, not diſabling the Witneſſes. For *Soto*, both a Friar and a learned Schoolman, holds, That *extra cauſas fidei ipſi Pontifices nunquam auſi ſunt Reges deponere:* The Popes themſelves durſt never depoſe any King without the compaſs of ſuch Matters as concern Faith. But *Childerick* was depoſed not for any Point of Faith, but as Pope *Gelaſius* writes to *Anaſtaſius*, becauſe he was of no uſe to the Commonwealth; therefore it is not poſſible that *Childerick* ſhould be depoſed by Pope *Zachary*. What Hue-and-Cry hath been made in former Times againſt uncivil Claims, varniſh'd with religious Pretences, nothing proves more plainly than the ſtrong Oppoſition which was made at the *Holy-Land* to *Pelagius* the Pope's Legate, for ſeeking to draw in all Parts to the Share of the Church, at the taking the rich City *Damiata*, not unlike to the Partition which was made by the Lion to other Beaſts that hunted in his Company: For it is true that at the firſt they wonder'd, and after complained, that the Miniſter of him, whoſe Office was to ſtrenghthen by Advice, ſhould diſcourage by too much Greedineſs.

To that Example which is given by *Gregory* VII. of *Alexander* I. another ſuppoſed Predeceſſor, abſolving Chriſtians from Oaths, it were Idleneſs to ſhape any formal Anſwer; ſince it hath neither Likelihood in common Senſe, nor Ground of Antiquity: For, in a thouſand Years after *Alexander* I. this kind of releaſing Oaths was not hatched, much leſs practiſed. It is not probable that a diſcreet Pope, void of Humours, (as in that firſt Spring of Piety all were) would have ſought to range a faithleſs Prince to formal Diſcipline, ſince *Paul* himſelf refuſeth to judge thoſe that were no Sheep of the Fold, but *foris*, that is without. And as unprobable it is, that when the Biſhops of *Rome* intended moſt the winning of Souls by Obedience, that ſhould give ſo great Cauſe of Diſtaſte to thoſe Princes, that by the ſtrength of their own Laws were moſt abſolute in Authority. It may be that *Alexander* I. might comfort and ſecure the Conſcience of ſome Chriſtians that were over-ſcrupulous and preciſe in obſerving wicked and unlawful Oaths, which are *ipſo jure nulla*, (tho' the Pope ſhould not diſpenſe) and therefore broken with a better Conſcience towards God, than kept. But how proves that the Breach of lawful Oaths to Princes that are rightly ſeated in their State, (tho' perhaps not ever good) which the Church condemns, and no Law juſtifies? I hold it moſt abſurd, that the Church of *Rome* for Greatneſs, or the Church univerſal for Inſtruction, would not have kept Record of ſuch a Fact, if any ſuch had been: But it is not hard to prove *quidlibet ex quolibet*, where Men may deviſe to join their own Poſitions, without care either to anſwer for Preſumption, or to account for Ignorance, and then to grace them with Proteſtations of Piety.

The Caution which St. *Peter* is ſaid to give at the Ordination of St. *Clement*, that no Man ſhould be favour'd or kindly entertain'd by the true Profeſſors of Religion, againſt whom his Succeſſors ſhould conceive Offence, may be admitted without prejudice to this Point; if we ſpeak of ſuch juſt Offences as God's Law puniſheth. There are Caſes wherein a Man, that doth but in a Word ſalute and give a God-ſpeed to a grievous Sinner, is ſaid *Communicare operibus ipſius malignis:* But this is not ever; when St. *Clement*'s Succeſſors cenſure more out of Paſſion, than out of Reaſon. Chriſtian Princes were not ſo much as thought upon when this Courſe was ſet, and therefore far out of Pope *Alexander*'s Aim, that is, made to wound a King ſtanding ſo far off, with a headleſs Arrow. Reaſon ſatisfies thus far, that the Paſtors of the Church (excluding us out of the Fold) can bereave us only of thoſe things which they give us at our coming in, that is, the Kingdom of Heaven, more in Value than ten Millions of Worlds, but no Kingdom upon Earth; Co-inheritance with Saints, not with Sinners; eternal Bleſſings, not temporal Benefits. It appears the Wardrobe is very beggarly (as one of Mr. *Garnet*'s Fellows wrote over in ſuch another Caſe) that affords nothing but Rags inſtead of Robes; and the Stock goes low, that would pay Counters for *Portagues*.

Theſe are all the Predeceſſors which *Gregory* VII. preſents as it were in a Mummery, to caſt Dice for a Prince's Crown, as the Soldiers did for the ſeemleſs Coat of Chriſt: For they come, and go out again, without either ſpeaking any Word, or giving other Notice, than by Signs, which is nothing in Effect: Their End ſhould rather give Evidence, than make Appearance, diſpute, than dally. It is hard that the Pope ſhould flouriſh in this ſhameleſs Manner, about the Heads of anointed Majeſty with a ruſty Sword, which ſince the Time that St. *Peter* was commanded to put it into the Scabbard, was never drawn, nor by the Rule of Chriſt ought to be.

King *Edgar* in an excellent Oration, perſuading the *Saxon* Biſhops that had the Sword of *Peter*, to join Hands with him that had the Sword of *Conſtantine* for the cleanſing of the Church, meant nothing leſs, than that it could be in a Biſhop's Power againſt himſelf, to make uſe of the material Sword, which was aſſigned to his Cuſtody. He tells *Dunſtane* in the ſame Speech afterward, that it was he that committed this Truſt to the Biſhop's Care, that ſhould chaſtiſe Offenders indeed: But how? *Epiſcopali cenſura, & authoritate Regiâ*, by the epiſcopal Cenſure, and the King's Authority. *Gregory* VII. was not yet awake, who putting two Swords into one Sheath, intends nothing more, than to drive Princes out of the Field with their own Weapons.

But howſoever ſome weak Sovereigns, that received their Authority from God for Term of Life, have notwithſtanding been content to hold it of the Pope at will; this bars not others of a quicker Spirit, to examine Evidence concerning the Point of Right, before they ſuffer themſelves to be concluded in the Court of Equity. Subjects that are dutiful, and not apt to be tranſported from their Faith with every Blaſt of ambitious Spleen, cleave faſt to the Foundation which is the Band of Obedience, not voidable by ſtrong Intruders, nor partial Interpreters. I confeſs, that a godly Paſtor ought chiefly to provide, that Chriſt's humble Sheep ſhould be folded in due Seaſon, and ſafely guarded from the Perſecution of Wolves: but the Sheep, for their Part alſo, ought to be as cautious, that a Wolf be not the Bellweather; which hath happen'd as often in many Churches, as the Biſhops out of their Affections and wreakful Paſſions have been Authors of a far greater Effuſion of Blood, than Herciticks or Infidels out of their Malignity. Further, if we may give credit to that ſtrange Viſion which *Sozomen* in his Hiſtory reports, there aroſe a Queſtion not only among Doctors upon Earth, but even among Saints in Heaven, what Courſe was beſt to be taken with *Julian* the Renagade, notwithſtanding his Apoſtacy, in reſpect of Place: And yet of both, I preſume, that Mr. *Garnet* held him a Man of worſe Condition and Affection towards God and godly Men than *Henry* IV. whom without the leaſt gall of Conſcience, or Suppoſition of Doubt, the Pope deprived thus unworthily.

Touching the Quality of this afflicted and tormented Emperor, and the true ſtate of his Cauſe, which was the Ground and Motive of the Pope's ſharp Choler, I need not at this Time ſay much, when much cannot be ſaid for want of Time; but will leave him with his Oppoſite to their final Trial by Grand Jury at the dreadful Bar, where the Books of all Accounts and Evidences ſhall be laid open, and Sentence ſhall be rather grounded upon juſt Deſert, than partial Deſire: And where no Man ſhall be either charged out of the Envy of *Craſſus*, or defended by the Eloquence of *Anthony*. I am not Ignorant of that which Writers on both ſides (Imperial and Pontifical, *Guelphes* and *Gibillines*) have ſet down touching Pope and Emperor, according to that Humour which Infection and Diſtraction of Parts envenom'd their Pens. I know that a Man may err eaſily, bending too much out of Partiality or Prejudice to the Byaſs of either ſide: And I want that juſt meaſure of Diſcretion and Diſtinction which ſhould level Grounds, that are made unequal and uneven by diſtemper'd Conceits. But whether the Pope were vexed and diſquieted with *Henry*'s Challenge of Inveſtiture of Biſhops *per baculum & annulum*, and Collation of Church-Preferments, as ſome think, (tho' many Kings, and ours eſpecially, have had, and ever challenged the like Prerogative in their own Eſtates,) or with the Inſtigation of *Sigisfred* the Archbiſhop of *Mentz*, to withdraw Subjects over-haſtily from their ordinary Reſort to *Rome*, as others write, (tho' this hath been the Caſe of ſome other Princes in like ſort that eſcaped Thunder-claps) or whether *Henry*'s mean Account of the Pope's Admonitions, or his Preparation to withſtand Force with Force, put the Pope into Choler, as other Emperors have done often times, both before and ſince, with more eaſy Penance for ſuppoſed Pertinacy: Whether all theſe or any one of theſe Occaſions gave fire to the Train, tho' I preſume not to reſolve, yet I may be bold to conceive in my own Opinion, that the Medicine was over-ſharp and violent for the Malady. True it is, that the Grudge of *Gregory* to this Emperor began firſt to feſter in his Heart a good ſpace before, in reſpect of the Countenance and Aid which *Henry* gave to *Gibert*, Biſhop of *Parma*, choſen Pope by the Cardinals on that ſide of the *Alps*, with Oppoſition unto *Alexander*, whom *Gregory* that was then but an Arch-deacon, highly favour'd.

But ſuppoſing all were true that either colourably or juſtly hath been given out in this Cauſe for Truth, I deſire to learn of ſome grave Doctor whether theſe poor Motives were proportionable to the Pope's glowing Indignation, which ſhutting his Gate againſt the Emperor, (I will not ſay uncivilly, but uncharitably, that came barefoot in a bitter Froſt to witneſs true Contrition of Heart, for Satisfaction to Wrath) ſet up a Competitor againſt him in *Germany*, while he was labouring by this painful Pilgrimage to *Rome*, to work a perfect Reconcilement with the Pope; and to write to the Party oppoſite (leſt they might ſhrink upon thoſe ſhews of Friendſhip, likely to enſue between the Emperor and him) that he would ſend him back, as he would uſe the Matter, *culpabiliorem* more culpable, and by conſequence more ſubject to their violent Advantages.

Nay, which is worſt of all, after Peace and Friendſhip, and abſolute forgiveneſs of Offences ſworn, and the Sacrament received by the Emperor, (for the better aſſurance of the League intended at the Pope's own Hand) to arm his Son againſt him in the Field, under the pretence and maſk of Zeal, *ut nomen Auguſti ab hæreſi vindicaret*, that he might redeem the Title of *Auguſtus* from the blot of Hereſy; for to this Center all the Lines of the Pope's diſguiſed Exceptions may be drawn, and in this Gulf they vaniſh: As if no Man could embrace a ſound Belief, unleſs he had a ſervile Heart; as if all that oppoſe againſt Intruders were Hereticks; as if it were not lawful for the Emperor to ſet up a Traverſe in the Church, ſo long as he reſolved to exclude the Pope from Competition to the Chair of State: or as if the ſuppoſition of Hereſy at large without Conviction of any Point heretical, againſt the Canons of the Church by Proof, were a common Jail, wherein the Pope's Cuſtom is to lodge all Chriſtian Princes, that by contradiction to partial demands upon juſt grounds, are condemned as his Caſt-aways.

Laſt of all, I would know where the Pope learned to forgive *culpam*, but not *pœnam*, to a Prince, that in the end was more willing to ſollicite Union, than to rankle Hate; or where he learned to diſtinguiſh between Reſtitution to Grace and Majeſty, by ſuſpending that part of his Favour that might put him into poſſeſſion of his own lawful Intereſt. I find by *Sigibert* the Abbot of *Gemelack*, that in his time it was holden *hæreſis nondum in mundum emerſa*, that the Chaplains of that powerful God, that oftentimes makes Hypocrites to reign *propter peccata populi*, ſhould caſt the Rod into the Fire, before that Faults were chaſtiſed according to Deſerts; or by their abſolute Commands, diſplace thoſe Inſtruments, that, as powerful Executioners of heavenly Judgment, are to diſcharge the Duty which is laid upon them.

But howſoever *Gregory* might in thoſe Dog-days ſcorch an Emperor by the Combuſtion of Beams that *ex diametro* were oppoſite, by the ſtrength of a Party raiſed by Advantage of the Time; yet by ſucceeding Tokens I obſerve, that God was juſt, tho' Popes were humorous. For one of thoſe Arch-traitors whom the Pope erected out of Paſſion, and ſupported out of Pride, was ſlain afterward at the winning of a Town; another in the Field, tho' (as one writes) not impenitent for his Treachery. The Pope himſelf, worn as it ſeems with Vexation and Strife, lived not many Years; and having left his Point in this Prince, was never able to any great purpoſe to ſting afterwards. The mutinous and rebellious Biſhops (that had oppreſſed and reſiſted by the Pope's Direction) never held up their Heads after the fatal Blow which they received at the Synods of *Mentz* and *Wormes*, but were either ſlain by their own Sheep, or periſhed in the Mountains by a moſt hard Deſtiny.

Walran Biſhop of *Mægburghe* writing to a *German* Count, gives a very juſt Cauſe of this Concurrence in Malignity of ſharp Accidents: For ſince by reſiſting Power (ſaith the Biſhop) they reſiſted God, it was not poſſible for the Succeſs to be better. *Platina* reports, that in the very *interim*, while the Pope was as yet adviſing and conſulting about the beſt Courſe to be taken with this diſcontented Prince, ſome wiſer than the reſt were of the mind, *Regem non ita cito anathematiſandum*, that a Prince was not to be accurſed in ſuch poſt-haſte. But Oppoſitions were idle, the Pope's Heart being wholly ſet upon Revenge, and ſupporting this whole Proceſs with the Commiſſion which Chriſt gave to St. *Peter* to feed his Sheep, that is, to teach and inſtruct the Flock: for I make as great difference between Inſtruction and Deſtruction, as between feeding and ſtrangling, tho' by the very form of the Sentence, (as it is ſet down againſt this Emperor) it be manifeſt that *Gregory* commandeth St. *Peter* and St. *Paul*, as if they were his Bailiffs-errant, to execute the Writs of his pontifical and privative Authority.

Touching the Charge of abſolving Subjects from their Oaths, which is the chiefeſt Inſtrument by which the Canon *Nos Sanctorum* works, in ſeeking to ſubvert the Seats of Kings, upon ſuch grounds of Quarrel and Exceptions as may be made, I will chiefly note, That *Gregory* doth in this Caſe aſſume more to his Dignity by Deputation, than God himſelf doth to his Deity by Prerogative. For admitting Oaths to be lawful, voluntary and without derogation from Right, (as thoſe are which we make to Princes as becomes) he concludes all their Miniſters, that dare preſume to violate Faith ingaged upon thoſe due Reſpects, within the compaſs of Perjury. The promiſe which God makes to Man in ſwearing by himſelf, he will not (tho' it tend to the quicker and the juſter puniſhment of Sin) releaſe unto himſelf; and yet ſhall we think that the Promiſe which was made by a Sinner to him, can be releaſed without him? *Frater non redimet, redimet homo? non dabit Deo placationem ſuam & pretium redemptionis animæ ſuæ*, as we may conclude in this caſe with the Prophet. Tho' God were ſo juſtly moved with diſpleaſure againſt Man, as he ſeemed to repent his own Free-Grace in planting an ingrateful Stock in a barren Soil: *& præcavens in futurum, & tactus dolore cordis intrinſecus* which inward Wound might very far provoke the Wrath of God againſt his Creature: yet in reſpect of his Word engaged, from the beginning of the World, That the bleſſed Seed of a Woman (whom all Generations call bleſſed) ſhould bruiſe the Serpent's Head; which Myſtery was to be wrought with effect *plenitudine temporis*; he would not diſpenſe with his own Promiſe, but ſuffered the purpoſe of Free-grace to be carried upon the Wheels of eternal Providence, to the prefixed Period of his own Benignity. The grievous Sins of the Prophet *David* and of his Offspring, provoked God's Wrath juſtly to wipe both the Bloſſoms and the Root, out of all Grace and Mercy: and yet in reſpect of an Oath taken long before, that an Heir of his Line ſhould never want, to keep his Throne, it pleaſed him for the making good of his own Promiſe, to remit his Diſpleaſures.

The greateſt hope of Encouragement that God's People could draw from the Prophet *Samuel*, when they implored his Aſſiſtance in Diſtreſs, was this, That God having by a ſolemn Oath ſelected and in a ſort impropriated that Nation as a choice People to himſelf, would neither exclude them out of Protection, nor leave them to Fury.

The Rule of God's own Direction is very ſtrict, That if any Man hath made a Vow to God, *& ſe juramento conſtrinxerit*, and bound himſelf by Oath to keep the ſame, it ſhall no longer be in his own Election to make it void, but he ſhall perform preciſely what was deliberately promiſed. It is not known to any Man of Underſtanding, what the Law ſets down concerning the Redemption of Vows upon juſt Cauſe in the preſence of the Prieſt, and at ſuch a rate as the Votary, according to the meaſure and proportion of his Means, is able (without undoing) to afford. Again, all Men underſtand that unlawful Vows and Oaths (as that of *Jephtha*, *Herod*, and many other raſh Proteſters of like ſort) force not the Point of Conſcience in the leaſt degree: But when we take an Oath adviſedly and freely, according to the Meaſures and Conditions limited and expreſſed in the Law of God, that is, according to Judgment, Righteouſneſs, and Truth; yea, tho' it be by Duty to a wicked Prince, *Ezekiel* will teach us by the warrant of the Holy Spirit, that God himſelf will nail upon the Head of the Perjuror, the Oath which he hath ſet light, and the Covenant which he hath perfidiouſly broken.

By the reaſon which Pope *Gregory* makes his warrant of releaſing the Subjects Oaths to *Henry* the Fourth, the prophet *Hananias* one of the High Prieſts for the time, might as well have diſpenſed with the Oaths of God's People to *Nebuchodonoſor* an Infidel, and an Idolater. But God himſelf condemneth all Prieſts and Prophets that by falſe hopes went about to eaſe the People's Burden before the time prefixed for their Penance by his Impoſition: and the Days of *Hananias* the falſe Prophet were cut off for his flattery. Wherefore as the Boldneſs and Preſumption is very great in any mortal Man to dive ſo deeply into the ſecret Myſteries of Providence, as to judge at what Time, in what Perſon, upon what Condition, or by what Warrant one Sinner may releaſe another of his Oath: ſo likewiſe the Charter which the School-men in the Pope's behalf pretend upon this Claim, muſt undoubtedly be very weak, whenſoever they ſhall undertake without Aſſurance of God's certainly revealed Will, to diſcharge the Conſcience of Man engaged by Election, and obliged with Solemnity. The School-men ſhall never be able to make clear Proof by any ground out of either Teſtament, by any Canon of the Councils Primitive, nor any of the Fathers living in a purer Air than ours, (howſoever they deviſe Diſtinction upon Diſtinction, rather to entangle than to ſettle Faith) that this Doctrine of accurſing Princes upon light occaſions, of releaſing Oaths, of depoſing Magiſtrates, is conſonant to thoſe Principles of Obedience and Patience which our Saviour left to his Apoſtles, and they like Heirlomes to their Succeſſors. If it be clear by St. *Matthew*, that our Peace ſhall return unto ourſelves, when they to whom we wiſh the Peace, declare themſelves unworthy of our wiſh; undoubtedly as true it is, that our Curſes ſhall recoil upon our own Heads, (and that worthily) when they that are within the Boſom of the Church, (which is the Houſe of God) declare themſelves unworthy of the Curſes which without Deſert we caſt upon them. For as it is a Queſtion well moved in this Caſe of *Balaam*, *quomodo maledicat ei, cui non maledixit Dominus?* ſo is it as diſcreetly noted by St. *Gregory*, that *ligandi & ſolvendi poteſtate ſe privat, qui eam injuſte exercet*: he deprives himſelf of the Power of binding and looſing Sins, that ſeeks to practiſe without Grounds that may be juſtified. *Origen* writes excellently, that where the Motives of ſharp Setences are unjuſt, and not able to endure the touch of due Regard, he that is caſt out, goes not, *ſed qui manet intus, excluditur*.

It was not in the power of the Prieſt by the Law of *Moſes*, to make him a Leper that was clean, but to judge (by ſearch) whether he were clean or not: and therefore St. *Auguſtine* may more confidently deliver his own Concluſion, That raſh Judgment hurts not the Perſon *de qua temere judicatur, ſed ei qui temere judicat*. The Reaſon may be drawn out of another of the ſame ſuit, *quia dum volumus per iram aliena coercere, graviora committimus*: in ſeeking to correct the Faults of other Men in Paſſion, ourſelves commit Faults that are greater, for want of Charity.

Therefore I conclude, and that *magiſtraliter*, as the School-men ſpeak, out of the very Canons themſelves, *manere Petri privilegium, ubicunque fertur ex ipſius æquitate judicium*; that *Peter*'s Priviledge doth continue ſo long as the Sentence is pronounced out of *Peter*'s Equity, and not otherwiſe. To that Caution put in by St. *Gregory* out of ſcrupuloſity of Conſcience, *Vel iniquam judicis ſententiam timendam*, that the Sentence of a lawful Judge ought to be feared, (yea, tho' it be unjuſt) we may give a reaſonable Anſwer, by reſtraining that fear to ſuch a kind of Modeſty and Tenderneſs as being ever apt to ſuſpect Frailty in itſelf, ſhall offend leſs by ſearching Sin with too deep, than too ſhort an Inſtrument; and by ſuppoſing out of the Senſe of an humble Spirit, that all Men are more apt to flatter themſelves in the ways of their own Errors, than a learned, diſcreet and religious Judge to cenſure without a juſt Occaſion.

A wiſe Man that deſires to preſerve his Health, receiving Pills from the Hand of his Phyſician, who underſtandeth the State of his Body out of Knowledge and Experience, much better than himſelf, preſumeth at the firſt impreſſion, that ſome Humour may offend either in quantity or quality which deſerveth Correction, tho' he know it not: but after calling to mind upon adviſed Obſervation, that his Appetite is ordinary, his Temper perfect, his Digeſtion ſtrong, and all thoſe other Circumſtances, which the learned in that Faculty regard, ſuitable to a perfect Conſtitution and State of Health, he begins to apprehend (by oppoſing the Senſe of his own Parts to his Doctor's Aim) that Men, tho' grave and learned otherwiſe, may err either by miſtaking Principles, or giving too light ear to falſe Informations, which are rightly termed the Spectacles of Error. For God doth only ſearch the Hearts and Reins, and therefore only knows truly with what Ignorance or Skill the Plaiſter is applied to the part either feſtered indeed, or for want of a ſound Judgment (in thoſe that take upon them as his Vicegerents to diſcern) ſo deemed of. God hath pronounced in his Word, that *ſpiritus hominis tantummodo*, the Spirit of Man only knows thoſe things which are in Man, and the Spirit of God alone thoſe things which belong to God: and therefore *de occultis vel de male intellectis*, that Spirit which only breathes in the Noſtrils of mortal Men, can neither diſcern nor judge infallibly. But if any Man object, that Popes proceeding againſt Princes, arm themſelves with ſufficiency of Proof, before they come to reſolve to the Defendant's Prejudice: I anſwer, that Preſumptions too far carried in the ſcope of Paſſion, have cauſed many Popes to err againſt Emperors in the Act of Proceſs. And leſt we ſtray too far in ſeeking an Example, even this *Gregory* the VII. condemned *Henry*, *Cauſa inaudita*, before the Cauſe was heard, as ſome Writers of that Age teſtify. That Rule of Equity which warrants orderly Appeals from Judges ill informed, to Judges grounding Sentence upon Proof above Exception, in matters of leſs weight than this, hath been current in all Policies and Times: for, *Lex juſto non eſt poſita*. And howſoever for the maintenance of Order, outward Forms are to be kept with Moderation and Reverence; yet to the Soul of Man, the Conſcience ſtandeth for a thouſand Witneſſes, and is in very deed the trueſt touch. And therefore for my own part I ſhall never tax that Patient, that privily, and without diſgrace to the Doctor, throws the Pills out of the Window which are ſent, if from certain and undoubted Knowledge of his own inward State, he be ſure, that for the Reparation of Health, or for the Cure of a ſuppoſed Sickneſs, his Body hath no need of them.

I ſtand the longer upon Satisfaction to this Place of *Gregory*, becauſe it is oppoſed in Defence of all erring Judges, to the ſnaring (or at the leaſt to the frighting) of thoſe Souls that are oftentimes moſt timorous, becauſe they are moſt innocent. But in the mean time, note that this godly Father releaſed no Subject of his Oath in point of Duty; he accurſed no Prince in the Chair of Royalty; he confounded no State by extent of Primacy; but knew very well how eaſily a Judge may err by ſtrong Imagination, with *Gad* in the Book of *Judges*, miſtaking *capita hominum pro umbris montium*, the Heads of Men for the Shadows of Hills; *& hoc errore decipi*, and by this Error be deluded and dazzled.

The Chapter of *Liege* utterly rejecting this Releaſe of Oaths and Fealty, might be moved with many Grounds. Firſt, becauſe the Breach of a lawful Oath (as hath been juſtified before) falls into the compaſs of a mortal Sin. Again, becauſe many of their Predeceſſors were departed to God in peace of Conſcience, that till the laſt point of Life obſerved their Oath; whoſe Example they had ſmall reaſon to under-value. Furthermore, they alledged, and not without juſt cauſe, that ſuppoſing this Emperor as impious as the Sentence did import, yet it became them no more than *Zedekiah* (till the Fire of Correction had eaten out the Ruſt of Sin) to withdraw their Necks preſumptuouſly from the Yoke of *Nebuchadnezzar*. I conclude this Point with a fit Example of the Wiſdom of our Kings in former times, drawn out of the Cabinet of moſt ancient Records: For nothing could give them Satisfaction touching the Loyalty and Fidelity of their own Prelates, till they had inſerted into the Oath of Homage theſe words, *In verbo veritatis*, (which binds Conſcience) in place of former words of an elder date, *Salvo ordine*, which left Churchmen in effect to their own Liberty. For it is free, ſaith an old *Roman* Catholick, *Johanes de Pariſiis*, for any lawful Prince to repel the Violence of the ſpiritual Sword by the beſt means he can, finding that it tendeth to the Diſturbance of the civil State, *cujus cura incumbit Regi*, the Care whereof belongeth to the King: or elſe he ſhould bear the Sword idlely.

But now to make the beſt uſe that the fitneſs of this Occaſion offers upon the worſt Motive that ever was heard of among Men before this Accident; and to make all Men ſee that have either Eyes of Underſtanding in their Heads, or the Fear of God's Judgments in their Hearts, how raſhly our late Undertakers (who ſteer *Peter*'s Ship in our narrow Seas, Mr. *Garnet* being one of the chief Pilots) have run her upon the Rock of Rebellion, neither looking to the Card of Conſcience, nor regarding the Compaſs of Faith; I deſire that certain Obſervations may be kept in memory, as certain Monuments of God's powerful Works were in *Iſrael*, *tanquam ſigna prædicantia*; that is, forewarning Signs and Cautions for Abſtinence to giddy Malecontents in future times: which otherwiſe, upon the Motives of like Miſchief, may be metamorphoſed into Figures of like Inhumanity; for an Angel ſaid to *Tobit*, That to publiſh and reveal the Works of God, is laudable.

I know that ſtrange things happen oftentimes by Accident, (ſo far as the weakneſs of our Senſe is able to apprehend) tho' Truth aſſures us, that without the Providence of God no Sparrow lights upon the Ground: And *Pericles* juſtly maketh Fortune to be nothing elſe but *veræ cauſæ ignorationem*, our Ignorance of the proper and true Cauſes of all things. But yet where a wild Boar by rooting in the Ground doth not accidentally expreſs one *A*, but adds to that ſo many Letters in due Courſe as preſents this whole word *Agamemnon* to the Reader's Eye; where a Man doth not caſt three quaters upon three Dice, but three thouſand quaters upon three thouſand: and where Order, which proceeds from Reaſon and Election, is kept in coherent Forms, Chance hath no ſtroke of Predominance by the right grounds of Philoſophy. Wherefore no Man can tell whether ſome of thoſe Confederates alive, (becauſe I dare not ſay that there are none) looking back as it were from the Shore upon the Rocks and Quickſands which they eſcaped in this Storm, (calling to account the bad Succeſs, not of one or two, but of all their many Counſels, Labours and Events in this luckleſs Action, keeping in mind that Obſervation among the *Galeniſts*, that where all Simples work againſt their kind or Property, the Cure is deſperate) finding our *Jeruſalem* to be built as a City, *Cujus participatio in idipſum*; marking that our gracious, our juſt, and beſt deſerving King (ſupported by God's Angels, which are *Spiritus adminiſtratorii in miniſterium miſſi propter eos qui capiunt hæreditatem ſalutis*) doth dwell *in adjutorio Altiſſimi*; and that it is in vain to work upon a Monarchy, *cujus cor eſt unum & anima una*, whoſe Heart and Soul in the point of Obedience is one and the ſame: will return to the Reſolution wherein they ſtand ingaged by the Laws of God, and of their own native Soil; give ear to the Voice of their own Shepherd, and acknowledge humbly with *Jacob*, that *Dominus erat in loco iſto, & ipſi neſciebant*; God with the mighty Protection of his powerful Hand was in the Place, altho' they knew it not.

Firſt therefore I obſerve, that when you, Maſter *Garnet*, and your practiſing Diſciples, laid a Pack together for a Project of Invaſion againſt the late Queen, and in her later days, with hope to put out a Fluſh of Princes with a Prime of Jacks, which will never ſtand in this State, I truſt, with our right Game of *primus ero*: God took away this Lady in her ripe and mellow Years, when her Head was white with the Bloſſoms of the Almond-Tree, as he did *Joſias*, *Ne videret mala quæ eventura erant*, leſt ſhe ſhould ſee the Miſchief which was likely to enſue, and had followed undoubtedly, (as Men were reſtrained from the certain Knowledge of the only rightful Succeſſor) if the *bonus genius* of our dear Sovereign had not, thro' the Preparation of ordinary Means and Inſtruments, by ſupernal Grace eſtabliſhed this State in the full Fruition of their long laſting Security.

The Bulls which by the Practice of you and your *Catiline*, the lively Image of your Heart, ſhould (by loud lowing) have called all his Calves together with a Preparation to band againſt our Sovereign, at the firſt Break-of-day, and to have cropped thoſe ſweet Olive-Buds that environ the regal Seat, did more good than hurt, as it happened, by calling in a third Bull, which was *Bull* the Hangman, to make a ſpeedy Riddance and Diſpatch of this forlorn Fellowſhip.

In the time of *Henry* VI. *Humphrey* Duke of *Gloceſter*, finding certain Bulls that came from *Rome* to be very prejudicial to the King's Eſtate, without aſking leave of any Man, caſt them roundly into a Bonfire. The late Queen of happy Memory entertaining the Bull which *Felton* ſet upon the Biſhop of *London*'s Gate, with the ſame or greater Diſtaſte, becauſe the Drift was to embaſe her Title, and tranſport her Crown, gave it as quick Diſpatch by like Deſtiny: And Maſter *Garnet* thought his Bulls as worthy to be ſacrificed in a quick Fire as any of the reſt, for their Idleneſs and Weakneſs in effecting what was wiſhed, and expected by the Friends that invited them. Theſe Bulls Maſter *Garnet* were *Cornupetæ*; you were warned by the State to ſhut them up, in reſpect of the Miſchief that they Meant; you regarded not the Prohibitions of Law, but gave them Scope of grazing in certain Grounds, where the Marks of their Impreſſions are viſible. If this be denied, *Cateſby* your apt Scholar and choice Friend ſhall charge your Conſcience, who drew from the Direction of theſe Bulls that ſhreud Argument, That if it were lawful to keep a right Heir from his Kingdom, in reſpect of Conſcience, before Eſtabliſhment, it was as lawful to remove him after he were eſtabliſhed. The Wiſdom of the Holy Ghoſt ordaineth, That *bos lapidibus obruetur ſi occidetur dominus*: tho' we leave all to the Law's Ordinance, and his Majeſty's good Pleaſure. But whatſoever happeneth in the Proceſs, I muſt confeſs that Bulls have little reaſon to require a *Mittimus* into theſe Parts, ſince neither their Acceſs is acceptable, nor their Succeſs fortunate. The Point whereat I wonder moſt, (in revolving theſe ſtrange Events) is, That the Bulls which were conſumed into Aſhes at *White Webbs*, ſhould be brought forth this day to be baited at the *Guildhall*.

At the King's firſt entrance into this happy State, with as great Security and Eaſe, as if he had removed after an ordinary faſhion from *London* to *Greenwich*, and from *Greenwich* to *Hampton-Court*, the moſt expedient Device for the Diſturbance of the general Applauſe (which entertained *noſtrum Solomonem pacificum* with a kind of Joy and Cheerfulneſs unſpeakable) as was conceived by the Brotherhood, was to awake the purpoſe of Invaſion, that ſlept in foreign Parts, by a ſet Meſſenger imployed. But tho' *Venus* had commended this Petition by Letter of Requeſt to *Mars*, it would not have been heard, God having then prepared and diſpoſed the Minds of Princes on both ſides to ſuch a Peace, as could admit neither ſecret Operation, nor open Execution of Hypocriſy. This was not by the Method of Divine Proceſs, *eligere infirma ut confundat fortia*: But this was rather by the Spirit of *Achitophel*'s Suggeſtion, *abuti fortibus ut confunderentur omnia*. But Thanks be to God, the Lion is alive, out of whoſe Mouth you muſt have drawn your dropping Honey-Comb, before your Riddle could have had either the Grace or the Succeſs which you deſire among our conſpiring *Philiſtines*: So that we only find your fixed Truſt in Tumult and Vexation, (as the Prophet ſpeaketh) inſtead of that Hope and Silence which ſhould have been your Sheet-Anchor.

Your End was by poſſeſſing Princes with the Motives of your Malice to ſtir Compaſſion; becauſe it happeneth often that Exhalations drawn up to the higheſt Region by the Beams of the Sun, are there inflamed and ſent back again with a fiery Effect: But *multi committunt eadem diverſo crimina fato*. A great Philoſopher obſerveth to the ſame Effect, that *Proſperum ſcelus virtus vocatur*. And tunably to this Conſort another, that tho' the Fact and Intent were one in both, yet *Ille crucem ſceleris pretium tulit, hic diadema*. But in this Caſe by the Goodneſs of God it fell out quite contrary; for the Princes being as weary of War, as you were of Peace, deſiring as much to ſpare Blood, as you to let it out; and regarding more the Grounds of their own Diſcretion than the Storms of your Paſſion, ſent away your ſecond *Mercury* with a Flea in his Ear, and inſtead of procuring Treaſure and Supplies, were content to learn, (by the Scope of this Employment) that ſome Profeſſors of the Catholick Religion had other Views wherein to exerciſe their Inventions and Meditations beſide the Repetition of the *Roſary*, which without ſo manifeſt a Proof, perhaps they would either not at all, or not ſo eaſily have credited.

The Conſpirators could not deviſe a more likely Motive of Attraction whereby to draw *Malecontents* and *Beautefeux* into the Miſchief which their Malice did intend, than by whiſpering into the Ears of ignorant and ill-adviſed Catholicks, that his Majeſty had violated a former Promiſe made to ſome of them before, of Toleration in point of Conſcience: For Ears that itch after light Reports, and Minds that interpret common Fears in that Senſe which tends to their private Harm and Prejudice, (converting for the moſt part to rank Poiſon whatſoever is prepared by the beſt Affections to kindle Nutriment) take hold of the firſt Overture. But for prevention of this Peril, God ſo wrought, by diſpoſing Times and Accidents to beſt Effects, as before the Poiſon could pierce to the ſecret of Men's Thoughts, *Watſon* the Prieſt had confeſſed to myſelf (ſent from his Majeſty to the Jail at *Wincheſter*, for the finding out of the firſt Author of this leud Report) not paſt one day or two before his Death, (at which time no Man is preſumed by the Civil Laws to lye) that he never could receive any ſpark of Comfort touching Eaſe of Conſcience to Catholicks from his Majeſty, how unjuſtly ſoever the World had made him Author of that Scandal; tho' withal he added how unwilling he had been to utter the King's Anſwer to the Catholicks at his return in his own Words, and with thoſe incurable Obſtructions, (which appeared by the manner) for fear leſt over-great Diſcouragement might make them deſperate, and drive them to ſeek other Helps, as ſome did, which this action makes evident.

Beſides, there are in *England* ſome Recuſants at this day, that for a Need both could and would avow the like Report of *Percy* after his Returns out of *Scotland*, both before and after the Queen's Death; adviſing no Man to depend upon the leaſt Conceit or Apprehenſion of Hope from thence, but make the beſt ſhift they could deviſe for themſelves; for in the point of Conſcience he found the King's Intent and final Purpoſe to be peremptory. By this plain Dealing many were deprived of their beſt Advantage of improving this ſhreud Circumſtance, both as a Colour of Exception and a Maſk of Conſpiracy.

The Practice was begun with auricular Confeſſion, as the ſafeſt Lock to which Men durſt adventure to commit a Secret of this weight; for, who could hope to draw that from a Confident or a Confeſſor in reſpect of Safety, (beſides Cenſures of the Church) the Peril reaching and extending to the Loſs of Life? But by the Streams of *Jordan* running backwards to the drowning of the worſt diſpoſed part, it came to paſs that by the words which paſſed between *Greenwell* and *Bates* (*Cateſby*'s Servant) in Confeſſion upon the horror of his Conſcience againſt ſo foul a Fact, thoſe Circumſtances happily fell out, which being brought to light, made a fair Introduction into that full Diſcovery which the Lords laboured. It may be thought that God himſelf abhorring the falſehood of a Prieſt, (that under the Colour of the Keys, abuſing both his Perſon and his Power, is not aſhamed to contrive Conſpiracies ſo much more perilous and peſtilent, as they are countenanced with a more Holy ſhew) hath ſet a Mark of his own Wrath both upon the Matter and the Miniſter. For the Patients are oftentimes beguiled in judging by Taſte the Quality of the Simples, and Ingredients which they receive, *decepto ſenſu cum judicio*, the Judgment of the Senſes being firſt deceived, *& corruptis organis.*

It is clear, that for the ſecreting and concealing of this Purpoſe (till by Progreſſion it might be ripen'd for the deſired End) the Seal of the Sacrament of Union was ſet to this Contract of Blood; as if God would be put in Truſt with the keeping of theſe prophane Bands and Obligations of Conſcience, againſt the Rule and Canon of his own written Law, *que verſatur tantummodo in bonæ fidei Judiciis.* But we that know what deſperate Effects unworthy eating of the Sacrament, and the Preſumption of bearing the Standard of our Saviour in open Field againſt himſelf, have wrought in Minds polluted with Impreſſions of Sins, that are voluntary and premeditate, will not greatly wonder at the bad Succeſs of this Conjunction, calling to Mind that the firſt Work of *Judas* after the receiving of the Sop, was to betray his Maſter, and the next to hang himſelf; and in ſuch a Manner, *ut creparet medias & effunderentur ejus viſcera*, that he brake in the middle, and his Entrails came out of him.

The purpoſe of theſe Gallants in binding Faith and Promiſe one to another by ſolemn Oath, (tho' *Demens eſt qui fidem præſtat errori)* ſtood upon the Diſtruſt that one repoſed in another's Love and moveleſs Conſtancy, holding themſelves as ſure after ſuch Seal of the Contract, as *Seleucus* did himſelf in the Speculation of a City to be built in the Air above the reach of the Capacity or Wit of Man; but yet Experience reveals, that the Hands of *Madian* have fought againſt themſelves, the Voices of *Babel* have confounded their own Plots, and theſe forlorn Hopes like the Knights of *Cadmus* (as appeareth by the Scope of their own Confeſſions) *mutuis conciderunt vulneribus*, have been wounded to death one by another.

The Courſe of Mining into the ſtrong Wall of the Parliament, was in very deed more laborious and ſlow, but yet more ſure and Secret than the latter by the Vault, in caſe the Pioneers had proceeded reſolutely according to the Plot of the firſt Device: For Prevention of which almoſt inevitable Stroke, the Cellar was ſet open even in the very heat of their endeavour, as it were by the handy-work of God himſelf; and not only ſet open, but almoſt miraculouſly put into their Hands by a faithful Servant of the King's, whoſe ordinary Caution could not poſſibly have been ſo far over-ſhot, without an inward working and contriving Favour from above, which took hold of the Feet of Sinners in that very Snare that they had prepared and ſet for thoſe that were moſt innocent. They flatter'd their own Conceits ſo idely (but yet ſo far with the facility of working upon this unexpected Overture) as if it had been the Will of God, that to them, as to *Jacob* hunting for his Prey, *occureret quod volebant*: But on the other ſide we may obſerve with Joy and Comfort, That tho' they watched eagerly with *Eſau* for thoſe Days of Mourning, wherein the Death of *Iſaac* might prepare a way for their moſt bloody and moſt violent Revenge, like Rats between the Hanging and the Wall *ſuo perierunt judicio*, they were firſt betrayed, and afterwards periſhed by their own Diſcovery.

Their Spleen was even *ſævire in Saxa*, bent againſt the Walls and Houſe of Parliament, as an inſtrumental Cauſe for producing many ſharp Laws, for the Space of more than forty Years, againſt the Religion, which their own diſguiſed Affections did eagerly embrace, with a purpoſe to convert *Hieruſalem in acervum lapidum*, into a heap of Stones. Thus *Polymneſtor* ſtricken blind (out of Rage againſt *Hecuba*) ſought to murder all the Women he could meet. Thus *Fulvia* by thruſting Needles into the Tongue of *Cicero* (after he was dead) ſought Revenge of his ſharp Invectives againſt *Anthony*: And thus *Anthony* himſelf warred againſt the Walls of the Senate-Houſe at *Rome* after *Cæſar*'s Death; but yet the Place is as it was, the Benches ſtand as they did, and they that ſat on them have the ſame Affections which before they had; inforced perhaps by this late more than *Neronian* attempt of endangering both their Souls and Bodies at one Blaſt (for want of Time to call for Grace) to ſtrike a deeper Wound than any of their Anceſtors had done before into the Cauſe which the Scope and Drift of theſe Undertakers pretended by their Inventions to rectify. The *Roman* Soothſayers had Reaſon to divine, that when Bulls, Bandogs and Aſſes (which are Beaſts created for Obedience and Uſe) grew mad upon a ſudden, and without a certain Cauſe, *Bellum ſervile imminibat*; and of this Compoſition was the late pack of Rebels, that with the ſame barbarbarous inhumanity, which was well obſerved at the Ruin of *Saguntum, nihil reliqui fecerunt ut non ipſis elementis fieret injuria*; left nothing undone for their Parts to wrong the very Elements. I grant that they might learn their Art of building muddy Walls of the Swallow, which are but Summer Birds; and their Skill in weaving Cobwebs of the Spinners, whom *Minerva* hated; chiefly, becauſe their Works were more laborious than durable; and moſt commonly ſwept away before they came to finiſhing. But this Trick of ſubverting and demoliſhing, they could not learn better than of the *Montaniſts*, *Qui non laborabant* (as *Tertullian* reports) *ut ædificarent ſua, quàm ut deſtruerent aliena*, to build their own as to deſtroy other Men's; *Heu genus inviſum ſuperis!*

The Train of Powder was laid only for true Men by wicked Traitors; to this End chiefly, that after Innocency had endured, Malice might inſult, that *cùm ſcelera proſunt, peccat qui rectè facit*: and conclude with the rankeſt *Atheiſts* of our Time, a Prejudice of God's Anger againſt faithful Subjects, out of the barbarous effects of their own Villainy: For this Argument is uſed in defence of the ſlaughter of the laſt *French* King. But as we find juſt Cauſe to rejoice thus far with *Shadrach, Meſhech* and *Abednego, Nihil poteſtatis in noſtra corpora habuiſſe ignem*: That the rage of the Fire had no force or ſtrength againſt our Bodies, God's Angels coming down of purpoſe both to diſperſe the Flame, and to infuſe in lieu thereof *ventum roris flantem*, a cool Wind of mild Air breathing, to ſlack waſting Heat, *Ut neque eos contriſtaret ignis, nec quicquam moleſtiæ inferret*; as it could neither make them ſad, nor offend them any way: So on the other ſide, God wrought ſo powerfully in this particular, (to give a Taſte and a Feeling to ſome of the chief Traitors of thoſe endleſs Flames, that in another World ſhall never eaſe, without Contrition and Confeſſion in this) as in the chiefeſt Puzzle and Perplexity of their ill-thriving Practices, they were blaſted by the Rage of their own Gunpowder.

Thus *Alexander* VI. and his Darling *Borgia*, the only Monſter of that Age, were poiſoned by error of the Cupboard-keeper, out of the Bottles that were kept in ſtore (and by *Cæſar*'s own Appointment) againſt Supper, for the Deſtruction of certain Cardinals. And thus it happens many times (God's Juſtice far ſurmounting Man's Capacity) that thoſe Inſtruments which we ſelect for Execution of Malice, ſerve for the Protection of Innocents, *Et ſæpe fugiendo mala, in majora incurrimus.*

Theſe *Catalines* in the raging diſtemper of their Paſſion, (which meeteth their own wants *& commoda aliena pari dolore)* were ſo deſirous to draw Blood even *ad animæ deliquium*, of the nobleſt, the trueſt and beſt Subjects of the State in all Degrees, that had not one drop of attainted or infected Blood in any Vein; and to make ſure Work, that there might be ſpare of none, like the *Roman Triumviri*, they held it ſafeſt to let out their own, without Diſtinction of Kinſmen, Allies, or Friends; leaving no one Man of Mark out of the Liſt, which was agreed upon by the Conſpirators. But mark the Proof; For (as *Leo* writeth to *Mauritius) in victoria veritatis, ſola veritatis inimici perierunt*, none but the Enemies of Truth did periſh in Truth's Victory. For whoſoever loves to dive into the Waters of Contradiction, whoſe Property is, as a learned Father notes, rather *vorare* than *portare*; may be ſure to expect in vain, that the Hand of *Chriſt* which aſſiſted *Peter* in his Faith, ſhould ſupport them in their Fraud: For between Truth and Falſehood, as well the differences as the degrees are infinite.

It was holden a ſafe Courſe and of great Uſe for advancement of this bloody Project, that a Faculty might be granted to ſome Perſons (which in that Rank were reputed Choice for their exceſs in Cruelty, and barbarous Inhumanity above all the reſt) for the calling in of ſuch other Aſſiſtants and Confederates, as *Non propter eximias virtutes*, but ſuch as *pares negotiis erant nec ſupererant*, and that when the Stock grew Poor, might be beſt able to defray Expences, to eaſe Burthens, and advance Deſires. But it fell not out that any good grew to the Cauſe by any Perſon let in at this Loop, howſoever their Affections were bent: For *Francis Treſham* the laſt above, intended much, but effected little by Relief; only this I note, that by his Paſſions and Words in his firſt Anſwer at the Council-Board before the Lords, he left ſo deep Impreſſions both of his Fore-Feet, and his Hinder-Feet, as tho' we could not evidently deſcry the Hare, yet we eaſily diſcerned what Courſe ſhe took, and thereupon the better with a full Cry upon ſo hot a Scent, purſued the Game that haſted to get over.

No Man can deny but it was in *Robin Cateſby* the trick of a crafty Pate, enrounding violently the Ruin of our Sovereign, and his Royal Progeny, to engage the Fortunes of his dear Friends, *Rookwood, Grant*, &c. to his hungry Creditors, in deep Bonds, before he would impart to them the Secret of his Plot, ſuppoſing certainly, that in reſpect of their own danger by his fall, they would be more apt to undergo the hazard of all events, and rather chuſe to die with him, (tho' the worſt ſhould chance) than to beg after him; having in the mean time in their Eye ſo bright an Object of enticing Hopes, That *ſumma ſcelera incipiuntur cum periculo, peraguntur cum præmio.* But as the greatneſs and inwardneſs between wicked Men (according to the grounds of moral Wiſdom) is accounted rather Conſpiracy than Amity, (having but *metum & noxam conſcientiæ pro fœdere*; ſo likewiſe in this Caſe, the Succeſs was ſuitable, for one led another by the Links of Combination to the Reward of Cozenage. Truſt was the Trap, falſe Hopes the Baits; and all the Fruit they could expect by Tricks, was of the ſame quality with the Grapes and Pomegranates that grew in *Sodom*, after the Ruin of the Town as we read in *Origen*, (that is) ſmelling of Sulphur, tho' delightful to the Eye. And even as thoſe upon the firſt touch were apt to diſſolve into Powder, ſo were theſe upon proof to run into Gunpowder.

The ſcope of ſome chief Actor in this Tragedy (more ſenſitive in that point of Compaſſion, as it ſeems, than the reſt) was to adviſe a noble Gentleman (whom in reſpect of his approved Love aud Loyaly to the King his Sovereign, he durſt not Truſt) by an obſcure Letter (more reſembling the Riddle of an *Oedipus* than the Counſel of a Friend) that he ſhould abſtain from the Place prefixed at the Time determined. The dark Figure of the Writing, the ſtrange Manner of delivering, the ſmall likelihood of any Cloud at that Time gathering, might have moved many Men rather to have neglected, than apprehended ſo blind a Figure of Diſcovery. But this diſcreet and worthy Gentleman, conceiving that Men experienced in Myſteries of State were better able than himſelf, both to diſcern of Spirits, and unlooſe hard Knots; imparted this Occurrent to certain of the Privy Council, and they to the King, who by that Spirit of true Divination, which is infuſed into the Lips of the King by God, (as the Proverb ſay) never gave over Mining into the Purpoſe of this Admonition, with due regarding Circumſtances and Preſumptions, according to the nature of the Motion, till the Barrels were brought into Light, and order was taken to drive the Devils out of their Den, the Materials out of their Opportunities, and the Pioneers from all poſſibility of effecting the Powder-Works.

The Purpoſe of theſe Gallants *qui paſcuntur ſcelere*, was to Feaſt their Eyes with the ſight of our dead Carcaſes; for ſince they were no Doves, but Ravens, the leſs wonder that they did *ſequi cadavera*: But now by God's Providence it comes to paſs, that their Limbs feed the Fowls of the Air; unleſs, the curſe of God, the Putrefaction of Sin, and horror of the Fact, move all the Creatures of God to loath and abhor to look upon them.

The ſame ſly Serpent that ſeduced *Eve* (by the deceitful Bait of underſtanding Good and Evil) to tranſgreſs, induced ſome of theſe (I doubt not) to undertake more gallantly, upon hope to be reputed holy Angels in this Life (in caſe their Enterpriſe ſucceeded happily) or Martyrs in the next, if it fell out otherwiſe. But by evident Confeſſion it appears, that the very Night wherein the Powder ſhould have wrought the deſperate Effect, either the Light of Reaſon, the Horror of Vexation, or the Power of Revelation, preſented

ſented to *Robert Winter* in a Dream, the Faces of his chief Friends, and the higheſt Traitors that ſhould have acted Execution upon the bloody Stage, in ſuch a ghaſtly and ugly Figure, more like to that *malus Genius* which appeared unto *Brutus* the Night before his Death, or the Face of *Hector* that appeared unto *Andromache*, or the Countenance which they themſelves held afterward upon the Pinacles of the Parliament, than to that Figure of Beatitude, by which their own fantaſtical Conceits and alluding Apprehenſions were too much flattered. For it is not only true that God, as *Job* ſays, *terret per ſomnia*, affrights by Dreams, *& per viſiones horrorem concutit*, and by Viſions ſhakes the Mind with Horror: But beſide, this ground out of the Book of Wiſdom can never fail, as I ſaid before, that *cum timida ſit nequitia, dat teſtimonium condemnationis:* Wickedneſs gives evidence of Condemnation, becauſe it is timorous, *Et ſemper præſumit ſæva pertubata conſcientia.*

While the wiſeſt in this wicked Pack (upon the Diſcovery made by that worthy Lord of whom I ſpake before) began to lay their Heads together, and in a Staggering with great uncertainty what Courſe to take, ſtood with the King of *Babylon*, as the Poet ſays, *in bivio quærentes divinationem*; ſome doubting, ſome ſecuring, ſome hoping, ſome deſpairing, and all ſetting the Cauſe in ſuch a Courſe, as in caſe *Percy* their Explorator (that was let out like a Raven, and ſent as a Spy to deſcry by the beſt Inducements he could find, whether the State took hold of their Diſcoveries or not) brought back ill news, a Ship might be prepared on the ſudden for the tranſport of this his Pack. God dazzled their Eyes with ſo dark a miſt of Error and Perplexity, as they could not find the right way to get out of the Wood; and their Prophet *Percy* by ſecuring doubts at his return, inſpired new Life into dead Hopes, that the Project for ſpeedy rigging of a Ship was careleſly caſt off, and Error left to make full Satisfaction by Suffering. For God, that cauſed the firſt Veſſel to be built by *Noah* for the ſaving of thoſe eight faithful, pure and ſelected Souls, that ſhould with Time renew the World which Sin had drowned in the depths of Deſpair, would not permit that any other of that Mould or Fabrick, ſhould preſerve theſe eight unfaithful, unpure and deteſted Souls, whoſe End was to deſtroy this μικρόκοσμος of our *Engliſh* Orb, which hath been ſo ſtrongly, ſo often, and ſo powerfully protected under the Wings of his Tenderneſs.

As *Joab* kiſſed *Abner* when he gave him the Stab, *Jezebel* proclaimed a Faſt when ſhe cut *Naboth*'s Throat, and *Judas* kiſſed our Saviour when his End was only to betray him to the *Phariſees:* So *Percy*, the right Limb of *Lucifer*, pretended with a Colour of Devotion to kiſs the Image of the bleſſed Virgin, after he had plighted Faith and Promiſe to his Complices, by blowing up the Body of the State, to deſtroy the King, who is indeed the ſacred Image of the eternal Son. But God, whoſe holy purpoſe was to publiſh to the World how far his Bleſſed Mother is from countenancing and protecting Traitors, that by oppoſing to his Deputy revolt from him, branded this Act of Hypocriſy with ſo palpable a Mark for an Admonition everlaſting to well-meaning Souls, that are oftentimes ſurprized in their Weakneſs, by falſe ſeeming ſhews of Piety, when the Practices are foul, as on that very Feaſt of the Bleſſed Virgin, (whoſe Picture *Percy* did ſo embrace) which ſhall ſet forth to the World's End the Memory of Chriſt's Incarnation, whom the Traitors would have wounded thro' the Side of his Lieutenant in the Seat of Majeſty, an Act did paſs in Parliament, for the blowing up of theſe Monſters and their Hopes, that by an Act which never had the Voice of any Member of the Parliament, would have blown up both Houſes.

To your own drift and purpoſe, Maſter *Garnet*, in recommending that antient Hymn, uſed on the Day of all Saints,

Gentem auferte perfidam
Credentium de finibus;

for a ſpeedy Diſpatch of many Innocents, that God, which converts both the Labours and the Prayers of the Wicked into Sin, and reflecteth Execrations of Infidelity upon the Heads of thoſe that execrate and curſe without juſt ground, gave Satisfaction, tho' in a contrary Element; purging the preſent State of *Cateſby*, *Percy*, and their Complices, which may truly be reckoned, and reputed above all Men that ever were, *Gens perfidiſſima*, tranſcending all Proportions either of precedent or future Immanity. As for your Fervency in ſwearing and forſwearing manifeſt Untruths, and ſuch as you were forced afterwards to confeſs with a bluſhing Countenance, it proceeded as I think from a reverent Regard to ſhadow great Faults, which breaking out of *Chaos* into Light, might caſt Scandal as you thought upon your whole Society. And this I gather evidently, as well out of your own Speeches, as out of your Requeſt; that the Cenſure of your Weakneſs might determine Perſonally, within the Compaſs of your Fault. But we receive a farther Benefit thereby in diſtinguiſhing between the Proteſtations of plain Dealers, and of thoſe that are taught to equivocate; to mark thoſe that pronounce verbally, when they renounce mentally, and thoſe that in Point of Fact are not ranged unto the Rules of Faith; and the Civil Laws have reſolved, both juſtly and judiciouſly, that Conſtruction ought ever to be made againſt the Party that comes maſked to the Bar, and ſpeaks ambiguouſly upon Advantage, when he ſhould ſpeak plainly for Satisfaction.

I dare undertake, it was certainly conceived by you, Mr. *Garnet*, and by Mr. *Hall* your Fellow-Priſoner both in Profeſſion and Bands, that if by any Accident you might confer but half an Hour after you had paſſed the File of their Examinations, that had both you and your Cauſe in Hand, the Lips of Scandal would have been ſealed and ſhut up ſo cloſe, as nothing might evaporate to emblemiſh Oaths, ſince the Lords of the Commiſſion forbearing Torture, dealt ſo tenderly; and thereupon you found a ſecond vent of Whiſpering between two Doors, but with no better Proof by this Adventure than by the reſt. For your former Reſervedneſs, being now encouraged and urged by the Spur of Opportunity, became ſo confident in running beyond itſelf thro' the chief Points whereof the State was moſt eager and deſirous to take certain Notice at that Time, as they that could not reap might glean, and many Shifts and ſubtil Traverſes were over-wrought by this Occaſion, which could not be extracted out of your Breaſt either by Intreaty or Induſtry.

By writing to the Pope in a Chriſtian and humble Manner for the tempering and cooling of hot Humours of ſome giddy-headed Catholicks by his Apoſtolick Authority, leſt they might cauſe Diſtemper in the State, carried in Appearance a great likelihood of that Obedience and Patience which the Word of God enjoins, and was accordingly divulged both by you Mr. *Garnet*, and many others of your Suit, for the Satisfaction of their Conceits that were ſuſpicious of your plain Faith: But many grew to Fear by the Forewarnings which *Watſon* left before his Death, that this was but a Vizard of Invention to dazzle Truſt: And moſt grew ſuſpicious of a Miſchief imminent, tho' they knew not what it was: The World heard Rumours of a Feat to be wrought for the Catholicks in Parliament, tho' they could not underſtand the Mean, and Experience hath taught the Ground of this ſubmiſſive Letter to the Pope, after the beſtowing of all the Barrels among the Piles of Wood, to have only proceeded out of Fear, that ſuch another hot Alarm as aroſe in *Wales* about the giddy Mutinies of ſome light Catholicks might awake thoſe Eyes of *Argus* that were brought into ſo ſweet a Slumber by the Pipe of *Mercury*, and put all Viſes and Devices, out of Frame, that were to work with Leiſure, Silence, and Repoſe in the great helliſh Enterprize.

Thus God intended mercifully the proſperous and happy Defeat of *Achitophel*'s Device, was content that the firſt Contrivers ſhould put it to the higheſt Proof, that upon Diſcovery the Practice might be more clear, the State more ſecure, and the Fault more inexcuſable. For *homo inimicus* the envious Man ſows his Tares ſo ſlily and ſecretly at the firſt, as the Eye of Obſervation cannot reach to the Depth of Fraud; but like Baſtard-ſlips, the higher they grow, the more evidently they diſcover the true Parent's Impiety.

Greenwell deſiring more the good Succeſs of this Invention, than the planting of the Roman Faith, enjoined *Bates* in the Secret of Confeſſion to reveal the Purpoſe to no Prieſt; ſo jealous and ſuſpicious he was (in reſpect of the Main) both of Weakneſs and Error in his own Conſort: And you Mr. *Garnet*, no leſs provident in thoſe Things which concerned your own Safety or Reputation, or as it is ſaid by one ſpiteful alike with you,

Subſedit dubius totam dum colligit iram;

forbad *Greenwell* to give the leaſt inkling to *Cateſby* of your Privity to the Proceeding, tho' you were made acquainted with the Matter in generality. And more, when you were aſſured of a likelihood of good Succeſs by *Cateſby*'s own Encouragement, (ſo much wiſer are the Children of this World, that do rather *ſapere quæ ſunt carnis*, than *ſentire quæ ſunt ſpiritus*, as *Paul* forewarns, than the Children of Light, but this is only in their own Generation) you were ſo careful out of Fear to be ſurprized with a Lye, (as the wicked Judges were by *Daniel* upon the Queſtion *ſub qua arbore*, under what Tree) and that your Confeſſions might be conſonant, that the Quinteſſence of Wit ſublimed to the higheſt Point, could not work more preciſely and more punctually for Prevention of Diſcovery by orderly Digeſtion of all Occaſions or Directions, than you did by this Preparative. But againſt the ſtroke of Providence all Counter-practices are vain: For *dies diei eructat verbum, & nox nocti indicat ſcientiam*, as may appear by that *nubes teſtium*, that Cloud of Witneſſes, which turning to a *Scotiſh* Miſt, hath not only wet both yourſelf and your Fellows to the Skin, but beſide, made all their ſhameful Parts ſo manifeſt, (even to vulgar Eyes, that were to act upon the bloody Stage) as the Prieſts themſelves appeaching one another, and falling out to be *ſuorum flagitiorum proditores*, were as much deceived in the theorick of Truſt, as the Lay Diſciples were in the practick of Conſpiracy.

For it is no leſs ſtrange than true, that the powerful God (which by his Word aſſureth us that the Birds of Heaven ſhall bring thoſe Projects and Inventions to Light, that are contrived in the Secret Thought, or privy Cabinet of any wicked and falſe-hearted Subject againſt the King) hath ſo fitted and prepared Inſtruments of Overtures, as the Myſteries which paſſed in Confeſſion between the Prieſts themſelves (revealed by themſelves) come this Day and in this renowned Place to be ſcanned and cenſured.

I will now ſhut up this Audit of Demonſtrations which we deſcry God's Anger (working almoſt miraculouſly in the Tranſmutation of Subſtances and Change of Properties for Accompliſhment of his own juſt Ends) with the higheſt Object of your wicked Aim, which was the Deſtruction of the moſt juſt, learned, bountiful, temperate, and tender-hearted King, (I may ſpeak it on my Conſcience without baſe Flattery) that ever was ranked either in the *Engliſh* or the *Scotiſh* Regiſter: His Right, his Heart, his Tongue, hath wiſhed Happineſs, and brought Security to this State; which if you and your Confederates diſdain or wilfully reject, his own good Wiſhes ſhall return to himſelf, and the Duſt of thoſe harmleſs Feet, that never were *veloces ad effundendum ſanguinem*, ſwift or haſty to ſhed Blood, ſhall raiſe a Cloud between you and that eternal Judge in the dreadful Day, to plague your Ingratitude. For what is the Fault (in the Name of God) that can offend the moſt preciſe and captious Conceits (excepting Conſcience, for which he muſt neither account to *Bruno* or *Ignatius*, but to God alone) wherein the King may be ſaid to have caſt Duſt in their Eyes, that were moſt violent and diligent in preparing Fuel, and making Fire, for the ſacrificing of a Lamb, whoſe innocent Blood, like that of *Abel*, would have cried for Vengeance in the Ear of God, againſt the curſed Crew of all the Conſpirators, if their Succeſs had been fortunate?

By the way, I cannot ceaſe to wonder at the Providence and Piety of this thrice happy King, this *Pacator Orbis*, (the real Attribute of *Conſtantine*) who ſeeketh to eſtabliſh the Throne of his Dominion and Power, neither with the three Feet of *Apollo*'s Stool at *Delphos*, which his own Interpreters have underſtood of Nimbleneſs, Obſervation and Subtilty; nor only with the Lions and Lions Whelps, that garniſhed the ſix Steps aſcending to the Chair of *Solomon*, to ſtir up Magnanimity, both in young and old, but according to the Rules and ancient Preſcripts of our *Engliſh* Government, with the three Piles of Conſcience, Honour and the People's Love; and that ſo ſtedfaſtly, as the Sons of *Belial* have neither Hope nor Poſſibility of compaſſing their own Deſires, without cutting off theſe Three, that is Biſhops, Peers and Commons at one Blow, *ut ceſpes unus & Regem noſtrum, & Rempub. tegeret.* Therefore hold not the Peril ſtrange wherein you ſtand at this preſent, of another kind of Triplicity ſpecified by *Solomon*, for proportionable Puniſhment of your barbarous affection in Working (by the

Quinteſſence of Inhumanity) the Ruin both of Prince and State, for *Funiculus triplex non facile rumpitur*. For to Men of uncertain Wits and Aims, it happens often in Experience, That by the leaſt ſwerving either of the Eye of Judgment, or of the Hand of Uſe, inſtead of the White of Ambition, they hit point-blank the Mark of Execution: Therefore no Man ſhall be able to avow either in the preſent or the future Time, that they which ſit as Judges in this Caſe of execrable Treaſon, waſh their Hands with *Pilate* in Hypocriſy, when you and your Confederates that ſtand forth to be tried, cannot waſh your own Hands with the Prophet *David*, *inter Innocentes*, among thoſe that are innocent.

Princes uſe not to taſte Offers without Aſſays: We cannot admit your Obſtinacy in refuſing to pledge the Health of this whole Eſtate; and no Man knows better (Mr. *Garnet*) than your ſelf, by what Writ true Men are warranted *in poculo quod nobis miſcuiſtis*, *miſcere vobis duplum*, to give you double Meaſure of the Draught which you had prepared for the State's Deſtruction; when your Purpoſe was (if Courſes had ſuited to your wiſh) that it ſhould begin from them. By this it appears, That *virtutis curſus* (if that were in you which the World did imagine) was *celerior quàm ætatis*, that your Life had overrun your Loyalty.

It is hard for a Man ſo many ways engaged to a Prince, and for ſo many Favours as my ſelf, to cut evenly between Affection and Truth, or to provide ſo tenderly by Preoccupation, as no Spider may ſuck Poiſon out of a Roſe: but *jacta eſt alea*, and therefore ſince it is neither my delight to ſow ſoft Pillows under Princes Elbows, nor the King's deſire that his truſty Servants and true Counſellors ſhould with the gloſing Prophets in the Days of *Micah* utter *placentia potius quam ſolida*, I would only crave that Liberty which is afforded in Caſe of private Perſons to Affections that are moſt indifferent, which is to preſent his Picture to the Eye of Obſervation in true Colours and Proportions, without ſwerving too far on either hand, (becauſe he muſt ever be *iniquus dignitatis Judex*, *qui aut invidet aut nimiùm favet*) and to wipe away the Wrong which hath been done to him, (and hereafter may by falſe Aſperſions, from the Pencils of prejudicate Conceit) awake my Spirits in diſcharge of Duty, beſide Obligations of Grace, to raiſe my Compaſs thus high at the leaſt, and to lend my ſtrongeſt Arms and beſt Endeavours to the juſt Defence of a moſt juſt and worthy King, furiouſly and unjuſtly ſet upon. What Spirit moved you and yours (Mr. *Garnet*) to diſſolve the Quiet of a State, that never conceived you in her Womb, with a purpoſe that (like the brood of Vipers) you ſhould make your Iſſue into Life by eating out the Bowels of the Dam that gave you both Creation and Nouriſhment? For it could not be, but the Commonwealth *in ipſa vindicta libertatis*, as yours termed it, *eſſet peritura*, when *Cateſby* and his deſperate Rout meant not *ſubigere noſtram urbem*, as the *Athenian* Orator ſaith of *Philip*, *ſed funditus evertere*; well knowing that thoſe that eſcaped, to be Slaves *neque voluerunt eſſe*, *neque potuerunt*. What ailed you to mine into the ſtrongeſt Fort of your dear Countrymen, who living by the Temper of the King's Affections under *Libra*, that is as much as under the Golden-Line of Juſtice, Moderation, and Grace, can hardly judge out of their own Affection, whether the Nights or the Days paſs over their Heads more happily. For neither is it poſſible at this Day for *Virgo*, that barren Sign, to endanger us by Orbity or Age, nor for *Taurus* the Bull to gore our Sides with Anticipation, nor for *Scorpio* to ſting us in the Heart, nor for *Sagittarius* to wound us in the Reins, nor *Aries* the Roman Engine to butt with his offenſive Head at the Walls of our High-Court of Parliament: *Tempeſtas abiit, & ecce nova facta ſunt omnia.*

At his Majeſty's firſt Entrance he found us embroiled and greatly weakened by the deeply feſtered long running Ulcer of a laſting War; what was the Cure? A beam of Wiſdom ſeaſonably derived from the Practice and Experience of the wiſeſt King that ever was, to conclude a Peace *cum omnibus Nationibus in circuitu*, that every faithful Subject might enjoy the ſhade of his own Figtree, and the Fruit of his own Vine from *Dan* to *Beerſheba*. I do eaſily believe, Mr. *Garnet*, that this Courſe was nothing agreeable to your Affections and Ends, that ſought a greater Gain by fiſhing in Streams that were more troubled; and ſitting on a bare Bough, like the Raven when the Lion and the Leopard came forth to fight, began bravely to ſound a Point of War, in hope that whether of both thoſe had the worſt, one ſhould ſerve for a Prey for him to feed upon. And with the wicked Crew in *Lucan* your Prayer was,

Non pacem petimus, Superi, date gentibus iras;

but were of another Mind and Hope to make you pine a good while longer at the Calms of our Repoſe, before you put us into theſe Diſtempers, that have made your own beſt Friends, and faireſt Fortunes abſolutely deſperate; to whom ſo far as in Modeſty you could aſk, I may ſay with *Paterculus*, *quod tumultuando adipiſci petiiſtis, quiete obtuliſſet Reſpublica*. Peace is the Mark whereat the Holy Ghoſt would have all religious Affections to aim: It is the Razor that cuts the Throat of crying Sins; it is the good Angel that drives Horror out of the Conſcience of every Chriſtian, when Death threatens to arreſt; it is the chiefeſt Badge by which our Saviour would have his true Diſciples known from Hypocrites; and it is both the richeſt and the laſt Jewel which, departing hence to his Father, he left to his Spouſe the Church for a Legacy. And therefore our Prayer by oppoſition to your Exorciſm muſt be thus,

Nulla ſalus bello, pacem te poſcimus omnes.

But how long is it, I pray you, Mr. *Garnet*, ſince the Heart of every faithful Subject in this Kingdom was ready to break with a fearful Contemplation of thoſe Rocks, upon which the Veſſels of all Fortunes both publick and particular were likely to have run, at what time ſoever *Deborah* was to walk the ways of all Fleſh, and to be laid up to reſt in the Grave of her Anceſtors, for want of a certainly deſigned Succeſſor, upon whom *Iſrael* might only fix their Eyes, both for Satisfaction in Conſcience, and infallible Direction to Loyalty? In thoſe Days the State was charged by all your Pens and Pamphlets with an uncivil, or rather an unchriſtian Facility in flattering the preſent time, with Peril to the time to come, in preferring Humours perſonal before real Plagues, and in ſettling the whole weight of this State upon the Staff of Age, with no leſs Confidence than if it had been a Pole of Eternity. You could then inſinuate for the kindling of undutiful Affections at home, how deeply both the Queen ſhould be charged in another Day for ſetting the Kingdom's Reſt upon the weak Cards of her own particular Reſpects; and others for inclining ſo much out of awe to the Predominance of Time; as without the Work of God's powerful Hand, their Fear might have been the Cauſe of the State's Overthrow. Nothing was then more rife in the Mouths of many Catholicks, than the Wrong that was done to the true and lawful Iſſue of that worthy Queen, who (inſtead of digging up a Turf according to the manner) made her Grave an Entry in her Son's behalf to the Title of theſe Crowns; as if ſhe ſhould have ſaid with the Conqueror when he took a fall at his firſt Landing, *Terram capio*: by laying down her Life, ſhe took a formal Livery and Seiſin for her Son; her Life, I ſay, more precious than either my Mind is able to apprehend, or my Pen to deliver.

Give me leave therefore to enquire of you in the Phraſe of *Paul*, and rather with true Zeal than detracting Spleen, *O inſenſati Galatæ, quis vos ſuſcitavit non obedire veritati?* O ye ſenſeleſs *Galatians*, who hath (ſince that) ſtirred up your Paſſions againſt Obedience to Truth, and moved you in this manner to abhor the moſt cordial Receipts for Cure of inveterate Infirmities, as if they were compounded of *Coloquintida*, which in hatred of Time paſt you only ſought, as your only Reſtoratives? For tho' every Man that had in his head either half a Drachm of Diſcretion, or the leaſt Scruple of common Senſe, knew very well what ſhould become of thoſe which in the Day of Demonſtration durſt proteſt with *Sheba* the Son of *Belial* by Sound of Trumpet, *nullam ſibi eſſe partem in David*, *neque hæreditatem in filio Jeſſe*; that ſince they had neither part in *David*, nor inheritance in the Son of *Jeſſe*, it were free to *Iſrael* to return to their Pavilions: Yet I muſt confeſs that the wiſer ſort *in omnem eventum* (to make the Foundation more ſure) would have purchaſed the publick Satisfaction in this Degree at an exceſſive Rate, which was ſuppreſſed by the Strength of Law, and overcaſt with a Cloud of Suſpicion. We are not ignorant in thoſe Days, Mr. *Garnet*, how many did expect with *Eſau*, *diem luctus* for opportunity of Revenge. We knew both in what manner, and by what means ſome heavy Bodies, and more heavy Spirits were in hope to raiſe themſelves like Buſtards in fallow Fields *vi turbinis*, by the ſtrength of a Whirlwind, to that height which Ambition (void of due Conſideration) did fooliſhly affect.

It is evident that *Iſhmael* would have been *Iſaac*'s Play-fellow; and every day more Arguments were brought to light of a ſtrong Deſire in many Minds, That *Eteocles* and *Polynices* might make partition of their Inheritance *acuto ferro*, with a ſharp cutting Sword: But as *Paterculus* reports of the Security of the *Roman* Empire, otherwiſe than was expected, after the Death of *Auguſtus*, we felt not ſo much as a quivering of that Commonwealth, of whoſe Ruin we ſtood in ſo great Fear, *tanta fuit unius viri Majeſtas, ut nec bonis, neque contra malos opus armis foret*: For ſo great was the Majeſty of one Man, that not ſo much as thoſe that were dutiful, needed Weapons againſt thoſe that were traitorous; for whatſoever he protected was ſafe, and whatſoever he rejected did only periſh.

And thanks be given to God, we are now ſo ſafe and thorowly ſecured from foreign Groans and pining Fears by theſe ſweet Olive-buds which environed the Mercy-Seat, as *Doleman* may indeed *dolere*, that by no kind of Inſtrument he can *dolare*, that is, bore or wimble into this glorious and graceful Stock, wherein he would inoculate the Griefs of his ſtinging Grievances.

Again, it cannot be denied, That the State of this ſtrong Iſland, if it be conſidered by Integrity and Union of Parts, was in a manner paralytical (ſo long as *Scotland* was divided from this Realm of *England* as it were in half) by Privation as well of Motion, as of Senſe: And by reaſon of Obſtructions in divided Heads (that ſtop the free Courſe and Paſſage of the Spirits thro' all and every part and Member of the Main from Preſervation of Health and Strength) it was like to fall by the leaſt Diſtemper ſymptomatical into a dead Apoplexy. It was a Work of Mercy in our Saviour to cure *manum aridam*, I mean *aridam* in reſpect of the ſmall uſe to us, tho' active, ſtrong and powerful for it ſelf. It was an Act of Policy in *Cæſar* to ſhut up the back Door that let in the *Germans*, to the diſturbance and diſquiet of thoſe Parts in *Gaul*. And great Wiſdom it was once in *Severus*, to part thoſe from us with a Wall of Hoſtility, whom ſince a more divine Hand hath happily faſtened to us in eternal Fraternity: For the Holy Ghoſt accounteth it a Curſe to ſtand alone, becauſe he cannot be ſure of his next Neighbour to take him up: The Branch bears Fruit no longer than it continues in the natural and proper Vine, fed with the ſame Sap, ſtrengthened from the ſame Root, cut and pruned by the ſame Vinctor. Thus *England* and *Scotland* are the Twins of *Hypocrates*, that muſt ever laugh and weep together; they are the *Caſtor* and *Pollux* that muſt ever riſe and ſet together; they are the two Hands of one Body Natural and Politick, that ought both to waſh one another's Spots, and ſupply Weakneſſes: To conclude, they are that *cor* and *cerebrum*, that Heart and Brain, ſo faſtened and knit together in Harmony and Correſpondencies, that without a perfect Union of both, it is not poſſible for the Iſle of *Britain* to move with Power, to feel with Tenderneſs, or to breathe in Security.

Our Anceſtors deſired to have ſeen this happy Day, (I will not ſay as *Abraham* deſired the Days of Chriſt, leſt the Compariſon might perhaps ſeem over-bold, but yet as they that live under the Pole deſire to ſee the Sun which is familiar,) as may appear by Treaties between Princes in the Times of ſome of our wiſeſt Kings, as the Third and Seventh *Henries*: And again, by the Continuance of that earneſt Inſtance of the Eighth, for a Match between the young Queen *Mary* and Prince *Edward* his eldeſt Son, upon eaſy Conditions. The Letts in former Times proceeded in part from the practice of foreign Potentates envying the Greatneſs of united Crowns; and in part from the Flaws of Domeſtick Factions within the Bodies of both Kingdoms, neglecting the Benefit of Opportunity thus offered upon the light Impreſſions of private Fears. God himſelf beſtowed this Union between the Realms of *Iſrael* and *Judah* (ſever'd much after the ſame Meaſure and Proportion that ours have been ſo long), as the ſtrongeſt Pledge of Favour, and the richeſt Bleſſing of eternal Bounty that his loving Kindneſs could confer upon both States, *ut eſſet Rex unus omnibus imperans*, *ut non eſſent ultra duæ gentes*, *nec dividerentur amplius in duo regna:* that there might be but one King to reign indifferently over all, that they might no longer be reputed two Nations; and with a further Condition, That from that time forward, they ſhould be no more divided into two Monarchies.

Many Motives of Encouragement have been propounded, many Satisfactions to Jealouſy have been tendered, many Inſtruments of excellent Advantage have been ſet on work in former Times, but to ſmall Effect, ſo long as Wiſdom rather debated, than Right determined; and beſides, for that *nondum tempus a ſomno ſurgere:* but our Age is that *plenitudo temporis*, that full Period of Time wherein ſo many working Cauſes and Inducements draw to one Concluſion of Equality in Happineſs in both Eſtates, as unleſs we will embaſe what our Anceſtors with leſs Advantage did improve, diſable what they did admire, reject what they did recommend, and in a ſort repel the Grace of God which knocketh at our Door, we muſt acknowledge, *Non feciſſe Deum taliter omni nationi*, That God hath not dealt thus with every Nation. For our *Rex pacificus*, our *Deliciæ Britannæ gentis*, our *Leo Rubens*, (which according to *Merlin*'s Prediction, was to hold in one Paw the Battlements of New *Troy*, in another *Sylvam Caledoniam*, which can level in common Senſe at no other Prince that wielded the Scepter of this State before) hath by God's bleſſed Providence as well united the Parts of *England*, *Scotland* and *Ireland*, in one Body of Dominion, as the Lines of *Edgar*, *Fergus* the Conqueror, *Mac Morragh*, and *Cadwallader* in one Center of Conjunction, and thereby compounded out of many Waters, that *Margaritam pretioſam*, for the compaſſing whereof rather than it ſhould eſcape our Hands, we ought to purchaſe it at as high a Rate, as the wiſe Merchant did that other in St. *Luke*, *qui*, *inventa una pretioſa Margarita*, *abiit*, *&* *vendidit omnia quæ habuit*, *ut emeret eam:* having found one precious Pearl among the reſt, went and ſold all that he poſſeſſed in the World beſide, to purchaſe it.

I reſemble the rare Object of the King our Maſter's aim, (in ſeeking to unite and knit together all his Subjects Affections, Scopes and Endeavours, *Nodo indiſſolubili*, to this End chiefly, that it may not reſt hereafter in the power of Fleſh to ſever what hath been conjoined by the Hand of Grace) rather *Margaretæ* than to any other Jewel of great Price, becauſe her Name was *Margaret*, by whom his Majeſty derives his lineal Deſcent by juſt Title of the *Saxon* Kings. Her Name was *Margaret*, that being eldeſt Daughter to King *Henry* VII. inveſted in the Blood of our dear Sovereign King *James*, the moſt abſolutely and radically united Intereſt of the two renowned Families of *York* and *Lancaſter:* wherein we are to note *ex abundante*, that at the Point prefixed of one hundred Years, in which this worthy Princeſs was conveyed, by a lucky Match for this renowned Iſland, to her Huſband *James* IV. her Royal Offspring *James* VI. our matchleſs Sovereign, made his happy Entrance into the poſſeſſion of all theſe Crowns with a chearful Jubilee. I would be glad for my private Comfort, and in grateful Duty to the gracious Bounty of this bleſſed Line, (if it be lawful to intermingle *corpus opacum* with ſo many glorious Aſpects) in a light touch to record and view the Revolutions and Fortunes of my own Family. For as the Duke of *Norfolk* was a forward Miniſter in attending this great Princeſs (by the wiſe King's Direction) to the full accompliſhing of the nuptial Solemnity; ſo his Heir in the third Degree, by Miſconſtruction of humble Thoughts, and witty Workmanſhip upon weak Suſpicion, was drawn into the Loſs both of Life and State, for gazing too much upon the gleams of this riſing Glory; and our Royal Sovereign (the true and lawful Heir of that peerleſs *Margaret*, on whom the Service did attend) reſerved by Deſtiny to reſtore the Honour of that fading Houſe, which was overcaſt with a Cloud of Scorn, and as it were to lay new Earth to the Root of that ſapleſs Tree whoſe Leaves were fallen, and the faireſt Branches withered. Of my ſelf on whom it hath pleaſed my moſt gracious Maſter and dear Sovereign to caſt more Favour than either *ſub ſpe* I could merit, or *in re* I can utter, this only ſhall be ſaid in acknowledgement of Favour and Admiration of Grace,

Ultimus hic ego ſum qui quam benè, *quam malè*, *nolo dicere*, *qui de me judicet*,
alter erit.

The Name of the late old Counteſs of *Lenox* was alſo *Margaret*, by whom as Daughter to the Queen of *Scotland*, by an Earl of *Angus* in a ſecond Match, the younger Branch of that Princely Line was thorowly incorporate into the Perſon of the King on his Father's ſide, for a ſtronger Union, if it were poſſible, both of Blood and Intereſt, and for a double Ornament of his Royal Progeny. She was no *Margaret* I confeſs, but a worthy *Mary*, that in the laſt Deſcent covered *fermentum acceptum*, the Leaven which ſhe had received by Deſcent into Three Kingdoms, as the diſcreet Woman in the Goſpel did her own into three Lumps of Dough, till by her bleſſed Iſſue, Founder of our perpetual Quiet, they might be all thorowly and compleatly leavened.

Now to draw to the Concluſion, which is the Knot of theſe united Ends, that is that worthy Sovereign, to whom

De noſtris annis ſibi Jupiter augeat annos.

That you and your Diſciples, Mr. *Garnet*, in reward of ſo great Merit of this Iſland, were ſo haſty to blow up by your Powder-Plots into a higher Region, than that wherein his Throne was by God eſtabliſhed, together with thoſe very Walls, which, as I find by antient Record, were firſt by the Holy Confeſſor St. *Edward* raiſed, of whoſe Family his Majeſty deſcends, that one King might be buried, and the chief of his Race deſtroyed within the Compaſs of one Monument. But howſoever Mr. *Garnet* was willing to forget that this Place was once ſanctified for a Refuge and Retreat to all ſorts of Perſons in Diſtreſs, by his own Canons; yet God that would not deſtroy *Judah* for his Servant *David*'s ſake, his Providence in like ſort purpoſing to continue the Piety of that bleſſed King in this faireſt Branch of his Deſcent; the Juſtice of that Divine Majeſty holding it an Act of Atheiſm to caſt *tot Margaritas porcis*, ſo many Pearls to Swine, or *Sanctum canibus*, that which is Holy to Dogs, bounded the Malice of theſe graceleſs Imps within ſo narrow Streights, as it reſted not in their power by the Murder of our King to ſtain the Confeſſor's Walls with his own Blood; or under the Vizard of St. *Edward*'s Profeſſion, to extirp the Roots of St. *Edward*'s Poſterity. For in the Proverbs we are certainly aſſured, that *domus juſtorum permanebit*, the Houſe or Generation of the Juſt ſhall continue: But it falls out in a better Conſequence, That the Skull of faithleſs *Percy* ſhould ſtand Centinel where he was once Captain Pioneer; and *Lambeth* ſhould now be *Cateſby*'s Horizon, that was his Arſenal: And their giddy Pates are left *tanquam malus navis*, like the Maſt of a Ship, to uſe the Prophet's Phraſe, to warn Paſſengers by what juſt Diſaſter theſe roving Pirates came to their unhappy End; eſpecially for ſeeking the Golden-Fleece, not by *Jaſon*'s Merit, but by *Medæa*'s Sorcery.

To conclude, we may learn of the wiſe Man, That there can be neither Wiſdom, nor Counſel, againſt God. The Ribs of a crazed Veſſel are too weak to bruiſe the Rock which they ruſh upon. We ſpur Aſſes to no purpoſe, when God's Angel is *ad oppoſitum*. *Jacob* having ſhrunk a Sinew, halted all the days of his Life, after he wreſtled ſo long and to ſo little purpoſe with God Omnipotent. Men are ſure to gain no more than their own Smart, that kick againſt the Thorn: In ſuch Attempts it is neither in him that wills, nor in him that runs, but in God that ſhews Mercy to thoſe that direct themſelves according to Diſcipline: for *Sortes mittuntur in Sinum*, the Lots are caſt into the Lap, but it is God that diſpoſeth the Lottery. Tho' your purpoſe were all one with *Ahab* and *Jezabel*, in ſeeking to cut the Throat of *Naboth* for his Ground: Tho' you gave out your Hymn before this holy Act, as they proclaimed a religious Faſt: Tho' you made your ſelves ſick (as *Ahab* did) with Anguiſh and Vexation, becauſe you could not have your Wills; yet ſince you could neither *occidere* nor *poſſidere*, your Luck was worſe than theirs: For by God's powerful and preventing Grace, you were thruſt as well from all the Means and Advantages of killing whom you hated, as of poſſeſſing what you coveted. It were good therefore that (upon ſo many plain Experiments) you would confeſs with certain Wanderers in the Book of Wiſdom, *Laſſatos eſſe vos*, that you are wearied and over-laboured in theſe crooked ways, and have been ever ſince you leaped out of *Via regia*, the King's High-way, which neither leads to Diſhonour, nor ends in Miſery. Nothing is more proper *Materiæ*, to Matter, than to flow (ſay the Philoſophers) *niſi à formâ ſiſtitur*, unleſs it be ſtayed and fixed by the Form; nor any thing more proper to Humanity, (according to the Rule of Truth) than to err, if Grace direct it not. *Mahomet* confeſſeth in his Alcoran, That the Throne of Chriſt was raiſed by Patience, his by Revenge; that by Miracles, his by Tyranny. The Modeſty and Piety of Chriſtians afflicted for the Point of Conſcience in the Time of *Tertullian*, appears by the Reaſon which he gives of their Abſtinence *à ſuffocato & ſanguine*, that is, *ne quo ſanguine contaminarentur*, *vel intra viſcera ſepulto*; that they might admit no Pollution by Blood, tho' it were buried within their Bowels.

Pardon me, Mr. *Garnet*, tho' I doubt whether in the Point of Conſcience alone, you would voluntarily and reſolutely abide the Saw of *Eſay*, the Bolts of *Jeremy*, the Gibbet of *Peter*, the Sword of *James*, or the ſtoning of St. *Stephen*, much leſs make a Gathering among thoſe of your Profeſſion, toward the preparing of an humble Sacrifice for the Life of *Nebuchadnezzar* (as you eſteem the King), that with the Rage of a Tiger ſought his Life, and waxed thus impatient of that ſoft and eaſy Hand, which it pleaſed him in his gracious Compaſſion and Tenderneſs, before the late intended Tragedy, to hold over you; ſo that with *Seneca* you might juſtly ſay, *Nihil fœlicitati meæ deerat*, *niſi moderatio ejus.* Thoſe golden Comforts of the Prophets to contrite Offenders, ought at this time to be of greater Eſtimation and Value in your Thoughts, than all the Treaſures of the *Vatican*. You cannot ſteer the Ship of your crazed Conſcience more ſafely in this ſharp Storm (which hath been raiſed by your ſelves) than by the Council of *Lactantius*, which doth warrant, That to Minds truly penitent, *Optimus portus eſt mutatio conſilii*, Change of Reſolution is the beſt Haven and ſafeſt Harbour. After an humble acknowledgment of a grievous Sin *in fratres veſtros*, againſt your Brethren, with the Sons of *Jacob*, and withal, that for this Cauſe chiefly Tribulation hath taken hold of your higheſt Top: Firſt, yield unfeigned Thanks to Almighty God for preventing this deſtructive Project, that would have caſt ſo great a weight of Judgment upon your Soul, and for turning your ill Purpoſe to his Honour: Then thank your merciful and tender-hearted King, who ſeeks not to ſurprize you ſuddenly, as *Levi* did *Sichem*, *Quando dolor vulnerum erat graviſſimus*; as you would have dealt with him; and to aſſault you in the greateſt Horror and the ſharpeſt Torture of your crying Sin; but by imitation of that Eternal Object whoſe Perſon he repreſents, whoſe Example he regards, agreeably to that Record in the Book of Wiſdom, *Dat tempus et locum per quæ poteſtis mutari à malitiâ*, gives Time and Place by which you may be changed from your Malice: Crave Pardon of the World, for leaving ſuch a Precedent to future Times, of a poſſibility to atchieve ſo deſperate an Act, which may perchance, according to the Diſpoſitions and Humours of Men diverſly affected, as well *admonere* as *prohibere*, that is, put the World in mind that ſuch a matter may be, as forbid that it be not.

Remember the difference which *Theodoret* doth diſcreetly put, between Suffering and the Cauſe of Suffering, between Torture to force Conſcience, and legal Puniſhments to chaſtiſe Faults. To conclude my laſt Caution with your laſt Occaſion,

Diſcite juſtitiam, *moniti*, *& non temnere Divos:*

Becauſe, *Hæc vos ſapere vel mori jubent*; and withal (as *Martial* did for *Trajan)* wiſh to the beſt of Majeſty, to whom you meant the worſt of Malice,

Dii tibi dent quicquid, *princeps Auguſte*, *mereris*,
Et rata perpetuo, *quæ tribuere*, *velint.*

Then the Lord Chief Juſtice making a pithy Preamble of all the apparent Proofs and Preſumptions of his Guiltineſs, gave Judgment, that he ſhould be drawn, hanged, and quartered.

And my Lord of *Saliſbury* demanded, if *Garnet* would ſay any thing elſe?

Garnet anſwered, No, my Lord; but I humbly deſire your Lordſhips all to commend my Life to the King's Majeſty; ſaying, That at his pleaſure he was ready either to die or live, and do him Service.

And ſo the Court aroſe.

ON the 3d of *May*, *Garnet*, according to his Judgment, was executed upon a Scaffold, ſet up for that Purpoſe at the Weſt End of St. *Paul*'s Church. At his ariſe up the Scaffold, he ſtood much amaz'd, Fear and Guiltineſs appearing in his Face. The Deans of *Paul*'s and *Wincheſter* being preſent, very gravely and chriſtianly exhorted him to a true and lively Faith to God-ward, a free and plain Acknowledgement to the World of his Offence; and if any further Treaſon lay in his Knowledge, to unburden his Conſcience, and ſhew a Sorrow and Deteſtation of it: But *Garnet*, impatient of Perſuaſions, and ill-pleaſed to be exhorted by them, deſir'd them not to trouble him, he came prepar'd and was reſolv'd. Then the Recorder of *London* (who was by his Majeſty appointed to be there) aſk'd *Garnet* if he had any thing to ſay unto the People before he died: It was no time to diſſemble, and now his Treaſons were too manifeſt to be diſſembled; therefore, if he would, the World ſhould witneſs what at laſt he cenſur'd of himſelf, and of his Fact; it ſhould be free to him to ſpeak what he liſted. But *Garnet*, unwilling to take the Offer, ſaid, His Voice was low, his Strength gone, the People could not hear him, tho' he ſpake to them; but to thoſe about him on the Scaffold, he ſaid, The Intention was wicked, and the Fact would have been cruel, and from his Soul he ſhould have abhorred it had it been effected: But he ſaid, He had only a general Knowledge of it by Mr. *Cateſby*, which in that he diſcloſed not, nor uſed Means to prevent it, herein he had offended; what he knew in Particulars was in Confeſſion, as he ſaid. But the Recorder wiſhed him to be remembred, that the King's Majeſty had under his Hand-writing theſe four Points amongſt others:

1. That *Greenway* told him of this, not as a Fault, but as a thing which he had Intelligence of, and told it him by way of Conſultation.
2. That *Cateſby* and *Greenway* came together to him to be reſolved.
3. That Mr. *Teſmond* and he had Conference of the Particulars of the *Powder-Treaſon* in *Eſſex* long after.
4. *Greenway* had aſk'd him who ſhould be the Protector? but *Garnet* ſaid, That was to be referred till the Blow was paſt.

Theſe prove your Privity beſides Confeſſion, and theſe are extant under your Hand. *Garnet* anſwer'd, Whatſoever was under his Hand was true. And for that he diſcloſed not to his Majeſty the things he knew, he confeſſed himſelf juſtly condemn'd; and for this did aſk Forgiveneſs of his Majeſty. Hereupon the Recorder led him to the Scaffold to make his Confeſſion publick.

Then *Garnet* ſaid, Good Countrymen, I am come hither this bleſſed Day of *The Invention of the holy Croſs*, to end all my Croſſes in this Life: The Cauſe of my Suffering is not unknown to you; I confeſs I have offended the King, and am ſorry for it, ſo far as I was guilty, which was in concealing it; and for that I aſk Pardon of his Majeſty. The Treaſon intended againſt the King and State was bloody, my ſelf ſhould have deteſted it, had it taken effect. And I am heartily ſorry that any Catholicks ever had ſo cruel a Deſign. Then turning himſelf from the People to them about him, he made an Apology for Mrs. *Anne Vaux*, ſaying, There is ſuch an honourable Gentlewoman who hath been much wronged in Report: For it is ſuſpected and ſaid, that I ſhould be married to her, or worſe. But I proteſt the contrary: She is a virtuous Gentlewoman, and for me a perfect pure Virgin. For the Pope's Breves, Sir *Edmund Baynam*'s going over Seas, and the Matter of the *Powder-Treaſon*, he referred himſelf to his Arraignment, and his Confeſſions: For whatſoever is under my Hand in any of my Confeſſions, ſaid he, is true.

Then addreſſing himſelf to Execution, he kneeled at the Ladder-foot, and aſked if he might have time to pray, and how long. It was anſwer'd, He ſhould limit himſelf, none ſhould interrupt him. It appear'd he could not conſtantly or devoutly pray; Fear of Death, or Hope of Pardon, even then ſo diſtracted him: For oft in thoſe Prayers he would break off, turn and look about him, and anſwer to what he over-heard, while he ſeemed to be praying. When he ſtood up, the Recorder finding in his Behaviour as it were an Expectation of a Pardon, wiſhed him not to deceive himſelf, nor beguile his own Soul; he was come to die, and muſt die; requiring him not to equivocate with his laſt Breath; if he knew any thing that might be Danger to the King or State, he ſhould now utter it. *Garnet* ſaid, It is no time now to equivocate; how it was lawful, and when, he had ſhewed his Mind elſewhere: But, ſaith he, I do not now equivocate, and more than I have confeſſed I do not know. At his aſcending up the Ladder he deſired to have Warning before he was turned off. But it was told him, he muſt look for no other Turn but Death. Being upon the Gibbet, he uſed theſe Words: *I commend me to all good Catholicks, and I pray God preſerve his Majeſty, the Queen, and all their Poſterity, and my Lords of the Privy Council, to whom I remember my humble Duty, and I am ſorry that I did diſſemble with them: But I did not think they had had ſuch Proof againſt me, till it was ſhew'd me; but when that was proved, I held it more Honour for me at that time to confeſs, than before to have accuſed. And for my Brother* Greenway, *I would the Truth were known; for the falſe Reports that are, make him more faulty than he is. I ſhould not have charged him, but that I thought he had been ſafe. I pray God the Catholicks may not fare the worſe for my Sake; and I exhort them all to take heed they enter not into any Treaſons, Rebellions, or Inſurrections againſt the King. And with this ended ſpeaking, and fell to praying; and croſſing himſelf, ſaid,* In nomine Patris & Filii, & Spiritus Sancti; *and prayed,* Maria mater gratiæ, Maria mater miſericordiæ, tu me à malo protege, & horâ mortis ſuſcipe. *Then,* In manus tuas, Domine, commendo Spiritum meum: *Then,* Per Crucis hoc Signum *(croſſing himſelf)* fugiat procul omne malignum. Infige Crucem tuam in corde meo, Domine; *Let me always remember the Croſs: and ſo returned again to* Maria mater gratiæ, *and then was turned off, and hung till he was dead.*

XXI. *The Trial of* GEORGE SPROT *in* Scotland, *for* High-Treaſon, *in conſpiring with* John *Earl of* Gowrie *to murder King* James I. 12 Aug. 1608. 6 Jac. I.

GEORGE SPROT, a Notary*, inhabiting at *Aymouth*, having given cauſe of Suſpicion by ſome Words which fell from him, and afterwards by ſome Papers found upon him, that he was privy to, and acquainted with the † Plotting of the late Earl of *Gowrie* and *Robert Logane*, for the cruel murdering of King *James*, was ſeized and committed to Priſon; and after divers Examinations, being moved with remorſe of Conſcience for the long concealing his Fore-knowledge of this Conſpiracy, confeſſeth, declareth, and deponeth, That he knew perfectly, that *Robert Logane*, late of *Reſtalrig*, was privy, and upon the Fore-knowledge of *Gowrie*'s treaſonable Conſpiracy. And for the greater Aſſurance of his Knowledge, deponeth, That he knew that there were divers Letters interchanged betwixt them, anent the treaſonable Purpoſe aforeſaid, in the beginning of the Month of *July* 1600. Which Letters *James Bour*, called Laird *Bour*, Servitor to *Reſtalrig*, (who was imployed Mediator betwixt them, and privy to all that Errand) had in keeping, and ſhewed the ſame to *Sprot* in the Place of *Faſt-Caſtle*. The firſt of *Gowrie*'s Letters, containing in effect as followeth:

‘GOOD Laird of *Reſtalrig*, you underſtand what Conditions ſhould have been betwixt us, of before. Indeed I purpoſed to have come by your Houſe, but underſtanding of your Abſence in *Lothiane*, I came not. Always I wiſh you either your ſelf to come Weſt, or elſe to ſend ſome ſure Meſſenger, who may confer with me anent the Purpoſe you know. But rather would I wiſh yourſelf to come, not only for that Errand, but for ſome other thing that I have to adviſe with you.’

To the which Letter *Reſtalrig* wrote an Anſwer, and ſent the ſame to the Earl of *Gowrie*, by the ſaid *James Bour*, of the Tenour following:

‘MY Lord, my moſt humble Duty and Service heartily remembred. At the Receipt of your Lordſhip's Letter I am ſo comforted, that I can neither utter my Joy, nor find my ſelf ſufficiently able to requite your Lordſhip with due Thanks. And perſuade your Lordſhip in that Matter, I ſhall be as forward for your Lordſhip's Honour, as if it were my own Cauſe. And I think there is no living Chriſtian that would not be content to revenge that *Machiavellian* Maſſacring of our dear Friends; yea, howbeit it ſhould be, to venture and hazard Life, Lands, and all other things elſe. My Heart can bind me to take part in that Matter, as your Lordſhip ſhall find better Proof thereof. But one thing would be done, namely, That your Lordſhip ſhould be circumſpect and earneſt with your Brother, that he be not raſh in any Speeches touching the Purpoſe of *Padua*. My Lord, you may eaſily underſtand, that ſuch a Purpoſe as your Lordſhip intendeth, cannot be done raſhly, but with Deliberation. And I think for my ſelf, that it were moſt meet to have the Men your Lordſhip ſpake of, ready in a Boat or Bark, and addreſs them as if they were taking Paſtime on the Sea, in ſuch fair Summer-time. And if your Lordſhip could think good, either your ſelf to come to my Houſe of *Faſt-Caſtle* by Sea, or to ſend your Brother, I ſhould have the Place very quiet and well provided after your Lordſhip's Advertiſement, where we ſhould have no ſcant of the beſt Veniſon can be had in *England*: And no others ſhould have Acceſs to haunt the Place, during your Lordſhip's being here, but all things very quiet. And if your Lordſhip doubt of ſafe landing, I ſhall provide all ſuch Neceſſaries as may ſerve for your Lordſhip's Arrival, within a Flight-ſhot of the Houſe. And perſuade your Lordſhip you ſhall be as ſure and quiet here, while we have ſettled our Plot, as if you were in your own Chamber: for I truſt and am aſſur'd we ſhall hear Word within few days from them your Lordſhip knoweth of; for I have care to ſee what Ships comes home by. Your Lordſhip knoweth I have kept the Lord *Bothwell* quietly in this Houſe in his greateſt Extremity, ſay both King and Council what they liked. I hope (if all things come to paſs, as I truſt they ſhall) to have both your Lordſhip and his Lordſhip at one good Dinner afore I die. *Hæc jocosè*, to animate your Lordſhip: I doubt not, my Lord, but all things ſhall be well. And I am reſolved, whereof your Lordſhip ſhall not doubt, of any thing on my part, yea to peril Life, Land, Honour and Goods; yea, the Hazard of Hell ſhall not affray me from that, yea, altho' the Scaffold were already ſet up. The ſooner the Matter were done, it were the better, for the King's Buck-hunting will be ſhortly; and I hope it ſhall prepare ſome dainty Cheer for us to dine againſt the next Year. I remember well, my Lord, and I will never forget, ſo long as I live, that merry Sport which your Lordſhip's Brother told me of a Nobleman at *Padua*; for I think that a *Paraſceve* to this purpoſe. My Lord, think nothing that I commit the Secrecy hereof and Credit to this Bearer; for I dare not only venture my Life, Lands, and all other things I have elſe, on

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* Spotſwood's *Hiſtory of the Church of* Scotland, *p.* 509.

† *Ibid.* p. 459. See *State-Trials*, vol. VII. p. 33, and 78.

‘ his Credit, but I durſt hazard my Soul in his keeping, if it were poſſibly ‘ in earthly Men; for I am ſo perſuaded of his Truth and Fidelity. And ‘ I trow (as your Lordſhip may aſk him if it be true) he would go to Hell-‘ Gates for me; and he is not beguiled of my Part to him. And therefore ‘ I doubt not but this will perſuade your Lordſhip to give him Truſt in this ‘ Matter, as to my ſelf. But I pray your Lordſhip direct him home with ‘ all poſſible haſte, and give him ſtrait Command, that he take not a Wink ‘ ſleep, while he ſee me again, after he come from your Lordſhip. And ‘ as your Lordſhip deſireth in your Letter to me, either rive or burn, or elſe ‘ ſend back again with the Bearer; for ſo is the Faſhion, I grant.’

Which Letter written every word with *Reſtalrig*'s own Hand, was ſubſcribed by him after his accuſtomed manner, *Reſtalrig*, and was ſent to the Earl *Gowrie* by the ſaid *James Bour*. After whoſe Return, within five days, with a new Letter from *Gowrie*, he ſtaid all night with *Reſtalrig* in * *Gunnes-Green*; and *Reſtalrig* rode to *Lothiane* the Morn thereafter, where he ſtaid five or ſix days. Then after his returning, paſt to *Faſt-Caſtle*, where he remained a certain ſhort Space.

And farther deponeth, that he ſaw and heard *Reſtalrig* read the laſt Letter, which *Bour* brought back to him from *Gowrie*, and their Conference there-anent. And heard *Bour* ſay; Sir, if ye think to make any Commodity by this Dealing, lay your Hand to your Heart. And *Reſtalrig* anſwer'd, that he would do as he thought beſt. And farther ſaid to *Bour*, Howbeit he ſhould ſell all his own Land that he had in the World, he would paſs thorow with the Earl of *Gowrie*, for that Matter would give him greater Contentment, nor if he had the whole Kingdom; and rather or he ſhould falſify his Promiſe, and recall his Vow that he had vowed to the Earl of *Gowrie*, he ſhould ſpend all that he had in the World, and hazard his Life with his Lordſhip. To whom *Bour* anſwer'd: You may do as you pleaſe, Sir, but it is not my Counſel, that you ſhould be ſo ſudden in that other Matter. But for the Condition of *Dirlton*, I would like very well of it. To whom *Reſtalrig* anſwer'd, Content your ſelf, I am at my Wit's-end.

And farther, *Sprot* deponeth, That he enter'd himſelf thereafter in Conference with *Bour*, and demanded what was done betwixt the Laird and the Earl of *Gowrie*. And *Bour* anſwer'd, that he believ'd that the Laird ſhould get *Dirlton* without either Gold or Silver, but feared that it ſhould be as dear unto him. And *Sprot* inquiring how that could be; *Bour* ſaid, they had another Pie in hand, nor the ſelling of any Land; but prayed *Sprot*, for God's ſake, that he would let be, and not trouble himſelf with the Laird's Buſineſs; for he feared, within few days, the Laird would be either Land-leſs or Life-leſs.

And the ſaid *George Sprot* being demanded, if this his Depoſition was true, as he would anſwer upon the Salvation and Condemnation of his Soul; and if he will go to death with it, ſeeing he knoweth the time and hour of his Death to approach very near; deponeth for Anſwer, That he hath not a Deſire to live, and that he knows the time to be ſhort, having care of no earthly Thing, but only for clearing of his Conſcience in the Truth of all theſe Things, to his own Shame before the World, and to the Honour of God, and Safety of his own Soul; that all the former Points and Circumſtances contained in this his Depoſition, with the Depoſition made by him the 5th Day of *July* laſt, and the whole remanent Depoſitions made by him ſen that Day are true, which he will take on his Conſcience, and as he hopeth to be ſaved of God, and that he would ſeal the ſame with his Blood.

And farther, being demanded, where this above-written Letter, written by *Reſtalrig* to the Earl of *Gowrie*, which was return'd again by *James Bour*, is now; deponeth, that he abſtracted it quietly from *Bour*, in looking over and reading *Bour*'s Letters, which he had in keeping of *Reſtalrig*'s; and that he left the above-written Letter in his Cheſt among his Writings, when he was taken and brought away, and that it is cloſed and folded within a piece of Paper.

This aforeſaid Depoſition was made by him the tenth of *Auguſt* 1608, written by *James Primeroſe*, Clerk of his Majeſty's Privy-Council, and ſubſcribed with the ſaid *George Sprot*'s own Hand, in the Preſence of

The Earl of *Dunbar*,
The Earl of *Lothiane*,
The Biſhop of *Roſſe*,
The Lord *Schune*,
The Lord *Halyrudehouſe*,

The Lord *Blantyre*,
Sir *Will. Hart*, his Majeſty's Juſtice,
Mr. *John Hall*,

Mr. *Patrick Galoway*,
Mr. *Peter Hewart*, Miniſters of the Kirks of *Edinburgh*.

Subſcribed with all their Hands.

And alſo the 11th Day of the aforeſaid Month and Year, the ſaid *George Sprot* being re-examin'd, in the Preſence of a Number of the Council and Miniſters aforeſaid, and it being declar'd to him, that the time of his Death now very near approached, and that therefore they deſir'd him to clear his Conſcience with an upright declaration of the Truth; and that he would not abuſe the Holy Name of God, to make him, as it were, a Witneſs to Untruths; and eſpecially being deſired that he would not take upon him the innocent Blood of any Perſon dead or quick, by making and forging Lyes and Untruths againſt them:

Deponeth, That he acknowledgeth his grievous Offences to God (who hath made him a reaſonable Creature) in abuſing his holy Name with many Untruths, ſen the beginning of this Proceſs: but now being reſolv'd to die, and attending the hour and time when it ſhall pleaſe God to call him, he deponeth with many Atteſtations, and as he wiſheth to be participant of the Kingdom of Heaven, where he may be countable and anſwerable, upon the Salvation and Condemnation of his Soul, for all his Doings and Speeches in this Earth, that all that he hath deponed ſen the fifth Day of *July* laſt, in all his ſeveral Depoſitions, were true in every Point and Circumſtance of the ſame; and that there is no Untruth in any Point thereof.

And having deſired Mr. *Patrick Galoway* to make a Prayer, whereby he might be comforted now in his Trouble; which was done:

The ſaid Deponer, with many Tears after the Prayer, affirmed this his Depoſition to be true; and for the Confirmation thereof, declared, That he would ſeal the ſame with his Blood.

And the next Day thereafter, being the 12th of the aforeſaid Month of *Auguſt*, upon the aforeſaid Confeſſion, the ſaid *George* was brought forth and preſented in Judgment upon Panel, within the Tollbooth of *Edinburgh*, before Sir *William Hart* of *Preſton*, his Majeſty's Juſtice, and there in a fenced Court holden by him that Day, aſſiſted by the honourable Perſons following, his Aſſeſſors in that Errand: They are to ſay,

Alexander Earl of *Dumfermling*, Lord Chancellor,
George Earl of *Dunbar*, Treaſurer,
John Archbiſhop of *Glaſcow*,
David Biſhop of *Roſſe*,
Gawin Biſhop of *Galloway*,
Andrew Biſhop of *Brechine*,
David Earl of *Crawford*,
Mark Earl of *Lothiane*,
John Lord *Abirnethy* of *Saltoun*,

James Lord of *Balmerinoth*, Secretary,
Walter Lord *Blantyre*,
John Lord *Halyrudehouſe*,
Michael Lord *Burley*,
Sir *Richard Cokburne* of *Clarkintoun*, Knight,
Mr. *John Preſton* of *Fenton Barnes*, Collector-General,
Sir *John Skeyne* of *Currhil*, Knight, Clerk of Regiſter:

was delated, accuſed, and purſued by Sir *Thomas Hamilton* of *Binning*, Knight, Advocate to our Sovereign Lord for his Highneſs's Entries, of the Crimes contained in his Indictment, produced by the ſaid Advocate; whereof the Tenour followeth:

George Sprot, Notary in *Ayemouth*, You are indicted and accuſed, forſomuch as *John*, ſometime Earl of *Gowrie*, having moſt cruelly, deteſtably, and treaſonably conſpired in the Month of *July*, the Year of God 1600 Years, to murder our dear and moſt gracious Sovereign the King's moſt excellent Majeſty: And having imparted that deviliſh Purpoſe to *Robert Logane* of *Reſtalrig*, who allowed of the ſame, and moſt willingly and readily undertook to be Partaker thereof: The ſame coming to your Knowledge at the times and in the manner particularly after ſpecified, you moſt unnaturally, maliciouſly, and treaſonably concealed the ſame, and was art and part thereof in manner following. In the firſt, in the ſaid Month of *July* ſixteen hundred Years, after you had perceiv'd and known, that divers Letters and Meſſages had paſt betwixt the ſaid ſometime Earl of *Gowrie*, and the ſaid *Robert Logane* of *Reſtalrig*, you being in the Houſe of *Faſt-Caſtle*, you ſaw and read a Letter written by the ſaid *Robert Logane* of *Reſtalrig*, with his own Hand, to the ſaid *John* ſometime Earl of *Gowrie*, of the Tenour following:

MY Lord, my moſt humble Duty and Service heartily remember'd. At the Receipt of your Lordſhip's Letter I am ſo comforted, that I can neither utter my Joy, nor find my ſelf ſufficiently able to requite your Lordſhip with due Thanks. And perſuade your Lordſhip in that Matter, I ſhall be as forward for your Lordſhip's Honour, as if it were mine own Cauſe. And I think there is no living Chriſtian that would not be content to revenge that *Machiavellian* maſſacring of our dear Friends, yea, howbeit it ſhould be, to venture and hazard Life, Lands and all other thing elſe. My Heart can bind me to take part in that Matter, as your Lordſhip ſhall find better Proof thereof. But one thing would be done: namely, That your Lordſhip ſhould be circumſpect and earneſt with your Brother, that he be not raſh in any Speeches touching the Purpoſe of *Padua*.

And a certain Space after the execution of the aforeſaid Treaſon, the ſaid *Robert Logane* of *Reſtalrig*, having deſired the Laird of *Bour* to deliver to him the aforeſaid Letter, or elſe to burn it; and *Bour* having given to you all Tickets and Letters, which he then had either concerning *Reſtalrig*, or others, to ſee the ſame, becauſe he could not read himſelf; you abſtracted the above-written Letter, and reteined the ſame in your own hands, and divers times read it, conteining farther in ſubſtance nor is formerly ſet down, according to the words following:

MY Lord, you may eaſily underſtand, that ſuch a Purpoſe as your Lordſhip intendeth, cannot be done raſhly, but with Deliberation. And I think for my ſelf, that it were moſt meet to have the Men your Lordſhip ſpake of, ready in a Boat or Bark, and addreſs them as if they were taking Paſtime on the Sea, in ſuch fair Summer time. And if your Lordſhip could think good, either your ſelf to come to my Houſe of *Faſt-Caſtle* by Sea, or to ſend your Brother, I ſhould have the Place very quiet, and well provided after your Lordſhip's Advertiſement, where we ſhould have no ſcant of the beſt Veniſon can be had in *England*. And no others ſhould have acceſs to haunt the Place during your Lordſhip's being here, but all things very quiet. And if your Lordſhip doubt of ſafe landing, I ſhall provide all ſuch Neceſſaries as may ſerve for your Lordſhip's Arrival, within a Flight-ſhot of the Houſe. And perſuade your Lordſhip you ſhall be as ſure and quiet here, while we have ſettled our Plot, as if you were in your own Chamber: for I truſt, and am aſſured, we ſhall have word within few Days from them your Lordſhip knoweth of; for I have care to ſee what Ships comes home by. Your Lordſhip knoweth I have kept the Lord *Bothwell* quietly in this Houſe in his greateſt Extremity, ſay both King and Council what they liked. I hope (if all things come to paſs, as I truſt they ſhall) to have both your Lordſhip and his Lordſhip at one good Dinner afore I die. *Hæc jocoſe*, to animate your Lordſhip: I doubt not my Lord but all things ſhall be well. And I am reſolved, whereof your Lordſhip ſhall not doubt, of any thing on my part, yea, to peril Life, Land, Honour and Goods; yea, the Hazard of Hell ſhall not affray me from that, yea, altho' the Scaffold were already ſet up. The ſooner the Matter were done, it were the better; for the King's Buck-hunting will be ſhortly; and I hope it ſhall prepare ſome dainty Cheer for us to dine againſt the next Year. I remember well, my Lord, and I will never forget ſo long as I live, that merry Sport which your Lordſhip's Brother told me of a Nobleman at *Padua*: for I think that a *Paraſceve* to this Purpoſe. My Lord, think nothing that I commit the Secrecy hereof and Credit to this Bearer; for I dare not only venture my Life, Lands, and all other things I have elſe, on his Credit, but I durſt hazard my Soul in his keeping, if it were poſſible in earthly Men; for I am ſo perſuaded of his Truth and Fidelity. And I trow (as your Lordſhip may aſk him if it be true) he would go to Hell-gates for me; and he is not beguiled of my Part to him. And therefore, I doubt not but this will perſuade your Lordſhip to give him Truſt in this Matter, as to my ſelf. But I pray your Lordſhip direct him home with all poſſible haſte, and give him ſtrait Command, that he take not a Wink ſleep, while he ſee me again, after he come from your Lordſhip. And as your Lordſhip deſireth in your Letter to me, either rive or burn, or elſe ſend back again with the Bearer; for ſo is the Faſhion, I grant.

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* *A Houſe of* Reſtalrig'*s*.

Which Letter, written every word with the ſaid *Robert Logane* his own Hand, was ſubſcribed by him after his accuſtomed manner, with this Word, *Reſtalrig*.

And albeit by the Contents of the aforeſaid Letter, you knew perfectly the Truth of the ſaid moſt treaſonable Conſpiracy, and the ſaid *Robert Logane* of *Reſtalrig*, his Foreknowledge, Allowance, and Guiltineſs thereof; like as you were aſſured of the ſame by his receiving of divers Letters ſent by *Gowrie* to him, and by his ſending Letters to *Gowrie* for the ſame Purpoſe, and by ſundry Conferences betwixt the ſaid *Robert Logane* of *Reſtalrig*, and the ſaid *James Bour*, in your Preſence and Hearing concerning the ſaid Treaſon, as well in the ſaid Month of *July* immediately preceding the attempting of the ſaid Treaſon, as at divers other times ſhortly thereafter, as likewiſe by the revealing thereof to you by the ſaid *James Bour*, who was upon the Knowledge and Device of the ſaid Treaſon, and was employed as ordinary Meſſenger by the ſaid *Robert Logane* of *Reſtalrig*, to the ſaid ſometime Earl of *Gowrie*, in the Traffick of the ſaid damnable Treaſon, whereby your Knowledge, Concealing and Guiltineſs of the ſaid Treaſon was undeniable: yet, for further Manifeſtation thereof, about *July* 1602 Years, the ſaid *Robert Logane* of *Reſtalrig* ſhewed to you that *Bour* had told him, that he had been ſomewhat raſh to let you ſee a Letter which came from the Earl of *Gowrie* to the ſaid *Robert Logane* of *Reſtalrig*, who then urged you to tell what you underſtood by that Letter. To whom you anſwer'd, That you took the meaning of it to be, that he had been upon the Counſel and Purpoſe of *Gowrie*'s Conſpiracy. And he anſwer'd you, whatever he had done, the worſt was his own: But if you would ſwear to him, that you ſhould never reveal any thing of that Matter to any Perſon, he ſhould be the beſt Sight that ever you ſaw; and in token of farther Recompenſe he then gave you twelve pound of Silver. Nevertheleſs, albeit you knew perfectly the whole Practices and Progreſs of the ſaid Treaſon, from the beginning thereof as ſaid is, as well by the ſight of the ſaid Letters, as alſo by your Conferences with the ſaid *James Bour*, called Laird *Bour*, and *Robert Logane* of *Reſtalrig*; yet during all the days of their Life-times, who lived till the Year of God 1606 Years, or thereby, and ſo by the ſpace of ſix Years after that, you knew the guiltineſs of the treaſonable Conſpiracy aforeſaid, you moſt treaſonably concealed the ſame; and ſo you was and is art and part of the ſaid moſt heinous, deteſtable and treaſonable Conſpiracy, and of the Knowledge and Concealing thereof; and therefore you ought and ſhould incur, underlie and ſuffer the Sentence and Pain of High-Treaſon. To the Token, that ye have not only by your Depoſitions ſubſcribed with your Hand, and ſolemnly made in Preſence of many of the Lords of his Majeſty's Council, and of the Miniſters of the Borough of *Edinburgh*, of the Dates, the 5th, 15th and 16th days of *July* laſt by-paſt, and 10th and 11th days of *Auguſt* Inſtant, confeſſed every Head, Point, and Article of the Indictment above written, but alſo, by divers other your Depoſitions ſubſcribed likewiſe with your Hand, you have ratify'd the ſame, and ſworn conſtantly to abide thereat, and to ſeal the ſame with your Blood, which you cannot deny.

Which Indictment being read openly in judgment to the ſaid *George Sprot*, before he was put to the Knowledge of an Inqueſt, he confeſſed in the Preſence of the ſaid Lord Juſtice and whole Aſſeſſors above-named, the ſame and every Point thereof to be true and of Verity. And therefore the Juſtice ordained the ſame Indictment to be put to the Knowledge of a condign Inqueſt of the honeſt, famous and diſcreet Perſons under-written. They are to ſay:

William Trumbill of *Ardre*.
William Fiſher, Merchant, Burgeſs of *Edinburgh*.
Robert Stuart, there.
Edward Johnſton, Merchant, Burgeſs there.
Harbert Maxwell of *Cavens*.
James Tennent of *Linhouſe*.
William Trumbill, Burgeſs of *Edinburgh*.
George Brown in *Gorgymill*.
John Hucheſon, Merchant, Burgeſs of *Edinburgh*.
John Leyis, Merchant, Burgeſs there.
James Somervell, Merchant, Burgeſs there.
William Simintoun, Burgeſs there.
John Cunniſon in *Dirlton*.
Tho. Smith, Merchant, Burgeſs of *Edinburgh*.
And *John Cowtis*, Burgeſs there.

Which Perſons of Inqueſt being choſen, ſworn and admitted, after the Accuſation of the ſaid *George Sprot*, before them, of the ſaid treaſonable, heinous, and deteſtable Crimes conteined in the Indictment aforeſaid, and reading of the ſaid Indictment of new again in his and their Preſence; the ſaid *George Sprot* of new confeſſed in the Audience of the ſaid Inqueſt the aforeſaid Indictment, and every Point thereof, to be true and of Verity. Whereupon the ſaid Sir *Thomas Hamilton* of *Binning* Knight, his Majeſty's Advocate, as before, aſked Act and Inſtrument: And in reſpect thereof proteſted, in caſe the ſaid Inqueſt cleanſed him of the ſaid Crimes for wilful and manifeſt Error. And therefore the whole forenam'd Perſons of Inqueſt remov'd all together forth of Court to the Inqueſt Houſe, where they being incloſed, by Plurality of Votes elected and made choice of the ſaid *Harbert Maxwell* of *Cavens* to be Chancellor, or Foreman. And having with great Deliberation gravely conſider'd the Effect and whole Circumſtances of the ſaid Indictment, and conſtant judicial Confeſſion made by the Party pannelled, as well before the ſaid Lord Juſtice and his Aſſeſſors, as thereafter in Preſence of the Inqueſt themſelves, they all voted upon the whole Effect of the ſaid Indictment. And being ripely and well adviſed therewith, re-enter'd again in Court, where they all in one Voice, by the Mouth of the ſaid Chancellor or Foreman, found, pronounced, and declar'd the ſaid *George Sprot* (according to his own Confeſſion judicially made in their Preſence and Audience) to be guilty, culpable, filed and convict of art and part of the ſaid moſt heinous, deteſtable and treaſonable Conſpiracy conteined in his Indictment above-written, and of the Knowledge and Concealing thereof. For the which Cauſe the ſaid Juſtice, by the Mouth of the Dempſter of Court, by his Sentence and Doom decerned and ordeined the ſaid *George Sprot* to be taken to the Market Croſs of *Edinburgh*, and there to be hanged upon a Gibbet till he be dead, and thereafter his Head to be ſtricken from his Body, and his Body to be quartered and demeaned as a Traitor, and his Head to be affixed and ſet up upon a Prick of Iron upon the higheſt part of the Tollbooth of *Edinburgh*, where the Traitor *Gowrie*, and others of the Conſpirators Heads ſtand; and his whole Lands, Heritages, Tacks, Stedings, Rooms, Poſſeſſions, Goods and Geere to be forfeited and eſchet to our Sovereign Lord his uſe, for his treaſonable and deteſtable Crimes above ſpecify'd. Which was pronounc'd for Doom.

Extractum de libro Actorum Adiornalis S. D. N. Regis per me D. Johannem Cobburne de Ormeſtoun militem, Clericum Juſtitiariæ ejuſdem generalem. Sub meis ſigno & ſubſcriptione manualibus.

The Doom being pronounced, the ſaid *George* was convoyed to a privy Houſe, where he remain'd at his ſecret Meditation, and afterwards in Conference with the Miniſters and others, unto the time all things was provided neceſſary for his Execution: and being brought to the Place where he was to die, he in publick Audience of the whole People, at the three ſides of the Scaffold, ratify'd the former Depoſitions made by him concerning the treaſonable Practices intended and deviſed betwixt *Gowrie* and *Reſtalrig*, for the murdering of our moſt gracious Sovereign, and bereaving his Highneſs of his Life, and his own Knowledge and concealing of their Guiltineſs. For the which he humbly craved God and his Majeſty Forgiveneſs, being moſt ſorry and grieved that he had offended God and the King's Majeſty in concealing ſuch a vile, deteſtable and unnatural Treaſon, enterprized by them againſt his gracious Sovereign, who hath been ever ſo good and gracious to his Subjects: proteſting that if he had a thouſand Lives to render, and were able to ſuffer ten thouſand Deaths, it were not a ſufficient Satisfaction and Recompenſe for his Offence. And that God had preſerved him from many great Perils, when his Life was in extreme Danger, to bring him to this publick Declaration of that deteſtable and horrible Fact, in Preſence of all the People, uttered by him in theſe words following: *To my own Shame, and to the Shame of the Devil, but to the Glory of God.* And for Satisfaction of the Conſciences of all thoſe that have or can make any doubt of the Truth of this ſo clear a Matter, he acknowledged that his haunting with *Reſtalrig*, who was a Man without Religion, and ſubject to many other Vices, as alſo his continual being in Company with the Laird of *Bour*, who likewiſe was irreligious and without fear of God, and his being ingyred by them into their Matters after his firſt ſight of *Reſtalrig*'s Letter written by him to *Gowrie*, brought him from one Sin to another, and conſequently upon this grievous Crime, for the which moſt juſtly, worthily and willingly, he is now to render his Life. And thereupon he deſired all the People there preſent to beware of evil Company, and namely of the Society of thoſe who are void of Religion; ſaying to them, That this was the moſt glorious Day that ever his Eyes did ſee. In the midſt almoſt of theſe Speeches, he had proſtrate himſelf, and fell upon his Knees in Preſence of the whole People, making a very pithy Prayer, in the Form following:

'O Father, how ſhall I call Thee Father, that am ſo unworthy to be 'called thy Son? I have wandered aſtray like a Loſt-Sheep, and 'thou of thy Mercy haſt brought me home unto Thee, and haſt preſerv'd 'my Life from many Dangers until this Day, that I might reveal theſe hidden 'and ſecret Myſteries, to mine own Shame, and thy Glory. Thou 'haſt promiſed, that whenſoever a Sinner from his Heart will repent and 'call to Thee, that thou wilt hear him, and grant him Mercy.'

And thus he continued a good Space in a moſt fervent Prayer, to the great Admiration of all the Standers-by. And having ended the ſame, one of the Miniſters prayed again, and the Priſoner joined with him, *That God would forgive his Sins, and receive his Soul to Mercy.* After which, *Sprot* ſtanding up made divers Requeſts: Firſt, that what he had deliver'd by his Confeſſion on the Scaffold, might be put into his Proceſs, that the World might take notice of it. Secondly, that ſuch as were preſent (as they might have Opportunity) would be Suitors unto the King, that his Majeſty would forgive him this Offence; for the which, he ſaid, *He craved Pardon of God, of his Sovereign, and the World.* And thirdly, he deſired thoſe of the Miniſtry which were preſent, that wherſoever they came they would proclaim in the Pulpit his Confeſſion of his Crime, his Sorrow for the ſame, and his full Hope that God would pardon him. And to the end that this might be perform'd, he took the Hands of ſuch Miniſters as ſtood near about him, ſo binding a Promiſe on them. And here, being told by the ſaid Miniſters and other Perſons of Quality, that being ſo near his Departure out of the World, it concerned him to ſpeak nothing but the Truth, and that upon the Peril of his Soul: he anſwer'd, That to the end they ſhould know, that he had ſpoken nothing but the Verity, and that his Confeſſion was true in every reſpect, he would (at the laſt Gaſp) give them ſome apparent Token for the Confirmation of the ſame. Then fitting himſelf to the Ladder, the Executioner cometh to him, and, as the manner is, aſking Forgiveneſs of him; *With all my Heart*, ſaith he, *for you do but your Office, and it is the thing I deſire; becauſe ſuffering in my Body, I ſhall in my Soul be joined to my Saviour.*

Afterward ganging up the Ladder with his Hands looſe and untied, being on the upper Part thereof, he deſired Liberty to ſing the ſixth Pſalm, and requeſted the People to accompany him in the ſinging thereof. Which being granted, he took up the Pſalm himſelf with a very loud and ſtrong Voice, far by his accuſtomed Form, being before his coming to the Scaffold a weak-ſpirited Man, of feeble Voice and Utterance; and was aſſiſted with the Number of a Thouſand Perſons at the leaſt, who accompany'd him in ſinging that Pſalm. After the ending whereof he again openly repeated and ratified his ſaid former Confeſſion: and with that, recommending his Soul to God, he faſtened a Cloth about his own Eyes, and was caſt over the Ladder, ſo ending this mortal Life.

Before his laſt Breath, when he had hung a pretty Space, he lift up his Hands a good height, and clapped them together aloud, three ſeveral times, to the great Wonder and Admiration of all the Beholders. And very ſoon thereafter he yielded his Spirit.

XXII. *Proceedings between the Lady* Frances Howard, *Counteſs of* Eſſex, *and* Robert *Earl of* Eſſex *her Huſband, before the King's Delegates, in a Cauſe of* Divorce, 1613. 11 Jac. I. *

UPON the Petition of *Frances* Counteſs of *Eſſex*, complaining that the Earl her Huſband was incapable of conſummating their Marriage, and praying a Commiſſion to examine, if her Complaint was well founded; the King granted her Requeſt, and appointed the following Perſons Commiſſioners:

George Archbiſhop of *Canterbury*,
John Biſhop of *London*,
Lancelot Biſhop of *Ely*,
Richard Biſhop of *Litchfield* and *Coventry*,
John Biſhop of *Rocheſter*,

Sir *Julius Cæſar*, LL.D.
Sir *Thomas Parry*, LL.D.
Sir *Daniel Donne*, LL.D.
Sir *John Bennet*, LL.D.
Dr. *Francis James*, and
Dr. *Thomas Edwards*.

The Libel contain'd the following Allegations:

I. That ſhe, at the time of the Marriage, was thirteen years old, and is at this time twenty-two or twenty-three.

II. That ſhe and *Robert* Earl of *Eſſex* were marry'd by publick Rites and Ceremonies of the Church in *January* 1603.

III. That the aforeſaid *Robert*, at the time of the pretended Marriage, was about fourteen, and is about twenty-two or twenty-three at this time; and ever ſince, and at this preſent, is a Man (as far forth as a Man may judge) and hath been in good Health, and perfect Eſtate of Body, nor any way hinder'd by any Ague or Sickneſs, but that he might have carnal Copulation with a Woman.

IV. That ſince the pretended Marriage, at leaſt by the ſpace of whole and continuate three years after the ſaid *Robert* had fully attained the Age of eighteen Years, as Time and Place did ſerve, after the faſhion of other married Folks, the ſaid *Frances Howard* in hope of lawful Iſſue, and deſirous to be made a Mother, liv'd together with the ſaid *Robert* at bed and board, and lay both naked and alone in the ſame Bed, as married Folks uſe: And deſirous to be made a Mother, from time to time, again and again yielded herſelf to his power, and as much as lay in her offer'd her ſelf and her Body to be known; and earneſtly deſired Conjunction and Copulation.

V. And alſo the ſaid Earl, in the ſame time very often, again and again, did try to have Copulation, as with his lawful Wife, which ſhe refus'd not, but uſed the beſt means ſhe could: notwithſtanding all this, the ſaid Earl could never carnally know her, nor have that Copulation in any ſort which the married Bed alloweth.

VI. Yet before the ſaid pretended Marriage, and ſince, the ſaid Earl hath had, and hath Power and Ability of Body to deal with other Women, and to know them carnally, and ſometimes have felt the Motion and Pricks of the Fleſh carnally, and tending to carnal Copulation, as he ſaith and believeth; and peradventure, by a perpetual and natural Impediment, hath been hindered all the former time, and is at this preſent, that he can have no Copulation with the ſaid Lady *Frances*.

VII. Furthermore, the ſaid Lady *Frances* hath been, and is fit and able to have Copulation with a Man, and ſuch a one as may be carnally known; neither hath in this regard any Impediment.

VIII. Moreover, the ſaid Lady *Frances* remaineth, and is at this preſent a Virgin. Alſo at the time of the pretended Marriage, the ſaid Lady *Frances* was unacquainted with the Earl's want of Ability and Impediment, formerly mention'd.

IX. And furthermore the ſaid Earl, long before this Suit commenced, hath very often, and at ſundry times confeſſed in good earneſt, before Witneſſes of good Credit, and his Friends and Kinsfolks, that altho' he did his beſt Endeavour, yet he never could, nor at this time can, have Copulation with the ſaid Lady *Frances*, no not once.

X. And laſtly, in regard of womaniſh Modeſty, the Lady *Frances* hath conceal'd all the former Matters, and had a Purpoſe ever to conceal them, if ſhe had not been forced, thro' falſe Rumours of Diſobedience to the ſaid Earl, to reveal them.

She requireth, ſince this pretended Matrimony is but a Fact, and not in Right, it may be pronounced, declared, and adjudged as none and of none effect; and ſhe may be quiet and free from all Knots and Bonds of the ſame, by your Sentence and Authority.

The Earl of Eſſex *put in his Anſwer the 5th of* July, 1614.

The firſt and ſecond he anſwereth affirmatively.

To the third, he thinketh that at the Time of his Marriage, he was full fourteen Years, and is now twenty-two and upwards; neither ſince hath had, or hath any Sickneſs or Impediment to hinder him, but that he might have had Copulation with a Woman, ſaving in the time of his Sickneſs of the Small-Pox, for two or three Years after his Marriage, which continued for a Month or ſix Weeks, and at another time, when he had a few Fits of an Ague.

To the fourth, he affirmeth, that for one Year he divers times attempted; that the two other Years, when he was willing, ſhe ſhewed herſelf ſometimes willing, but other times refuſed, and he lay in Bed moſt commonly with her, but felt no Motions or Provocations.

To the fifth, he anſwereth, that he never carnally knew her, but found not any defect in himſelf, yet was not able to penetrate into her Womb, nor enjoy her.

To the ſixth, he believeth, that before and after the Marriage, he hath found an Ability of Body to know any other Woman, and hath oftentimes felt Motions and Provocations of the Fleſh, tending to carnal Copulation; but for perpetual and natural Impediments, he knoweth not what the Words mean; but that he hath lain by the Lady *Frances* two or three Years laſt paſt, and had no Motion to know her, and he believes never ſhall.

To the ſeventh, he believeth not that the ſaid Lady *Frances* is a Woman able and fit for carnal Copulation, becauſe he hath not found it.

To the eighth and ninth, he believeth them both to be true, and thinketh that once before ſome Witneſſes of Credit, he did ſpeak to this purpoſe, *That he oftentimes had endeavoured carnally to know her, but that he did not, nor could not.*

Doubts conceived out of the Fact and Proceſs in the Suit between the Lady Frances Howard, *and the Earl of* Eſſex.

1. Whether the Libel be defective, eſpecially in the fourth Article, where it is ſaid, that *Dominus Comes Eſſex pluribus & iteratis vicibus* (which may be verified and ſatisfied in two or three times) *dictam dominam Franciſcam ejus uxorem prætenſam cognoſcere tentavit*, &c.

2. Whether the Anſwer of my Lord of *Eſſex* to the ſaid fourth Article in that behalf, being but thus, That he did divers times attempt, *&c.* be full, certain and ſufficient.

3. Whether in this caſe my Lord of *Eſſex* his Oath (*cum 7 manu propinquorum*) be not by Law requiſite, as well as my Lady's.

4. Whether my Lord of *Eſſex* would be inſpected by Phyſicians, to certify (ſo far as they can by Art) the true Cauſe and Nature of the Impediment.

5. Whether by triennial Cohabitation, there having been no carnal Copulation between them (*Impedimentum maleficii* being accidental), *preſumatur præceſſiſſe vel potius ſubſecutum fuiſſe matrimonium contractum & ſolemnizatum.*

6. Whether they ought *poſt præceptum Judicis* (notwithſtanding their triennial Cohabitation before the Suit begun) to cohabit together, *ſaltem per aliquod temporis ſpatium arbitrio Judicis moderandum*, for further Trial, *&c.*

DEPOSITIONS *taken in the Caſe of the Earl of* Eſſex, *and the Lady* Howard.

The Oath taken by the Lady Frances Howard.

THAT ſince the Earl of *Eſſex* was eighteen Years of Age, he and I have for the ſpace of three Years diverſe and ſundry times lain together in naked Bed all Night. And at ſundry of the ſaid times the ſaid Earl hath purpoſely endeavoured and attempted to conſummate Marriage with me, and to have carnal Copulation with me for Procreation of Children: And I have at ſuch times, as the ſaid Earl hath attempted ſo to do, yielded myſelf willing to the ſame Purpoſe. All which notwithſtanding, I ſay and affirm upon my Oath, that the ſaid Earl never had carnal Copulation with me,

Frances Howard.

Interrogatories adminiſtred to all Witneſſes (excepting the Earl and Counteſs of Suffolk*) produced, and examined on behalf of the Earl of* Eſſex, *and who had been produced againſt him on the part of the Lady* Frances Howard, *in a Suit brought by the ſaid Lady againſt the Earl of* Eſſex, *for the Nullity of a pretended Marriage.*

1. Let each witneſs be interrogated, as to his Age, Birth, Condition and Place of Abode; and where he has chiefly reſided for ten Years laſt paſt; and how long he has known the Parties conteſting.

2. Whether he is a Relation or Kinſman of the Party on whoſe Behalf he is produced; and if ſo, in what degree of Conſanguinity.

3. Which of the Parties, Plaintiff or Defendant, he moſt favours; with which of them he is moſt converſant, and to which he would confer the Better-of-the-Day, if in his Power.

4. Whether he has communicated to any body, or any body has conferred with him concerning the Nature and Subſtance of his Depoſition in this Cauſe: And if he anſwer in the Affirmative, then let him declare with whom he ſo conferred, and what the Diſcourſe that paſſed between them.

5. Whether he came of his own Accord, or by Compulſion, to give his Teſtimony in this Cauſe.

6. Let him depoſe what he knows of the Contents in the 4th Article of the Libel put in, in this Cauſe; or any Part thereof: And in what Month and Year the Earl of *Eſſex* attained to the full Age of eighteen Years; and in what Place and Places the Earl and the Plaintiff for the whole ſpace of three Years after ſuch time, had Society of Bed and Board, cohabited and lay together; and for how long together in each diſtinct Place.

7. Let him likewiſe depoſe what he can ſay to the Contents in the ſixth Article of the aforeſaid Libel; and whether he knows what perpetual and incurable Impediment the Earl did and does labour under; and let him expreſs the Nature and Quality thereof, and when he knew it; and let him give the Cauſes of ſuch his Knowledge in every Circumſtance.

8. Let him depoſe likewiſe what he can ſay to the Contents in the 10th Article of the ſaid Libel: And of the Time and Place, and how often and before whom the Earl confeſſed and acknowledged as in the ſaid Article is contained and ſpecified.

Depoſitions, upon the Articles of the Libel put in by the Lady Frances Howard, *taken* June 2, 1613.

Katherine Fines, Daughter of *Thomas* Lord *Clinton*, aged about 18 Years, depoſeth, that ſhe hath known the Lady *Frances* for about a Year and a half, and the Lord *Eſſex* for above a Year.

To the 1ſt, 2d, and 3d Article, cannot depoſe.

To the 4th Art. ſays, That from *Midſummer* laſt to *All-hollantide*, the Earl of *Eſſex* and Lady *Frances* remained and kept Company together as Man and Wife; firſt in the Counteſs of *Leiceſter*'s Houſe at *Drayton* in *Warwickſhire*; and after at the Earl's own Houſe at *Chartley* in *Staffordſhire*: And that for two of the Nights they lodged at *Drayton*, being on a *Sunday* at Night and on a *Monday* at Night, they to her Knowledge lay together in one Chamber; ſhe ſeeing the Earl go into the ſaid Chamber undreſs'd and ready for Bed; and ſhe verily believes they did lie together in the ſame Bed thoſe two Nights, for that ſhe knows there was but one Bed in the ſaid Chamber. That before *Chriſtmas* laſt the ſaid Lady *Frances* lying at *Saliſbury*-Houſe in the *Strand*, the Earl came thither and went into the Chamber where Lady *Frances* was in Bed, and went to Bed to her, and there was no other Bed in that Chamber; and this Deponent heard the Earl and Lady *Frances* talking together a good part of that Night.

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* Complete Hiſt. *of* England, *Vol.* III. *pag.* 686, 692. *Edit.* 1706. Bacon's *Works*, *Vol.* I. *pag.* 78.

Her Depoſitions to the Interrogatories adminiſtred for the other Side.

To the 1ſt Art. Speaks as to her Birth and Abode.
2d Art. That ſhe is Couſin-German to the Lady *Frances*.
3d Art. That as to this Cauſe, ſhe favours the Parties equally; that her Converſation is moſt with the Plaintiff; and that if it were in her Power, ſhe would give the Deciſion according to Right.
4th Art. Anſwers in the Negative.
5th Art. That ſhe was not compelled, but was made acquainted by ſome that ſhe ſhould be uſed as a Witneſs in this Cauſe, and had Notice given her when ſhe ſhould come.

The Depoſition of Elizabeth Raye, *the Daughter of* William Raye, *of* Woodſtock *in* Oxfordſhire, *Gent. taken to the Libel: Aged above* 20 *Years.*

That ſhe has known the Lady *Frances* for above two Years; and the Earl of *Eſſex* for the ſame time.

To the 4th Art. That ſhe ſerved the Lady *Frances* for above twelve Months, and that ſhortly after ſhe came to ſerve her, my Lady went to my Lord *Knowles*'s Houſe at *Cawſam* in *Oxfordſhire*, where ſhe ſtayed about a Fortnight, and the Lord *Eſſex* came thither to her, and laid in naked Bed with the ſaid Lady *Frances* divers Nights, as this Deponent hath heard them report that attended the Lady in her Chamber: That the Deponent herſelf at *Drayton* attending the ſaid Lady in her Chamber, did ſee them in naked Bed together as Man and Wife for divers Nights; as they did likewiſe afterwards at *Chartley*, for above a Quarter of a Year, and at *Michaelmas* after that, at *Durham*-Houſe at *London*.

Her Examination to the Interrogatories on the other Side.

To the 1ſt Art. Speaks as to her Abode at diſtinct Times.
2d Art. Anſwers in the Negative.
3d Art. That ſhe favours both Parties equally; converſes with neither of them; and if in her Power, would have Right take place.
4th Art. Anſwers Negatively.
5th Art. That ſhe was requeſted to come to teſtify in this Cauſe, but was not compelled by any Proceſs.
6th Art. Hath heard it reported that the Earl of *Eſſex* was 22 Years old in *January* laſt.
7th and 8th Art. No wiſe concern this Deponent.

The Depoſition of Frances Britten, *Widow, taken to the Libel.*

That ſhe is aged about 55 Years, and hath known both the Parties reſpectively from their Infancy.

To the 4th Art. That the Deponent having oftentimes occaſion of Buſineſs with the Lady *Frances*, hath come to her ſince her Marriage to the Earl, and hath ſeen the Earl and ſhe dine and ſup together as Man and Wife: That between *Michaelmas* and *All-hollantide* was three Years, this Deponent coming to Lady *Frances*'s Lodging at *Hampton-Court* early in the Morning, ſhe was brought into the Bed-Chamber, where ſhe did ſee them in naked Bed together; as likewiſe ſhe did at Lady *Frances*'s Lodging at *Whitehall*: That perceiving them in Bed together, this Deponent ſtept back, but the Lady *Katherine Howard* her Siſter being there, called the Deponent in, and then Lady *Frances* ſtept out of her Bed, and left the Earl there: That this was on St. *Valentine*'s-day, for that Lady *Katherine* told the Earl, that there was a Valentine for him. Cannot depoſe further, ſaving that when this Deponent was at *Hampton-Court*, as is before mentioned, after the Earl and Lady *Frances* were riſen, the Lady miſſing a Pendant Ruby that uſually hung at the Ring in her Ear, deſired this Deponent to look for it in the Bed. That thereupon ſhe and the Lady's Chambermaid turned down the Bed-cloaths, and there they ſaw the Places where the Earl and Lady had lain, but that there was ſuch a Diſtance between the two Places, and ſuch a Hill between them, that this Deponent is perſuaded they did not touch one another that Night.

Her Examination on the other Side.

To the 1ſt Art. Hath already ſpoken.
2d Art. Anſwers Negatively.
3d Art. That ſhe favours both Parties equally, converſes moſt with the Plaintiff, but would have Right take place in the Deciſion of the Cauſe, if in her Power.
4th Art. Speaks Negatively.
5th Art. Came at the Requeſt of Lady *Frances*, but no ways compelled.
6th Art. Refers herſelf to her former Depoſition.
7th and 8th Art. Do not concern her to anſwer.

The Depoſition of Catherine Dandenell, *one of the Lady* Frances'*s domeſtick Servants; aged about* 16 *Years.*

Hath known the Lady *Frances* about four Years, and the Earl for about three.

To the 4th Art. That about this time three Years, Lady *Frances* went to the Lord Chamberlain, her Father's, at *Awdley-end* in *Eſſex*, and remained there all that Summer, whither the Earl came to her and ſtaid ſometimes a Week, ſometimes a Fortnight, and they converſed together as Man and Wife, and lay together many Nights, to this Deponent's knowledge, who had ſeen them ſo over Night, and had found them together in naked Bed in the Morning: as ſhe likewiſe hath, at the Earl's Houſe at *Chartley*; and at the Lady *Walſingham*'s at the *Tilt-yard*; and the Counteſs of *Leiceſter*'s at *Drayton*; and at *Saliſbury-houſe*, and *Durham-houſe*.

Her Examination to the Interrogatories on the other Side.

To the 1ſt Art. Hath already ſpoke.
2d Art. Anſwers Negatively.
3d Art. Moſt favoureth the Lady *Frances*, and is moſt in her Company; and wiſheth the Victory to go where the Right is.
4th Art. Anſwers Negatively.
5th Art. That ſhe comes at the Plaintiff's Requeſt, no ways compelled.
6th Art. Refers herſelf to her former Depoſition.
7th and 8th Art. Do not concern her to anſwer.

The Depoſition of Anne Jaconim, *one of the domeſtick Servants of Lady* Frances; *aged about* 24 *Years.*

Hath known the Parties in difference betwen three and four Years.

To the 4th Art. That for all ſuch Time ſhe hath attended on Lady *Frances* as her Chamber-Maid, and that all along until within theſe twelve Months laſt, the Earl hath cohabited at Bed and Board with the ſaid Lady *Frances*, at *White-hall*, *Chartley*, *Tilt-yard*, and other Places: Hath often ſeen them lie together naked in one and the ſame Bed, and at *Saliſbury-houſe* in the *Strand*, ſince *Chriſtmas* laſt.

In her Examination on the oppoſite Side, depoſeth as the laſt Witneſs did.

The Depoſition of Thomas Bamforde, *Yeoman; aged about* 40 *years.*

Hath known the Lady *Frances* by ſight about five Years, and the Earl by ſight about three Years.

To the 1ſt, 2d and 3d Art. Cannot depoſe.

4th Art. Depoſeth, That in 1611, about the latter end of the Summer, the Earl of *Eſſex* and Lady *Frances* were at the Lady *Corbett*'s Houſe in *Derbyſhire*, whom the Deponent then did and ſtill doth ſerve; that they continued there about a Week, and dined or ſupped together in the ſaid Houſe, and lay together in one and the ſame naked Bed, as it was commonly thought amongſt the Servants of the ſaid Houſe.

His Examination on the other Side.

To the 1ſt Art. Hath already ſpoken.
2d Art. Anſwers Negatively.
3d Art. That he favours both Sides equally, converſes with neither, and wiſheth the Victory in this Suit may go according as the Equity of the Cauſe requireth.
4th Art. Anſwers Negatively.
5th Art. Came on Requeſt of Lady *Frances*, no ways compelled.
6th Art. Refers himſelf to his former Depoſition.
7th and 8th Art. Not concerned to anſwer.

The Depoſition of George Powell, *Gent. aged about* 36 *Years.*

Hath known the Parties in difference about three Years.

To the 1ſt, 2d and 3d Art. Cannot depoſe.

4th Art. Says, That he ſerved the Earl and Lady *Frances* from *May* 1609, to this time, and ſtill doth attend on Lady *Frances*. During all which time they did cohabit and keep Company together as Man and Wife, ſometimes at *Whitehall*, *Greenwich*, and in their Progreſs attending the King and Queen, at *Kenſington*, all the Summer 1611, at *Chartley*, at *Durham-houſe*, *Awdley-end*, and other Places. That their Cohabitation together continued till the end of the Year 1612, and that it was commonly reported amongſt the Servants of the Houſe, that they did lie together in one and the ſame naked Bed. That this Deponent hath from time to time ſeen their Servants put them to Bed together; and that he hath come to their Chamber to know their Commands, and it was told him they were in Bed together. That in *June* or *July* 1609, this Deponent being called into their Lodging-Chamber at *Greenwich*, in a Morning, ſaw them in naked Bed together.

His Examination on the other Side.

To the 1ſt Art. Hath ſpoken already.
2d Art. Anſwers Negatively.
3d Art. Favours both Parties equally, is moſt converſant with Lady *Frances*, his Employment being to wait on her, and wiſhes that Right may take place.
4th Art. Anſwers Negatively.
5th Art. Comes on Requeſt of Lady *Frances* to give his Teſtimony, and no ways compelled thereto.
6th Art. Refers to his former Depoſition.
7th and 8th Art. Concern not this Deponent to anſwer.

The Depoſition of William Power, *of* London, *Merchant; aged near* 60 *Years.*

Hath known Lady *Frances* about ten Years, and the Earl of *Eſſex* for about ſeven.

To the 1ſt Art. Says, The Earl and Lady *Frances* were in *Chriſtmas* time, either ſeven Years ſince laſt *Chriſtmas*, or ſeven come *Chriſtmas* again, to his knowledge married together in the Chapel at *White-hall*, for that this Deponent was preſent at the Marriage.

2d and 3d Art. Cannot depoſe any thing certainly.

4th Art. Says, That this time two Years they cohabited as Man and Wife, and kept Houſe together at the Earl's Houſe at *Chartley*. That this Deponent was there about four Months, and hath divers times been in their Lodging-Chamber in a Morning, and hath ſeen them in naked Bed together.

His Examination on the other Side.

To the 1ſt Art. Hath already ſpoken.
2d Art. Anſwers Negatively.
3d Art. Favoureth both the Parties in this Suit alike, is moſt in the Plaintiff's Company: And wiſheth they were come to an Agreement.
4th Art. Anſwers Negatively.
5th Art. That he came on no Compulſion, but was requeſted by Sir *William Button*, on Behalf of the Lady *Frances*.
6th Art. Refers himſelf to his Depoſitions made to the 4th Art. of the Libel.
7th and 8th Art. Not concerned to anſwer the ſame.

The

The Depoſition of Benjamin Orwell, *one of the domeſtick Servants of the Lady* Frances; *aged above* 17 *Years.*

Hath known the Parties in difference for ſeven Years.

To the 1ſt, 2d and 3d Art. Cannot depoſe.

4th Art. Saith, That for theſe two Years laſt paſt, the Deponent hath continually attended on Lady *Frances* at *Kenſington*, *Chartley*, the Lady *Corbett*'s, Counteſs of *Leiceſter*'s, Lord *Knowles*'s; and in all thoſe Places the Earl and Lady *Frances* cohabited together as Man and Wife, and, as it was ſaid by their Attendants, did commonly lie together in the ſame Bed naked. Hath ſeen the Earl come out of the Lady's Lodging-Chamber in his Pantables, having nothing on him but his Shirt: And verily believes he at ſuch times came out of Bed from the ſaid Lady *Frances.*

His Examination on the other ſide.

To the 1ſt Art. Hath ſpoken already.

2d Art. Anſwers Negatively.

3d Art. That touching this Suit, he favoureth the Parties alike, is moſt in Company with the Plaintiff; and if it were in him, he would beſtow the Victory where the moſt Right is.

4th Art. Anſwers Negatively.

5th Art. Anſwers, He was deſired by Sir *William Button*, on the Plaintiff's Behalf, to come and teſtify in this Cauſe, and is not compelled.

6th Art. Refers to his former Depoſition.

7th and 8th Art. Not concern'd to anſwer.

The Depoſition of the Right Honourable Thomas *Earl of* Suffolk, *Lord High Chamberlain of the Houſhold, taken the* 10*th of* June 1613; *aged about* 57 *years.*

To 1ſt Art. Says, It is true, for he was preſent at the Solemnization of the pretended Marriage.

2d Art. That Lady *Frances* was above thirteen Years of Age at the Time of the ſaid Marriage, and is now above 22 Years old.

3d Art. That at the time of the Marriage the Earl was above 14 Years of Age, as the Deponent hath heard his Friends, who were likely to know his Age, report; and is now above 22 Years old. That to that Time and ſince the Earl was, in the Judgment of Men, of good Health and Strength of Body, except at two ſeveral Times, when he was ſick of the Small-pox and an Ague; and was likely to be able to have the carnal Knowledge of a Woman, for any thing this Deponent could judge.

4th Art. Knows that after the Earl was come to the Age of 18 Years, he and Lady *Frances* kept Company, and lay together as Man and Wife, for three whole Years: Hath ſeen them in Bed together ſometimes.

5th and 6th Art. That notwithſtanding the Premiſes, the Earl never had any carnal Knowledge of Lady *Frances*, nor never could, as the Earl hath confeſſed to the Deponent.

7th, 8th and 9th Art. Believes theſe Articles to be true.

10th Art. That the Earl, in this Deponent's hearing, confeſſed divers times, in ſeveral Companies, that he hath done his Endeavour to have carnal Knowledge of Lady *Frances*, and yet never could.

11th Art. Believes this Article to be true.

12th, 13th, 14th and 15th Art. Refers himſelf to the Regiſter of the Court of Delegates.

16th Art. Says his above Depoſitions are true.

The Depoſition of the Right Honourable Katherine *Counteſs of* Suffolk; *aged about* 47 *Years.*

To 1ſt, 2d, 3d Art. Depoſes they are true.

4th, 5th, 6th, 7th Art. Believes to be true.

8th Art. Depoſes to be true of her knowledge.

9th Art. Believes to be true.

10th Art. Hath heard it reported, and believes it to be true.

11th Art. Believes the ſame to be true.

14th Art. &c. Concludes as the Earl of *Suffolk.*

The Lord Archbiſhop of Canterbury's *Reaſons againſt the Nullity.*

Inaſmuch as we firmly believe, that the Scripture doth directly, or by conſequence, contain in it ſufficient matter to decide all Controverſies, eſpecially in things appertaining to the Church, as that Marriage among Chriſtians can be no leſs accounted than a ſacred Thing, as being inſtituted by God himſelf in Paradiſe, honoured by the Preſence of our Saviour himſelf, declared by St. *Paul* to be a Sign of the ſpiritual Conjunctions between Chriſt and the Church:

I would be glad to know, and by what Text of Scripture, either by the Old or New Teſtament, a Man may have a Warrant to make a Nullity of a Marriage ſolemnly celebrated, *propter maleficium verſus hanc.*

Which I do the rather aſk, becauſe I find warrant expreſly in the Scriptures to make a Nullity of a Marriage *propter frigiditatem*, by the Words of our Saviour, *Mat.* 19. 12. *For there be ſome chaſte, or Eunuchs, which are ſo born of their Mothers Belly, and there be ſome which are made chaſte of Men, and there be ſome which have made themſelves chaſte for the Kingdom of Heaven.*

I would alſo know gladly, what antient Father amongſt the *Greeks* or *Latins*, by occaſion of Interpretation of Scripture, or any Diſputation, hath mentioned *maleficium verſus hanc.*

The like I demand touching antient Councils, either General or Provincial, and concerning Stories Eccleſiaſtical, whether any ſuch matter be to be found in them.

If for aught that appeareth never mention was made of this, till *Hircanus Rhemiſis Epiſcopus*, who lived four hundred years after Chriſt; it may well be conceived that this was a Concomitant of Darkneſs or Popiſh Superſtition, which about that time grew to ſo great an height (God permitting them) that Puniſhment might fall upon the Children of Unbelief.

But ſince the Light of the Goſpel is now in ſo great a meaſure broken forth again, why ſhould not I hope that thoſe, who have imbraced the Goſpel, ſhould be free from this *Maleficium*; eſpecially ſince amongſt a Million of Men in our Age, there is but one found in all our Country, who is clearly and evidently known to be troubled with the ſame? And if there ſhould be any which ſhould ſeem to be moleſted, we are taught to uſe two Remedies, the one temporal Phyſick, the other eternal.

For the firſt, our Saviour ſaid, *Hoc genus Dæmoniorum non ejicitur, niſi per orationem & jejunium:* and St. *Peter* ſpeaking of the Devil, *Cui reſiſtite firmè in fide*; and the Canoniſts themſelves preſcribe Alms, Faſting and Prayer to be uſed in this Caſe; but that they join Supplication and their Exorciſms thereunto, and for corporeal Medicine to be applied therewith as againſt a Diſeaſe: ſo is the Judgment of our late Divines, whether they ſpeak of *Maleficium* or not.

Now admit the Earl of *Eſſex* might be imagined to be troubled with *Maleficium verſus hanc*; I demand what Alms hath been given, what Faſting hath been uſed, and what Prayers have been poured forth to appeaſe the Wrath of God towards him or his Wife; or what Phyſick hath been taken, or Medicine hath been applied for three Years together? Not one of theſe things: but the firſt hearing muſt be to pronounce a Nullity in the Marriage, of which Declaration we know the beginning, but no mortal Man's Wit can foreſee the end, either in his Perſon, or in the Example.

Then the Archbiſhop for Confirmation of his Opinion ſhewed the Teſtimony of *Melancthon*, *Pezelius*, *Hemingius*, *Polanus*, *Arcularius*, *Beza*, *Zanchius.*

Judicium Philippi Melancthonis de divortiis ex impotentia.

PErſonæ quæ non ſunt idoneæ ad commixtionem conjugalem nequaquam fiunt conjuges, ſed cum explorata eſt frigiditas, Judex pronunciet illas perſonas liberas eſſe. Nec fit tunc divortium, quia non erat conjugium, juxta dictum Mat. 19. *ſed fit declaratio, ut alii ſciant, illam ſocietatem non eſſe conjugium, & perſonæ quæ habet naturæ vires integras, concedi aliam fæliciorem copulationem legitimam. Sed ad explorandam frigiditatem Jura tempus conſtituunt, ſi res dubia eſt, ne ante triennium fiat ſejunctio. Eodem modo pronunciant de iis in quibus natura ita læſa eſt faſcino aut veneficio, ut ope medica ſanari non poſſit, ſi toto triennio fruſtra tentata eſt medicatio.*

Tanta autem eſt virtus aliquarum mulierum, ut occultent imbecillitatem virorum, ſicuti viri doctiſſimi Simonis Grynei *ſoror narravit, ſe, mortua prima conjuge, duxiſſe viduam virginem, quæ undecim annos nupta fuerit viro frigido, nec unquam ulli, ante mortem viri, hanc rem patefecit. Hæc Melancthon in locis: Loco de conjugio, quæ Chriſtopherus Pezelius ſuis in Melancthonis examen explicationibus inſeruit, & eis adjecit hanc annotationem. Impotentia alia naturalis, alia accidentalis eſt. Naturalis, cum quis natura non eſt idoneus ad commixtionem conjugalem. Accidentalis, cum quis eſt caſtratus, aut veneficio corruptus. Rurſus quæ ex veneficio accidit impotentia, aut curari poteſt medicamentis, aut eſt perpetua. Ex his diſtinctionibus ſumitur explicatio quæſtionis, an, & quomodo impotentia ſit cauſa divortii. Nam inter impotentes, non poteſt conſtare conjugium, quia deeſt cauſa ſufficiens & finalis. Primùm, ni perſona illa quæ ſana eſt, decepta fuit, & ignorans duxit impotentem, non igitur potuit eſſe conſenſus, qui eſt cauſa efficiens Matrimonii. Secundò, duplex eſt finis conjugii; unus eſt generatio ſobolis, ſicut dicitur, Creſcite & multiplicamini: Alter finis eſt, Vitatio confuſionis libidinum, juxta dictum; Vitandæ fornicationis cauſa unuſquiſque habeat uxorem. Hæc Pezelius 2 parte explicat. In Examen Melancthon.*

In eadem Cauſa Hemingii Judicium.

INhabilitas corporum ad uſum matrimonii divortii cauſa eſt, & nonnunquam faſcino & veneficio adeo inhabiles redduntur viri, ut nunquam ſanari poſſint. Sed plura ſunt judicii perpendenda, antequam divertii ſententiam ferat. Primum, an impotentia præceſſerit Nuptias. Secundum, an ſit ſubſecuta Nuptias. Tertium, an ſit curabilis. Quartum, an ejus rei mulier conſcia fuerit ante Nuptias. Si præceſſerit Nuptias, poteſt liberari perſona ſana divortium petens, non enim fuit verum conjugium, ſiquidem non legitimè conſentiunt, cum unus fallit, alter errat, fallit impotens, errat potens. Cum ergo Deus nec fallaciam nec errorem probat, non eſt dicendus eos conjunxiſſe. Proinde Judex, ſi intellexerit ex probationibus incurabile eſſe vitium, mox declarabit ſuo teſtimonio, non fuiſſe Matrimonium; verum ſi ſpes ſit curationis, triennium ſtatuatur, in quo patienter expectetur curatio; quæ ſi fruſtra tentata fuerit, Judex pronunciabit Conjugium nullum fuiſſe.

Si ſubſecutum eſt vitium poſt nuptias & complexum maritalem conjugum, nullo pacto permittendum eſt divortium: fortuna enim afflicta, ſi abſit culpa, patienter in conjugio ferenda eſt. Si alter fuerit conſcius infirmitatis alterius ante nuptias, cogantur ſimul habitare, & alia officia ſibi mutuo præſtare: Nam perſona conſcia vitii alterius abſque dubio fraudem meditata eſt, quæ fraus non debet illi prodeſſe, ſi poſtea divortium petat. Hæc Hemingius libello de Conjugio, Repudio, & Divortio.

Polani profeſſoris Theo. nuper in Academia Baſilienſi Judicium.

COnjugium inire poſſunt, qui non ſunt natura vel arte Spadones, aut quibus natura non eſt læſa faſcino aut veneficio. Tales enim perſonæ nequaquam fiunt conjuges. Ideo etiam nuptiis celebratis, cum trienni ſpatio explorata eſt ſpadonis frigiditas, aut toto triennio tentata eſt naturæ læſæ medicatio, Judex pronunciare poteſt illas perſonas liberas eſſe. Polanus lib. 10. *Syntag. cap.* 53.

* Arcularii nuper profeſſoris Theol. in Academia Marpurgenſi Judicium.

* *Sive Treularii.*

INter perſonas quæ propter frigiditatem aliudve naturæ vitium ad uſum conjugii ſunt ineptæ, cum non ſit conjugium, teſte Chriſto Mat. 19. *divortium hic locum habere poterit. Si quam igitur perſonam talem alteri jungi contingat, Judex, explorata frigiditate aut naturæ vitio, utramque perſonam liberam pronunciabit. Porro ad explorandam frigiditatem Jura triennii tempus præſcribunt, præſertim ſi res dubia ſit. Idem judicium eſt de eis quorum natura vel faſcino vel veneficio ita ſit læſa, ut ad conjugii uſum reddantur inepti; & omnem medicorum operam intra triennium inanem fuerint experti. Hæc Arcularius in arcu fœderis, cap.* 28.

Theodori Bezæ Judicium.

SPonſalia cum perſonis paralyſi immedicabili, quæ corpus prorſus enervavit, frigiditate inſanabili, genitalium partium privatione, vel adeo inſigni læſione, ut perpetua coitus impotentia neceſſario conſequetur, affectis, contracta prorſus inutilia ſunt, cum ad matrimonium a Deo vocati videri non poſſint, qui fidem in ſponſalibus datam præſtare, naturali objecto vitio nequeunt. Quod ſi ſponſalibus factis, conjugio tamen nondum reipſa conſummato, ejuſmodi malum ſupervenerit, ſentio ejuſmodi ſponſalia, veluti Deo ipſo jubente, dirimenda; ut, quid objecto perpetuo impedimento, palam demonſtret, ſibi iſtiuſmodi ſponſalia non placere. Beza lib. de Divort. & Repud. pag. 91. *Genev.* 1591. *impreſſ.*

Atque hanc ſuam doctrinam Beza multis ex ſacræ ſcripturæ teſtimoniis probat: ſed tantum pag. 94. *ei duas cautiones adjecit. Primum, ſi frigidus poſtea convaluit,*

convaluit, repetere priorem uxorem, errore, viz. *Separatam oportet, etiamſi alteri poſtea eſſet conjuncta: ſecundam cautionem, recte omnino in iſtiuſmodi controverſiis conſtitutum eſt, (ne quid videlicet fieret, quod poſtea mutari ſine magno offendiculo non poſſet) ut triennium ſaltem ab ipſo copulationis,* i. e. *ductæ uxoris die expectaretur, prinſquam iſti morbi inſanabiles eſſe, & ſponſalia conjugiave dirimenda pronunciarentur. Hoc autem omnino de iis vitiis accipiendum eſt quæ per ſe non patent. Nam alioqui, ut in exectione, vel ſiquis naturæ vitio, teſtibus aut genitali membro careat, quorſum ullum temporis intervallum?*

Zanchii Judicium.

QUemadmodum Beza, ſic nec Zanchius impotentiam ex veneficio attiget, ſed tantum docet, quoſdam eſſe caſus, quibus matrimonia in ipſa Eccleſia benedicta nulla ſint, & ſubinde hæc exempla ſubjungit. Si cum eo contrahitur, qui vir non erat, ſed ſpado, aut propter perpetuum ei inſanabilem morbum, officium conjugis præſtare nullo modo poteſt. Hæc Zanchius lib. 4. de op. Dei, cap. 3. ſed illam nec ſcripturæ teſtimoniis nec rationibus confirmat.

To theſe Arguments of the Archbiſhop, the King vouchſafed to give an Anſwer himſelf, which was as follows:

The KING's Anſwer.

‘ TO the Firſt Article, that the Scripture doth directly or by conſequence contain ſufficient matter to decide all Controverſies, eſpecially in this appertaining to the Church: This in my Opinion is prepoſterous, and one of the Puritans Arguments, without a better Diſtinction or Explanation.

‘ For the Orthodox Propoſition is, That the Scripture doth directly, or by conſequence, contain in it ſufficient Matter to decide all Controverſies in Points of Faith and Salvation, of which ſort a Nullity of Marriage cannot be accounted for one; and therefore your Conſequence upon the former Propoſition muſt fail.

‘ For further ſatisfaction of your following Queſtion (I ſay) your ſecond Queſtion doth anſwer it: if there be warrant in Scripture for pronouncing a Nullity *propter frigiditatem*, then all the means which may make him *frigidus verſus hanc*, muſt be comprehended therein; for why doth our Church juſtly condemn the Marriage of a Man with his Siſter's Daughters, or the Marriage of two Siſters, but *ut paritate rationis*, for none of them are *in terminis* prohibited by the Scripture? only the Concluſion is gathered *à paritate rationis*. For if it be not lawful to marry the Father's Wife, becauſe thereby you diſcover your Father's Shame; nor his Siſter, becauſe ſhe is his Kinſwoman; nor your own Siſter, becauſe thereby you diſcover your Father's and your Mother's Shame: It can no more be lawful to marry your Siſter's Daughter, for thereby alſo you diſcover your own Shame; as alſo the ſame reaſon ſerves for aſcending or deſcending in Points of *Conſanguinity*, *quia par eſt ratio.*

‘ The like is in this caſe; for altho' Chriſt ſpake only of three ſorts of Eunuchs, yet *Ratio eſt quia non poteſt eſſe Copulatio inter Eunuchum & Mulierem*; and therefore St. *Paul*, 1 Cor. vii. telleth us clearly, that it is not *Conjugium ſine Copulatione*. I conclude, therefore, *a paritate rationis*, that Chriſt did comprehend under theſe three ſorts all Inability which doth perpetually hinder *Copulationem verſus hanc*, whether it be natural or accidental; for what difference is there between cutting off the Hand, and being made impotent thereof? *Amputatio & Mutilatio membri*, is all one in the Civil Law; and that is a like defrauding of the Woman, when either he who is to be her Huſband is gelded, or when the uſe of that Member towards her is by any unlawful means taken from him. Neither is it any way needful to crave the particular Warrant of Scripture for a Nullity, no more than of Warrant in this place for any Nullity at all; for Chriſt doth not directly ſay, that a Marriage ſo made ſhall be nullified, neither doth he teach us what form or proceſs ſhall be uſed in that, neither makes he mention of the triennial Probation, no more than he forbiddeth Marriage within the fourth Degree, without leave obtained of the Biſhop of the Dioceſe. It is then ſufficient to all moderate Chriſtians to be taught out of the Word of God, that Marriage is *nulla ſine Copulatione*; and theſe words, *quos Deus conjunxit*, are never found in Scripture, where & *erunt ei* doth not proceed, *viz.* they two ſhall be one Fleſh.

‘ But whether the Impediment be univerſal, or *verſus hanc* only; or whether the Fault thereof hath been born with him, or done to him by Violence, or fallen unto him by Diſeaſe, or Diſproportion, or Inaptitude betwixt the Parties, or unnatural Practices, that is ever *par ratio*, he is *Eunuchus verſus hanc & omnes alias*, ſeeing to him only was ſhe married.

‘ Then *paritate rationis*, ſuch Nullities are grounded upon the aforeſaid warrant of *Scripture*, neither had Chriſt any occaſion to ſpeak of the *Jews* Marriage concerning *Maleficium verſus hanc*; for though it be apparent that God made King *Abimelech* and his Servants unable to abuſe *Sarah*, *Abraham*'s Wife, and ſo was he made by God himſelf *Eunuchus verſus hanc*, and that it be not improbable that the Devil being God's Ape, ſhould imitate God's Works, by his filthy Witchcraft, by making ſuch as God will permit him, unable *verſus hanc:* howbeit, it is very probable that it was long after that time the Devil put that trick upon the Earth.

‘ As for the third and fourth Queſtions, what mention the Fathers and Councils do make of *Maleficium verſus hanc*, I anſwer, that it may be (if they were well ſearched) that either ſomething to this purpoſe in them, or at the leaſt *aliquid analogum*, with *a paritate rationis*, or by conſequence, may ſerve to decide the Queſtion.

‘ But leaving this to ſearch, my main Anſwer is, That we muſt diſtinguiſh oft-times: for in all the firſt Ages, as long as Perſecution lay heavy upon the Church, and before the Empire became Chriſtian, the Church did not meddle with any thing, which drew a Conſequence after it of Poſſeſſions, or Inheritance, as Marriage doth; nay, even divers hundred Years after the Converſion of the Emperors, the Judgment and Deciſion of all ſuch Queſtions did ſtill remain *in foro Civili*, till the Popedom began to wax great, and aſſume, or rather uſurp to herſelf a ſupreme and independent *Judicatory* in all *Eccleſiaſtical* Cauſes: and therefore the *Fathers* and *Councils* had no occaſion to make mention of that which was not *de præfori* at that time.

‘ And beſides, that is an evil Argument to ſay ſuch a thing is not lawful, becauſe the *Fathers* and *Councils* made no mention of it: for you know much better than I, divers and many Points betwixt the *Papiſts* and us are never mentioned by the *Fathers*, becauſe they could never have dreamed that ſuch Queſtions would ariſe; and therefore are the *Fathers* exact only in ſuch Queſtions as were agitated upon the State at that time, as *De Trinitate, de duabus in Chriſto Naturis*, and ſuch like: and therefore 'tis ſufficient that there can be nothing found which may juſtly be underſtood to contradict this Opinion.

‘ And it is very probable (as I ſaid before) that this trick of *Maleficium* had not then been put in practice in the World, and therefore not known or mentioned by them; for why may not the Devil as well find out new tricks of Witchcraft (when God will permit him) as he did daily new *Sects* of *Hereſies*? for his Malice can never end until the end of Times.

‘ To the fifth Argument, my former Anſwer doth alſo ſerve; for till the 400th Year after Chriſt, it may be that deviliſh trick came never to be diſcovered. You know the old Proverb, *ex malis moribus bonæ leges:* and it is not unlikely that the time of Darkneſs gave the *Devil* occaſion to deviſe ſuch new Tricks (look my *Dæmonology*); and yet was that Law for which you cite *Hircanus*, by *Charles* the *Great*, who in many great Points (as you know) had ſo great Light, as I do ſcarce term this Time a Time of Blindneſs: but howſoever the Darkneſs was in points of Superſtition, I will ſtill maintain (as I have ever done) that for matters of Order and Policy, all the World ſhall never be able to find out any ſo good and ſo old an Order of Argument to be put in the place of it: in ſign whereof there is no well governed Commonwealth in the Chriſtian World, wherein the Common-Law is not received to judge in Queſtions of that nature; and it is certain, that this Queſtion now in hand, is only a Queſtion of Order and Policy: for the ground of this Queſtion, that the eſſential point of Matrimony cannot be accompliſhed *ſine copula*, is warranted by expreſs Scripture, and confeſſed by your ſelf.

‘ To your ſixth Argument (or rather Hope) I fear that Hope ſhall prove contrary to Faith; for as ſure as *God* is, there be *Devils*, and ſome *Devils* muſt have ſome Power, and their Power is in this World, neither are the *Elect* exempted from this Power; *Job* was not, *Paul* was not: *Chriſt* ſaid to all his Diſciples, *Cribraverit vos Sathanas*; and if the *Devil* hath any Power, it is over the Fleſh, rather over the filthieſt and moſt ſinful part thereof, whereunto original Sin is ſoldred; as God, before and under the Law, to ſhew *officialem* of purging Man's original Sin, ordained the *Præputium* of the Foreſkin: and to exempt this of our Profeſſion from the Power of Witchcraft, is a Paradox never yet maintained by any learned or wiſe Man.

‘ That the Devil's Power is not ſo univerſal againſt us, that I freely confeſs; but that it is utterly reſtrained *quoad nos*, how was then a Miniſter of *Geneva* bewitched to death, and were the Witches daily puniſhed by our Law? If they can harm none but the Papiſts, we are too charitable for avenging of them only.

‘ *Satan* is permitted to puniſh Man, as well for his breach of the ſecond as of the firſt Table, and thereof are we no leſs guilty than the Papiſts are; and if the Power of Witchcraft may reach to our Life, much more to a Member, not ſo governed by the Fancy, wherein the Devil hath his principal Operation; and he may ſo eſtrange the Huſband's Affection towards the Wife, as he cannot be able to perform that Duty to her; for that is a common thing in many Men's Natures, that they cannot do that thing but where they love, nor fight but where they are angry. God keep us therefore from putting the Trial of our Profeſſion upon Miracles; let the Miracle-mongers live by their own Trade.

‘ To the ſeventh Argument touching Remedies, what do you know, whether both Parties, or either of them hath uſed theſe means of Remedy or not? And that ſpecial Remedy ſhould be uſed publickly, for there I can ſee no Neceſſity; for *Non intereſt Reipub. nec Eccleſ.* and private Perſons are commanded to do their Faſtings and Alms, ſecretly and in private: no ſuch Cure alſo is likely to ſucceed well, except the Parties own Hearts and Deſires be ſet thereupon.

‘ And as for your Concluſion upon your *Incommodum*, whether upon his Perſon or the Example, I can ſee none in either, ſo as to the Couple, between them Marriage was never accompliſhed truly; they will peradventure both of them by the Declaration of the Nullity be capable to accompliſh Marriage with others, which they could never do between themſelves; wherein they may have the Satisfaction of their Hearts, and enjoy the Bleſſing of Procreation of Children.

‘ And as for the Example, the Law ſhall be fulfilled with due Adminiſtration of Juſtice, which cannot prove for an Example or Precedent of a counterfeit Nullity hereafter, *Authoritas facti*, or rather *non facti, ſed luce clarior* in this caſe, beſides the many Probations and Confeſſions of the Parties which have been taken in this Proceſs: whereas by the contrary, they ſhall be forcibly kept together, but never their Perſons or Affections, and they ſtill be forced to live in perpetual Scandal, or Miſery, or both; and what ſuch a Kind of forced Continency may avail, the Monks Continency may teach us: and for a Precedent in time to come, that reacheth no further, than to open a way of lawful Relief, to any Perſon who ſhall chance to be diſtreſſed in that ſort.

‘ And for legal Doubts, they concern none of your Calling; if your Conſcience be reſolved in points of Divinity, that is your part to give your conſent to the Nullity, and let the Lawyers take the burden of making that firm; and as for the Triennial Probation, I hope no Man can be ſo blind as to make a doubt, whether that be taken before or after the Suit begun: and in concluſion of Divine Solution of this Queſtion proved clearly, that this Reſolution of this Doubt, howſoever it was in Blindneſs as you think, that is now proved in the greateſt time of Light and Purity of the Profeſſion of the Goſpel.

‘ And for your Extract upon the late Divines Opinions upon this Queſtion, I cannot gueſs what your Intent was in ſending them to me, for they all agree in Terms with my Opinion: but there is ſuch a thing as *Maleficium, & Maleficiale verſus hanc*; and your very interlude Paſſages prove that cleareſt: and for that Advice concerning the Remedies, that is but *Conſilium non Decretum*, not impoſing a Neceſſity: but is to be uſed by Diſcretion, as occaſion ſhall prove and require it.

'To conclude then, if this may ſatisfy your Doubts, I will end with 'our Saviour's Words to St. *Peter*, *Cum converſus fueris, confirma fratres* '*tuos*; for on my Conſcience, all the Doubts I have yet ſeen, are nothing 'but *nodos in ſcirpo quærere.*'

Notwithſtanding the Confeſſions in the Earl's Anſwer, the Court thought it neceſſary to ſatisfy themſelves of the Truth by the Inſpection of Midwives and Matrons. Whereupon it was decreed by the Court, that ſix Midwives of the beſt Note, and ten other noble Matrons, out of which they themſelves would chuſe two Midwives, and four Matrons, ſhould inſpect the Counteſs, the Entry whereof is as follows: *Tunc Domini*, viz. *Arch.* Cant. Lond. Elienſ. Covent. & Lichf. Cæſar, Parry, Donne, Bennet, Edwards, *habita inter eos privata deliberatione, ex numero matronarum prædict. elegerunt*,

The Lady *Mary Tirwhit*, Wife of Sir *Philip Tirwhit* Bart.
Lady *Alice Carew*, Wife of Sir *Matthew Carew*
Lady *Daliſon*, Wife of Sir *Roger Daliſon.*
Lady *Anne Waller*, Widow.

& ex obſtetricum numero, &c. Margaritam Mercer & Chriſtianam Cheſt. *Et aſſignârunt Procuratorem dictæ dominæ* Franciſcæ *ad ſiſtendum hujuſmodi inſpectrices coram Reverendo Patre Epiſc.* London. Cæſar, Donne, *&c. inter cæteros nominat. iſto die inter horas quintam & ſextam poſt meridiem, juramentum in hac parte ſubituras, atque inſpectione facta fideliter relaturas earum judicium juxta earum ſcientiam & experientiam, &c. coram dictis Dominis Delegatis, ſicut præfertur, aſſignatis quam cito fieri poſſit ante horam quartam & ſextam poſt meridiem diei Jovis proximæ, alioquin ad comparend. hoc in loco, coram Commiſſariis dicto die Jovis inter horas quartam & ſextam poſt meridiem ejuſdem diei, earum judicium hanc in parte tunc relaturas, & ad intereſſendum hora & loco reſpectivè prædictis, ad videndum inſpectrices prædictas juramento in hac parte onerari; nec non quibuſcunque aliis diebus hora & loco prædictos Dominos Commiſſarios nominat. dictis inſpectricibus, ad referendum earum judicium aſſignat.*

Accordingly between the Hours of that Day aforeſaid, were preſented before the Delegates the ſaid Ladies, and ſworn *ad inquirend. & inſpiciend.*

1. Whether the Lady *Frances* were a Woman fit and apt for carnal Copulation without any Defect, which might diſable her for that purpoſe.

2. Whether ſhe were a Virgin carnally unknown by any Man.

Whereupon they went from the Preſence of the Commiſſioners into the next Room where the Counteſs was, who was left alone with the ſaid Ladies*. After ſome convenient time they returned, and delivered in their Report under their Hands; all Perſons being removed except the Regiſter, that ſo the Ladies and Midwives might more freely deliver their ſecret Reaſons, *&c.* which were not fit to be inſerted into the Record; and this is in ſum their Report:

1. That they believe the Lady *Frances* fitted with Abilities to have carnal Copulation, and apt to have Children.

2. That ſhe is a Virgin uncorrupted.

And to corroborate all this, the Counteſs in open Court produced ſeven Women of her Conſanguinity, That inaſmuch as the Truth was beſt known to herſelf, ſhe might by virtue of her Oath diſcover the ſame, and her Oath ſhould be no farther regarded than as it was confirmed by the Oath of her Kinſwomen. In order hereto the Counteſs took an Oath, That ſince the Earl was eighteen Years old, for three Years he and ſhe had lain in Bed, *&c.* as in the Libel. And then the ſeven Noble Women, *viz.*

Katharine Counteſs of *Suffolk*,
Frances Counteſs of *Kildare*,
Elizabeth Lady *Walden*,
Elizabeth Lady *Knevet*,
Lady *Katharine Thynne*,
Mrs. *Katharine Fiennes*,
Mrs. *Dorothy Neale*,

being ſworn, depoſed that they believed the ſame was true; and in particular becauſe,

1. That after they were both grown to Years of Puberty, they both endeavour'd Copulation.

2. That notwithſtanding, on her part, as appear'd by the Inſpectors, ſhe remain'd a Virgin uncorrupted.

3. That the Earl had judicially ſworn that he never had, nor could, nor ſhould ever know her carnally.

Whereupon the Delegates declared the Law to be, That *impotentia coëundi in viro* whatſoever, whether by natural Defect, or accidental Means, whether abſolute towards all, or reſpective to his Wife only, if it precede Matrimony, and be perpetual (as by Law is preſumed, when after three Years Trial, after the Man is of the Age of eighteen Years, there has been *nil ad copulam*, and the Marriage not conſummated) is a juſt Cauſe of Divorce *à vinculo matrimonii*; and that the Proofs produced in this Caſe were abundantly ſufficient to convince them of the Earl's Impotency; and therefore pronounced Sentence that they ſhould be divorced from each other, and be at Liberty to marry again; which Sentence was as follows:

'That *Robert* Earl of *Eſſex*, and the Lady *Frances Howard*, contracted 'by ſhew of Marriage, did cohabit in one Houſe, and lie together in one 'Bed; *nudus cum nuda & ſolus cum ſola*; and that the ſaid Lady *Frances* 'did ſhew her ſelf prompt and ready to be known of him, and that the 'ſaid Earl neither did nor could have Knowledge of her, altho' he did 'think himſelf able to have Knowledge of other Women; and that the 'ſaid Lady *Frances* by Inſpection of her Body by Midwives, expert in 'matter of Marriage, was proved to be apt for carnal Copulation with 'Man, and yet a Virgin: Therefore we the ſaid Judges deputed in the 'Cauſe, firſt invocating the Name of Chriſt, and ſetting God before our 'Eyes, do Pronounce, Decree, and Declare, That the Earl of *Eſſex*, for 'ſome ſecret, incurable, binding Impediment, did never carnally know, 'or was, or is able carnally to know the Lady *Frances Howard*: And 'therefore we do Pronounce, have Decreed, and do Declare, the pretended Marriage ſo contracted and ſolemnized *de facto* between them, to have 'been, and to be utterly void and to no Effect, and that it did want, and 'ought to want the ſtrength of the Law: And that the Lady *Frances* was, 'and is, and ſo ought to be free, and at liberty from any Bond of ſuch 'pretended Marriage *de facto*, contracted and ſolemnized. And we do 'Pronounce, that ſhe ought to be divorced, and ſo we do Free and Di'vorce her, leaving them as touching other Marriages to their Conſciences 'in the Lord.

'Which our definitive Sentence and Decree we ratify and publiſh.'

Thomas Wint.
Lancel. Ely.
Rich. Coven. and *Lichf.*
John Roffen.
} Biſhops.

Julius Cæſar,
Thomas Parry,
Daniel Donne,
} Doctors.

The following Commiſſioners could not agree to this Sentence, and therefore abſented themſelves.

George Cant.
John London.
} Biſhops.

John Bennet,
Francis James,
Thomas Edwards,
} Doctors.

Dec. 5. Soon after this Sentence, the Counteſs was married to the Viſcount *Rocheſter*, lately made Earl of *Somerſet*.

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* *Some Authors ſay, that the Counteſs under a pretence of Modeſty, having obtain'd leave to put on a Veil, when ſhe was inſpected, cauſed a young Woman of her Age and Stature, dreſs'd in her Clothes, to ſtand the Search in her place.*

XXIII. *The Trial of* RICHARD WESTON † *at the* Guild-Hall *of* London, *for the Murder of Sir* Thomas Overbury ‡, 19*th of* October, 1615. 13 Jac. I.

The COMMISSIONERS were,

The Lord Mayor.
The Lord Chief Juſtice of England.
Juſtice Crook.
Juſtice Doderidge.
Juſtice Haughton.
Serjeant Crew; *and*
Sir Henry Montague, *Recorder.*

THE Court being ſet, and the King's ſpecial Commiſſion read, the Lord [1] Chief Juſtice gave the Charge; the Effect whereof was,

Firſt, To expreſs the King's pious Inclinations and Command unto juſt Proceedings againſt all ſuch as ſhould be any way proved to be guilty of the Murdering and Poiſoning of Sir *Thomas Overbury*, his Majeſty's Priſoner in the Tower.

Secondly, to aggravate the Manner and Quality of the Murdering, in ſhewing the Baſeneſs of Poiſoning above all other Kinds of Murder, declaring the Vengeance of God, and his Juſtneſs in puniſhing Offenders: He alledged 9 *Gen.* 6. *Quicunque effuderit humanum ſanguinem. effundetur ſanguis illius*; *ad imaginem Dei quippe factus eſt homo.* He alſo took the Example of *Uriah* by *David*; he therein obſerved how Adultery is moſt often the Begetter of that Sin.

Then he declared, That of all Felonies, Murder is the moſt horrible; of all Murders, Poiſoning the moſt deteſtable; and of all Poiſoning, the lingering Poiſoning.

He ſhewed how that by an Act of Parliament 22 *H.* 8. *cap.* 9. it was made Treaſon, and that wilful Poiſoners ſhould be boiled to death; rehearſing the Example of one *Richard Rowſe*, that had poiſoned a Man and Woman, and was therefore ſcalded to death.

Then he laid open to the Jury the Baſeneſs and Cowardlineſs of Poiſoners, who attempt that ſecretly, againſt which there is no Means of Preſervation or Defence for a Man's Life; and how rare it was to hear of poiſoning in *England*, ſo deteſtable it was to our Nation: But that ſince the Devil had taught divers to be cunning in it, ſo that they can poiſon in what Diſtance of Space they pleaſe, by conſuming the *Nativum Calidum* or *Humidum Radicale* in one Month, two, or three, or more, as they liſt; which they four manner of Ways do execute, 1. *Guſtu*, 2. *Hauſtu*, 3. *Odore*, 4. *Contactu*.

He finiſhed his Charge with ſerious Exhortations to the Jury to do Juſtice in preſenting the Truth, notwithſtanding the Greatneſs of any that upon their Evidence ſhould appear to be guilty of the ſame Offence: comforting both Judges and Jury with the Scripture, *Pſal.* 5. *ver. ultimo*, *For*

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[1] *Sir* Edward Coke.

† *He had been an Apothecary's Man, but was now made Under-Keeper to the new Lieutenant of the Tower, Sir* Jervis Elvis.

‡ *He was Son to Sir* Nicholas Overbury *of* Burton-upon-the-Hill *in* Gloceſterſhire, *educated at* Queen's-College *in* Oxford, *and at the* Middle-Temple, *of which his Father was a Bencher. See a full relation of the Manner of his Death,* Bacon's *Works,* vol. i. p. 77—79. *and its Diſcovery,* ibid. p. 80.

thou, Lord, wilt bleſs the Righteous; with Favour wilt thou compaſs them as with a Shield.

The Charge being ended, the Jury, conſiſting of fourteen Perſons, did for the Space of an Hour depart the Court into a Private Room, where they received their Evidence from Mr. *Fenſhaw*, his Majeſty's *Coroner*, and his Highneſs's *Counſel* prepared and inſtructed for that purpoſe, with the Examinations and Confeſſions as well of the Priſoner himſelf, as of divers other Witneſſes, before that time taken by the Lord Chief Juſtice of *England*, and others the Lords of his Majeſty's Council.

In the mean time, Mr. *William Goare*, Sheriff of *London*, was commanded to fetch his Priſoner, remaining at his Houſe, to be ready in Court for his Arraignment.

So a certain Space after, the *Grand Jury* returned to the Bar, and delivered in their Bill of Indictment, ſigned *Billa Vera*. Whereupon the Priſoner was ſet up to the Bar, and the Indictment read by Mr. *Fenſhaw*, which contained in effect as followeth.

The Indictment.

THAT *Richard Weſton*, being about the Age of ſixty Years, not having the Fear of God before his Eyes, but inſtigated and ſeduced by the Devil, deviſed and contrived not only to bring upon the Body of Sir *Thomas Overbury* Kt. great Sickneſs and Diſeaſes, but alſo to deprive him of his Life: And to bring the ſame to paſs, 9 *Maii* 1613, 11 *Jacobi, &c.* at the *Tower* of *London*, in the Pariſh of *Alhallows Barking*, did obtain and get into his hands certain Poiſon of green and yellow Colour, called *Roſalgar*, (knowing the ſame to be deadly Poiſon) and the ſame did maliciouſly and feloniouſly mingle and compound in a kind of Broth poured out into a certain Diſh; and the ſame Broth ſo infected and poiſoned, did give and deliver to the ſaid Sir *Thomas Overbury* as wholeſome and good Broth, to the Intent therewith to kill and poiſon the ſaid Sir *Thomas*, which Broth he took and did eat.

Alſo the ſaid *Weſton* upon the firſt of *July*, 11 *Jacobi*, as aforeſaid, did in like manner get another Poiſon or Poiſons compounded, called *White Arſenick*, and (knowing the ſame to be deadly Poiſon) did give unto the ſaid Sir *Thomas Overbury*, as good and wholeſome to eat, who took and did eat.

Alſo that *Weſton*, upon the ſaid 19th of *July* following, did get another Poiſon called *Mercury Sublimate*, (knowing the ſame to be mortal Poiſon) and put and mingled the ſame in Tarts and Jellies, and gave the ſame unto Sir *Thomas Overbury*, as good and wholeſome to eat, which he in like manner took and did eat.

Alſo the ſaid *Weſton*, and another Man being an Apothecary, afterwards, upon the 14th of *September*, feloniouſly did get a Poiſon, called *Mercury Sublimate*, (knowing the ſame to be deadly Poiſon) and put the ſame into a Clyſter mingled with the ſaid Poiſon: and the ſaid Clyſter the ſaid Apothecary, for the Reward of 20*l.* promiſed unto him, did put and miniſter (as good and wholeſome) into the Guts of the ſaid Sir *Thomas*; and that *Weſton* was preſent and aiding to the ſaid Apothecary in miniſtring and infuſing the ſaid Clyſter; and that immediately after, as well the taking of the ſaid poiſoned Meats, and miniſtring the ſaid Clyſter, the ſaid Sir *Thomas* did languiſh, and fell into Diſeaſes and Diſtempers; and from the aforeſaid Times of taking and eating the ſaid poiſoned Meats, and miniſtring the ſaid Clyſter, he died: and ſo the Jury gave their Verdict, That *Weſton* in this manner had killed, poiſoned, and murdered the ſaid Sir *Thomas*, againſt the King's Peace and Dignity.

Which Indictment being read, he was demanded if he were guilty of the Felony, Murdering, and Poiſoning, as aforeſaid, yea or no. To which he anſwered, doubling his Speech, *Lord have Mercy upon me! Lord have Mercy upon me!* But being again demanded, he anſwered, *Not Guilty*. And being then demanded how he would be tried, he anſwered, He referred himſelf to God, and would be tried by God; refuſing to put himſelf and his Cauſe upon the Jury or Country, according to the Law or Cuſtom.

Hereupon the Lord Chief Juſtice, and all other in their Order, ſpent the ſpace of an Hour in perſuading him to put himſelf upon the Trial of the Law; declaring unto him the Danger and Miſchief he ran into by reſiſting his ordinary Courſe of Trial, being the Means ordained by God for his Deliverance, if he were innocent; and how by this means he would make himſelf the Author of his own Death, even as if he ſhould with a Knife or Dagger kill or ſtab himſelf: exhorting him very earneſtly either with Repentance to confeſs his Fault, or elſe with Humility and Duty to ſubmit himſelf to his ordinary Trial. Whereupon he ſtubbornly anſwered, *Welcome by the Grace of God*; and he referred himſelf to God. And ſo when no Perſuaſions could prevail, the Lord Chief Juſtice plainly delivered his Opinion [*], That he was perſuaded that *Weſton* had been dealt withal by ſome Great-Ones, guilty of the ſame Fact, as acceſſary, to ſtand mute, whereby they might eſcape their Puniſhment: and therefore he commanded (for Satisfaction of the World) that the *Queen*'s *Attorney* there preſent ſhould declare, and ſet forth the whole Evidence, without any Fear or Partiality: and yet notwithſtanding, he once more uſed much Perſuaſion to the Priſoner to conſider what Deſtruction he brought upon himſelf by his contempt; and declaring unto him how his Offence of Contempt was, in refuſing his Trial, and how the Laws of the Land had provided a ſharper and more ſevere Puniſhment to ſuch Offenders than unto thoſe that were guilty of High Treaſon: and ſo he repeated the Form of Judgment given againſt ſuch, the Extremity and Rigour whereof was expreſſed in theſe Words, *Onere Frigore & Fame.* For the firſt, he was to receive his Puniſhment by the Law, to be extended, and then to have Weights laid upon him, no more than he was able to bear, which were by little and little to be increaſed.

For the ſecond, that he was to be expoſed in an open Place, near to the Priſon, in the open Air, being naked.

And laſtly, That he was to be preſerved with the coarſeſt Bread that could be got, and Water out of the next Sink or Puddle to the Place of Execution, and that Day he had Water he ſhould have no Bread, and that Day he had Bread he ſhould have no Water; and in this Torment he was to linger as long as Nature could linger out, ſo that oftentimes Men lived in that Extremity eight or nine Days: Adding further, that as Life left him, ſo Judgment ſhould find him. And therefore he required him, upon conſideration of theſe Reaſons, to adviſe himſelf to plead to the Country; who notwithſtanding abſolutely refuſed.

Hereupon the Lord Chief Juſtice willed Sir *Lawrence Hyde*, the *Queen*'s *Attorney*, and there of Counſel for the King, to manifeſt unto the Audience the Guiltineſs of the ſaid *Weſton* by his own Confeſſion, ſigned with his own Hand; and if in the Declaration thereof they may meet with any great Perſons whatſoever, as certainly there were Great-Ones confederate in that Fact, he ſhould boldly and faithfully open whatſoever was neceſſary, and he could prove againſt them. Whereupon Mr. *Attorney* began his Accuſation:

Firſt, he charged the Counteſs of *Somerſet* and the Earl to be principal Movers unto this unhappy Concluſion, Mrs. *Turner* to be of the Confederacy, and the Pay-miſtreſs of the Priſoner's Reward; in which the *Attorney*'s Boldneſs was very obſervable, in terming the Counteſs a dead and rotten Branch, which being lopt off, the Noble Tree, meaning that Noble Family, would proſper the better.

Secondly, He proceeded to the Cauſe, which he affirmed to be the Malice of the Counteſs: And the Ground of this Malice he alledged, and by many Inducements he evidently affirmed, That Sir *Thomas Overbury* had diſſuaded the Viſcount *Rocheſter* from that adulterate Marriage with the Counteſs of *Somerſet*, then Counteſs of *Eſſex*. And for this he alledged as followeth:

Sir *Thomas Overbury* having divers times diſſuaded the Earl, then Viſcount *Rocheſter*, from ſeeking by any means to procure Marriage with the Counteſs of *Eſſex*, to which he ſaw the Earl too much inclined; and having very earneſt Conference with the Earl one Night in private in the Gallery at *White-Hall* concerning his intendment, perceiving the Earl too much at that time to deſire that unlawful Communication; in the Ardency of his fervent Affection unto the Earl, and great Preſcience of the future Miſery it would inevitably bring unto him, (his well-beloved Lord and Friend) uſed Speeches to this Effect:

Well, my Lord, if you do marry that filthy baſe Woman, you will utterly ruin your Honour and your ſelf; you ſhall never do it by my Advice or Conſent; and if you do, you had beſt look to ſtand faſt.

My Lord replied, bewitched with the Love of the ſaid Counteſs, moved with Sir *Thomas Overbury* for ſo ſlighting her, anſwered, *My own Legs are ſtreight and ſtrong enough to bear me up; but, in Faith, I will be even with you for this:* and ſo parted from him in a great Rage.

This Conference was over-heard by ſome in an adjoining Room, and their Depoſitions for the Truth thereof were read in Court.

Altho' this Conference moved the Earl to ſuch a ſudden Choler, yet it ſeemed Sir *Thomas Overbury* conceited it no otherwiſe than a ſudden extreme Diſtemperature or Paſſion, and not a final Concluſion of their Boſom-Friend as before, in which the Earl ſeemed reciprocal; howſoever, in his Double-Dealing it ſeemed to be clearly otherwiſe.

For upon this the Earl moved the King to appoint Sir *Thomas Overbury* Embaſſador for *Ruſſia*. The King, willing to prefer Sir *Thomas Overbury*, as one whoſe Worth and Valour was not unknown to his Majeſty, accordingly adjoined him that Service; the which Sir *Thomas* was moſt willing to accept of, as a gracious Aſpect of the King towards him: which Willingneſs of his was proved by the Depoſition of two or three ſeveral Witneſſes read in Court, and by the Oath of Sir *Dudly Diggs*, who voluntarily, at the Arraignment in open Court, upon his Oath, witneſſed how Sir *Thomas* had imparted to him his Readineſs to be imployed on an Embaſſage.

The Earl as well abuſing the King's Favours, in moving to ſhew Favour where he meant the Party ſhould take no Benefit, as bearing unhoneſt Friendſhip, in Conference with Sir *Thomas* concerning that Imployment, perſuaded him to refuſe to ſerve Embaſſador, where (quoth he) I ſhall not be able to perform ſuch Kindneſs to your advantage, as having you with me; and (quoth he) if you be blamed or committed for it, care not, I will quickly free you from all harm. Sir *Thomas*, thus betrayed by a Friend, refuſed to ſerve in that nature; whereupon he was committed to the *Tower*.

Being thus committed, he was preſently committed cloſe Priſoner, and a Keeper he muſt have; and who muſt that be but this *Weſton*, who was commended by the Counteſs of *Eſſex* to Sir *Thomas Monſon*, to be by him recommended over unto the Lieutenant of the *Tower*, to be Keeper to Sir *Thomas Overbury*. Sir *Thomas Monſon*, according to the Counteſs's Requeſt, commended the ſaid *Weſton* to Sir *Jervis Elvis*; whereupon the ſaid Lieutenant entertained the ſaid *Weſton*, and appointed him to keep Sir *Thomas Overbury*. The ſaid *Weſton*, upon his own Confeſſion read in Court, ſigned with his Mark, had during the time that ſhe was Counteſs of *Eſſex*, been a Procurer and Pandar to the ſaid Earl, then Viſcount *Rocheſter*, and the Counteſs of *Eſſex*, for the conveying and effecting of their adulterate Deſires, which they did divers times conſummate, meeting in Mrs. *Turner*'s Houſe once between the Hours of Eleven and Twelve, and at *Hammerſmith*, and at divers times elſewhere, for that purpoſe; that now, by the Procurement of the Counteſs, (who hated Sir *Thomas Overbury*, for being a good Means to keep them from contaminating themſelves with ſuch luſtful Embracements, and from the purpoſed Marriage they mutually laboured to compaſs) her Pandar was become his Keeper, a fit Agent for Luſt and Murder.

Weſton now being become Sir *Thomas Overbury*'s Keeper, kept him ſo cloſe, that he ſcarce had the Comfort of the Day's Brightneſs; neither ſuffered he any one to viſit him, Father, Brother, his beſt Friends, his neareſt Kindred were Strangers to him from the beginning of his Impriſonment unto the end.

Mrs. *Turner*, upon the firſt day's keeping, promiſed to give him a contenting Reward, if he ſhould adminiſter ſuch things to Sir *Thomas Overbury*, as ſhould be ſent unto him, thinking him a fit Inſtrument to compaſs black Murder, that was ſo well acquainted with foul Luſt; and ſo indeed they found him, for he agreed and did promiſe to adminiſter whatſoever ſhe would ſend him. Mrs. *Turner*, upon this murderous Promiſe, the very ſame day that *Weſton* became Sir *Thomas Overbury*'s Keeper, being the 6th day of *May* 1613, ſent unto him the ſaid *Weſton* certain yellow Poiſon, called *Roſalgar*, in a Vial.

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[*] *The* Chief Juſtice *had Intelligence under-hand, that* Yelverton, *an obliged Servant to the Houſe of the* Howards, *had adviſed this Counſel for* Weſton, *in order to prevent the Proſecution from reaching any farther:* Yelverton *was at this time Solicitor-General, but does not appear to have had any ſhare in any of the Trials for the Murder of Sir* Thomas Overbury, *tho' the Attorney and other Counſel of the King had their parts in them.*

Weſton having received that Poiſon, the aforeſaid 6th of *May* at Night, bringing Sir *Thomas Overbury*'s Supper in one hand, and the Vial of Poiſon in the other, meets with the Lieutenant, and aſks him in theſe terms, *Sir, ſhall I give it him now?* Upon this word *Now*, the Lord Chief Juſtice demurs, to aggravate the Malicioufneſs; affirming that this Particle *Now*, ſhewed a Reſolution to poiſon him. What ſhall you give him? replies the Lieutenant. *Weſton* replies, As if you did not know, Sir. The Lieutenant blaming him, he carries the Poiſon into an inner Room, which *Weſton*, the 9th of *May*, did adminiſter to Sir *Thomas Overbury* in Broth. This was proved both by *Weſton* and the Lieutenant's Confeſſion.

Weſton having given this Poiſon, which wrought very vehemently with him by Vomits and extreme Purging, he preſently demands his reward of Mrs. *Turner*, who replies, *That the Man is not yet dead: Perfect your Work, and you ſhall have your Hire.* This was alſo confeſſed by *Weſton* under his Marks.

Sir *Thomas Overbury*, by his cloſe Impriſonment, growing ſick, and daily languiſhing, after three or four Weeks ſpace (conſidering he had not got his Freedom and Releaſe, having no Friends ſuffered to come unto him, but only ſuch as the Earl ſent to comfort him, of his own Followers) writ to the Earl to remember his Impriſonment; who received anſwer, *The Time would not ſuffer, but ſo ſoon as poſſible might be, he would haſten his Delivery:* ſo indeed it ſeems he intended to do, but not ſo as Sir *Thomas Overbury* conceived, whoſe true Affection would not admit his Judgment to debate the ſtrangeneſs of his Impriſonment, which he might well think the Earl might eaſily have relieved.

The 5th of *June*, Viſcount *Rocheſter* ſent a Letter to Sir *Thomas Overbury*; in the Letter he ſent him a white Powder, willing Sir *Thomas* to take it: *It will* (quoth he) *make you more ſick; but fear not, I will make this a means for your Delivery, and for the Recovery of your Health.* Sir *Thomas Overbury* never dreaming of baſe Treachery, but conceiving it as a friendly Policy, received the ſaid Powder, which wrought upon him more vehemently; whereupon his Sickneſs grew more vehement or violent, and his Languiſhment increaſed: which white Powder, upon *Weſton*'s Confeſſion, was Poiſon.

Sir *Thomas Overbury*'s Sickneſs increaſing, and with it his wondering that he could not in two Months ſpace be releaſed, after his Phyſick taking, he thus writes to the Earl, lamenting his own Eſtate; for his Faith being thus ſhaken with the Earl's Unkindneſs, gave way for his Judgment to ſcan thoſe Actions, rather like an underſtanding Man, than like a loving Friend, as appeareth by his Letter ſent to Viſcount *Rocheſter*, the Effect whereof was thus, as it is averred by the Depoſition of Sir *Thomas Overbury*'s Servants, who ſaw the Letter.

Sir Thomas Overbury*'s Letter to the Viſcount* Rocheſter.

S I R,

‘I Wonder you have not yet found means to effect my Delivery; but I remember you ſaid, you would be even with me,’ [not ſuſpecting, as it ſeemeth, any Poiſoning, but an unkind Forgetfulneſs of my Lord of *Rocheſter*] ‘and ſo indeed you are; but aſſure yourſelf, my Lord, if you do not releaſe me, but ſuffer me thus to die, my Blood will be required at your hands.’

My Lord comforts him, and excuſes, that it cannot yet be compaſſed: Sir *Thomas*, after the Powder taken, languiſheth deadly; and to comfort him, ſome Followers of my Lord of *Rocheſter*'s are ſent to him daily, in the name of my Lord, by the appointment and procurement too of the Lady of *Eſſex* (as *Weſton* confeſſed) to viſit and comfort him, and to intreat him if he deſired any Meat, that he ſhould ſpeak, and it might be better perhaps provided for him, than he ſhould have in the *Tower*: this was about three Months after his Impriſonment.

He (as Men ſick deſire luſcious Meats) deſired Tarts and Jellies, which were provided by Mrs. *Turner*, with the knowledge of the ſaid Counteſs, and ſent unto him, of which he did eat; the which Tarts were poiſoned with *Mercury Sublimate*, not being ſo well coloured as other Tarts are, and *Weſton* confeſſed that he was ſtraitly charged not to taſte thereof.

Sir *Thomas* thus continuing languiſhing with the Extremity of Sickneſs, until the 6th of *September*, when the aforeſaid Mrs. *Turner* did procure an Apothecary's Boy for twenty Pounds to poiſon a Clyſter, which was by the Boy and *Weſton* afterwards adminiſtred as good Phyſick, upon the 7th day of *October*; after the Receipt of the Clyſter, he fell into a great Extremity of Vomiting, and other Purging, which left him not, till it cauſed his Soul to leave his poiſoned Body: this *Weſton* confeſſed and ſigned.

Being thus dead, he was preſently and very unreverently buried in a Pit, digged in a very mean place; on his Body thus venomouſly infected, appeared divers Blains and Bliſters: whereupon they, to take away as well his good Name, as his Life, did ſlanderouſly report, that he died of the *French* Pox; but this Report was cleared in Court, by the Depoſitions of his Servants, and other Men of Worth there read.

That before his Impriſonment, he had a clean and ſound Body, only he had an Iſſue in his Left Arm, purpoſely made for the benefit of his Nature, for the avoiding of Rheum and ill Humours, which, with continual ſitting at his Study, he had ſubjected himſelf unto.

He further obſerved the Confeſſion of the Lieutenant to be, that if any Priſoner died there, his Body was to be viewed, and Inquiſition to be taken by the Coroner.

But Sir *Thomas Overbury*'s Friends and others by no means might be ſuffered to ſee his Body; and altho' it was reported, that there was an Inquiſition taken, yet it could by no means be found.

After Mr. *Attorney* had ended his Speech, Mr. *Warr* alſo of Counſel for the King, declared to the Court what Familiarity he had with Sir *Thomas*, being both of the *Temple* together, much commending his ſingular honeſt and virtuous Converſation; affirming, That he was addicted to no diſhoneſt Actions: and from this he proceeded to urge his ſad Uſage in the *Tower*, where he might have no Company, but the Apothecary and the *Walloon*; and repeating the ſending of the Tarts and Jellies in my Lord of *Somerſet*'s Name, he ended his Speech with this Saying, *Pereat unus, ne pereant omnes; pereat peccans, ne pereat Reſpub.* Then, by the Commandment of the Court, were read by Mr. *Fenſhaw* the Examinations of divers Witneſſes taken before my Lord Chief Juſtice and others, which in effect were as follows.

Laurence Davies, *Servant to Sir* Thomas Overbury, *examined the* 15*th of* October, *before the Lord Chief Juſtice.*

He ſaith, That he had ſerved Sir *Thomas Overbury* eight or nine Years; in all which time he was very healthful, and never kept his Bed for any Sickneſs, only he was ſometimes troubled with the Spleen, for eaſe whereof, he had by the Advice of his Phyſician an Iſſue made in his Left Arm; but before his Impriſonment, he had no Sores, Bliſters, or other Defects in all his Body.

Alſo he ſaith, Sir *Thomas* would have gone over upon the Embaſſage, but was diſſuaded by *Somerſet*, who promiſed to bear him out: he complained, he needed not to be Priſoner if *Somerſet* would; and that if he died, his Blood would be required at his hands.

That *Somerſet* was as good as his word, who told him at *Newmarket*, he would be even with Sir *Thomas Overbury.*

Henry Payton, *another Servant of Sir* Thomas Overbury'*s*, *examined the* 15*th of* October, 1615.

He affirmeth, that Sir *Thomas* was of a very good Conſtitution of Body; that he uſed ſometimes to run, to play at Foils, and ſuch like; that he was of a moderate Diet, never had any Sores, ſaving the Iſſue in his Arm.

That Sir *Thomas* wrote Letters to *Somerſet*, ſignifying, that he needed not to lie in Priſon if *Somerſet* would, and if he died, his Blood ſhould be required at his hands.

That Sir *Thomas*, at one of the Clock at Night, meeting *Somerſet* in the Gallery at *Whitehall*, had Speeches with him touching the Counteſs, whom he called baſe Woman, and told *Somerſet*, he would overthrow all the King's Favours and Honours; and upon Diſpleaſure between them at this Conference, Sir *Thomas Overbury* deſired *Somerſet* that he might have his Portion due, and he would ſhift for himſelf. Whereunto *Somerſet* anſwer'd, And my Legs are ſtraight enough to carry me; and ſo flung away in Anger. All which this Examinant heard, being in a Chamber next to the Gallery.

Sir *Dudley Diggs* being preſent in Court, and ſworn, declared *viva voce*, that he was ſent by a Privy-Counſellor (a great Man) to Sir *Thomas Overbury*, to bring him to this great Man, which he did; and coming back together over the Water in a Boat, Sir *Thomas* was much diſcontented; the Reaſon whereof he ſaid was, That he was perſuaded by the great Man to withdraw himſelf from the Court for ſome Reaſons which he diſcloſed not: And Sir *Dudley* afterwards being ſent by the Lords, to know the Reſolution of Sir *Thomas* touching the Embaſſage, he found him to rely upon the Lord of *Somerſet*, ſaying, My precious Chief knows the King's Mind better than any, and I the Mind of my precious Chief.

Richard Weſton *the Priſoner examined, the* 6*th of* October, 1615. coram Coke & Crew.

He affirmeth, That before Sir *Thomas Overbury* was in the *Tower*, he, this Examinant, carried three Letters to *Somerſet*, from the Lady *Eſſex*, to *Royſton*, *Newmarket*, and *Hampton-Court*, and he delivered Anſwer to Mrs. *Turner*; and that upon the Letter to *Hampton-Court*, he had anſwer only by word of Mouth, That his Lordſhip would come: And that coming back, he met with the Counteſs and Mrs. *Turner* half way, in the Coach, whom he told, that the Lord only anſwered ſo; whereupon the Counteſs ſtrook out of the way into a Farmer's Houſe hard by, whither within a little ſpace *Somerſet* came, and that afterwards they met in the Night at Mrs. *Turner*'s Houſe in *Pater-noſter-Row.* And he confeſſeth, that of a Year before Sir *Thomas*'s Impriſonment, no Man carried Letters between them but he.

Sir Thomas Monſon *examined the* 5*th of* October, coram Coke & Crew.

He ſaith, that he never knew *Weſton* until Sir *Thomas Overbury* was Priſoner in the *Tower*; and that he preferred him to the Lieutenant, to be Keeper of Sir *Thomas Overbury*, at the Requeſt of the Counteſs.

Anne Turner, *Widow, examined the* 11*th of* October. 1615, coram Coke & Crew.

She ſaith, That *Weſton* was an antient Servant, and her Huſband's Bailiff in the Country: She denieth to have any thing to do in placing him in the *Tower*; but ſaith, that the Counteſs of *Eſſex* did effect it, and uſed the help of Sir *Thomas Monſon* therein.

Sir Jervis Elves *examined the* 3*d of* October, 1615. coram Coke & Crew.

He ſaith, He had a Letter from Sir *Thomas Monſon*, requeſting him, that *Weſton* might be Keeper of Sir *Thomas Overbury*, and that he did perform it; and afterwards having conference with Sir *Thomas Monſon*, he told him, That his Keeper was not to ſuffer any Letters or Tokens, or any things to be delivered unto him.

Richard Weſton *the Priſoner examined again.*

He confeſſeth, He ſhewed him the Glaſs that was delivered him by his Son from the Counteſs to the Lieutenant, and told him, that it came from the Counteſs of *Eſſex*, and that he perſuaded him not to give it to Sir *Thomas.*

He ſaith, That he had divers Tarts from the Counteſs, to give to Sir *Thomas*, with Caveats that he himſelf ſhould not taſte of them; and confeſſeth, that he thought they were poiſoned.

He ſaith, Mrs. *Turner* appointed him to come to *White-hall*, and that ſhe dealt with him to give Sir *Thomas Overbury* the Water, and told him, he ſhould not drink thereof; and was promiſed a great Reward, and he ſuſpected it was Poiſon. His Son afterwards delivered him the Glaſs, which he ſhewed to the Lieutenant, who rebuked him, and ſo he ſet the Glaſs in a Study near to Sir *Thomas*'s Chamber, but gave it him not; altho' he told Mrs. *Turner*, the next day, he had given the Water, which made Sir *Thomas* to vomit often, and to be exceeding ſick.

He ſaith, Mr. *James* and Mrs. *Rawlins*, Servants to the Counteſs, came often to know of the Examinant, how Sir *Thomas Overbury* did, and what he would eat; and they delivered him Jellies and Tarts, which he gave Sir *Thomas*, who did eat thereof.

He ſaith, He demanded of Mrs. *Turner* his Reward, who anſwered, He was to have no Reward until Sir *Thomas* was dead, and he was promiſed a Purſuivant's Place; but confeſſeth, that afterwards at two ſeveral times, he received ſecretly after the Death of Sir *Thomas*, for a Reward of Mrs. *Turner* from the Counteſs, 180 *l.*

William Weſton, *Son to the Priſoner, examined.*

He confeſſeth, He received a Glaſs from the Counteſs, (by her Servant) two Inches long, being wrapped in Paper, which he delivered to his Father in the Tower.

Then was read the Confeſſion of the Lieutenant to the King.

He ſaith, That *Weſton* met him, carrying Sir *Thomas*'s Supper in the one Hand, and the Glaſs in the other, and demanded of the Lieutenant this, *Sir, ſhall I give it him now?* Whereat the Lieutenant ſtepped to him, and aſked him, What? To which *Weſton* ſaid, Why, Sir, know you not what is to be done? And ſo the Lieutenant having made him to confeſs the Matter, diſſuaded him, and he ſeemed to be reſolved not to do it: and afterwards this *Weſton* confeſſed, that an Apothecary had twenty Pounds for adminiſtring a Clyſter to Sir *Thomas Overbury.*

Weſton, *the Priſoner, examined before the Lord* Zouch *and others.*

Confeſſeth, That Sir *Thomas* had a Clyſter which gave him ſixty Stools and a Vomit; alſo being confronted with the Writings of Sir *Jervis Elwes*, and charged therewith, he confeſſeth the ſame to be true.

Simon Marſon, *Muſician, examined*;

Saith, He ſerved Sir *Thomas Monſon* ſix Years, and is preferred by him to the King's Service, but waiteth ſometimes upon Sir *Thomas Monſon*; he ſaith, That he received divers Tarts and Jellies from the Counteſs of *Eſſex*, to be carried to the Lieutenant of the Tower for Sir *Thomas Overbury.*

Paul de la Bell, *examined*;

Saith, That on the 3d of *July*, he made Sir *Thomas Overbury* a Bath by Dr. *Micham*'s Advice, to cool his Body, and that he ſaw his Body very exceeding fair and clear; and again, he ſaw his Body (being dead) full of Bliſters, and ſo conſumed away, as he never ſaw the like Body.

George Rawlins, *a Kinſman to Sir* Thomas Overbury, *examined*;

Saith, That upon the Bruit of the Murder of Sir *Thomas*, he was taxed by ſome, why he made no Proſecution; he thereupon made a Petition, and delivered it to the King, that the Examination of the Cauſe might be referred to Law, and denieth that he was perſuaded by any to the contrary: he ſaith, that he coming often to the Tower to ſee Sir *Thomas*, could not be ſuffered to ſee him ſo much as out at the Windows; and *Weſton* told him, it was the Commandment of the Council, and of the Lieutenant.

The Lieutenant of the Tower examined, coram Coke & Crew.

He ſaith, That after the Death of Sir *Thomas*, *Weſton* came to him, and told him he was much neglected and ſlighted by the Counteſs, and could receive no Reward; but afterwards he confeſſed he had received 100 *l.* and ſhould receive more: and the Lieutenant alſo ſaith, that Sir *Thomas Overbury* was very angry with his Apothecary at certain Vomits which he had, and alſo at the Tarts and Jellies he had, which would be found within a day or two ſtanding, ill-coloured, and that no body did eat thereof but Sir *Thomas*; and *Weſton* confeſſed unto him, that the Apothecary had twenty Pounds for adminiſtring the Clyſter.

Theſe Examinations being read and applied to the purpoſe, the Lord Chief Juſtice ſaid, he would diſcharge his Duty, firſt to God, in giving all Glory, for the bringing to light of ſo horrible and wicked a Fact; and next to the King, his great Maſter, who as in caſe of the like nature, as in the caſe of *Zanquer* and *Turner*, ſo eſpecially in this, hath given ſtraight charge of juſt and due examination to be had, without any manner of Partiality or Fear in the World; to the intent, that as well the Innocent might be freed, as the Nocent and Guilty ſeverally puniſhed.

And for this purpoſe, his Majeſty hath with his own Hand written two Sheets of Paper on both ſides, concerning Juſtice to be adminiſtred to all Parties which were to be examined; which Writing, the Lord Chief Juſtice ſhewed to the Lord Mayor, and the reſt of the Commiſſioners; and then he declared the King's Juſtice, who, albeit the many Favours and Honours which his Majeſty had beſtowed on the Lord *Somerſet*, and his nearneſs to his Perſon, by reaſon of his Office, yet he had committed him Priſoner to the Dean of *Weſtminſter*'s Houſe, under the Cuſtody of Sir *Oliver St. John*, and alſo had committed his Lady. So having laſt of all (again) demanded of the Priſoner, if he would put himſelf to be try'd by the Country? which he refuſed;

The Court was adjourn'd until Monday following, at Two of the Clock in the Afternoon.

On Monday the 23d of *October*, 1615. to which day the Court was adjourned by the ſaid Commiſſioners, after Proclamation made, the Jury of Life and Death called, the Priſoner *Weſton* was ſet to the Bar, and Mr. *Fenſhaw*, Clerk of the Crown, declared unto him, that he had been formerly arraigned, and had pleaded Not Guilty; ſo he demanded of him, how he would be tried: whereupon the Priſoner anſwered, By God and his Country. And thereupon the Jury being ſworn, and the Indictment being read as before, Sir *Laurence Hyde*, the Queen's Attorney, being of Counſel with the King, having briefly rehearſed the Effect of the Indictment, ſhewed how that he muſt neceſſarily mention others that were guilty of the ſame Fact, wherein if any other Man or Woman were touched, the Cauſe it was, and not he that touched them.

And therefore *Weſton* being but a ſtranger to Sir *Thomas Overbury*, and one, who by himſelf could reap no benefit by his Death, it was againſt all reaſon that he would do it of himſelf, therefore (ſaid he) I muſt needs open the whole Plot; and he firſt declared the Worth and Honeſty of Sir *Thomas Overbury*, ſhewed his Familiarity with *Rocheſter*, and how often he willed him to forbear the Company of the Lady *Eſſex*, terming her a vile and baſe Woman, which ſtirred up the Anger and Malice of the Counteſs againſt him.

And that afterwards, the King intended, for the Honour and Preferment of Sir *Thomas Overbury*, to ſend him upon an Embaſſage; whereunto he was willing, but was dealt with and perſuaded by the Lord *Rocheſter*, to diſobey the King's Direction and Counſel, with Promiſes that he would bear him out; by which contempt Sir *Thomas* was committed to the *Tower* the 22d of *April*, 1613. Sir *William Wade* being Lieutenant of the *Tower*: the 6th of *May* following, Sir *William* was removed, and Sir *Jervis Elwes* put in his place.

And the next day after, *Weſton*, by the procurement of the Counteſs, was preferred to the Service of the Lieutenant, and to be Keeper of Sir *Thomas*; which *Weſton* had been Servant to Mrs. *Turner*, and the only Agent in conveying Letters and Meſſages between *Rocheſter* and the Counteſs: and he, whoſe Office ſhould have been to ſave and keep, was now appointed to kill and murder him.

He ſhewed, how the very ſame day of his Entertainment at the *Tower*, he was ſent for to the Counteſs, who perſuaded him, that if he would give Sir *Thomas* a Water that ſhould be delivered him, he ſhould be well rewarded, and ſhe bid him not taſte of it himſelf.

And that the 9th of the ſame Month of *May*, the ſaid Water was ſecretly ſent from the Counteſs to *Weſton* by his Son; and the ſame Night *Weſton* meeting with the Lieutenant, and having Sir *Thomas*'s Supper in one Hand, and the ſaid Glaſs in the other, he demanded of the Lieutenant, *Sir, ſhall I give it him now?* Whereupon the Lieutenant took him aſide, and diſſuaded him ſo far forth, that he confeſſed, he thanked God upon his Knees, that he had met with him.

But Mr. *Attorney* obſerved this notwithſtanding, that the Lieutenant did let him go away with the Poiſon; and albeit he now denieth he ever gave the Poiſon, yet ſaid he delivered it: he confeſſed to Mrs. *Turner* he had done it, ſaying, It made him very ſick, and to vomit often, demanding of her his Reward; to which ſhe anſwered, He was not to have his Reward until Sir *Thomas* were dead. Then he ſhewed how the laſt of *June* following, a certain Powder was ſent in a Letter to Sir *Thomas Overbury* from *Rocheſter*, perſuading him not to fear, tho' it made him ſick, for that ſhould be his Reaſon to move the King for his Enlargement.

And that the 14th of *September*, *Weſton* and the Apothecary miniſtred the Clyſter to Sir *Thomas*, which gave him ſixty Stools and Vomits, and that he died the next day; he remembered the ſtrangeneſs of the Botches and Bliſters on his Body, being dead: he ſhewed how *Weſton* came to Mrs. *Turner* for his Reward, which was deferred till his Death; and that he had received in ſecret from the Counteſs by Mrs. *Turner* at ſeveral times for his Reward 180 *l.* and that the Apothecary had for his Reward 20 *l.* All which *Weſton* had confeſſed to be true.

Then remembering how ignominiouſly they buried him, not ſuffering any to ſee him, for fear he ſhould be digged up again, and without any Coroner's Inqueſt that ſhould be found; and thus he ended his Speech.

And to all this opened and ſet forth by Mr. *Attorney*, Mr. *Warr* only added thus much, which he deſired the Jury to conſider, That *Weſton* was Servant to Mrs. *Turner* when Sir *Thomas* was committed, and then he was entertained and made Keeper to Sir *Thomas Overbury*; and having diſpatched his Buſineſs (Sir *Thomas* being dead and poiſoned), he ſtay'd no longer at the *Tower*, but returns again to Mrs. *Turner*.

Then the Lord Chief Juſtice exhorted the Jury to take God before their Eyes, and with equal Ballance to weigh as well the Anſwer of the Priſoner, as the Proofs and Examinations againſt him; declaring unto them how quietly and freely he had examined him from time to time, without menacing or rough Uſage, which the Priſoner confeſſed: and my Lord, for matter of Law, ſatisfied the Jury, That albeit the Poiſoning in the Indictment be ſaid to be with *Roſalgar*, *White Arſenick*, and *Mercury Sublimate*, yet the Jury were not to expect preciſe Proof in that Point, ſhewing how impoſſible it were to convict a Poiſoner, who uſeth not to take any Witneſſes to the compoſing of his ſibber Sauces: wherefore he declared the Law in the like Caſe; As if a Man be indicted for murdering a Man with a Dagger, and it fall out upon Evidence to have been done with a Sword or with a Rapier, or with neither, but with a Staff; in this Caſe the Inſtrument ſkilleth not, ſo that the Jury find the Murder. And ſo in this Priſoner's Caſe, if they would be ſatisfied of the Poiſoning, it ſkilleth not with what; therefore he requireth them to attend the Proof. 3 Co. Inſt. 49. 135.

Then were read, firſt the Examinations of *Laurence Davies*, as at the firſt Arraignment; then of *Henry Payton*, both Servants to Sir *Thomas Overbury*; then of *Weſton* himſelf formerly read.

Then the Examination of Sir David Wood, *taken the 21ſt of* October, 1615. *ſince the firſt Arraignment.*

He ſaith, He had obtained the King's Conſent to a Suit, for which he was a Petitioner, and that he was croſſed by the Lord *Rocheſter* and Sir *Thomas Overbury*: that for certain Words he had received from Sir *Thomas Overbury*, he intended to baſtinado him; that his Suit would have been worth 2200 *l.* and that *Rocheſter* would not let it paſs, unleſs he might have 1200 *l.*

That the Lady *Eſſex* ſent for this Examinant upon the day that the King and Queen went to *Rocheſter* with the Lady *Elizabeth*, and told him, ſhe underſtood that he had received much Wrong from Sir *Thomas Overbury*, and that he was a Gentleman that could revenge himſelf; and that Sir *Thomas* had much wronged her: and Sir *David* anſwered, that Sir *Thomas* had refuſed him the Field; ſhe perſuaded him to kill him, and promiſed him 1000 *l.* for his Reward, and Protection from his Enemies: which he refuſed, ſaying, He would be loth to hazard going to *Tyburn* upon a Woman's Word; but ſhe ſtill perſuaded him he might eaſily do it, as he returned late home from Sir *Charles Wilmot*'s in his Coach.

Then were read the Examinations of Sir Thomas Monſon *and Mrs.* Turner, *as at the firſt Arraignment.*

Next, the Examination of *Weſton* before the Lord *Zouch*, and Sir *Ralph Windwood*, Sir *Thomas Parry*, and Sir *Foulke Grevill*, at the *Duchy-houſe*, the 29th of *September*, 1615. where *Weſton* did confeſs, that he was preferred to the keeping of Sir *Thomas Overbury*, by Mrs. *Turner*, upon the means and requeſt of Sir *Thomas Monſon* to the Lieutenant; and that ſhe told him, If he would give Sir *Thomas Overbury* a Water which the Counteſs would ſend him, he ſhould be well rewarded; and being confronted with a Relation in Writing, which Sir *Jervis Elves* had made to the King, as touching Sir *Thomas Overbury*, he confeſſed the ſame to be all true.

The Examination of the Lieutenant, *taken the 5th of* October, 1615.

He ſaith, That having conferred with his Servants about the time of *Weſton*'s coming to the Tower, he found it to be the very next day after himſelf was made Lieutenant, and had the Poſſeſſion of the *Tower*; and that he had Letters from Sir *Thomas Monſon*, that *Weſton* might be Keeper to Sir *Thomas Overbury*; which Letters he had loſt. Sir *Thomas Monſon* told him the chief Purpoſe of *Weſton*'s keeping of Sir *Thomas Overbury*, was, to ſuffer no Letters or other Meſſengers to paſs to or from him, and to that purpoſe he adviſed the Lieutenant.

Weſton'*s Examination the 5th of* October, 1615.

He confeſſeth, That the next day he was preferred to the *Tower*, he had the keeping of Sir *Thomas Overbury*, and ſoon after he received the Glaſs by his Son ſecretly from the Counteſs; and that the Lieutenant told him, all the Tarts came likewiſe from her: and he confeſſeth, the Counteſs willed him to give them to Sir *Thomas*, but not to taſte of them himſelf.

Weſton'*s Examination the 1ſt of* October, 1615.

Confeſſeth, That Mrs. *Turner* appointed him to come to *White-hall* to the Counteſs, the next day that he was at the *Tower*; and that he went, and the Counteſs did requeſt him to give to Sir *Thomas Overbury* a Water, which ſhe would deliver him, but not to drink of it himſelf; ſhe promiſed to give him a good Reward, and he ſuſpected it was Poiſon: he received the Glaſs by his Son, and told the Lieutenant of it, who did rebuke him, and he ſet the Glaſs into a little Study. He confeſſeth, he told Mrs. *Turner* he had given it him, and demanded his Reward; that Mr. *James* and Mr. *Rawlins*, my Lord of *Somerſet*'s Men, came often to know of him what Tarts, Jellies, or Wine Sir *Thomas* would have, and that they brought divers times Tarts and Jellies, whereof he did eat.

He confeſſeth to have received of the Counteſs in Rewards, after Sir *Thomas Overbury*'s Death, by Mrs. *Turner* ſecretly, in all 180*l.*

The Confeſſion of the Lieutenant *to his Majeſty.*

After *Weſton* was placed in the *Tower*, he met with me with Sir *Thomas*'s Supper, and the Glaſs, and aſked me, *Sir, ſhall I give it him now?* Wherein I proteſt unto your Majeſty my Ignorance, as I would alſo be glad to proteſt the ſame to the World: ſo I privately conferred with *Weſton*, and by this means made him aſſured unto me, and knew all, but diſſuaded him; and *Weſton* has ſince the Death of Sir *Thomas Overbury*, confeſſed to me, that the Clyſter was his Overthrow, and the Apothecary had 20 *l.* for adminiſtring it.

Your Majeſty's Servant,
Sir Jervis Elves.

Here the Lord Chief Juſtice obſerved by this Queſtion of *Weſton* to the Lieutenant, *Shall I give it him now?* that it was certainly agreed and plotted before what ſhould be done, and that nothing more was doubted on but the time when it ſhould be done.

The Teſtimony of Lawrence Davies, *taken upon Oath before* Coke *and* Crew.

He affirmeth, that *Weſton* delivered him a Letter from Sir *Thomas Overbury* to *Rocheſter*, the Effect whereof was, that he would do his Endeavour in being a means of Friendſhip between *Rocheſter* and ſome others; but as touching the Marriage with the Counteſs of *Eſſex*, he would never give his conſent: and alſo bringing a Letter from *Rocheſter* to Sir *Thomas Overbury*, he delivered it to *Weſton*, and a Paper of white Powder fell out, which *Rocheſter* perſuaded Sir *Thomas* to eat, and not to fear, tho' it made him ſick, for that ſhould be a means for his Enlargement; ſo they put the Powder into the Letter again. He ſaith, that he ſaw ſome part of the Powder in *Weſton*'s hands after the Death of Sir *Thomas Overbury*.

Then were read the Examinations of William Weſton *and* Paul de la Bell, *as at the firſt Arraignment.*

The Examination of George Rawlins.

George Rawlins Eſq; the 15th of *October*, 1615. ſaith, That upon the Bruit of poiſoning of Sir *Thomas Overbury*, being taxed of divers, for that he ſtirred not in the Matter, Sir *Thomas* being his Kinſman and Means of his Preferment; he did of himſelf prefer a Petition to the King, that the Cauſe might be referred to the Judges of the Law, for ordinary Courſe of Juſtice, rather than to the Lords of the Council, by them to be examined; of which he had a gracious Anſwer: and ſaith, that of fourteen days before the death of Sir *Thomas Overbury*, he could never be ſuffered to ſee him, either in his Chamber, or at the Window; which, *Weſton* ſaid, was the Commandment of the Lords and the Lieutenant.

And here the Lord Chief Juſtice declared what a Scandal they put upon his Majeſty and the State, that a Gentleman and a Freeman, being only committed upon Contempt, ſhould be more ſtreightly and cloſely kept than a Traitor or a Bond-Slave, ſo that neither his Father, Brother, nor Friend might poſſibly ſee him. And to that Point, Mr. *Overbury*, Father to Sir *Thomas*, ſwore, being preſent in Court; who ſaid, That his Son being Priſoner in the *Tower*, and himſelf not being ſuffered to have Acceſs unto him, found at laſt, that *Rocheſter* was the Man that withſtood it.

The Lieutenant *examined the 5th of* October;

Saith, That after the Death of Sir *Thomas Overbury*, *Weſton* told him, That he was neglected by the Counteſs, and demanded his Reward: Mrs. *Turner* told him, The Counteſs had not Money; but afterwards he confeſſed, he had received ſome, and ſhould have more; and that Mr. *James* told him, my Lord of *Somerſet* would reward him for the Pains he took with Sir *Thomas Overbury*. He ſaith, That the Tarts were ſent from the Counteſs to Sir *Thomas*, which looked ill-favouredly, and that the Jellies, with a little ſtanding, would be furred, and thinketh they were poiſoned: alſo *Weſton* told him, that the Apothecary had 20*l.* for giving the Clyſter, and that he was poiſoned with that Clyſter.

Here was well obſerved by the Court, as by the Queen's Attorney, That *Weſton* was not ſingle in his Confeſſion, but whenſoever he had confeſſed any thing in any of his Examinations, it was likewiſe confirmed by the Examinations of others, as the Lieutenant, his Son, *&c.*

The Examination of William Goare, *one of the Sheriffs of* London;

Saith, *Weſton* being in his Cuſtody, he often perſuaded him to put himſelf to be tried by his Country, telling him, he would firſt kill himſelf, and aſk God Forgiveneſs afterwards: and *Weſton* anſwered, He hoped he would not make a Net to catch little Birds, and let the great ones go.

Then Mr. *Warr* craving leave of the Court to ſpeak, proteſted, in his Experience he never found a Buſineſs ſo proſecuted with degrees of Malice, which was the Ground of Sir *Thomas Overbury*'s Overthrow: he urged the Evidence in the Examination of Sir *David Wood*, and ſhewed the Reaſons of the Malice againſt him to be, for that he was ſo great an Impediment to Affections. Then he made the Dependency Mrs. *Turner* had to the Lady, and *Weſton* to Mrs. *Turner*, and how they all concluded to kill Sir *Thomas Overbury*, the like whereof he ſaid our Fathers never ſaw before us; and he lamented the Place from whence the Poiſon came, ſhould be from the Court, the Place (ſaid he) from whence all Men expect their Safeties and Protection.

Laſtly, He obſerved the *Finger of God*, even in this, that the Poiſon had been ſcarcely ſuſpected at all, or enquired after, had it not been for the extraordinary ſtrange Things appearing after his Death, which was the firſt only cauſe of Suſpicion and Muttering.

The Evidence being given, *Weſton* was demanded what he could ſay for himſelf? Who, altho' he had before confeſſed all his Examinations to be true, yet he ſeemed to excuſe himſelf in a kind of Ignorance or Unawares: he ſaid, he received the ſaid Glaſs, and thought it was not good, but denied the giving of it to Sir *Thomas*. Being demanded, Why he had formerly accuſed one *Franklin*, for delivering him the ſaid Glaſs from the Counteſs? (from whom indeed it was ſent;) He confeſſed it was to ſave his Child: and finally could ſay nothing that had any colour of material or ſubſtantial Point to excuſe or argue Innocency in him. So the Court referred him to the Jury; who went together, and within a ſhort Space returned, being agreed upon their Verdict, and there at the Bar gave in, that *Weſton* was guilty of the felonious Murdering and Poiſoning of Sir *Thomas Overbury*. And then the Clerk of the Crown demanded of *Weſton*, what he could ſay for himſelf, why Judgment ſhould not be pronounced againſt him according to Law? To which he anſwered, He referred himſelf to my Lord, and to the Country. And then the Lord Chief Juſtice, before he pronounced Sentence of Death, ſpake to this Effect, That for the Duty of the Place, he muſt ſay ſomewhat; and that to two ſeveral Perſons:

Firſt, To the Auditory: And,
Secondly, To the Priſoner.

And that which he ſpake to the Auditory, he divided into four Parts.
1ſt, The *Manifeſtation of the Glory of God, and Honour of the King.*
2dly, The preventing of other damned Crimes of Poiſoning.
3dly, An Anſwer to certain Objections.
4thly, That there is no Practice of Conſpiracy in Proſecuting of the Buſineſs.

For the *1ſt*, He obſerved the Finger of God in the Manifeſtation and bringing to light of this Matter, having ſlept two Years, being ſhadowed with Greatneſs, which cannot overcome the Cry of the People.

He obſerved alſo the Providence and Goodneſs of God, who put into the Hearts of himſelf and the reſt of the Judges, the day of the Priſoner's laſt Arraignment, when he ſtood mute, not to give Judgment againſt him for that time, but defer it till now; and how in the mean time it pleaſed his Majeſty out of his gracious Care and Pity, to ſend to the Priſoner firſt the Biſhop of *London*, next the Biſhop of *Ely*, to admoniſh and perſuade him for the ſaving of his Soul; who, after each of them had ſpent two Hours with him, it pleaſed God (when they had left him) to move his Heart, ſo that now he did put himſelf to be tried by the Country; by which means (uſing *Weſton*'s own Words) he ſaid, The *great Flies* ſhall not eſcape, but receive their Puniſhment. For concluſion of his firſt Point he laſtly obſerved, *Divinum quiddam in vulgi opinione*, that notwithſtanding ſo many uncertain Rumours touching this Caſe, at laſt it proved to be true.

2dly, He declared, how for prevention of this damned Crime of Poiſoning, Juſtice was the golden mean, and declared his Majeſty's Reſolution ſtreightly to execute Juſtice for that Treaſon; and he uſed this Saying, *Nemo prudens, &c.* and deſired God that this Precedent of *Overbury* might be an Example and Terror againſt this horrible Crime, and therefore it might be called, *The great Oyer of Poiſoning.*

3dly, He ſaid, That at the Arraignment there were certain Criticks, who had given out, the Priſoner ſhould deny his Examinations; and found much fault, for that the Examinations were read, the Priſoner ſtanding mute. But for the firſt, how untrue it was, all the World ſaw, the Priſoner here confeſſing them all, being read and ſhewed unto him: and for the ſecond, beſides that it was exceeding diſcreet and convenient the World ſhould receive ſome Satisfaction in a Cauſe of that nature, he cited and ſhewed, that by the Laws of the Land they ought and were bound to do ſo, notwithſtanding the Greatneſs of any, who might thereby be impeached; of whom he ſaid, altho' this was *unum crimen*, yet it was not *unicum crimen.*

4thly, As touching the ſuppoſed Practice or Conſpiracy, he ſolemnly proteſted to God, he knew of none, nor of any Semblance for Colour thereof; and therefore he much inveighed againſt the Baſeneſs and Unworthineſs of ſuch as went about ſo untruly and wickedly to ſlander the courſe of Juſtice. And ſo he came, laſt of all, to that which he had to ſpeak of *Weſton* the Priſoner.

Firſt, Touching the Wickedneſs of his Fact, he very ſeriouſly exhorted him to an unfeigned Confeſſion and Contrition for the ſame, declaring unto him, how that his Confeſſion would be a Satisfaction to God and the World, and that by his Faith and true Repentance he would lay hold upon the Merits of his Saviour.

He perſuaded him, that no vain Hope (which is a Witch) ſhould keep him back from giving Satisfaction to the World, by diſcovering the Guiltineſs of the Great-ones; aſſuring him, that after this Life, as Death left him, ſo Judgment ſhould find him.

And laſtly, taking occaſion there to remember this Poiſoning to have been a Popiſh Trick, which he inſtanced by Examples of one *Gurnandus de Birlanus*, mentioned 22 *Edw.* I. *Squier*, that attempted to poiſon Queen *Elizabeth*'s Saddle; *Lopez*, and Mrs. *Turner*: he then proceeded to give Judgment, which was,

That the Priſoner ſhould be carried from thence to the Place from whence he came, and from thence to *Tyburn*, and there to be hanged by the Neck till he was dead.

Judgment being given, the Lord Chief Juſtice commanded, that the Priſoner might have convenient Reſpite, and the Company of ſome godly learned Men to inſtruct him for his Soul's health.

He was afterwards executed at *Tyburn*, purſuant to the Sentence. At the time of his Execution, Sir *John Hollis* (afterwards Earl of *Clare*) and Sir *John Wentworth*, out of Friendſhip to the Earl of *Somerſet*, rode to *Tyburn*, and urged *Weſton* to deny all that he had before confeſſed: But *Weſton* being prepared for Death, reſiſted their Temptations, ſealing penitently the Truth of his Confeſſions with his laſt Gaſp; and Sir *John Hollis*, Sir *John Wentworth*, together with Mr. *Lumſden*, who had publiſhed a Relation of the Proceedings againſt *Weſton* at his Arraignment, were afterwards proſecuted in the *Star-Chamber*, for traducing the King's Juſtice in thoſe Proceedings *.

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* Bacon's *Works, Fol. Edit. Vol.* I. p. 80—86. Vol. IV. p. 282.

The Proceedings *againſt Sir* John Hollis, *Sir* John Wentworth, *and Mr.* Lumſden, *in the* Star-Chamber, *for traducing the Publick Juſtice,* November 10, 1615. 13 Jac. I.

In Camera Stellata decimo Novembris, 13° *Jacobi Regis*, 1615.

Preſent,

THE Lord Chamberlain, Archbiſhop of *Canterbury*, Lord *Crew*, Lord Steward, Earl of *Pembroke*, Biſhop of *London*, Biſhop of *Winton*, Lord *Zouch*, Lord *Knowles*, Secretary *Winwood*, Chancellor of the Duchy, Sir *Thomas Lake*, the three Chief Juſtices.

Being ſat,

There were brought to the Bar, Sir *John Hollis* (now Lord *Houghton*) Sir *John Wentworth*, and Mr. *Lumſden*, a *Scotiſh* Gentleman, as Offenders and Priſoners, committed by the Lords of the Council. Mr. Attorney-General * did inform againſt them *Ore tenus* in this manner:

The Offence wherewith I ſhall charge the three Offenders at the Bar, is a Miſdemeanor of a high Nature, tending to the Defacing and Scandal of Juſtice in a great Cauſe capital. The particular Charge is this:

The King, amongſt many his Princely Virtues, is known to excel in that proper Virtue of the imperial Throne, which is Juſtice. It is a royal Virtue, which doth employ the other three cardinal Virtues in her Service. Wiſdom to diſcover, and diſcern Nocent or Innocent: Fortitude to proſecute and execute: Temperance, ſo to carry Juſtice as it be not paſſionate in the Purſuit, nor confuſed in involving Perſons upon light Suſpicion nor precipitate in time. For this his Majeſty's Virtue of Juſtice God hath of late raiſed an Occaſion, and erected as it were a Stage or Theatre much to his Honour for him to ſhew it, and act it in the Purſuit of the untimely Death of Sir *Thomas Overbury*, and therein cleanſing the Land from Blood. For, my Lords, if Blood ſpilt pure doth cry to Heaven in God's Ears, much more Blood defiled with Poiſon.

This great Work of his Majeſty's Juſtice, the more excellent it is, your Lordſhips will ſoon conclude the greater is the Offence of any that have ſought to affront it, or traduce it. And therefore, before I deſcend unto the Charge of theſe Offenders, I will ſet before your Lordſhips the Weight of that which they have ſought to impeach; ſpeaking ſomewhat of the general Crime of Impoiſonment, and then of the particular Circumſtances of this Fact upon *Overbury*; and thirdly and chiefly, of the King's great and worthy Care and Carriage in this Buſineſs.

This Offence of Impoiſonment is moſt truly figured in that Device or Deſcription, which was made of the nature of one of the *Roman* Tyrants, that he was *lutum ſanguine maceratum*, Mire mingled or cemented with Blood: for as it is one of the higheſt Offences in Guiltineſs, ſo it is the baſeſt of all others in the mind of the Offenders. Treaſons, *magnum aliquid ſpectant:* They aim at great things; but this is vile and baſe. I tell your Lordſhips what I have noted, that in all God's Books, (both in the Old and New Teſtament) I find Examples of all other Offences and Offenders in the World, but not any one of an Impoiſonment or an Impoiſoner. I find mention of Fear of caſual Impoiſonment: when the wild Vine was ſhred into the Pot, they came complaining in a fearful manner; Maſter, *mors in olla.* And I find mention of Poiſons of Beaſts and Serpents; *the Poiſon of Aſpes is under their lips.* But I find no Example in the Book of God of Impoiſonment. I have ſometime thought of the Words in the Pſalm, *let their Table be made a Snare.* Which certainly is moſt true of Impoiſonment; for the Table, the daily Bread, for which we pray, is turned to a deadly Snare: but I think rather that that was meant of the Treachery of Friends that were participant of the ſame Table.

But let us go on. It is an Offence, my Lords, that hath the two Spurs of offending; *ſpes perficiendi*, and *ſpes celandi:* It is eaſily committed, and eaſily concealed.

It is an Offence that is *tanquam ſagitta noctе volans*; it is the Arrow that flies by Night. It diſcerns not whom it hits; for many times the Poiſon is laid for one, and the other takes it: as in *Sander*'s Caſe, where the poiſoned Apple was laid for the Mother, and was taken up by the Child, and killed the Child: and ſo in that notorious Caſe, whereupon the Statute of 22 *Hen.* VIII. *cap.* 9. was made, where the Intent being to poiſon but one or two, Poiſon was put into a little Veſſel of Barm that ſtood in the Kitchen of the Biſhop of *Rocheſter*'s Houſe; of which Barm Pottage or Gruel was made, wherewith ſeventeen of the Biſhop's Family were poiſoned: nay, divers of the Poor that came to the Biſhop's Gate, and had the broken Pottage in Alms, were likewiſe poiſoned. And therefore, if any Man will comfort himſelf, or think with himſelf, here is great talk of Impoiſonment, I hope I am ſafe; for I have no Enemies; nor I have nothing that any body ſhould long for. Why? that is all one; for he may ſit at table by one for whom Poiſon is prepared, and have a Drench of his Cup, or of his Pottage. And ſo, as the Poet ſaith, *Concidit infelix alieno vulnere*; he may die another Man's Death. And therefore it was moſt gravely, and judiciouſly, and properly provided by that Statute, that Impoiſonment ſhould be High-Treaſon; becauſe whatſoever Offence tendeth to the utter Subverſion and Diſſolution of human Society, is in the nature of High-Treaſon.

Laſtly, It is an Offence that I may truly ſay of it, *non eſt noſtri generis, nec ſanguinis.* It is (thanks be to God) rare in the Iſle of *Britain:* it is neither of our Country, nor of our Church; you may find it in *Rome* or *Italy*. There is a Region, or perhaps a Religion for it: and if it ſhould come amongſt us, certainly it were better living in a Wilderneſs than in a Court.

For in the particular Fact upon *Overbury*. Firſt, for the Perſon of Sir *Thomas Overbury:* I knew the Gentleman. It is true, his Mind was great, but it moved not in any good Order; yet certainly it did commonly fly at good things; and the greateſt Fault that I ever heard by him was, that he made his Friend his Idol. But I leave him as Sir *Thomas Overbury*.

But take him as he was the King's Priſoner in the *Tower*; and then ſee how the caſe ſtands. In that Place, the State is as it were reſpondent to make good the Body of a Priſoner. And if any thing happen to him there, it may (tho' not in this caſe, yet in ſome others) make an Aſperſion and Reflection upon the State itſelf. For the Perſon is utterly out of his own Defence, his own Care and Providence can ſerve him nothing. He is in Cuſtody and Preſervation of the Law; and we have a Maxim in our Law, (as my Lords the Judges know) that when a State is in Preſervation of Law, nothing can deſtroy it, or hurt it. And God forbid but the like ſhould be for the Perſons of thoſe that are in Cuſtody of Law; and therefore this was a Circumſtance of great Aggravation.

Laſtly, To have a Man chaſed to death in ſuch manner (as it appears now by matter of Record; for other Privacy of the Cauſe I know not) by Poiſon after Poiſon, firſt Roſeacre, then Arſenick, then Mercury Sublimate, then Sublimate again; it is a thing would aſtoniſh Man's Nature to hear it. The Poets feign, that the Furies had Whips, that they were corded with poiſonous Snakes; and a Man would think that this were the very Caſe, to have a Man tied to a Poſt, and to ſcourge him to death with Snakes: for ſo may truly be termed diverſity of Poiſons.

Now I will come to that which is the principal; that is, his Majeſty's princely, yea, and as I may truly term it, ſacred Proceeding in this Cauſe. Wherein I will firſt ſpeak of the Temper of his Juſtice, and then of the Strength thereof.

Firſt, It pleaſed my Lord Chief Juſtice to let me know, (that which I heard with great Comfort) which was the Charge that his Majeſty gave to himſelf firſt, and afterwards to the Commiſſioners in this Caſe, worthy certainly to be written in Letters of Gold, wherein his Majeſty did fore-rank and make it his prime Direction, that it ſhould be carried without touch to any that was innocent; nay more, not only without Impeachment, but without Aſperſion: which was a moſt noble and princely Caution from his Majeſty; for Men's Reputations are tender things, and ought to be like Chriſt's Coat, without Seam. And it was the more to be reſpected in this caſe, becauſe it met with two great Perſons; a Nobleman that his Majeſty had favoured and advanced, and his Lady being of a great and honourable Houſe: tho' I think it be true, that the Writers ſay, that there is no Pomegranate ſo fair or ſo ſound, but may have a periſhed Kernel. Nay, I ſee plainly, that in thoſe excellent Papers of his Majeſty's own Handwriting, being as ſo many Beams of Juſtice iſſuing from that Virtue which doth ſhine in him; I ſay, I ſee it was ſo evenly carried without Prejudice, (whether it were a true Accuſation of the one part, or a Practice of a falſe Accuſation on the other) as ſhewed plainly that his Majeſty's Judgment was *tanquam tabula raſa*, as a clean Pair of Tables, and his Ear *tanquam janua aperta*, as a Gate not ſide open, but wide open to Truth, as it ſhould be by little and little diſcovered. Nay, I ſee plainly, that at the firſt (till farther Light did break forth) his Majeſty was little moved with the firſt Tale, which he vouchſafeth not ſo much as the name of a Tale; but calleth it a Rumour, which is an headleſs Tale.

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* *Sir* Francis Bacon.

As for the Strength or Reſolution of his Majeſty's Juſtice, I muſt tell your Lordſhips plainly: I do not marvel to ſee Kings thunder out Juſtice in Caſes of Treaſon, when they are touched themſelves; and that they are *vindices doloris proprii:* but that a King ſhould *pro amore juſtitiæ* only, contrary to the tide of his own Affection, for the Preſervation of his People, take ſuch Care of a Cauſe of Juſtice, that is rare, and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this Kingdom, nor in any other Kingdom, the Blood of a private Gentleman vindicated, *cum tanto motu regni*, or to ſay better, *cum tanto plauſu regni.* If it had concerned the King or Prince, there could not have been greater nor better Commiſſioners to examine it. The Term hath been almoſt turned into a *juſtitium*, or vacancy; the People themſelves being more willing to be Lookers-on in this Buſineſs, than to follow their own. There hath been no Care of Diſcovery omitted, no Moment of Time loſt. And therefore I will conclude this Part with the ſaying of *Solomon*, *Gloria Dei celare rem, & gloria Regis ſcrutari rem.* And his Majeſty's Honour is much the greater, for that he hath ſhewed to the World in this Buſineſs, as it hath relation to my Lord of *Somerſet*, (whoſe Caſe in no ſort I do prejudge, being ignorant of the Secrets of the Cauſe, but taking him as the Law takes him hitherto, for a Suſpect) I ſay, the King hath to his great Honour ſhewed, that were any Man in ſuch a Caſe of Blood, as the Signet upon his right Hand, (as the Scripture ſays) yet would he pull him off.

Now will I come to the particular Charge of theſe Gentlemen, whoſe Qualities and Perſons I reſpect and love; for they are all my particular Friends: But now I can only do this Duty of a Friend to them, to make them know their Fault to the full.

And therefore, firſt, I will by way of Narrative declare to your Lordſhips the Fact, with the Occaſion of it; then you ſhall have their Confeſſions read, upon which you are to proceed, together with ſome collateral Teſtimonies by way of Aggravation: and laſtly, I will note and obſerve to your Lordſhips, the material Points which I do inſiſt upon for their Charge, and ſo leave them to their Anſwer. And this I will do very briefly, for the Caſe is not perplexed.

That wretched Man *Weſton*, who was the Actor or mechanical Party in this Impoiſonment, at the firſt Day being indicted by a very ſubſtantial Jury of ſelected Citizens, to the number of nineteen, who found *billa vera*, yet nevertheleſs at the firſt ſtood mute; but after ſome Days Intermiſſion, it pleaſed God to caſt out the dumb Devil, and that he did put himſelf upon his Trial; and was by a Jury alſo of great Value, upon his Confeſſion, and other Teſtimonies, found guilty: ſo as thirty-one ſufficient Jurors have paſſed upon him. Whereupon Judgment and Execution was awarded againſt him. After this, being in Preparation for another World, he ſent for Sir *Thomas Overbury*'s Father, and falling down upon his Knees, with great Remorſe and Compunction, aſked him Forgiveneſs. Afterwards, again, of his own Motion, deſired to have his like Prayer of Forgiveneſs recommended to his Mother, who was abſent. And at both times, out of the Abundance of his Heart, confeſſed that he was to die juſtly, and that he was worthy of Death. And after, again, at his Execution (which is a kind of Sealing-time of Confeſſions), even at the point of Death, (altho' there were Tempters about him, as you ſhall hear by and bye) yet he did again confirm publickly, that his Examinations were true, and that he had been juſtly and honourably dealt with. Here is the Narrative which induceth the Charge. The Charge itſelf is this:

Mr. *Lumſden*, whoſe Offence ſtands alone ſingle, (the Offence of the other two being in Conſort; and yet all three meeting in their End and Center, which was to interrupt or deface this excellent Piece of Juſtice:) Mr. *Lumſden*, I ſay, mean while, between *Weſton*'s ſtanding mute and his Trial, takes upon him to make a moſt falſe, odious, and libellous Relation, containing as many Untruths as Lines, and ſets it down in Writing with his own Hand, and delivers it to Mr. *Henry Gibb*, of the Bed-chamber, to be put into the King's Hand; in which Writing he doth falſify and pervert all that was done the firſt Day at the Arraignment of *Weſton*; turning the Pike and Point of his Imputations principally upon my Lord Chief Juſtice of *England*, whoſe Name (thus occurring) I cannot paſs by, and yet I cannot ſkill to flatter. But this I will ſay of him, and I would ſay as much to Ages, if I ſhould write a Story; that never Man's Perſon and his Place were better met in a Buſineſs, than my Lord *Coke* and my Lord Chief Juſtice, in the Cauſe of *Overbury*.

Now, my Lords, in this Offence of Mr. *Lumſden*'s, for the Particulars of theſe ſlanderous Articles, I will obſerve them unto you when the Writings and Examinations are read; for I do not love to ſet the Gloſs before the Text. But in general I note to your Lordſhips, firſt, the Perſon of Mr. *Lumſden:* I know he is a *Scots* Gentleman, and thereby more ignorant of our Laws and Forms: But I cannot tell whether this doth extenuate his Fault in reſpect of Ignorance, or aggravate it much, in reſpect of Preſumption; that he would meddle in that that he underſtood not: but I doubt it came not out of his Quiver; ſome other Man's Cunning wrought upon this Man's Boldneſs. Secondly, I may note unto you the Greatneſs of the Cauſe, wherein he being a private mean Gentleman, did preſume to deal. Mr. *Lumſden* could not but know to what great and grave Commiſſioners the King had committed this Cauſe; and that his Majeſty in his Wiſdom would expect Return of all things from them to whoſe Truſt he had committed this Buſineſs. For it is the part of Commiſſioners, as well to report the Buſineſs, as to manage the Buſineſs; and then his Majeſty might have been ſure to have had all things well weighed, and truly informed: and therefore it ſhould have been far from Mr. *Lumſden* to have preſumed to put forth his hand to ſo high and tender a Buſineſs, which was not to be touched but by employed Hands. Thirdly, I note to your Lordſhips, that this Infuſion of a Slander into a King's Ear, is of all Forms of Libels and Slanders the worſt. It is true, that Kings may keep ſecret their Informations; and then no Man ought to enquire after them, while they are ſhrined in their Breaſt. But where a King is pleaſed that a Man ſhall anſwer for his falſe Information; there, I ſay, the falſe Information to a King exceeds in Offence the falſe Information of any other kind; being a kind (ſince we are in matter of Poiſon) of Impoiſonment of a King's Ear. And thus much for the Offence of Mr. *Lumſden.*

For the Offence of Sir *John Wentworth* and Sir *John Hollis*, which I ſaid was in Conſort, it was ſhortly this: At the time and place of the Execution of *Weſton*, to ſupplant his Chriſtian Reſolution, and to ſcandalize the Juſtice already paſt, and perhaps to cut off the Thread of that which is to come; theſe Gentlemen, with others, came mounted on Horſeback, and in a ruffling and facing manner, put themſelves forward to re-examine *Weſton* upon Queſtions: and what Queſtions? Directly croſs to that that had been tried and judged; for what was the Point tried? That *Weſton* had poiſoned *Overbury*. What was Sir *John Wentworth*'s Queſtion; whether *Weſton* did poiſon *Overbury* or no? A Contradictory directly: *Weſton* anſwered only, that he did him wrong; and turning to the Sheriff ſaid, You promiſed me I ſhould not be troubled at this time. Nevertheleſs, he preſſed him to anſwer; ſaying, he deſired to know it, that he might pray with him. I know not that Sir *John Wentworth* is an Eccleſiaſtick, that he ſhould cut any Man from the Communion of Prayer. And yet for all this vexing of the Spirit of a poor Man, now in the Gates of Death, *Weſton* nevertheleſs ſtood conſtant, and ſaid, I die not unworthily: my Lord Chief Juſtice hath my Mind under my Hand, and he is an honourable and juſt Judge. This is Sir *John Wentworth*'s Offence.

For Sir *John Hollis*, he was not ſo much a Queſtioniſt; but wrought upon the other's Queſtions, and, like a kind of Confeſſor, wiſhed him to diſcharge his Conſcience, and to ſatisfy the World. What World? I marvel! It was ſure the World at *Tyburn*. For the World at *Guild-Hall*, and the World at *London*, was ſatisfied before; *teſte* the Bells that rung. But Men have got a faſhion now-a-days, that two or three Buſy-bodies will take upon them the name of the World, and broach their own Conceits, as if it were a general Opinion. Well, what more? When they could not work upon *Weſton*, then Sir *John Hollis* in an Indignation turned about his Horſe (when the other was turning over the Ladder) and ſaid, he was ſorry for ſuch a Concluſion; that was to have the State honoured or juſtified: but others took and reported his Words in another Degree: but that I leave, ſeeing it is not confeſſed.

Sir *John Hollis*'s Offence had another Appendix, before this in time; which was, that at the Day of the Verdict given by the Jury, he alſo would needs give his Verdict, ſaying openly, that if he were of the Jury, he would doubt what to do. Marry (he ſaith), he cannot tell well whether he ſpake this before the Jury had given up the Verdict, or after; wherein this is little gained. For whether Sir *John Hollis* were a Pre-juror or a Poſt-juror, the one was as to prejudge the Jury, the other as to taint them.

Of the Offence of theſe two Gentlemen in general, your Lordſhips muſt give me leave to ſay, that it is an Offence greater and more dangerous than is conceived. I know well, that as we have no *Spaniſh* Inquiſitions, nor Juſtice in a Corner; ſo we have no gagging of Men's Mouths at their Death, but that they may ſpeak freely at the laſt Hour; but then it muſt come from the free Motion of the Party, not by Temptation of Queſtions. The Queſtions that are to be aſked, ought to tend to farther revealing of their own or others Guiltineſs; but to uſe a Queſtion in the nature of a falſe Interrogatory, to falſify that which is *res judicata*, is intolerable. For that were to erect a Court or Commiſſion of Review at *Tyburn*, againſt the *King's-Bench* at *Weſtminſter*. And beſides, it is a thing vain and idle: for if they anſwer according to the Judgment paſt, it adds no Credit; or if it be contrary, it derogateth nothing: But yet it ſubjecteth the Majeſty of Juſtice to popular and vulgar Talk and Opinion.

My Lords, theſe are great and dangerous Offences; for if we do not maintain Juſtice, Juſtice will not maintain us.

But now your Lordſhips ſhall hear the Examinations themſelves.

Hereupon the Examinations were read.

Mr. *Lumſden* for Anſwer to this Charge ſaid, That himſelf was not at the Arraignment, but what he had ſpoken, or ſet down in writing, he had received of many in common Diſcourſe; who being now demanded to juſtify the ſame, do deny it; and therefore he would confeſs that which was written was falſe. He pleaded Ignorance of the Law, and that he did it without any Purpoſe of Prejudice to the publick Buſineſs, but only as he conceived out of Duty; and becauſe he had always lived as a Gentleman, he would not ſo much degenerate from himſelf and his Birth, nor ſo much offend againſt human Society, as to become a baſe Accuſer; but would ſubmit himſelf and his Offence to the Cenſure of the Court, and to the favourable Interpretation of their Lordſhips.

Mr. *Attorney* reply'd, That his Anſwer and Submiſſion were modeſt, and therefore he would not preſs his Offence farther; yet he would tell him, that in criminal Cauſes, whoſoever would raiſe a Slander, and refuſe to tell his Author, he muſt tell him that which the Laws tell him, that he was the Author himſelf. This kind of ſlandering Judges to Kings and Princes is common. *Popham*, a great Judge in his Time, was complained of by Petition to Queen *Elizabeth*; it was committed to four Privy-Counſellors; but the ſame was found to be ſlanderous, and the Parties puniſhed in the Court. He likewiſe ſaid, I may not admit of this new Learning; I hold it not unworthy a Gentleman to diſcharge his Fault upon the firſt Author; and by the Law, the not doing thereof maketh him the firſt Author; ſo he becomes a falſe Accuſer of himſelf.

Sir *John Wentworth*'s Anſwer was, That he would not willingly be conceived to ſpeak more here than he had done heretofore. It was true, that he was at the Execution of *Weſton*, and did aſk thoſe Queſtions touching the poiſoning of Sir *Thomas Overbury*; which he did on two Reaſons: The one was, becauſe he had ſeen others do the ſame at the ſame time, and eſpecially one *Parkes*; and he thought he might do it as well as he. Another Reaſon was, becauſe he not being at the Arraignment, and hearing that *Weſton* had denied the Fact, he was deſirous to be ſatisfy'd of the Truth from himſelf; yet he purpoſed not to aſk any Queſtions when he came thither: but if to aſk Queſtions of a Man going to Execution were offenſive to the State, he did humbly ſubmit to their Lordſhips Cenſures.

Sir *John Hollis* anſwered, That the Matter declared againſt him contained three Crimes. The firſt, that whereas at the firſt upon the Indictment he ſhould fore-judge the Jury, by delivering his Opinion; ſaying, that he ſhould doubt what to do; and this he confeſſed, as a Man perhaps more trickiſh and curious to give his Verdict or Judgment of Life or Death than others: And if a bare word of his Opinion drawn by Diſcourſe (he being but a Stander-by in this Buſineſs) be to be cenſur'd, I appeal to your Judgments. His ſecond Offence was for giving of Counſel, and aſking Queſtions of *Weſton* at the Execution. He ſaid, he confeſt he was there, but carried with a general deſire which he had to ſee the Execution, as he had done in many like caſes before. And he had formerly ſeen that it was a common thing for Men Standers-by to aſk Queſtions of thoſe that were to be executed: and now many aſking this Queſtion of the Fact of *Weſton*, and he anſwering in general Terms, I die not unworthily; he alſo, among many others, did aſk him the Queſtion (as hath been opened;) which was not purpoſed of him when he came thither, but was occaſioned by reaſon of one that ſtood behind him at the Gallows, who ſaid to *Weſton*, that he ſhould confeſs the Truth of this Fact, for if he had had his Right, he had been hanged many years ago: whereunto *Weſton* anſwer'd, Fact or no Fact I die worthily. Sir *John* ſaid, that Mr. *Attorney* had ſo well apply'd his Charge againſt him, that tho' he carry'd the Seal of a good Conſcience with him, he would almoſt make him believe that he was guilty; but he hoped their Lordſhips would take the Bird by the Body and not by the Feathers: His Speech, he ſaid, might be well underſtood, but the worſt end of it was turned towards him; he did but the part of a Chriſtian to perſuade *Weſton* to diſcharge his Conſcience, and intended not to controvert the Law and Juſtice that had paſſed on him. As for the Teſtimony of *Bearingborne*, I know not what he is that hath depoſed againſt me; but it ſeems he is ſome Man of Trade, againſt whom I think I may now put myſelf in Oppoſition, that my Denial may ſtand againſt his Affirmation. In his Youth ſome of your Lordſhips know, that he [Sir *John Hollis*] had ſpent ſome of his Time in the Wars and Travel, and afterwards had lived in place at Court, both in the Time of Queen *Elizabeth*, and his Majeſty eight Years: he had ſerved the late moſt worthy Prince, the Memory of whom, he ſaid, did grieve him that he ſhould plead his Name at the Bar, whom for the Miſery of this State it pleaſed God to take away; ſince whoſe Death he had been as a Fiſh out of the Water. Thus much, he ſaid, was pulled out of his Mouth, by reaſon of his Teſtimony produced againſt him; but he knew that not Words but his Cauſe muſt help him out of this Mire. And therefore if their Lordſhips had determined any thing againſt him for theſe Offences, he did humbly ſubmit himſelf to their honourable Cenſures. The Lord Chancellor ſaid, that this Depoſition of *Bearingborne* was not read but in Explanation and Aggravation, and not for Evidence of Condemnation againſt Sir *John Hollis*.

Mr. *Attorney* reply'd upon Sir *John* to this Anſwer of his, That his Speech to *Weſton* was occaſional, and not reſolved on before his coming to the Execution; That it was new Matter thought upon and deviſed ſince his being queſtioned for his Offence; for there was never a word thereof ſpoken in this Examination: and there this is the Feather you ſpeak of, and not the Body. Whereunto Sir *John Hollis* anſwered, that they might very well ſtand together.

Hereupon Sir *Edward Coke*, the Chief Juſtice of the *King*'s-*Bench*, pronounced the Sentence; when he ſaid, that he would ſay of this Buſineſs, and his dealing therein, as *Abimelech* ſaid of himſelf, *Tu ſcis, Domine*, *quod feci in ſimplicitate cordis & munditie manuum*; and therefore would alſo boldly affirm, that there were none brought into queſtion of this great Buſineſs of Poiſon, but ſuch as in his Soul and Conſcience were apparently Guilty: He ſaid he was no fit Man for a Common-Place; yet he had found ſome Records of Poiſoning which he would ſhew: as namely in the Treaſury 31 *Ed.* III. as the King indeed had two Treaſuries, the one of Records, the other of Gold and Silver; where a Woman committed Adultery, and after poiſoned her Huſband. And 21 *Edw.* I. *Solomon le Roch*, a Judge, was poiſoned by a Monk, who afterwards prayed to be deliver'd to the Cenſure of the Church; and he was denied, becauſe the ſame was a Wrong to the State to poiſon a Judge. And it is to be obſerved in the firſt Caſe, that Poiſon and Adultery go together; and on the ſecond, that Poiſon and Popery go together. From *Edward* III. down to 22 *Henry* VIII. (which was a great Lump of Time) no mention is made of poiſoning any Man; and then a Statute was made, that thoſe that did poiſon any body ſhould be boiled to death, and were firſt to be put in at the Tiptoes. In this Buſineſs, he ſaid, he would tell no News, but he was not yet at the Root; God forbid that thoſe kinds of Offences ſhould be unſearched and unpuniſhed, whereſoever they are found: There are divers ſorts of Poiſoning, by ſome whereof a Man ſhall die a Month or a Quarter of a Year after, *ut ſic ſe ſentiat mori*; and ſhall not know in what manner he is poiſoned: as one *Squire*, a Prieſt, ſhould have poiſoned Queen *Elizabeth* by poiſoning her Saddle. This Poiſoning came firſt from Popery. In this Caſe of *Weſton* he would never confeſs the Indictment, becauſe the Indictment was, that he poiſoned Sir *Thomas Overbury* with Arſenick, Roſeaker and Mercury Sublimate; whenas indeed it was not known what Poiſon killed him. Here the poor Man conceived a Scruple, that if he did not know with which of the Poiſons *Overbury* was poiſoned, he was not guilty of the Offence laid in the Indictment; and therefore ſaid he was not guilty of the Offence. Now *ut obſtruatur os iniqui*, that the Mouth of the wicked Man may be fully ſtopped; after that it was reſolved unto him, that the manner of Killing, laid in the Indictment, was not the Point of the Indictment, but the Matter of Killing; as if the Indictment be, that a Man was killed with a Sword, whereas indeed he was killed with a Dagger; yet the Party is guilty, becauſe the killing of a Man is the Point of the Indictment; then he confeſſed the Fact. And for this Gentleman, Mr. *Lumſden*, a *Scotiſh* Gentleman, a Nation that he loved well, (and to his Majeſty both *Engliſh* and *Scotiſh* were equally dear) *Scoti & Angli nullo diſcrimine*, *&c.* He that infuſeth into his Majeſty's Ears the leaſt Falſhood concerning his Judges unjuſtly, is like him that infuſeth never ſo little Copper into Coin; they both commit a kind of Treaſon: and for the Matter of it, which was informed, for *qui non bene reſpondet*, *non reſpondet*; and a little to divert from this Buſineſs, you, Mr. *Lumſden*, were a Pandar to the Earl of *Somerſet*, and were his Favourer in Deed, but his Follower in Evil. *Afflictio dat intellectum*, let your Affliction now give you ſenſe and feeling of your Sins; your Service of a Pandar is apparently to be ſhewed you by a Letter under my Lord of *Somerſet*'s own Hand, and your Anſwer to it. Let it then enter your Heart and Soul to aſſure yourſelf, that there is now no Safety, Protection, nor Aſſurance, but under a religious Faith in Jeſus Chriſt; and that, *radix juſtitiæ eſt pietas*, the Foundation and Root of Juſtice is Piety. I confeſs I had a great Suſpicion out of whoſe Quiver the Murder came firſt; but becauſe I had no certain Proofs, I would never queſtion them. This Reſolution of *Weſton* to be mute, was very great. When he was perſuaded by the Biſhop of *London* and *Ely* to plead, he would not: and after being promiſed that if he would ſpeak, he ſhould have a Popiſh Prieſt; he thereunto anſwer'd, Have I refuſed the godly Perſuaſions of the Biſhop of *London*, and ſhall I anſwer to a Popiſh Prieſt? And for your Perſuaſions, Mr. *Lumſden*, that you will not be an Accuſer, this is a contemptuous Anſwer; for this is not to be an Accuſer, being examin'd of another to diſcover him; but your Refuſal in this kind o anſwer is a manifeſt Contempt: and for the like Offence, a great Lady of the Land lieth now in the *Tower*, only for refuſing to anſwer being examined. *Quod diabolus ad malum expoſuit*, *Deus ad bonum expoſuit*; That which the Devil expoſeth to Evil, God diſpoſeth to Good. This refuſing to diſcover an Offender, is a Contempt to a Maſter of a Family; if he ſhould command any of his Servants to tell him of an Offence committed, and by whom; and the Servant that is ſo aſked ſhall refuſe to tell him, he ſhall be worthy of Puniſhment: much more any Subject being examined by the King's Authority and Commiſſioners, if he ſhall refuſe to make diſcovery of the Truth. The Statute of the 1 and 2 of *Rich.* II. is, that he that doth raiſe falſe News between the King and his Nobles, ſhall be impriſoned for the ſpace of a Year; I think fit that Mr. *Lumſden*'s Impriſonment ſhould be for a Year, and afterwards, until he ſhould produce his Author. As for Sir *John Hollis*, his Fault of queſtioning and counſelling, it is very great, the ſame being made after a Verdict; for if a Man commit Treaſon the twentieth day of *May*, and ſell his Lands the fifth day, and after is indicted that he did commit the Treaſon the firſt day, which goes before the Sale, and after is found guilty of this Indictment; he that is to loſe the Land cannot deny this Verdict, and ſay the Treaſon was committed the twentieth day, tho' it concern him for all that he hath of laying; if that he that is to be undone by a Verdict ſhall not ſpeak croſs Matter to a Verdict (as the Books of *Edw.* III. and *Edw.* I. are, and 11 *Hen.* IV. 53 *Eſtophel.* 137.) what ſhall be done to him that having no Cauſe in a matter Capital, wherein he had nothing to do, would intermeddle? For as the Law ſaith, *Turpis eſt admiſſio rei ad ſe non pertinentis.* Sir *John* ſaid, that it hath been a Cuſtom to aſk Queſtions at thoſe times, and that he did uſually go to Executions. For his own part, he ſaid, that ever ſince he was a Scholar, and had read thoſe Verſes of *Ovid*, *Triſt.* iii. 5.

Et lupus & vulpes inſtant morientibus——
Et quæcunque minor nobilitate fera eſt,

he did never like it; and therefore, he ſaid, he did marvel much at the Uſe of Sir *John*. Sir *John* anſwers here at the Bar, and ſaith, that if any thing were determined againſt him, he did humbly ſubmit himſelf thereto: by which Term ſo determining, he meant (I think) as if we did give our Cenſures againſt him by Conſpiracy. For my own Part, I talked with none other, nor I think did any of us one ſpeak with other before we came together here. Peradventure he thinks (as ſome have thought) that all the Carriage of this Buſineſs is but a Conſpiracy againſt the Earl of *Somerſet*. He ſaith, he hath been ſince the Prince's Death but as a Fiſh out of the Water. I know not what he means by a Fiſh out of the Water: I have heard that *Clericus in oppido*, *tanquam piſcis in arido*, A Clerk in the Town is like a Fiſh out of the Water: he is a Juſtice of Peace, a Commiſſioner of *Oyer* and *Terminer*; a Man of fair Lands, 1500*l.* *per annum* at the leaſt; this Money is enough to be a Privy-Counſellor: and yet Sir *John Hollis* is like a Fiſh out of the Water. I know he hath travelled many Countries, ſpeaks many Languages, hath ſeen many Manners and Cuſtoms, and knows much of foreign Nations; yet a little Knowledge of the Common-Law of this Land would have been better for him than all theſe; it would have kept him from aſking Queſtions, and counſelling in Scandal of Religion and Juſtice; two of the main Pillars of the Kingdom, and that in cold Blood. Evidence is above Eloquence; the Party himſelf acknowledged that he died juſtly; and thoſe that ſaw him ſaid he died penitently: So to conclude, as it was ſometime ſaid of *Rome*, *Et quæ tanta fuit Romam tibi cauſa videndi*, he might very well now ſay of Sir *John Hollis* his going to *Tyburn*, with a little Alteration of the Words, *Et quæ tanta fuit* Tyburn *tibi cauſa videndi.* For the Cenſure, he agreed with that which had been ſet; and the Acknowledgment of Mr. *Lumſden* ſhould be alſo in the Court of Common-Pleas and the Exchequer, becauſe the Juſtice of all Courts may be wronged with ſlanderous Petitions. He moved that Information might be made againſt the other Gentlemen that were aſking ſuch Queſtions as theſe were; and that they might receive their due Puniſhment: he meant, he ſaid, Mr. *Sackvil*, Sir *Thomas Vavaſor*, and Sir *Henry Vane*, who would be a Baron if Attainders did not lie in the Way: If theſe be not puniſhed, theſe Gentlemen will think that they have wrong; for *quæ mala cum multis patimur leviora videntur.* He ſaid he would wiſh Gentlemen to take heed how they fell into Diſcourſes of theſe Buſineſſes, when they be at their Chambers; for in the proceeding of theſe great Buſineſſes and Affairs, if a Man ſpeak irreverently of the Juſtice thereof, the Bird that hath Wings will reveal it.

The Sentence was Fine, Impriſonment, and Submiſſion, as followeth:

Lumſden fined two thouſand Marks, impriſoned in the *Tower* for a whole Year, and after until he ſhall, at the *King*'s-*Bench* Bar, ſubmit himſelf and confeſs his Fault, and alſo produce his Authors.

Sir *John Hollis* was fined one thouſand Pounds, impriſoned in the *Tower* for the ſpace of a Year.

Sir *John Wentworth* fined one thouſand Marks, impriſoned in the *Tower* for a Year; and both to make Submiſſion at the *King*'s-*Bench* Bar.

XXIV. *The Trial of* ANNE TURNER, *Widow, at the* King's-Bench, *for the* Murder *of Sir* Thomas Overbury, *the 7th of* November 1615. Mich. 13 Jac. I.

THE Indictment whereupon *Richard Weſton* took his Trial being repeated *verbatim*, ſhe was indicted for comforting, aiding and aſſiſting the ſaid *Weſton*, in the Poiſoning to death Sir *Thomas Overbury*; to which ſhe pleaded not Guilty, putting herſelf upon God and the Country[*]. Whereupon a ſufficient Jury of two Knights, and the reſt Eſquires and Freeholders of *Middleſex*, were ſworn and impanelled for the Trial, whereof Sir *Thomas Fowler* was Foreman.

Sir *Ed. Coke*, Lord Chief Juſtice, told her, That Women muſt be covered in the Church, but not when they are arraigned, and ſo cauſed her to put off her Hat; which done, ſhe covered her Hair with her Handkerchief, being before dreſſed in her Hair, and her Hat over it.

Sir *Laurence Hyde*, the Queen's Attorney, open'd the Matter much to the Effect as he did at *Weſton*'s Arraignment, ſhewing the Wickedneſs and Heinouſneſs of Poiſoning: He ſhewed further, That there was one Dr. *Forman*, dwelling in *Lambeth*, who died very ſuddenly, and a little before his Death deſired that he might be buried very deep in the Ground, or elſe (ſaith he) I ſhall fear you all.

To him, in his Life-time, often reſorted the Counteſs of *Eſſex* and Mrs. *Turner*, calling him Father[†]: their cauſe of coming to him was, That by force of Magick, he ſhould procure the now Earl of *Somerſet*, then Viſcount *Rocheſter*, to love her, and Sir *Arthur Manwaring* to love Mrs. *Turner*, by whom (as it was there related) ſhe had three Children. About this Buſineſs, the Counteſs of *Eſſex* wrote two Letters, one to Mrs. *Turner*, another to Dr. *Forman*, as followeth:

The Counteſs's Letter to Mrs. Turner.

[*Burn this Letter.*]

Sweet Turner,

‘ I Am out of all hope of any Good in this World, for my Father, my
‘ Mother, and my Brother ſaid, I ſhould lie with him; and my Bro-
‘ ther *Howard* was here, and ſaid, he would not come from this Place all
‘ Winter; ſo that all Comfort is gone: and, which is worſt of all, my
‘ Lord hath complained, that he hath not lain with me, and I would not
‘ ſuffer him to uſe me. My Father and Mother are angry, but I had rather
‘ die a thouſand times over; for beſides the Sufferings, I ſhall *loſe* his Love
‘ if I lie with him. I will never deſire to ſee his Face, if my Lord do that
‘ unto me. My Lord is very well as ever he was, ſo as you may ſee in
‘ what a miſerable caſe I am. You may ſend the Party word of all; he
‘ ſent me word all ſhould be well, but I ſhall not be ſo happy, as the Lord
‘ to love me. As you have taken pains all this while for me, ſo now do
‘ all you can, for never ſo unhappy as now; for I am not able to endure
‘ the Miſeries that are coming on me, but I cannot be happy ſo long as
‘ this Man liveth: therefore pray for me, for I have need, but I ſhould be
‘ better if I had your Company to eaſe my Mind. Let him know this ill
‘ News: If I can get this done, you ſhall have as much Money as you
‘ can demand, this is fair Play.

Your Siſter,
Frances Eſſex.

A Letter from the Counteſs to Dr. Forman.

Sweet Father,

‘ I Muſt ſtill crave your Love, altho' I hope I have it, and ſhall deſerve
‘ it better hereafter: Remember the Galls, for I fear tho' I have yet no
‘ cauſe but to be confident in you, yet I deſire to have it as it is yet remain-
‘ ing well; ſo continue it ſtill, if it be poſſible, and if you can you muſt
‘ ſend me ſome good Fortune, alas I have need of it. Keep the Lord ſtill
‘ to me, for that I deſire; and be careful you name me not to any body,
‘ for we have ſo many Spies, that you muſt uſe all your Wits, and all little
‘ enough, for the World is againſt me, and the Heavens favour me not,
‘ only happy in your Love; I hope you will do me good, and if I be in-
‘ grateful, let all Miſchief come unto me. My Lord is luſty and merry,
‘ and drinketh with his Men; and all the Content he gives me, is to abuſe
‘ me, and uſe me as doggedly as before: I think I ſhall never be happy in
‘ this World, becauſe he hinders my Good, and will ever, I think ſo; re-
‘ member (I beg for God's ſake) and get me from this vile Place.

Your affectionate loving Daughter,
Frances Eſſex.

‘ Give *Turner* warning of all things, but not the Lord: I would not
‘ have any thing come out for fear of the Lord Treaſurer, for ſo they may
‘ tell my Father and Mother, and fill their Ears full of Toys.'

There was alſo ſhewed in Court certain Pictures of a Man and Woman in Copulation, made in Lead, as alſo the Mould of Braſs, wherein they were caſt, a black Scarf alſo full of white Croſſes, which Mrs. *Turner* had in her Cuſtody. At the ſhewing of theſe, and inchanted Papers and other Pictures in Court, there was heard a crack from the Scaffolds, which cauſed great Fear, Tumult and Confuſion among the Spectators, and throughout the Hall, every one fearing Hurt, as if the Devil had been preſent, and grown angry to have his Workmanſhip ſhewed, by ſuch as were not his own Scholars; and this Terror continuing about a quarter of an hour, after Silence proclaimed, the reſt of the cunning Tricks were likewiſe ſhewed.

Dr. *Forman*'s Wife being Adminiſtratrix of her Huſband, found Letters in Packets, by which much was diſcovered; ſhe was in Court, and depoſed that Mrs. *Turner* came to her Houſe immediately after her Huſband's Death, and did demand certain Pictures which were in her Huſband's Study; namely, one Picture in Wax, very ſumptuouſly apparelled in Silks and Sattins, as alſo one other ſitting in form of a naked Woman, ſpreading and laying forth her Hair in a Looking-glaſs, which Mrs. *Turner* did confidently affirm to be in a Box, and that ſhe knew in what part or room of the Study they were.

Mrs. *Forman* further depoſeth, That Mrs. *Turner* and her Huſband would be ſometimes three or four hours locked up in his Study together. She did depoſe further, that her Huſband had a Ring would open like a Watch.

There was alſo a Note ſhewed in the Court, made by Dr. *Forman*, and written in Parchment, ſignifying what Ladies loved what Lords in the Court; but the Lord Chief Juſtice would not ſuffer it to be read openly in the Court.

Mrs. *Turner* ſent *Margaret* her Maid to Mrs. *Forman*, and wiſhed that all ſuch Letters and Papers as concerned the Earl of *Somerſet*, or the Counteſs of *Eſſex*, or any other great Perſonages, ſhould be burnt; telling her, That the Council's Warrant ſhould come to ſearch the Study, and that all his Goods might be ſeized: whereupon ſhe and her Maid *Margaret*, with the conſent of Mrs. *Forman*, burnt divers Letters and Papers, but yet ſhe kept ſome without their Privity.

There was alſo Enchantments ſhewed in Court, written in Parchment, wherein were contained all the Names of the bleſſed Trinity, mentioned in the Scriptures; and in another Parchment, + *B.* + *C.* + *D.* + *E.* and in a third likewiſe in Parchment, were written all the Names of the Holy Trinity, as alſo a Figure, in which was written this Word, *Corpus*; and upon the Parchment was faſtned a little piece of the Skin of a Man.

In ſome of theſe Parchments, were the Devils particular Names, who were conjured to torment the Lord *Somerſet* and Sir *Arthur Manwaring*, if their Loves ſhould not continue, the one to the Counteſs, the other to Mrs. *Turner*.

Mrs. *Turner* alſo confeſſed, That Dr. *Savories* was uſed in ſucceſſion after *Forman*, and practiſed many Sorceries upon the Earl of *Eſſex*'s Perſon.

Mrs. *Turner* being in a manner kept cloſe Priſoner in one of the Sheriff's Houſes in *London*, before ſhe was brought to the Bar, knew not that *Weſton* was executed; but by the Proceedings, having underſtanding thereof, and hearing divers Examinations read, it ſo much dejected her, that in a manner ſhe ſpake nothing for herſelf. Alſo Examinations and Witneſſes, *viva voce*, that were produced at *Weſton*'s Arraignment, and divers others, were now read again, as the Examinations of one *Edward Pain*, *John Wright*, and *Robert Freeman*.

Symcots, *Raulins*, *Payte* and *Williams*, at one of theſe Examinations, gave evidence, That one *Franklin*, being an Apothecary and Druggiſt, was the Provider of all the Poiſons given to Sir *Thomas Overbury*.

A Chirurgeon there depoſed, That he cured *Franklin* of the Pox; and that at ſeveral times he demanded of this Chirurgeon, What was the ſtrongeſt Poiſon? The Chirurgeon demanding of him what he would do with it, *Franklin* replies, Nothing but for his Experience, and to try Concluſions.

Another Examination of one *Mercer*, who had Conference with the ſaid *Franklin*, calling him Couſin, who demanded of this Examinant, What News? He anſwered, I hear ill News, I am ſorry that my old Lord and Maſter's Son is found inſufficient, and not able to content the Lady.

Franklin replies, I have a hand in that Buſineſs; I have a great Friend of my Lady of *Eſſex*, ſhe allows me 2*s.* 6*d.* a-day for my Boat-hire, and 10*s.* a-week for my Diet, I could have any Money I would. *Mercer* replies, But, Couſin, how can God bleſs you in this Buſineſs? *Franklin* anſwers, Let them talk of God that have to do with him, my Lord of *Somerſet* and the Counteſs will bear me out in any thing I do; if you have any Suit, wherein you may do your ſelf any good, and I may gain by it, I will warrant you I will get it.

Frances depoſeth, that *Franklin* married his Siſter, and that he thinketh in his Conſcience ſhe was poiſoned; and that upon ſome Diſcontent, he heard him ſay, He would be hanged for never a Whore or Quean of them all.

The Lord Chief Juſtice made a Speech upon divers Examinations there read, That the Earl of *Somerſet* gave Directions, that of the Powder he ſent to *Overbury*, that which ſhould be left, ſhould be brought back again: his Pretext was, that it ſhould make him ſick; which ſhould be the Ground to make the King grant his Liberty, ſaying further, It would do *Overbury* good; and he had Tarts and Jellies likewiſe ſent him by the Counteſs, with expreſs Commandment, that none muſt eat of them but Sir *Thomas*, ſaying, they will do him no harm.

At another time, the Counteſs ſent Tarts, Jellies and Wine, with Directions, that thoſe which had been formerly ſent, ſhould be brought back again; and thoſe laſt brought, ſhould be given him at Supper, and then all ſhould be well; but Directions given, that neither the Lieutenant, nor his Wife might eat of them, but they might drink of the Wine, for in the Tarts and Jellies there might be Letters, but in the Wine there might be none. And afterwards it was openly related, and proved by divers Witneſſes, that thoſe words *Letters* were private Tokens between the Counteſs, and the Lieutenant, and *Weſton*, to give notice what things were poiſoned, and what not.

In the Examinations that were of *Weſton*, it was related, That Mr. *James* told him, that the Earl his Maſter would pay him for his pains about Sir *Thomas Overbury*.

Then the Lord Chief Juſtice gave in charge to the Jury, concerning the Evidence they had formerly heard, and told them, That *Weſton* at his Examination, had confeſſed, that all he had ſaid formerly was true.

He further related, What a great Vexation and Grief it was to the King, that *Somerſet* only by making uſe of his Favour and Love, ſo foul a Fact was done: as, Firſt, To be the Occaſion to put Sir *Thomas Overbury* to Employment for the Embaſſage at *Ruſſia:* and, Secondly, To make him refuſe the ſame, and to give right Cauſe for his Commitment: Thirdly, To bear him in hand, that he would work his Liberty, but ſtill aggravated and laboured the contrary, and gave Directions to the Lieutenant of the *Tower*, to look ſurely to him, and to keep him cloſe Priſoner, and that he ſhould ſend to none of his Friends, or they to him, urging great Matters againſt him.

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[*] 3 Co. Inſt. 49. 135.

[†] Complete Hiſt. of England, *Vol.* III. *p.* 693.

Sir *Thomas Monſon* was often employed to give Directions to the Lieutenant therein; which was a moſt barbarous Courſe to be ſo dealt withal, only for a Contempt: concluding, that *Overbury* was a cloſe Priſoner to all his Friends, but open to all his Enemies, ſuch as *Somerſet* would have or ſend unto him.

Then the Lord Chief Juſtice told Mrs. *Turner*, that ſhe had the ſeven deadly Sins; *viz.* a Whore, a Baud, a Sorcerer, a Witch, a Papiſt, a Felon, and a Murderer, the Daughter of the Devil *Forman*; wiſhing her to repent, and to become a Servant of Jeſus Chriſt, and to pray to him to caſt out of her thoſe ſeven Devils.

She deſired the Lord Chief Juſtice to be good unto her, ſaying, ſhe was ever brought up with the Counteſs of *Somerſet*, and had been of a long time her Servant, and knew not that there was Poiſon in any of thoſe things ſent to Sir *Thomas Overbury*.

Then the Jury went forth, and not long after returned, finding her Guilty.

Who being aſked, What ſhe had to ſay for her ſelf, why Judgment ſhould not be pronounced againſt her; ſhe only deſired Favour, but could not ſpeak any thing for weeping.

Then Judge *Crook* made another grave Speech, exhorting her to Repentance, and to prepare her ſelf ready for Death; and that the little time which ſhould be aſſigned her to live, ſhe ſhould not ſpend it either in Hope or in Imagination to get Life, for that Hope was but a Witch. Upon concluſion of which Speech, he gave Judgment, and told her, ſhe had had a very honourable Trial, by ſuch Men as he had not ſeen for one of her Rank and Quality, and ſo was delivered to the Sheriffs.

Upon the *Wedneſday* following, ſhe was brought from the Sheriff's in a Coach to *Newgate*, and was there put into a Cart; and caſting Money often among the People as ſhe went, ſhe was carried to *Tyburn*, where ſhe was executed, and whither many Men and Women of faſhion came in Coaches to ſee her die: to whom ſhe made a Speech, deſiring them not to rejoice at her Fall, but to take example by her; ſhe exhorting them to ſerve God, and abandon Pride, and all other Sins; relating her breeding with the Counteſs of *Somerſet*, having had no other Means to maintain her and her Children, but what came from the Counteſs: and ſaid farther, That when her hand was once in this Buſineſs, ſhe knew the revealing of it would be her Overthrow. The which, with other like Speeches, and great Penitency there ſhewed, moved the Spectators to great Pity, and Grief for her.

XXV. *The Trial of Sir* JERVIS ELWES, *Kt. Lieutenant of the* Tower, *at the* Guild-Hall *of* London, *for the* Murder *of Sir* Thomas Overbury, *the* 16*th of* November, 1615. 13 Jac. I.

THE Form of the Indictment was the malicious Aiding, Comforting, and Abetting of *Weſton* in the Poiſoning and Murdering of *Overbury*; whereupon it was laid againſt him as follows:*

Firſt, When *Weſton* received the Vial of Poiſon of two Inches long, to give Sir *Thomas*, he having the Glaſs in one Hand, and Broth for Sir *Thomas* in the other Hand, meeting the Lieutenant, aſked him thus, *Sir, ſhall I give it him now?* The Lieutenant reproved him, yet that Night he gave it him in his Broth: *Ergo*, the Lieutenant knew of the Practice and Poiſoning of Sir *Thomas Overbury: & qui non propulſat injuriam cum poſſit, infert.* Cicero.

After this was known to be Poiſon, yet he kept *Weſton* ſtill; he favoured, countenanced and graced him, and one time ſent him a Cup of Sack, and bid his Man tell him, that he loved him as well as ever he did: all this while he paid him no Wages, and as ſoon as *Overbury* died, *Weſton* was removed.

The Counteſs wrote a Letter to the Lieutenant; with the Letter ſhe ſent poiſoned Tarts to *Overbury*, and Wine to the Lieutenant's Wife; and bade him give the Tarts to *Overbury*, for there were Letters in them, but his Wife and Children might drink the Wine, for ſhe was ſure there were no Letters in it.

The Earl of *Northampton* writ a Letter to the Lieutenant, concerning the Impriſonment of *Overbury*; the ſaid Earl writ two Letters to *Rocheſter*, containing theſe Words.

The Earl of Northampton's *Letter to* Rocheſter.

Sweet Lord,

‘THINK not I find Pain in that which gives me ſweeteſt Pleaſure, which is any thing that falls from your Pen; three things concur to my exceeding joy in your worthy Letters, Proof of your Love, Comfort in your Words, and Judgment in your Writing: you may believe the Words of him that will rather die than flatter you; my Heart is full of the Love of you; your Characters are no more pain for me to peruſe, being as well acquainted with your Hand as my own, the Pain is no more than the cracking of a Nut for the ſweet Kernel, or my Niece's Pain, in the Silver-dropping Stream of your Pen.'——[There the Lord Chief Juſtice left off reading for the Bawdineſs of it; then after in the Letter followed] I ſpent two Hours yeſterday, prompting the Lieutenant with Cautions and Conſiderations; obſerving with whom he is to deal, that he might the better act his Part, for the Adventure in which he dealeth.'

Henry Northampton.

Another Letter to Rocheſter.

Sweet Lord,

‘I Cannot deliver unto you with what Caution and Conſideration, *&c.* and the Lieutenant looking to his Buſineſs, which concerns no more than Text affords, that marched in his Affairs, I ſhall hold him diſcreet, and love him better whilſt I live, for this his Concluſion: For this *Negro* can no more change his Skin than a *Leopard* his Spots.'

Henry Northampton.

Another Letter to Rocheſter.

Sweet Lord,

‘O*Verbury* being viewed, there was found in his Arm an Iſſue, and on his Belly twelve Kernels likely to break to iſſue, each as big as Three-Pence; one Iſſue on his Back, with a tawny Plaiſter on it; this was ſtrange and ugly. He ſtunk intolerably, in ſo much that he was caſt into the Coffin with a looſe Sheet over him. God is gracious in cutting off ill inſtruments from off the factious Crew: If he had come forth, they would have made uſe of him. Thus, Sweet Lord, wiſhing you all Increaſe of Happineſs and Honour, I end,

Your Lordſhip's, more than any Man,

Henry Northampton.

The Lieutenant writ a Letter to the Earl of *Northampton*, certifying him, That he undertook Sir *Thomas Overbury* according to his Inſtructions: That as ſoon as he came to the Place, Sir *Thomas* proteſted his Innocency upon the Bible; and then (quoth he) he aſked me what they meant to do with him? I anſwered, *They mean to refine you, that your pureneſs may appear a little better.* After I walked with him in his Chamber, and adviſed him to give way to the Match between *Rocheſter* and the Counteſs; but then he grew hot againſt your Lordſhip and the Counteſs of *Suffolk*, ſaying, *If he were the Counteſs of* Suffolk's *Priſoner*, (as he thought he was) *then* (ſaid he) *let her know that I care as little to die, as ſhe to be cruel.* The Counteſs of *Suffolk* I find to be joined with you in this Plot, tho' the Chamberlain knows not of it, nor any one elſe. But *Rocheſter's* part I ſhall much fear, until I ſee the Event to be clearly conveyed. And ſo he concluded his Letter.

Jervis Elwes.

The Anſwer of Sir Jervis Elwes *to the Points propoſed.*

My Lord, Before I anſwer to the Matter of Charge againſt me, let me remember your Lordſhip of one Speech which I learned from your Mouth: I have heard you ſpeak it at the Council-Table, and you have delivered it at the Aſſizes in the Country, That when a Priſoner ſtands at the Bar for his Life, comfortleſs, allowed no Counſel, but ſtrong Counſel againſt him, perchance affrighted with the Fear of Death, his Wife and Children to be caſt forth out of doors, and made to ſeek their Bread; you have always pitied the Cauſe of ſuch a one: You have proteſted you had rather hang in Hell for Mercy to ſuch a one, than for Judgment.

My Lord, you have not obſerved your own Rule in my Cauſe; you have paraphraſed upon every Examination, you have aggravated every Evidence, and applied it to me, ſo that I ſtand clearly condemned before I be found guilty: If I be ſo vile a Man as your Lordſhip conceives me, I were unworthy of any Favour; but I hope your Lordſhip ſhall not find it.

So I will deny nothing that hath Evidence of Truth againſt me, I will not tell a Lye to ſave my Life, and I beſeech your Lordſhip ſo to conceive of me, move your Charity towards me.

Then deſired he the Court, that the Heads of the Accuſations might be collected by the Counſel for the King, which were the ſame which were mentioned before; to which he ſeverally anſwered, *&c.*

To the firſt, Shall I give it him now? he anſwered, that when *Weſton* aſked him the Queſtion, he ſaw no Poiſon in his Hand, and therefore ſaid he, In *Weſton's* and mine Examination, the Queſtion was, Shall I give it him now? not, Shall I give him this now? for there is a great difference between *Hoc* and *Id* in matter of Prevention.

But further, when *Weſton* had told me that it was Poiſon which he meant to give, I reproved and beat him down with God's Judgment; nay, I humbled him ſo, that upon his Knees he thanked God and me, and told me, that he and his had cauſe to bleſs God for me, for that I withheld him from doing that Act: and if you call this Comforting and Abetting, to terrify a Man for his Sins, and to make him ſo confeſs his Faults to God, and to abhor and deteſt the Act, then was I an Abettor and Comforter of *Weſton.*

To the ſecond, after I had thus terrified *Weſton* with God's Judgments, and ſaw him caſt down for his Offence; I could do him no better Office than of Charity, to raiſe him up, who was thus down, and therefore favoured him; I ſhowed him kindneſs, I drank to him, to the intent I might encourage the Intentions of his Mind, which I found then reſolved in abhorring the Fact: and that I gave him no Wages, it is true, I took him from the Commendations of my Lord of *Northampton*, and Sir *Thomas Monſon*, whom I took to be my Friends, and thought they would commend no Man to be a Keeper, which might any way endanger me.

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* 3 Co. Inſt. 49. 135.

To the third, I never knew any other meaning to the Counteſs's words in her Letters, but the bare literal meaning; and ſure (quoth he) after I had received the Tarts, and they had ſtood a-while in my Kitchin, I ſaw them ſo black and foul, and of ſuch ſtrange Colours, that I did cauſe my Cook to throw them away, and to make other Tarts and Jellies for him.

To the fourth, he ſaid the Earl of *Northampton*'s Letter to me, was not any thing touching the Poiſoning of *Overbury*, but for a cloſe Reſtraint; to the end, that *Overbury* might agree to their Purpoſes concerning the Marriage to be had between *Rocheſter* and the Counteſs: if the Earl of *Northampton* had any other Plot to take away his Life, I was not any thing of his Council, or had knowledge therein.

To the fifth, whereas it is ſaid, I received him according to my Inſtructions, I meant none other thing than I have delivered before, which was concerning the cloſeneſs of his Impriſonment. But being aſked what he meant by theſe words; Rocheſter*'s part I ſhall greatly fear, until I ſee the Event to be clearly carried*; in this, he ſtaggered, and wavered much, and gave his Anſwer: It was long ſince I wrote this Letter, and for the particular Circumſtances that induced me to this Speech, I cannot now call to Memory; but ſure I am, that at that time, knowing my ſelf to be innocent, I could the better have ſatisfied my remembrance, ſo that I meant nothing the taking away of his Life: but becauſe I was a Stranger to *Rocheſter*, and had heard and known of that great League that was between them; I might well think, ſuſpect, and fear, whether he would always countenance theſe Projects for his reſtraint. Theſe were the Anſwers he made to his Accuſations, and after he had made many Proteſtations between God and his Soul, of his Innocency of this malicious plotting and abetting of *Overbury*'s Death, he applied himſelf to the Jury, and told them thus:

I will prove unto you by many infallible and unanſwerable Reaſons, that I could not be Aider and Complotter with *Weſton* in this Poiſoning.

Firſt, I made a free and voluntary diſcovery of it my ſelf, I was not compelled: will any Man imagine, that I would diſcover a thing, whereof I could not clear my ſelf? Nature is more kind than to be its own Accuſer.

Beſides, that my Clearneſs might more appear, and remain in the World without any Suſpicion, I proceed and accuſed the Murderer *Weſton*: it had been a ſenſeleſs thing, and abſurd in me, if I had not thought my ſelf clear, to have accuſed him, who might have done as much for me.

Nay, *Weſton* himſelf proved me to be an honeſt Man before the Chancellor of the Exchequer; for he confeſſed to him, and others being preſent, that he thought that the Lieutenant knew not of the Poiſon: and in his Examination before the Lord Chief Juſtice, and Serjeant *Crew*, being aſked the meaning of theſe words, Shall I give it him now? he anſwers, that he thought that thoſe which had ſet him on work, had acquainted the Lieutenant with their Plot.

Alſo I was ſo confident in my own Innocency, that I told my Lord Chief Juſtice, and my Lord *Zouch*, the way to make *Weſton* confeſs, and to diſcover all; which was by fair and gentle intreaty of him, and ſo by this means they might ſearch the bottom of his Heart: in this the Lord Chief Juſtice witneſſed with him.

And after Sir *Thomas Overbury* was dead, *Weſton* and Mrs. *Turner* were ſent to know of me whether I had any inkling of the Death of Sir *Thomas*? What need they have made this Queſtion, if I had known any thing thereof?

Alſo that which I do know concerning the Poiſoning of Sir *Thomas*, was after his Death, by Relation of *Weſton*; and here I am indicted as Acceſſary before the Fact, when I knew nothing till after the Fact.

After that he had confirmed theſe Reaſons by ſundry Proofs and Witneſſes, he went further in his own Defence: If I be in the Plot, the Lord Treaſurer is, I have his Letter to ſhew, in it; he called me to his Lodging, and ſaid, The Plots you know them as well as I, the Plots were only to repair her Honour: my Wife hath the Letters from my Lord Treaſurer and *Monſon*; for theſe Plots I will run willingly to my Death, if Circumſtances be knit with any manner of Fact.

He proceeded further, and told the Lord Chief Juſtice, that he ſpake not this to juſtify himſelf, ſo that no blemiſh or ſtain might cleave unto him; for (ſaid he) this Viſitation is ſent me from God; and whether I live or die, it is the happieſt Affliction to my Soul, that I ever received. I have laid open my whole Heart for Blood-guiltineſs: I have not repented me other than of errors of my Judgment, in not detecting what I ſuſpected, and yet I do aſk God forgiveneſs daily for leſſer Sins; but of this I know no other, but the groſs Error of my Judgment, in not preventing it, when I ſaw ſuch Intendment and Imaginations againſt him.

Then he put to my Lord Chief Juſtice this Caſe: If one that knoweth not of any Plot to poiſon a Man, but only ſuſpecteth, is no Actor or Contriver himſelf, only imagineth ſuch a thing, Whether ſuch a one be acceſſary to the Murder; for the words of the Indictment are, Abetting and Comforting with Malice: Now if there be any Man that charges me expreſsly, or in direct Terms, that I was an Abettor, or if the Court ſhall think in this Caſe which I have put that ſuch a concealing without Malice, is an Abetting, I refuſe not to die, I am Guilty. This was the Sum of his Speech.

Then the Lord Chief Juſtice replied; That to his knowledge, he ſpake no more concerning the Evidence than he could in Conſcience juſtify, which was only to expreſs the Evidence of things, and not wreſting any thing in prejudice of his Life.

But further he told him, That two Days before Sir *Thomas Overbury* died, you wiſhed his Man to bring his beſt Suit of Hangings to hang his Chamber, which you knew were your Fees.

And after he told him, that his Accuſation of the Lord Treaſurer was very malicious; for in the Examinations he had taken, and in all the exact Speech he could work for the finding out of the Truth, he ſaw not that honourable Gentleman any way touched.

In concluſion he told him, It is not your deep Proteſtations, nor your appealing to God, that can ſway a Jury from their Evidence, which is not yet anſwered unto.

But to leave you without Excuſe, and to make the Matter as clear as may be, here is the Confeſſion of *Franklin*, (which he then drew out of his Boſom) ſaying, This *poor Man*, not knowing Sir *Jervis* ſhould come to his Trial, this Morning he came unto me at Five of the Clock, and told me, That he was much troubled in his Conſcience, and could not reſt all that Night until he had made his Confeſſion; and it is ſuch a one (theſe were his Words) as the Eye of *England* never ſaw, nor the Ear of *Chriſtendom* never heard.

The Confeſſion of James Franklin, *the* 16*th of* November, 1615.

Mrs. *Turner* came to me from the Counteſs, and wiſhed me from her to get the ſtrongeſt Poiſon I could for Sir *Thomas Overbury*. Accordingly I bought ſeven, viz. *Aquafortis*, *White Arſenick*, *Mercury*, *Powder of Diamonds*, *Lapis Coſtitus*, great *Spiders*, and *Cantharides*: All theſe were given to Sir *Thomas Overbury* at ſeveral times. And further confeſſeth, That the Lieutenant knew of theſe Poiſons; for that appeared (ſaid he) by many Letters which he writ to the Counteſs of *Eſſex*, which I ſaw, and thereby knew that he knew of this Matter: One of theſe Letters I read for the Counteſs, becauſe ſhe could not read it herſelf, in which the Lieutenant uſed this Speech;

Madam, The *Scab* is like the *Fox*, the more he is *curſed*, the *better* he *fareth*; and many other Speeches. Sir *Thomas* never eat White Salt, but there was *White Arſenick* put into it: Once he deſired Pig, and Mrs. *Turner* put into it *Lapis Coſtitus*.

The *White Powder* that was ſent to Sir *Thomas* in a Letter he knew to be *White Arſenick*.

At another time he had two Partridges ſent him from the Court; and Water and Onions being the Sauce, Mrs. *Turner* put in *Cantharides* inſtead of Pepper; ſo that there was ſcarce any thing that he did eat, but there was ſome Poiſon mix'd. For theſe Poiſons the Counteſs ſent me Rewards: She ſent many times Gold by Mrs. *Turner*.

She afterwards wrote unto me to buy her more Poiſons. I went unto her, and told her I was weary of it; and I beſought her upon my Knees, that ſhe would uſe me no more in thoſe Matters: But ſhe importuned me, bad me go, and enticed me with fair Speeches and Rewards; ſo ſhe overcame me, and did bewitch me.

The cauſe of this Poiſoning, as the Counteſs told him, was, Becauſe Sir *Thomas Overbury* would pry ſo far into their Suit, as he would put them down. He did alſo ſay that the *Toothleſs Maid*, truſty *Margaret*, was acquainted with the Poiſoning; ſo was Mrs. *Turner*'s Man *Stephen*; ſo alſo Mrs. *Horne*, the Counteſs's own Hand.

He ſaith, On the Marriage-Day of the Countefs with *Somerſet* ſhe ſent him 20*l*. by Mrs. *Turner*; and he was to have been paid by the Counteſs 200*l*. *per Annum* during his Life.

That he was urged and haunted two hundred ſeveral times, at leaſt, by the Counteſs to do it againſt his Conſcience. He ſaith, ſhe was able to bewitch any Man; and then he wrought the Love between *Rocheſter* and her; and that he had twelve ſeveral Letters from her to proſecute it, and was to have 200*l*. to continue their Loves until the Marriage; and that all Things were burnt ſince the firſt Diſcovery.

Thoſe were all the *Materials* in *Franklin*'s Confeſſion. To this Sir *Jervis Elwes* knew not what to anſwer, or to make of his own Letters.

Then preſently the Jury departed from the Bar, and ſhortly after returned, and found him Guilty; and the Lord Chief Juſtice gave Judgment of Death againſt him.

ON *Monday* the 20th of *November*, 1615, he was executed at *Tower-hill*, upon a Gibbet there ſet of purpoſe, about ſix o'clock in the Morning.

He came on foot to the Gibbet from Sheriff *Goare*'s Houſe, between Dr. *Whyting* and Dr. *Felton*, two of his Majeſty's Chaplains; and coming to the Ladder's Foot, he talked a Word or two to the Executioner.

Then he went up the Ladder four or five Steps, the Executioner ſitting over his Head, upon the Top of the Gibbet: Sir *Jervis* finding the Ladder to ſtand too upright for his Eaſe, ſpake to have it amended, which forthwith (he coming down) was done, being faſtened in the Ground; and then he went up again ſix Steps, where after a while, ſitting eaſily, he ſaid:

Nobles, Right Worſhipful, and others, I am here come, as well to ſhew, explain, and unfold that which, at the time of my Arraignment, ſo many of you as were preſent expected; as alſo to ſhew that then I perceived I had loſt the good Opinion of many, in ſtanding ſo long upon my Innocency, which was my Fault, I confeſs, hoping now to recover the ſame, and your good charitable Opinions of me; which Fault I then ſaw not, being blinded with mine Errors, which made me account it no Sin.

But ſince my Condemnation, by Means and Help of theſe two Gentlemen here preſent (*the two Doctors*) I was perſuaded of the Greatneſs of my Sin, and that it was ſo much the greater, by how much the more I did conceal it; which by God's Mercy I perceiving, conſulted not with Fleſh and Blood, but thought, in this my Condemnation, my beſt way for my Soul's Health, to reveal to the Omnipotent and All-ſeeing God, the moſt ſecret and inward Intentions and Thoughts of my deceitful Heart, not once ſuſpecting the Pains or Diſpraiſes of the World, which I regard not at all.

It may be ſome will ſay, that this Place was moſt unfit for my Execution, appointed to terrify and daunt me ſo much the more; but alas! I fear not Death, Place, nor any ſuch like thing, for I account it the King's and Council's ſpecial Favour that I die here; for that I requeſting the ſame, it was granted; whereby I ſee now this Tower, wherein of late I have been called to the State Buſineſs, and ſtill might, if I had perform'd a more loyal Service to my King and Country than I did.

Next, That I was not appointed to *Tyburn*, a Place of more publick Reproach than now I am brought, being worthy to die by due and lawful Juſtice, in proſecuting this bloody and enormous Act againſt a kind Gentleman, who deſerved not ill at my Hands, nor at any Man's elſe for aught I know.

But were it I had not truſted him, who was a moſt perfidious Wretch, I had not fallen into this ſame; which may warn all here preſent to take heed whom they truſt in a bad Matter, and to admoniſh you that are truſted never to break honeſt and juſt Fidelity.

I was by divers Tricks drawn into this Action, which I received from the Earl of *Northampton*, Sir *Thomas Monſon*, and none other: but had I remembred the 119th *Pſalm* 115th *Verſe*, and ſaid with that holy Prophet, *Away from me, ye Wicked, for I will keep the Commandments of my God*; then had I refuſed ſuch like Tricks. Alas! now too late; there was my Fault, that I did not refuſe them, and caſt myſelf upon God's Providence, without any Dependency on Man, tho' never ſo honourable. Was ever any deceiv'd that did truſt in God? There was never any.

Therefore I admoniſh you all; let none, how honourable ſoever he be, or the King himſelf, move you to any thing not agreeable to God's Word, do it not, reject it; for this was my Fault, that I had not at the firſt opened this Plot to his Majeſty, who no doubt would moſt juſtly and righteouſly have puniſhed the ſame.

You Nobles, Worſhipful, and others, let my Example teach you thus much, That you prophane not *the holy Sabbath of the Lord*, nor his good Creatures, nor that you turn (by a laſcivious Courſe) Nights into Days and Days into Nights, as I have done; and that in ſerving God, you muſt not only read the Scriptures, but join Practice therewith: for what Good elſe will the ſame effect, if the Heart be foul, bloody, and impure?

Some here knew my Forwardneſs therein; but I plead not Innocency that way, but caſt it off, and confeſs, that of this great Aſſembly I am the moſt wretched Sinner.

You expect Speeches from me of ſome concealed Matters, and upon ſome of my Speeches uſed at the cloſing up of my Arraignment; but I ſtand here *loco Peccatoris, non Oratoris*: yet I will ſhew you that I have opened to my Lord Chief Juſtice of *England*, ſince my Arraignment, that which to the uttermoſt of my power I was able to verify, upon which then I took the *Body and Blood of Jeſus Chriſt*; and in further Teſtimony thereof, I will now ſeal it with my laſt and deareſt Breath.

Nobles and others, to ſee your Faces it rejoiceth me, whereby you manifeſt your Love in granting my Requeſt, to be Witneſſes of my Death; I ſee a Number of my Friends, there, there, there, [*pointing as he ſpake*] whom, out of their Loves, I entreat to beſeech God to ſtrengthen me in Death; tho' ignominious to ſome, yet to me *a bitter Cup, mingled to me with God's Mercy*, a ſpecial Favour this way to call me Home, whereas he might have taken away my Life by ſhooting the Bridge, or ſome fall, or otherwiſe; and then this unrepented Sin, which I accounted no Sin (ſuch was my Blindneſs) had been Damnation to me; for God is juſt, and the unrepented Sinner ſhall have no Salvation.

There is none of you preſent here, that knows how or in what ſort he ſhall die, it may be in his Bed, it may be otherwiſe (God knows); I proteſt before you all, I never came over this Hill, in the chiefeſt of all my Proſperity, with more Joy than now I have at this preſent; for I now know that preſently I ſhall behold the glorious Face and Sight of my Creator.

Take heed, and let my Example incite you to ſerve God truly and uprightly, better than I have done, leſt a ſhameful Death overtake you, as it doth me, who am unworthy of my Parents Care in bringing me up.

It may be ſome will ſay I have a flinty Heart, becauſe I ſhed no Tears; my Heart is Fleſh as any others, and I am as faint-hearted to look Death in the Face as any others: but becauſe my Uſe hath been not to ſhed Tears, I cannot now eaſily, except it be for the Loſs of ſome great Friend; albeit now my Heart beginneth to melt within me, being wounded [*with that the Tears ſtood in his Eyes*] to ſee the Faces of ſome there preſent, whom I moſt earneſtly love, and now muſt depart from with Shame: for worldly Regard I reſpect not, for well Mr. Sheriff knows, that (to ſhame this my ſinful Fleſh the more) I wiſh (if he had pleaſed) to have been brought from *Weſtminſter* thro' the City, to have warned all Spectators how they ſhould not eſcape without Judgment for Blood; for God is juſt.

I had almoſt forgotten to ſhew you a ſtrange thing, which God brought to my Memory the laſt Night, which was this; I confeſs I have been a great Gameſter, and eſpecially on the other ſide, have waſted and played many Sums of Money, which exhauſted a great Part of my Means; which I perceiving, vowed ſeriouſly (not ſlightly or unadviſedly) to the Lord in my Vow and Prayers, *Lord, let me be hanged if ever I play any more!* which not long after is moſt juſtly come upon me, whereof you are all Eye-witneſſes, becauſe a thouſand times ſince I brake this my Vow.

Then he eſpied one Sir Maximilian Dalliſon *ſtanding near the Gibbet on horſeback, and ſaid unto him:* You know, Sir *Maximilian*, what gaming we have had, and how we have turned Days into Nights, and Nights into Days; I pray you in time to leave it off, and diſhonour God no more by breaking his Sabbaths, for he hath always enough to puniſh, as you now ſee me, who little thought to die thus.

To which Sir Maximilian *anſwer'd him*; Sir *Jervis*, I am much grieved for you, and I ſhall never forget what you have here ſaid; *whereunto Sir* Jervis *ſaid*, Look to it, do then.

Further, he continued his Speech, ſaying, Let no Man boaſt of the Abilities and Gifts of Nature, which God giveth him; for therein I diſpleaſed God, being tranſported with over-much Pride of my Pen; which obſequious Quill of mine procured my juſt Overthrow, upon the knitting of my Lord Chief Juſtice's Speech at my Arraignment, by reaſon of two or three Paſſages at the bottom of my Letter, ſubſcribed with my own Hand, which I utterly had forgotten, becauſe I felt not any Sin; which when I heard, I ſaw none other but the *Finger of God* could thus point to this Fact; by this Means I do proteſt before God, and confeſs before you all, that I was ſo far overtaken by this bloody Fact, that for Satisfaction of the ſame, I willingly yield my deareſt Blood, to the Shame of this my Carcaſs, not being ſo much grieved for the ſame as for others, that I wiſh I had hanged in Chains perpetually, ſo that I had revealed at firſt the heinous Plot.

Then ſhould I have ſaved the Lives of ſome already dead, ſome in the *Tower*, ſome in the City, ſome over Seas; ſo ſhould I have prevented many from being Widows, ſome from being Fatherleſs, and ſome from being Childleſs, among whom mine own Wife for one, and eight fatherleſs Children of mine, which I leave now behind me, and God knows how many be guilty of this Fact, and when it will be ended.

The Lord Chief Juſtice upon cloſing up of my Speeches at my Arraignment, ſaid I was an *Anabaptiſt*: I would to God I were as clear from all other Sins, as from that, for I always deteſted that Condition.

As for my Wife, ſome ſay ſhe is a Papiſt; but true it is, ſhe comes ſo ſhort from a ſincere *Proteſtant*, (I mean in that reſpect) that when ſhe is among *Papiſts* ſhe cannot well forbear them.

Then he ſpake to the Sheriff, ſaying, If it may be permitted without Offence, I have ſomewhat to ſay, and that is this, *Is it lawful for any one here to demand of me any Queſtions?* To which the Sheriff anſwer'd, *It is not lawful*; wherefore, good Sir *Jervis, (quoth he)* forbear. Sir *Jervis* thereunto ſaid, with doubling his Words, *It is enough, it is enough.*

I have here *(quoth he)* one that holdeth my Cloak, may I beſtow ſomewhat on him? *The Sheriff anſwer'd*, That you may, Sir; whereupon he call'd the young Man to him by his Name, who ſtood waiting at the Ladder's Foot, and gave him out of his Pocket ſome Pieces of Gold, or Silver, *Here, take this, ſpend it*; which he with bitter Tears thankfully accepted. *Dr.* Whyting *and Dr.* Felton *ſtrained Courteſy, which of them ſhould begin a publick Prayer, fitting for this Party's Condition; one of them willed the other: but at laſt Dr.* Whyting *ſaid, If you, Sir* Jervis, *can perform it yourſelf, you of all Men are the fitteſt to do it, with Efficacy both of Soul and Spirit: whereupon he ſaid*, I ſhall do my beſt then; but my Hearers, I crave your charitable Conſtruction, if with half Words, and imperfect Speeches, *I chatter like a Crane.*

His Prayer being ended, he aſked if he might pray privately; the Doctor ſaid, Yes, Sir.

Then made he a ſhort Prayer to himſelf, with his Face cover'd; and after he uncover'd it, and ſaid, *Now I have pray'd, now I muſt pay, I mean, do the laſt Office to Juſtice.* With that Dr. *Whyting* ſaid, *Sir* Jervis, *you may ſtand one Step lower on the Ladder:* To whom the Sheriff anſwer'd, *It is better for him, Mr. Doctor, to be where he is. Stay* (quoth the Doctor) *to the Executioner, for he hath given a Watch-word, he is in private Prayer again. Yea*, quoth he, *I know that, for he hath given me a Watch-word, when I ſhall perform my Office to him.*

He uncover'd his Face after his ſecond ſhort Prayer, and firſt took his leave of all the Aſſembly, ſaying, with a chearful Voice and Countenance, *I pray you pray for me, who ſhall never more behold your Faces.* Then he ſaid with a great Fervency of Spirit, *Lord, I deſire at thy hands this bitter Cup of Death, as the Patient receiveth a bitter Potion, not once demanding what is in the Cup, but takes and drinks it off, be it never ſo bitter.*

As ſoon then as he had audibly ſaid, *Lord Jeſus, receive my Soul*; which, it ſeems, was the Executioner's Watch-word, he preſently turn'd him off the Ladder; and being off, the Executioner's Man caught hold of one of his Feet, his own Man on the other Foot, whereby they ſuddenly weigh'd his Life; where hanging a ſmall Diſtance of Time, his Body not once ſtirred, only his Hands a little ſtirred and moved, being tied with a little black ribband, which a little before he had reach'd to the Executioner, putting up his Hands to him for that purpoſe. All which being ended, both Corpſe and high Gibbet were from thence removed.

XXVI. *The Trial of* JAMES FRANKLIN, *at the* King's-Bench, *for the Murder of Sir* Thomas Overbury, 27*th of* November, 1615. Mich. 13 Jac. I.

AFTER he had put himſelf for his Trial upon the Country, a Jury of Eſquires and Gentlemen was impannelled to paſs upon his Life. Then *Weſton*'s Indictment was read, and *Franklin* accuſed as Acceſſary to the Poiſoning of Sir *Thomas Overbury*, and in his Examination formerly taken were theſe Words:

James Franklin's *Confeſſion.*

He confeſſeth, That in a Houſe near to *Doctors-Commons*, Mrs. *Turner* did firſt come unto him about the Poiſoning of Sir *Thomas Overbury*, and prayed him to provide that which ſhould not kill a Man preſently, but lie in his Body for a certain time, wherewith he might languiſh away by little and little; at the ſame time ſhe gave him four Angels, wherewith he bought a Water called *Aqua Fortis*, and ſent it to Mrs. *Turner*, who, to try the Operation thereof, gave it to a Cat, wherewith the Cat languiſhed, and pitifully cried for the ſpace of two days, and then died.

Afterwards Mrs. *Turner* ſent for *Franklin* to come to the Counteſs, who told him, that *Aqua fortis* was too violent a Water; but what think you (quoth ſhe) of *White Arſenick?* He told her, it was too violent. What ſay you (quoth ſhe) to *Powder of Diamonds?* He anſwers, I know not the Nature of that. She ſaid, then he was a Fool; and gave him Pieces of Gold, and bade him buy ſome of that Powder for her. *Franklin* demands of the Counteſs, what was the reaſon ſhe would poiſon Sir *Thomas Overbury?* She told him, He would pry ſo far into their Eſtate, that he would overthrow them all.

A little before Sir *Thomas Overbury*'s Death, the Counteſs ſent for *Franklin*, and ſhewed him a Letter written from the Lord of *Rocheſter*, wherein he read theſe Words: *I marvel at theſe Delays, that the Buſineſs is not yet diſpatched.* Whereby *Franklin* thinketh in his Conſcience, was meant the Poiſoning of Sir *Thomas Overbury*. And in another Letter from the Lord of *Rocheſter*, was written, that Sir *Thomas* was to come out of the *Tower* within two days, and they all ſhould be undone: whereupon the Counteſs ſent for *Weſton*, and was very angry with him that he had not diſpatched Sir *Thomas Overbury*. *Weſton* told her, that he had given him a thing that would have killed twenty Men.

Alſo a Fortnight after *Weſton*'s Apprehenſion, the Counteſs ſent for *Franklin* to her Houſe at St. *James*'s Park, where he found the Earl and the Counteſs walking together; and as ſoon as he came, the Earl went apart into a Chamber. Then ſhe told him, *Weſton* had been ſent for by a Purſuivant, and had confeſſed all, and we ſhall all be hanged: but on your Life (quoth ſhe) do not you confeſs that you brought any Poiſon to me, or to Mrs. *Turner*: for if you do, you ſhall be hanged, for I will not hang for you; and, ſays Mrs. *Turner*, I will not hang for you both.

The Counteſs told him, That the Lord who was to examine him, would promiſe him a Pardon to confeſs; but believe him not, for they will hang thee when all is done.

Weſton comes to *Franklin*'s Houſe, and told him, Now the Counteſs's Turn is ſerv'd, ſhe uſed him unkindly, and they ſhould be poiſoned, and that two were ſet of purpoſe to poiſon him.

Franklin having confeſſed his former Examinations under his own Hand, being permitted to ſpeak for himſelf, ſaid, That at the Entreaty of the Counteſs and Mrs. *Turner*, he did buy theſe Poiſons, but proteſted his Ignorance what they meant to do with them; and for the reſt, he referred himſelf to the Conſcience of the Jury: who went from the Bar, and within a quarter of an hour, did return, and pronounc'd him Guilty.

Then Judge *Crook*, after a brief Exhortation, gave the Sentence of Death upon him.

The Lord Chief Juſtice made a ſhort Exhortation alſo, with addition of theſe Words; That knowing as much as he knew, if this had not been found out, neither the Court, City, nor any particular Family had eſcaped the Malice of this wicked Cruelty.

He was afterwards executed according to the Sentence.

XXVII. *The Arraignment of Sir* THOMAS MONSON *Kt. at the* Guild-Hall *of* London, *for the* Murder *of Sir* Thomas Overbury, 4*th of* December, 1615. 13 Jac. I.

WHEN he came to the Bar, he made a Motion to the Lord Chief Juſtice; That, whereas he had written unto his Lordſhip, to aſk the Lord Treaſurer two Queſtions, which my Lord would do; he deſired then an Anſwer, and that Sir *Robert Cotton* might be preſent.

After the Queſtions were read, he was indicted for conſpiring with *Weſton* to poiſon Sir *Thomas Overbury*; to which he pleaded, Not Guilty, and would be tried by God and his Country.

The Lord Chief Juſtice brake up the Proceedings, and made a Speech to this effect, *viz.*

He ſaw a great Aſſembly, and tho' it had been ſhewed them often, yet it could not be ſaid too often, that the City was much bound to God, and to his Deputy on Earth the King, his Maſter, for their great Deliverance, and exact Juſtice; for God was always juſt; and for the King, tho' they were never ſo high in Place, nor ſo dear to him, tho' his own Creatures, yet his Juſtice is dearer to him, for which we are upon our Knees to give him Thanks; as alſo for ſo mild a Proceeding in ſo great an affair: for neither the great Man's Houſe in the *Tower*, nor his Lady's Houſe, nor this Priſoner's Houſe (to my knowledge) have been ſearched, neither hath this Priſoner been committed to the Sheriff, but to an Alderman, a Man who of all others might be moſt kind to him; for, as I take it, leſt I ſhould be miſtaken, Sir *Francis Anderſon* married Sir *Stephen Some*'s Daughter, and Sir *Thomas Monſon* married Sir *Francis Anderſon*'s Siſter. I never knew the like Favour, nor do I like it ſo well, but do declare it as a gentle Proceeding from the King.

For other things, I dare not diſcover Secrets; but tho' there was no Houſe ſearched, yet ſuch Letters were produced, which make our Deliverance as great, as any that happened to the Children of *Iſrael.*

For *Weſton* and Mrs. *Turner*, they died penitently, as is worthy to be written in Letters of Gold; and for the Lieutenant, tho' with great Imprecations, and a high hand he denied, yet for the great Glory of the King's Juſtice, he died moſt penitently and reſolutely: this is ſpoken to the Praiſe of God, that hath crowned theſe juſt Proceedings, tho' not having need of it, *Juſtitia confirmata non eget Authoritate*; wherein we may ſee the great Hand of God; for that Morning the Lieutenant was arraigned, *Franklin* came to me as one afflicted in Conſcience, not knowing of his Arraignment, with Evidence againſt him: which being delivered to the Jury, one of them heard him ſay, *Then Lord have mercy on me.* But for this preſent, *Non eſt cunctatio longa de vita hominis*; therefore he muſt be conveyed to the *Tower* as a ſafer Place, till further Order be taken. Then the Lord Chief Juſtice addreſſed his Speech to Sir *Thomas Monſon*, ſaying,

Whereas you name my Lord-Treaſurer, every Man's Fame is dear unto him, and he hath ever been honourable, you ſhall hear what he hath anſwered to my Letter.

'After my hearty Commendations, I have heard that Sir *Thomas Monſon* thinks I can clear him, but I know nothing of him to accuſe or 'excuſe him; but I hope he is not guilty of ſo foul a Crime.'

You hear (quoth he) that he will neither accuſe you, nor excuſe you.

Monſon. I do not accuſe the Lord-Treaſurer, nor calumniate him, for I know he is very honourable, but I deſire to have an Anſwer to my two Queſtions.

Ld. Ch. Juſt. You ſhall hear more of that when the time ſerveth; do you as a Chriſtian, and as *Joſhua* bad *Achan*, *My Son, acknowledge thy Sin, and give Glory to God.*

Monſon. If I be guilty, I renounce the King's Mercy and God's; I am innocent.

Ld. Ch. Juſt. There is more againſt you than you know of.

Monſon. If I be guilty, it is of that I know not.

Ld. Ch. Juſt. You are Popiſh, that Pulpit was the Pulpit where *Garnet* died, and the Lieutenant as firmly; I am not ſuperſtitious, but we will have another Pulpit.

Doderidge. It is an Atheiſt's word to renounce God's Mercy, you muſt think the Change of your Lodging means ſomewhat.

Hyde. I have looked into this buſineſs, and I proteſt, my Lord, he is as guilty as the guiltieſt.

Monſon. There was never Man more innocent than I; in this I will die innocent.

After this Speech, certain Yeomen of his Majeſty's Guard, attending for that purpoſe, conducted him to the *Tower*, where between the Yeomen and the Warders, there was ſome Contention about his Entertainment.

The Lord Chief Juſtice having at this Trial let drop ſome Inſinuations that *Overbury*'s Death had ſomewhat in it of Retaliation, as if he had been guilty of the ſame Crime againſt Prince *Henry*, Sir *Thomas Monſon*'s Trial was laid aſide, and himſelf ſoon after ſet at liberty, and the Lord Chief Juſtice was rebuked for his Indiſcretion, and before the next Year expired, remov'd from his Poſt. *

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* Bacon's *Works*, *Vol.* I. p. 87.

XXVIII. *The Trial of the Lady* Frances *Counteſs of* Somerſet, *for the Murder of Sir* Thomas Overbury, *the* 24*th of* May, 1616. 14 Jac. I.

The Summons of the Peers to the Trial.

AFTER our hearty Commendations to your Lordſhip; Whereas the King's Majeſty has reſolv'd, that the Earl of *Somerſet*, and the Counteſs his Wife, lately indicted of Felony, for the Murder and Poiſoning of Sir *Thomas Overbury*, then his Majeſty's Priſoner in the *Tower*, ſhall now receive their lawful and publick Trial, by their Peers, immediately after the end of this preſent *Eaſter* Term; at the Trial of which noble Perſonages your Lordſhip's Preſence, as being a Peer of the Realm, and one of approv'd Wiſdom and Integrity, is requiſite to paſs upon them: Theſe are to let your Lordſhip underſtand, that his Majeſty's Pleaſure is, and commandeth by theſe our Letters, that your Lordſhip make your repair to the City of *London*, by the eleventh Day of the Month of *May* following, being ſome few days before the intended Trial; at which time your Lordſhip ſhall underſtand more of his Majeſty's Pleaſure. So not doubting of your Lordſhip's Care to obſerve his Majeſty's Directions, we commit you to God.

From Whitehall, *this*
24*th of* April, 1616.

Your Lordſhip's
Very loving Friends,

G. Cant.
T. Elleſmere Canc.
Fenton.
E. Watton.
Tho. Lake.
Lord *Darcy*, of the South.
C. Edmonds.

E. Worceſter.
Lenox.
P. Herbert.
Ralph Winwood.
Fulke Grevyl.
Jul. Cæſar.

The Names of the Peers.

The Earl of *Worceſter*, Lord Privy-Seal.
The Earl of *Pembroke*, Lord Chamberlain.

The Names of the Peers.

The Earl of *Rutland.*
The Earl of *Suſſex.*
The Earl of *Montgomery.*
The Earl of *Hertford.*
The Lord Viſcount *Liſle.*
The Lord *Zouch*, Warden of the *Cinque-Ports.*
The Lord *Willoughby* of *Ereſby.*
The Lord *Delaware.*
The Lord *Dacres*, of the South.
The Lord *Mounteagle*; who being ſick, went away before Judgment.
The Lord *Wentworth.*
The Lord *Rich.*
The Lord *Willoughby* of *Parham.*
The Lord *Hunſdon.*
The Lord *Ruſſel*, the ſecond Day was not there.
The Lord *Compton.*
The Lord *Norris.*
The Lord *Gerrard.*
The Lord *Cavendiſh.*
The Lord *Dormer.*
Thomas Lord *Elleſmere*, Chancellor of *England*, Lord High-Steward *hac vice.*

His Aſſiſtants in the Commiſſion there preſent.

Sir *Edward Coke*, Lord Chief Juſtice of *England.*
Sir *Henry Hubbart*, Lord Chief Juſtice of the *Common-Pleas.*
Sir *Lawrence Tanfield*, Lord Chief Baron of the *Exchequer.*
Judge *Altham*, one of the Barons of the *Exchequer.*
Judge *Crooke*, one of the Judges of the *King*'s-*Bench.*

Judge *Doderidge*, one of the Judges of the *King*'s-*Bench*.
Judge *Houghton*, one of the Judges of the *King*'s-*Bench*.
Judge *Nicholls*, one of the Judges of the *Common-Pleas*.

The Counſel that were there the firſt Day.

Sir *Francis Bacon*, the King's Attorney-General.
Serjeant *Montague*.
Serjeant *Crew*.
Sir *Henry Yelverton*, the King's Sollicitor.
Francis Moor, the Queen's Serjeant.
Sir *Lawrence Hyde*, the Queen's Attorney.
Moſley, Attorney of the Dutchy.
Sir *John Davis*, the King's Serjeant.
Mr. *Walter*, the Prince's Attorney.
Mr. *Finch*, Keeper of the Records of Attainders.

More the ſecond Day.

Serjeant *Thomas Moor*.
Serjeant *Finch*.

The Peers above-named were all that appear'd at any time at the Trial, tho' there were ſix others ſummon'd, but why they abſented themſelves is not known; and thoſe were,

The Duke of *Lenox*, Lord Steward of the Houſhold.
Earl of *Huntingdon*.
Lord *Darcy* of *Menell*.
Lord *Eure*.
Lord *Hunſdon*.
Lord *Darcy* of *Chiche*.

The Form of their Sitting, and their Ceremonies.

When my Lord Chancellor, who for this time was High-Steward of *England*, came into the Court, there came before him ſix Serjeants at Arms, with their Maces; Sir *George Coppin* with his Patent; Sir *Richard Coningſby* with his white Staff; Mr. *Manwaring* with the great Seal; he himſelf, at the upper end of the Court, ſitting under a Cloth of Eſtate; on both Hands of him the Peers, under them the Judges; at the farther end the King's Counſel, below the Judges; on one ſide *Finch*, Keeper of the Records of Attainders; the Clerk of the Crown and his Deputy, in the midſt of the Court, the Serjeant-Crier ſtanding by him; Sir *Richard Coningſby*, Sir *George Coppin*, the Seal-bearer, *&c.* at my Lord Steward's Feet. The Priſoner at the Bar behind the King's Counſel; the Lieutenant of the *Tower* in a little place adjoining to the Bar.

All being ſilent, Sir *George Coppin* riſes and delivers the Patent to the Lord High Steward, upon his Knee; he receives it and kiſſes it, then redelivers it to Mr. *Fenſhaw*, who takes it kneeling. Then the Serjeant-Crier makes a Proclamation in the Lord High-Steward's Name, to keep ſilence; then Mr. *Fenſhaw* reads the * Commiſſion, which bears date the 10th of *May*: then there is another O-yes, to certify my Lord Steward, whether *Weſton* were convicted as Principal, for the Murder of Sir *Thomas Overbury*. Then the Lord Chief Juſtice delivers a † Schedule indorſed with a Certificate of four Judges of the *King*'s-*Bench*, and others the Commiſſioners. This *Fenſhaw*, turning to my Lord Steward, reads. A third O-yes, for certifying of other Indictments: My Lord *Coke* delivers another Schedule indors'd with the Certificate of my Lady *Somerſet*'s Indictment; which *Fenſhaw*, as before, read. A fourth O-yes, for *Walter Lee*, Serjeant at Arms, to return the Precept for the Peers of *Frances* Counteſs of *Somerſet*; which accordingly, after his three Reverences to the Lord High-Steward, he delivered to Mr. *Fenſhaw*: he reads the Indorſement. A fifth O-yes, to call the Lords ſummon'd by the Command of the Lord High-Steward, to anſwer to their Names, which they accordingly did, beginning at the firſt; and as every one was named they put off their Hats, and ſtood up till the next was named. A ſixth O-yes to the Lieutenant of the *Tower*, to return his Precept, and bring the Priſoner to the Bar; which he did, and gave his Precept to the Serjeant, who gave it to Mr. *Fenſhaw*, and he, as before, read the Indorſement. The Priſoner made three Reverences to his Grace and the Peers; ſhe was in black Tammel, a Cypreſs Chaperon, a Cobweb Lawn Ruff and Cuffs.

L. H. S. My Lords, the Reaſon why you be call'd hither this day, is to ſit as Peers of *Frances* Counteſs of *Somerſet*.

Mr. *Fenſhaw*, *Clerk of the Crown*. *Frances* Counteſs of *Somerſet*, hold up thy Hand.

She does ſo, and held it up till Mr. Lieutenant told her ſhe might put it down; and then he read the Indictment, containing *Weſton*'s Accounts, in the Poiſoning of Sir *Thomas Overbury*, and her abetting of him, the 8th of *May*, 1613.

The Counteſs of *Somerſet*, all the while the Indictment was reading, ſtood, looking pale, trembled, and ſhed ſome few Tears; and at the firſt naming of *Weſton* in the Indictment, put her Fan before her Face, and there held it half cover'd till the Indictment was read.

Mr. *Fenſhaw*. *Frances* Counteſs of *Somerſet*, what ſayſt thou? Art thou guilty of this Felony and Murder, or not guilty?

The Lady *Somerſet* making an Obeiſance to the Lord High Steward, anſwer'd Guilty, with a low Voice, but wonderful fearful.

My Lady, upon her Arraignment, having pleaded ‖ Guilty, the Proceeding after was thus:

Mr. *Attorney*. May it pleaſe your Grace, my Lord High Steward of *England*, I am glad to hear this Lady's ſo free Acknowledgement, for Confeſſion is noble. Thoſe that have been formerly indicted, at their Arraignment perſiſted in denial, as *Weſton*, *Elwes*, *Franklin* and *Turner*; but you ſee this Lady's Humility and Repentance by ſo pleading; and certainly ſhe cannot but be a Spectacle of much Commiſeration, if you either reſpect the Sex, a Woman, or her Parentage, honourable; but this Day and To-morrow is to crown Juſtice: the Mercy-Seat is the inner part of the Temple, the Throne publick, and therefore I ſhall now only pray a Record of the Confeſſion and Judgment: but ſince the Peers are met, for Honour's ſake it is good to declare the King's Juſtice. This is the ſecond time ſince the King's coming, theſe thirteen Years, that any Peers have been arraign'd, and both theſe times your Grace had the Place of High-Steward; the firſt were *Grey* and *Cobham*, and tho' they were convicted, yet Execution followed not. No noble Blood hath yet been ſpilt ſince his Majeſty's Reign. The firſt was Revenge of Treaſon amongſt Malecontents; and this of a particular Offence to a private Subject, againſt thoſe that have been ſo high in the King's Grace and Favour, and therefore deſerve to be written in a Sun-beam. But his being the beſt Maſter in the World, hinders him not from being the beſt King; for he can as well plane a Hill, as raiſe a Valley: a good Leſſon to put to my Lords the Peers; he is Lieutenant to him that is no Reſpecter of Perſons. This that I ſhould now ſpeak of, may be reduced to that which was acted in the Vault, and ſince upon the Stage: The firſt I will not now enter into, becauſe I will neither grieve a Lady that is preſent, nor touch a Lord that is abſent; my Duty requires it not, and my Humanity forbids it. For that which hath been upon the Stage, which is the Theatre of God's Juſtice, you ſhall underſtand that which hath been worthily acted by the King, in this noble Work of Juſtice, and right well by his Miniſters. *Overbury* died poiſoned the 15th of *September* 1613, in the Tower of *London*: He was no ſooner dead, but there was a certain Rumour and Muttering, that was *Vox Populi*, that *Overbury* came ſtrangely to his Death: And in that time, on the contrary hand, there was another Rumour, but that was *Vox Diaboli*, that he died of a foul Diſeaſe, ſo foul a one as is not fit for me to name. But for two years after this, tho' *Overbury*'s Blood cried for Revenge, *Vox Dei* was not heard. *Gloria Dei celare, Regis perſcrutare rem*: It is the Glory of God to conceal a thing, of a King to find it out; yet all the while God ſo dazzled the Eyes of theſe two great Procurers, and their Inſtruments, that the firſt look'd not about them, the other fled not. About the beginning of the laſt Progreſs it firſt brake forth; and as all Murders are ſtrange in their Diſcovery, ſo this was miraculous, for it came out in a Compliment thus: My Lord of *Shrewſbury*, who is now with God, commended Sir *Jervis Elwes* to a Counſellor of Eſtate; and it was by him that Sir *Jervis*, in reſpect of the good Report he had heard made of his Honour and Worth, deſired to be made known unto him. That Counſellor anſwered, That he took it for a Favour from him; but withal added, there lies a kind of heavy Imputation on him, about *Overbury*'s Death: I could wiſh he would clear himſelf, and give ſome Satisfaction in the Point. This my Lord *Shrewſbury* related back, and preſently *Elwes* was ſtruck with it, and makes a kind of Diſcovery, that ſome Attempts were undertaken againſt *Overbury*, but took no effect, as check'd by him. Tho' the truth be, he lack'd rather Fortitude in the Repulſe, than Honeſty. This Counſellor weighing well this Narration from *Elwes*, acquainted the King with the adventure; who commanded preſently that *Elwes* ſhould ſet down his Knowledge in Writing, which accordingly he did, but ſtill reſerving himſelf within his own Compaſs, not to touch himſelf, endeavouring rather to diſcover others than any elſe ſhould undertake that Office, and ſo accuſe him. The King ſtill endeavours to ſearch the Truth of this Buſineſs, gives Direction for the Examination of the Truth of it, commits it to certain Counſellors; they pick ſomething out of *Weſton*; then the further Enquiry is deliver'd over to my Lord *Coke*, who in this Cauſe was very painful, took two or three hundred Examinations: but when he found it might touch upon greater Perſons, then he deſired ſome others might be join'd with him, which was accordingly granted; namely, the Lord Chancellor, Lord Steward, the Lord *Zouch*. But then there were no Practices left untry'd for the Suppreſſion of the Diſcovery; *Weſton* was ſollicited to ſtand mute, but at laſt this dumb Devil was caſt out. Then follows *Elwes*, *Turner*, *Franklin*, all of which were Actors in this Tragedy, without Malice, but no Authors. Now when this Lady comes to her part, ſhe meets Juſtice in the way, by Confeſſion, which is the Corner-ſtone either of Mercy or Judgment; yet it is ſaid, that Mercy and Truth be met together. Truth you have in her Confeſſion, and that may be a Degree to Mercy, which we muſt leave to him in whoſe Power it reſides; in the mean time this Day muſt be reſerved for Judgment. Now to conclude, and give you an Account of the often Procraſtinations in this Buſineſs; the firſt was due to Humanity, her Child-birth; the ſecond was for Reaſon of State; and the laſt had a grave and weighty Cauſe. Thoſe Directions the King at the firſt gave written with his own Hand, for the Examination of his Buſineſs, I deſire may be read.

The King's Inſtructions read.

There be two things in this Cauſe to be try'd, and the Verity can be but in one of them: Firſt, Whether my Lord of *Somerſet* and my Lady were the Procurers of *Overbury*'s Death; or, That this Imputation hath been by ſome practiſed to caſt an Aſperſion upon them. I would firſt have you diligently enquire of the firſt; and if you find them clear, then I would have you as carefully look after the other, to the intent ſuch Practices may be diſcover'd, and not ſuffered to paſs with Impunity.

Mr. *Attorney*. There be other Directions in theſe Inſtructions, by way of Interrogatories, that are not now neceſſary to be read.

L. H. S. Let the Lords the Peers view theſe Directions from the King.

Ld. *Coke*. None of theſe Interrogatories, which the King deſired there ſhould be Examinations upon, came away empty; and whatſoever Whiſperings there be abroad of the Death of *Weſton*, they all (ſome before the hour of their Death) confeſs'd the Fact, and died penitent; and if need ſhould require, I have brought their Confeſſor along (namely, Dr. *Whyting*).

L. H. S. My Lords, you ſee, and have heard thoſe Directions under the King's Hand; give the Glory to God, and Honour to the King.

Mr. *Attorney*. May it pleaſe your Grace, *&c.* whereas *Frances* Counteſs of *Somerſet* hath been indicted as Acceſſary before the Fact, of the wilful Poiſoning and Murder of Sir *Thomas Overbury*; upon her Indictment, ſhe hath been arraign'd; upon her Arraignment, pleaded guilty: I deſire that her Confeſſion may be recorded, and Judgment given againſt the Priſoner.

Fenſhaw. *Frances* Counteſs of *Somerſet*, hold up thine Hand: Whereas thou haſt been indicted, arraign'd, and pleaded guilty, as Acceſſary before the Fact, of the wilful Poiſoning and Murder of Sir *Thomas Overbury*; what canſt thou now ſay for thy ſelf, why Judgment of Death ſhould not be pronounced againſt thee?

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* *See the Commiſſion in* Rym. Fœd. *Vol.* XVI. *Pag.* 781.

† 3 *Co. Inſt.* 135, 136.

‖ 3 *Co. Inſt.* 50. Bacon's *Works*, *Vol.* I. *p.* 87.

C. of Som. I can much aggravate, but nothing extenuate my Fault; I deſire Mercy, and that the Lords will intercede for me to the King. (This ſhe ſpake humbly, fearfully, and ſo low, the Lord Steward could not hear it, but Mr. *Attorney* related it.)

Mr. *Attorney*. The Lady is ſo touched with Remorſe and Senſe of her Fault, that Grief ſurprizes her from expreſſing of her ſelf; but that which ſhe hath confuſedly ſaid, is to this effect, That ſhe cannot excuſe herſelf, but deſires Mercy.

Sir *Richard Coningſby* ſitting before the Lord High Steward, riſes, and upon his Knee delivers him the White Staff.

L. H. S. *Frances* Counteſs of *Somerſet*, whereas thou haſt been indicted, arraigned, pleaded guilty, and that thou haſt nothing to ſay for thy ſelf, it is now my part to pronounce Judgment; only thus much before, Since my Lords have heard with what Humility and Grief you have confeſſed the Fact, I do not doubt they will ſignify ſo much to the King, and mediate for his Grace towards you: but in the mean time, according to the Law, the Sentence muſt be this, That thou ſhalt be carried from hence to the *Tower* of *London*, and from thence to the place of Execution, where you are to be hang'd by the Neck till you be dead; and the Lord have Mercy upon your Soul.

XXIX. *The Trial of* ROBERT CARR * *Earl of* Somerſet, *for the Murder of Sir* Thomas Overbury,
May 25, 1616. 14 Jac. I.

Ser. Cryer. O Yes, my Lord High-Steward of *England* purpoſes this Day to proceed to the Trial of *Robert* Earl of *Somerſet*. O yes, Whoſoever have any Indictments touching this Cauſe, publickly give them in.

My Lord *Coke* delivers in the Indictment of my Lord of *Somerſet* to Mr. *Fenſhaw* indors'd.

Ser. Cryer. O yes, *Walter Lee*, Serjeant at Arms, return the Precept for the Lords, which thou haſt warn'd to be here this Day. O yes. [*He calls every Lord by his Name, and they ſtand up as they be called.*]

My Lord High Steward excuſes the Lords *Mounteagle* and *Ruſſel* of their Abſence, in reſpect of their Sickneſs.

Serj. Cryer. O yes, Lieutenant of the *Tower*, return thy Precept, and bring the Priſoner to the Bar. Which he did, and my Lord makes three Reverences to the Lord High Steward and the Lords.

Mr. Fenſhaw. *Robert* Earl of *Somerſet*, hold up thy Hand.

He holds it up ſo long, until Mr. Lieutenant bad him hold it down. The Indictment is read, containing *Weſton*'s Actions in the Poiſoning of Sir *Thomas Overbury*, and his abetting of him, the 8th of *May* 1613.

My Lord of *Somerſet* was apparelled in a plain black Sattin Suit, laid with two Sattin Laces in a Seam; a Gown of Uncut Velvet lined with Unſhorn; all the Sleeves laid with Sattin Lace; a pair of Gloves with Sattin-tops, his George about his Neck, his Hair curl'd, his Viſage pale, his Beard long, his Eyes ſunk in his Head. Whilſt his Indictment was reading, he three or four times whiſpered to the Lieutenant.

Mr. Fenſhaw. *Robert* Earl of *Somerſet*, What ſay'ſt thou, art thou Guilty of this Felony and Murder whereof thou ſtandeſt indicted, or Not Guilty?

My Lord of *Somerſet* making an Obeiſance to the Lord High Steward, anſwered, Not Guilty.

Mr. Fenſhaw. How wilt thou be try'd?

Ld. Som. By God and the Country; but preſently recalling himſelf, ſaid, By God and my Peers.

Ser. Cryer. O yes, All you that be to give in Evidence againſt *Robert* Earl of *Somerſet*, who ſtands now at the Bar upon his Deliverance, make your Appearance, and you ſhall be heard what you have to ſay againſt him.

My Lord of *Somerſet*, upon his Arraignment, having pleaded Not Guilty, the Proceeding after was thus.

† Ellesmere, *Lord Chancellor.*

† *Lord High Steward.* *Robert* Earl of *Somerſet*, you have been arraigned, and pleaded Not Guilty; now I muſt tell you, whatſoever you have to ſay in your own Defence, ſay it boldly, without Fear; and tho' it be not the ordinary Cuſtom, you ſhall have Pen and Ink to help your Memory: but remember that God is the God of Truth; a Fault defended is a double Crime; hide not the Verity, nor affirm an Untruth: for, to deny that which is true, increaſes the Offence; take heed leſt your Wilfulneſs cauſe the Gates of Mercy to be ſhut upon you. Now for you, my Lords the Peers, you are to give diligent Attention to that which ſhall be ſaid; and you muſt not reſt alone upon one piece of Evidence, but ground your Judgment upon the whole. This moreover I would have you remember, that tho' you be not ſworn as common Juries, upon a Book, yet that you are ty'd in as great a Bond, your own Honour and Fidelity, and Allegiance to the King: and thus I leave the whole Proceeding to your Cenſures. And for you that be of the King's Counſel, free your Diſcourſe from all Partiality, but let Truth prevail, and endeavour to make it appear.

Serj. Montague. My Lord High Steward of *England*, and you my Lords, this cannot but be a heavy Spectacle unto you, to ſee that Man that not long ſince in great Place, with a white Staff, went before the King, now at this Bar hold up his Hand for Blood; but this is the Change of Fortune, nay, I might better ſay, the Hand of God, and Work of Juſtice, which is the King's Honour.

But now to the Fact; *Robert* Earl of *Somerſet* ſtands indicted as Acceſſary before the Fact, of the wilful Murder and Poiſoning of Sir *Thomas Overbury*, done by *Weſton*, but procured by him; this, my Lord, is your Charge. The Indictment hath been found by Men of good Quality, ſeventeen Knights and Eſquires of the beſt Rank and Reputation, ſome of whoſe Names I will be bold to read unto you; Sir *Thomas Fowler*, Sir *William Slingſby*, and fifteen more; theſe have return'd *billa vera*. Now an Indictment is but an Accuſation of Record in Form thus: *Weſton*, at four ſeveral times, gave *Overbury* four ſeveral Poiſons, the firſt *May* the 9th, 1613. that was *Roſalgar*, carrying this Poiſon in one Hand, and his Broth in the other; the ſecond was *June* following, and that was *Arſenick*; the third was *July* the 10th following, and that was *Mercury Sublimate* in Tarts; the fourth was *September* the 14th following, and that was *Mercury Sublimate* in a Clyſter, given by *Weſton* and an Apothecary yet unknown, and that kill'd him. Of theſe four ſeveral Poiſons miniſtred by *Weſton*, and procured by you, the 15th of *September* 1615. *Overbury* died, and the Author is ever worſe than the Actor. The firſt Poiſon laid in the Indictment, that *Weſton* gave Sir *Thomas Overbury*, was the 9th of *May*; and therefore we ſay, That the Lord *Somerſet*, the 8th of *May*, hir'd, counſel'd and abetted *Weſton* to this Fact: and as this Day, my Lord, I do charge you for a King, ſo heretofore King *David* was charg'd in the like Caſe, for the Murder of *Uriah*; and tho' *David* was under his Pavilion, and *Uriah* in the Army, yet *David* was the Cauſe of his Murder: So tho' you were in the King's Chamber, and *Overbury* in the *Tower*, yet it was you that kill'd him. It was a ſtronger Hand than *Weſton*'s that wrought this. The Proof, Mr. Attorney will follow; and I will now conclude with two Deſires to the Peers: Firſt, That they will not expect viſible Proofs in the Work of Darkneſs. The Second is, That whereas in an Indictment there be many things laid only for Form, you are not to look that the Proof ſhould follow that, but only that which is ſubſtantial; and the Subſtance muſt be this, Whether my Lord of *Somerſet* procur'd or cauſ'd the Poiſoning of Sir *Thomas Overbury*, or no?

Ld. High Steward. That indeed, my Lords, is that which you are to look after, Whether my Lord of *Somerſet* was the Cauſe of his Poiſoning, or not.

Ld. Coke. This was very well mov'd by Mr. Recorder, and the Law is clear in this Point, that the Proof muſt follow the Subſtance, not the Form.

The Judges all riſing, affirm'd this to be true.

* *Attor. Gen.* May it pleaſe your Grace, my Lord High Steward of *England*, and you my Lords the Peers, you have here before you *Robert* Earl of *Somerſet* to be tried for his Life, concerning the procuring and conſenting to the Poiſoning of Sir *Thomas Overbury*, then the King's Priſoner in the *Tower* of *London*, as an Acceſſary before the Fact.

* *Sir* Francis Bacon.

I know your Honours cannot behold this noble Man, but you muſt remember the great Favours which the King hath conferred on him, and muſt be ſenſible, that he is yet a Member of your Body, and a Peer, as you are; ſo that you cannot cut him off from your Body, but with Grief: and therefore you will expect from us that give in the King's Evidence, ſound and ſufficient Matter of Proof to ſatisfy your Honours Conſciences.

As for the Manner of the Evidence, the King our Maſter (who amongſt other his Virtues, excelleth in that Virtue of the Imperial Throne, which is Juſtice) hath given us Command, that we ſhould not expatiate nor make Invectives, but materially purſue the Evidence, as it conduceth to the Point in queſtion.

A Matter, that (tho' we are glad of ſo good a Warrant) yet we ſhould have done of our ſelves: For far be it from us by any ſtrains of Wit or Arts, to ſeek to play Prizes, or to blazon our Names in Blood, or to carry the Day otherwiſe than upon ſure Grounds; we ſhall carry the Lanthorn of Juſtice (which is the Evidence) before your Eyes upright, and ſo be able to ſave it from being put out with any ground of Evaſion or vain Defence, not doubting at all, but that the Evidence it ſelf will carry that Force, as it ſhall need no Advantage or Aggravation.

Firſt, my Lords, The Courſe that I will hold in delivering of that which I ſhall ſay (for I love Order) is this:

1ſt, I will ſpeak ſomewhat of the Nature and Greatneſs of the Offence, which is now to be tried, not to weigh down my Lord with the Greatneſs of it, but rather contrariwiſe to ſhew, that a great Offence needs a good Proof. And that the King, howſoever he might eſteem this Gentleman heretofore as the Signet upon his Finger, (to uſe the Scripture Phraſe) yet in ſuch a Caſe as this, he was to put it off.

2dly, I will uſe ſome few words touching the Nature of the Proofs, which in ſuch a caſe are competent.

3dly, I will ſtate the Proofs.

And, *laſtly*, I will produce the Proofs, either out of Examination and Matters of Writing, or Witneſſes *viva voce*.

For the Offence it ſelf, it is of Crimes, next unto High-Treaſon, the greateſt; it is the fouleſt of Felonies. It hath three Degrees; Firſt, It is Murder by Impoiſonment: Secondly, It is Murder committed upon the King's Priſoner in the *Tower*: Thirdly, I might ſay, That it is Murder under the colour of Friendſhip; but that is a Circumſtance moral, and therefore I leave that to the Evidence it ſelf.

For Murder, my Lords, the firſt Record of Juſtice which was in the World, was Judgment upon a Murderer, in the Perſon of *Adam*'s Firſt-born *Cain*: and tho' it was not puniſhed by Death, but Baniſhment, and Marks of Ignominy, in reſpect of the Population of the World; yet there was a ſevere Charge given, that it ſhould not go unpuniſhed.

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* 3 Co. Inſt. 50. *Bacon*'s Works, Vol. I. p. 87.

So it appeareth likewiſe in Scripture, that the Murder of *Abner* by *Joab*, tho' it were by *David* reſpited in reſpect of great Services paſt, or reaſon *of State, yet* it was not forgotten. But of this I will ſay no more, becauſe *I will not* diſcourſe; it was ever admitted and ranked in God's own Tables, that Murder is, of Offences between Man and Man, next unto High-Treaſon, and Diſobedience to Authority, (which ſometimes have been referred to the firſt Table becauſe of the Lieutenancy of God in Princes) the greateſt.

For Impoiſonment, I am ſorry it ſhould be heard of in our Kingdom; it is not *noſtri generis, nec ſanguinis peccatum*; it is an *Italian Comfit* for the Court of *Rome*, where that Perſon that intoxicateth the Kings of the Earth, is many times really intoxicated and poiſoned himſelf. But it hath three Circumſtances which make it grievous beyond other Matters.

The firſt is, That it takes a Man away in full *Peace*, in God's and the King's Peace, that thinks no harm, but is comforting of Nature with Refection and Food; ſo that, as the Scripture ſaith, his *Table is made a Snare*.

The ſecond is, That it is eaſily committed, and eaſily concealed; and on the other ſide, hardly prevented, and hardly diſcovered: For Murder by Violence, Princes have Guards, and private Men have Houſes, Attendants and Arms; neither can ſuch Murder be committed, but *cum ſonitu*, with ſome overt and apparent Acts, that may diſcover and trace the Offenders: but for Poiſon, the Cup it ſelf of Princes will ſcarce ſerve in regard of many Poiſons that neither diſcolour nor diſtate; it comes upon a Man when he is careleſs, and without ſuſpicion, and every day a Man is within the Gates of Death.

And the laſt is, Becauſe it concerneth not only the Deſtruction of the maliced Man, but of every Man, *Quis modo tutus erit?* For many times the Poiſon is prepared for one, and is taken by another, ſo that Men die other Men's Deaths, *Concidit infelix alieno vulnere*; and it is, as the *Pſalmiſt* calleth it, *Sagitta nocte volans*, the Arrow that flieth by Night, that hath no Aim nor Certainty. And therefore if any man ſhall ſay to himſelf, Here is great talk of Impoiſonment, but I am ſure I am ſafe, for I have no Enemies, neither have I any thing another Man ſhould long for: Why, that is all one, he may ſit next him at the Table, that is meant to be impoiſoned, and pledge him of his Cup: As we may ſee in the Example of 21 *Henry* VIII. That where the Purpoſe was to poiſon one Man, there was Poiſon put into Barm or Yeaſt, and with that Barm, Pottage or Grewel was made, whereby ſixteen of the Biſhop of *Rocheſter*'s Servants were poiſoned; nay, it went into the Alms-Baſket likewiſe, and the Poor at the Gate were poiſoned. And therefore with great Judgment did the Statute made that Year, touching this Accident, make Impoiſonment High-Treaſon, becauſe it tends to the diſſolving of Human Society; for whatſoever Offence doth ſo, is in the nature thereof High-Treaſon.

Now for the third Degree of this particular Offence, which is, that it is committed upon the King's Priſoner, who was out of his own Defence, and merely in the King's Protection, and for whom the King and the State were a kind of Reſpondent: it is a thing that aggravates the Fault much, for certainly (my Lord of *Somerſet*) let me tell you this, that Sir *Thomas Overbury* is the firſt Man that was murdered in the Tower of *London*, ſave the Murder of the two young Princes, by the appointment of *Richard* the Third.

Thus much of the Offence; now to the Proofs.

For the matter of Proofs, you may conſider that Impoiſonment, of all Offences, is moſt ſecret, even ſo ſecret, that if in all caſes of Impoiſonment, you ſhould require Teſtimony, you ſhould as good proclaim Impunity.

Who could have impeached *Livia* by Teſtimony, for the poiſoning of her Figs upon the Tree, which her Huſband was wont to gather with his own Hands? Who could have impeached *Paraſetis*, for the poiſoning of the one ſide of the Knife ſhe carried with her, and keeping the other ſide clean, ſo that her ſelf did eat of the ſame piece of Meat that they did whom ſhe did impoiſon?

Theſe Caſes are infinite, and need not to be ſpoken of the Secrecy of Impoiſonment; but wiſe Men muſt take upon them, in theſe ſecret Caſes, *Solomon*'s Spirit, that when there could be no Witneſſes, collected the Act by the Affection: but yet we are not at our Cauſe, for that which your Lordſhips are to try, is not the Act of Impoiſonment, for that is done to your hands; all the World, by Law, is concluded to ſay, that *Overbury* was poiſoned by *Weſton*: but the Queſtion before you is, of the Procurement only, and, as the Law termeth it, as Acceſſary before the Fact; which abetting is no more, but to do or uſe any Act or Means which may aid or conduce to the Impoiſonment.

So that it is not the buying, nor the making of the Poiſon, nor the preparing, nor confecting, nor commixing of it, nor the giving or ſending, or laying of the Poiſon, that are the only Acts that do amount unto the Abetment: but if there be any other Act or Means done, or uſed to give Opportunity of Impoiſonment, or to facilitate the Execution of it, or to ſtop or divert any Impediments that might hinder it, and that it be with an intention to accompliſh and atchieve the Impoiſonment; all theſe are Abetments and Acceſſaries before the Fact. As for Example, if there be a Conſpiracy to murder a Man, as he journeyeth on the way, by Invitation, or by colour of ſome Buſineſs; and another taketh upon him to diſſuade ſome Friend of his Company, that he is not ſtrong enough to make his Defence; and another hath a part to hold him in talk till the firſt Blow be given: all theſe, my Lords, without ſcruple, are Acceſſaries to the Murder, altho' none of them give the Blow, nor aſſiſt to give the Blow.

My Lords, He is not the Hunter alone, that lets ſlip the Dog upon the Deer, but he that lodgeth him and hunts him out, or ſets a Train or Trap for him, that he cannot eſcape, or the like. But this, my Lords, little needeth in this Caſe; for ſuch a Chain of Acts of Impoiſonments as this, I think, was never heard nor ſeen. And thus much of the Nature of the Proofs.

To deſcend to the Proofs themſelves, I ſhall keep this courſe:

Firſt, I will make a Narration of the Fact it ſelf.

Secondly, I will break and diſtribute the Proofs, as they concern the Priſoner. And,

Thirdly, According to the Diſtribution, I will produce them, and read them, to uſe them. So that there is nothing that I ſhall ſay, but your Lordſhip ſhall have three Thoughts or Cogitations to anſwer it.

1ſt, When I open it, you may take your aim.

2dly, When I diſtribute it, you may prepare your Anſwers without Confuſion. And,

3dly, When I produce the Witneſſes, or the Examinations themſelves, you may again ruminate, and re-adviſe to make your Defence.

And this I do, becauſe your Memory and Underſtanding may not be oppreſſed or overloaden with length of Evidence, or with confuſion of Order; nay more, when your Lordſhip ſhall make your Anſwer in your time, I will put you in mind, where cauſe ſhall be, of your Omiſſion.

Firſt therefore, Sir *Thomas Overbury*, for a time, was known to have great Intereſt and ſtrait Friendſhip with my Lord of *Somerſet*, both in his meaner Fortunes, and after; inſomuch that he was a kind of Oracle of Direction unto him, and if you will believe his own Vaunt (being indeed of an inſolent and *Thraſonical* Diſpoſition) he took upon him that the Fortunes, Reputation and Underſtanding of this Gentleman (who is well known to have an able Teacher) proceeded from his Company and Counſel: and this Friendſhip reſted not only in Converſation and Buſineſs at Court, but likewiſe in Communication of Secrets of State; for my Lord of *Somerſet* exercíſing at that time by his Majeſty's ſpecial Favour and Truſt, the Office of Secretary, did not forbear to acquaint *Overbury* with the King's Packets and Diſpatches from all parts of *Spain*, *France*, and the *Low-Countries*: and this then not by Glimpſes, or now and then rounding in the Ear for a Favour, but in a ſettled manner; Packets were ſent, ſometimes opened by my Lord, ſometimes unbroken unto *Overbury*, who peruſed them, copied them, regiſtered them, made Table-talk of them, as they thought good. So I will undertake the time was, when *Overbury* knew more of the Secrets of State, than the Council-Table did; nay, they were grown to ſuch Inwardneſs, as they made a Play of all the World beſides themſelves, ſo as they had Ciphers and Jargons for the King and Queen, and Great Men of the Realm; things ſeldom uſed, but either by Princes to their Confederates, or at the leaſt, by ſuch as practiſe and work againſt, or, at the leaſt, upon Princes.

But underſtand me, my Lord, I ſhall not charge you with Diſloyalty at this day; and I lay this for a Foundation, That there was great Communication of Secrets between you and Sir *Thomas Overbury*, and that it had relation to Matters of State, and the great Cauſes of this Kingdom.

But, my Lords, as it is a Principle in Nature, that the beſt Things are, in their Corruption, the worſt, and the ſweeteſt Wine maketh the ſoureſt Vinegar; ſo it fell out with them, that this Exceſs, as I may ſay, of Friendſhip, ended in mortal Hatred on my Lord of *Somerſet*'s part.

I have heard my Lord Steward ſay ſometimes in the Chancery, that Froſt and Fraud end foul; and I may add a third, and that is, the Friendſhip of ill Men, which is truly ſaid to be Conſpiracy, and not Friendſhip. For it fell out ſome twelve months or more before *Overbury*'s Impriſonment in the *Tower*, that the Earl of *Somerſet* fell into an unlawful Love towards that unfortunate Lady, the Counteſs of *Eſſex*, and to proceed to a Marriage with her: this Marriage and Purpoſe did *Overbury* mainly impugn, under pretence to do the true part of a Friend, for that he accounted her an unworthy Woman. But the truth was, *Overbury*, who (to ſpeak plainly) had little that was ſolid for Religion, or Moral Virtue, but was wholly poſſeſs'd with Ambition and Vain-glory, was loth to have any Partners in the favour of my Lord of *Somerſet*; and eſpecially not any of the Houſe of the *Howards*, againſt whom he had always profeſſed Hatred and Oppoſition.

And, my Lords, that this is no ſiniſter Conſtruction, will appear to you, when you ſhall hear that *Overbury* made his Brags, That he had won him the Love of the Lady, by his Letters and Induſtry; ſo far was he from Caſes of Conſcience in this Point.

And certainly, my Lords, howſoever the tragical Miſery of this poor Gentleman, *Overbury*, might ſomewhat obliterate his Faults, yet, becauſe we are not upon point of Civility, but to diſcover the face of Truth, before the face of Juſtice, for that it is material to the true Underſtanding of the ſtate of this Cauſe, *Overbury* was naught and corrupt; the Ballads muſt be mended for that point.

But to proceed: When *Overbury* ſaw that he was like to be Poſſeſſor of my Lord's Grace, which he had poſſeſſed ſo long, and by whoſe Greatneſs he had promiſed himſelf to do Wonders, and being a man of an unbounded and impudent Spirit, he began not only to diſſuade, but to deter him from the Love of that Lady; and finding him fixed, thought to find a ſtrong Remedy: and ſuppoſing that he had my Lord's Head under his Girdle, in reſpect of Communication of Secrets of State, as he calls them himſelf Secrets of Nature; and therefore dealt violently with him, to make him deſiſt, with Menaces of Diſcovery, and the like: Hereupon grew two ſtreams of Hatred upon *Overbury*, the one from the Lady, in reſpect that he croſſed her Love, and abuſed her Name (which are Furies in Women;) the other of a more deep nature from my Lord of *Somerſet* himſelf, who was afraid of *Overbury*'s Nature, and if he did break from him and fly out, he would wind into him, and trouble his whole Fortunes. I might add a third ſtream of the Earl of *Northampton*'s Ambition, who deſires to be firſt in favour with my Lord of *Somerſet*; and knowing *Overbury*'s Malice to himſelf, and to his Houſe, thought that Man muſt be removed and cut off, ſo as certainly it was reſolved and decreed, that *Overbury* muſt die.

That was too weak, and they were ſo far from giving way to it, as they croſſed it; there reſted but two ways of Quarrel, Aſſault and Poiſon. For that of Aſſault, after ſome Propoſition and Attempt, they paſſed from it, as a thing too open, and ſubject to more variety of Shame; that of Poiſon likewiſe was an hazardous thing, and ſubject to many Preventions and Caution, eſpecially to ſuch a working and jealous Brain as *Overbury* had, except he was firſt faſt in their hands: therefore the way was firſt to get him into a Trap, and lay him up, and then they could not miſs the Mark. And therefore in execution of this Plot, it was concluded, that he ſhould be deſigned to ſome honourable Employment in Foreign Parts, and ſhould underhand, by my Lord of *Somerſet*, be encouraged to refuſe it; and ſo, upon contempt, he ſhould be laid Priſoner in the *Tower*, and then they thought he ſhould be cloſe enough, and Death ſhould be his Bail. Yet they were not at their end, for they conſider'd, that if there were not a fit Lieutenant of the *Tower* for their purpoſe, and likewiſe a fit Under-keeper of *Overbury*; Firſt, They ſhould meet with many Impediments in the giving and exhibiting of the Poiſon; Secondly, They ſhould be expoſed to Note and Obſervation, that might diſcover them; and, Thirdly, *Overbury*, in the mean time, might write clamorous and furious Letters to his Friends, and ſo all might be diſappointed. And therefore, the next Link of the Chain was to diſplace the then Lieutenant *Wade*, and to place *Elwes*, a principal Abetter to the Impoiſonment; to diſplace *Cary*, that was Under-keeper in *Wade*'s Time, and to place *Weſton*, that was the Actor in the Impoiſonment: And this was done in ſuch a while, that it may appear to be done as it were in a Breath.

Then, when they had this poor Gentleman in the *Tower*, cloſe Priſoner, where he could not eſcape, nor ſtir; where he could not feed, but by their Hands; where he could not ſpeak or write, but thro' their Trunks; then was the Time to act the laſt day of his Tragedy.

Then muſt *Franklin*, the Purveyor of the Poiſons, procure five, ſix, ſeven ſeveral Poiſons, to be ſure to hit his Complexion: Then muſt Mrs. *Turner*, the Lay-miſtreſs of the Poiſons, adviſe what works at preſent, and what at diſtance: Then muſt *Weſton* be the Tormenter, and chaſe him with Poiſon after Poiſon, Poiſon in Salt-meats, Poiſon in Sweet-meats, Poiſon in Medicines and Vomits, until at laſt his Body was almoſt come by uſe of Poiſons to the ſtate of *Mithridates*'s Body, by the uſe of Treacle and Preſervatives, that the Force of the Poiſons was blunted upon him; *Weſton* confeſſing, when he was chid for not diſpatching him, that he had given him enough to poiſon twenty Men.

And, laſtly, Becauſe all this aſked Time, Courſes were taken by *Somerſet*, both to divert all the true Means of *Overbury*'s Delivery, and to entertain him with continual Letters, partly with Hopes and Proteſtations for his Delivery, and partly with other Fables and Negotiations, ſomewhat like ſome kind of Perſons which keep in a Tale of Fortune-telling, when they have a felonious Intent to pick Pockets and Purſes. And this is the true Narration of this Act, which I have ſummarily recited.

Now, for the Diſtribution of the Proofs, there are four Heads to prove you Guilty, whereof two are precedent to the Impoiſonment, the third is preſent, and the fourth is following or ſubſequent: for it is in Proofs, as it is in Lights, there is a direct Light, and there is a Reflexion of Light, and a double Light.

The firſt Head or Proof is, That there was a Root of Bitterneſs, a mortal Malice or Hatred, mixed with a deep and bottomleſs Miſchief, that you had to Sir *Thomas Overbury*.

The ſecond is, That you were the principal Actor, and had your hand in all thoſe Acts, which did conduce to the Impoiſonment, and gave opportunity to effect it, without which the Impoiſonment could never have been, and which could ſeem to tend to no other end, but to the Impoiſonment.

The third is, That your Hand was in the very Impoiſonment itſelf, that you did direct Poiſon, and that you did deliver Poiſon, and that you did continually hearken to the Succeſs of the Impoiſonment, and that you ſpurred it on, and called for diſpatch, when you thought it lingered.

And laſtly, That you did all things after the Impoiſonment, which may detect a guilty Conſcience, for the ſmothering of it, and the avoiding of Puniſhment for it; which can be but of three kinds.

That you ſuppreſſed, as much as in you was, Teſtimony; that you did deface, deſtroy, clip and miſdate all Writings that might give light to the Impoiſonment; and you did fly to the Altar of Guiltineſs, which is a Pardon of Murder, and a Pardon for your ſelf, and not for your ſelf.

In this, my Lord, I convert my Speech unto you, becauſe I would have you alter the Points of your Charge, and ſo make your Defence the better. And two of theſe Heads I have taken to my ſelf, and left the other to the King's two Serjeants.

For the firſt main Part, which is the mortal Malice coupled with Fear, that was in you to Sir *Thomas Overbury*, altho' you did palliate it with a great deal of Hypocriſy and Diſſimulation, even to the very End; I will prove it, my Lord Steward, the root of his Hate was that which coſt many a Man's Life, that is, fear of diſcovering Secrets; I ſay, of Secrets of a dangerous and high nature: wherein the Courſe that I will hold, ſhall be this.

I will ſhew that a Breach and Malice was betwixt my Lord and *Overbury*, and that it burſt forth into violent Threats and Menaces, on both ſides.

Secondly, That theſe Secrets were not of a light, but of an high nature. I will give you the Elevation of the Pole: they were ſuch, as my Lord of *Somerſet* had made a Vow, that *Overbury* ſhould neither live in Court, nor Country; that he had likewiſe opened himſelf ſo far, that *either he or himſelf muſt die for it:* and of *Overbury*'s part, he had threatned my Lord, that *whether he did live or die, my Lord's Shame ſhould never die*, but that *he would leave him the moſt odious Man in the World.* And farther, that my Lord was like enough to repent where *Overbury* wrote, which was in the Tower of *London*; he was a Prophet in that: ſo there is the higheſt of the Secret.

Thirdly, I will ſhew you that all the King's Buſineſs was, by my Lord, put into *Overbury*'s hands, ſo as there is work enough for Secrets whatſoever; they write them, and like Princes they had Confederates, their Ciphers, and their Jargons.

And, Laſtly, I will ſhew you that it was but a Toy, to ſay the Malice was only in reſpect he ſpake diſhonourably of the Lady, or for doubt of breaking the Marriage, for that *Overbury* was Coadjutor to that Love, and the Lord of *Somerſet* was as deep in ſpeaking ill of the Lady as *Overbury:* and again, it was too late for that Matter, for the Bargain of the Match was then made and paſt; and if it had been no more than to remove *Overbury* for diſturbing the Match, it had been an eaſy matter to have landed over *Overbury*, for which they had a fair way, but that would not ſerve.

And, Laſtly, *Periculum periculo vincitur:* to go ſo far as an Impoiſonment, muſt have a deeper Malice than flaſhes, for the Cauſe muſt have a Proportion in the Effect.

For the next general Head or Proof, which conſiſts in the Acts preparatory, or middle Acts, they are in eight ſeveral Points of the Compaſs, as I may term them.

1ſt, There were divers Devices and Projects to ſet *Overbury*'s Head on work, to diſpatch him, and overthrow him, plotted between the Counteſs of *Eſſex*, and the Earl of *Somerſet*, and the Earl of *Northampton*, before they fell upon the Impoiſonment; for always before Men fix upon a courſe of Miſchief, there will be ſome Reflection: but die he muſt one way or other.

2dly, That my Lord of *Somerſet* was principal Practicer, I muſt ſpeak it, in a moſt perfidious manner; to ſet a Trap and Train for *Overbury*, to get him into the *Tower*, without which they durſt not attempt the Impoiſonment.

3dly, That the placing of the Lieutenant *Elwes*, one of the Impoiſoners, was done by my Lord of *Somerſet*.

4thly, That the placing of *Weſton* the Under-keeper, who was the principal Impoiſoner, and diſplacing of *Cary*, and the doing all this within the ſpace of fifteen days after *Overbury*'s Commitment, was by the means and countenance of my Lord of *Somerſet:* and theſe were the active Inſtruments of the Impoiſonment, and this was a Buſineſs the Lady's power could not reach unto.

5thly, That becauſe there muſt be a Cauſe of this Tragedy to be acted, and chiefly becauſe they would not have the Poiſons work upon the ſudden, and for that the ſtrength of *Overbury*'s Nature, on the very cuſtom of receiving the Poiſons into his Body, did overcome the Poiſons that they wrought not ſo faſt; therefore *Overbury* muſt be held in the *Tower*, as well as he was laid in: and as my Lord of *Somerſet* got him into the Trap, ſo he keeps him in, and amuſeth him with continual hope of Liberty, but diverted all the true and effectual means of his Liberty, and makes light of his Sickneſs and Extremities.

6thly, That not only the Plot of getting *Overbury* into the *Tower*, and the Devices to hold and keep him there, but the ſtrange Manner of the cloſe keeping of him, being in but for a Contempt, was by the Device and Means of my Lord of *Somerſet*, who denied his Father to ſee him, denied his Servants that offered to be ſhut up cloſe Priſoners with him, and in effect handled it ſo, that he made him cloſe Priſoner to all his Friends, and expoſed to all his Enemies.

7thly, That all the Advertiſement the Lady received from time to time, from the Lieutenant or *Weſton*, touching *Overbury*'s ſtate of Body and Health, were ever ſent nigh to the Court, tho' it were in progreſs, and that from my Lady; ſuch a thirſt and liſtening he had to hear that he was diſpatched.

Laſtly, That there was a continual Negotiation to ſet *Overbury*'s Head on work, that he ſhould make ſome offer to clear the Honour of the Lady, and that he ſhould be a good Inſtrument towards her and her Friends; all which was but Entertainment: For your Lordſhips ſhall ſee divers of my Lord of *Northampton*'s Letters, (whoſe Hand was deep in this Buſineſs) written I muſt ſay in dark Words and Clauſes, that there was one thing pretended, and another thing intended; that there was a real Charge, and ſomewhat not real; a main Drift and Diſſimulation. Nay, farther, there be ſome Paſſages which the Peers, in their Wiſdoms, will diſcern to point directly at the Impoiſonment.

And now for producing of my Proofs, I will uſe this Courſe: Thoſe Examinations that have been taken upon Oath, ſhall be here read; and the Witneſſes alſo I have caus'd to be here, that they may be ſworn, and to juſtify or deny what they hear read, and to diminiſh or add to their Examinations; and beſides that, my Lord of *Somerſet*, and you my Lords the Peers, may aſk them what farther Queſtions you pleaſe.

H. Payton, *Servant of Sir* Thomas Overbury, *now of his Father, examined before the Lord Chief Juſtice.*

He ſaw a Letter of his Maſter's, whoſe Hand he knew, to my Lord of *Somerſet*, wherein were theſe Words, *If I die, my Blood lie upon you.* And in that or another Letter there was this Clauſe, *My Lord, you are now as good as your Word, you have kept your Vow to me.* Moreover, that in the Privy-Gallery at *White-hall*, my Lord of *Somerſet* coming late to his Chamber, met there Sir *Thomas Overbury*; *How now*, ſaid my Lord, *are you up yet? Nay*, anſwers Sir *Thomas Overbury*, *what do you here at this time of Night? Will you never leave the Company of that baſe Woman? And ſeeing you do ſo neglect my Advice, I deſire that to-morrow Morning we may part*; *and that you will let me have that Portion you know is due to me*; *and then I will leave you free to your ſelf, to ſtand on your own Legs.* My Lord of *Somerſet* anſwer'd, *His Legs were ſtrong enough to bear himſelf*; and ſo departed in great diſpleaſure. And to his certain knowledge, they were never perfectly reconcil'd again. And being aſk'd how he heard this Diſcourſe, he ſaid, it was in the dead of the Night, and he, being in a Room within the Gallery, heard all that paſs'd.

H. Payton. I acknowledge every Part of this Examination to be true: And more, That my Maſter being in the *Tower*, he ſent a Letter by *Weſton* to me, to carry to my Lord; and withal, to deliver my Lord this Meſſage, That that Powder he had ſent him had made him very ſick, and given him in one Night ſixty Stools, beſides Vomits. This Letter I carried to the Court, and deliver'd to Mr. *Pawlins* to carry in to my Lord, who was then in his Chamber. My Lord preſently came out; aſked me how my Maſter did. I told him very ſick; and withal, this Meſſage how the Phyſick had wrought with him. My Lord ſmiled, and cry'd *Piſh*; and ſo turn'd him away.

L. Davis, *ſometime Servant of Sir* Thomas Overbury, *now of Sir* Humphrey May, *his Examination before the Lord* Coke.

Saith, That he hath heard his Maſter ſay, That he would have gone Embaſſador, but that my Lord of *Rocheſter* diſſuaded him. He hath ſeen ſome Letters of Sir *Thomas Overbury*'s, wherein he writ that the Lord of *Rocheſter* was even with him: But he thinks he *(i. e.* the Lord *Rocheſter)* never ſaw thoſe Paſſages.

Lord of Som. I pray you, my Lords, note he ſays, I never ſaw thoſe Paſſages.

Mr. Attorney. It is true: For thoſe Letters were loſt; but after found by him, who knew them to be his Maſter Sir *Thomas Overbury*'s Hand.

Sir Thomas Overbury's *Firſt Letter to my Lord* Somerſet.

‘ IS this the Fruit of my Care and Love to you? Be theſe the Fruits of
‘ common Secrets, common Dangers? As a Man, you cannot ſuffer me
‘ to lie in this Miſery; yet your Behaviour betrays you. All I intreat of
‘ you

you is, that you will free me from this Place, and that we may part Friends. Drive me not to Extremities, leſt I ſhould ſay ſomething that you and I both repent. And I pray God that you may not repent the Omiſſion of this my Counſel in this Place, whence I now write this Letter.’

L. Wentworth. How did you know theſe Letters were ſent from him to my Lord of *Somerſet?*

L. Coke. They were found in a Cabinet, among ſome other Things, left in Truſt by my Lord of *Somerſet* with Sir *Robert Cotton:* And thus they were diſcover'd; Sir *Robert Cotton*, fearing Searches, delivers them to a Friend of his in *Holborn*, one Mrs. *Farneforth*; ſhe, to the intent they might be ſafely kept, ſent them to a Merchant's Houſe in *Cheapſide*, where, ſome nine Months before, ſhe had lodged, and deſir'd that they might ſafely be kept for her, pretending they were ſome Writings that concern'd her Jointure. On St. *Thomas*'s Day ſhe her ſelf comes to have them again, ſaying, ſhe muſt carry them to her Counſel to peruſe. He ſaid, *If you will ſuffer me to open it before you, and that there be nothing elſe, you ſhall have them.* But ſhe by no means would conſent to the breaking of it open. Then he anſwer'd, *It is a troubleſome Time; I will go to my Lord Chief Juſtice, and if he find no other Writings than ſuch as concern you, you ſhall have them again.* So coming to my Chamber, and not finding me within, (for I was gone to St. *Paul*'s to the Sermon) he went to my Lord *Zouch*, one of the appointed Commiſſioners for this Cauſe; who himſelf alone would not break it up, but came to St. *Paul*'s to me; where in a By-room we broke it up, and in it found theſe Letters, and divers from my Lord of *Northampton*, beſides many other Papers.

L. Zouch. I affirm this Relation of my Lord *Coke*'s to be true.

Sir Thomas Overbury'*s Second Letter to my Lord* Somerſet.

‘THIS comes under Seal; and therefore ſhall be bold. You told my Brother *Lidcote*, that unreverend Style might make you neglect me. With what Face could you do this, who know you owe me for all the Fortune, Wit, and Underſtanding that you have?’ [Here were inſerted ſome borrowed Names.]

Mr. *Attorney.* Under theſe falſe Names they meant Great Perſons; *Julius* the King, *Dominick* my Lord of *Northampton*, *Unclius* my Lord of *Canterbury.*

The reſt of the Letter.

‘And yet pretend the Reaſon why you ſeek not my Liberty, to be my unreverend Style; whilſt, in the mean time, you ſacrifice me to your Woman, ſtill holding Friendſhip with thoſe that brought me hither. You bad my Brother *Lidcote* keep my Deſire of Liberty ſecret: Yet this ſhall not ſerve your turn; for you and I, ere it be long, will come to a publick Trial of another nature. I upon the Rack, and you at your Eaſe; and yet I muſt ſay nothing! when I heard (notwithſtanding my Miſery) how you went to your Woman, curled your Hair, preferred *Gibbe* into the Bed-chamber, and in the mean time ſend me nineteen Projects, how I ſhould caſt about for my Liberty; and give me a long Account of the Pains you have taken, and then go out of Town. I wonder to ſee how you ſhould neglect him, to whom ſuch Secrets of all kinds have paſs'd: and ſuffer my Mother and Siſters to lie here in Town, expecting my Liberty; my Brother *Lidcote* to be in a manner quite overthrown, in reſpect of my Impriſonment; and yet you ſtand ſtupid: Nor have neither Servant nor Friend ſuffer'd to come to me. Well, all this Vacation I have written the Story betwixt you and me: How I have loſt my Friends for your ſake; what hazard I have run; what Secrets have paſs'd betwixt us; how after you had won that Woman by my Letters, and then you conceal'd all your After-proceedings from me; and how upon this there came many Breaches betwixt us; of the Vow you made to be even with me, and ſending for me twice that Day that I was caught in the Trap, perſuading me that it was a Plot of mine Enemies, to ſend me beyond Sea; and urging me not to accept it, aſſuring me to free me from any long Trouble. On *Tueſday* I made an end of this, and on *Friday* ſent it to a Friend of mine under eight Seals; and if you perſiſt ſtill to uſe me thus, aſſure your ſelf it ſhall be publiſh'd. Whether I live or die, your Shame ſhall never die, but ever remain to the World, to make you the moſt odious Man living.’

H. Payton and *L. Davis.* We both, upon our Oaths, know this to be Sir *Thomas Overbury*'s Hand.

Simcocks'*s Examination before my Lord* Coke, *writ with his own Hand.*

He ſays, that *Weſton* many times, when Sir *Thomas Overbury* was in the *Tower*, told him, That my Lord of *Somerſet* charg'd him to look to *Overbury* well; for if ever he came out, one of us two muſt die.

L. Som. I would fain know whether *Weſton* were examin'd, or no.

L. Wentworth. How long is it ſince this familiar Acquaintance betwixt *Simcocks* and *Weſton?*

Simcocks. He and I were of antient and familiar Acquaintance long ſince.

Mr. Attorney. *Weſton* had continual Acceſs to my Lord, had Rewards from him: My Lord charg'd him to look to *Overbury* well. It could not be his Marriage that made him ſo much fear; but what the Secrets were that caus'd it, it is not the Work of this Day. Now to ſhew that the greateſt Matters of State were communicated to him, read *Davis.*

L. Davis examined. There was a Packet of Letters, and ſeal'd, which, as he takes, came from Sir *John Digby*, directed to the King; and his Maſter Sir *Thomas Overbury* open'd it, took brief Notes for my Lord of *Somerſet*, and ſealing it again, ſent both the Notes and Packets to him. Another of this he ſaw his Maſter had at *New-Market* from Sir *Thomas Edmundes* to the King, out of which, after he had taken Extracts, he ſeal'd it up again, and ſent both back by this Examinant to my Lord *Somerſet.*

Mr. Attorney. I will not now, my Lords, endeavour to preſs the Greatneſs of this Offence: But I urge it thus, That you may ſee there were no mean Secrets betwixt my Lord and Sir *Thomas Overbury*, that might rather cauſe him to fear him, than the Hindrance of his Marriage: If that had been it alone, his going beyond Sea would have ſerv'd the Turn.

L. of Som. exam. Says, That amongſt many other Characters for Names, that paſs'd between Sir *Thomas Overbury* and him, *Simoniſt* was for Sir *Henry Nevil*, *Wolfy* for the now Lord Treaſurer, *Ductius* for my Lord of *Canterbury.*

Mr. Attorney. In good Faith, theſe two made Plays of all the World beſides themſelves; but tho' it were a Play then, it hath prov'd tragical ſince.

A Letter of my Lord of Northampton *to my Lord of* Somerſet.

‘NOW all is concluded about the *Form of the Non-altity*, I doubt not but God will bleſs the next Bargain. I hope hereafter to find better Pen and Ink in this Lady's Chamber. Be ſtill happy. Underneath ſubſcrib'd *H. Northampton*, and I am Witneſs to this Bargain,

Fra. Howard.

This Letter was ſhew'd my Lord of *Somerſet*, and he confeſs'd the Hand.

Mr. Attorney. For the ſecond Branch that I mean to follow; and that is, That you uſed the Means to expoſe him to the *Tower*, and there to keep him cloſe Priſoner. It is a Chain of eight Links, and ſhall be ſhewed you upon eight Points of the Compaſs. But before we come to theſe, it is to be conſider'd, that as no Conſultation is ripe in an Hour, ſo no more was theirs; for they purpoſed at firſt to have taken away his Life by Aſſault. And *Franklin* tells you the Cauſe of this Malice.

Franklin *examin'd before my Lord* Coke, *but not upon Oath.*

He ſaith, That my Lady *Somerſet* ſaid the Cauſe of this Hatred of Sir *Thomas Overbury* was, that he would pry ſo far into my Lord of *Somerſet*, that he would put him down.

Sir D. Woodes *examined before Lord* Coke.

He ſaith, My Lady *Somerſet* knowing there was ſome Diſcontent betwixt *Overbury* and him, in reſpect of a Suit that he croſſed him in, told him, That if he would kill Sir *Thomas Overbury* he ſhould have 1000*l.* and beſides, ſhe would make his greateſt Enemy to become his greateſt Friend: And he knew no Enemy he had in Court but my Lord of *Rocheſter.* He anſwer'd, That if my Lord of *Rocheſter* would give him his Hand, or but paſs his Word, if he did it, that he ſhould eſcape, and have his Pardon, he would do it. Upon this ſhe pauſed, and deſir'd ſome time to give her Anſwer; and when he came again to her, ſhe told him that could not be: but promiſed all Favour poſſible unto him, and warranted him to go on upon her Life.

L. of Som. exam. Saith, It was once reſolv'd ſomebody in Court ſhould fall out with *Overbury*, and offer him ſome Affront; but that was not follow'd.

Mr. Attorney. Note, my Lords, he does not ſay it was diſlik'd. And now to the Puddle of Blood: The firſt Link of which is, That the Means to entrap *Overbury* for the Tower, was by the Means of my Lord of *Somerſet.*

Sir Dudley Diggs *ſworn.*

Sir *Thomas Overbury* once told me, That he went to undertake the Employment offer'd him to go beyond Sea; but afterwards he ſent me word by Sir *Robert Manſel*, that he had chang'd his Mind. And Sir *Robert Manſel* told me farther, That he ſaw a Letter from the Lord of *Somerſet* to *Overbury*, that diſſuaded him from that Courſe. Seeing Mr. Attorney hath call'd me ſo far out of the Country for this ſmall Teſtimony, I wiſh Sir *Robert Manſel* were here to juſtify it.

My Lord of Somerſet'*s Declaration in Writing to the King.*

Being told by my Lord Chief-Juſtice that I was indicted, and was ſhortly to expect my Arraignment, I did not then believe him; for I did not look for that Way. Your Majeſty hath three Kingdoms, wherein to exerciſe the Prerogative of your Power, and but few that taſte of the firſt of your Favours; in which number I did think my ſelf, if not the firſt, yet inferior to very few. And having committed no Offence againſt your Perſon, nor the State, I hope your Majeſty will not for this bring me to a publick Trial, which for my Reputation's Cauſe, I humbly deſire to avoid. Grace truly given may be a Benefit; for it is not enough to give Life, and not to ſave Reputation. But if I muſt come to my Trial, knowing the Preſumptions may be ſtrong againſt me, in reſpect I conſented to, and endeavour'd the Impriſonment of Sir *Thomas Overbury*, (tho' I deſign'd it for his Reformation, not his Ruin) I therefore deſire your Majeſty's Mercy, and that you will be pleaſed to give me leave to diſpoſe of my Lands and Goods to my Wife and Child, and graciouſly to pardon her, having confeſs'd the Fact. For my ſelf, being uncertain how I ſhall be judg'd upon Preſumptions, I humbly deſire that in the mean time you will be pleas'd to give my Lord *Hays* and Sir *Robert Carr* leave to come to me.

Mr. Attorney. The ſecond Link is, How that *Elwes* came to be Lieutenant of the *Tower* by your means: And yet that muſt have a Colour; my Lord of *Shrewſbury* and Lord Chamberlain muſt prefer him to you as their Friend, tho' it was reſolved before he ſhould have the Place.

Sir *Jervis Elwes* examined, but not on Oath. He ſaith, Sir *Thomas Monſon* told him that *Wade* was to be remov'd; and that if he ſucceeded Sir *William Wade*, he muſt bleed, that is, give 2000*l.* And ten Days after *Wade* was removed he came into the Place, and paid 1400*l.* of the Money at his Uncle Alderman *Elwes*'s Houſe to Dr. *Campian.*

Mr. Attorney. You may ſee they had Ciphers for Money. He muſt bleed; a ſtrange Preſage! And as it is impoſſible to ſerve God and Mammon, ſo in that kind it is hard to ſerve a King.

Sir *Thomas Monſon* examined, but not on Oath, ſaith, my Lord of *Northampton*, upon the diſplacing of *Wade*, mov'd the King for Sir *Jervis Elwes*; and that he directed Sir *Jervis Elwes* to go to the Lords of *Shrewſbury* and *Pembroke*, to move my Lord of *Somerſet* to ſpeak for him to the King.

Sir *Jervis Elwes*'s *Examinat.* When it was reſolved *Wade* ſhould be removed, and he to ſucceed him, then he was adviſ'd to deſire my Lord of *Somerſet* to move for him; which he did accordingly: But took that only to be but for a Colour, becauſe it was reſolv'd before.

Mr. Attorney. Now the third Link concerns the placing of *Weſton* for his Keeper.

Sir *Thomas Monſon exam.* Saith, He recommended *Weſton* to the Service of Sir *Jervis Elwes*, and to keep Sir *Thomas Overbury*, upon the Counteſs of *Somerſet*'s Entreaty: And farther ſaith, That my Lord of *Northampton* was acquainted with the placing of him.

R. Weſton exam. My Lord and Lady *Somerſet* gave good Words of him to the Lieutenant.

L. of Som. exam. He denies the Knowledge of *Weſton*, either before his coming into the *Tower*, or ſince.

Simcocks exam. *Weſton*, during the time Sir *Thomas Overbury* was in his keeping, came often to my Lord, had much Money of him, and wonder'd Sir *Thomas Overbury* had ſo good an Opinion of my Lord; and thought he had not ſo much Wit as the World eſteem'd, for there was no Man hinder'd his Liberty but he: And whenever he came to my Lord, he might uſe ſuch Means as *Rawlins* his Man muſt not know.

[In this interim a Scaffold broke, and there was a great Noiſe and Confuſion; but after Silence was proclaim'd, all huſh'd and quiet.]

Mr. Attorney. All the Confeſſions of *Weſton* were taken before Conviction: And theſe two laſt Witneſſes are merely to his denying the Knowledge of *Weſton*. Now for the fourth Link, which is the placing and diſplacing Officers.

Sir *Jervis Elwes exam.* Saith, That *Overbury* was committed *April* the 30th, and *May* the 6th himſelf came to be Lieutenant of the *Tower*; and that *Weſton* was preferr'd to be Sir *Thomas Overbury*'s Keeper *May* the 7th; and that all this time he ſerv'd, he never had Wages from him.

Mr. Attorney. Now the fifth Link or Point of the Compaſs I promiſ'd to ſhew you, was, That this muſt not be done ſuddenly, but by degrees; and ſo he muſt be poiſoned leiſurely, to avoid Suſpicion. And in the mean ſpace you entertain'd his Father and Mother with frivolous Hopes; and yet indeed hinder'd and made oppoſition (but underhand) to all the Means that were uſed for his Delivery.

Mr. Overbury *the Father ſworn.* After my Son was committed, I heard that he was very ſick; I went to the Court, and deliver'd a Petition to the King: The Effect whereof was, That in reſpect of my Son's Sickneſs ſome Phyſicians might have Acceſs unto him. The King anſwer'd, That his own Phyſician ſhould go to him: And then inſtantly ſent him word by Sir *William Button*, that his Phyſician ſhould preſently go. Upon this I only addreſſed myſelf to my Lord of *Somerſet*, and none elſe; who ſaid my Son ſhould be preſently delivered, but diſſuaded me from preferring any more Petitions to the King: Which notwithſtanding, I (ſeeing his Freedom ſtill delay'd) did deliver a Petition to the King to that purpoſe; who ſaid I ſhould have a preſent Anſwer. And my Lord of *Somerſet* told me, he ſhould be ſuddenly reliev'd; but with this, That neither I nor my Wife muſt preſs to ſee him, becauſe that might protract his Delivery; nor deliver any more Petitions to the King, becauſe that might ſtir his Enemies up againſt him. And then he wrote a Letter to my Wife, to diſſuade her from any longer Stay in *London*.

My Lord of Somerſet'*s Letter to Mrs.* Overbury.

‘MRS. *Overbury*, Your Stay here in Town can nothing avail your Son's Delivery; therefore I would adviſe you to retire into the Country, and doubt not before your coming home you ſhall hear he is a Freeman.’

Mr. Overbury. Then after my Son's Death, he writ another Letter to me.

My Lord of Somerſet'*s Letter to Mr.* Overbury.

‘SIR, Your Son's Love to me got him the Malice of many, and they caſt thoſe Knots on his Fortune that have coſt him his Life; ſo, in a kind, there is none guilty of his Death but I: And you can have no more cauſe to commiſerate the Death of a Son, than I of a Friend. But tho' he be dead, you ſhall find me as ready as ever I was to do all the Courteſies that poſſibly I can to you and your Wife, or your Children. In the mean time, I deſire Pardon from you and your Wife for your loſt Son, tho' I eſteem my Loſs the greater. And for his Brother that is in *France*, I deſire his Return, that he may ſucceed his Brother in my Love.’

Mr. Attorney. By this you ſee my Lord's Diſſimulation. And I think he was a piece of a Lawyer, by his inſinuating with his next Kindred, for fear of Appeals. Now to come to the ſixth Link, which ſhews how light my Lord of *Somerſet* made both of Sir *Thomas Overbury*'s Fortunes and Sickneſs, read *Simcocks*.

Simcocks exam. Saith, That *Weſton* told him he wonder'd Sir *Thomas Overbury* ſhould have ſo great Confidence in my Lord of *Somerſet*, and think that he lov'd him ſo well; for he knew that he could not abide him, and thought of nothing leſs than his Liberty.

Sir John Lidcote ſworn. Saith, He deſir'd my Lord of *Somerſet* that either he or Sir *Robert Killigrew* might have leave to ſee Sir *Thomas Overbury* in his Sickneſs, which my Lord obtain'd from the King. And ſo they had a Warrant from my Lord of *Northampton*, and ſome other Counſellors, to ſee him; and found him very ſick in his Bed, his Hand dry, his Speech hollow. And at this time he deſired me to write his Will; I propos'd to come to him again the next Day. Now being ready to depart, the Lieutenant going out before, *Overbury* aſk'd me ſoftly this Queſtion, Whether *Somerſet* juggled with him, or not? But I then told him, as I believed, that I thought not. But the Lieutenant looking back, and perceiving that ſome Whiſpering had paſs'd, ſwore that I had done more than I could juſtify. But afterwards, coming to preſs my Lord of *Somerſet* about Sir *Thomas Overbury*, I perceived he dealt not plainly with him. And once ſpeaking with my Lord about him, he gave a counterfeit Sigh, (as this Deponent conceiv'd) for at that inſtant he ſmil'd in my Face.

Mr. Attorney. The ſeventh Link is to ſhew you the Manner of his Keeping; which was cloſe Priſoner in the *Tower*, his Offence being only a Contempt: And who was the Author of this, read Sir *Thomas Monſon*.

Sir *Thomas Monſon* examined, but not upon Oath, ſaith, My Lord of *Northampton* and my Lord of *Somerſet* gave Directions to the Lieutenant of the *Tower* to keep him cloſe Priſoner.

L. Davis exam. Saith, That he was a Suitor to my Lord of *Somerſet*, that he might wait upon his Maſter Sir *Thomas Overbury* in the *Tower*, tho' he were ſhut up with him. But my Lord anſwered, He ſhortly purpos'd to procure his total Liberty, and this might hinder it.

Mr. Attorney. Now the eighth and laſt Link is, In the interim that *Overbury* in the *Tower* was ply'd with Poiſons, my Lord thirſted after the News, to know what became of him, and continual Poſts went between him and my Lady; and all this while bore him in hand with other Pretences.

Franklin (but not upon Oath) ſaith, That being with my Lady *Eſſex*, ſhe told him that ſhe had that Day received a Letter from my Lord of *Rocheſter*, wherein he writ, That if *Weſton* did not preſently diſpatch, Sir *Thomas Overbury* would be out.

Sir *Jervis Elwes exam.* Saith, He received divers Letters from my Lady *Eſſex*, wherein ſhe deſir'd to know how *Overbury* did, that ſhe might certify to the Court.

Lord of Som. exam. Saith, That there paſs'd many Letters betwixt my Lady and him, but not concerning *Overbury*. But then deſir'd that this Point might be altered; for it might be that ſome Letters concerning *Overbury* might have then paſt betwixt them.

Mr. Attorney. My Lord knew not whether any of theſe Letters were extant, and therefore deſir'd that this might be alter'd.

Loubell, an Apothecary, a *Frenchman*, ſaith, That coming to my Lord of *Somerſet*, he aſk'd him of *Overbury*, and how he did? and he ſaid, Ill. Another time alſo he ſent for him to enquire about *Overbury*; and then he anſwer'd him, That he was ill, but hoped he might recover. What, ſays my Lord, do you think he would recover if he were at Liberty? And he anſwer'd, Yes. Again, my Lord ſent for him a third time; and carrying him into the Gallery at *Whitehall*, aſk'd him how *Overbury* did. He anſwer'd, He was very ſick: And farther added, He found him ill before the 25th of *June*, that he came to him.

L. of Som. exam. Denies that ever he ſaw *Loubell* but once at *Theobalds*.

Mr. Attorney. Here again you ſee my Lord falſify'd: But it ſeems, imagining or not knowing that *Loubell* could ſay more againſt him than he hath done, he denied the Knowledge of him, as he did of *Weſton*.

L. Coke. It was doubted *Loubell* might be a Delinquent; and therefore I durſt not examine him upon Oath, no more than I did *Franklin*. But when in their Teſtimony they accuſe themſelves, it is as ſtrong as if upon Oath.

Mr. Attorney. Now in reſpect *Overbury* had a working Brain, my Lord of *Northampton* muſt in ſhew negotiate about his Delivery, and the Terms of his coming out, whilſt they intended his Poiſoning: That was real, and the other but in pretence.

My Lord of Northampton'*s Firſt Letter to my Lord of* Somerſet.

‘IN this Buſineſs concerning *Overbury* there muſt be a main Drift, and a real Charge: You may imagine the Meaning.’

My Lord of Northampton'*s Second Letter to my Lord of* Somerſet.

‘I Yeſterday ſpent two Hours in prompting the Lieutenant, with as great Caution as I could, and find him to be very perfect in his Part. And I long exceedingly to hear his Report of this Adventure.’

My Lord of Northampton'*s Third Letter to my Lord of* Somerſet.

‘YOU need not uſe many Inſtruments, ſo long as I am in Town, with the Lieutenant.’

My Lord of Northampton'*s Fourth Letter to my Lord of* Somerſet.

‘I Cannot deliver with what Caution and Diſcretion the Lieutenant hath undertaken *Overbury*. But for his Concluſion, I do and ever will love him the better; which was this, That either *Overbury* ſhall recover, and do good Offices betwixt my Lord of *Suffolk* and you; which if he do not, you ſhall have reaſon to count him a Knave: or elſe, that he ſhall not recover at all, which he thinks the moſt ſure and happy Change of all; for he finds ſometimes from *Overbury* many Flaſhes of a ſtrong Affection to ſome Enemies of his.’

L. of Som. I acknowledge theſe Letters to be my Lord of *Northampton*'s; and all thoſe that I ſent to him were deliver'd me after his Death by Sir *Robert Cotton*: all which the Evening before my Commitment to the Dean of *Weſtminſter*'s, I burnt.

Mr. Attorney. Theſe Letters of *Northampton* were found in the Box Sir *Robert Cotton* gave Mrs. *Farnforth*. And here my Part ends: And that that reſts behind, I leave to the two Serjeants.

Lord High-Steward. My Lord, you have heard what hath been urged againſt you, and may imagine that there reſts much behind: And therefore you had beſt confeſs the Truth; otherwiſe you will but more and more wind in your ſelf.

L. of Som. My Lord, I came with a Reſolution to defend my ſelf.

After this my Lord High-Steward and the reſt of the Lords retir'd themſelves.

Serj. Montague. May it pleaſe your Grace, my Lord High-Steward of *England*, it falls to my part to diſcover thoſe Secrets that were concurrent and preſent with the Murder of Sir *Thomas Overbury.* And there be three Things that make evidently that my Lord of *Somerſet* was the principal Procurer: 1. A Powder that was ſent Sir *Thomas* from your own hand, which was Poiſon, and taken by him. 2. Poiſon in Tarts, which you occaſioned to be ſent. 3. That you thirſted after the Succeſs, and wondered that he was no ſooner diſpatch'd. How the firſt general Light of this Poiſoning came out, Mr. Attorney yeſterday excellently obſerved that it was by a Compliment; ſo now I ſhall ſhew how out of the Compunction of an Offender's Heart theſe came to be diſcover'd: *Franklin* confeſſes the Poiſons he bought for this purpoſe, and the trial that he made of them before they were ſent. And 1. For the Powder, it was ſent in a Letter written with my Lord's own Hand to *Overbury:* And you writ that it would make him a little ſick, (which it did in a high degree;) and that upon this you would take occaſion to ſpeak for him to the King. And this Letter, with the Powder, you ſent to him by *Davis*; and the Powder was Poiſon. 2. For the Poiſoned Tarts: At firſt you ſent them good, to diſguiſe the bad; but after came the poiſoned Tarts which you ſent him. And to make this appear that they came from you, continual Poſts ran between you and my Lady; and ſhe writes to the Lieutenant, 'I was bid to tell you, That in 'the Tarts and Jellies there are *Letters*; but in the Wine none: And of 'that you may take your ſelf, and give your Wife and Children: but of 'the other, not. Give him theſe Tarts and Jelly this Night, and all ſhall 'be well.' And it appears that the *Letters* did ſignify Poiſon. 3. The third Charge that I lay upon you, is, That you writ to my Lady that you wondered theſe Things were not diſpatch'd. She preſently ſent for *Franklin*, and ſhew'd him your Letters; which he read, and remembers the Words. She then alſo ſent for *Weſton* to diſpatch him quickly; who anſwer'd, That he had already given him as much as would poiſon twenty Men. And in all theſe things, my Lord, I ſhall prove you as guilty as any whoſoever hath been formerly arraign'd: And *Weſton*, upon his Arraignment, affirm'd all theſe things to be true. Now to the Proof: He ſends a Petition to the Lord *Coke*, to deſire to ſpeak with him, the very Night before *Elwes*'s Arraignment, he knowing nothing of it; and ſays, That his Conſcience troubles him ſo, that he cannot ſleep, and therefore deſires to reveal ſomething to him; and that until he had done it, he could never be at quiet.

Franklin's *Exam.* Mrs. *Turner* deſired him to buy ſome of the ſtrongeſt Poiſons he could get; which he did, and brought them to Mrs. *Turner* and my Lady; and at that time they both ſwore him to Secrecy. And afterwards he perceived that theſe Poiſons were ſent to the *Tower*; and amongſt the reſt a kind of white Powder called *Arſenick*, which ſhe told him was ſent *Overbury* in a Letter; and after ſhewed him, and told him of many more Poiſons that were ſent, and to be ſent by *Weſton* to *Overbury.* And thoſe Poiſons which my Lady ſhewed him, were wrapped in a Paper, written with a *Roman* Hand. And they tryed ſome of the Poiſons upon a Cat, or a Dog, which was wonderfully tormented, and died.

Weſton's *Exam.* My Lady told him that he ſhould be well rewarded; but before ſhe could procure that, the Fact muſt be done: And that he had already given him as many Poiſons as would poiſon twelve Men.

Ld. of Som. Exam. Saith, That he cauſed a Vomit to be ſent him at his own requeſt, which was a white Powder; and it was the ſame that he had had before of Sir *Robert Killegrew*, and ſent by *Rawlins*; and it may be that this ſecond ſent by *Davis* was in a Letter.

L. Davis Exam. Saith, That three Weeks after Sir *Jervis Elwes* came to be Lieutenant of the *Tower*, my Lord ſent, in a Letter by him, a white Powder to Sir *Thomas Overbury*; and that it would make him a little ſick, ſo he might have the better Opportunity to ſpeak for him to the King; and he ſaw this Letter. Next Day *Weſton* told him how ſick *Overbury* had been, and ſhew'd him what loathſome ſtuff he had vomited, which he would have had to have carried to the Lord *Somerſet*; but *Weſton* would not let him, ſaying, It was an unfit Sight to ſhew him.

H. Payton Exam. Saith, That this Powder gave Sir *Thomas* fifty or ſixty Stools and Vomits for four or five days.

Serj. Mont. Four ſeveral Juries have found that this Powder was Poiſon, and of this Poiſon Sir *Thomas Overbury* died; now for the Proof of the poiſoned Tarts.

La. of Som. Exam. She ſaith, She knoweth of no Tarts were ſent Sir *Thomas Overbury*, but either from her ſelf or my Lord.

Sir Jervis Elwes Exam. Saith, By *Letters* my Lady meant Poiſon, but the Word was then uſed to clear his Eyes.

The Lady Somerſet'*s Letter to Sir* Jervis Elwes.

'I Was bid to bid you ſay, that theſe Tarts came not from me; and again, 'I was bid to tell you, that you muſt take heed of the Tarts, becauſe 'there be *Letters* in them, and therefore neither give your Wife nor 'Children of them, but of the Wine you may, for there are no *Letters* in 'it; Sir *Thomas Monſon* will come from the Court this day, and then we 'ſhall have other News.'

La. of Som. Exam. Saith, That by *Letters* ſhe meant Poiſon.

Serj. Mont. Now for my Lord's haſte to ſpur this on, (and here I end) read *Franklin*'s Examination.

Franklin Exam. Saith, in a Letter which my Lady told him was ſent her from my Lord, there were theſe Words, *That he wondered things were not yet diſpatch'd*; and *that he thinks was meant about* Overbury, *by reaſon of her then Speeches to him, and preſent ſending for* Weſton.

Serj. Crew. My Part is now to diſcover thoſe Acts that ſucceeded the Fact, and then my Lord begins to ſew Fig-leaves: 1. Practices to ſuppreſs all Teſtimonies. 2. To ſurprize all Letters. 3. To get a Pardon, and deſires a Pattern of the moſt large Pardon. Now for your Practice to ſuppreſs the Teſtimony of *Franklin*; you come from Court and tell my Lady, that *Weſton* was apprehended; then Mrs. *Turner* ſends to *Franklin* to come to my Lady at one o'Clock at Night. Then my Lady tells him that *Weſton* had confeſſed all, and that we ſhall all be hanged; and at that time did again give him another Oath for Secrecy. And, during this Dialogue, ſhe went into an inner Room, to ſpeak with one (whom he took to be my Lord of *Somerſet*); when ſhe came out, then ſhe inſtructs *Franklin* what to ſay, if he were examin'd, but by no means to confeſs the Knowledge of her, or of Mrs. *Turner*: That the Lords will promiſe him, upon his Confeſſion, hope of a Pardon, but that by no means he ſhould believe their fair Words; for if he did, then they ſhould all be hang'd. Now for the Courſe you took in ſuppreſſing of Letters: *Lawrence Davis*, after his Maſter's Death, made ſuit to ſerve my Lord, then his Suit was rejected; but laſt Summer, fearing this might break out, ſends *Rawlins* to him, proffers him all Courteſy, and deſires that he would ſend to him all thoſe Letters, and Copies of Letters, which had paſt between Sir *Thomas Overbury* and him. *Davis* did ſo; and upon this my Lord gave him 30 *l.* After *Weſton* and Mrs. *Turner* were committed, there was a Trunk, wherein were many Letters: This Trunk ſtood at the Houſe of *Weſton*'s Son's Maſter. For this Trunk, my Lord (after he was commanded to forbear the Court) makes a Warrant to the Conſtable to break it open, and to ſend unto him thoſe Bundles of Writings that were in it; pretending they were certain Bonds and Writings belonging to Miſtreſs *Hide*, a Siſter of Mrs. *Turner*'s. According to this Direction, thoſe Letters that were in the Trunk were brought unto him. Now for thoſe Letters that paſſed betwixt my Lord of *Northampton* and you; thirty of thoſe you had ſent him, were delivered you after his Death by Sir *Robert Cotton*; and all theſe the Night before your Commitment to the Dean of *Weſtminſter* you burnt. For thoſe Letters of *Overbury*'s that you had, Sir *Robert Cotton* advis'd you not to burn, but keep them: And all of them being without Dates, *Cotton* told you there might be ſuch Dates given them as would be much to your advantage: So you gave him Order for that purpoſe, to give Dates to thoſe Letters. According to your Directions he did ſo; but not till after *Weſton*'s Arraignment: And then underſtanding at what Time the Poiſons in the Indictment were ſaid to be deliver'd, he dated ſome of them with a Purpoſe to croſs the Indictment; and ſome of the Letters he razes, ſome paſtes, ſome pares, as they were advantageous or diſadvantageous to him; and all this to obſcure the Fact. My next Aggravation is, That my Lord went about to get a Pardon; and that Precedents ſhould be ſought of the largeſt that ever were granted; and they were brought him. Why ſhould he ſeek this, but to be freed from this Murder? And in the Precedent of *Henry* the VIII.'s Pardon to Cardinal *Wolſey*, after many Offences were forgiven, both in the Beginning and Ending, then in the Midſt come in all Treaſons and Murders. Laſtly, Now I urge the Declaration you ſent to the King; wherein you ſeemed to doubt your ſelf, becauſe that you endeavoured and conſented to the Puniſhment of Sir *Thomas Overbury*; and in reſpect you had formerly been ſo much in the King's Favour, thought you might expect Mercy; and ſeeing you had never done any Offence againſt the King, nor the State, hoped that you ſhould never be called in queſtion for this: But if you ſhould, then you implored Grace for your Wife; but you never ſought a Pardon for her, as you did for your ſelf. And then, laſtly, you deſire to have leave to diſpoſe of your Lands to your Wife and Child. Now for the Proofs of all this that I have ſaid, firſt read *Franklin*, for the Suppreſſion of his Teſtimony.

Franklin's *Exam.* When my Lord of *Somerſet* came to Town, after *Weſton*'s Apprehenſion, he (*Franklin*) was ſent for to the *Cock-Pit*; and there my Lady ſwore him again to Secrecy, told him *Weſton* was taken, and that it was likely he ſhould be ſo ſhortly, and that they ſhould all be hang'd. Then retiring into an Inner-room, to ſpeak with one, (whom he verily believes to be my Lord of *Somerſet*) ſhe came again, and told him, That the Lords, if they examin'd him, would put him in hope of a Pardon upon Confeſſion: But, ſaid ſhe, believe them not; for when they have got out of you what they would, we ſhall all be hang'd. Nay, ſaith Mrs. *Turner*, Madam, I will not be hanged for you both.

Mary Erwin'*s Examination, (not upon Oath) Mrs.* Turner'*s Maid.*

Mrs. *Turner* ſent her for *Franklin*, to bring him to the *Cock-Pit*, at Ten a-Clock at Night; and is ſure that Night my Lord of *Somerſet* came from Court, and was at the *Cock-Pit* when ſhe came.

Lady Som. Exam. She confeſſeth all that *Franklin* ſaid concerning her Diſcourſe with him; and that my Lord was with her that Night in the *Cock-Pit.*

Mr. Serj. Crew. Next follows the Proof for ſurprizing Letters.

L. Davis Exam. Saith, That in Summer laſt my Lord ſent *Rawlins* to him, to deſire that if he had any Letters, either from my Lord to Sir *Thomas*, or from him to my Lord, that he would ſend them by him; which he did: And for this my Lord did afterwards ſend him by *Rawlins* 30*l.*

George Errat *the Conſtable*'s *Examination.*

Saith, That *Poulter*, a Meſſenger, brought him a Warrant from my Lord of *Somerſet*, to break open and ſearch a Houſe for certain Writings, which were pretended to be one Mrs. *Hide*'s, a Siſter of Mrs. *Turner*'s; and that he ſhewed him a part of the Warrant only, but not all; ſo that for that cauſe he would not execute it. Whereupon, *Poulter* got Smiths himſelf to break open the Houſe and Doors, and found in the Cellar a Box and Bag of Writings, where he ſaw the Name of Mrs. *Turner*; and thoſe were carried to my Lord.

L. of Som. For theſe Letters, Sir *Robert Cotton* delivered them me back after my Lord of *Northampton*'s Death; and concerning the Dates, you need not trouble your ſelf, for it now grows late, and I ſhall have very little time to anſwer for my ſelf. I confeſs, Sir *Robert Cotton* delivered me back thoſe Letters I had ſent my Lord of *Northampton*, and that I burnt them; and that ſome Parts were cut off as impertinent.

Sir R. Cotton Exam. Saith, my Lord delivered into his hands many of Sir *Thomas Overbury*'s Letters; and that he cut and dated them by my Lord's Direction; and that he put in Dates the next Day to ſome of the Letters, after *Weſton*'s Arraignment.

Mr. Serj Crew. I deſire my Lord will be pleaſed to look upon this Book of *Overbury*'s Letters. And now for the Copy of the largeſt Pardon:

Sir *Robert Cotton* ſaith, That at my Lord of *Somerſet*'s Intreaty, a little before *Michaelmas* laſt, he got him a Draught of the largeſt Pardon, and the Precedent was of one that King *Henry* the Eighth granted to Cardinal

Wolſey: and if he deſired ſuch a one, I told him the beſt way was to follow Precedents.

The Pardon was read; wherein, amongſt other Offences, before and after, of ſmall account, Treaſon and Murder be foiſted in.

Mr. Serj. Crew. And this was it that made *Weſton* fear that the Net was for the little Fiſhes, and that the great ones could break through.

Alderman Bowles Exam. Saith, That after he had perſuaded *Weſton* from ſtanding mute, he told him, That he feared the Net was laid for the little Fiſhes, and that the great ones would break through.

Mr. Serj. Crew. The laſt thing I urge, is my Lord's Declaration to the King, which I deſire ſhould be read.

The ſame that were noted before, after he underſtood by my Lord *Coke* that he was to be arraigned, *&c.*

Mr. Attorney. You ſee, my Lords, in this Declaration of my Lord *Somerſet* there is a Brink of Confeſſion; I would to God it had a Bottom. He urges that in reſpect he hath formerly been ſo great in the King's Favour, and had never committed any Treaſon, neither againſt his Perſon nor State, that he ſhould never have been called to an Account for this Fault, though he had been guilty: That Grace timely given is a Benefit; and that it is not only enough to give Life, but to ſave Reputation. But if he muſt be urged, then he deſires his Wife might be pardoned, having confeſſed the Fact: And that if he muſt be put upon the Hazard of a Trial, the King will before give him leave to diſpoſe of his Lands and Goods to the Uſe of his Wife and Child; and that in the mean time he will give my Lord *Hay* and Sir *Robert Carr* leave to come to him.

Mr. Serj. Crew. This Declaration is an implicative Confeſſion.

Mr. Attorney. I think there is none here but wonders, ſeeing that all Poiſons be Works of Darkneſs, how this ſhould ſo clearly appear: But it ſeems, his Greatneſs in Fortune cauſed this Groſſneſs in offending.

L. High-Steward. My Lord of *Somerſet* hath behav'd himſelf modeſtly in the Hearing: And only this, (before you ſpeak for your ſelf) by way of Advice, I will ſay unto you, in giving you two Examples: Your Wife, that yeſterday confeſſed the Fact; and there is great hope of the King's Mercy, if you now mar not that which ſhe made. On the contrary, *Byron*, who when the King of *France* uſed all the means he poſſibly could, to bring him to the acknowledgement of his Offence, which if he had done, there was no queſtion to be made of the King's Grace. And I think there never was, nor is, a more gracious and merciful King than our Maſter. But *Byron* ſtill perſiſting in the Denial of his Fact, you know his End.

L. of Som. I am confident in mine own Cauſe, and am come hither to defend it. And in reſpect the King's Counſel have been ſo long in ſpeaking againſt me, that neither my Memory nor Notes will give me leave to anſwer every Particular in order, I will begin with ſome of the laſt Things that they ſeemed moſt to urge againſt me, and ſo anſwer the reſt that I think do any thing at all touch me. For the Powder that was ſent *Overbury* to make him ſick, that ſo I might have the better occaſion to ſpeak for him to the King for that purpoſe, he himſelf deſired it, and upon his Letter I ſent it. And though it be true that I conſented to his Impriſonment, to the end he ſhould make no Impediment in my Marriage; yet I had a care of his Lodgings, that they ſhould be where he might have the beſt Air, and Windows both to the Water and within the *Tower*, ſo that he might have liberty to ſpeak with whom he would. So you ſee it was againſt my Intention to have him cloſe Priſoner.

Whereas the Breach of Friendſhip betwixt *Overbury* and me is uſed for an Aggravation againſt me; it is no great wonder for Friends ſometimes to fall out, and leaſt of all with him; for I think he had never a Friend in his Life that he would not ſometimes fall out with, and give Offence unto: And this they termed Inſolence in him; but I give it a better Name.

For the great Truſt and Communication of Secrets between *Overbury* and me, and for the Extracts that he took of Ambaſſadors' Letters, I confeſs this; I knew his Ability, and what I did was by the King's Commiſſion. For other Secrets, there were never any betwixt us.

And for his faſhion of braving both in Words and Writing, there was none that knew it better, nor feared it leſs than myſelf. At that time he was in diſgrace with the Queen, and for that cauſe was enforced for a time to abſent himſelf from Court, and this was for ſome particular Miſcarriage of his towards her Majeſty; and tho' I laboured his Reconcilement and Return, yet he with main violent Terms laid the cauſe of his Diſgrace upon me. And another time my Lord of *Saliſbury* ſent for him, and told him, That if he would depend upon his Favour, he would preſently help him with a Suit that ſhould benefit him 2000 *l.* which preſently *Overbury*, coming to me, told me of: To which I anſwered, He did not need to rely upon any body but me; and that, if he would, he might command my Purſe, and preſently have more than that; and ſo he had. And yet afterwards, upon ſome cauſeleſs Diſcontent, in a great Paſſion he ſaid, That his Love to me had put him out of my Lord of *Saliſbury*'s Favour, and made him loſe 2000*l.* Whereas it was urg'd that I caus'd him to refuſe the Imployment that was impoſed upon him; it is not ſo; for I was very willing he ſhould have undertaken it, but he not. My Lord of *Canterbury* moved him to it, but not without my privity; for I ſhould have been glad to have removed him, both in reſpect of my Marriage and his Inſolence. But *Overbury* came to me, and ſaid, I will tell Sir *Dudley Diggs* I will undertake this Embaſſage, that he may ſo return Anſwer to my Lord of *Canterbury*; but then you muſt write to me not to do ſo, and ſo take it upon you. Whereas it is pretended that I ſhould cauſe poiſoned Tarts to be ſent him to the *Tower*; my Wife in her Confeſſion ſaith, That there were none ſent but either by me or her; and ſome were wholeſome, and ſome not: Then it muſt needs follow, that the good ones were thoſe which I ſent, and the bad hers.

L. Liſle. If you had ſent him good Tarts, you ſhould have ſeen them convey'd by a truſty Meſſenger.

L. Compton. My Lady, in her Letter to the Lieutenant, writes, I was bid to bid you do this. Who ſhould bid her?

Mr. Serj. Montague. The continual Letters between my Lord and her argues that.

L. of Som. If *Franklin* knew me ſo well, and that I was privy to the Plot, why ſhould then my Wife and I (as he pretends) when he was there, ſpeak ſo cloſely, and always out of his Hearing and Sight? But for *Overbury*, my furtheſt Intent in his Impriſonment was, that he ſhould be no Impediment to my Marriage; and this I communicated to my Lord of *Northampton* and *Elwes*.

Serj. Montague. You could not couple your ſelf worſe than with them two.

L. of Som. Whereas *Simcocks* ſays, from the Relation of *Weſton*, That he ſo often came to me; I proteſt I never ſaw him till after *Overbury*'s Death, and then *Rawlins* brought him to me.

Serj. Crew. Sir *Jervis Elwes* in his Examination ſaith, that *Weſton* many times told him, that my Lord of *Somerſet* many times ſent for him: And for this purpoſe you ſhall have *Weſton*'s Examination.

Weſton's Examin. Saith, That my Lord of *Somerſet* many times ſent him Directions, before *Overbury*'s going to the *Tower*, to appoint Meetings betwixt him and my Lady.

L. of Som. This may hold, and yet that I never ſpake to him: So for thoſe Meſſages he ſpoke of, he might receive Directions from me by a third Perſon. And for that which *Payton* alledges about the Powder which I ſent, and made Sir *Thomas Overbury* ſo ſick; that Powder I ſent was one of them which I received from Sir *Robert Killegrew*.

Serj. Crew. But this, my Lord, was none of the Powders you received from Sir *Robert Killegrew*, for you had three from him: The firſt was loſt; the ſecond you ſent him by *Rawlins*; and the third your ſelf took at *Buly*: Now a fourth, which was ſent by *Davis*, was that that made him ſo ſick, and gave him ſo many Stools; and that was Poiſon, and ſent three Weeks after that that *Rawlins* carried.

Sir *Robert Killegrew* ſaith, That my Lord deſired him to give him Powders, which he himſelf ſometimes uſed to take for a Vomit; but he thought it had been only for himſelf, not that he had had a Purpoſe to ſend it to Sir *Thomas Overbury*; and that my Lord never had of this Powder of him but thrice.

Mr. Rawlins Exam. Saith, That the firſt Vomit Sir *Robert Killegrew* gave my Lord, was laid upon a Teſter of a Bed, and loſt; and that then upon that he got another, which my Lord ſent to Sir *Thomas Overbury* by him; and afterwards a third, which my Lord took at *Buly*: But he never heard that Sir *Thomas Overbury* deſired my Lord to ſend him any.

Franklin Exam. Saith, That he provided a white Powder, which was Poiſon, for my Lady called it *Arſenick*; which, as my Lady did afterwards tell him, was ſent to Sir *Thomas Overbury* in a Letter.

L. of Som. I do not think you can take *Franklin* for a good Witneſs. Now for the Antedates which are uſed as a Circumſtance againſt me; Sir *Robert Cotton* moved me to it, ſaying, That the Dates might prove uſeful to me at this time. Whereas my Lord of *Northampton* writes in one of his Letters, that he had promoted the Lieutenant; I conceive his Meaning to be, That he ſhould endeavour to make *Overbury* to be a good Inſtrument betwixt my Lord of *Suffolk* and me; and to that end, thoſe whom he thought to be his principal Enemies ſhould be the only Cauſers of his Freedom. And what I underſtand by *Elwes*'s Concluſion, which my Lord of *Northampton* relates in the end of one of his Letters to me, That Death is the beſt Way; I wiſh that my Anſwers to thoſe Letters were now to be ſeen: and if I had ever thought that thoſe Letters of my Lord of *Northampton*'s would be dangerous to me, it is likely I would never have kept them. For the Warrant I made, my Wife deſired me to do it for Mrs. *Turner*'s ſake: *Packer* formed it; and told me, I might do it as a Counſellor alone, without other Hands; for I would have had at that time my Lord *Knowles* to have joined with me, but that he was at Council. And when this Warrant was ſent, I was not commanded from Court, as is pretended.

L. High-Steward. All the Council together could not juſtify the making of ſuch a Warrant.

L. of Som. For my endeavouring to get a Pardon; having had many things of Truſt under the King, and the Cuſtody of both the Seals, without particular Warrant, I deſired by this means to be exonerated. And for all general Words, the Lawyers put them in without my privity. And for the Precedent of the largeſt Pardon, which I had from Sir *Robert Cotton*, it was upon this occaſion: Sir *Robert Cotton* ſaid, In reſpect you have received ſome Diſgrace in the Opinion of the World, in having paſt that Pardon which the laſt Summer you deſired, eſpecially ſeeing there be many Precedents of larger; I would have you now get one after the largeſt Precedent, that ſo by that Addition you might recover your Honour. And upon this I bad him ſearch for the largeſt.

Serj. Mont. Sir *Robert Cotton* ſays otherwiſe.

Sir R. Cotton Exam. Saith, My Lord deſired to ſeek Precedents of the largeſt Pardons.

L. of Som. For the Declaration which I lately ſent to the King, and particularly the Word [*Mercy*], which is now ſo much urged againſt me, it was the Lieutenant's; for I would have uſed another, but he ſaid it could be nothing prejudicial unto me: But when I writ it, I did not think thus to be ſifted in this Declaration; for I in that, in all Humility, did ſo far endeavour to humble and yield my ſelf, that the King might the better expreſs his Grace. And for the Words, [That I did conſent to and endeavour the Impriſonment of Sir *Thomas Overbury*] it is true, for the Reaſon there alledged.

Mr. Attorney. May it pleaſe your Grace, my Lord here hath had a moſt gracious Hearing, and hath behaved himſelf modeſtly and wittily.

L. High-Seward. If you have any more to ſay, my Lord, you ſhall be heard at length; we will not ſtraiten you in Time.

L. of Som. For *Loubell*, I never ſaw him but twice: he affirms the contrary, I deny it; and there is none elſe that proves it but himſelf. For Sir *Robert Cotton*, I could wiſh that he were here to clear many things that now be obſcure.

Mr. Attorney. If he were here, he could not be ſworn, for Reaſon of State, being held for a Delinquent.

L. of Som. For Sir *David Wood*, there was a Suit wherein he might have benefited himſelf 1200 *l.* which I was willing to further him in, conditionally, that *Overbury* ſhould have been a Sharer: But for the not effecting of it, it ſeems, he took ſome diſlike of Sir *Thomas Overbury*. The Money that is ſaid Sir *Jervis Elwes* gave for his Place, I had no part of it.

Whereas the ſhifting of Offices is urged againſt me, to make the more eaſy way for *Elwes*'s Entrance; it is well known, the reaſon of *Wade*'s diſplacing was in reſpect of his Careleſſneſs, in ſuffering the Lady *Arabella* to have a Key, by which ſhe might have convey'd her ſelf out of Priſon. More I cannot call to Mind; but deſire Favour.

Mr. Attorney. It hath, my Lord, formerly at Arraignments been a Cuſtom, after the King's Counſel and the Priſoner's Defence hath been heard, briefly to ſum up what hath been ſaid: But in this we have been ſo formal in the Diſtribution, that I do not think it neceſſary: And therefore now there is no more to be done, but that the Peers will be pleaſed to confer, and the Priſoner to withdraw 'till the Cenſures be paſt.

E. of Som. My Lords, before you go together, I beſeech you give me leave to recommend my ſelf and Cauſe unto you: As the King hath raiſed me to your Degree, ſo he hath now diſpoſed me to your Cenſures. This may be any of your own Caſes, and therefore I aſſure my ſelf you will not take Circumſtances for Evidence; for if you ſhould, the Condition of a Man's Life were nothing. In the mean time, you may ſee the Excellence of the King's Juſtice; which makes no Diſtinction, putting me into your Hands for a juſt and equal Cenſure. For my part, I proteſt before God I was neither guilty of, nor privy to, any Wrong that *Overbury* ſuffered in this kind. A Man ſenſible of his own Preſervation, had need to expreſs himſelf.

So he being withdrawn from the Bar, my Lord High-Steward briefly reported to the Lords the Proofs againſt my Lord of *Somerſet*. Then the Lords by themſelves (and my Lord Steward for his Eaſe, but returning before the reſt) ſtaid ſome time together; in which Interim they ſent for the two Chief Juſtices. Being return'd, the Serjeant-Cryer, Mr. *Fenſhaw*, called every Lord by his Name, *Robert* Lord *Dormer*, and ſo to the reſt, before my Lord High-Steward ſpake.

L. H. Steward. *Robert* Lord *Dormer*, How ſay you? Whether is *Robert* Earl of *Somerſet* guilty of the Felony, as Acceſſary before the Fact, of the wilful Poiſoning and Murder of Sir *Thomas Overbury*, whereof he hath been indicted and arraigned, or not guilty? And ſo particularly to every Lord, one by one.

L. Dormer. Guilty, my Lord: Standing up, and bare-headed; then ſitting again. My Lord *Norris*, when it came to him, ſaid, Guilty of Murder: But being told by my Lord High-Steward that he muſt ſay either Guilty, or Not Guilty, to the Indictment, he ſaid, Guilty. Then Mr. Lieutenant brought the Priſoner again to the Bar: But he had before taken off his George himſelf.

Mr. Attorney. My Lord High-Steward, *Robert* Earl of *Somerſet* hath been indicted and arraigned, and put himſelf upon his Peers, who all, without the Difference of one Voice, have found him guilty; I pray Judgment.

Mr. Fenſhaw. *Robert* Earl of *Somerſet*, hold up thy Hand. Whereas thou haſt been indicted, arraigned, and pleaded Not guilty, as Acceſſary before the Fact, to the wilful Poiſoning and Murder of Sir *Thomas Overbury*, and haſt put thy ſelf upon thy Peers, who have found thee guilty; what haſt thou to ſay for thy ſelf, why Sentence of Death ſhould not be pronounc'd againſt thee?

L. of Som. The Sentence that is paſt upon me muſt be juſt: I only deſire a Death according to my Degree. For that *Simcocks* ſaid ——.

L. H. Steward. My Lord, you are not now to ſpeak any more in your Defence; but why Judgment of Death ſhould not be pronounced.

L. of Som. Then I have no more to ſay; but humbly beſeech you my Lord High-Steward and the reſt of the Lords to be Interceſſors to the King for his Mercy towards me, if it be neceſſary.

My Lord High-Steward, taking the White-Staff from Sir *Richard Coningſby*, pronounc'd Sentence.

L. High-Steward. *Robert* Earl of *Somerſet*, Whereas thou haſt been indicted, arraign'd, and found guilty, as Acceſſary before the Fact, of the wilful Poiſoning and Murder of Sir *Thomas Overbury*; you are therefore to be carried from hence to the *Tower*, and from thence to the Place of Execution, where you are to be hang'd 'till you be dead: And the Lord have Mercy upon you.

L. of Som. My Lords the Peers, I beſeech you, as you have been the Judges of this Day, ſo you will be my Interceſſors.

Then my Lord Steward broke his Staff, the Court diſſolv'd, and the Priſoner was carried away.

Afterwards the Earl and his Counteſs received ſeveral Reprieves, during which he wrote to the King the following obſcure Letter[*].

May it pleaſe your Majeſty,

‘ BY this Gentleman your Majeſty's Lieutenant, I underſtand of ſome halt you made, and the Cauſe of it, at ſuch time as he offered to your Majeſty my Letters; but ſoon after your Majeſty could reſolve your ſelf, and behold me nothing ſo diffident of you, but in humble Language petitioning your Favour; for I am in hope that my Condition is not capable of ſo much more Miſery, as I need to make my Paſſage to you by ſuch way of Interceſſion.

‘ This which follows after, I offer your Majeſty, tho' not as to your ſelf, for upon leſs Motive you can find Favour for me.

‘ Now I need only move, not plead before your Majeſty, as my Caſe doth ſtand; for what I ſeek to have done, follows upon what you have already done, as a Conſequence and ſucceeding Growth of your own Act.

‘ But to the intent that your Majeſty may ſee that there is enough to anſwer thoſe (if any ſuch there be) as do go about to pervert the exerciſe of your Power, and to turn it from its own clear Excellency, for to miniſter unto their Paſſions; I have preſum'd to this end to awake your Majeſty's own Conceit upon this Subject, which can gather to it ſelf better and more able Defences in my behalf upon this View. For tho' the Acts of your Mercy which are not communicable, nor the Cauſes of them with others; as derived from thoſe ſecret Motives which are only ſenſible and privy to your own Heart, and admit of no ſearch or diſcovery to any general Satisfaction; and that under this Protection I might guard my Particular ſufficiently; yet my Caſe need not hide it ſelf, but attend the Diſpute with any, that would put upon it a monſtrous and heavy Shape: tho' that I muſt acknowledge, that both Life and Eſtate are forfeited to you by Law; yet ſo forfeited, that the ſame Law gives you the ſame Power to preſerve, as it doth to puniſh, whereby your Majeſty's higher Prerogative doth not wreſtle with it, nor do you infringe thoſe Grounds by which you have ever governed, ſo as the Reſiſtance is not great, that your Majeſty hath for to give Life, and which is leſs in the Gift of Eſtate, for that the Law caſts wholly upon your ſelf, and yields it as fit matter for Exerciſe of your Goodneſs.

‘ Once it was your Majeſty's Gift to me, ſo it may be better not taken, for to avoid to take that, which hath been once their own; and I may ſay farther, that the Law hath not been ſevere upon the Ruin of innocent Poſterity, nor yet cancelled nor cut off the Merits of Anceſtors, before the Politick Hand of State had contriv'd it into theſe ſeveral Forms, as fitted to their Ends of Government.

‘ To this I may add, that whereupon I was judged, even the Crime it ſelf might have been none, if your Majeſty's Hand had not once touched upon it, by which all Acceſs unto your Favour was quite taken from me. Yet as it did at length appear, I fell rather for want of well defending, than by the Violence or Force of any Proofs; for I ſo far forſook my ſelf, and my Cauſe, as that it may be a queſtion whether I was more condemned for that, or for the matter it ſelf, which was the ſubject of that day's Controverſy.

‘ Then thus far nothing hath appeared, wherein your Majeſty hath extended for me your Power, beyond the reaſonable bound; neither doth any thing ſtand ſo in the way of your future Proceedings, but rather make eaſy your Majeſty's favour for my Relief.

‘ What may then be the Cauſe that Malice can pitch upon, wherefore your Majeſty ſhould not proceed to accompliſh your own Work? Aſperſions are taken away by your Majeſty's letting me looſe to the utmoſt power of Law, with the Lives of ſo many Offenders, which yieldeth the World Subjects of Sorrow rather than Appetite to more Blood. But Truth and Innocency protect themſelves in poor Men, much more in Kings; neither was there ſuch Aſperſion (God knows) in any poſſibility towards your Majeſty, but among thoſe who would create theſe Pretences to miſlead your Majeſty, and thereby make me miſerable; if not this (whereof the Virtue and Uſe was in the former time, and is now determined) there is not any but your Pleaſure.

‘ It is true, I am forfeited *to* your Majeſty, but not *againſt* you by any treaſonable or unfaithful Act; beſides, there is to be yielded a diſtinction of *Men*, as in *Faults*; in which I am of both under the neareſt degrees of Exception.

‘ Yet your Majeſty hath pardoned Life and Eſtate to Traitors and Strangers, ſometimes the one, ſometimes the other; nay, to ſome concerned in this Buſineſs, wherein I ſuffer, you have pardoned more unto them, than I deſire, who (as it is reputed) if they had come to the Teſt, had proved Copper, and ſhould have drunk of the bitter Cup as well as others.

‘ But I do not by this envy your Favours to any Perſons, nor ſeek I to draw them into the Yoke with my ſelf, but applaud your Majeſty's Goodneſs, being in that reſpect in a near poſſibility to come at me; beſides this, to *Elwes* your Majeſty has given an Eſtate, (which is a greater Gift than Life, becauſe it extends to Poſterity,) who was the worſt deſerver in this Buſineſs, an unoffended Inſtrument, who might have prevented all After-miſchief, but for his own Ends ſuffered it, and by the like Arts afterwards betrayed it.

‘ To this I may add *Treſham* in the *Powder-Treaſon*, upon whoſe Succeſſors I do not caſt any of his Infamy, yet he preſerved himſelf to Poſterity; ſo as what he, or others ſuch as he, have defrauded by the Arts of Law, and whom their own unfaithfulneſs made ſafe; I have much ado to hold my Ingenuity and Confidence, how it may be, becauſe I diſtruſted not your Majeſty, or becauſe it returned in your Power from whom I had it. Is it in danger to be broken or diſmembred; Let me hope that there is nothing, which by Favour may be excuſed, or by Induſtry might have been avoided, that will fail me, where your Majeſty is to determine. It is not I, that put your Majeſty in mind opportunely, it is he, that was your *Creature*; it is *Somerſet*, with all your Honours and envious Greatneſs, that is now in queſtion. Kings themſelves are protected from the breach of Law, by being Favourites and God's Anointed; which gives your Majeſty like Privilege over yours, as I took from Doctor *Donne* his Sermon, That the Goodneſs of God is not ſo much acknowledged by us in being our *Creator*, as in being our *Redeemer*; nor in that he hath choſen us, as that nothing can take us out of his hand; which in your Majeſty's remembrance let me challenge and hope for: for the firſt acceſſes of Favour, they may be aſcribed unto one's own pleaſing themſelves, but that appears to be for our Sakes, and for our Good, when the ſame forſakes not our civil Deſires.

‘ This Redemption I crave, not as to my own Perſon, but with your Benefits once given; nor do I aſſume them very deep, for I have voluntarily departed from the hopes of my Penſion, Place, Office; I only cleave to that which is ſo little, as that it will ſuffer no parting or diminution.

‘ And as in my former Letters, ſo by this, I humbly crave of your Majeſty not to let the Practices of Court work upon your Son the *Prince*, not fearing the Sufferings of my Loſs in that particular ſo much (for I cannot loſe it but willingly all with it,) as for to take off the Stage, that which in the attempt may prove inconvenient.

‘ But if your Majeſty have any reſpects to move you to ſuſpend your Goodneſs towards me, let that which is mine reſt in your own Hands, till that you find all oppoſite Humours conformed to your Purpoſe.

‘ I have done wrong to myſelf, thus to entertain ſuch a doubt of your Majeſty; but the unrelenting of Adverſaries, which, when you will have them, will ſoon alter; and that all this while I have received nothing of preſent Notice for Direction, or to comfort me from your Majeſty, hath made me to expoſtulate with my ſelf thus hardly: for God is my Judge, Sir, I can never be worthy of it, if I have theſe Marks put upon me of a *Traitor*, as that tumbling and diſordering of that Eſtate, would declare. The Divorce from your Preſence, lays too much upon me, and this would upon both.

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[*] *'Tis not improbable, that ſome Expreſſions in this Letter may have relation to a Report ſpread about at that time, of* Somerſet'*s threatning Meſſage ſent to King* James *by the Lieutenant of the* Tower, That if he had not his Pardon, he would diſcover an important Secret, which it was the King's intereſt to have conceal'd.

‘ I will ſay no further, neither in that which your Majeſty doubted my aptneſs to fall into: *for my Cauſe nor my Confidence is not in that Diſtreſs, as for to uſe that Mean of Incerceſſion or any thing beſides*; but to remember your Majeſty that I am the Workmanſhip of your Hands, and bear your Stamp deeply imprinted in all the Characters of Favour; that I was the firſt Plant ingrafted by your Majeſty's Hand in this Place, therefore not to be unrooted by the ſame Hand, leſt it ſhould taint all the ſame kind with the Touch of that fatalneſs; and that I was even the Son of a Father, whoſe Services are regiſter'd in the firſt Honours and Impreſſions I took of your Majeſty's Favour, and laid there as a Foundation ſtone of that Building.

‘ Theſe and your Majeſty's Goodneſs for to receive them, is what I rely upon, praying for your Majeſty's Proſperity; I am in all humbleneſs,

Your Majeſty's
Loyal Servant and Creature,
R. Somerſet.

On the 18th of *January* 1621, the King by Order of Council granted them the Liberty of retiring to a Country-Houſe.

At White-hall, January *the* 18*th*, 1621.

Preſent,

L. Keeper,
L. Treaſurer,
L. Preſident,
L. M. Hamilton,
Earl Marſhal,
L. Viſ. Falkland,
L. Digby,
L. Brooke,
Mr. Treaſurer,
Mr. Secretary Calvert,
Mr. Chancellor of the Exchequer,
Maſter of the Rolls.

‘ WHereas his Majeſty is graciouſly pleaſed to enlarge and ſet at Liberty the Earl of *Somerſet* and his Lady, now Priſoners in the *Tower* of *London*; and that nevertheleſs it is thought fit that both the ſaid Earl and his Lady be confined to ſome convenient Place: It is therefore, according to his Majeſty's gracious Pleaſure and Command, ordered, That the Earl of *Somerſet* and his Lady do repair either to *Grays* or *Cowſham*, the Lord *Wallingford*'s Houſes, in the County of *Oxon*, and remain confined to one or either of the ſaid Houſes, and within three Miles Compaſs of either of the ſame, until farther Order be given by his Majeſty.'

At laſt in the Year 1624, about four Months before the death of the King, they obtain'd their Pardons, notwithſtanding the King had formerly made a ſolemn Declaration *, that he would never pardon any Perſon who ſhould appear to have been concerned in this Murder.

The Counteſs of *Somerſet*'s Pardon.

Jacobus Rex,

REX *omnibus ad quos,* &c. *ſalutem. Cum tam juſtic. quam miſericord' fontes a ſolio Regis promanare conſueverint & debeant ex quibus prior ille juſtitiæ in memorabili caſu mortis & interfectionis* Thomæ Overbury *mil. curſu conſtanti, & recto a nobis, & cura noſtra regia fluxit, & derivatus eſt, in noſtram & ſubditorum ſatisfactionem plenariam: Cumque divers' & multiplices caus' & Motiva clementiæ noſt' occurrant, quæ miſericordiam noſt. regiam erga* Franciſcam Carr *nuper Comitiſſ.* Somerſet *promovere poſſint, præſertim cæde illa tot' & tal' exemplis juſtitiæ jam antea expiata, præcipue vero duæ, quarum prima ad patrem ejus & amicos ſpectat, familiamque & proſapiam prænobil. altera ad eam ipſam, quod lib. & ſpontaneé delictum ſuum confeſſa ſit, ſe ſubmittendo & proſternendo ad miſericordiæ noſt. altare, non ſolum durante tempore incarcerationis ſuæ, verum etiam publice & in judicio. Cumque* Tho. *Dominus* Elleſmere *Cancellar. nr' Angliæ, & magnus Seneſcallus nr' Angliæ ea vice exiſtens, necnon omnes pares ejus per quorum judicium convicta fuit ad humil. Petitionem ejuſdem* Franciſcæ *publice fact' promiſſo ſuo ad intercedend. pro miſericordia noſtra regia erga eam ſolenniter ſe obſtrinxerint.* Imprimis *autem nobiſcum perpendentes natur' delicti ejus unde ipſa indictat' arraignat' convict' & condemnat' ſit (viz.) quod non fuer' proceſſ. & judicium tanquam de principal. ſed de acceſſoria ante fact' eaque ipſa procuratio ex conſcelerata inſtigatione hominum quorundum ignobilium originem ſuſcepiſſe videtur.* Sciatis *quod nos pietate moti de gratia noſtra ſpeciali ac certa ſcienc' & mero motu noſt' pardonavimus, remiſimus, & relaxavimus, ac per præſentes pro nob' hæred' & ſucc' noſtris pardonamus, remittimus, & relaxamus præfat'* Franciſcæ Carr *nuper Comitiſſ.* Somerſet, *ſeu quæcunque alio nomine, cognomine ſive additione nominis vel cognominis, dignitatis, loci vel locorum eadem* Franciſca *ſciatur, cenſeatur, vocetur, ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur, occiſionem, necem, venenationem, intoxicationem, mortem, feloniam, & felonicam interfectionem præd.* Thomæ Overbury *mil. ſeu quocunque alio nomine, cognomine, ſive additione nominis vel cognominis loci vel locor' idem* Thomas Overbury *mil. ſciatur, cenſeatur, vocetur ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur, ſive nuncupabatur, per ipſam* Franciſcam *per ſe ſolam ſive cum aliqua alia perſona ſive aliquibus al' perſonis quibuſcunque, quomodocunque qualitercunque, quandocunque ſeu ubicunque fact' commiſſ. ſive perpetrat' ac omnes & omnimodas conſpirationes, felonias, abettationes, procurationes, incitationes, confortation' manutenſion' auxiliationes, conductiones, mandat' conſilia, crimina, tranſgreſſiones, malefacta, offenſ. & delict' quæcunque præd. mortem, occiſionem, necem, venenationem, intoxicationem, feloniam & felonicam interfectionem præd.* Thomæ Overbury *mil. in aliquo tangen. ſive concern. ac acceſſar. eorundem tam ante factum, quam poſt factum, ac fugam, & fugas ſuperinde fact. licet eadem* Franciſca *de permiſſ. vel aliquo præmiſſor. indictata impetit. appellat. rectat. vocat. waviat. convict. condemnat. attinct. ſive adjudicat. per judicium parium ſuorum coram præd. magno Seneſcallo noſtro Angl. vel alr. quomodocunque exiſtit vel non exiſtit, aut indictari, impetiri, appellari, rectari, vocari, waviari, convinci, condemnari, attingi, ſive adjudicari contigerit in futur. ac omnia & ſingula indictamenta, judicia, condemnationes, executiones, pœnas, mortis pœnas, corporal. puniciones, ac omnes al. pœnas, & pœnalitat. quaſcunque de pro ſive concern. mortem, occiſionem, necem, venenationem, intoxicationem, feloniam, & felonicam interfectionem præd.* Thomæ Overbury *mil. in ſup. vel verſus ipſam* Franciſcam *hab. fact. reddit. ſive adjudicat. aut impoſter. habend. fiend. reddend. ſive adjudicand. aut quæ nos verſus ipſam* Franciſc' *pro præmiſſ. vel aliquo præmiſſor. habuim' habem' ſeu impoſt. habere poterimus, aut hæred. ſeu ſuc. habere poterint in futur. (Impriſonament. ad arbitrium nr' regium aut reſtric. ullo modo ad locum certum Anglicé* confining, *tantum except.) Pardonamus inſuper ac per præſent' pro nob. hæred. & ſuccr. nr' remitt. & relax. præfat.* Franciſcæ *omni & ſingul. utlagar. ſi quæ verſus ipſam* Franciſc. *ratione, ſive occaſione præmiſſor. ſeu eor. alicujus promulgat. fuer. ſive impoſter. erunt promulgand. ac omn. & omnimod. ſect. querel. impetitiones, & demand. quæcunque, quæ nos verſus ipſam* Franciſcam *pro præmiſſ. vel aliquo præmiſſor. habuimus, habem. ſeu in futur. habere poterimus, Sectamque pacis noſtræ, quæ ad nos verſus ipſam* Franciſc. *pertinet, ſeu pertinere poterit ratione præmiſſor. ſeu eor. alicujus, & firmam pacem nr' eidem* Franciſcæ *inde damus & concedimus per præſentes: Nolentes quod eadem* Franc. *per Juſt. Vic. Eſcaetor. Ballivos, ſeu aliquos Miniſtr' nr' occaſionibus præd. ſeu eor. aliquo moleſtetur, perturbetur, ſeu in aliquo gravetur; ita tamen quod ſtet rect. in cur. nr. ſi quis verſus eam loqui voluerit de præmiſſis vel aliquo præmiſſor' Licet eadem* Franciſca *bonam & ſufficient. ſecuritat. non inveniat ſecundum formam & effectum cujuſdam Actus Parliament. Domini* Edwardi *nuper Regis Angliæ tertii, progenitor. nr. anno regni ſui decimo apud* Weſtm. *tent. edit. de ſe bene gerend. ex nunc erga nos hæred. ad ſucc. nr' & cunctum populum nr' Et ulterius pro nobis hæred. & ſucc. noſtris de ampliori gratia noſtra ſpeciali, ac ex certa ſcienc. & mero motu noſtris volumus & concedimus per præſentis, quod hæ Litt. nræ. Paten. pardonationis, ac omnia & ſingula in eiſdem content. bone, firme, valide ſufficient. & effectual. in lege ſtabunt, & exiſtent, & dehinc nullo modo vacuæ devenient; Quodque impoſter. eadem* Franciſca *ullo modo non indictetur, arrectetur, impetatur, vexetur, ſeu gravetur de pro vel concernend. mort. occiſionem, necem, venenationem, intoxicationem, feloniam aut felonicam interfectionem præd.* Thomæ Overbury *mil. qualitercunque ſeu quocunque modo idem* Thomas Overbury *mil. ad mortem ſuam devenit. Statut. in Parliament. Domini* Richardi *nuper Regis Angliæ ſecundi, anno regni ſui decimo tertio tent. edit. aut aliquo alio ſtatut. actu, ordination. proviſione, ſive reſtrictione in contrar. inde non obſtan. In cujus rei, &c. Teſte, &c.*

Ex per *Francis Bacon.*

May it pleaſe your excellent Majeſty,

THIS Bill containeth your Majeſty's gracious Pardon unto the Lady *Frances* late Counteſs of *Somerſet*, for being Acceſſary before the Fact, of the Death and Impoiſonment of Sir *Thomas Overbury*.

It hath inſerted, as Motives to your Majeſty's Mercy, four reſpects; that is to ſay: The reſpect of her Father, Friends and Family.

Her Voluntary Confeſſion, both when ſhe was Priſoner, and at the Bar.

The Promiſe made publickly by the Lord High Steward, and her Peers, to intercede for your Majeſty's Mercy.

And that the Crime was not of a Principal, but of an Acceſſary, before the Fact, by the Inſtigation of baſe Perſons.

The like Pardon formerly paſſed your Majeſty's Signature, and is now amended by your Majeſty's ſpecial Direction from your Royal Mouth, in two Points: The one is, That Impriſonment in the *Tower*, or other Confining at your Majeſty's Pleaſure, is not pardoned. The other, that the ſolemn Promiſe made at her Arraignment by the Lord Steward and the Peers to intercede to your Majeſty for your Mercy, is inſerted.

Francis Bacon.

The aforeſaid Bill tranſlated into Engliſh.

James Rex,

THE King to whom, *&c.* Greeting. Where as the Fountains, as well of Mercy as Juſtice, are wont and ought to flow from the King's Throne; of which the former of Juſtice in the memorable Caſe of the Death and Murder of Sir *Thomas Overbury*, in a conſtant and right Courſe, hath flowed and is derived from us and our Royal Court, for the full Satiſfaction of our Self and Subjects. And whereas divers and manifold Cauſes of our Clemency occur, which may move our Regal Mercy towards *Frances Carr*, late Counteſs of *Somerſet*; chiefly, that Murder, with ſo many and ſuch Examples of Juſtice, before this time expiated; eſpecially two, whereof the firſt reſpecteth her Father, and Friends, and Family, and noble Progeny; the other hath reſpect to herſelf, becauſe ſhe freely and willingly confeſſed her Offence, ſubmitting and proſtrating her ſelf at the Altar of our Mercy, not only during the time of her Impriſonment, but alſo publickly, and in her Trial. And foraſmuch as *Thomas* Lord *Elleſmere* our Chancellor of *England*, and being our High Steward of *England* in that behalf, and all her Peers, by whoſe Judgment ſhe was convict, at the humble Petition of the ſaid *Frances* publickly made, ſolemnly bound themſelves by their Promiſe, to intercede for our Royal Mercy towards her: And firſt weighing with ourſelves the nature of her Offence, upon which ſhe was indicted, arraigned, convicted and condemned, *viz.* That the Proceſs and Judgment were not as of a Principal, but as of an Acceſſary before the Fact, and that ſhe ſeemed to have begun by the Procurement and wicked Inſtigation of certain baſe Perſons: Know ye, that we, moved with Pity, of our ſpecial Grace, and of our certain Knowledge, and our mere Motion, have pardoned, remitted and remiſed, and by theſe Preſents for us, our Heirs and Succeſſors, do pardon, remiſe, and releaſe to the aforeſaid *Frances Carr*, late Counteſs of *Somerſet*, or by whatſoever other Name, or Surname, or addition of Name, or of her Surname of Dignity, Place, or Places, the ſame *Frances* may be known, eſteemed, called, or named, or lately was known, eſteemed, called or named, the Slaughter, Killing, Poiſoning, Bewitching, Death, Felony and felonious Murdering of the aforeſaid Sir *Thomas Overbury*; or by whatſoever other Name, Surname, or addition of Name or Surname, of Place or Places, the ſaid Sir *Thomas Overbury* may be known, eſteemed, called or named, by the ſaid *Frances*, by herſelf alone, or with any other Perſon, or any other Perſons whatſoever, howſoever, in what manner ſoever, whenſoever, or whereſoever done, committed, or perpetrated; and all, and all manner of Conſpiracies, Felonies, Abetments, Procurements, Incitations, Partnerſhips, Maintainances, Helps, Hirings, Commands, Counſels, Crimes, Tranſgreſſions, Wrongs, Offences and Faults whatſoever, the aforeſaid Death, Slaughter, Killing, Poiſoning, Bewitching, Felony and felonious Murdering of the aforeſaid Sir *Thomas Overbury*, in any wiſe touching or concerning. And the Acceſſary of them, as before the Fact, as after the Fact, and Flight and Flights made thereupon, altho' the ſaid *Frances* of the ſaid Premiſes, or any of the Premiſes ſtand, or not ſtand indicted, impeached, *appellat. vocat. rectat. waviat.* convicted, condemned, attainted, or adjudged by the Judgment of her Peers, before the aforeſaid High Steward of *England*, or otherwiſe howſoever, or thence in time to come ſhall appear to be indicted, impeached, *appellar. rectari, vocari, waviari*, convicted, condemned, attainted or adjudged. And all and ſingular Indictments, Judgments, Condemnations, Executions, Pains of Death, Pains of Corporal Puniſhments, and all other Pains and Penalties whatſoever of, for, or concerning the Death, Slaughter, Killing, Poiſoning, Bewitching, Felonies, and felonious Murdering of the aforeſaid Sir *Thomas Overbury*, in, upon, or againſt the ſame *Frances*, had, made, returned, or adjudged; or hereafter to be had, made, returned, or adjudged, or which we againſt the ſaid *Frances* may have in time to come (Impriſonment at our Royal Pleaſure, or Reſtraint, confining to a certain Place only excepted.) Moreover, we do pardon, and by theſe Preſents for us, our Heirs and Succeſſors, remit and remiſe to the aforeſaid *Frances*, all and every Outlawries which againſt the ſame *Frances*, by reaſon or occaſion of the Premiſes, or any of them, have been proclaimed, or hereafter ſhall be proclaimed; and all, and all manner of Suits, Complaints, Impeachments, and Demands whatſoever, which we againſt the ſame *Frances*, for the Premiſes, or any of the Premiſes, have had, have, or in time to come ſhall have; and the Suit of our Peace which appertained to us againſt the ſame *Frances*, or may appertain by reaſon of the Premiſes, or any of them. And by theſe Preſents, We do give and grant our firm Peace to the ſame *Frances*, willing that the ſame *Frances*, by the Juſtices, Sheriffs, Eſcheators, Bailiffs, or any other our Miniſters, by the Occaſions aforeſaid, or any of them, be not moleſted, troubled, or in any manner vexed; ſo as nevertheleſs ſhe ſtand right in our Court: if any towards her ſhould ſpeak concerning the Premiſes, or any of the Premiſes, although the ſaid *Frances* do not find good and ſufficient Security, according to the Form of a certain Act of Parliament, of the Sovereign Lord *Edward* the Third, late King of *England*, our Progenitor, held at *Weſtminſter*, in the tenth Year of his Reign, for her good Behaviour from henceforth towards us, our Heirs and Succeſſors, and all our People. And farther, for us, our Heirs, and Succeſſors, of our more ample ſpecial Grace, and out of our certain Knowledge, and our mere Motion, we will and grant by theſe Preſents, That theſe our Letters-Patent of Pardon, and all and ſingular the Things contained in the ſame, ſhall ſtand, and be good, firm, valid, ſufficient and effectual in the Law, and from henceforth ſhall by no means become void. And that in time to come, the ſaid *Frances*, by any means, ſhall not be indicted, arreſted, accuſed, vexed or troubled of, for, or concerning the Death, Murder, Slaughter, Poiſoning, Bewitching, Felony, or felonious Killing of the aforeſaid Sir *Thomas Overbury*, howſoever, or by whatſoever Means the ſaid Sir *Thomas Overbury* came to his End: The Statute of the Sovereign Lord *Richard* the Second, late King of *England*, in the thirteenth Year of his Reign, or any other Statute, Act, Ordinance, Proviſion, or Reſtriction to the contrary thereof notwithſtanding. In Teſtimony whereof, *&c.* Witneſs, *&c.*

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* *At the time when this Proſecution was firſt ſet on foot, the King gave a ſtrict Charge to the Judges to make a diligent ſearch and inquiry into the Truth, and told them,* If ever he ſpared any that were guilty, he wiſhed the Curſe of God might light on him, and his Poſterity.

Ex. per *Francis Bacon.*

De Pardonatione ſpeciali pro Roberto Karr, *nuper Comiti* Somerſet *.

‘ REX omnibus ad quos, &c. Salutem. Cum per quandam Inquiſitionem captam apud Civitatem *Weſtm.* in Comitatu *Middleſexiæ*, in magnâ Aulâ Placitorum ibidem, *Die Veneris decimo nono die Januarii*, Anno Regni noſtri *Angliæ*, *Franciæ & Hiberniæ* tertio decimo, & *Scotiæ* quadrageſimo-nono, coram.

‘ *Edwardo Coke* Milite, Capitali Juſticiario noſtro ad Placita coram nobis tenenda aſſignato, uno de Privato Concilio noſtro:

‘ *Julio Cæſar* Milite, Magiſtro Rotulorum Cancellariæ noſtræ, altero de Privato Concilio noſtro:

‘ *Henrico Hobarte* Milite, Capitali Juſticiario noſtro de Banco:

‘ *Laurentio Tanfield* Milite, Capitali Barone Scaccarii noſtri:

‘ *Jacobi Altham* Milite, uno Baronum Scaccarii noſtri:

‘ *Johanne Croke* Milite, uno Juſticiariorum noſtrorum ad Placita coram nobis tenenda aſſignato:

‘ *Johanne Dodderidge* Milite, altero Juſticiario ad Placita coram nobis tenenda aſſignato:

‘ *Roberto Houghton* Milite, altero Juſticiario noſtro ad Placita coram nobis tenenda aſſignato:

‘ *Rogero Wilbraham* Milite, Superviſore Curiæ noſtræ Wardorum & Liberationum:

‘ *Daniele Dunn* Milite, uno Magiſtrorum Curiæ noſtræ Requiſitionum:

‘ *Jacobo Ley* Milite, Attornato Noſtro Curiæ noſtræ Wardorum & Liberationum:

‘ Et *Edwardo Moſeley* Milite, Attornato Curiæ Ducatûs noſtri *Lancaſtriæ:*

‘ Ad tunc Juſticiariis noſtris, per Literas Patentes noſtras eis, & quibuſcunque quatuor vel pluribus eorum, inde confectas; ad inquirendum per Sacramentum proborum & legalium Hominum de Comitatu *Middleſexiæ*, ac aliis viis, modis & mediis quibus melius ſciverint aut poterint, tàm infra Libertatis quàm extra, per quos rei Veritas melius ſciri poterit, de quibuſcunque Proditionibus, Miſpriſionibus Proditionum, Inſurrectionibus, Rebellionibus, Contrafacturis, Tonſuris, Loturis, falſis Fabricationibus, & aliis Falſitatibus Monetæ hujus Regni noſtri *Angliæ*, & aliorum Regnorum ſive Dominiorum noſtrorum quorumcunque; ac de quibuſcunque Murdris, Feloniis, Homicidis, Interfectionibus, Burglariis, Raptibus Mulierum, Congregationibus & Conventiculis illicitis, Verborum Prolationibus, Coadunationibus, Miſpriſionibus, Confœderationibus, falſis Allegationibus, Tranſgreſſionibus, Riotis, Routis, Retentionibus, Eſcapiis, Contemptibus, Falſitatibus, Negligentiis, Concelamentis, Manutenentiis, Oppreſſionibus, Cambipartiis, Deceptionibus, & aliis Malefactis, Offenſis & Injuriis quibuſcunque; Nec non Acceſſariis eorundem infra Comitatum prædictum, tam infra Libertates quam extra, per quoſcunque & qualitercunque factis, habitis, perpetratis ſive commiſſis, & per quos vel per quem, cui vel quibus, quando, qualiter & quomodo; ac de aliis Articulis & Circumſtantiis præmiſſa, & eorum quodlibet, ſive eorum aliquod vel aliqua qualitercunque concernentibus plenius veritatem; & ad eaſdem Proditiones, & alia Præmiſſa audiendi & terminandi, ſecundùm Legem & Conſuetudines Regni noſtri *Angliæ* aſſignatis, recitantes quod cum *Ricardus Weſton*, nuper de *London*, *Yeoman*, Deum præ Oculis ſuis non habens, nec acerbiſſimas Pœnas & Punitiones contra Malefactores per Leges & Statuta hujus Regni *Angliæ* edita & proviſa, atque quotidiè in Exemplum & Terrorem eorundem in Executionem poſita, aliqualiter verens; ſed Inſtigatione Diabolicâ motus & ſeductus, machinans & intendens quendam *Thomam Overbury* Militem, non ſolum in graviſſimos, odioſiſſimos & periculoſiſſimos Morbos inducere, verum etiam præfatum *Thomam Overbury* de Vitâ ſuâ felonicè & voluntariè deprivare atque ſpoliare, & nequiſſimam Intentionem illam atque Animi ſui impium propoſitum prædictum efficere; Nono die *Maij* Anno Regni noſtri *Angliæ*, *Franciæ*, & *Hiberniæ* undecimo, & *Scotiæ* quadrageſimo-ſexto, apud *Turrim London*, in Parochiâ *Omnium Sanctorum Barking*, in Warda *Turris London*, ex Malitia ſua præcogitata, quoddam Venenum Coloris ſubviridis & ſubflavi (*Anglicè of a greeniſh and yellowiſh Colour*) vocatum *Roſeacre*, in Manus ſuas obtinuerit & acquiſiverit: Ac prædictus *Ricardus Weſton*, eiſdem Die & Anno apud *Turrim London* prædictam in parochia & warda prædictis, ſciens prædictum Venenum, vocatum *Roſeacre* fore Venenum mortale, idem *Ricardus Weſton* Venenum prædictum vocatum *Roſeacre*, cum quodam genere Juſculi (*Anglicè Broth*) in quodam Diſculo per ipſum *Ricardum Weſton*, ad tunc apud *Turrim London* prædictam, in parochiâ & wardâ prædictis, compoſuit & miſcuit, & Juſculum prædictum cum Veneno prædicto, vocato *Roſeacre*, ad tunc apud *Turrim London* prædictam in parochia & warda prædictis, vitiaverit & infecerit eâ Intentione, ut idem *Ricardus Weſton* præfatum *Thomam Overbury* cum Veneno prædicto, ſic, ut præfertur, compoſito & mixto, interficeret & murdraret. Et prædictus *Ricardus Weſton*, Juſculum prædictum ſic per ipſum *Ricardum Weſton*, ut præfertur, vitiatum & infectum & cum Veneno prædicto compoſitum & mixtum, præfato *Thomæ Overbury*, ad tunc apud *Turrim London* prædictam, in parochiâ & wardâ prædictis, felonicè, voluntariè & ex Malitia ſua præcogitata, tanquam ſalubre Juſculum ad edendum præbuerit & dederit: Super quo prædictus *Thomas Overbury* credens prædictum Juſculum, ſic, ut præfertur, cum Veneno prædicto per præfatum *Ricardum Weſton* compoſitum, mixtum, vitiatum & infectum, fore ſalubre, idem *Thomas Overbury* poſtea, ſcilicet, eiſdem Die & Anno apud *Turrim London* prædictam, in parochiâ & wardâ prædictis, prædictum Juſculum ſic, ut præfertur, per præfatum *Ricardum Weſton*, cum Veneno prædicto compoſitum, mixtum, vitiatum & infectum, ad tunc apud *Turrim London*, in parochia & warda prædictis, ceperit & comederit.

‘ Cumque etiam prædictis *Ricardus Weſton* poſtea, ſcilicet, primo Die *Junii* Annis undecimo & quadrageſimo-ſexto ſupradictis, in parochia & warda prædictis, ex Malitia, ſua præcogitata, quoddam aliud Venenum in Pulvere vocatum *white Arſenick*, in Manus ſuas obtinuerit & acquiſiverit, & prædictus *Ricardus Weſton* ad tunc, ſcilicet, prædicto primo Die *Junii* Annis ſupradictis, ſciens prædictum Pulverem, vocatum *white Arſenick*, fore mortale Venenum, idem *Ricardus Weſton*, eâ Intentione ut idem *Ricardus Weſton* cum Veneno prædicto, vocato *white Arſenick*, præfatum *Thomam Overbury* magis celeriter interficeret & murdraret, Venenum illud, vocatum *white Arſenick*, tanquam ſalubrem pulverem, ad edendum præfato *Thomæ Overbury* ad tunc, ſcilicet, prædicto primo Die *Junii* Annis ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, felonicè, voluntariè ex Malitia ſua præcogitata, præbuerit & dederit; ſuper quo prædictus *Thomas Overbury*, credens prædictum Pulverem, vocatum *white Arſenick*, fore ſalubrem Pulverem, idem *Thomas Overbury* Pulverem prædictum vocatum *white Arſenick*, ad tunc, ſcilicet, prædicto primo Die *Junii* Annis ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, ſumpſerit & comederit.

‘ Cumque etiam prædictus *Ricardus Weſton* poſtea, ſcilicet, decimo Die *Julii* Annis undecimo & quadrageſimo-ſexto ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, ex Malitia ſua præcogitata, quoddam alium Venenum, vocatum *Mercury ſublimate*, in manus ſuas obtinuerit & acquiſiverit, ac prædictus *Ricardus Weſton* ad tunc, ſcilicet, prædicto decimo Die *Julii* Annis ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis ſciens Venenum prædictum, vocatum *Mercury ſublimate*, fore mortale Venenum, idem *Ricardus Weſton* poſtea, ſcilicet, prædicto decimo Die *Julii* Annis ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, Venenum prædictum, vocatum *Mercury ſublimate* in Placentis, *Anglicè Tarts*, poſuerit; & Venenum prædictum, vocatum *Mercury ſublimate* cum Placentis illis ad tunc, ſcilicet, prædicto decimo Die *Julii* Annis ſupradictis, apud *Turrim London* prædictam in parochia & warda prædictis, miſcuerit; & Placentas prædictas cum Veneno prædicto, vocato *Mercury ſublimate* ad tunc, ſcilicet, prædicto decimo Die *Julii* Annis ſupradictis, apud *Turrim London* prædictam in parochia & warda prædictis, vitiaverit & infecerit, eâ Intentione ut idem *Ricardus Weſton* præfatum *Tho. Overbury* cum Veneno prædicto, vocato *Mercury ſublimate* ſic, ut præfertur, per præfatum *Ricard. Weſton* in Placentis prædictis poſito, & cum Placentis prædictis ſic, ut præfertur, mixto, magis celeriter interficeret & murdraret. Et prædictus *Ricardus Weſton* prædictas Placentas ſic, ut præfertur, per præfatum *Ricardum Weſton* cum Veneno prædicto, vocato *Mercury ſub-*

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* 22 Jac. I. A. D. 1624. Rymer's Fœdera, Vol. XVII. p. 625, & ſeq. Edit. 1717.

limate mixtas, vitiatas & infectas poſtea, ſcilicet, prædicto decimo die *Julii*, annis undecimo & quadrageſimo-ſexto prædictis apud *Turrim London* prædictam, in parochia & warda prædictis, felonicè, voluntariè & ex Malitia ſua præcogitata tanquam ſalubrem placentam præfato *Thomæ Overbury* ad edendum præbuerit & dederit; ſuper quo prædictus *Thomas Overbury*, credens prædictas placentas ſic, ut præfertur, per præfatum *Ricardum Weſton* cum Veneno prædicto, vocato *Mercury ſublimate*, mixtas, vitiatas & infectas, fore ſalubres placentas; idem *Thomas Overbury* poſtea, ſcilicet, prædicto decimo die *Julii*, annis undecimo & quadrageſimo-ſexto ſupradictis, apud Turrim *London* prædictam, in parochia & warda prædictis, placentas prædictas ſic, ut præfertur, per præfatum *Ricardum Weſton*, cum Veneno prædicto, vocato *Mercury ſublimate*, mixtas, vitiatas & infectas ſumpſerit & comederit.

‘ Cumque etiam prædictus *Ricardus Weſton*, & quidam homo ignotus exiſtens Pharmacopola, (Anglicè, *an Apothecary)* Deum præ oculis ſuis non habentes, ſed inſtigatione Diabolicâ moti & ſeducti, poſtea, ſcilicet, quarto-decimo die *Septembris*, anno regni noſtri *Angliæ*, *Franciæ* & *Hiberniæ* undecimo, & *Scotiæ* quadrageſimo-ſeptimo, apud *Turrim London* prædictam, in parochia & warda prædictis, ex Malitiis ſuis præcogitatis, quoddam Venenum, vocatum *Mercury ſublimate* in manus ſuis obtinuerunt & acquiſiverunt, ac prædictus *Ricardus Weſton* & præfatus Pharmacopola ad tunc, ſcilicet, prædicto quarto decimo die *Septembris*, annis undecimo & quadrageſimo-ſeptimo ſupradictis, ſcientes prædictum Venenum, vocatum *Mercury ſublimate*, ultimò mentionatum, fore Mortale Venenum, idem *Ricardus Weſton* & præfatus Pharmacopola poſtea, ſcilicet, prædicto quarto-decimo die *Septembris*, annis undecimo & quadrageſimo-ſeptimo ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, Venenum prædictum, vocatum *Mercury ſublimate*, ultimò mentionatum in quoddam Cliſterium (Anglicè *a Gliſter)* malitioſè, diabolicè, felonicè & voluntariè impoſuerint & Cliſterium prædictum cum Veneno prædicto, vocato *Mercury ſublimate*, ultimo mentionato ad tunc, ſcilicet, quartodecimo die *Septembris*, annis undecimo & quadrageſimo-ſeptimo ſupradictis, apud *Turrim London* prædictam in parochia & warda prædictis, vitiaverint & infecerint, ea intentione ut idem *Ricardus Weſton* & præfatus Pharmacopola, præfatum *Thomam Overbury* cum Veneno prædicto, vocato *Mercury ſublimate*, ultimo mentionato, ſic ut præfertur, in Cliſterium prædictum, per præfatum *Ricardum Weſton* & prædictum Pharmacopolam, impoſitum magis celeriter interfecerent & murdrarent; & prædictus Pharmacopola pro iniquo lucro viginti librarum ei in ea parte dandarum & ſolvendarum, Cliſterum prædictum ſic ut præfertur, per præfatum *Ricardum Weſton* & ipſum Pharmacopolam prædictum, cum Veneno prædicto, vocato *Mercury ſublimate*, ultimo mentionato vitiatum & infectum præfato *Thomæ Overbury*, tanquam bonum, medicinabile & ſalutare Cliſterium pro corpore ipſius *Thomæ Overbury* ad tunc, ſcilicet, prædicto quarto-decimo die *Septembris*, annis undecimo & quadrageſimo-ſeptimo ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, felonicè, voluntariè, & ex Malitia ſua præcogitata ſuppeditaverint (Anglicè, *did miniſter)* & in inteſtina (Anglicè, *the Guts)* ipſius *Thomæ Overbury* infuderint (Anglicè, *did infuſe and put up*;) & quod prædictus *Ricardus Weſton* ad tunc, ſcilicet, prædicto quarto-decimo die *Septembris*, annis undecimo & quadrageſimo-ſeptimo ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, felonicè, voluntariè, & ex Malitia ſua præcogitata, fuerit præſens & auxilians eidem Pharmacopolæ in ſuppeditatione & infuſione prædicti Cliſterii ſic, ut præfertur, per præfatum *Ricardum Weſton* & prædictum Pharmacopolam cum Veneno prædicto, vocato *Mercury ſublimate* ultimo mentionato, vitiati & infecti, in inteſtina prædicti *Thomæ Overbury*; & quod immediatè, tam poſt prædictas ſeparales captiones & comeſturas ſeparalium Venenorum prædictorum, per præfatum *Thomam Overbury* in forma prædicta, quam poſt prædictam infuſionem & ſuppeditationem Cliſterii prædicti in inteſtina prædicti *Thomæ Overbury*, per præfatum Pharmacopolam in forma prædicta, idem *Thomas Overbury* apud *Turrim London* prædictam, in parochia & warda prædictis ægrotaverit, & in diverſa genera morborum, tam ratione prædictarum captionum & comeſturarum ſeparalium Venenorum prædictorum per prædictum *Thomam Overbury* in forma prædicta, quam ratione Infuſionis & Suppeditationis Cliſterii prædicti in Inteſtina ipſius *Thomæ Overbury*, per præfatum Pharmacopolam in forma prædicta, inciderit, & in Corpore ſuo variè diſtemperatus & diſturbatus devenerit: Et prædictus *Thomas Overbury* de ſeparalibus Venenis prædictis & operatione inde prædictis ſeparalibus temporibus, tam captionis & comeſturæ ſeparalium Venenorum prædictorum per præfatum *Thomam Overbury* in forma prædicta, quam prædictæ Infuſionis & Suppeditationis Cliſterii prædicti in Inteſtina ipſius *Thomæ Overbury* per præfatum Pharmacopolam in forma prædicta uſque in quintum-decimum diem *Septembris*, anno regni noſtri *Angliæ*, *Franciæ* & *Hiberniæ* undecimo, & *Scotiæ* quadrageſimo-ſeptimo ſupradictis, apud *Turrim London* prædictam, in parochia & warda prædictis, graviter languebat & intoxicatus fuit; quo quidem quinto-decimo die *Septembris*, annis undecimo & quadrageſimo-ſeptimo ſupradictis, prædictus *Thomas Overbury* apud *Turrim London* prædictam in parochia & warda prædictis de ſeparalibus Venenis prædictis obiit venenatus: Et ſic prædictus *Ricardus Weſton* præfatum *Thomam Overbury* modo & forma ſupradictis, felonicè, voluntariè & ex Malitia ſua præcogitata, venenaverit, interfecerit & murdraverit, contra Pacem noſtram, Coronam & Dignitatem noſtras, & in Jurium & Legum noſtrarum contemptum manifeſtum, & in peſſimum exemplum omnium aliorum in tali caſu delinquentium, nec non contra formam Statuti in hujuſmodi caſu editi & proviſi.

‘ *Robertus Karr* nuper Comes *Somerſet*, per nomen *Roberti* Comitis *Somerſet* nuper de parochia *Sanctæ Margaretæ* in *Weſtm.* in Comite *Middleſex* indictatus fuit, pro eo quod ipſe, Deum præ oculis ſuis non habens, ſed inſtigatione Diabolicâ motus & ſeductus, ante Feloniam & Murdrum prædicta, per præfatum *Ricardum Weſton* modo & forma prædictis felonicè facta & perpetrata (videlicet) octavo die *Maii* anno regni noſtri *Angliæ*, *Franciæ* & *Hiberniæ* undecimo, & *Scotiæ* quadrageſimo-ſexto ſupradictis, prædictum *Ricardum Weſton* apud prædictam parochiam *Sanctæ Margaretæ* in *Weſtm.* in dicto Comite *Middleſex* ad Feloniam & Murdrum prædicta modo & forma prædictis facienda & perpetranda malitioſè, felonicè, voluntariè & ex Malitiâ ſuâ præcogitatâ, incitavit, movit, præcepit, conduxit, auxiliatus fuit, abbetavit, procuravit & conſuluit contra Pacem noſtram, Coronam & Dignitatem noſtras, nec non contra formam Statuti in hujuſmodi caſu editi & proviſi, prout per Indictamentum prædictum in Curiâ noſtrâ coram nobis de Recordo remanens, plenius liquet & apparet.

‘ Cumque præfatus *Robertus Karr* nuper Comes *Somerſet*, ſuper prædictam Inquiſitionem in modo & forma prædictis captam, de & ſuper Acceſſariis Feloniæ & Murdri prædictorum, ante Feloniam & Murdrum illa facta & perpetrata in eadem Inquiſitione contenta mentionata, arrectatus, convictus, attinctus & adjudicatus exiſtit, prout per Recordum inde plenius liquet & apparet.

‘ Sciatis quòd Nos,

‘ Oculis verè regiis & gratioſis Præmiſſa intuentes, nec non gratiſſima & fideliſſima ſervitia quæ *Thomas Karr* de *Farniherſt* in Regno noſtro *Scotiæ* Miles, Pater præfati *Roberti* nuper Comitis *Somerſet*, tam præchariſſimæ Matri noſtræ Dominæ *Mariæ* nuper *Scotiæ* & *Franciæ* Reginæ, ob cujus cauſam prædictus *Thomas Karr* exilium & fortunarum ſuarum jacturam & ruinas conſtanti Animo & Fide paſſus eſt, quam nobis ipſis ſumma cum Fide & Alacritate multifariè præſtiterit, Animo benigno recolentes, Pietate etiam moti erga ipſum nuper Comitem *Somerſet* & innocentem Sobolem ſuam; qui etiam ipſi *Robertus* multa Fidelia & perquam acceptabilia Servitia Nobis antehac impendit.

‘ De Gratia noſtra ſpeciali, ac ex certa Scientia & mero Motu noſtris, pardonavimus, remiſimus, & relaxavimus, ac per præſentes, pro Nobis, Hæredibus & Succeſſoribus noſtris, pardonamus, remittimus & relaxamus præfato *Roberto Karr* nuper Comiti *Somerſet*, aliàs dicto *Roberto* communiter dicto Comiti *Somerſet*, aliàs dicto *Roberto* nuper Comiti *Somerſet*, aut quocunque alio Nomine, Cognomine, ſive Additione Nominis vel Cognominis Officii, Honoris, Dignitatis, Loci vel Locorum idem *Robertus Karr* ſciatur, cenſeatur, vocetur ſive nuncupetur, aut nuper ſciebatur, cenſebatur, vocabatur ſive nuncupabatur, omnes & omnimodas Conſpirationes, Felonias, Abattationes, Procurationes, Incitationes, Motiones, Confortationes, Manutentiones, Præceptiones, Auxiliationes, Conductiones, Mandata, Conſilia, Crimina, Tranſgreſſiones, Malefacta, Offenſa & Delicta quæcunque in Indictamento ſive Inquiſitione prædicta ſpecificata, Mortem, Occiſionem Necem, Venenationem, Intoxicationem, Feloniam, & felonicam Interfectionem prædicti *Thomæ Overbury* Militis, in aliquo tangentia ſive concernentia: Ac Acceſſaria eorundem tam ante Factum quam poſt Factum, ac Fugam & Fugas ſuperinde factas, licet idem *Robertus Karr* nuper Comes *Somerſet* de Præmiſſis vel aliquo Præmiſſorum indictatus, impetitus, appellatus, arrectatus, utlagatus, convictus, condempnatus, attinctus ſive adjudicatus exiſtit vel non exiſtit, aut inde indictari, impetiri, appellari, rectari, utlagari, convinci, condempnari, attingi ſive adjudicari contigerit in futurum; ac omnia & ſingula Indictamenta, Judicia Condemnationes, Executiones, Pœnas Mortis, Pœnas Corporales, Pecuniarias Punitiones, Impriſonamentas, Reſtrictiones ad locum certum vel loca certa (Anglicè *Confining)* Pœnas & Pœnalitates quaſcunque, de, pro, ſive concernentes Mortem, Occiſionem, Necem, Venenationem, Intoxicationem, Feloniam, & felonicam Interfectionem prædicti *Thomæ Overbury* Militis, in aliquo tangentia ſive concernentia: Ac Acceſſaria eorundem tàm ante Factum quàm poſt Factum, ac Fugam & Fugas ſuperinde Factas, licet idem *Robertus Karr* nuper Comes *Somerſet* de Præmiſſis vel aliquo Præmiſſorum indictatus, impetitus, appellatus, arrectatus, utlagatus, convictus, condempnatus, attinctus ſive adjudicatus exiſtit vel non exiſtit; aut inde indictari, impetiri, appellari, rectari, utlagari, convinci, condempnari, attingi ſive adjudicari contigerit in futurum; ac omnia & ſingula Indictamenta, Judicia, Condemnationes, Executiones, Pœnas Mortis, Pœnas Corporales, Pecuniarias Punitiones, Impriſonamenta Reſtrictiones ad Locum certum vel Loca certa (Anglicè *Confining)* Pœnas & Pœnalitates quaſcunque, de, pro, ſive concernentes Mortem, Occiſionem, Necem, Venenationem, Intoxicationem, Feloniam & felonicam Interfectionem prædicti *Thomæ Overbury* Militis, in, ſuper vel verſus ipſum *Robertum Karr* nuper Comitem *Somerſet* habita, facta, reddita, ſive adjudicata, aut impoſterùm habenda, fienda, reddenda, ſive adjudicanda; aut quæ Nos verſus ipſum *Robertum Karr* nuper Comitem *Somerſet*, pro Præmiſſis vel aliquo Præmiſſorum habuimus, habemus ſeu impoſterùm habere potuimus, aut Hæredes vel Succeſſores noſtri ullo modo habere poterint in futurum.

‘ Pardonavimus inſuper, ac pro Nobis, Hæredibus & Succeſſoribus noſtris remittimus, pardonamus & relaxamus præfato *Rob. Karr* nuper Com. *Somerſet* omnes & ſingulas Utlagaria, ſi quæ verſus prædictum *Rob. Karr* nuper Comitem *Somerſet*, ratione ſive occaſione præmiſſorum, ſive eorum alicujus promulgatæ fuerint, ſive impoſterùm erint promulgandæ; ac omnes & omnimodas Sectas, Querelas, Impetitiones & Demanda quæcunque, quæ Nos, verſus ipſum *Robertum Karr* nuper Comitem *Somerſet*, pro Præmiſſis vel aliquo Præmiſſorum habuimus, habemus, ſeu in futurum habere potuerimus: Sectamque Pacis noſtræ quæ ad nos verſus ipſum *Robertum Karr* nuper Comitem *Somerſet* pertinet ſeu pertinere poterit ratione præmiſſorum, ſive eorum alicujus, & firmam Pacem noſtram eidem *Roberto Karr* nuper Comiti *Somerſet* damus & concedimus per Præſentes.

‘ Nolentes quod idem *Robertus Karr* nuper Comes *Somerſet*, per Vicecomites, Juſticiarios, Eſcaetores, Ballivos ſive alios Miniſtros noſtros occaſionibus prædictis ſeu eorum aliquo, moleſtetur, occaſionetur, perturbetur, ſeu in aliquo gravetur, licet idem *Robertus Karr*, nuper Comes *Somerſet*, non inveniat ſufficientes Manucaptiones ſive Securitates, juxta formam & effectum cujuſdam Actus in Parliamento Domini *Edwardi* nuper Regis *Angliæ* Tertii Progenitoris noſtri, Anno Regni ſui decimo, apud *Weſtmonaſterium* tento, editi, de ſe bene gerendo, exnunc, erga Nos, Hæredes & Succeſſores noſtros & cunctum Populum noſtrum.

‘ Sciatis ulterius quòd nos, de uberiori Gratiâ noſtrâ ſpeciali, & ex certâ Scientâ & mero Motu noſtris, pro Nobis, Hæredibus & Succeſſoribus noſtris concedimus præfato *Robertus Karr*, nuper Comiti *Somerſet*, & Hæredibus ſuis, quantum in nobis eſt, quod idem *Robertus Karr*, nuper Comes *Somerſet*, de cætero plenè & integrè adjudicetur, habeatur & reputetur in lege de & in eiſdem hujuſmodi & conſimilibus honore, ſtatu, ordine, dignitate, ſtilo, ſanguine, & loco honoris & præcedentiæ, ad omnes intentiones & propoſita, ac ſi prædictæ felonia, venenatio, intoxicatio & felonica interfectio præfati *Thomæ Overbury*, militis & acceſſaria eorundem, & prædictæ conſpirationes, felonia, abettationes, procurationes, incitationes, motiones, confortationes, proſcriptiones, auxiliationes, condemnationes, mandata, conſilia, & alia malefacta, tranſgreſſiones & offenſæ, per ipſum, per ſe ſolum, aut cum aliis nunquam facta commiſſa ſive perpetrata fuiſſent, & prout prædictæ convictiones, condemnationes, judicia, utlagaria ſive attincturæ nunquam habita, data, ſeu promulgata fuiſſent: Ac eundem *Robertum Karr*, nuper Comitem *Somerſet*, & hæredes ſuos ad omnia & ſingula dignitates, ſtatus, præheminentias ſanguinis, loci honoris, ordinis & præcedentia quæcunque, quæ idem *Robertus Karr*, nuper Comes *Somerſet*, ratione aliquorum prædictorum convictionum, judiciorum, utlagariarum ſive attincturarum, ſeu eorum alicujus, amiſit ſeu forisfecit plenariè quantum in nobis eſt damus, reddimus & reſtituimus per Præſentes, adeo plenè, liberè & integrè ad omnes intentiones & propoſita, ac ſi idem *Robertus Karr*, nuper Comes *Somerſet*, prædicta Felonia aut alia Malefacta nunquam commiſiſſet aut perpetraſſet; aut pro eidem indictatus, arrectatus, convictus, utlagatus aut attinctus nunquam extitiſſet: quodque idem *Robertus Karr*, nuper Comes *Somerſet*, & hæredes ſui de cætero & deinceps (quantum in nobis eſt) ſunt & erunt in lege capaces & habiles in ſanguine, ac de cætero & deinceps fore hæredes ad omnes & ſingulos anteceſſores lineales ſive collaterales ſuos quoſcunque, & (quantum in nobis eſt) ad petendum, habendum, hæreditandum & gaudendum omnia & ſingula, honores, maneria, dominia, terras, jura, titulos, actiones & hereditamenta quæcunque impoſterùm deſcendentia ſeu devenientia, per deſcenſum hæreditarium ab aliquo anteceſſorum ſuorum quorumcunque.

‘ Et ulterius de ampliori Gratiâ noſtrâ ſpeciali, ac ex certa ſcientiâ & mero motu noſtris volumus & concedimus per præſentes, pro Nobis, hæredibus & ſucceſſoribus noſtris, præfato *Roberto Karr*, nuper Comiti *Somerſet*, hæredibus & aſſignatis ſuis, quod hæ Literæ noſtræ Patentes, & omnia & ſingula in eiſdem contenta vel irrotulamentum earundem, erunt in omnibus & per omnia firmæ, validæ, bonæ, ſufficientes & effectuales in lege erga & contra nos, hæredes & ſucceſſores noſtros, tam in omnibus curiis noſtris quam alibi infra Regnum noſtrum *Angliæ*, abſque aliquibus Confirmationibus, Licentiis vel Tolerationibus, de Nobis, hæredibus vel ſucceſſoribus noſtris per prædictum *Robertum Karr*, nuper Comitem *Somerſet*, aut hæredes ſive aſſignatos ſuos, procurandis vel obtinendis; quodque impoſterùm idem *Robertus Karr*, nuper Comes *Somerſet*, ullo modo non judicetur, arrectetur, impetatur, vexetur, ſeu gravetur de, pro, vel concernente mortem, occiſionem, necem, venenationem prædicti *Thomæ Overbury* militis qualitercunque, ſeu quocunque modo idem *Thomas Overbury* miles ad mortem ſuam devenerit: Non obſtante ſtatuto in Parliamento Domini *Ricardi*, nuper Regis *Angliæ* ſecundi, Anno Regni ſui decimo tertio, tento, Edito: Et non obſtante male aut non vere recitando vel mentionando prædictum Indictamentum ſive Inquiſitionem ſuperius in præſentibus mentionatum, vel aliquam inde Parcellam: Et non obſtante non recitando vel non mentionando aliquam inquiſitionem de, pro, aut concernentem præmiſſa per præſentes pardonata ſive relaxata, aut eorum aliquod vel aliqua, aut aliquo alio Statuto, Actu, Ordinatione, Proviſione, Reſtrictione, Materiâ vel Re, in contrarium inde non obſtantibus.

In Cujus Rei, &c.

Teſte Rege apud *Weſtmonaſterium* ſeptimo
die *Octobris*.
Per Breve de Privato Sigillo.

When King *Charles* came to the Crown, *Somerſet* uſed great Sollicitations for the Recovery of his Eſtate; for which end he preſented the following Petition.

To the King's moſt Excellent Majeſty: The humble Petition of Robert *Earl of* Somerſet.

Sheweth,

‘ THAT in the Year 1616, after your Petitioner's Troubles were over, the King (your Majeſty's Father) was pleaſed by the Earl of *Suffolk*, the Lord Treaſurer, the Earl of *Worceſter*, Lord Privy-Seal, and the Duke of *Richmond*, Lord Steward, to make known to your Petitioner his favourable Intentions towards him, as well touching his Pardon and Inlargement, and the Payment of his Debts, as for his Eſtate, of which they ſhewed him that his Majeſty did mean to take ſome part to the Crown; but would make up to your Petitioner in other Lands to as much in Value: and in particular, that with a Manor which he had in *Northamptonſhire*, of a Thouſand Pounds *per Ann.* there was four Thouſand Pound of the King's Lands to be given him, which ſhould be improvable, and be eſteem'd at ſix Thouſand Pounds *per Ann.* But your Petitioner, in that he had never taken any Lands of Gift from the King, as for ſome other Reaſons, did delay to take hold of that Offer, deſiring that he might be allow'd to keep that Eſtate which he had formerly got, without Prejudice to his Majeſty or any Perſon. In which Hope he reſted, until he found that ſome Pieces of it had been diſpoſed of. Whereupon, being urged by his Wife's Friends, he was content, in the behalf of her and his Daughter, to give way that they ſhould ſue to his Majeſty for the Performance of that which had been proffer'd to your Petitioner; but in that he would not appear therein himſelf, (doubting leſt that might be underſtood to imply an Aſſent on his part to that which had been done with his Eſtate) it was given otherwiſe than as it was at firſt intended. Notwithſtanding whereof, and that your Petitioner continued in the ſame mind, without craving any Reparation therein for the ſpace of eight or nine Years after, yet he found cauſe at laſt to ſue both for his Freedom and Pardon, and for that Part of his Eſtate which reſted in the Crown; which Pardon he had not above four Months before God took the King. And his Majeſty being moved a little before concerning your Petitioner's Eſtate, (he being then at *New-Market*) profeſſed that he would give Order therein at his coming to *Whitehall*; which it pleaſed God to prevent.

‘ Since that time he hath ſued to your Majeſty by the Duke of *Buckingham*, the Earl of *Portland*, and afterwards by my Lord of *Canterbury*, my Lord of *Cottington*, and others. At the Marriage of his Daughter with the now Earl of *Bedford*, he was by the Dutcheſs of *Buckingham* and the Earl of *Pembroke* deſired, for Reaſons they then gave him, not to preſs your Majeſty therein at that time; being aſſured by them, that whatſoever he had to demand juſtly of your Majeſty, or ſhould make appear to have been meant of him by your Father, you would do him right in it. Whereupon he went on, and engaged himſelf to the late Earl of *Bedford*, and for his Uſe, in which he ſtands yet bound, to his exceeding great Prejudice: All which notwithſtanding, and that he afterwards did petition your Majeſty for a Reference in this ſame Cauſe, yet he could not then neither obtain any.

‘ Your Petitioner humbly prayeth, That your Majeſty will be pleaſed to take into your Conſideration this Suit of his, of a nature far differing from all others that are made to you; that which he craves being only the Performance of what your Father intended for him, in lieu of ſo much as he had taken of his, and the ſame no otherwiſe in your Majeſty to give him, than as he hath forborn to take hold of it; and for which your Majeſty may conceive there hath been a Cauſe, and that not a common one, which had made him ſo long diſpute with himſelf the Receipt of ſo great a Benefit, and wherein his whole Fortune conſiſted, and all that he had been getting for many Years. However, he being the firſt that hath left in the Crown that which he might have had from it, may well hope that his Confidence will not be imputed to him for a Crime, or that your Majeſty (if he had thereby given you any Advantage) would think fit to make uſe of it, againſt one whom you may have cauſe to find, when it comes to be enquired into, that he hath been more than any truſted by the Crown, and hath more Proofs to ſhew than any other, that he hath deſerved well of the King your Father, of your Majeſty, and of all theſe your three Kingdoms.

‘ His laſt and humble Suit to your Majeſty is, That in reſpect of the many Croſſes he hath met with in this preſent Cauſe, and that Time hath taken away thoſe great Men before-mentioned, as alſo the Earl of *Carliſle* and others, that were imployed by the King to your Petitioner, or preſent when he received his Meſſage from the Lords, there remaining only now ſome noble Perſons of a greater Number in this Kingdom, that can teſtify ſo much as will give Credit to that which is deliver'd here; that your Majeſty will therefore pleaſe to be inform'd by them what your Petitioner hath further to ſay herein for himſelf, and what they themſelves can report touching the Intentions of the King, your Majeſty's Father, towards him in this Particular which is now ſought of you: That after the many Loſſes he hath ſuſtained by his want of Acceſs to your Majeſty, and the Aſſiſtance of thoſe about you, ſuch Courſe may be taken now at length by your Majeſty for the repairing him again, either out of that Eſtate which was his own, or otherwiſe, as may accord with the Purpoſe of the King your Father, with your Majeſty's Juſtice, and is due to the Demand of your Petitioner.

And he ſhall pray for your Majeſty's long and happy Reign.

The Requeſt of this Petition was never granted, and he and his Counteſs both died in Obſcurity.

XXX. *Proceedings in Parliament againſt* Francis Bacon *Lord* Verulam, *Viſcount* St. Albans, *Lord-Chancellor of* England, *upon an Impeachment for* Bribery *and* Corruption *in the Execution of his Office*, March 19, &c. 1620. 18 *and* 19 Jac. I.

PROCEEDINGS in the Houſe of Commons.

Jovis 15° die Martii 1620.

SIR *Robert Phillips* reports from the Committee appointed to enquire into Abuſes in the Courts of Juſtice, *viz.*

I am commanded from the ſaid Committee to render an Account of ſome Abuſes in the Courts of Juſtice, which have been preſented unto us. In that which I ſhall deliver, are three Parts.

Firſt, The Perſon againſt whom it is alledged.

Secondly, The Matter alledged.

Thirdly, The Opinion of the Committee.

1. The Perſon againſt whom it is alledged, is no leſs than the Lord Chancellor*, a Man ſo endued with all Parts, both of Nature and Art, as that I will ſay no more of him; being not able to ſay enough.

2. The Matter alledged, is *Corruption.*

3. The Perſons by whom this is preſented to us, are two, *viz. Awbrey* and *Egerton.*

Awbrey's Petition ſaith, that he having a Cauſe depending before the Lord Chancellor, and being tir'd by Delays, was adviſed by ſome that are near my Lord, to quicken the way by more than ordinary Means, *viz.* by preſenting my Lord with one hundred Pounds.

The poor Gentleman, not able by any means to come to his wiſh'd-for Port, ſtruck Sail at this, and made a ſhift to get an hundred Pounds from the Uſurer; and having got it, went with Sir *George Haſtings* and Mr. *Jenkins* to *Grays-Inn:* and being come to my Lord's Houſe, they took the Money of him, and carry'd it in to my Lord Chancellor, and came out to him again, ſaying, my Lord was thankful, and aſſured him of good Succeſs in his Buſineſs.

Sir *George Haſtings* acknowledgeth the giving of Advice, and carrying in of the Money to my Lord, and ſaith he preſented it to my Lord as from himſelf, and not from *Awbrey.*

This is all confirm'd by divers Letters, but it wrought not the Effect which the Gentlemen expected; for notwithſtanding this, he was ſtill delay'd.

Egerton ſheweth, that he deſiring to procure my Lord's Favour, was perſuaded by Sir *George Haſtings* and Sir *Richard Young*, to preſent my Lord with a Sum of Money.

Before this Advice, he had given a Preſent of 52*l.* and odd Shillings in Plate, as a Teſtimony of his Love; but is doubtful whether before his calling to the Seal, or ſince: But now by mortgaging his Eſtate he got up 400*l.* and ſends for Sir *George Haſtings* and Sir *Richard Young*, deſires their Aſſiſtance in preſenting this Money, and told them how much it was.

They took it and carry'd it to my Lord Chancellor as a Gratuity from the Gentleman; for that my Lord (when he was Attorney) ſtood by him. My Lord (as they ſay] ſtarted at firſt, ſaying it was too much, he would not take it; but at length was perſuaded, becauſe it was for Favours paſt, and took it, and the Gentlemen return'd him Thanks; ſaying that their Lord ſaid, that he did not only enrich him, but laid a Tie on him to aſſiſt him in all juſt and lawful Buſineſs.

Sir *George Haſtings* and Sir *Richard Young* acknowledged the Receiving and Delivery of the Purſe; but ſaid they knew not what was in it.

Then a Queſtion was propoſed, Whether there were any Suit depending during thoſe Offerings, either in the Chancery, or the Star-Chamber; but there was no certain Evidence of it.

Thus you ſee *Corruption* laid to the Charge of a Judge too, a great Judge; nay, to the Great Keeper of the King's Conſcience.

Another Point came in by the by, ſhewing that ſome indirect Means are ſometimes open (I fear too often) to the Courts of Juſtice.

It concerns no leſs a Man than a Divine, (who is now a Biſhop †) but then called Dr. *Field*, Mr. *Egerton* and he being acquainted, and Mr. *Egerton*'s Mind being troubled with the ill Succeſs of his Buſineſs, vented it to the Divine, who (contrary to his Profeſſion) took upon him to broke for him, in ſuch a manner as was never precedented by any.

He made *Egerton* to acknowledge a Recognizance of 10000 Marks, with a Defeazance, that if my Lord Chancellor did decree it for him, 6000 Marks was to be diſtributed among thoſe honourable Perſons that did ſollicit it for him: But if it did not go as they deſired, he promis'd, *in verbo Sacerdotis*, that he would deliver up the Bonds.

This appear'd by Letters from the now Reverend Biſhop, but then Practical Doctor.

Mr. *Johnſon* (a moral honeſt Man) perceiving that Mr. *Egerton* finding no Relief, did intend to prefer a Petition againſt the Lord Chancellor by one *Heales*'s means, took occaſion to talk with Mr. *Egerton*; aſking him why he would prefer ſuch a ſcandalous Petition againſt my Lord; he would have him take the Money out of the Petition, and then his Cauſe by the Mediation and Conference of ſome other Judge with my Lord, might be brought to a good End; and for Money, if he had lent any, he might be ſatisfy'd again.

Afterwards upon a Petition to the King by Sir *Rowland Egerton*, there was a Reference of this Matter to the Lord Chancellor, and Mr. *Edward Egerton* enter'd into a Bond for ten thouſand Marks.

He had treated with one Dr. *Sharp*, that if he would give 1100*l.* he ſhould have his Deſire.

We ſent for *Sharp*, but he deny'd that he ever contracted with him.

The Deſire of the Committee was, to reform that which was amiſs; and they thought fit to give as much Expedition as might be, becauſe ſo great a Man's Honour is ſoiled with it, and therefore do think meet that farther Inquiſition be made this Afternoon, and when the Truth of the Matter is found, then to be ſent to the Lords.

Thus I have faithfully related what hath paſſed, and with as much Duty and Reſpect, as I might, to my Lord Chancellor; I deſire it to be carry'd out of the Houſe with a favourable Conſtruction.

Order'd,

That this Matter be further conſider'd by the Committee this Afternoon.

Then the Houſe adjourn'd.

Sabbati 17° *die Martii*, 1620.

Sir *Robert Phillips* made Report from the Committee of the Abuſes in the Courts of Juſtice, *viz.*

We met on *Thurſday* in the Afternoon; the principal Thing wherein I deſir'd to be ſatisfy'd was, whether at the Time of giving thoſe Gifts to the Lord Chancellor there were any Suit depending before him.

In *Awbrey*'s Caſe it appear'd plainly there was: Something accidentally fell out in this Examination, and that is, a Declaration of Sir *George Haſtings*, who hath been ſtruggling with himſelf betwixt Gratitude and Honeſty; but publick and private Goods meeting, he preferr'd the Publick, and own'd, that he taking pity on *Awbrey*'s Suit, did give in a Box of 100*l.* to the Lord Chancellor, in theſe Terms or the like, *That it was to help* Awbrey *in his Cauſe.* Notwithſtanding, not long after, a very prejudicial and murdering Order was made againſt *Awbrey* in his Cauſe: whereupon Sir *George Haſtings* moved my Lord Chancellor to rectify this Order. My Lord promiſed to do it, but did it not.

The Order was put into the Hands of one *Churchil* (one of the Regiſters in Chancery) by a Servant of the Lord Chancellor's.

There are Letters of *Awbrey*'s to the Lord Chancellor touching this Buſineſs.

Now for Mr. *Egerton*'s Caſe: As the Matter was of more Weight, ſo the Sum was of larger Extent, for there was 400*l.* given them, and a Suit then depending in the *Star-Chamber*; about which time Sir *Rowland Egerton* did prefer a Petition to the King for a Reference unto the Lord Chancellor: Whereupon my Lord cauſed him to enter into a Bond for ſix thouſand Marks to ſtand to his Award. An Award was afterwards made, which was refuſed by Mr. *Edward Egerton*; thereupon a Suit by the Lord Chancellor's Direction was commenced againſt him, and the Bond of ſix thouſand Marks aſſign'd over to Sir *Rowland Egerton.*

About this time *Edward Egerton* became acquainted with Dr. *Field*, and related his Cauſe unto him; who pitying him, ſent him to two worthy Gentlemen, Mr. *Damport* and Sir *John Butler*, (who is now dead;) he makes known his Caſe to them, and deſires them to be a means to put off his Cauſe from Hearing, becauſe his Witneſſes were not here.

Whereupon *Damport* wrote to the Duke of *Buckingham* to have had his Letter to the Lord Chancellor to ſtop it: But the Duke ſaid he would not write, becauſe the Matter was already decreed, and he would not receive it.

Mr. *Egerton* was drawn into a Bond of 10000 Marks for the Payment of 6000: and Mr. *Damport* being aſked what he and Dr. *Field* ſhould have had of this Money, he ſaid, he did not remember what certain Sum; but he ſaid it was more than any Cauſe could deſerve in any Court of Juſtice.

In *Awbrey*'s Caſe this is to be ſaid,

That Sir *George Haſtings* being at *Hackney*, where he dwelt, was ſent for by the Lord Chancellor, and accordingly he came to him and found him in Bed, who bid him come near him, and willed the reſt to depart the Room; and then ſaid unto him, *Sir* George, *I am ſure you love me, and I know that you are not willing that any thing done by you ſhall reflect any Diſhonour upon me. I hear, that one* Awbrey *pretends to petition againſt me; he is a Man that you have ſome Intereſt in; you may take him off if you pleaſe.*

Sir *George Haſtings* afterwards met with *Awbrey*, and aſked him whether he intended any ſuch thing, and deſired to ſee it, to ſhew my Lord Chancellor; which Sir *George* accordingly did, and deſir'd my Lord to do the poor Man Juſtice.

My Lord promiſed to do it, and bad him bring his Council; and they did, but could have no Remedy, ſo the Petition went on.

Sir *George Haſtings*, ſome time ſince, had Conference with my Lord Chancellor; and he told him, *He muſt lay it upon his Lordſhip.* If you do, *George*, (ſaid he) *I muſt deny it upon my Honour.*

Thus you ſee the Relation of what hath paſſed.

Now for our Proceedings in it; it is a Cauſe of great Weight, it concerns every Man here: For if the Fountains be muddy, what will the Streams be?

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* *Francis* Lord *Verulam*, Viſcount *St. Albans.*

† *Biſhop of* Landaff.

If the great Diſpenſer of the King's Conſcience be corrupt, who can have any Courage to plead before him?

I will preſent one thing unto you, and then make a Requeſt.

That which I move is, That we preſent his Buſineſs ſingly to the Lords, and deliver it without Exaſperation; 1*ſt.* Becauſe there is but one Precedent* for it, in the like Caſe, for a Chancellor in a Cauſe of Corruption. 2*dly.* Becauſe the Party accuſed is a Peer of the Kingdom, ſitting in the higher Houſe, whom we cannot meddle with. 3*dly.* Becauſe we have no Power to give an Oath.

That which I requeſt is, that thoſe People which have been fetter'd with much Calamity by theſe Courſes, may by Petition to his Majeſty, or otherwiſe, have their Cauſe Revived and Reviſed.

Sir *Edward Sackville.* This honourable Lord ſtands but yet ſuſpected, and I hold not thoſe Gentlemen that have teſtified againſt him competent Witneſſes.

Firſt, Becauſe they ſpeak to diſcharge themſelves.

Secondly, Becauſe if he be guilty, they were thoſe that tempted him.

But yet, if notwithſtanding you reſolve to ſend it up to the Lords, let it be preſented without any prejudicial Opinion, to be weighed in the Ballance of their Lordſhips Judgments.

And if they think fit to examine theſe Witneſſes, let them.

Sir *George Haſtings.* This adds to my Grief; but this is my Reſolution, I had rather periſh with a juſt Sentence here, than eſcape with a guilty Conſcience.

Some moved that Sir *George Haſtings* and Sir *Richard Young* ſhould be ſequeſtred from Parliament till the Matter was ended; but there was nothing order'd therein.

Mr *Nevill.* After ſome Reluctation within me, I am reſolv'd to ſpeak what my Conſcience leads me unto.

I ſpeak for the good of my Country, the honour of my King, and advancement of Juſtice.

Juſtice is the Fountain, the King the Head thereof, clear as the Waters of *Siloah*, pure as the River of *Damaſcus:* but there is a derivative Juſtice brought unto us by Channels, thoſe are often muddy and more bitter than the Waters of *Marah:* Such Waters flow abundantly in Chancery.

I will not touch upon the Perſon of him that ſits in Court, for he is the Diſpenſer of the King's Conſcience; but becauſe ſome Motions are made againſt the Teſtimony of thoſe Gentlemen, I will ſay this, I think them fit to ſit here, becauſe they are neither Delinquents nor Accuſed.

My Lord means to deny it upon his Honour: But I would not have that ſerve his Turn, for he himſelf hath made the Nobility ſwear in Chancery.

Therefore I would have their Lordſhips informed what Privileges they have loſt.

Next, I would have them note the luxuriant Authority of that Court, and how it is an inextricable Labyrinth, wherein reſideth ſuch a Monitor as gormandizeth the Liberty of all Subjects whatſoever.

Mr. *Recorder Finch.* If we ſhall make but a Preſentation of this, we do in a ſort accuſe him, nay judge him: if the Gentlemen be admitted to give Teſtimony, before it ſhall condemn another it muſt agree with itſelf.

Firſt, I heard him ſay, he gave it as a Preſent from himſelf: Yet afterwards he ſaith, he told my Lord Chancellor he had it from *Awbrey*.

Again, *Awbrey* ſpeaks not of any Delivery of Money himſelf to my Lord Chancellor.

Then again 'tis urg'd, that a diſcontented Suitor writ Letters to my Lord: The Letters are rejected, not hearken'd unto; what doth this but free him?

In the other Caſe, if *Egerton*, out of a Deſire to congratulate him at his coming to the Seal, made my Lord a Preſent for his Kindneſſes and Pains in former Buſineſſes, what Wrong hath he done if he hath received a Preſent? And tho' a Suit were depending, yet who keeps a Regiſter in his Heart of all Cauſes? Nay, who can, among ſuch a Multitude?

And for the ſix thouſand Marks, there is no Colour to ſay that ever he was to have any Part thereof.

For taking away the Privilege of the Nobility in requiring an Oath, he found the Court poſſeſſed of it before he came there; ſo that we have no ſufficient Grounds to accuſe ſo great a Lord upon that Account.

But if we ſhall preſent Articles to the Lords, what do we (as I ſaid before) but accuſe him?

Sir *Edward Coke.* It is objected, that we have but one ſingle Witneſs; therefore no ſufficient Proof.

I anſwer, That in the 37th of *Eliz.* in a Complaint againſt *Soldier-Sellers*, for that having Warrant to take up Soldiers for the Wars, if they preſs'd a rich Man's Son they would diſcharge him for Money, there was no more than *ſingularis teſtis* in one Matter; but tho' they were ſingle Witneſſes in ſeveral Matters, yet agreeing in one and the ſame third Perſon, it was held ſufficient to prove a Work of Darkneſs.

For in ſuch Works it is a marvel there are any Witneſſes.

But ſome object, that theſe Men are culpable; and therefore no competent Witneſſes.

I anſwer, They came not to accuſe, but were interrogated.

If I be interrogated, I had rather ſpeak Truth than reſpect any Man; and you will make *Bribery* to be unpuniſh'd, if he that carrieth the *Bribe* ſhall not be a Witneſs.

In this, one Witneſs is ſufficient; He that accuſeth himſelf, by accuſing another, is more than three Witneſſes: and this was wrought out of them.

Order'd,

That the Complaint of *Awbrey* and *Egerton* againſt the Lord Chancellor and the Biſhop for *Corruption*, for the 100*l.* and 400*l.* and the Recognizance, ſhould be drawn up by Sir *Robert Phillips*, Sir *Edward Coke*, Mr. *Noy*, and Sir *Dudley Diggs*; and that the ſame be related to the Lords without Prejudice or Opinion at a Conference; and that a Meſſage be ſent to the Lords for this Purpoſe on Monday next.

Adjourn'd, &c.

Lunæ 19° *die Martii* 1620.

A Meſſage was ſent to the Lords by Sir *Robert Phillips*, to deſire a Conference touching the Lord Chancellor and the Biſhop of *Landaff*, being petition'd againſt by *Awbrey* and *Egerton*.

Sir *Robert Phillips* reports that the Lords had agreed to a Conference.

Mr. Secretary *Calvert* brings a Meſſage from the King, that this Parliament hath ſat a long time, and *Eaſter* is near come, and thinks it is fit there ſhould be a Ceſſation for a time; yet the King will appoint no time, but leaves it to your ſelves.

But for the beginning again, he thinketh the 10th of *April* a fit time, but will appoint none; only he would have you take care that there be no Impediment in the Subſidies.

The King alſo took notice of the Complaints againſt the Lord Chancellor, for which he was ſorry, for it hath always been his Care to have placed the beſt; but no Man can prevent ſuch Accidents: But his Comfort was, that the Houſe was careful to preſerve his Honour.

And his Majeſty thought not fit to have the Affair hang long in ſuſpence; therefore would not have any thing to hinder it.

But for the Furtherance thereof, he propoſed a Commiſſion of ſix of the higher Houſe, and twelve of the lower Houſe, to examine it upon Oath.

This Propoſition if we liked well, he would ſend the like to the Lords, and this he thought might be done during this Ceſſation: and tho' he hoped the Chancellor was free, yet if he ſhould be found guilty, he doubted not but you would do him Juſtice.

Sir *Edward Coke* ſaid, We ſhould take heed the Commiſſion do not hinder the Manner of our Parliamentary Proceedings.

The Anſwer return'd to the King was, To render him Thanks for the *firſt* Part of his gracious Meſſage.

And for the *ſecond*, we deſired that the like Meſſage may be ſent to the Lords; for there being ſo great a Concurrence betwixt us, we may have Conference with them about it.

And then Adjourn'd, &c.

Martis 20° *die Martii* 1620.

Sir *Edward Giles* made a Motion that one *Churchil* ſhould be called in.

Whereupon there was a Petition of one *Montacute*, *Wood*, &c. againſt the Lord Chancellor for taking 300*l.* of the Lady *Wharton*, and making Orders, &c. which was read.

Churchil and *Keeling* were ſaid to be Witneſſes, and a Committee was appointed to examine them.

Sir *Robert Phillips* reports from the Conference, that according to the Commandment of this Houſe he had deliver'd thoſe Heads which were agreed on at the Conference Yeſterday; excuſing himſelf if he had failed in any Point.

That the Lords accepted it with a great deal of Affection, as ſenſible of the Wrongs done to the Commonwealth; and return'd Anſwer by the Lord Treaſurer; *Firſt*, By way of Queſtion, Whether we would not reduce them into Writing. *Reſolved* No, for no Cauſe; this only conſiſting of two or three Points, clear and plain; and as for the Letters and other things which the Lords deſir'd, we would acquaint the Houſe, and doubted not but it would be yielded.

The Lords further return'd for Anſwer, That they would proceed in this Matter with Care, Diligence and Expedition.

A Meſſage from the Lords to ſignify, that they have taken into Conſideration the laſt Conference, and ſhall need the Teſtimony of two Members of this Houſe; and therefore deſire, that voluntarily, and without ordering, as private Perſons, they make Declaration upon Oath, and the like for others if occaſion were.

The Anſwer return'd was, That the Gentlemen would attend voluntarily as private Gentlemen, and upon private Notice be examined.

Sir *Robert Phillips* reports from the Committee appointed to examine *Churchil*; from which Particular a General may be extracted, conducing to the Diſcovery of Corruption in the Lord Chancellor.

The Lady *Wharton* having a Cauſe depending in Chancery, many Orders were made in it.

Amongſt the reſt, there was an Order made for the Diſmiſſion of the Bill, by the conſent of the Counſel on both ſides; which my Lady diſliking, took *Churchil* the Regiſter into her Coach, and carry'd him to my Lord Chancellor's, and ſo wrought that he was willed not to enter the laſt Order; ſo that my Lady was left at liberty to proſecute it in Chancery, brought it to a Hearing, and at length got a Decree.

Keeling being examin'd, ſaith, That near about the time of paſſing this Decree, my Lady took an hundred Pound (he ſaw it) and ſhe made him ſet down the Words and Style which ſhe ſhould uſe in the Delivery of it.

Then ſhe goes to *York-houſe*, and deliver'd it to my Lord Chancellor, as ſhe told him.

She carry'd it in a Purſe.

My Lord aſked her, *What ſhe had in her Hand?* She reply'd, *A Purſe of my own making*, and preſented it to him; who took it and ſaid, *What Lord could refuſe a Purſe of ſo fair a Lady's Working.*

After this my Lord made a Decree for her, but it was not perfected; but 200*l.* more being given (one *Gardiner* being preſent) her Decree had Life.

But after the giving of the 100*l.* becauſe ſhe had not 200*l.* ready in Money, one *Shute* dealt with her to convey the Land to my Lord Chancellor and his Heirs, reſerving an Eſtate to her ſelf for Life; But ſhe knowing no Reaſon to diſinherit her own Children, aſked *Keeling* her Man what he thought of it; he (like an honeſt Servant) was againſt it.

Shute knowing this, ſets upon *Keeling*, and brings him to be willing my Lady ſhould do it, with Power of Revocation upon the Payment of 200*l.* but that not being liked, they made a ſhift to pay 200*l.* in a reaſonable time.

Keeling lets fall ſome Speeches, as if he had left *York-houſe* for the Corruption which was there, which he himſelf knew in part.

Gardiner, *Keeling*'s Man, confirm'd the Payment of the 300*l.* for the Decree, *viz.* 100*l.* before, and 200*l.* after.

This purchas'd Decree being lately damn'd again by my Lord Chancellor, was the Cauſe of this Complaint.

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* *This ſeems to be the Caſe of Cardinal* Wolſey. *See* 3 Co. Inſt. 148. 4 Co. Inſt. 89.

Keeling ſaith, Sir *John Trevor* did preſent my Lord Chancellor with 160 *l.* by the Hands of Sir *Richard Young*, for a final End to this Cauſe.

Sir *Richard Young* anſwer'd, That when he attended my Lord Chancellor, Sir *John Trevor*'s Man brought a Cabinet and a Letter to my Lord Chancellor, and intreated me to deliver it, which I did openly; and this was openly done, and this was all I knew of it.

Sir *Edward Coke.* Strange to me that this Money ſhould be thus openly deliver'd, and that one *Gardiner* ſhould be preſent at the Payment of the 200 *l.*

Ordered,

That Sir *Robert Phillips* do deliver to the Lords this Afternoon the Biſhop of *Landaff* and *Awbrey*'s Letters, and all other Writings that he hath.

And then Adjourn'd, *&c.*

Mercurii 21° *die Martii* 1620.

Sir *Robert Phillips* reports from the Committee appointed to examine *Keeling* and *Churchil*, who inform'd many Corruptions againſt the Lord Chancellor.

1. In the Cauſe betwixt *Hull* and *Holeman*, *Hull* gave or lent my Lord one thouſand pound ſince the Suit began.

2. In the Cauſe between *Wroth* and *Manwaring*, there were one hundred Pieces given, of which *Hunt* had 20 *l.*

3. *Hoddy* gave a Jewel which was thought to be worth 500 *l.* but he himſelf ſaid it was a Trifle of a hundred or two hundred Pound Price: It was preſented to the Lord Chancellor by Sir *Thomas Peryn* and Sir *Henry Holmes.*

4. In the Cauſe between *Peacock* and *Reynell*, there was much Money given on both ſides.

5. In the Cauſe of *Barker* and *Bill*; *Barker* ſaid he was 800 *l.* out in Gifts ſince this Suit began.

6. In the Cauſe between *Smithwick* and *Welſh*, *Smithwick* gave 300 *l.* yet my Lord decreed it againſt him; ſo he had his Money again by piece-meal.

In this and other Cauſes, my Lord would decree Part; and when he wanted more Money he would ſend for more, and then decree another Part.

In moſt Cauſes my Lord's Servants have undertaken one Side or another; inſomuch as it was uſual for Counſel, when their Clients came unto them, to aſk what Friend they had at *York-houſe.*

Mr. *Mewtys.* Touching the Perſons that inform, I would intreat this honourable Houſe to conſider that *Keeling* is a common Sollicitor (to ſay no more of him) *Churchil* a guilty Regiſter by his own Confeſſion: I know that Fear of Puniſhment, and Hopes of leſſening it, may make them to ſay much, yea more than is true.

For my own part, I muſt ſay I have been an Obſerver of my Lord's Proceedings; I know he hath ſown the good Seed of Juſtice, and I hope that it will prove that the envious Man hath ſown thoſe Tares.

I humbly deſire that theſe Generals may not be ſent up to the Lords, unleſs theſe Men will teſtify them in particular.

Ordered,

That a Meſſage be ſent to the Lords by Sir *Robert Phillips*, to relate the Caſe of the Lady *Wharton*, and the Informations of *Churchil.*

Sir *Robert Phillips* reports from the Lords, that they acknowledged the great Care of this Houſe in theſe important Buſineſſes; return Thanks for the Correſpondence of this Houſe with them, and aſſure the like from them for ever to this Houſe. In theſe and all other things they will adviſe, and return Anſwer as ſoon as poſſible.

And then Adjourn'd, *&c.*

PROCEEDINGS *in the* HOUSE *of* LORDS.

ON *Monday* the 19th Day of *March* 1620. in the Afternoon the Commons had a Conference with the Lords: which Conference was reported the next Day by the *Lord Treaſurer*; That it was the deſire of the Commons to inform their Lordſhips of the great Abuſes of the Courts of Juſtice, the Information whereof was divided into theſe three Parts.

Firſt, The Perſons accuſed.
Secondly, The Matters objected againſt them.
Thirdly, The Proofs.

The Perſons are the Lord Chancellor of *England*, and the now Biſhop of *Landaff*, being then no Biſhop, but Dr. *Field.*

The incomparable good Parts of the Lord Chancellor were highly commended, the Place he holds magnified, from whence Bounty, Juſtice and Mercy were to be diſtributed to the Subjects, with which he was ſolely truſted; whither all great Cauſes were drawn, and from whence no Appeal lay for any Injuſtice or Wrong done, ſave to the Parliament.

That the Lord Chancellor was accuſed of great Bribery and Corruption * committed by him in this eminent Place; whereof two Caſes were alledged.

* 3 Co. Inſt. 148.

The one concerning *Chriſtopher Awbrey*, and the other concerning *Edward Egerton.*

1. In the Cauſe depending in the Chancery between the ſaid *Awbrey* and Sir *William Bronker*, *Awbrey* feeling ſome hard Meaſure, was adviſed to give the Lord Chancellor 100 *l.* the which he delivered to his Counſel, Sir *George Haſtings*, and he to the Lord Chancellor: This Buſineſs proceeding ſlowly notwithſtanding, *Awbrey* did write divers Letters, and delivered them to the Lord Chancellor, to which he never obtained any Anſwer from his Lordſhip; but at laſt delivering another Letter, his Lordſhip anſwered, *If he importuned him, he would lay him by the Heels.*

The Proofs of this Accuſation are five.

Firſt, Sir *George Haſtings* relating it long ſince unto Sir *Charles Montague.*

Secondly, The Lord Chancellor fearing this would be complained of, deſired Silence of Sir *George Haſtings.*

Thirdly, Sir *George Haſtings*'s Teſtimony thereof, which was not voluntary, but urged.

Fourthly, The Lord Chancellor deſired Sir *George Haſtings* to bring the Party *Awbrey* unto him, and promiſed Redreſs of the Wrongs done him.

Fifthly, That the Lord Chancellor ſaid unto Sir *George Haſtings*, if he ſhould affirm the giving of this 100 *l.* his Lordſhip would and muſt deny it upon his Honour.

2. The Caſe of Sir *Edward Egerton* is this: There being divers Suits between *Edward Egerton* and Sir *Rowland Egerton* in the Chancery, *Edward Egerton* preſented his Lordſhip, a little after he was Lord Keeper, with a Baſon and Ewer of the Value of 50 *l.* and upwards; and afterwards he delivered unto Sir *George Haſtings*, and Sir *Richard Young*, 400 *l.* in Gold.

Sir *Richard Young* preſented it to his Lordſhip, who took it, and poiſed it, and ſaid it was too much; and returned Anſwer, that Mr. *Egerton* had not only enriched him, but had laid a tye upon his Lordſhip to do him Favour in all his juſt Cauſes.

The Proofs for this are the Teſtimony of Sir *George Haſtings*, and the Teſtimony of *Mereſill* a Scrivener thus far, that he took up 700 *l.* for Mr. *Egerton*; *Mr. Egerton* then telling him that a great part of it was to be given to the Lord Chancellor, and that Mr. *Egerton* afterwards told him that the 400 *l.* in Gold was given to the Lord Chancellor.

At this Conference was farther declared ſomewhat relating to a Biſhop, who was touched in this Buſineſs upon the bye, whoſe Function was much honoured, but his Perſon touched herein: The Buſineſs depending between the *Egertons* being order'd againſt *Edward Egerton*, he procured a new Reference thereof from the King to the Lord Chancellor; his Lordſhip demanded the Parties to be bound in 6000 Marks to ſtand to his Lordſhip's Award; they having entred into that Bond, his Lordſhip awarded the matter againſt *Edward Egerton* for Sir *Rowland Egerton*; but *Edward Egerton* refuſing to ſtand to the ſaid Award, a new Bill was exhibited in the Chancery, and thereupon his Lordſhip ordered that this Bond of 6000 Marks ſhould be aſſigned unto Sir *Rowland Egerton*, and he to put the ſame in Suit in his Lordſhip's Name.

The Biſhop of *Landaff*, as a Friend to Mr. *Edward Egerton*, adviſeth with *Randolph Damport* and *Butler* (which *Butler* is now dead) that they would procure a ſtay of the Decree of that Award, and procure a new Hearing; upon which it was agreed, that the ſaid 6000 Marks ſhould be given for this by *Edward Egerton*, and ſhared amongſt them, and amongſt certain Noble Perſons.

A Recognizance of 10000 Marks was required from Mr. *Egerton* to the Biſhop for the Performance hereof; the Biſhop his Share of this 6000 Marks was ſo great, as no Court of Juſtice would allow.

To prove this, they produce Letters of the Biſhop, naming the Sum, and ſetting down a Courſe how theſe 6000 Marks might be rais'd, *viz.* the Land in queſtion to be decreed for Mr. *Egerton*, and out of that the Money to be levied; and if this were not effected, then the Biſhop *in verbo Sacerdotis* promiſed to deliver up this Recognizance to be cancelled; the new Recognizance is ſealed accordingly, and *Randolph Damport* rides to Court, and moved the * Lord Admiral for his Lordſhip's Letter to the Lord Chancellor herein; but his Lordſhip denied to meddle in a Cauſe depending in Suit.

* *Duke of* Buckingham.

Then the ſaid *Randolph Damport* aſſayed to get the King's Letter, but failed therein alſo; ſo that the Good they intended to Mr. *Egerton* was not effected, and yet the Biſhop, tho' required, refuſed to deliver up the ſaid Recognizance, until Mr. *Egerton* threatned to complain thereof unto the King.

The Lord Treaſurer ſhewed alſo that the Commons do purpoſe, that if any more of this kind happen to be complained of before them, they will preſent the ſame to your Lordſhips, wherein they ſhall follow the antient Precedents, which ſhew that great Perſons have been accuſed for the like in Parliament.

They humbly deſire, that foraſmuch as this concerneth a Perſon of ſo great Eminency, it may not depend long before your Lordſhips, that the Examination of the Proofs may be expedited, and if he be found Guilty, then to be puniſhed; if not Guilty, the now Accuſers to be puniſhed.

This being reported, the Lord Admiral preſented to the Houſe a Letter written unto their Lordſhips; the Tenor whereof follows.

My very good Lords,

‘ I Humbly pray your Lordſhips all to make a favourable and true Conſtruction of my Abſence; it is no feigning nor fainting, but ſickneſs both of my Heart, and of my Back, tho' joined with that Comfort of Mind, that perſuades me, that I am not far from Heaven, whereof I feel the firſt Fruits: and becauſe whether I live or die, I would be glad to preſerve my Honour and Fame as far as I am worthy; hearing that ſome Complaints of baſe Bribery are coming before your Lordſhips, my Requeſts unto your Lordſhips are,

‘ *Firſt*, That you will maintain me in your good Opinion without Prejudice, until my Cauſe be heard.

‘ *Secondly*, That in regard I have ſequeſter'd my Mind at this time in great part from worldly Things, thinking of my Accompt and Anſwer in a higher Court, your Lordſhips would give me convenient Time, according to the Courſe of other Courts, to adviſe with my Counſel, and to make my Anſwer; wherein nevertheleſs my Counſel's part will be the leaſt, for I ſhall not by the Grace of God trick up an Innocency with Cavillations, but plainly and ingenuouſly, as your Lordſhips know my manner is, declare what I know or remember.

‘ *Thirdly*, That according to the Courſe of Juſtice, I may be allowed to except to the Witneſſes brought againſt me, and to move Queſtions to your Lordſhips for their croſs Examination, and likewiſe to produce my own Witneſſes for diſcovery of the Truth.

And *Laſtly*, ‘ That if there come any more Petitions of like Nature, that your Lordſhips would be pleaſed not to take any Prejudice or Apprehenſion of any Number or Muſter of them, eſpecially againſt a Judge, that makes two Thouſand Orders and Decrees in a Year; not to ſpeak of the Courſes that have been taken for hunting out Complaints againſt me; but that I may anſwer them according to the Rules of Juſtice ſeverally and reſpectively. Theſe Requeſts I hope appear to your Lordſhips no other than Juſt; and ſo thinking my ſelf happy to have ſo Noble Peers, and Reverend Prelates to diſcern of my Cauſe, and deſiring no privilege of Greatneſs for ſubterfuge of Guiltineſs, but meaning, as I ſaid, to declare fairly and plainly with your Lordſhips, and to put my ſelf upon your Honours and Favours, I pray God to bleſs your Councils, and your Perſons; and reſt

Your Lordſhips
March 19, 1620. *Humbleſt Servant,*
Fra. St. Alban.

Upon which Letter, Anſwer was ſent from the Lords unto the ſaid Lord Chancellor on the ſaid 20th of *March*, viz. *That the Lords received his Lordſhip's Letter delivered unto them by the Lord Admiral: They intend to proceed in his Cauſe now before their Lordſhips, according to the right Rules of Juſtice; and they ſhall be glad, if his Lordſhip ſhall clear his Honour therein; to which End they pray his Lordſhip to provide for his juſt Defence.*

And afterwards, on *Wedneſday* the 21ſt of *March*, the Commons ſent a Meſſage unto the Lords concerning their further Complaint againſt the ſaid Lord Chancellor; which conſiſted of theſe four Points, *viz.*

1. The *Firſt* in Chancery being between the Lady *Wharton* Plaintiff, and *Wood* and others Defendants, upon Croſs-Bills; the Lord Chancellor upon hearing wholly diſmiſſed them, but upon entry of the Order, the Croſs-Bill againſt the Lady *Wharton* was only diſmiſſed, and afterwards for a Bribe of 300*l.* given by the Lady *Wharton* to the Lord Chancellor, his Lordſhip decreed the Cauſe further; and then hearing that *Wood* and the other Defendants complained thereof to the Houſe of Commons, his Lordſhip ſent for them, and damned that Decree as unduly gotten: and when the Lady *Wharton* began to complain thereof, his Lordſhip ſent for her alſo, and promis'd her Redreſs; ſaying, the Decree is not yet entered.

2. *Secondly*, In a Suit between *Hall* Plaintiff and *Holman* Defendant, *Holman* deferring his Anſwer was committed to the *Fleet*, where he lay twenty Weeks; and petitioning to be delivered, was anſwered by ſome about the Lord Chancellor, the Bill ſhall be decreed againſt him (*pro confeſſo*) unleſs he would enter into 2000*l.* Bond to ſtand to the Lord Chancellor's Order; which he refuſing, his Liberty coſt him one way or other one Thouſand Pounds. *Holman* being freed out of the *Fleet*, *Hall* petition'd to the Lord Chancellor, and *Holman* finding his Cauſe to go hard with him on his ſide, complained to the Commons; whereupon the Lord Chancellor ſent for him, and to pacify him, told him, *He ſhould have what Order he would himſelf.*

3. *Thirdly*, In the Cauſe between *Smithwick* and *Welſh*, the matter in queſtion being for Accompts, it was referred to certain Merchants, who certified in the behalf of *Smithwick*; yet *Smithwick* to obtain a Decree, was told by one Mr. *Burrough*, one near to the Lord Chancellor, that it muſt coſt him 200*l.* which he payed to Mr. *Burrough* or Mr. *Hunt* to the uſe of the Lord Chancellor, and yet the Lord Chancellor decreed but one part of the Certificate; whereupon he treats again with Mr. *Burrough*, who demanded another 100*l.* which *Smithwick* alſo paid to the uſe of the Lord Chancellor. Then his Lordſhip referred the Accompts again to the ſame Merchants, who certified it again for *Smithwick*; yet his Lordſhip decreed the ſecond part of the Certificate againſt *Smithwick*, and the firſt part, which was formerly decreed for him, his Lordſhip made doubtful. *Smithwick* petitioned to the Lord Chancellor for his Money again, and *Smithwick* had all his Money again, ſave 20*l.* which was kept back by *Hunt* for a Year.

The Lord Chief Juſtice * alſo deliver'd three Petitions, which his Lordſhip receiv'd yeſterday from the Commons, the firſt by the Lady *Wharton*, the ſecond by *Wood* and others, and the third by *Smithwick*.

The *Fourth* part of the Meſſage conſiſts only of Inſtructions delivered unto the Commons by one *Churchil* a Regiſter, concerning divers Bribes and Abuſes in the Chancery, which the Commons deſire may be examined.

The Lords in the mean time proceeded to the Examination of the Complaints, and took divers Examinations of Witneſſes in the Houſe, and appointed a ſelect Committee of themſelves, to take Examination of Witneſſes to the Briberies and Corruptions of the Lord Chancellor; which being ended and collected, were order'd to be tranſcribed with the Proofs, and were as follow:

	£.
That in the Cauſe between Sir *Rowland Egerton* and *Edward Egerton*, his Lordſhip received on the part of Sir *Rowland Egerton* before he decreed for him, — —	300
Item, Of *Edward Egerton* in the ſaid Cauſe, —	400
Item, In the Cauſe between *Hodie* and *Hodie*, a dozen of Buttons (after the Cauſe ended) of the value of —	50
Item, Of the Lady *Wharton*, — —	310
Item, Of Sir *Thomas Monk*, —	100
Item, Of Sir *John Trevor*, — —	100
Item, Of one *Young*, — —	100
Item, Of one *Fiſher*, — —	106
Item, In the Cauſe of *Kenday* and *Valore*, of *Kenday* a Cabinet worth	800
Of *Valore* (borrow'd at two times) — —	2000
Item, In the Cauſe between *Scot* and *Lenthall*, of *Scot*	200
Item, Of *Lenthall*, — —	100
Item, Of one *Wroth*, who had a Cauſe between him and one *Manwaring*, — — —	100
Item, Of Sir *Ralph Hanſby*, — —	500
Item, In the Lord *Mountaine*'s Cauſe, of the Lord *Mountaine*, and more promis'd at the end of the Cauſe,	600 or 700
Item, Of one Mr. *Dunch*, — —	200
Item, In a Cauſe between *Reynell* and *Peacock*, 200*l.* in Money, and a Diamond Ring worth 5 or 600*l.*	700 or 800
Item, Of *Peacock*, — —	100
Item, In a Cauſe of *Barker*, — —	700
Item, There being a Reference from his Majeſty to his Lordſhip of a Buſineſs between the Grocers and Apothecaries, he had of the Grocers — — —	200
Of the Apothecaries, (beſides a rich Preſent of Ambergreaſe)	150
Item, Of the *French* Merchants, to conſtrain the Vintners of *London* to take 1500 Tuns of Wine; to accompliſh which, he uſed very indirect means, by colour of his Office and Authority, without Bill or other Suit depending, as threatning and impriſoning the Vintners, for which he receiv'd of the Merchants	1000

Laſtly, That he had given way to great Exactions by his Servants, in reſpect of private Seals, and ſealing Injunctions.

On *Tueſday* the 24th of *April*, the Prince his Highneſs ſignified unto their Lordſhips, that the ſaid Lord Chancellor had ſent a Submiſſion unto their Lordſhips, which was preſently read *in hæc Verba.*

May it pleaſe your Lordſhips,

‘ I Shall humbly crave at your Lordſhips Hands a benign Interpretation of that, which I ſhall now write; for Words, that come from waſted Spirits, and an oppreſſed Mind, are more ſafe in being depoſited in a noble Conſtruction, than in being circled with any reſerved Caution.

‘ This being moved, and as I hope obtained in the Nature of a Protection for all that I ſhall ſay, I ſhall now make into the reſt of that, wherewith I ſhall at this time trouble your Lordſhips, a very ſtrange entrance: for in the midſt of a ſtate of as great Affliction, as I think a mortal Man can endure, (Honour being above Life) I ſhall begin with the profeſſing of Gladneſs in ſome things.

‘ The firſt is, that hereafter the Greatneſs of a Judge or Magiſtrate ſhall be no Sanctuary or Protection of Guiltineſs, which (in few words) is the beginning of a Golden World.

‘ The next is, that after this Example, it is like that Judges will fly from any thing that is in the likeneſs of Corruption (tho' it were at a great diſtance) as from a Serpent; which tendeth to the purging of the Courts of Juſtice, and the reducing them to their true Honour and Splendor. And in theſe two Points, God is my Witneſs, that, tho' it be my Fortune to be the Anvil whereupon theſe good Effects are beaten and wrought, I take no ſmall Comfort.

‘ But to paſs from the Motions of my Heart, whereof God is only Judge, to the Merits of my Cauſe, whereof your Lordſhips are Judges under God, and his Lieutenant; I do underſtand there hath been heretofore expected from me ſome Juſtification, and therefore I have choſen one only Juſtification inſtead of all other, one of the Juſtifications of *Job*: for after the clear Submiſſion and Confeſſion, which I ſhall now make unto your Lordſhips, I hope I may ſay and juſtify with *Job* in theſe words *, *I have not hid my Sin, as did* Adam, *nor concealed my Faults in my Boſom*; this is the only Juſtification, which I will uſe: it reſteth therefore, that without Fig-leaves I do ingenuouſly confeſs and acknowledge, that having underſtood the particulars of the Charge, not formally from the Houſe, but enough to inform my Conſcience and Memory, I find matter ſufficient and full both to move me to deſert the Defence, and to move your Lordſhips to condemn and cenſure me.

‘ Neither will I trouble your Lordſhips by ſingling thoſe Particulars, which I think may eaſieſt be anſwer'd, *Quid te exempta juvat ſpinis de pluribus una?* neither will I prompt your Lordſhips to obſerve upon the Proofs, where they come not home, or the Scruples touching the Credit of the Witneſſes; neither will I repreſent to your Lordſhips how far a Defence might in divers things extenuate the Offence in reſpect of the time or manner of the Gift, or the like Circumſtances; but only leave thoſe things to ſpring out of your own noble Thoughts and Obſervations of the Evidence and Examinations themſelves, and charitably to wind about the particulars of the Charge here and there, as God ſhall put you in mind, and ſo ſubmit my ſelf wholly to your Pity and Grace.

‘ And now that I have ſpoken to your Lordſhips as Judges, I ſhall ſay a few words to you as Peers and Prelates, humbly commending my Cauſe to your noble Minds and magnanimous Affections.

‘ Your Lordſhips are no ſimple Judges, but parliamentary Judges; you have a farther extent of Arbitrary Power, than other Judges; and if your Lordſhips be not tied by the ordinary Courſe of Courts or Precedents in Points of Strictneſs and Severity, much leſs are you in Points of Mercy and Mitigation.

‘ And yet if any thing which I ſhall move, might be contrary to your honourable and worthy End to introduce a Reformation, I ſhould not ſeek it; but herein I beſeech you give me leave to tell your Lordſhips a Story. *Titus Manlius* took his Son's Life for giving Battle againſt the Prohibition of his General: Not many Years after the like ſeverity was purſued by *Papirius Curſor* the Dictator againſt *Quintus Maximus*; who, being upon the Point to be ſentenc'd, by the Interceſſion of ſome principal Perſons of the Senate, was ſpared; whereupon *Livy* makes this grave and gracious Obſervation: *Neque minus firmata eſt Diſciplina militaris periculo Quinti Maximi, quam miſerabili ſupplicio Titi Manlii. The Diſcipline of War was no leſs eſtabliſhed by the queſtioning of* Quintus Maximus, *than by the puniſhing of* Titus Manlius. And the ſame Reaſon is of the Reformation of Juſtice; for the queſtioning Men of eminent Place hath the ſame Terror, tho' not the ſame Rigour, with the Puniſhment.

‘ But my Caſe ſtayeth not there; for my humble deſire is, that his Majeſty would take the Seal into his Hands, which is a great downfal, and may ſerve, I hope, in itſelf for an expiation of my Faults.

‘ Therefore if Mercy and Mitigation be in your Powers, and do no way croſs your noble Ends, why ſhould I not hope of your Lordſhips

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* Sir *James Ley.*

* Job c. 31. verſe 33.

‘ Favours and Commiſeration? Your Lordſhips will be pleaſed to behold your chief Pattern, the King our Sovereign, of moſt incomparable Clemency, and whoſe Heart is inſcrutable for Wiſdom and Goodneſs: Your Lordſhips will remember that there ſat not theſe 200 Years before a Prince in your Houſe, and never ſuch a Prince, whoſe Preſence deſerves to be made memorable by Records and Acts mixt of Mercy and Juſtice. Your ſelves, either Nobles (and Compaſſion ever beats in the Veins of noble Blood) or reverend Prelates, who are the Servants of him that would not break the bruiſed Reed, nor quench the ſmoaking Flax; you all ſit upon an high Stage, and therefore cannot but be more ſenſible of the Changes of the World, and of the Fall of any of High Place.

‘ Neither will your Lordſhips forget, that there are *vitia temporis* as well as *vitia hominis*; and that the beginning of Reformations hath the contrary Power of the *Pool of Betheſda*; for that had ſtrength to cure only him that is firſt caſt in, and this hath ſtrength to hurt him only that is firſt caſt in: And for my part I wiſh it may ſtay there, and go no further.

‘ *Laſtly*, I aſſure my ſelf your Lordſhips have a noble feeling of me as a Member of your own Body; and one thing there was, that in this very Seſſion had ſome taſte of your loving Affections, which I hope was not a Lightning before Death, but rather a Spark of that Grace, which now in concluſion will more appear.

‘ And therefore my humble Suit unto your Lordſhips is, that my penitent Submiſſion may be my Sentence, and the Loſs of the Seal my Puniſhment, and that your Lordſhips will ſpare my farther Sentence: But recommend me to his Majeſty's Grace and Pardon for all that is paſt. God's Holy Spirit be among you.

Your Lordſhips humble Servant

April 22.
1621.

and Supplicant,

Fran. St. Albans, *Canc.*

The Lords having conſider'd of this Submiſſion, and heard the Collections of Corruptions charged upon the ſaid Lord Chancellor, and the Proofs thereof read, they ſent a Copy of the ſame without the Proofs unto the Lord Chancellor by Mr. Baron *Denham*, and Mr. * Attorney-General, with this Meſſage from their Lordſhips, *viz.* That the Lord Chancellor's Confeſſion is not fully ſet down by his Lordſhip in the ſaid Submiſſion, for three Cauſes.

* *Sir* Thomas Coventry.

1. *Firſt*, His Lordſhip confeſſeth not any particular Bribe or Corruption.
2. Nor ſheweth how his Lordſhip heard the Charge thereof.
3. The Confeſſion, ſuch as it is, is afterwards extenuated in the ſame Submiſſion. And therefore the Lords have ſent him a particular of the Charge, and do expect his Anſwer to the ſame with all convenient Expedition.

Unto which Meſſage the Lord Chancellor anſwered, that he would return the Lords an Anſwer with ſpeed.

And on the 25th of *April*, the Lords conſidered of the Lord Chancellor's ſaid Anſwer ſent unto their Meſſage yeſterday, and ſent a ſecond Meſſage unto his Lordſhip to this effect by the ſaid Mr. Baron *Denham*, and Mr. Attorney General, *viz.* The Lords having received a doubtful Anſwer unto the Meſſage their Lordſhips ſent him yeſterday, therefore they now ſend to him again to know of his Lordſhip directly, and preſently, whether his Lordſhip will make his Confeſſion, or ſtand upon his Defence.

Anſwer returned by the ſaid Meſſengers, *viz.* The Lord Chancellor will make no manner of Defence to the Charge, but meaneth to acknowledge Corruption, and to make a particular Confeſſion to every Point, and after that an humble Submiſſion; but humbly craves Liberty, that where the Charge is more full than he finds the Truth of the Fact, he may make Declaration of the Truth in ſuch Particulars, the Charge being brief, and containing not all Circumſtances.

The Lords ſent the ſame Meſſengers back again to the Lord Chancellor, to let him know, that their Lordſhips have granted him time until Monday next the 30th of *April*, by Ten in the Morning, to ſend ſuch Confeſſion and Submiſſion as his Lordſhip intends to make.

On which *Monday* the Lord Chancellor ſent the ſame accordingly, which follows *in hæc Verba*, viz.

To the Right Honourable the Lords Spiritual and Temporal, in the High Court of Parliament aſſembled:

The humble Confeſſion and Submiſſion of me the Lord Chancellor.

UPON adviſ'd Conſideration of the Charge, deſcending into my own Conſcience, and calling my Memory to account ſo far as I am able, I do plainly and ingenuouſly confeſs, that I am guilty of Corruption, and do renounce all Defence, and put my ſelf upon the Grace and Mercy of your Lordſhips.

The Particulars I confeſs and declare to be as followeth:

To the *firſt* Article of the Charge, *viz.* In the Cauſe between Sir *Rowland Egerton* and *Edward Egerton*, the Lord Chancellor receiv'd 300*l.* on the part of Sir *Rowland Egerton*, before he had decreed the Cauſe:

I do confeſs and declare, that upon a Reference from his Majeſty of all Suits and Controverſies between Sir *Rowland Egerton* and *Edward Egerton*, both Parties ſubmitted themſelves to my Award by Recognizances reciprocal in 10000 Marks a-piece. Thereupon, after divers Hearings, I made my Award, with the Advice and Conſent of my Lord *Hobart*. The Award was perfected and publiſhed to the Parties, which was in *February*. Then ſome Days after, the 300 Pounds mentioned in the Charge, were delivered unto me. Afterwards Mr. *Edward Egerton* flew off from the Award. Then in *Midſummer* Term following a Suit was begun in Chancery by Sir *Rowland*, to have the Award confirmed: And upon that Suit was the Decree made, mentioned in the Article.

The *ſecond* Article of the Charge, *viz.* In the ſame Cauſe he received from *Edward Egerton* 400*l.*

I confeſs and declare, that ſoon after my firſt coming to the Seal, being a Time when I was preſented by many, the 400*l.* mentioned in the ſaid Charge, was delivered unto me in a Purſe, and as I now call to mind, from Mr. *Edward Egerton*; but, as far as I can remember, it was expreſs'd by them that brought it, to be for Favours paſt, and not in reſpect of Favours to come.

The *third* Article of the Charge, *viz.* In the Cauſe between *Hody* and *Hody*, he received a dozen of Buttons of the value of 50*l.* about a Fortnight after the Cauſe was ended; I confeſs and declare, that as it is laid in the Charge about a Fortnight after the Cauſe was ended, it being a Suit for a great Inheritance, there were gold Buttons, about the value of 50*l.* as is mentioned in the Charge, preſented unto me, as I remember, by Sir *Thomas Perrot*, and the Party himſelf.

To the *fourth* Article of the Charge, *viz.* In a Cauſe between the Lady *Wharton* and the Coheirs of Sir *Francis Willoughby*, he received of the Lady *Wharton* three hundred and ten Pounds:

I confeſs and declare, that I did receive of the Lady *Wharton*, at two ſeveral times, as I remember, in Gold 200*l.* and 100 Pieces, and this was certainly *Pendente Lite:* But yet I have a vehement Suſpicion, that there was ſome ſhuffling between Mr. *Shute* and the Regiſter, in entring ſome Orders, which afterwards I did diſtaſte.

To the *fifth* Article of the Charge, *viz.* In Sir *Thomas Monk*'s Cauſe, he received from Sir *Thomas Monk*, by the Hands of Sir *Henry Holmes*, 110*l.* but this was three quarters of a Year after the Suit was ended:

I confeſs it to be true that I received 100 Pieces, but it was long after the Suit ended, as is contained in the Charge.

To the *ſixth* Article of the Charge, *viz.* In the Cauſe between Sir *John Trevor* and *Aſcue*, he received on the part of Sir *John Trevor* 100*l.*

I confeſs and declare, that I received at *New-Year's-Tide* 100*l.* from Sir *John Trevor*; and becauſe it came as a *New-Year's* Gift, I neglected to inquire, whether the Cauſe was ended, or depending: but ſince I find, that tho' the Cauſe was then diſmiſſed to a Trial at Law, yet the Equity was reſerved, ſo as it was in that kind *Pendente Lite.*

To the *ſeventh* Article of the Charge, *viz.* In the Cauſe between *Holman* and *Young*, he received of *Young* 100*l.* after the Decree made for him:

I confeſs and declare, that as I remember, a good while after the Cauſe ended, I received 100*l.* either by Mr. *Toby Mathew* or from *Young* himſelf: but whereas I have underſtood, that there was ſome Money given by *Holman* to my Servant *Hatcher*, to that Certainty I was never made privy.

To the *eighth* Article of the Charge, In the Cauſe between *Fiſher* and *Wrenham*, the Lord Chancellor, after the Decree paſſed, received a Suit of Hangings worth one hundred and threeſcore Pounds and better, which *Fiſher* gave him by advice of Mr. *Shute:*

I confeſs and declare, that ſome time after the Decree paſſed, I being at that time upon remove to *York-houſe*, I did receive a Suit of Hangings of the value, I think, mentioned in the Charge by Mr. *Shute*, as from Sir *Edward Fiſher*, towards the furniſhing of my Houſe, as ſome others, that were no ways Suitors, did preſent me with the like about that time.

To the *ninth* Article of the Charge, In the Cauſe between *Kenneday* and *Vanlore*, he received a rich Cabinet from *Kenneday*, apprais'd at 800*l.*

I confeſs and declare, that ſuch a Cabinet was brought to my Houſe, tho' nothing near half the value; and that I ſaid to him that brought it, that I came to view it, and not to receive it, and gave commandment that it ſhould be carried back, and was offended when I heard it was not. And about a Year and an half after, as I remember, Sir *John Kenneday* having all that time refuſed to take it away, as I am told by my Servants; I was petitioned by one *Pinkney*, that it might be delivered to him, for that he ſtood engaged for the Money that Sir *John Kenneday* paid for it; and thereupon Sir *John Kenneday* wrote a Letter to my Servant *Sherborne*, with his own Hand, deſiring I would not do him that diſgrace as to return that Gift back, much leſs to put it into a wrong hand: And ſo it remains yet ready to be returned to whom your Lordſhips ſhall appoint.

To the *tenth* Article of the Charge, *viz.* He borrowed of *Vanlore* 1000*l.* upon his own Bond at one time, and the like Sum at another time upon his Lordſhip's own Bill, ſubſcribed by Mr. *Hunt* his Man:

I confeſs and declare, that I borrowed the Money in the Article ſet down, and that this is a true Debt; and I remember well, that I wrote a Letter from *Kew* about a twelvemonth ſince to a Friend about the King, wherein I deſired, that whereas I owed *Peter Vanlore* 2000*l.* his Majeſty would be pleaſed to grant me ſo much out of his Fine ſet upon me in the Star-Chamber.

To the *eleventh* Article of the Charge, *viz.* He received of *Richard Scott* 200*l.* after his Cauſe was decreed, but upon a precedent Promiſe; all which was tranſacted by Mr. *Shute:*

I confeſs and declare, that ſome Fortnight after, as I remember, that the Decree paſſed, I received 200*l.* as from Mr. *Scott* by Mr. *Shute*, as upon ſome precedent Promiſe or Tranſaction by Mr. *Shute:* Certain I am I knew of none.

To the *twelfth* Article of the Charge, *viz.* He received in the ſame Cauſe on the part of Sir *John Lentall* 100*l.*

I confeſs and declare, that ſome Month after, as I remember, that the Decree paſſed, I received 100*l.* by my Servant *Sherborne*, as from Sir *John Lentall*, who was not the adverſe Party to *Scott*, but a third Perſon relieved by the ſame Decree in the Suit of one *Power*.

To the *thirteenth* Article of the Charge, *viz.* He receiv'd of Mr. *Worth* 100*l.* in reſpect of the Cauſe between him and Sir *Arthur Manwaring:*

I confeſs and declare, that this Cauſe being a Cauſe for Inheritance of good value, was ended by my Arbitrement and Conſent of Parties, and ſo a Decree paſſed of courſe; and ſome Month after the Cauſe was ended, the 100*l.* mentioned in the ſaid Article, was deliver'd to me by my Servant *Hunt*.

To the *fourteenth* Article of the Charge, *viz.* He received of Sir *Ralph Hanſbye*, having a Cauſe depending before him, 500*l.*

I confeſs and declare, that there were two Decrees, one, as I remember, for the Inheritance, and the other for the Goods and Chattles, but all upon one Bill: and ſome good time after the firſt Decree, and before the ſecond, the ſaid 500*l.* was deliver'd unto me by Mr. *Toby Mathew*; ſo as I cannot deny but it was upon the matter *Pendente Lite.*

To the *fifteenth* Article of the Charge, *viz. William Compton* being to have an Extent for a Debt of 1200*l.* the Lord Chancellor ſtaid it, and wrote his Letter; upon which part of the Debt was paid preſently, and part at a future Day. The Lord Chancellor hereupon ſends to borrow 500*l.* and becauſe *Compton* was to pay 400*l.* to one *Huxley*, his Lordſhip requires *Huxley* to forbear ſix Months, and hereupon obtains the Money from *Compton*. The Money being unpaid, Suit grows between *Huxley* and *Compton* in Chancery, where his Lordſhip decrees *Compton* to pay *Huxley* the Debt, with Damage and Coſts, when it was in his own Hands:

I do declare, that in my Conſcience the ſtay of the Extent was juſt, being an Extremity againſt a Nobleman, by whom *Compton* could be no loſer. The Money was plainly borrowed of *Compton* upon Bond with Intereſt, and the Meſſage to *Huxley* was only to intreat him to give *Compton* a longer Day, and in no ſort to make me Debtor or reſponſible to *Huxley*; and therefore, tho' I was not ready to pay *Compton* his Money, as I would have been glad to have done, ſave only 100*l.* which is paid, I could not deny Juſtice to *Huxley* in as ample manner as if nothing had been between *Compton* and me: But if *Compton* hath been damnified in my reſpect, I am to conſider it to *Compton.*

To the *ſixteenth* Article of the Charge, *viz.* In the Cauſe between Sir *William Bronker* and *Awbrey*, the Lord Chancellor receiv'd from *Awbrey* 100 *l.*

I do confeſs and declare, that the Money was given and receiv'd; but the manner of it I leave to the Witneſſes.

To the *ſeventeenth* Article of the Charge, *viz.* In the Lord *Montague*'s Cauſe he received from the Lord *Mountague* 6 or 700*l.* and more was to be paid at the ending of the Cauſe:

I confeſs and declare, there was Money given, and as I remember, to Mr. *Bevis Thelwall*, to the Sum mentioned in the Article, after the Cauſe was decreed; but I cannot ſay it was ended, for there have been many Orders ſince cauſed by Sir *Francis Inglefield*'s Contempts: and I do remember, that when *Thelwall* brought the Money, he ſaid, that my Lord would be yet farther thankful if he could once get his quiet. To which Speech I gave little regard.

To the *eighteenth* Article of the Charge, *viz.* In the Cauſe of Mr. *Dunch*, he received from Mr. *Dunch* 200*l.*

I confeſs and declare, that it was delivered by Mr. *Thelwall* to *Hatcher*, my Servant, for me, as I think ſome time after the Decree; but I cannot preciſely inform my ſelf of the time.

To the *nineteenth* Article of the Charge, *viz.* In the Cauſe between *Reynell* and *Peacock*, he received from *Reynell* 200*l.* and a Diamond-Ring worth 5 or 600*l.*

I confeſs and declare, that at my firſt coming to the Seal, when I was at *Whitehall*, my Servant *Hunt* deliver'd me 200*l.* from Sir *George Reynell*, my near Ally, to be beſtowed upon Furniture of my Houſe; adding farther, that he had received divers former Favours from me: And this was, as I verily think, before any Suit began. The Ring was receiv'd certainly *Pendente Lite:* and tho' it were at *New-Year's-Tide*, it was too great a value for a *New-Year's Gift*, tho', as I take it, nothing near the value mentioned in the Article.

To the *twentieth* Article of the Charge, *viz.* That he took of *Peacocke* 100*l.* without Intereſt, Security, or Time of Payment:

I confeſs and declare, that I received of Mr. *Peacocke* 100*l.* at *Dorſet-houſe*, at my firſt coming to the Seal, as a Preſent; at which time no Suit was begun: and at the Summer after I ſent my then Servant *Liſter* to Mr. *Rolfe*, my good Friend and Neighbour, at *St. Albans*, to uſe his means with Mr. *Peacocke* (who was accounted a money'd Man) for the borrowing of 500*l.* and after by my Servant *Hatcher*, for borrowing of 500 more; which Mr. *Rolfe* procured, and told me at both times it ſhould be without Intereſt, Script, or Note, and that I ſhould take my own time for payment of it.

To the *twenty-firſt* Article of the Charge, *viz.* in the Cauſe between *Smithwick* and *Welſh*, he received from *Smithwick* 200*l.* which was repaid.

I confeſs and declare, that my Servant *Hunt* did, upon his Account, being my Receiver of the Fines upon original Writs, charge himſelf with 200*l.* formerly received of *Smithwick*, which after that I had underſtood the nature of it, I ordered him to re-pay, and to defalk it out of his Accompts.

To the *twenty-ſecond* Article of the Charge, *viz.* In the Cauſe of Sir *Henry Ruſwell*, he received Money from *Ruſwell*, but it is not certain how much:

I confeſs and declare, that I received Money from my Servant *Hunt*, as from Mr. *Ruſwell*, in a Purſe: And whereas the Sum in the Article is indefinite, I confeſs it to be 3 or 400*l.* and it was about a Month after the Cauſe was decreed; in which Decree I was aſſiſted by two of the Judges.

To the *twenty-third* Article of the Charge, *viz.* In the Cauſe of Mr. *Barker*, the Lord Chancellor receiv'd from *Barker* 700*l.*

I confeſs and declare, that the Sum mentioned in the Article was received from Mr. *Barker* ſome time after the Decree paſs'd.

To the 24*th*, 25*th*, and 26*th* Articles of the Charge, *viz.* the 24*th*; There being a Reference from his Majeſty to his Lordſhip of a Buſineſs between the *Grocers* and the *Apothecaries*, the Lord Chancellor receiv'd of the *Grocers* 200*l.* The 25*th* Article; In the ſame Cauſe he receiv'd of the *Apothecaries*, that ſtood with the *Grocers*, a Taſter of Gold, worth between 4 and 500*l.* and a Preſent of Ambergreaſe. And the 26*th* Article; He receiv'd of a new Company of *Apothecaries*, that ſtood againſt the *Grocers*, 100*l.*

To theſe I confeſs and declare, That the ſeveral Sums from the three Parties were received: and for that it was no judicial Buſineſs, but a Concord of Compoſition between the Parties, and that as I thought all had received good, and they were all three common Purſes, I thought it the leſs matter to receive that which they voluntarily preſented; for if I had taken it in the nature of a corrupt Bribe, I knew it could not be concealed, becauſe it needs muſt be put to account to the three ſeveral Companies.

To the *twenty-ſeventh* Article of the Charge, *viz.* He took of the *French* Merchants 1000*l.* to conſtrain the Vintners of *London* to take from them 1500 Tuns of Wine: To accompliſh which he uſed very indirect means, by Colour of his Office and Authority, without Bill or Suit depending, terrifying the *Vintners* by Threats, and by Impriſonment of their Perſons, to buy Wines, whereof they had no need nor uſe, at higher Rates than they were vendible:

I do confeſs and declare, that Sir *Thomas Smith* did deal with me in behalf of the *French* Company, informing me that the *Vintners*, by combination, would not take off their Wines at any reaſonable Prices; that it would deſtroy their Trade, and ſtay their Voyage for that Year; and that it was a fair Buſineſs, and concerned the State: and he doubted not but I ſhould receive thanks from the King, and Honour by it; and that they would gratify me with a thouſand Pounds for my travail in it. Whereupon I treated between them by way of perſuaſion, and to prevent any compulſory Suit, propounding ſuch a Price as the *Vintners* might be gainers 6*l.* in a Tun, as it was then maintained unto me. And after the Merchants petitioning to the King, and his Majeſty recommending this Buſineſs unto me as a Buſineſs that concerns his Cuſtoms and the Navy, I dealt more earneſtly and peremptorily in it, and, as I think, reſtrained in the Meſſenger's hand for a day or two ſome that were the moſt ſtiff; and afterwards the Merchants preſented me with 1000*l.* out of their common Purſe; and acknowledging themſelves, that I had kept them from a kind of Ruin, and ſtill maintaining to me that the *Vintners*, if they were not inſatiably minded, had a very competent Gain. Theſe are the Merits of the Cauſe, as it then appear'd to me.

To the *twenty-eighth* Article of the Charge, *viz.* The Lord Chancellor hath given way to great Exactions by his Servants, both in reſpect of private Seals, and otherwiſe for ſealing of Injunctions:

I confeſs it was a great fault of neglect in me, that I look'd no better to my Servants.

This Declaration I have made to your Lordſhips with a ſincere Mind, humbly craving, that if there ſhould be any Miſtake, your Lordſhips would impute it to want of memory, and not to any deſire of mine to obſcure Truth, or palliate any thing; for I do now again confeſs, that in the Points charged upon me, tho' they ſhould be taken as my ſelf have declared them, there is a great deal of Corruption and Neglect, for which I am heartily ſorry, and ſubmit my ſelf to the Judgment, Grace and Mercy of the Court.

For extenuation, I will uſe none concerning the Matters themſelves; only it may pleaſe your Lordſhips, out of your Nobleneſs, to caſt your Eyes of Compaſſion upon my Perſon and Eſtate: I was never noted for an avaritious Man, and the Apoſtle ſaith, *That Covetouſneſs is the Root of all Evil.* I hope alſo that your Lordſhips do rather find me in the State of Grace, for that in all theſe Particulars there are few or none that are not almoſt two Years old; whereas thoſe, that have an Habit of Corruption, do commonly wax worſe. So that it hath pleaſed God to prepare me by precedent Degrees of Amendment to my preſent Penitency: And for my Eſtate, it is ſo mean and poor, as my Care is now chiefly to ſatisfy my Debts.

And ſo fearing I have troubled your Lordſhips too long, I ſhall conclude with an humble Suit unto you, That if your Lordſhips proceed to ſentence, your Sentence may not be heavy to my ruin, but gracious and mix'd with Mercy: and not only ſo, but that you would be noble Interceſſors for me to his Majeſty likewiſe, for his Grace and Favour.

Your Lordſhips' moſt humble

Servant and Suppliant,

Franc. St. Albans, *Canc.*

The Lords having heard this Confeſſion and Submiſſion read, theſe Lords under-named, *viz.* the Earl of *Pembroke* Lord Chamberlain, the Earl of *Arundel*, the Earl of *Southampton*, the Biſhop of *Durham*, the Biſhop of *Wincheſter*, the Biſhop of *Coventry* and *Litchfield*; the Lord *Wentworth*, the Lord *Cromwell*, the Lord *Sheffield*, the Lord *North*, the Lord *Chandois*, the Lord *Hunſdon*, were ſent to him the ſaid Lord Chancellor, and ſhewed him the ſaid Confeſſion, and told him, that the Lords do conceive it to be an ingenuous and full Confeſſion; and demanded of him, whether it be his own Hand that is ſubſcribed to the ſame, and whether he will ſtand to it or not. Unto which the ſaid Lord Chancellor anſwer'd, *My Lords, it is my Act, my Hand, my Heart*; *I beſeech your Lordſhips to be merciful to a broken Reed.* The which Anſwer being reported to the Houſe, it was agreed by the Houſe to move his Majeſty to ſequeſter the Seal: and the Lords intreated the Prince's Highneſs that he would be pleas'd to move the King; whereunto his Highneſs condeſcended. And the ſame Lords which went to take the Acknowledgment of the Lord Chancellor's Hand, were appointed to attend the Prince to the King, with ſome other Lords added. And his Majeſty did not only ſequeſter the Seal, but awarded a new Commiſſion unto the Lord Chief Juſtice, to execute the Place of the Chancellor, or Lord-Keeper.

This was on the 1ſt of *May:* And on *Wedneſday*, the 2d of *May*, the ſaid Commiſſion being read, their Lordſhips agreed to proceed to ſentence the Lord Chancellor to-morrow Morning. Wherefore the *Gentleman-Uſher*, and *Serjeant at Arms*, Attendants on the upper Houſe, were commanded to go and ſummon him, the ſaid Lord-Chancellor, to appear in Perſon before their Lordſhips to-morrow Morning by nine of the Clock. And the ſaid *Serjeant at Arms* was commanded to take his Mace with him, and to ſhew it unto his Lordſhip at the ſaid Summons: But they found him ſick in bed; and being ſummon'd, he anſwer'd, that he was ſick, and proteſted that he feigned not this for any Excuſe, for if he had been well he would willingly have come.

The Lords reſolved to proceed notwithſtanding againſt the ſaid Lord Chancellor. And therefore on *Thurſday*, the 3d of *May*, their Lordſhips ſent their Meſſage to the Commons to this purpoſe, *viz.* ‘ That the Lords ‘ are ready to give Judgment againſt the Lord Viſcount *St. Albans*, Lord ‘ Chancellor, if they, with their Speaker, will come to demand it.’ And the Commons being come, the Speaker came to the Bar; and, making three low Obeiſances, ſaid:

‘ The Knights, Citizens, and Burgeſſes of the Commons Houſe of Par- ‘ liament, having made Complaints unto your Lordſhips of many exor- ‘ bitant Offences of Bribery and Corruption, committed by the Lord Chan- ‘ cellor, underſtand that your Lordſhips are ready to give Judgment upon ‘ him for the ſame; Wherefore I, their Speaker, in their Name, do hum- ‘ bly demand, and pray Judgment againſt him the ſaid Lord Chancellor, ‘ as the nature of his Offence and Demerits do require.’

The Lord Chief Juſtice anſwered:

‘ Mr. *Speaker*, Upon complaint of the Commons againſt the Viſcount ‘ *St. Albans*, Lord Chancellor, this High Court hath thereby, and by ‘ his own Confeſſion, found him *guilty* of the Crimes and Corruptions ‘ complained of by the Commons, and of ſundry other Crimes and ‘ Corruptions of like nature.

‘ And therefore this High Court having firſt ſummoned him to attend, ‘ and having his excuſe of not attending, by reaſon of Infirmity and ‘ Sickneſs, which he proteſted was not feigned, or elſe he would moſt ‘ willingly have attended, doth neverthelеſs think fit to proceed to Judg- ‘ ment: And therefore this High Court doth adjudge;

“ That the Lord Viſcount *St. Albans*, Lord Chancellor of *England*, “ ſhall undergo Fine and Ranſom of 40000 Pounds.

“ That he ſhall be impriſoned in the *Tower* during the King's plea- “ ſure.

“ That he ſhall for ever be uncapable of any Office, Place, or Im- “ ployment, in the State or Commonwealth.

“ That he ſhall never ſit in Parliament, nor come within the Verge “ of the Court.”

This is the Judgment and Reſolution of this High Court.

Thus he loſt the Privilege of his Peerage, and his Seal; and it was for ſome time doubtful, whether he ſhould be allowed to retain his Titles of Honour, which was all he did, having only a poor empty Being left, which laſted not long with him, his Honour dying before him. Tho' he was afterwards ſet at liberty, and had a Penſion from the King, he was in great want to the very laſt, living obſcurely in his Chambers at *Grays-Inn*, where his lonely and deſolate Condition ſo wrought upon his melancholy Temper, that he pined away; and after all his height of Abundance was reduced to ſo low an Ebb, as to be denied Beer to quench his Thirſt: for having a ſickly Stomach, and not liking the Beer of the Houſe, he ſent now and then to Sir *Fulk Grevil* Lord *Brook*, who lived in the Neighbourhood, for a Bottle of his Beer; and, after ſome grumbling, the Butler had Orders to deny him.

He died on the 9th of *April*, 1626. being *Eaſter-day*, early in the Morning, in the 66th Year of his Age, at the Earl of *Arundel*'s Houſe in *High-gate*, near *London*, to which Place he had caſually repaired about a Week before. The Diſtemper of which he died was a gentle Fever, accidentally accompanied with a violent Cold; whereby the Defluxion of Rheum was ſo great upon his Breaſt, that he was quite ſuffocated.

He was buried in St. *Michael*'s Church at *St. Albans*, being the Place directed for his Burial by his laſt Will, both becauſe his Mother had been buried there before, and becauſe it was the only Church then remaining within the Precincts of old *Verulam*; where he hath a Monument erected for him of white Marble, by Sir *Thomas Meautys*, formerly his Lordſhip's *Secretary*, afterwards *Clerk* of the King's Privy-Council, with an Inſcription compoſed by the famous Sir *Henry Wotton*.

XXXI. *The Trial of* Mervin *Lord* Audley, *Earl of* Caſtlehaven, *for a* Rape *and* Sodomy, *on the* 25*th of* April, 1631. 7 Car. I.

THERE were three Indictments found at *Saliſbury* in *Wiltſhire* againſt the Earl, the *Wedneſday* preceding *Eaſter*, before the Lord Chief Juſtice *Hyde*, the Lord Chief Juſtice *Richardſon*, and Baron *Denham*, Juſtices of Aſſize for that Circuit, and ſpecial Commiſſioners in that matter*. One Indictment was for a Rape upon his own Wife; for holding her by Force, while one of his Minions forcibly, againſt her Will, had carnal Knowledge of her: So that he was indicted as *Præſens, Auxilians* and *Confortans*; and therefore a Principal. The other two Indictments were for Buggery with a Man.

The Judges, on *Friday* Morning before the Trial, being ſent for, all but *Denham* being met at *Serjeants-Inn* in *Fleet-ſtreet*, theſe Queſtions were propoſed them by Sir *Robert Heath*, the King's Attorney-General; a Memorial of which a learned Judge, Sir *James Whitlock*, one of the eight hereafter mentioned, ſet down in Writing, to the effect following.

1. Whether a Peer of the Realm might wave his Trial by Peers, and plead he will be tried by God and the Country?

Anſw. He might not: For his Trial by Peers was no Privilege, but the Law declared by *Magna Charta*; which if he would not plead to by a Trial of his Peers, it was ſtanding mute.

2. Whether a Peer might challenge his Peers, as in the caſe of common Jurats?

Anſw. He might not, (which I think is ſo, ſaid that Judge) becauſe they were not upon their Oath, but upon their Honour; and a Challenge is try'd whether he ſtands indifferent, as unſworn.

3. Whether a Peer might not have Counſel any more than a Commoner?

Anſw. If Matter of Law appeared, he might; not for Matter of Fact.

Certain Examinations having been taken by the Lords without an Oath,

It was reſolv'd, Thoſe could not be uſed until they were repeated upon Oath, unleſs of the Party to be try'd; which might be read without an Oath.

4. Whether the Wife in this Caſe might be a Witneſs againſt her Huſband for the Rape?

Anſw. She might: For ſhe was the Party wronged; otherwiſe ſhe might be abuſed. In like manner a Villain (Vaſſal) might be a Witneſs againſt his Lord in ſuch Caſes.

5. Whether, if he ſtood mute, he could demand his Clergy?

Anſw. If he ſtood mute in the Caſe of Rape or Buggery, he might have his Clergy † in either.

6. Then if he might not be put to a Trial on the other Indictment, might not he be for a later Buggery, and be deny'd the Clergy?

Anſw. On that he might by 18 *Eliz.* 7.

7. Whether, in caſe one ſtood mute, Evidence might be open'd by the Court's Command concerning the Fact, tho' the Delinquent was to be preſs'd to Death for his Contempt?

Anſw. That was a Matter which lay in the Diſcretion of the Court.

8. Whether in Caſes wherein Clergy was allowable, the Party might pray it before he anſwered, and deny to anſwer otherwiſe?

Anſw. This was a Confeſſion.

9. Whether in a Rape there muſt be Penetration?

The Anſwer was in the Affirmative.

10. The Priſoner having petition'd to be bail'd, whether it might not be granted?

Anſw. The King, as King, was to adviſe about it: The Judges acquainted the Lord Keeper he could not in Juſtice require it; yet he might be bail'd *ex gratia*, which was not fit in that odious Caſe.

At a ſecond Meeting of the Judges in *Serjeants-Inn*, there were other Things conſidered of concerning this Matter.

They made a Difference between Buggery and a Rape, in point of having the Clergy if he ſtood mute: For it was argued he might have his Clergy if he ſtood mute in a Rape, but not in Buggery; becauſe by the Statute 25 *Hen.* 8. Buggery was made Felony, which by the Common Law was not. And in the very Creation of the Offence, Clergy was taken away; whereas Clergy lay for a Rape until it was (ſhould be) taken away by Statute.

It was concluded the Lords might eat and drink before they were agreed; but that they could not ſeparate nor adjourn till they gave their Verdict: That this appeared out of the Lord ‖ *Dacres* of *Greyſtock*'s Caſe, who was try'd for Treaſon, and acquitted by his Peers in 26 *Hen.* 8.

‖ Kely. 56.

It was agreed by the Juſtices in that Caſe of the Lord ‡ *Dacres*, That Verdict could not be given by a leſſer Number of Lords than Twelve; and that if twelve were for the King, and thirteen for the Priſoner, the Priſoner ſhould be acquitted: That in an Appeal, if the Defendant ſhould be mute, he ſhould be hang'd; and it was an Attainder, it being not within the Statute of * *Weſtminſter, cap.* 12. *De Paine fort & Dure.* No more was Treaſon.

‡ Kely. 56.

* S. P. C. Lib. 3. c. 60.

It was alſo agreed, That a Lord of Parliament was within the Statute of *Weſtminſter* 1. in caſe of Felony, and ſhould be preſs'd to Death.

Farther, That if the Lord *Audley* ſhould have his Clergy upon his being mute, yet he might be try'd upon the other Indictments of Rape and Buggery, and ſhould not have his Clergy, by the Statute of 18 *Eliz.* becauſe the admitting him to his Clergy would be a Superſede as to all Indictments of Offences within Clergy, not of thoſe without, by that Statute: For by the Common Law, he that was admitted to his Clergy was diſcharged from anſwering any other Offence; for by Indictment of that Law he was taken out of the power of the Secular Judge, and put into the hands of the Ordinary, whoſe Priſoner he was all his Life after.

It was reſolv'd, from the Lord *Dacres*'s Caſe, That the Lord Steward, after Verdict given, might take time to adviſe upon it, for any Point of Law;

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* Ruſh Col. Vol. II. p. 93——101. Hut. 115.

† *The Statute of* 25 H. 8. c. 6. *in Caſe of* Buggery, *and of* 18 Eliz. c. 7. *in Caſe of a* Rape, *take away* Clergy *only from ſuch as are convicted by Verdict, Outlawry or Confeſſion; which don't extend to thoſe who ſtand mute,* 11 Co. Rep. 30. 6. Poulter's *Caſe*; *but by the* 3 & 4 *of* Wil. & Mar. c. 9. *all who would be excluded in caſe of Conviction by Verdict or Confeſſion, are excluded in caſe of ſtanding mute.*

that his Office continued to him 'till his Judgment and Reſolution; and it was but a Commiſſion *pro hac vice* notwithſtanding.

The Arraignment.

The Lord *Coventry*, Lord Keeper of the Great Seal of *England*, was appointed Lord High-Steward for that Day; who, having Orders for the ſaid Trial from his Majeſty, gave Directions for the ſame.

The Lords the Peers took their Places about Eight of the Clock in the Morning, and were ſeated on Benches on each ſide of a large Table, covered with Green Cloth; and below them were the Judges placed, and the King's learned Counſel, and the Officers of the Court. And having diſpos'd of themſelves in their ſeveral Places, the Lord Steward about Nine of the Clock enter'd the Hall uncovered, with ſeven Maces carried before him by ſeven Serjeants at Arms, and was attended upon by Sir *John Burroughs*, Garter Principal King at Arms, and Mr. *James Maxwell*, Uſher of the Black Rod.

After the Lord Steward had ſaluted all the Lords the Peers, (who ſaluted him again) he preſently aſcended the State; and being ſeated in the Chair, he was preſented with his Majeſty's Commiſſion by one of the Maſters of the *Chancery*, which bore date the 13th of *April*, 1631.

After he had received the ſaid Commiſſion, he commanded an *O Yes* to be made, by one of the Serjeants at Arms, for a general Silence; and then deliver'd the ſaid Commiſſion to Sir *Thomas Fenſhaw*, Clerk of the Crown, to be openly read. Which being done, Mr. *Maxwell* kneel'd down and preſented his Lordſhip with a White-Staff Verge of State, which he gave to one of the Serjeants at Arms, who held the ſame up by the Cloth of State on the Right-hand thereof. And after the Commiſſion was read, and the Staff received as aforeſaid, his Grace commanded a ſolemn *O Yes* to be made; and then gave leave to all the Lords the Peers, and the Judges, and to all Privy-Counſellors there preſent, to be covered; and Command was given, that none under that Degree ſhould keep on their Hats upon pain of Impriſonment. And then the Peers were ſeverally called by their Names, and each of them anſwered particularly, *viz.*

1. *Lord* Weſton, *Lord High-Treaſurer of* England;
2. *Earl of* Mancheſter, *Lord Privy-Seal*;
3. *Earl of* Arundel *and* Surrey, *Earl Marſhal*;
4. *Earl of* Pembroke *and* Montgomery, *Lord Chamberlain*;
5. *Earl of* Kent;
6. *Earl of* Worceſter;
7. *Earl of* Bedford;
8. *Earl of* Eſſex;
9. *Earl of* Dorſet;
10. *Earl of* Saliſbury;
11. *Earl of* Leiceſter;
12. *Earl of* Warwick;
13. *Earl of* Carliſle;
14. *Earl of* Holland;
15. *Earl of* Berks;
16. *Earl of* Denbigh;
17. *Viſcount* Wimbleton;
18. *Viſcount* Conway;
19. *Viſcount* Dorcheſter;
20. *Viſcount* Wentworth;
21. *Lord* Percy;
22. *Lord* Strange;
23. *Lord* Clifford;
24. *Lord* Petre;
25. *Lord* North;
26. *Lord* Goring;
27. *Lord* Howard.

The Judges preſent.

Sir Nicholas Hyde, *Lord Chief Juſtice of the* King's Bench;
Sir Thomas Richardſon, *Lord Chief Juſtice of the* Common-Pleas;
Sir Humphrey Davenport, *Lord Chief Baron of the* Exchequer;
Baron Denham;
Judge Jones;
Judge Hutton;
Judge Whitlocke;
Judge Croke;

The King's Counſel.

Sir Robert Heath, *Attorney-General*;
Sir Richard Shelton, *Sollicitor-General*;
Sir John Finch, *Queen's Attorney-General*;
Sir Thomas Crew, *King's Serjeant at Law.*

Officers of the Court.

Sir Thomas Fenſhaw, *Clerk of the Crown*;
Mr. John Keeling, *his Deputy or Aſſiſtant.*

This done, the Lord Steward, after a ſolemn Precognizance, commanded the Indictments to be certified and brought in; and then, by a Serjeant at Arms, the Lieutenant of the *Tower* was called to bring forth the Priſoner, (who until that time was kept in a little Room by the *Common-Pleas*) and the Lieutenant brought him to the Bar, with divers of the Guard attending on him, where he had a Place in manner of a Pew, lin'd with Green, in which he ſtood; and the Lieutenant had another of the ſame Form for him to reſt in, adjoining to it. And when he had done his Obeyſance to the Lord High-Steward and the Peers, (who all re-ſaluted him again) the Lord High-Steward ſpake to him in the manner following:

The Lord High-Steward's Speech.

My Lord Audley,

THE King hath underſtood, both by Report and the Verdict of divers Gentlemen of Quality in your own Country, that you ſtand impeach'd of ſundry Crimes of a moſt high and heinous nature; and to try whether they be true or not, and that Juſtice may be done accordingly, his Majeſty brings you this day to your Trial, doing herein like the mighty King of Kings, in the 18th of *Geneſis*, ver. 20, 21. who went down to ſee whether their Sins were ſo grievous as the Cry of them: *Becauſe the Cry of* Sodom *and* Gomorrah *is great, and their Sins be grievous, I will go down* (ſaith the Lord) *and ſee whether they have done altogether according to the Cry of it.* And Kings on Earth can have no better Pattern to follow than the King of Heaven; and therefore our Sovereign Lord the King, God's Vicegerent here on Earth, hath commanded that you ſhall be here tried this day, and to that end, hath caus'd theſe Peers to be aſſembled: and the Deſire of his Majeſty is, that your Trial ſhall be as equal as Equity and Juſtice itſelf; and therefore theſe noble Men your Peers (whoſe Hearts are as full of Integrity, Juſtice and Truth, as their Veins full of noble Blood) are this Day to try you. Wherefore, if you be innocent, ſpeak boldly and confidently, and fear not to juſtify your ſelf; and be aſſur'd that thoſe that accuſe you (if you be free your ſelf) ſhall not eſcape free. But if you be guilty of thoſe Crimes, I adviſe you to give Honour to God and the King, and confeſs your Fault; for it is not vain Confidence, nor Subtilty, nor ſtanding out in Denial, that can hide the Truth; and all Shifts and Subtilties againſt it are but *Conſilia adverſus Dominum.* Therefore, if Truth touch you at the Heart, and your Conſcience, which is a thouſand Witneſſes, and God's Grace, which is greater than both, ſtand not out againſt it: And if you do, God will put it into the Hearts of theſe noble Perſons to find it out, and to do that which is juſt.

The Lord Audley's *Anſwer.*

May it pleaſe your Grace,

I Have been cloſe Priſoner theſe ſix Months, without Friends, without Counſel or Advice: I am ignorant of the Advantages and Diſadvantages of the Law, and am but weak of Speech at the beſt, and therefore I deſire to have the liberty of having Counſel to ſpeak for me.

The Lord High-Steward's Reply.

FOR your ſo long Impriſonment, it hath been to you a ſpecial Favour; for you have had time enough to bethink your ſelf, and more than ever any Man had that hath been committed for ſuch an Offence, and more Favour than ever any had that came to this Bar; and you ſhall demand nothing, which the Law can allow, but you ſhall have it. But for your Demand, I muſt move it to the Lords the Judges, and they ſhall ſatisfy you in it, or any other thing you deſire.

Then his Grace deſired to be reſolved of the Judges, Whether this Demand of my Lord *Audley*, to have Counſel to plead for him, might be granted or not?

The Judges anſwered, That, in Criminal Caſes, Counſel is not to be admitted for Matter of Fact; but for Matter of Law they may.

Then the Lord Steward proceeded to the Charge, commanded the three Indictments to be read by Sir *Thomas Fenſhaw*, Clerk of the Crown; two for Sodomy with *Lawrence Fitz-Patrick*, his Footman; the third for a Rape committed on his own Wife, the Counteſs of *Caſtlehaven.*

Then being aſked, whether he was Guilty of them, or Not Guilty? He anſwered, Not Guilty.

Then he was aſked, How he would be try'd?

The Earl ſaid, By God and my Peers.

Whereupon the Peers put off their Hats; and thereupon the Iſſue was joined.

The Lord High-Steward's Speech to the Lords.]

My Lords,

THE Priſoner ſtands indicted for a Rape, by one Indictment, and of Sodomy * by two; and he hath pleaded Not Guilty to them all: It is my Duty to charge you with the Trial of it, and you are to judge of it.

The Offences wherewith he ſtands charged, are to be proved by Evidence; and the Crimes that come this Day before us, may in ſome breed Deteſtation, and the Perſon of his Lordſhip in others may breed Compaſſion; I deſire your Lordſhips to ſet theſe two aſide, and let your Reaſon ſway your Judgment, and let that rule your Affections, and your Hearts your Heads; for neither of theſe ought to be put into the Ballance, for a Grain on either ſide may ſway the Scale. You are to give attentive Hearing, and then to weigh equally, that the Scale may lean the right way. The Judges will aſſiſt you in the Points of Law, which if you doubt of you are to expound it to me, and I to them. And this you are to do without Corporal Oath; for the Law conceiveth you of ſuch Integrity, that you will do that for Juſtice, which others do upon their Oaths; and therefore admits of no Challenge: and God direct you to do as you ought.

Then Sir *Tho. Crew* gave the firſt Charge; and after him Mr. *Attorney* ſaid as followeth.

My Lord Steward,

MAY it pleaſe your Grace, there are three Indictments againſt *Mervin* Lord *Audley*; the firſt for a Rape, the other two for Sodomy.

The Perſon is honourable; the Crimes of which he is indicted diſhonourable; which if it fall out to be true (which is to be left to Trial) I dare be bold to ſay, never Poet invented, nor Hiſtorian writ of any Deed ſo foul. And although *Suetonius* hath curiouſly ſet out the Vices of ſome of the Emperors who had abſolute Power, which might make them fearleſs of all manner of Puniſhment, and beſides were Heathens, and knew not God; yet none of theſe came near this Lord's Crimes. The one is a Crime, that I may ſpeak it to the Honour of our Nation, is of ſuch Variety, that we ſeldom or never knew of the like; but they are all of ſuch a peſtilential Nature, that, if they be not puniſhed, they will draw from Heaven a heavy Judgment upon this Kingdom.

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* *See a Precedent of this kind drawn with great Deliberation in* Stafford'*s Caſe.* Co. Entr. 351. d.

Whereupon (Mr. *Attorney* digreſſing from the Matter) the Lord *Audley* would have interrupted him, and requir'd to hold him to the Points in the Indictments. But the Lord High-Steward deſir'd his Lordſhip to be patient, and aſſur'd him he ſhould be heard in fit time at full. Whereupon Mr. *Attorney* proceeded again in his Charge as followeth:

May it pleaſe your Grace,

I can ſpeak it with Joy and Comfort, that during all my Time of Service, both in his Majeſty's Father's Time, and ſince he came to the Crown, I had never the like Occaſion to ſpeak in this place againſt a Peer of the Realm before now; and God knows I do it now with Sorrow, and I hope I ſhall never have the like Occaſion to do ſo much again. But his Majeſty, who is the Pattern of Virtue, not only as King, but in his Perſon alſo; in whom it is hard to judge whether he moſt excels in Juſtice or Mercy, (but I rather think in Mercy) would have my Lord *Audley* the Priſoner at the Bar, heard with as much Favour as ſuch a Crime can admit: and when he firſt heard of it, he gave ſtrict Command, that the Truth ſhould be ſearch'd out, that his Throne and People might be clear'd from ſo heavy and heinous Sins; and thereupon he was indicted in his own Country, according to the Law, and by Gentlemen of Worth and Quality. The Bill was found; and now he is perſonally brought to the Bar to be tried by theſe his honourable Peers, ſuch of whoſe Wiſdom and Sincerity there can be no queſtion, but that he ſhall have juſt and honourable Trial. And firſt, I ſhall begin with the Indictment of Rape. *Bracton* tells us of King *Athelſtane*'s Law before the Conqueſt: *If the Party were of no chaſte Life, but a Whore, yet there may be a Raviſhment; but it is a good Plea to ſay ſhe was his Concubine.*

In an Indictment of Rape, there is no Time of Proſecution neceſſary; for *nullum Tempus occurrit Regi:* But in Caſe of an Appeal of Rape, if the Woman did not proſecute in convenient Time, it will bar her.

If a Man take away a Maid by Force, and raviſh her, and afterwards ſhe give her Conſent and marry him, yet it is a Rape.

For the *Crimen Sodomiticum*, our Law had no knowledge of it 'till the 25th of *Hen.* VIII. by which Statute it was made Felony: and in this there is no more Queſtion, but only, whether it be *Crimen Sodomiticum ſine Penetratione*; and the Law of 15 *Eliz.* ſets it down in general Words: and where the Law doth not diſtinguiſh, neither muſt we. And I know you will be cautious how you will give the leaſt Mitigation to ſo abominable a Sin, which brought ſuch Plagues after it, as we may ſee in *Gen.* 17. *Levit.* 18. *Judg.* 19. *Rom.* 1. But (my Lord) it ſeem'd to me ſtrange at the firſt, how a Nobleman of his Quality ſhould fall to ſuch abominable Sins; but when I found he hath given himſelf over to Luſt, and that *Nemo repente fit peſſimus*, and if once Men habit themſelves in Ill, it is no marvel if they fall into any Sins, and that he was conſtant to no Religion, but in the Morning he would be a Papiſt and go to Maſs, and in the Afternoon a Proteſtant and go to a Sermon: When I had conſider'd theſe Things, I eaſily conceiv'd, and ſhall be bold to give your Grace a Reaſon why he became ſo ill. He believ'd not God, he had not the Fear of God before his Eyes; he left God, and God left him to his own Wickedneſs: and what may not a Man run into? What Sin ſo foul, what Thing ſo odious, which he dares not adventure? But I find in him Things beyond all Imagination: for I find his ill Imagination and Intentions bent to have his Wife naught with the wickedeſt Man that ever I heard of before: for who would not have his Wife virtuous and good, how bad ſoever himſelf be? And I find him Bawd to his own Wife. If ſhe loved him, ſhe muſt love *Skipwith*, (whom he honour'd above all) and not any honeſt Love, but in a diſhoneſt Love; and he gives his Reaſon by Scripture, *She was now made ſubject to him*; and therefore if ſhe did ill at his Command, it was not her Fault but his, and he would anſwer it. His irregular Bounty toward *Skipwith* was alſo remarkable. He lets this *Skipwith* (whom he calls his Favourite) ſpend of his Purſe 500*l.* *per Annum*; and if his Wife or Daughter would have any thing, tho' never ſo neceſſary, they muſt lie with *Skipwith*, and have it from him, and not otherwiſe; alſo telling *Skipwith* and his Daughter-in-Law, he had rather have a Child by him than any other. But for theſe things, I had rather they ſhould come of the Witneſſes Mouths than from me: and thereupon deſir'd that the Proofs might be read.

The Depoſition of Walter Bigg.

Walter Bigg depos'd, That *Amptil* was a Page to Sir *H. Smith*, and had no more Means when he came to my Lord *Audley*, but the Mare he rode on. He entertain'd him as his Page eight Years, and afterwards let him keep Horſes in my Lord's Grounds, by which I think he enrich'd himſelf 2000*l.* but he never ſat at Table with my Lord till he had marry'd his Daughter, and then he gave him to the Value of 7000*l.*

That *Skipwith* was ſent from *Ireland* to be my Lady's Page; and that his Father and Mother were very poor Folks there. He ſpent of my Lord's Purſe *per Annum* 500*l.* and he gave him at one time 1000*l.* and hath made divers Deeds of Land unto him.

My Lord was firſt a Proteſtant; but after, by buying of *Founthill*, he turn'd his Religion.

That *Henry Skipwith* had no Means when he came to him, and that he had given him 1000*l.* and that *Skipwith* lay with him when he was ſtraiten'd in Rooms; and that he gave a Farm of 100*l.* *per Annum* to *Amptil* that married his Daughter, and at other times to the value of 7000*l.* and that there was one *Blandina* in his Houſe fourteen Days, and beſtowed an ill Diſeaſe there, and therefore he ſent her away.

The Lord *Audley*'s Examination taken before the Lord-Keeper, Lord-Treaſurer, Lord-Marſhal, and others; which being ſhew'd to him, ſubſcrib'd with his own Hand, he would not acknowledge, but excus'd it, ſaying his Eyes were bad; but being perfectly read, he acknowledg'd it.

My Lord-Steward's Advice to my Lord *Audley*.

My Lord,

I would adviſe you not to deny the Things which are clearly prov'd; for then the Lords will give leſs Credit to the reſt you ſay.

The Counteſs of Caſtlehaven'*s Examination.*

That ſhortly after the Earl marry'd her, *viz.* the firſt or ſecond Night, *Amptil* came to the Bed's ſide, while ſhe and her Huſband were in Bed, and the Lord *Audley* ſpake laſciviouſly to her, and told her, *That now her Body was his; and that if ſhe lov'd him ſhe muſt love* Amptil; *and that if ſhe lay with any other Man with his Conſent, it was not her Fault but his; and that if it was his Will to have it ſo, ſhe muſt obey, and do it.*

That he attempted to draw her to lie with his Servant *Skipwith*; and that *Skipwith* made him believe he did it, but did it not.

That he would make *Skipwith* come naked into his Chamber, and delighted in calling up his Servants to ſhew their Privities; and would make her look on, and commended thoſe that had the largeſt.

That one Night, being a-bed with her at *Founthill*, he call'd for his Man *Brodway*, and commanded him to lie at his Bed's Feet; and about Midnight (ſhe being aſleep) called him to light a Pipe of Tobacco. *Brodway* roſe in his Shirt, and my Lord pull'd him into Bed to him and her, and made him lie next to her; and *Brodway* lay with her, and knew her carnally, whilſt ſhe made Reſiſtance, and the Lord held both her Hands and one of her Legs the while: and that as ſoon as ſhe was free, ſhe would have kill'd herſelf with a Knife, but that *Brodway* forcibly took the Knife from her and broke it; and before that Act of *Brodway*, ſhe had never done it.

That he delighted to ſee the Act done; and made *Skipwith* to come into Bed with them, and lie with her whilſt he might ſee it; and ſhe cry'd out to have ſav'd herſelf.

Then *Lawrence Fitz-Patrick* was produc'd; but before his Examination was read, the Earl deſir'd that neither he, nor any other, might be allow'd Witneſſes againſt him, until he had taken the Oath of Allegiance. This was referr'd to the Lords the Judges.

The Judges reſolve againſt him, that they might be Witneſſes, unleſs they were convicted Recuſants.

The Examination of Fitz-Patrick *was then read, the Truth of which he then again confirm'd upon Oath.*

That the Earl had committed Sodomy twice upon his Perſon: that *Henry Skipwith* was the ſpecial Favourite of my Lord *Audley*, and that he uſually lay with him; and that *Skipwith* ſaid, that the Lord *Audley* made him lie with his own Lady; and that he ſaw *Skipwith* in his ſight do it, my Lord being preſent: and that he lay with *Blandina* in his ſight, and four more of the Servants, and afterwards the Earl himſelf lay with her in their ſights.

Then Skipwith *was produc'd and ſworn, and his Examination read, which he again confirm'd upon Oath, and depoſeth,* viz.

That the Earl often ſollicited him to lie with the young Lady, and perſuaded her to love him; and to draw her thereunto, he urg'd that his Son lov'd her not; and that in the end he uſually lay with the young Lady, and that there was Love between them both before and after; and that my Lord ſaid, he would rather have a Boy of his begetting than any other; and that ſhe was but twelve years of Age when he firſt lay with her, and that he could not enter her Body without Art; and that the Lord *Audley* fetch'd Oil to open her Body, but ſhe cry'd out, and he could not enter; and then the Earl appointed Oil the ſecond time; and then *Skipwith* enter'd her Body, and he knew her carnally; and that my Lord made him lie with his own Lady, but he knew her not, but told his Lord he did.

That he ſpent 500*l.* *per Ann.* of the Lord's Purſe, and, for the moſt part, he lay with the ſaid Earl.

That the Earl gave him his Houſe at *Saliſbury*, and a Manor of 600*l.* *per Annum.*

That *Blandina* lay in the Earl's Houſe half a year, and was a common Whore.

Fitz-Patrick'*s ſecond Examination.*

That the Lord *Audley* made him lie with him at *Founthill* and at *Saliſbury*, and once in the Bed, and emitted between his Thighs, but did not penetrate his Body; and that he heard he did ſo with others.

That *Skipwith* lay with the young Lady often, and ordinarily; and that the Earl knew it, and encourag'd him in it, and wiſh'd to have a Boy by him and the young Lady.

That *Blandina* liv'd half a year in my Lord's Houſe, and was a common Whore.

Edmund Scott'*s Examination.*

He depoſeth, That *Skipwith* frequently knew the young Lady, and that the Earl knew it, and encourag'd him therein.

Fry'*s Examination.*

That *Henry Skipwith* and the young Lady lay often together, and the Earl in Company; and that then the Earl proteſted, that he would fain have a Boy of his begetting.

Then was read the young Lady Audley'*s Examination.*

That ſhe was married to her Huſband by a Romiſh Prieſt in the Morning, and at Night by a Prebend at *Kilkenny*; that ſhe was firſt tempted to lie with *Skipwith* by the Earl's Allurements; and that ſhe had no Means but what ſhe had from *Skipwith*; but ſhe would not lie with *Pawlet*; he ſollicited her alſo to lie with one *Green*.

That the Earl himſelf ſaw her and *Skipwith* lie together divers times; and nine Servants of the Houſe had alſo ſeen it.

When the Earl ſollicited her firſt, he ſaid, that upon his Knowledge her Huſband lov'd her not; and threatened, that he would turn her out of doors, if ſhe did not lie with *Skipwith*; and that if ſhe did not, he would tell her Huſband ſhe did.

That ſhe being very young, he uſed Oil to enter her Body firſt: and afterwards he uſually lay with her, and it was with the Earl's Privity and Conſent.

Brodway's *Examination, who confeſſeth,*

That he lay at the Earl's Bed's Feet, and one Night the Earl call'd to him for Tobacco; and as he brought it in his Shirt, he caught hold of him, and bid him come to Bed, which he refus'd; but to ſatisfy my Lord, at laſt he conſented, and came into the Bed on my Lord's Side: then my Lord turn'd him upon his Wife, and bid him lie with her, which he did; and the Earl held one of her Legs and both her Hands, and at the laſt (notwithſtanding her Reſiſtance) lay with her.

Then the Earl uſed his Body as the Body of a Woman, but never pierc'd it, only emitted between his Thighs.

He hath ſeen *Skipwith* lie with the young Lady in Bed together; and when he had got upon her, the Earl ſtood by and encouraged him to get her with Child: and that he hath made him the ſaid *Brodway* kiſs his own Lady, and often ſollicited him to live with her, telling him, that he himſelf ſhould not live long, and that it might be his Making; and that he hath ſaid the like to *Skipwith.*

The Earl's ſecond Examination.

The Earl deſir'd to be pardon'd of thoſe Things whereof he muſt accuſe himſelf, and ſaid, *That Condemnation ſhould not come out of his own Mouth.*

Theſe Teſtimonies being read, Mr. *Attorney* preſs'd things very earneſtly, and in excellent Method againſt the Earl, and ſaid,

My Lords,

‘YOU have ſeen the Clearneſs of the Proofs, and I know your Wiſdoms to be ſuch, as you well know in ſo dark a Buſineſs clearer Proofs cannot poſſibly be had; for let a Man be never ſo wicked, or never ſo impudent, he will not call Witneſſes to ſee his Wickedneſs: yet you ſee here this Point fully prov'd.’

Then he ſhew'd how both the Laws of God and Man were againſt Sodomy, and cited *Levit.* 18. towards the end, *That by theſe Abominations the Land is defil'd; and therefore the Lord doth viſit this Land for the Iniquity thereof.* And then concludes; That God may remove and take away from us his Plagues, let this wicked Man (ſaith he) be taken away from amongſt us.

Then the Earl (after the Lord Steward had told him he ſhould be heard in his own Defence, with as much Patience as was admitted in his Charge) enter'd into his own Defence. But the Lord Steward adviſ'd him to ſpeak pertinently; whereupon he alledg'd, that he was a weak Man, and of ill Memory, and therefore deſir'd that he might not be interrupted.

I. Then he began his Defence with Exceptions againſt his Wife, urging, that ſhe was naught and diſhoneſt with *Brodway*, by her own Confeſſion.

Whereupon my Lord Steward anſwer'd, That this made againſt his Lordſhip; therefore he ought not to alledge for his Defence that Fact, as an Imputation to his Wife, which he forc'd her unto by Compulſion and Violence.

II. Then he objected againſt the Incompetency of the Witneſſes, as the one his Wife, the other his Servants; and they drawn to this by his Son's Practice, who ſought his Life: and deſir'd to know, if there were not a Statute againſt the Incompetency of Witneſſes?

The Judges reſolv'd him, that there was none touching Witneſſes; but in Caſes of High-Treaſon, there was a Statute concerning Accuſers.

III. Then he deſir'd to be reſolv'd, whether, becauſe *Brodway* doth not depoſe any Penetration, but only that he emitted upon her Belly while the Earl held her, that ſhould be judg'd Felony as for a Rape?

The Judges reſolv'd it to be a Rape, and ſo conſequently to be Felony.

IV. Then he deſir'd to be reſolv'd, whether his Wife is to be allow'd a competent Witneſs againſt him, or not?

The Judges reſolve, That in Civil Caſes the Wife may not; but in a Criminal Cauſe of this nature, where the Wife is the Party griev'd, and on whom the Crime is committed, ſhe is to be admitted a Witneſs againſt her Huſband.

Then the Lord High-Steward deſir'd the Lords the Judges to reſolve the Queſtions which Mr. *Attorney* in his Charge ſubmitted and referred to their Judgments.

1. Whether it were to be accounted *Buggery* within the Statute, without Penetration?

The Judges reſolve, that it was; and that the Uſe of the Body, ſo far as to emit thereupon, makes it ſo.

2. Whether, it being prov'd that the Party raviſh'd were of evil Fame, and of an unchaſte Life, it will amount to a Rape?

The Judges reſolve it to be a Rape, tho' committed on the Body of a common Strumpet; for it is the enforcing againſt the Will which makes the Rape; and a common Whore may be raviſh'd againſt her Will, and it is Felony to do it.

3. Whether it is adjudg'd a Rape, when the Woman complaineth not preſently? And, whether there be a Neceſſity of Accuſation within a convenient time, as within twenty-four Hours?

The Judges reſolve, That inaſmuch as ſhe was forc'd againſt her Will, and then ſhew'd her Diſlike, ſhe was not limited to any time for her Complaint; and that in an Indictment, there is no Limitation of Time, but in an Appeal there is.

4. Whether Men of no Worth ſhall be allow'd ſufficient Proofs againſt a Baron, or not?

The Judges reſolve, that any Man is a ſufficient Witneſs in caſe of Felony.

Then the Lord Steward ſpake, and ſaid; My Lord, you have been graciouſly dealt with in this Proceeding, for it is not an uſual thing in ſo capital and heinous Cauſes as this, to bring the Party and Witneſſes Face to Face before Trial: but (my Lord) you have long before this time heard their Examinations, and queſtion'd and oppos'd them Face to Face; and are thereby the better enabled to make your Defence; and his Majeſty is ſtill graciouſly pleas'd to continue his Goodneſs towards you, and hath commanded that you ſhould be heard at full: If therefore you have any thing elſe to ſay for your ſelf, ſpeak it.

Whereupon the Earl anſwered, (having firſt made a ſolemn Proteſtation of his Innocency, but nevertheleſs implor'd the Mercy of God and the King) That he had nothing more to ſay, but left himſelf to God and his Peers, and preſented to their Conſideration three *Woes*:

1. *Woe* to that Man, whoſe Wife ſhould be a Witneſs againſt him!
2. *Woe* to that Man, whoſe Son ſhould perſecute him, and conſpire his Death!
3. *Woe* to that Man, whoſe Servants ſhould be allow'd Witneſſes to take away his Life!

And he willed the Lords to take this into their Conſideration; for it might be ſome of their Caſes, or the Caſe of any Gentleman of Worth, that keeps a Footman or other, whoſe Wife is weary of her Huſband, or his Son arriv'd to full Age, that would draw his Servants to conſpire his Father's Death.

He ſaid further, his Wife had been naught in his Abſence, and had had a Child, which he conceal'd to ſave her Honour.

That his Son was now become 21 Years old, and he himſelf old and decay'd; and the one would have his Lands, and the other a young Huſband: and therefore, by the Teſtimony of them and their Servants added to their own, they had plotted and conſpired his Deſtruction and Death.

And then (being thereunto required by the Lord Steward) he withdrew himſelf from the Bar.

Then the Lord Steward (after ſolemn Proclamation of Silence) addreſſed himſelf to the Lords, and ſaid: My Lords the Peers, your Lordſhips have heard the Proofs, the Priſoner's Defence, all his Doubts and Queſtions reſolv'd by the Lords the Judges; and therefore your Lordſhips (if you pleaſe) may withdraw your ſelves, if you are ſatisfy'd; becauſe the Priſoner is not to be called to the Bar again, until your Lordſhips are agreed upon the Verdict.

Then the Peers withdrew themſelves; and after two Hours Debate, and ſeveral Advices and Conferences with the Lord Chief Juſtice, whom they ſent for, and conſulted with four ſeveral times; having in that time alſo ſent the Earl of *Warwick*, and Viſcount of *Dorcheſter*, together with the Lord Chief Juſtice, to conſult with the Lord Steward, at the laſt they return'd to their Places: and then the Lord Steward aſked them one by one, beginning at the loweſt, and ſo aſcending;

1. Whether the ſaid Earl of *Caſtlehaven* was Guilty of the *Rape* whereof he ſtood indicted, or not? And they all gave him guilty.

2. Whether the ſaid Earl of *Caſtlehaven* was Guilty of the *Sodomy* with which he was charged, or not? And fifteen of the Lords condemned him, and the other twelve freed him.

When the Verdict was thus given, the Lieutenant of the *Tower* was again commanded to bring the Priſoner to the Bar, to hear his Sentence; and after he was brought in, the Lord Steward ſaid unto him:

Foraſmuch as thou *Mervin* Lord *Audley*, Earl of *Caſtlehaven*, haſt been indicted for divers Felonies, by three ſeveral Indictments; one for a *Rape*, the other two for *Sodomy*; and haſt pleaded Not Guilty to them all, and for thy Trial thou haſt put thy ſelf upon God and thy Peers; which Trial thou haſt had, and they found thee guilty of them all: What can'ſt thou ſay for thy ſelf, why the Sentence of Death ſhould not be pronounced againſt thee?

Whereupon he anſwered, He could ſay no more, but referred himſelf to God and the King's Mercy.

Then the Lord Steward ſaid, My Heart grieveth for that which my Tongue muſt utter; but Juſtice is the way to cut off Wickedneſs, and therefore hear thy Sentence.

Thou muſt go from hence to the Priſon from whence thou cameſt, and from thence to the Place of Execution, there to be hang'd by the Neck till thou be dead, and the Lord have Mercy on thy Soul.

The Lord Steward's Exhortation.

Oh think upon your Offences! which are ſo heinous and ſo horrible, that a Chriſtian Man ought ſcarce to name them, and ſuch as the deprav'd Nature of Man (which of itſelf carries a Man to all Sin) abhorreth! And you have not only offended againſt Nature, but the Rage of a Man's Jealouſy! And, altho' you die not for that, that you have abuſed your own Daughter! And having both Honour and Fortune to leave behind you, you would have had the impious and ſpurious Offspring of a Harlot to inherit! Both thoſe are horrid Crimes. But my Lord, it grieves me to ſee you ſtand out againſt the Truth ſo apparent; and therefore I will conclude with this Admonition, That God might have taken you away when you were blinded in your Sins, and therefore hope he hath reſerved you as a Subject of his Mercy: and as he ſends you to ſee this Day of Shame, that you may return unto him, ſo thereby in a manner he lovingly draws you to him: therefore ſpend the remainder of your Time in Tears and Repentance; and this Day's Work, I hope, will be a Correction from many Crimes and Corruptions.

Whereupon, at laſt, the Earl deſcended to a low Petition to the Lords, and very humbly beſought them to intercede with his Majeſty, that he might not ſuddenly cut him off, but give him Time of Repentance. And then he deſired their Lordſhips Pardons, in that he had been ſo great a Stain to Honour and Nobility.

Then a Proclamation being made by a Serjeant, declaring, That the Lord High-Steward's Pleaſure was, that all ſuch as had attended this Day's Service might depart; the Lieutenant of the *Tower* carried the Earl away, and the Court broke up.

IN purſuance of the Sentence, a Warrant was iſſued for his Execution upon *Saturday* the 14th of *May* following; Notice whereof was given him, and his Coffin carried into the *Tower* about a Week before, that he might the better prepare himſelf for Death: The Dean of *Paul*'s, Doctor *Winerſe*, failed not daily to viſit him, and to ſee how he ſtood, and to ſettle him in his Religion.

Being brought to the Scaffold, attended by the Dean of *Paul*'s and Dr. *Wickham*, together with his Servants, he ſaluted the noble Perſonages, and whole Aſſembly, ſhewing to them all a very noble, manly and chearful Countenance, ſuch as ſeemed no ways daunted with the fear of Death. After a ſhort while ſhewing himſelf to the People, he addreſſed himſelf to Prayer, the Deans accompanying him in that Exercise, but ſomewhat apart; which being not long, he ſtood upon his Legs, and leaned upon the two Deans, conferring with them. Then he turned to the Lords, and ſpake to this Effect:

‘ I acknowledge with Thankfulneſs the great Goodneſs of Almighty God, that it hath pleaſed his Divine Majeſty to beſtow on me many Endowments, as Honour, Riches, and the like, which I have miſ-ſpent; having been a vicious Liver, and juſtly deſerv'd Death, for as much, and in that the leaſt Sin at God's hands juſtly deſerveth Death, and no leſs; but for the two heinous Crimes with which I am branded, condemned, and here to ſuffer for, I do here deny them upon my Death, freely forgiving thoſe that have accuſed me, and have been the Occaſion of my Death, even as freely as I my ſelf do deſire Forgiveneſs at God's hands, which I hope to obtain thro' his infinite Goodneſs and Mercy; and ſomewhat the rather, by your Chriſtian Prayers, which I expect, and humbly beg of your Lordſhips and this whole Aſſembly. Now for as much as there hath been Speech and Rumour of my Unſettledneſs in my Religion, I have, for Explanation thereof, not only made Confeſſion of my Faith to theſe two worthy Doctors, but for better Satisfaction to the World in that Point, expreſs the ſame in Writing under my Hand ſigned; which as it is here ſet down, I deſire may be publickly read.’

The Confeſſion of his Faith then was read by a young Gentleman, with a loud Voice, wherein he profeſſes he dies in the Faith of the Church of *England*.

After which he proceeded: ‘ I acknowledge the great Juſtice and Mercy of the King's Majeſty; his Juſtice in bringing me to the Bar; and his Mercy in affording me ſuch a noble and gracious Trial there: and I give his Majeſty humble and hearty Thanks for aſſigning my Death to be in this Manner, contrary to the Sentence pronounced againſt me at my Arraignment. But there is a greater Favour than this, for which I am to render Thanks unto his Sacred Majeſty, and that is, the long time I have had to repent in; whereof (praiſed be Almighty God) I can ſpeak with Comfort, I have made good Uſe, and am now fully prepared for Death, and much the better, by the good Help and Inſtruction of theſe two worthy Men, to whom I acknowledge my ſelf bounden, and do here, before you all, give them hearty Thanks for their great Pains taken in coming to me, praying for me, and preaching and reading to me.

‘ And I deſire your Lordſhips to preſent my humble Acknowledgment to his Majeſty, for his Goodneſs in ſending them to me, and my Thanks for the ſame.

‘ I do alſo from my Heart deſire and beſeech Almighty God to bleſs the King's Majeſty, the Queen, and the young Prince, together with all ſuch other Iſſue as he ſhall hereafter in Mercy beſtow on them, and the whole State; and my Truſt and Deſire is, there may be ever one of their Line to ſway the Scepter of theſe Kingdoms to the World's end.

‘ And I beſeech, and do heartily pray for the Welfare and happy Proſperity of the King and Queen of *Bohemia*, with all their Princely Iſſue. I do again deſire your Lordſhips to make Tender of my humble Acknowledgment of his Mercy and Goodneſs.

‘ And now laſtly, That you will not bend your Eyes ſo much upon me, as your Hands and Hearts to Heaven in Prayers for me; and ſo I take my laſt Farewel of your Lordſhips and the World.’

Then he went again to his private Prayers; which being done, he prepared himſelf for Death, ſtriving to ſhew the like Courage and Magnanimity which he had formerly done, unto the laſt: but ſight of the Headſman (whom yet he freely forgave, and took him by the Hand, bidding him do his Office manfully) together with the Apprehenſion of his near approaching End, made him ſomewhat to change Colour, and ſhew ſome Signs of trembling Paſſion; for his Hands ſhook a little in undoing his Band-ſtrings; which his Man perceiving, ſtept to him and helpt him, as alſo off with his Doublet. Then taking leave again of the Lords, the Doctors, and his Man, ſaying a very ſhort Prayer by himſelf, he pulled down his Handkerchief over his Face, and laid his Head upon the Block; which was taken off at one Blow.

XXXII. *The Trial of* LAWRENCE FITZ-PATRICK *and* GILES BRODWAY, *two Servants of the before-mentioned Lord* Audley, *Earl of* Caſtlehaven, *at the* King's-Bench, *for a* Rape *and* Sodomy, *the 27th of* June, 1631. Trin. 7 Car. I.

ON *Monday* the 27th of *June* 1631, the Marſhal of the *King's-Bench* brought *Fitz-Patrick* and *Brodway* to the Bar, where was a Jury of ſufficient and able *Wiltſhire* Men, impannell'd to go upon and try them *.

The Counteſs of *Caſtlehaven* herſelf was in Court, to give Evidence againſt *Brodway*; and ſhe came in upon the Inſtant, when the Lord Chief Juſtice † demanded of her, Whether the Evidence ſhe had formerly given at her Lord's Arraignment was true, and the full Matter of Charge ſhe had then to deliver againſt the Priſoner?

Whereunto ſhe anſwer'd, It was.

My Lord ſaid; Madam, you have ſworn that *Brodway*, Priſoner at the Bar, hath lain with you by Force, which may be, and yet no Act committed: Did he enter your Body?

She ſaid, That in her former Oath taken, when ſhe teſtified he lay with her by Force, her Meaning was, that he had known her carnally, and that he did enter her Body.

Then was ſhe wiſhed to look on the Priſoner; unto which Motion and Commandment ſhe made a ſhort Reply; That altho' ſhe could not look on him, but with a kind of Indignation, and with Shame, in regard of that which had been offer'd unto her, and ſhe ſuffer'd by him, yet ſhe had ſo much Charity in her, and ſuch Reſpect to God and his Truth, that ſhe had deliver'd nothing for Malice; and therefore hoped that her Oath and Evidence thereupon ſhould be credited: and ſo deſired to be believed and diſmiſs'd. Which being granted, ſhe departed with as much Privacy as might be into her Coach.

Fitz-Patrick being aſked concerning his Guiltineſs or Innocency, demanded, who were his Accuſers? The Lord Chief Juſtice anſwer'd, You have accuſed yourſelf ſufficiently. *Fitz-Patrick* replied, That he thought neither the Laws of the Kingdom required, nor was he bound to be the Deſtruction of himſelf; what Evidence he had formerly given, was for the King againſt the Earl, and no further.

The Lord Chief Juſtice replied, It was true, the Law did not oblige any Man to be his own Accuſer; yet where his Teſtimony ſerv'd to take away any one's Life, and made himſelf guilty of the ſame Crime, therein it ſhould ſerve to cut him off alſo.

Then the Jury demanded of the Court Satisfaction concerning the Words of the Statute, which run, *To charge him alone to be, and accounted a Felon in Law, that committed a Buggery with Man or Beaſt.* (Of which Fact the late Earl was found guilty, and had ſuffered.)

The Lord Chief Juſtice replied, That foraſmuch as every Acceſſary to a Felon is a Felon in Law; ſo he being a voluntary Proſtitute, when he was not only of Underſtanding and Years to know the Heinouſneſs of the Sin, but alſo of Strength to have withſtood his Lord, he therefore was ſo far forth guilty.

Whereupon the Jury found the Bill, and the Sentence of Death was paſs'd on them both; and they were deliver'd and committed to the Sheriff of *Middleſex*, who, after he had ſuffer'd them to have ſome Repaſt at Mr. *Hill*'s in the *Palace-Yard*, and Conference with their Friends, carried them to *Newgate*, where they behav'd themſelves civilly and religiouſly.

As ſoon as they were found Guilty, the Judges of the Court wrote this Letter to the Lord Keeper to prepare him for the King.

Right Honourable,

‘ MAY it pleaſe your Lordſhip to be inform'd, That this day *Giles Brodway* and *Lawrence Fitz-Patrick* were tried before us in the *King's-Bench*, for the ſeveral Offences of *Rape* and *Buggery*, of which they were indicted, and they have received Judgment of Death: but we forbear awarding Execution, upon a Meſſage ſent from your Lordſhip by Sir *Thomas Fenſhaw*, of his Majeſty's Pleaſure for the Stay of Execution, until further Direction from his Majeſty: but conceiving there is great Cauſe to put the Malefactors to Execution, we thought it our Duty to acquaint your Lordſhip with the Paſſages of the Trial, that his Majeſty by your Lordſhip's means being made acquainted therewith, may ſignify his further Pleaſure.

‘ *Brodway*, who was arraigned for the *Rape*, very impudently denied his own Confeſſion, taken before the Lords the Peers in the Trial of my Lord *Audley*: He pretended he was amazed, and knew not what he ſubſcribed; and profeſſed himſelf guiltleſs, with great Execrations. He would not be ſatisfied, unleſs the Lady was produced Face to Face, which ſhe was; who by her Oath, *viva voce*, ſatisfy'd the Auditors, both concerning the Truth of the Fact and his own Impudence.

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* *Ruſh.* Col. Vol. II. *p.* 102.

† *Sir* Nicholas Hyde.

‘ *Fitz-Patrick*, who was arraigned for the *Buggery*, confeſſed his Examination to be true; but like one very ignorant, or rather ſenſeleſs, would have them true againſt the Lord *Audley*, and not againſt himſelf, which was impoſſible: He pretended he was promiſed Security from Danger, if he would teſtify againſt the Lord *Audley*; and ſo ſought to raiſe a Suſpicion, as if he had been wrought upon, to be a Witneſs to bring the Lord *Audley* to his End. They were both found guilty, to the full Satiſfaction of all that were preſent; and we for our parts thought it to ſtand with the Honour of common Juſtice, that ſeeing their Teſtimony had been taken to bring a Peer of the Realm to his Death, for an Offence as much theirs as his, that they ſhould as well ſuffer for it as he did, leſt any Jealouſy ſhould ariſe about the Truth of the Fact, and the Juſtneſs of the Proceedings. But upon receipt of your Lordſhip's Meſſage, we have ſtopt the Execution till his Majeſty's further Pleaſure be known; to which we ſhall humbly ſubmit our ſelves, and reſt

At your Lordſhip's Command,

N. Hyde, *W. Jones*,
J. Whitlock, *G. Croke.*

The King by this means being truly informed how things ſtood, ſignified his Pleaſure, that they ſhould be executed, but to have a Week's time for Repentance.

ON *Wedneſday*, the 6th of *July* 1631, they were brought to *Tyburn*; where, when the Executioner had ty'd the Halter about *Fitz-Patrick*'s Neck, he ſaid:

‘ Foraſmuch as I am here, and, as it were, upon the Inſtant to ſuffer Death, I deſire all loving Subjects and Members of the Church of *Rome* to pray for me.’ *Then he proceeded to pray to* our Saviour, his Mother, and the Saints; *in which he was interrupted by ſome Gentlemen, who told him, that the Beginning of his Prayer was good, for that he offer'd it to* Chriſt Jeſus, *in whom only Salvation is to be found*; *as for the Virgin* Mary, *and the Saints, they could do him no good. But notwithſtanding he perſiſted, ſaying*, ‘ O yes, the bleſſed Virgin never forſook or fail'd any that truſted in, or called upon her; and therefore he would depend upon her and the reſt of the Saints; and ſo proceeded to an Exhortation to Mr. *Brodway*, to cleave to the ſame Opinion, and die in the *Romiſh* Faith; for which to have him do, *he ſaid*, if he had it, he would give the whole World.’ *Unto which Motion* Brodway *gave no Anſwer, or ſeemed not to regard it.* ‘ Then he proceeded to ſhew how he had been examin'd by my Lord Chief Juſtice touching the Corruptneſs of my Lord of *Caſtlehaven*'s Life, wherein he ſaid he confeſs'd nothing to prejudice the ſaid Earl.

‘ That being within three days after ſent for before the Lords of the Council, my Lord *Dorſet* had entrapp'd and enſnar'd him to his Deſtruction; for ſaying upon his Honour, and ſpeaking it in the plural Number (as the Mouth of the whole Board) that whatſoever he deliver'd ſhould no ways prejudice himſelf, he thereby got him to declare the Earl guilty of the Sin of Buggery; wherein himſelf being a Party, was the only Cauſe he came now to ſuffer Death: for which his Lordſhip's Skill and Policy in ſifting him, together with a Diſpenſation of his Promiſe and Oath, he freely forgave him; ſaying farther, the ſaid Lord had done him no Wrong, becauſe he therein was but an Inſtrument to ſend him out of this World into a better. Then he demanded of the Company, if the Earl deny'd the Sin at his Death; and wiſh'd my Lord had not (if he did) for it was too true; his Lordſhip had both bugger'd him, and he his Lordſhip. That it was true (for ſome private Diſcontentment) he bore a little Malice to the Earl and *Skipwith*, for which he aſk'd God Forgiveneſs. That for *Brodway*, if he had done any thing to the Counteſs, he did it not out of his own ill corrupt Nature, but was provok'd and perſuaded to it by the Earl.

‘ He clear'd the young Lord, as never being any Occaſion or Means of his Father's Death, in hiring, or perſuading him to give Evidence, as he had done. He confeſs'd he had liv'd an ill Life, in that he had delighted in Drinking, Whoring, and all manner of Uncleanneſs; but now, as he was heartily ſorry, ſo he doubted not of Mercy of Almighty God, to pardon and forgive him all his Sins, thro' and for the Merits and Mediation-ſake of *Chriſt Jeſus*, the bleſſed Virgin, and the Saints in Heaven.

‘ That he had fallen or run into theſe Sins, (and eſpecially that which he came to die for) by reaſon he had neglected, and not ſo duly, as he ſhould have done, repair'd to his ghoſtly Father, to make Confeſſion, and take Inſtructions from him. That after he did make Confeſſion, and his Sins known to the Prieſt, he was not only ſorry for them, but alſo reſolv'd never to come into my Lord's Houſe again; but it was thro' Frailty, and becauſe he was not furniſh'd of another Place.’

So turning again to *Brodway*, and perſuading him to embrace the *Romiſh* Faith, wherein, as he perceiv'd, his labour was in vain, ſo the Sheriff and other Perſons of Quality willed him to forbear, and ſhut up his Diſcourſe, unleſs he had any thing more to ſay to the purpoſe. Whereupon, praying for the King, Queen and State, he betook himſelf to private Prayer, and therein for the moſt part continu'd to his Death.

Brodway came, (and as it was thought by the Company, a true Penitent) and after fetching a deep Sigh at the ſight of the Tree, he lifted up his Eyes and Hands towards Heaven, making and ſaying to himſelf two ſhort Prayers; ſo attending *Fitz-Patrick*'s Diſcourſe, he ſat in private Meditation, often making it manifeſt he was in Prayer moſt of the time, and alſo rejoicing at the Aſſembly's well wiſhing of him, for which he return'd Smiles and Thanks. His time being come to ſtand up, and have the Halter put about his Neck, and ſo declare himſelf, he willingly ſuffer'd the one, and proceeded to the other. Firſt aſking *Fitz-Patrick* if he had done, he pull'd a Sheet of Paper out of his Pocket; which being writ broadways, he could not ſpread it to read, therefore deſir'd to have his Hands unty'd; which was done, and he read it diſtinctly to the Aſſembly; the effect whereof was, to declare himſelf guilty, in the Sight of Almighty God, of Death and Damnation; for that he had broke all the Commandments, in Thought, Word, and Deed, and ſinn'd in pride of Life, luſt of the Eye, conceit of his own Beauty, matchleſs Strength, and other natural Gifts, in deſire of Revenge, not pitying the Poor, unlawful Riches, not repairing to Sermons, not obſerving the Sabbath, *&c.* For all which and other his Sins whatſoever, he both deſir'd of, and truſted in God for Pardon, and that thro' and for the only Merits of our Saviour Chriſt Jeſus, his bitter Death and Paſſion. He expreſs'd a ſtrong Aſſurance, which his very Soul had, of Forgiveneſs, in that, thro' the Aſſiſtance of the Holy Ghoſt, he had laid ſuch hold on Chriſt as he had done. This Paper-writing contain'd his Confeſſion and Prayer; alſo (as I remember) ſomething of his ſlender Guiltineſs and Deſert of Death, but not ſo much. Then delivering that to the Sheriff, he open'd a little Book, intitled, *Learn to die*, and deſired the Company to join with him; ſo reading over three ſhort Prayers, the laſt whereof was compoſed only of Confeſſion, and for Pardon, which Prayer he pronounced with great Comfort, at every *Amen* clapping himſelf on the Breaſt; he cloſed it up, and gave it to his ghoſtly Father, a Miniſter and Kinſman of his, who came along with him on horſeback cloſe by the Cart. Then he pull'd out a little Paper, which contain'd a Prayer of his own making; and when he had read it, and every one join'd with him in the *Amen*, he commended it alſo to the Sheriff; and then throwing away his Poſy of Flowers, he rouſed himſelf, and ſaid to this effect:

‘ Gentlemen, tho' true it is, what I formerly have deliver'd touching my Guiltineſs and Deſert of Death, my Meaning was, and is, only in reſpect of my Sins towards God, and no further for Breach of the Laws of the Kingdom, than only lying once with the Lady *Caſtlehaven*, thro' Perſuaſion of the Earl, who was then in Bed with her; and uſing ſome ſmall Force for the purpoſe, I did emit, but not penetrate her Body. I came not to my Lord with a Deſire or Intent any ways to ſerve him, but was rather inclin'd for the Sea; only Mr. *Skipwith* had drawn me thither for Society-ſake: and not hearing from my Friends concerning my intended Voyage, and being more kindly reſpected by the Earl than I look'd for, I ſtaid from Week to Week, and Month to Month, contrary to my Intention. Then my Lord, making me his Bed-fellow, did one Day, when *Skipwith* was with him in the Garden, (but walking ſomewhat apart) break out in Speeches to me to this purpoſe: *Brodway*, thou art young, luſty, and well-favour'd, and therefore canſt not but prevail with any Woman thou attempteſt; wherefore for that I am old, and cannot live long, my Wife wholly delighting in Luſt, which I am neither able nor willing to ſatisfy, thou may'ſt do well to lie with her; and ſo pleaſing her, after my Death marry her, and thereby raiſe thy Fortune. *Fitz-Patrick* knows my Lord had ſollicited me again and again, hearing him uſe this Language when we have been in Bed together, and he lying at the Bed's Feet.’ Which to clear, he charg'd *Fitz-Patrick* to ſpeak his Knowledge; who reply'd, *'Twas true.* Then he was aſk'd by one of the Lords, *Whether, when my Lord ſollicited him, my Lady deſired to have him know her carnally?* ‘ To whom he ſaid, *No, he would not wrong her, tho' ſhe hated him infinitely. But*, ſaid he, *I know well, if I were minded, and able to proffer, ſhe would not ſay nay*; *for Mr.* Skipwith *and* Amptil *lay with her commonly.*’

He added, ‘ That *Skipwith* confeſſed to him, he had often known her, and gotten a Child upon her, which ſhe, like a wicked Woman, had made away; which was the only and ſole Occaſion he the ſaid *Skipwith* now hated her, and therefore had turned to the young Lady *Audley*: all which he preſum'd *Skipwith* would confeſs upon his Oath. That the Counteſs was the wickedeſt Woman in the World, and had more to anſwer for than any Woman that liv'd, as he thought.’ *At which Words, that Lord which aſk'd him the former Queſtion, ſaid*, Grow not into a Paſſion, Mr. *Brodway*, and ſpeak nothing for Malice. *He anſwer'd*, ‘ God forbid I ſhould, I am in Charity with all living People, and do as freely forgive my Lady *Caſtlehaven*, as I do deſire God to forgive me; but what I ſpeak, is true, as I ſhall preſently anſwer before him that redeem'd me, and the Holy Ghoſt who ſanctify'd me: To whom be all Honour and Glory, now and for evermore. *Amen.*’

Then he proceeded farther, and ſaid, ‘ That my Lord would have had him done it long before: for one Night coming to him to his Bedſide, he caught him, and bid him come to Bed to him and his Wife: that thereupon he made to him as if he would; but being got from him, departed the Chamber, never intending to do ſo foul a Deed; and that for the Reaſons aforeſaid he hated her of all Women living. Howbeit, that one time, ſatisfying my Lord's Deſire, he came to Bed to them, where (being gratify'd) Nature provok'd him to a kind of Deſire, and he emitted, but did not enter her Body, as he hoped for Salvation; that he never knew any Woman carnally whilſt he lived in my Lord's Houſe.

‘ That it was not his Intentions to bring to light either my Lord's or my Lady's Shame; but that when he was upon his Oath he could not but ſpeak the Truth, his Nature being never prone to Lying; or if it were in his Youth, the good Correction of his Parents had wean'd him from it, ſaying, that his Mother had often told him the old Proverb, *A Lyar is worſe than a Thief*; and he thought he had more Stripes for that than all Faults elſe whatſoever: that he had, as he hoped, ſpoke nothing of Moment againſt my Lord at his Arraignment; he could not now remember every thing; if he had, he deſired pardon.’ And ſo concluding his Speech, prepared himſelf for Death; pulling out a laced Handkerchief, he deſired the Executioner to tie it about his Head. Then, pulling off his Garters, and unbuttoning his Doublet, Mr. *Goodcoale*, the Miniſter, aſk'd him, *if he would not have a Pſalm.* He ſaid, *Yes, with all my heart.* Then he read the 143d *Pſalm*; which Mr. *Brodway*, pulling up the Handkerchief, ſung very chearfully, never changing Colour at all. The Miniſter deſired him to make Confeſſion of his Faith; ſo he pronounc'd aloud the *Belief.*

Mr. Goodcoale *ſaid*, *Theſe are the Articles of the Chriſtian Faith according to the Church of* England, *into which Faith you was baptiz'd*; *pray ſignify whether in that Faith you intend to die?* He ſaid, Yes; for there is no other Faith (as I ſuppoſe) in and by which a Man can be ſaved.

' Then he made Requeſt to the Sheriffs, and thoſe of his Kindred there, ' that he might be bury'd in his own Country.' It was then told him, *that it was granted, and Order taken to have it ſo, wherefore he ſhould now mind his Prayers.* When his Kinſman aſk'd him, *if he had never another Prayer in his Pocket?* he ſaid, *No.* Then aſk'd Mr. *Goodcoale, if he would ſay after him?* And he ſaid, *Yes, with all my Heart; but firſt he deſired the Executioner to tie his Hands again.* Which being done, Mr. *Goodcoale* ſaid a ſhort Prayer to recommend his Soul and Body to Almighty God, in and for the Merits of Chriſt's Death and Paſſion: To which *Brodway* and the People ſaid *Amen.* Then lifting up his Hands to Heaven, he ſaid, *Lord Jeſus receive my Spirit*, and the Cart was drawn away.

Fitz-Patrick lifting up his Hands, and commending himſelf to God, was executed in like manner.

XXXIII. *Proceedings in the* Star-Chamber *againſt* HENRY SHERFIELD, *Eſq. Recorder of* Saliſbury, *for breaking a painted* Glaſs-Window *in the Church of* St. Edmonds *in the ſaid City, the 6th of* February, 1632. 8 Car. I.

The Information was thus opened:

MR. *Attorney* hath exhibited an Information, in the Behalf of his Majeſty, againſt *Henry Sherfield*, Eſq. an antient Bencher of *Lincoln*'s-*Inn*; for taking upon him, of his own Authority, to deface a Pariſh-Church in the City of *New-Sarum*, in the County of *Wilts*, and that in oppoſition to the Church Government, eſtabliſh'd by the Laws amongſt us*.

His Majeſty's Attorney, in the ſaid Information, ſetteth forth, that his Majeſty is in his Kingdom, next under Chriſt, the ſupreme Head: that all Churches are ſacred, and both founded and maintained by Regal and Sovereign Power; that no Subject can meddle with them, in doing any thing for their Ornament or Structure, without Licence of the Biſhops in their ſeveral Dioceſes, or the Ordinary for the Time being, who derive their Authority from the Sovereign Power.

That the Party Delinquent was an Inhabitant of the Pariſh of *St. Edmonds*, in the City of *New Sarum*.

That in the ſame Church was an antient and fair Window, containing a Deſcription of the Creation: That in *January, quinto Caroli*, the Defendant, and ſome factious Perſons, intending to deface it, there met and agreed ſo to do.

The Biſhop of *Sarum* commanded the contrary, and accordingly made a publick Act thereof.

But in *October* following, he the ſaid Defendant got the Keys of the Church, upon pretence to walk there, and then lock'd the Door, and contrary to the Biſhop's Appointment, he beat down the ſaid Window, and utterly defaced it; and when he had thus done, he did boaſt and glory in that he had ſo done, and reported that himſelf was a Defacer of Idolatry.

And for puniſhing of this great Crime is this Information exhibited, by his Majeſty's Attorney in this honourable Court.

Mr. *Herne.* The Defendant humbly offers to the Conſideration of this honourable Court, that he is aged, and has grey Hairs upon him.

That among all the Croſſes of this Life hitherto, he doth not account this the leaſt.

That he is this Day not only ſuſpected, but accuſed as an Enemy to his Majeſty and his religious Government; and the Thing that he is eſpecially accuſed and charged with, is, that of breaking the Glaſs Window, whereunto himſelf giveth this Anſwer:

That in the Time of King *Hen.* III. this Church of *St. Edmonds* in *Sarum* was built, and that there was a College of Prieſts there; for there was an Houſe adjoining, called The College to this Day.

That by the Act in the Time of *Hen.* VIII. this College came to the Crown, and there remained until King *James* granted it to *Gouge* and *Lloyd*, who afterwards granted the ſame to *Bartholomew Tookey*, and others, to the Uſe of the Pariſh of *St. Edmonds*, together with the Advowſon and free Diſpoſition of the Vicaridge there, which they have by Grant from his ſaid late Majeſty King *James*.

And tho' he did conceive the ſaid Church to be a Lay-Fee, yet he offereth this, that what he hath done, was not to uſurp Authority over the Biſhop of *Sarum*, nor in Oppoſition to his Majeſty's Government: But the Pariſhioners, and ſuch as are Veſtry-men of the ſaid Pariſh, have Time out of mind aſſembled, and met upon Occaſions, in a little Room called the *Veſtry*, in or near to the Church of *St. Edmonds*; and there they have uſed, Time out of mind, to make Orders, whereby new Windows have been made, divers Seats in the Church alter'd and new made, and many other Things done for Ornament, and otherwiſe, in the ſame; and this without any Order from the Biſhop of *Sarum*, or any other Ordinary, for the Time being.

For this Window that is charged to contain the Hiſtory of the Creation, he anſwereth,

That it is no true Relation, or Story of the Creation, in that true Manner as it is ſet down in the Book of *Moſes*; but there are made and committed by the Workmen divers Falſities and Abſurdities in the painting of the ſame Window, as that he hath put the Form of a little old Man in a blue and red Coat, for *God the Father*, and hath made ſeven ſuch Pictures; whereas *God* is but One in Deity: And in his Order of placing the ſeveral Days Works of God in the Creation, he hath placed them prepoſterouſly, the fourth before the third; and that to be done on the fifth, which was done on the ſixth Day; and in one Place he hath repreſented God the Father creating the Sun and Moon with a pair of Compaſſes in his Hand, as if he had done it according to ſome Geometrical Rules.

That this was not one of the greateſt and faireſt Windows in the ſaid Church, it contained only four Lights; for the Coſt at firſt in ſetting it up could not be more than forty Shillings: And that which is broken is very little Damage to the Window, and may be repaired for a very little Coſt.

He conceiveth, for his defacing of this profane Repreſentation of God the Father, it is not ſo heinous a Crime as deſerves the Sentence of this Honourable Court; and for his defence he ſaith, That he hath for many Years paſt (*he ſetteth down for thirty Years paſt*) been ſettled and reſolved in his Judgment, and that upon good and ſound Authorities (as he conceiveth) that it is utterly unlawful to make any ſuch Repreſentations of God the Father; and by ſuch Authorities as were ſet out and declared in the Time of Queen *Elizabeth*, and otherwiſe, for the taking down and aboliſhing ſuperſtitious Images and Pictures, eſpecially in the Churches.

He was thereupon the rather emboldened to deſire, and endeavour the taking away of the ſaid Window; and becauſe it had been a Cauſe of Idolatry plainly to ſome ignorant People. He ſaith he was placed in the Church in ſuch a Seat as that the ſaid Window was always in his Eye, during his Abode in the Church; and not out of oppoſition to the King's Majeſty, but by ſpecial Order and Agreement of the *Veſtry*, about *January* 1629, (wherein it was ordered that Mr. *Sherfield* might, if he thought fit, take down the ſaid Window, and ſet up new Glaſs for the ſame) he thereupon did with his Staff pick out ſome of the Glaſs in that part of the Window only which repreſented the Deity; but for the doing the ſame thro' Combination with others, and by Force, he denieth the ſame: And that he ſhould do it contrary, and againſt the Command of the ſaid Biſhop of *Sarum*, and his ſaid Act, and Letter ſuppoſed to be ſent, this he alſo denieth, and ſaith, that he had no Notice thereof in any part.

And to all the reſt of the Miſdemeanours and Offences charged in the Information, he pleadeth *Not Guilty*, and ſubmitteth himſelf to the Judgment of this Honourable Court.

For the King.

* *Sol. Gen.* For that divers Things ſeem to be ſet forth in the Defendant's Anſwer, which have not been opened; we that are of Counſel for the King, deſire that the Anſwer may be read; and the rather, becauſe he hath thereby confeſſed more than we have proved, or indeed could prove againſt him.

* *Sir* Richard Shilton.

Whereupon the Anſwer was read in effect as followeth:

The Anſwer of Henry Sherfield *of* Lincoln's-Inn, *in the County of* Middleſex, *Eſq. to the Information of Sir* Robert Heath, *Kt. his Majeſty's Attorney-General.*

All Advantages of exception to the Uncertainties and Inſufficiencies of the ſaid Information to this Defendant, now and at all Times ſaved:

This Defendant ſaith, That K. *H.* 3. founded in *New Sarum* the College of *St. Edmonds*, and the Church thereunto belonging.

That there belonged unto the ſaid College and Church, a Provoſt and 13 Prieſts, which had Maintenance there allowed them. That in the Time of K. *H.* 8. by the Act of Diſſolution, the ſaid College and Church, with the Revenue thereof, came to the Crown, and ſo remained till *ſeptimo Jacobi*, who granted the ſame to *Gouge* and *Lloyd*, who alienated it to *Baylie*, who conveyed the whole Premiſes to *Bartholomew Tookey*, one of the Defendants named, who, in 13 *Jacobi*, for many good Uſes, conveyed the ſame to the Uſe of the Pariſhioners of the ſame Church.

That this Defendant is one of them, ſo that the Right of the ſaid Church is in the ſaid Pariſhioners, who are ſeized thereof, as of their Lay-Fee; and the ſaid Church is exempt from the Juriſdiction of the Biſhop of *Sarum*; and that they, as lawful Owners, had lawful Power without the Biſhop to take down or ſet up any Window, and to do any other Thing in Repairing or Adorning the ſaid Church, and for Reformation of ſuch Things as are amiſs in the ſame.

And that he, this Defendant, and the reſt of the Pariſhioners being Veſtry-men, have met, and have uſed to meet for a long while, and their Predeceſſors, Time out of mind, in the Veſtry-houſe, and there have made Orders for the taking down, and ſetting up again, Parts of the Church. They have taken down Glaſs Windows, they have removed Altars, Roodlofts have been pulled down, Seats pulled down and alter'd, the Pulpit taken down and ſet in another Place; and theſe and many other Things without any ſpecial Licence of the King's Majeſty that now is, or of his Father King *James*, or of *John* Lord Biſhop of *Sarum*, or of his Predeceſſors.

That at a Meeting of the ſaid Veſtry-men of the ſaid Pariſh, this Defendant being one of them, in or about *January* 1629, it was ordered, that this Defendant might, if he pleaſed, take down the ſaid Glaſs Window, being in the South-ſide of the ſaid Church, ſo as at his own Coſt and Charges he would repair the ſame with new plain Glaſs. And this Defendant being to come to *London*, deſired it ſhould be done before his Return; and that the Glazier might not miſtake the Window, he pulled down with his Staff two or three of the ſmall Quarrels of Glaſs, and ſo left it to the Church-Wardens to be done.

That he is accuſed to be an Oppoſer of his Majeſty's Government, and of the Reverend Biſhops; and this by the Procurement of thoſe that are ignorant of the Thing, which this Defendant accounteth a very great Affliction.

He ſaith, That this Window, and the Painting therein, was not a true Repreſentation of the *Creation*; for that it contained divers Forms of little old Men in blue and red Coats, and naked in the Heads, Feet and Hands, for the Picture of God the Father; and in one Place he is ſet forth with a pair of Compaſſes in his Hands, laying them upon the Sun and Moon; and the Painter hath ſet him forth creating of the Birds on the third Day, and hath placed the Picture of Beaſts, and

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* Ruſh. Coll. Vol. II. p. 153.

Man and Woman, the Man a naked Man, and the Woman naked in ſome Part, as much as from the Knees upwards, riſing out of the Man; and the ſeventh Day he therein hath repreſented the like Image of God, ſitting down, taking his Reſt: whereas this Defendant conceiveth this to be falſe, for there is but one God, and this repreſenteth ſeven Gods; and the Sun and Moon were not made on the third Day, but on the fourth Day; nor the Trees and Herbs on the fourth Day, but on the third Day; nor the Fowls on the third day, but on the fifth: and Man was not created on the fifth, but on the ſixth Day; nor did the Lord God ſo create Woman as riſing out of Man, but he took a Rib of the Man, when he was in a deep Sleep, and thereof made he the Woman, in all which the Workman was miſtaken: In regard of which Falſifications, this Defendant deemeth, that this was not a true Repreſentation of the Creation, tho' it be ſo pretended, but rather an Abuſe of the true and lively Word of God, which to pull down, as aforeſaid, cannot be any Offence in him, this Defendant, as he conceiveth, at leaſt in that Manner as in the Information it is pretended. But in as much as he is accuſed of Infidelity and Impiety to Almighty God, and to be diſaffected to the King, therefore this Defendant humbly craveth leave to declare his Opinion in the Thing itſelf.

And he ſaith, that he believeth it altogether unlawful to make the Repreſentation of the true God in any Church, or Wall, or Window; and this he hopeth to make appear by the Scripture, by Orthodox Writers, Councils, and Decrees of Emperors, and by a certain Book of the now Biſhop of *Sarum* (Dr. *John Davenant*) written on one of St. *Paul*'s Epiſtles, in the 97th and 98th Pages; King *James*'s Book, intitled his *Premonition to all Chriſtian Kings and Princes*; the Book of *Homilies*, ſet forth by Authority, and therein the Homily againſt Idolatry in particular: That this being ſo falſe a Repreſentation, and ſo profane a ſetting down of the Image of God the Father ſeven Times, he, this Defendant, being a Pariſhioner, and troubled therewith in Conſcience by the ſpace of twenty Years, for that he could not come into the Church, but he muſt ſee it, ſitting right oppoſite to it, he was much grieved thereat, and wiſhed a long while that the ſame were removed, and yet in reſpect of himſelf laboured ſtill to diſaffect his Thoughts; but ſeeing the Diſhonour done to God thereby by ſome ignorant Perſons, (as this Defendant was informed by the Paſtor of the ſaid Pariſh) and fearing that others might offend in Idolatry, he (by Order of the Veſtry aforeſaid) did take down ſome little Quarrels of the Window; and it was done by him only, without any Diſturbance, and he did it only in ſuch Places of the Glaſs as the Repreſentation of the Deity ſo falſified was: He did it not to arrogate to himſelf Authority, but as bound to do what he did to preſerve a good Conſcience; it was not done riotouſly, nor by Combination with any others. And he ſaith, That he never deſerved, nor will deſerve ſuch a bitter Charge, as thro' the Malice of his Enemies, is laid upon him by the ſaid Information. And he ſaith, that he, and other of the Defendants, were Juſtices of the Peace, and not altogether private Perſons, and they were Pariſhioners, and entruſted, as aforeſaid; and the taking down of the Window ſeem'd to be warranted by the Statute of *Edw*. 6. and by the late Queen's Injunctions, ſet forth in Print in the firſt Year of her Reign, whereby it was commanded that all idolatrous and ſuperſtitious Pictures, Roodlofts, Altars, and other Relicks of Idolatry, eſpecially in Churches, ſhould be defaced and aboliſhed, but the Wall preſerved, and this to be done by the Church-wardens, and theſe Injunctions being by Act of Parliament, they are ſtill in force, as he conceiveth. And in the 13th of *Elizabeth*, in the Convocation held by the Archbiſhops, amongſt other Canons, this for taking down and defacing idolatrous Pictures and Images was one, and made an Article, that the Church-wardens ſhall inquire whether it be done accordingly: And the ſame order'd by the Convocation, in the 1ſt of King *James*. He ſaith, That he doth not countenance any Contemners of the Church, nor ever did: That the painted Window aforeſaid was one of the meaneſt Windows in the ſaid Church, containing but four Lights, whereof all the Glaſs at firſt was worth but 40 *s.* and all that was taken down by this Defendant, was not worth more than 18 *d.*

And this Defendant denieth that the Biſhop of *Sarum* ſent to him to forbid the taking of it down; and denieth that he had any Notice by way of Act, Letter, or Monition to the contrary, or that any ſuch came to his Hands. But this Defendant ſaith, That he often attended the Lord Biſhop, as well upon this Defendant's own Buſineſs, as on the Biſhop's Occaſions; and yet his Lordſhip never uſed any Speech thereof to him at all. And therefore this Charge, that it was done by this Defendant againſt the Biſhop's Directions, is not true, as will appear by Proof. But this Defendant doth aver, what he hath done is lawfully done; and to all other the Offences, *&c.* he pleadeth *Not Guilty*.

Sol. Gen. Here is a Confeſſion of the Fact, and a Juſtification; and therefore we made no Examinations or Interrogatories; for as I ſaid before, ſo I make bold to ſay again, that he hath confeſſed more than we could prove againſt him.

The queſtion is, Whether a Pariſhioner may of himſelf undertake to pull down and ſet up what he conceiveth to be idolatrous, and ſo take upon him to be a Reformer?

In this Gentleman's Anſwer, you ſee how curious he hath been in confuting the Painter that is dead a hundred Years ago. (Nay, it hath been there theſe three hundred Years, *ſaid the Archbiſhop of* York.) From the 5th of *January* 1629, till *October* following, he could find no Opportunity to execute the Veſtry's Order; and yet he ſaith, ſhortly after the Order, he did with his Staff take down ſome of the Quarrels of the Window, *&c.* Firſt, for the Manner of coming into the Church, we ſhall read a Witneſs or two for that.

Depoſitions of Witneſſes on the King's part read.

Bowen the Sexton's Wife ſaith, That Mr. *Sherfield* came unto her (her Huſband not being at home) and ſaid Woman, bring the Keys of the Church-door, and let me into the Church; whereupon ſhe preſently brought the Key, and opened one of the little Doors of the Church, and Mr. *Sherfield* went in, and made the Door faſt unto him, and ſtaid there alone by himſelf.

That when he went into the Church, he ſaid, Now Woman go about your Buſineſs, while I walk in the Church.

That thereupon ſhe went into her Houſe, and after ſhe had tarried a little in her Houſe, her Child (that was abroad gathering of Sticks) came in, and brought her two or three Pieces of the Glaſs Window, and ſaid it was done by a Man all in black. Thereupon ſhe went to a private Door and looked into the Church, and ſhe ſaw Mr. *Sherfield* ſtanding upon a Seat ſome four Foot above the Ground, and ſo he ſtood breaking the Window with a black Staff with a Pike in the End of it.

That the Window was broken in eleven ſeveral Places. And after ſhe went by the ſame Window, and ſaw it broken; but being on the outſide, ſhe did not then ſee it, yet ſhe heard one groan, which ſhe conceived was Mr. *Sherfield* fallen from the Seat whereon he ſtood, to the Ground. And ſhe the rather believeth it was Mr. *Sherfield*, becauſe he afterwards ſent for a Horſe, and rode home.

That afterwards the Window was broken by another, and a Pitch-fork left in it; and divers other Windows were alſo broken, but by whom this Deponent knoweth not.

That therefore a Watch was ſet, and continued for a Fortnight, to ſee who ſhould attempt to break any of the Windows of the ſaid Church.

Elizabeth Bowen, *the Sexton's Daughter, ſaith*, That Mr. *Sherfield* came to this Deponent's Mother, about three or four of the Clock in the Afternoon, a little after *Michaelmas*, and commanded her Mother to open the Church Door for him, and ſhe did open it: when he was in the Church he ſaid, Get you about your Buſineſs; and when her little Brother brought in part of the Glaſs of the Window, ſaying, Somebody was within breaking ſome of the Windows of the Church, ſhe then run out of her Father's Houſe and went unto the Church, and ſaw him beating of the Ladder, and heard him talk to himſelf, and thereupon ſaid to her Mother, That ſhe thought Mr. *Sherfield* was mad.

That thereupon Mr. *Sherfield* came out of the Church, and went into the Clerk's Houſe; and after he had been there a little Space, he went again into the ſaid Church, and bolted the Door after him on the inſide, but ſhe peeped in at the Door, and ſaw him break the Window with his black Staff, which had a Pike in the end of it.

That the Staff broke, and he fell down into the Seat, and lay there a quarter of an Hour groaning; but what Hurt he had, ſhe knoweth not.

That he afterwards kept his Houſe for a Month.

That the Window was broke afterwards, and one *John Palmer* ſeen there about four of the Clock in the Morning.

Dr. Webb *of* Steeple-Aſhton *ſaith*, That Mr. *Sherfield* coming thither to keep a Court-Leet, he afterwards went with this Deponent into the Church of *Steeple-Aſhton* to view it, and he aſked this Deponent why they ſhould beſtow ſo much Coſt in their Windows; and he declared his Diſlike thereof, giving theſe Reaſons, to wit, That it made the Windows darker; and it was an occaſion of Idolatry: and he conferred with this Deponent about the Window now in queſtion, which he ſaid he would have taken down; but the Biſhop's Chancellor oppoſed him, and ſaid, He knew no Cauſe why he ſhould, for that it was a Lay-Fee.

John Lymminge *of the City of* New Sarum *ſaith*, That he hath been thirty Years a Pariſhioner, and two Years ago he was Church-warden of the Pariſh of St. *Edmond*'s in the City of *New Sarum*; that then the Order was made, when he was Church-warden.

That he was preſent in the Veſtry at the making thereof.

That Mr. *Sherfield* moved the Matter to the reſt that were preſent, and they all conſented thereunto, ſaving two, who ſaid, They deſired to have the Lord Biſhop's Leave for doing it. To whom Mr. *Sherfield* ſaid, Do not you trouble yourſelves, I will give my Lord Biſhop Satisfaction.

That the Biſhop afterwards ſent for this Deponent, being then Church-warden, as aforeſaid; and he went to his Lordſhip, who told this Deponent, He had heard of ſuch an Order or Agreement to have been made at the Veſtry, and aſk'd this Deponent if it were ſo? This Deponent anſwer'd, That it was ſo: that thereupon the Lord Biſhop ſaid, Let it not be done, and gave Directions and Commandment to this Deponent, not to give Notice of this Inhibition therein to the reſt of the Veſtrymen.

Francis Roberts, *Servant to the Biſhop's Regiſter, ſaith*, That an Agreement was brought to the Biſhop under Mr. *Sherfield*'s Hand, and the Hands of divers others, by Mr. *Sherfield*; and the Effect of the Order was (as he taketh it) for the taking down of the Window, in the South Porch of the Church of St. *Edmond's* in the City of *New Sarum*.

That the Lord Biſhop cauſed this Deponent to take a Copy thereof, which he did; and thereupon the Church-wardens were ſent for, and were forbidden by the Biſhop to put the ſame in execution, and made a publick Act thereof, which this Deponent wrote.

It was urged by thoſe of the King's Council, that the Anſwer was not in this rightly opened, and was therefore one of the Reaſons why they deſired the Anſwer itſelf to be read. In the Anſwer he juſtifieth the Act as well done; but the Council that opened the ſame, did not ſhew it ſo to be.

Mr. Herne. In opening the Anſwer, we declined, as but an Opinion of the Defendant, and from this a Man may recede: It was not the Point in Iſſue, therefore we were adviſed not to ſtand upon it; and we do acknowledge the Church to be a parochial Church, and ſubject to the Biſhop of *Sarum*.

Whereupon Sir *John Finch* deſired that *John Lymminge*'s Depoſition might be read again, and it was read to this Purpoſe,

That Mr. *Sherfield* ſaid he would ſatisfy the Biſhop, urging that this was after the Biſhop's Inhibition; *but this did not appear to the Court*.

Sir *John Finch* concluded the Evidence on the King's Part: the Queſtion is not what is fit to be in a Church; the Matter is, that he hath taken upon him to determine what is fit. He is an antient Reader, and well read in the Law; but our Law ſaith, (and this every one knoweth, that hath ſuck'd the leaſt Sweetneſs from the Books of the Law) That the Church muſt be governed by the reverend Biſhops of the Church. That it was a parochial Church he knew well, for that himſelf was a Pariſhioner: and tho' his Council decline this, yet his Defence is, that it is a Lay-Fee, and that he might well do as he did, to pull down the Window. He is well acquainted with the Biſhop, and yet would never deſire his

Leave in taking it down; but he goeth to the Veſtry for Power to do it, and yet there it is his own Motion; and when ſome queſtion'd there own Power to do it, he beareth them in hand he will ſatisfy the Biſhop. When he cometh to *Steeple-Aſhton* to Dr. *Webb*, there he ſaith it is a Lay-Fee; for he being a Juſtice of Peace, that ſeemeth to add another Wing to bear him up: But the Matter's not in queſtion, it appertaineth to the eccleſiaſtical Juriſdiction. For the Biſhop's Inhibition, that Mr. *Sherfield*, being a Veſtry-man, ſhould not have Notice of this, is very improbable. If it had been done in Execution of the Veſtry's Agreement, why then was it done ſo privately, and not ſome of the Veſtry called to be with him?

But to have the Doors ſhut, to do it with ſuch Privacy and ſo many Colours, as reading in a Book in the Church, walking and viewing of the Clerk's Houſe; this could not be but that he feared ſomething, and that this was the Inhibition,

Note, This was a great Defect in the Proof of the King's Part, that the Relator could not prove that Mr. *Sherfield* had Notice of the Biſhop's Inhibition: nay, he had not the Act of the Biſhop, which was ſo eaſy to be had, to ſhew in Court, for which the Biſhop of *London* was much diſpleaſed, and ſo was the Lord-Keeper.

To remedy this (if it might be) the * Biſhop of *London* deſired that Dr. *Lynn* the Biſhop of *Sarum*'s Chancellor, who was the Relator in this Cauſe, might be heard what he could ſay to this Point. And he was permitted to ſpeak, yet could not directly ſay that Mr. *Sherfield* had any Notice of the Biſhop's Inhibition; yet he mention'd a Letter that was ſent to him to give him Notice of the Biſhop's Commands to the contrary, but it could not be proved that ever any ſuch Letter came to his Hands.

* *Dr.* Wiliam Laud.

For the Defendant.

Mr. *Herbert*. That the Information contained ſeven ſeveral Charges againſt the Defendant; for five of which, that is to ſay,

1. That he being factiouſly diſpoſed, and diſaffected to his Majeſty's Government, on his own Authority took upon him to deface the Pariſh Church of St. *Edmond*'s in *New Sarum*.
2. That he is an Oppoſer of the Authority of the reverend Biſhops and their Government.
3. That he is an Encourager and Maintainer of all ſuch as are ill affected Perſons to their Government, and Contemners of their Authority.
4. That the defacing of the Window in queſtion was done by Combination and Confederacy between him and ten others, Defendants.
5. That this was done riotouſly and routouſly with Force and Arms.

For all theſe I appeal to this honourable Court, what colour of Proof hath been made; only it hath been proved that the Defendant himſelf took down a little of the Glaſs of that Window. And there hath been ſome offer of Proof made, that it was done againſt the Lord Biſhop of *Sarum*'s Inhibition. And whereas the ſaid Dr. *Lynn*, the ſaid Biſhop's Chancellor, hath endeavoured to prove ſome Things out of Courſe for this laſt Charge, we ſhall deſire and beſeech your Lordſhip's to conſider that he is the Proſecutor of the Cauſe againſt the Defendant. For the Manner of the Proſecution, it hath been very violent, injurious, and ſavouring of Malice. He was the Man that went to theſe Witneſſes and forty other Perſons, to raiſe up and frame a Charge upon the Defendant. He exhibits a foul Bill, or cauſeth the ſame to be exhibited againſt the Defendant, and ten others. And then falleth off from all thoſe Ten, and deſireth that Two of the Defendants might be Witneſſes for him; and when he had thus done, never uſed them. And this, my Lord, hath been the Manner of Proſecution.

For the taking away of the Glaſs-Window, it is true, we confeſs we did take down part of the Glaſs; but for the ſecond Thing, it doth not appear that he had Notice of the Biſhop's Inhibition.

And whereas Sir *John Finch* hath inſiſted upon ſome Probabilities for Proof hereof; we hope this Cauſe ſhall not be ſentenced according to Probabilities. Now tho' the Charge of thoſe five before-mention'd be not proved, nor any Interrogatory adminiſtred to prove them, yet we ſhall deſire Leave to offer our Proofs to the contrary to your Lordſhips Conſiderations.

And firſt, as to the Charge that we are ill affected to the Church-Government, and an Encourager of thoſe that be like-minded, and this for private Ends, and out of a private Spirit:

We anſwer, That Mr. *Sherfield* the Defendant hath on the contrary, in all his Actions, been conformable to the Canons and Conſtitutions Eccleſiaſtical, the Rites and Ceremonies of the Church of *England*.

That he hath been ſo far from encouraging ſuch factious Perſons, that he hath been very active in his Place to puniſh Separatiſts. And that he did not this (in removing this little Quantity of Glaſs) of his own Head or private Spirit; but it is true, he conceived it to be Idolatrous, and ſo was it thought by the Paſtor of the Church, and by all the Men of the Veſtry thought fit to be removed. What we did therefore, was no way out of a ſingular or private Spirit, nor our own Authority, but by Order from the Veſtry; not in oppoſition to the Church-Government, or Governors; but as in reſpect to the Nature of the Thing. Beſides, all the Canons, Conſtitutions, and Commands for taking away ſuch ſuperſtitious and idolatrous Relicks, we ſhall prove, in Fact, there has been much Idolatry committed therewith. We ſay, that of a long Time there have been Meetings in the Veſtry by ſome antient Men of the Pariſh, and this by Power from, and under the Eccleſiaſtical Governors; and this they have uſed to do, they have ordered many ſuch Things, and they agreed this Window ſhould be taken down by Mr. *Sherfield*, if he thought fit, and to ſet up new Glaſs. We go not about to entitle the Veſtry to any Juriſdiction; we ſay they are reſpondent to the Biſhop, and he may puniſh them if they abuſe their Power: but tho' they have not legally a Juriſdiction, yet *de facto* they do meet, and do ſuch Things, though it be not juſtifiable; yet this is the Queſtion before your Lordſhips, Whether thoſe of his Majeſty's learned Council can make it a Crime, *Yea*, or *No*? The Curate and Church-wardens aſſented, as is required by the Statute.

The Queen's Injunctions, 1 *Eliz*. give Power to the Commiſſioners and others to take away Things of this Nature, eſpecially in Churches, preſerving the Walls, *&c.* So in the Articles ſet out in 13 *Eliz.* to inquire whether they were removed, *Yea* or *No*. Afterwards there was the like in the Firſt of King *James*; and the Canons contain one Particular of the like Power given to the Church-wardens to inquire of ſuch Matters, *&c.*

Depoſitions of Witneſſes on the Defendant's Part read.

John Joye *of the City of* New Sarum *Gent. ſaith*, That he hath known the Defendant above twenty Years, and hath ever ſince obſerved him to be conformable to the Church of *England*; and that the Defendant, when he is in health and at home, is preſent at divine Service and Sermons, and that during all the Time of this Deponent knowing of him, giving good Example by his religious and pious Carriage unto others; and that this Deponent hath known this Defendant divers Times to have received the Sacrament of the Lord's Supper kneeling.

That this Deponent is a Pariſhioner within the Pariſh of St. *Edmond*'s in *Sarum*, and a Veſtryman.

That the Veſtrymen of the ſaid Pariſh have met, and uſed to meet as often as they thought fit, and uſed to make Orders for repairing and adorning the ſaid Pariſh Church, and have hitherto many times ordered the taking down of Seats in the Church, and the ſetting up of new, taking down of Windows, Walls, and Pieces of the ſame Church. And this Deponent remembereth, that about twenty Years ſince, a new Pew was erected in the middle of the Church for the Miniſter to read Prayers in; and fourteen Years ſince a new Pulpit was ſet up, and part of the Miniſter's Seat was again alter'd; there was alſo a new Loft made for ringing of the Bells, and thirty Seats were taken down and new made, and a Glaſs Window in the Towers was quite taken away: and all this was done without any ſpecial Order from the Biſhop of *Sarum*, for the Time being, or any other Ordinary, and never any Doubt or Queſtion was made thereof.

That upon the 16th Day of *January*, 1629. at a Meeting in the ſaid Veſtry, by the Veſtrymen, it was order'd, that the Window in queſtion ſhould be taken down, and the Reaſon why, as this Deponent remembreth, was for the Darkneſs cauſed by it, and for that it was Superſtitious; and that five of the ſaid Veſtrymen were Juſtices of the Peace within the ſaid City of *New Sarum*.

Mr. *Herne* noted, that the Defendant's Witneſſes are Juſtices of the Peace, and ſuch as have been Mayors of the City, and are Aldermen there; but the others Witneſſes are poor People, and ſilly Women led by Mr. Chancellor.

This Witneſs, and many others, teſtified the Defendant to have been conformable during all the Time of their knowing him, and obſervant of the Rites and Ceremonies of the Church of *England*.

Peter Thatcher, *Clark, Vicar of the Pariſh Church of St.* Edmond's *in* New Sarum, *ſaith*, That he hath known the Defendant, *Henry Sherfield*, by the ſpace of eight Years laſt paſt; that when he is well, and in good Health, he cometh to Church, and there ſtayeth all the Time of divine Service and Sermon, and hath received the Sacrament of the Lord's Supper kneeling.

That there was an Order made in the Veſtry, where this Deponent was preſent, for the taking down of the Window in queſtion by Mr. *Sherfield*.

That he hath ſeen the ſaid Window ſince it was broken; that the Story intended thereby to be ſet forth, may well enough be diſcerned, and this, upon his certain knowledge, for he took ſpecial Notice thereof, upon *Saturday* laſt, before his Examination; that there are no Letters in the Window aforeſaid, deſcribing the Repreſentation of the Creation.

That it may be amended for a very ſmall matter.

That it is not ſo good Work as ſome other Windows of the Church.

That he hath heretofore ſeen an Accompt, made in the Time of *Henry* VII. of Charges in ſetting up Certain Windows in the ſaid Church, which are all of painted Glaſs; and there was ſet down a Particular of 94 Foot of Glaſs, ſet up at 3*d*. a Foot, and this Window in queſtion containeth 72 Foot of Glaſs or thereabouts.

Note, That in the Time while this Depoſition was reading, Mr. *Sherfield* cauſed a Map of the ſaid Window to be preſented to the Lords, repreſenting the ſaid Window, and all the ſeveral Breakings of the ſame ſet forth in Colours like the Window itſelf, which was inſpected by the Lords.

The Biſhop of *London* at this Time took ſome Exception to the Teſtimony of the laſt Deponent, *Peter Thatcher*, for that he ſaith he knoweth he cometh to Church, and ſtayeth there all the Time of divine Service; whereas he knoweth that this *Thatcher* himſelf hath not read all the divine Service in a whole Year together; he hath not done it heretofore, whatſoever of late he hath done for By-Reſpect.

Then proceeded the Depoſition of the ſaid Peter Thatcher.

That the Picture of the old Man in blue and red, is taken to be the Picture of God the Father, the Creator of Heaven and Earth; and that he is taken to be there repreſented creating the Birds and Beaſts, the Sun and Moon, and ſpeaking to *Adam* and *Eve*, &c.

That, as this Deponent taketh it, there are many Miſtakes, Falſities and Abſurdities contained in the ſaid Window.

That he ſaw *Emma Browne* bowing to the Window aforeſaid, on which Occaſion (this Deponent coming in the mean while) he aſked what was the Cauſe ſhe ſo bowed. To which ſhe anſwered, I do it to my Lord God. Why, ſaid this Deponent, where is he? Said the ſaid *Emma Browne*, In the Window, is he not? This Deponent thinketh he told this Defendant of the ſame, but doth not remember the Time when.

Michael Mackerell, *of the City of* New Sarum, *Gent. ſaith*, That he hath known Mr. *Sherfield*, the Defendant, by the ſpace of twenty Years and more, during all which Time he hath been conformable to the Church of *England*, and duly repaireth to the Church and Sacrament, *&c.* That this Deponent knoweth he hath called divers in queſtion for their Inconformity, and divers have been accuſed for Anabaptiſts and Separatiſts before him, and other Juſtices of the Peace in the ſame City, and ſome of them were impriſoned, ſome bound to their good Behaviour, and ſome otherwiſe puniſhed by his Means; and the Deponent ſet down the Names of thoſe who were called in queſtion for Inconformity in particular.

James Palmer *of the City of* New Sarum, Senior, *aged about* 80 *Years*, ſaith. That in the ſaid Pariſh of St. *Edmond*'s, for fifty Years paſt, he hath known divers of the Pariſhioners to have met from Time to Time in the Veſtry of the ſaid Church, which is Part of the ſame Church, or adjoinneth thereunto; and they have order'd many things for Reparation of the ſaid Church, without the Biſhop of *Sarum*, or any of his Predeceſſors; and divers of the ſaid Pariſh are, and have been called, and have been and are Veſtry-Men of the ſaid Church, and they have done divers things in the Church without the Biſhop's Leave, as namely, the Place of reading the Service was altered from out of the Choir, and appointed and order'd by them to be read in the Body of the Church, without Licenſe from the Biſhop: and therefore the Pariſhioners did not aſk Leave in this Caſe, of the Biſhop, to remove the ſaid Window.

The Biſhop of London. Often Veſtries take upon them that Authority which pertaineth not unto them, and uſually tranſgreſs their Bounds; they were made by the Biſhops heretofore, where they are granted and ſuffer'd, and in many Caſes, by the Common Law, we cannot do without them. The Truth is, that the Arcdeacon in every Dioceſe was wont to be *magnus Oculus Epiſcopi*, to view and inform the Biſhop of the Things fit to be reformed. But you will ſay, Shall not thoſe Men repair, nor do any thing in the Church without Leave? Yes, they may, but not doubtful things; therefore for ſuch things they ſhould aſk Licenſe of the Biſhop at their Perils

The Lord Keeper. So for mending of a Wall, or repairing things not well done in the Church, Veſtry-Men may do it; but when they do ill, they are to be puniſh'd.

February 8,

THIS Day the Defendant's Council proceeded in reading their Witneſſes for their Defence.

William Antopp *of the City of* New Sarum, *Gentleman*, ſaith, That heretofore, about nine or ten Years ſince, he took Notice of one *William Trumpetter*, who came as a Stranger into the Town; and this Deponent after underſtood his Name was *Alderſey*.

That this Deponent hath obſerv'd the ſaid *William* putting off his Hat to the ſaid Window; and that the ſaid *William Trumpetter*'s Maſter, called *Beech*, did kneel down and Pray before the Crucifix in one of the Windows.

This Deponent had Conferrence with the ſaid *William Trumpetter*, and with his ſaid Maſter, the ſaid *Beech*; and in their Talk they much commended Pictures in Church-Windows, and praiſed *Bellarmine*'s Writings; wherefore this Deponent did conceive them both to be Romiſh Recuſants: And this Deponent ſaw the ſaid *Trumpetter* kneeling and praying towards the ſaid Window; and the ſaid *Beech* kneeling before the Crucifix, beating his Breaſt, which this Deponent did conceive was Idolatry.

Here the Defendant's Council offered to ſpeak ſomething to diſcharge the Defendant of that Point, as to the doing of the ſaid Act contrary to the Lord Biſhop of *Sarum*'s Inhibition.

Whereunto Mr. Attorney ſaid, That this was not worthy to be inſiſted on, becauſe they had come ſhort in Proof againſt him: But as for Mr. Chancellor's enquiring into the ſaid Offence done, we conceive it was rightly done, and proper for him to do it; for that this Fact is of a mixt Cognizance, Eccleſiaſtical and Temporal; and therefore, he being an Eccleſiaſtical Officer, it was not a Fault, but a commendable thing in him ſtrictly to enquire of the thing as he did, and it was his Duty ſo to do. And for the preparing and pre-examining of the Witneſſes, we ſay, in this Caſe by him it was lawfully done, and they were juſtly prepared.

The Defendant's Council proceeded, and read divers Statutes and Proclamations, and other Records and Authorities in Juſtification of the Defendant's Fact, as concerning the Nature of the Thing.

And firſt was read the particular Injunction in the Point, ſet out 1 *Eliz.* the 23d Article or Injunction; Church-Wardens are to ſee the Churches kept clean, and all Loathſomneſs by Duſt, or otherwiſe removed: That they have in the Churches the holy Bible and Homilies, late ſet out in Print againſt Rebellion, and other outrageous Crimes.

That there be in every Church a fair joining Table, and a convenient Pulpit, *&c.*

Alſo they ſhall ſee that all Shrines, Coverings, and Candleſticks, Pictures, Pilgrimages, Relicks of famed Miracles, Rolls of Wax, and ſuperſtitious Things be taken away and defaced, preſerving nevertheleſs the Walls of the Stone Buildings of the Windows.

* Archbiſhop of *York*. The Church-Wardens executed this by Direction of the Queen's Viſitors, not upon their own Authority.

* *Neale.*

Then was read the Article touching this Matter, ſet forth in the Book of Articles, in the 13th Year of the late Queen. The Title of which Book is, *Articles agreed upon by* Matthew *Archbiſhop of* Canterbury, *and the reſt of the Reverend Biſhops*, 3 Aprilis 1571.

The Article itſelf runneth thus:

Item. Whether all Shrines, Coverings, Rolls of Wax, *&c.* and Pictures of falſe and feigned Miracles, be removed and aboliſhed.

Biſhop of *London*. I do not think that the Story of the Creation was a Picture of falſe Miracles.

The Canon of 13 *Eliz.* was, That the Church-Wardens ſhould enquire and make Preſentment of ſuch things to the Biſhop or Ordinary; but it gave no Power to them, being but Lay-Men, to do what they would in Reformation.

Archbiſhop of *York*. The Injunctions were in 1 *Eliz.* when the Church was very much out of Order; and this was done by Special Commiſſioners, and not by the Church-Wardens Power.

Then was read the Canon, made 13 *Eliz.* the 18th Canon, That the Church-wardens ſhould ſee the Church kept clean, the holy Bible to be in the Churches, and the holy Homilies lately ſet forth againſt Rebellion, a fair joining Table for the Celebration of the Communion; and all Roodlofts, wooden Croſſes, Pictures of falſe and feigned Miracles, and all other Relicks of Superſtition deſtroyed and demoliſhed; the Walls of the Churches to be new whited, and Sentences of holy Scripture to be written upon them in great Letters, and a Baſon to be in the Church wherein Baptiſm is to be adminiſtered.

There was the like made in 1 of King *James*, and 2 *Jacobi*, 1603. Canon 85, That the Windows of the Church be well glazed, the Pavements even and decently kept: The like Care to be had for the Church-Walls and Church-Yards, that they be ſhut in with Pales, Walls and Rails, as hath been accuſtomed. And the Officers are to ſee that the Peace be well kept, and that the Book of Homilies be in the Church, which ſpeaketh againſt Idolatry and Superſtition, *&c.*

Mr. *Herbert*. The Matter before your Lordſhips in Judgment, is the Removal of ſome few Parcels of Glaſs out of a Church Window. Now, upon Things thus opened, whether this be a Crime puniſhable in this Court, we humbly leave to your Lordſhips to Judge. But if it ſhall be conceived to be an Ornament to the Church, and ſo a Fault in any to remove it without the Biſhop's Leave; we ſay it is true, we did it, but not upon our own private Head, the Veſtry agreed upon it.

And whereas it hath been objected and charged, that the Defendant did this to encroach upon the Church-Government, we hope it doth not ſo now appear to your Lordſhips; but that he is a good conſtant Obſerver of the Church of *England*. And for the taking down of this Glaſs, we have ſhewed what we did ſimply, and not ſo much what our own Opinion was, but as it was conceived Idolatrous by others.

If this be a Fault, it is then becauſe it ſeemeth to derogate from the Honour and Authority of the Church, and done in Oppoſition to the Biſhop's Juriſdiction; or elſe it ariſeth out of our Anſwer, in that we juſtify the doing thereof, as in our Lay-Fee. But we have ſhewed he did not this to make a Power in the Veſtry againſt the Power of the Biſhop; no, this was an Act of Duty to the Biſhop, and puniſhable by him if it were not well done: So we do not divide the Power from the Biſhop, but the Queſtion is upon the exerciſe of this Power, whether the Veſtry-Men, when they have done well, are to be reprehended; or whenſoever they do any thing about the Church, whether they muſt ſtill go to the Biſhop for Leave?

But tho' this be not an Offence in the nature of it, yet it is ſaid, that to us it is an Offence, becauſe of our Juſtification; which is not only *de facto* that it is done, but that it is rightly done by the Veſtry as their Act in their Lay-Fee, which is exempt from the Biſhop's Juriſdiction.

To this we Anſwer, That this was only the Opinion of the Defendant, it was not the Iſſue; but his Diſpoſition is not to ſtand out in a thing, which afterwards appeareth unto him to be otherwiſe; he did conceive it was a Lay-Fee, and was their Impropriation: And tho' he ſaid it was exempt from the Power of ſupreme Authority, the Archbiſhop or the King's Majeſty, yet he did it as the Act of the Church-Wardens, which is ſubject to the Biſhop.

For the Act it ſelf, the taking away of ſome little quantity of Glaſs, we have ſhewed you the Uſage of the Veſtry, what they have done in other Caſes; and if every Alteration in a Church ſhould be proſecuted as a Crime in this Court, I ſuppoſe the Court would be over-much filled with Proſecutions of this nature. Thus much for the Matter of the Fact; then for the Manner of doing it, It is pretended, that it was done againſt the Biſhop's Inhibition.

The Defendant hath denied this Point upon his Oath, and ſheweth Probability to the contrary: My Lord Biſhop had long and often Conferences with him, but never ſpake to him of this thing.

Next, for that Circumſtance, that by this Example of his breaking the Window, ſome others have done the like; but in the Books we find only that ſomebody did break the Windows again after this, but who it was, is not ſet down. Two or three Times a Year for Glaſs Windows to be broken by accident is a common thing. We find alſo that after this a Pitch-Fork was found hanging in the Window; we ſay that this was diſcover'd only upon Proof, and was not in the Pleading: But the Men that examined this, ſaid that it was a mad Man indeed that came that way, and threw his Pitch-Fork there, and this might have been proved. And ſhortly after many more Glaſs Windows were broken, but where, or in what Church, it doth not appear as I conceive. And, whereas it hath been ſaid by a ſilly Maid that ſhe thought Mr. *Sherfield* was mad; and it hath been ſaid, he went about like a Madman: We ſay, that if his faithful Care and Induſtry in that City for the good thereof, if his Advice in all the Kingdom ſo well known be reſpected, he is not to be accounted a Madman: He did not come in a mad and braving Manner, but ſecretly, and this is proved by the Mother and Daughter; we ſay the more privately it was done, the leſs offenſive it was: Which we ſubmit to your Lordſhips, and the whole Cauſe together with it. The Charge againſt the Defendant is, that he did diſhonour to the Church: but we ſay, that the Act was to do Honour to God.

Biſhop of *London*. Was not this done contrary to the Biſhop's Inhibition? Let me aſk this Queſtion of the Defendant's Council, Why did Mr. *Sherfield* promiſe to ſatisfy the Biſhop? did he give this Satisfaction before he did the Fact? This I muſt needs declare to your Lordſhips, that my Lord Biſhop of *Sarum* hath written to me, and by his Letters it appeareth ſufficiently how this Matter was carried and what paſſed about it: If it pleaſe my Lord Keeper, it may be read.

But this being out of Courſe, and a thing to which the Defendant could make no Anſwer, was not approved of. There hath been no Fault in the Biſhop of *Sarum*; but the Buſineſs on the Proſecutor's Part hath been as ill followed as ever I ſaw: and on the other Side, by the Defendant's Council, as well defended; ſo much I muſt ſay for them.

Sir *Richard Shilton*. This Offence is clearly againſt the Biſhop's Authority; and the greater by his Defence ſet forth in his Anſwer; and by what the Defendant hath ſhewed, it appeareth he did this by his own Authority.

The Order or Agreement of the Veſtry is no more but this, You may, if you pleaſe, do ſuch a thing: Mr. *Sherfield* may, if he pleaſe, take down the Glaſs Window; that is to be underſtood at his Peril, they would not ſtand to it. This, eſpecially in a Man of his Example, is not to be paſſed over in theſe Times. I undertake there are ſome Spirits now, that if they had been alive in *Solomon's* Time, would have gone nigh to have done Violence to the Cherubims; God knoweth what would have become of them!

Mr. *Herne*. As to my Lord of London's Objection, that it ſeemeth it was done after the Inhibition, Mr. *Sherfield*, upon his Oath, denieth that he had Notice of it. Mr. Chancellor himſelf ſaith, he had not Notice till after the fact: He was often with the Biſhop, and he never uſed any Words about it to him.

Biſhop of *London*. He undertook to ſatisfy the Biſhop (and the Biſhop you are to know, is not bound to give Notice to every Man of his public Act;) but your Proofs are, that the Veſtry have done theſe and theſe things, without the Biſhop; they prove Matter of Fact, but what was done heretofore, maketh not much for an evil Cuſtom.

* William Noy.

* *Attor. Gen.* We will not talk of the Authority of the Veſtry againſt the Biſhop's Authority, they were at firſt made and ſuffer'd thro' Negligence of the Prelates themſelves. The Veſtry conſiſts of the Miniſter and Curate, and ſome Laymen, I do not ſay Lay-Elders; they here agree for the taking of this Window down, but the Queſtion lieth not upon their Power, it lieth upon the Fact itſelf, confeſſed by the Defendant himſelf: and, I ſay, if he had not confeſſed and proved more againſt himſelf than the Relator himſelf hath done, he might (I think) have gone without the Cenſure of this Court. It is proved by the Defendant's Witneſſes; and that he did it, is confeſſed; but he alledgeth in his Excuſe, that for twenty Years he obſerved this Window, and he took Offence at it; he ſat in a Seat in the Church, and he could not chooſe but gaze on it; he could not reſt with a good Conſcience, but the Window muſt be taken down: But in all theſe twenty Years he never complained to the Ordinary; but after twenty Years he propoſeth it to the Veſtry; there were preſent the Church-wardens, the Veſtry-men, and Mr. *Thatcher* the Miniſter; ſome were ſo wiſe as to queſtion whether the Biſhop's Conſent were not to be had unto it: to this the Defendant ſaith he will ſatisfy the Biſhop, but never offereth to do it: Afterwards it is agreed Mr. *Sherfield* may take it down, provided he make it up again with new plain Glaſs. The Biſhop hearing of this, ſendeth for one of the Church-wardens, and makes a publick Act to prohibit the taking of the Window down, and ſuſpends the Power of the Veſtry, if they had any; of this the Biſhop is not bound to give Notice: The Defendant muſt do it afterwards at his Peril, and he told others that the Chancellor oppoſed it.

For the Manner of it, when he cometh from *London*, he went in ſecret Manner, it was between four and five of the Clock, when at that Time of the Year it was between Day and Night, growing to Darkneſs: And he went by himſelf, he took no Glazier with him, nor any other to witneſs his Act, no not ſo much as any one of the Veſtry-Men, upon whoſe Authority he ſaid he did it; and thus in private and ſecret Manner he committed this Exploit. It is ſaid by the Witneſſes on his Part, that ſome did, by Occaſion of it, commit Idolatry, but Mr. *Sherfield* knew not of it, (for any thing that appeareth;) beſides, he did not follow the Veſtry's Order in doing it, for he broke it down, he did not take it down; he taketh Offence at the painted Errors, but he hath broken it, and never mended it again: But he breaketh that Part only which offended him, the Head and the Feet: If this had been done in the Execution of a publick Act, he would ſurely have had ſome Witneſſes of it; but he had none, he bolted himſelf into the Church, that none might ſee him, he was not willing to be ſeen; ſo it was clandeſtinely done: If it had been done by him upon the Order, he would have conſulted with the Glazier; wherefore certainly he executed his own Humour, and not the Veſtry's Order.

It hath been farther ſaid (to excuſe the Defendant) that he may and muſt do it; but of how dangerous Conſequence this *may and muſt be*, is, I ſhall endeavour briefly to ſhew unto your Lordſhips. He takes Notice, firſt, that the Church is a Lay-Fee, and being in the Pariſhioners, and himſelf a Pariſhioner, that he may therefore do it: But from this they have already ſtarted, and they may and muſt do it; for they well know it is a Parochial Church, and endowed with a Vicaridge, which if they ſhould have denied, we have the Record itſelf ready here in Court to prove it.

But yet they ſay, there hath been a Veſtry even from the firſt Foundation: and they have done, and uſed to do divers ſuch things; they have made Seats, pulled down Seats, remov'd the Place for reading the Service out of the Choir into the Body of the Church, taken down Walls of the Church, and the like, without the Biſhop's Leave or Licenſe, and therefore may take down this Window.

My Lords, there is a great deal of Difference between Repairing and Reforming: Reformation ought to be made always by the ſupreme Power, not by private Men: but when private Perſons, or a Veſtry will take upon them Reformation, I make bold to ſay, it is the Highway to pull all out of order with their Reformation. Something was ſaid, as if the Reaſon why the Window ſhould be taken down, was, becauſe the Painting darken'd the Church: But if this had been all, I ſhould not have ſpoken much againſt it. But it was done for Reformation, his Conſcience could not bear it. If it ſhould be lawful for private Men to do thus much, what will they do next?

Nay, ſome hold our Church is Idolatrous and unclean, becauſe Common Prayers are ſaid in them, and Maſſes have heretofore been ſaid in them; and therefore theſe Reformers would at the next Bout take away our Churches alſo; this muſt be next. As to the kneeling down to the Windows by ſome; it may be ſome will do ſo to a Saint, or one of the Prophets of the Old Teſtament when they ſee their Pictures in a Church or Chapel, (as in *Lincoln's-Inn* Chapel) which if they do, then Mr. *Sherfield* muſt pull ſuch Windows down, or ſomebody elſe to whoſe Conſcience it is a trouble. Again, becauſe it is a Cauſe of Idolatry in others, therefore muſt Mr. *Sherfield* pull it down; but it is ſuch Idolatry as muſt be concealed from the Ordinary. Suppoſe another Man come, and ſay it is no Cauſe of Idolatry, and therefore it ſhall ſtand ſtill: Thus they differ firſt, and then they fight for it; next they have Partakers on both Sides, and ſo an Inſurrection may come of it, which has many Times taken its Beginnings from leſs Occaſions than this: And tho' (God be thanked) in this Caſe it was not ſo, yet it might have been, and may be ſo (if ſuch things ſhould be allowed) in other Inſtances of like Nature hereafter. But he may and muſt do it, becauſe of the late Queen's Injunctions and Articles, *&c.*

The Injunctions and Articles are but to authorize the Ordinary to enquire of ſuch things, fit to be reformed in Churches by the Church-wardens, and other Officers: and they are to preſent it to them, and ſo they are to be reformed by the Power of the Ordinary in every Dioceſe and Juriſdiction: And the Meaning was, that all Relicks of Idolatry and Superſtition ſhould be taken away; but every Memorial, or Story of a Saint and Prophet is not a Relick of Idolatry or Superſtition. Any Monument of Superſtition, or of feigned or falſe Miracles, may be taken down; but Monuments, or Pictures for Memorials of Saints or Prophets, are not Idolatrous or Superſtitious. If they ſhould be ſo, becauſe ſome Men conceive them ſo, and then they may pull them down of their own Heads, why then many might (and I doubt not but ſome fiery Spirits would) take upon them the Boldneſs, to pull down all Cathedral Churches, becauſe they are made in Form of a Croſs, which ſome of the preciſe Sort cannot abide: And ſo, becauſe Churches ſtand for the moſt Part Eaſt and Weſt, they would pull them down, becauſe (forſooth) they hold it Superſtition. But Reformation is, and always hath been a Work of publick Authority, and ſome Men have been puniſh'd in this Court, heretofore for offending in this Kind.

In the Queen's Time, many went abroad (of their own Heads) to break down Croſſes, Images, and Pictures of all Sorts, in the 44th *Eliz.* At *Banbury* they pulled down the Croſs there. And in the 12th of King *James* ſome were brought here in this Court, *Ore tenus*, and ſentenced for the like. And by the Sentence you ſhall ſee what Name is given to thoſe Men, who pulled down Croſſes; I ſhall read but theſe two Records, and ſay no more.

The Records were read by Mr. Robert Page, *the Recorder's Attorney.*

By the Queen, a Proclamation againſt pulling down of Images and Pictures: Whereas *many violent Perſons have of late of their own Authority gone about to deface the Walls and Glaſs Windows of Churches, and in their Violence have pulled down Tombs and Monuments of Noblemen, and Gentlemen deceaſed, to their Diſhonour, and to the Breach of our Peace:* Therefore *a ſtrict Commandment is given that all Men forbear to break the Pictures ſet upon Tombs or Graves, and not to break the Pictures or Pourtraitures of the Noblemen, or others in Churches, Church-Walls, Windows,* &c. *nor any Images whatſoever, without the Advice of the Ordinary, or the Advice of the Queen's Majeſty, or her Council,* &c. Given 44*th Eliz.*

The other Record is this:

In Camera Stellata Anno Regni Jac. duodecimo.

Whereas William Dale, John Eden, Hugh Jones *and* Richard Jackſon, *and other refractory Puritans and Browniſts, did deface divers Croſſes in High ways, in the Night-Time: For this the Judgment of this Court is upon their Confeſſion in open Court, that the ſaid* William Dale, John Eden, Hugh Jones *and* Richard Jackſon, *ſhall be bound to the good Behaviour, and acknowledge their Offence at the Aſſizes, and every one of them pay* 100 *Marks Fine to the King's Uſe.*

Your Lordſhips ſee now that the Defendant might not do it as he did, nor was he bound to do it at all; we therefore leave it now to your Lordſhips to cenſure.

The Sentence.

* *Lord* Cottington.

* *Chancellor of the Exchequer.* This Cauſe (may it pleaſe your Lordſhips) is of great Weight, and well deſerves the Conſideration of this Court: It is brought by his Majeſty's Attorney-General againſt this Defendant, *Henry Sherfield*, and ſome others; but the reſt are not proceeded againſt. His Offence (as it hath been proved by Witneſſes, and confeſſed by himſelf) is the wilful breaking of a Glaſs Window in a Church in *Saliſbury*, which Window antiently ſtood there; and this he endeavours to juſtify. That theſe, and ſuch like, are the Acts of Puritans and Browniſts, it appeareth upon Record. His Anſwer, I conceive, to be againſt him, tho' he now quits that Part of his Juſtification, and it ſheweth his Spirit. It is ſaid he is a wiſe Man, and an old Man, learned in the Laws, and that grey Hairs are upon him; but it had been a better Argument of Extenuation, to have ſaid he was a weak Man, a poor Man, or a mad Man. He took Scandal, and it was an Offence to his Conſcience; but this was a tender and ſcandal-receiving Conſcience; he muſt have the Window removed.

This, and ſuch like Matters may go very far, and great Miſchiefs may ariſe by it, as there have of late Years both here in this Kingdom and in *France*. He did not only do this, but he boaſted of it when he had done, as if he had reformed Superſtition: One Day's Work, in the repreſenting the Creation, is ſet before another; and the Picture of the little old Man in blue, muſt be the Picture of God the Father. But this is as light as to affirm, that Idolatry may be committed to any Thing, which for Ornament the Painter hath made. But for the making of Pews in the Church, Pulpits, *&c.* this is but Reparation, from this they come to Reformation. Six of the Veſtry, at leaſt, conceive they have Power to pull down this Window, they agree it ſhall be taken down, and Mr. *Sherfield* may do it if he pleaſe, *&c.* This was in *Jan.* 1629, 5*to Caroli*; but it was not done till *October* following, and then it is not taken down, but broken down. I verily believe (tho' it appears not in Proof, and therefore as a *Non liquet* I paſs it by) that he knew of the Biſhop's Inhibition. But, ſay they, why then ſhould not the Biſhop ſpeak to him of it? He ſaith it is a Lay-Fee; and ſaid, that before the Fact Mr. Chancellor oppoſed him. The violent Manner of his doing it, is both proved and confeſſed. It is ſaid he is a Juſtice of Peace, I hope your Lordſhips will take Order he be Juſtice no longer. It is proved he received the Communion kneeling; why did they not prove likewiſe that Mr. *Sherfield* was baptized? Who doubts that Mr. *Sherfield* was baptized? There was a ſtrict Inquiſition to prove the Fact; it was well done ſo to enquire, you ſee the ill Example of it, others followed it. They ſay it was a Madman who did it: this was not proved: But it was more like he was mad himſelf; it was indeed the Act of a Madman, and fit for none but Madmen to imitate.

For his Anſwer, I take it to be full of Singularity and Pride; and notwithſtanding any thing contained therein, or in the Proof, I hold this his Action a great Offence, an Offence of great Scandal and Preſumption as to him that knows the Law. If he or others had been minded, upon good Advice, or in good Way to have preſented this or the like Thing fit to be reformed, to the proper Ordinary, or to the King's Majeſty, being the Supreme Head, he and they ſhould have done well, and have had a great many Thanks for ſo doing: but tho' it were fit to be removed, it was not in his or the Veſtry's Power to do it. I take it, it differs not from that Caſe adjudged here in this Court the laſt Day, when a great many poor Men, who had a Right to Common, but in claiming it made a Riot, were juſtly puniſh'd. So here, tho' this Window were ſcandalous, yet a

Private Man, nor many private Men cannot take it down: For what (as Mr. Attorney ſaid) if one half of the Town would have it ſtand, and the other half would have it down, what muſt follow but Inſurrection? So that here is in this a great deal of Diſobedience, and that done in the Singularity of his Spirit in Contempt of the Church; he hath thereby touched upon the Regal Power, and encroached upon the Hierarchy of the Biſhops, who have their Authority from the King. I come now to my Sentence; *I will have him to be no more Recorder of this City, that he be bound to the good Behaviour, That he make a publick Acknowledgment of his Fault in that Church where his Fact was done, and in the Cathedral Church. And that he may pay* 1000 *l.* Fine to the King's Majeſty.

* *Sir* Robert Heath.

* *Lord Chief Juſtice of the Common-Pleas.* In this Cauſe, brought by Information by myſelf, when I was his Majeſty's Attorney-general, againſt Mr. *Sherfield* and others; the Relator hath only proceeded againſt this one Defendant. Upon all that hath been ſaid on both ſides, theſe Things come to my Conſideration, the Fact, and the Circumſtances of Aggravation: For the firſt of theſe, I ſhall agree it to be an Offence; but I ſhall not agree in the manner of Puniſhment, ſet by my Lord that ſpake laſt. I dare not give Encouragement for any private Man to do any publick Thing in Church or Commonwealth of his own Authority, it is a very pernicious and dangerous Thing; but yet I ſhall not ſentence him for ſome Things, which in the firſt place I ſhall make mention of.

1. That he ſhould do it by Confederacy and Conſpiracy with others, and that riotiouſly: It is true, it is thus charged in the Bill; but this is not proved, nor any other than Mr. *Sherfield* himſelf proſecuted. I muſt confeſs, I was informed that the Cauſe was much fouler than it is, and many others were ſuſpected to have an hand in it; and this was the Reaſon of the Charge in the Information.

2. It may be he took juſt Scandal at this ſuperſtitious Window; and had he only moved it at the Veſtry, this alone had not been ſo great a Fault, if he had done according as the Veſtry ordered.

3. That he did it contrary to the Command and Direction of the Biſhop; but this I dare not ſay is ſo fully proved, as on it to ground my Sentence, tho' I verily think (as to my own private Satisfaction) he could not but know of the Biſhop's Inhibition. However ſeeing it is not proved, (tho' if it had been carefully followed, I doubt not but it might have been made appear ſufficiently; for the Biſhop of *Saliſbury* himſelf, and many others, might have been examined in it) I paſs it over as a Thing not manifeſt.

4. That this was done out of the Spirit of Contradiction, and in oppoſition of the Church-Government: I condemn his Raſhneſs and Heat of Spirit in doing it without the Biſhop; but I cannot perceive that it was done to oppoſe the Biſhop, or Eccleſiaſtical Government. If this had been proved, or did appear in his Actions, I ſhould have accounted it the greateſt Matter againſt him; as for his inward Thoughts, I dare judge no Man's Conſcience.

5. That he did this in a profane Manner, and that it was a Breach of Piety towards God. I muſt confeſs I think not ſo, but rather that the Offence was fit to be removed; he was grieved, and his Conſcience offended at it; and I verily think, if the Biſhop had been told of it in a decent Manner, he would have reformed it.

6. That it was done riotouſly; but it is clear there was no Riot in the Manner of doing this Thing: And ſo I hold this no aggravating Circumſtance, he did but ſatisfy his ill-grounded Conſcience.

7. That when he had thus done, he boaſted of it; this appeareth not, no Man ſeeth this proved: Nay, in his anſwer, opened by his Council on his Oath, he ſaith he accounteth it a great Croſs to him, and is very ſorry for it.

As to his Place and Authority, his Wiſdom and Gravity, and his Profeſſion, theſe excuſe him not, but rather increaſe his Fault.

As to the colourable Pretences by him uſed in acting this Buſineſs, I do not take theſe, or his ſecret going about it, to aggravate his Fault; I think Veſtries have too great Power, and often take upon them to do Things beyond their Power; and yet I know nothing to the contrary but the Reverend Biſhops may abridge that Power when they will. As to this Action of his, I find that he did it not *contra voluntatem Epiſcopi, ſed præter*; that he was the firſt mover of the Matter to the Veſtry: This is not a Fault in him, I think, but well done of him; and yet when the Veſtry had done this, and the Defendant executed their Order or Agreement, I do not ſee, but the Biſhop, if they had done ill, might have puniſhed them. Give me leave, I beſeech your Lordſhips, to ſpeak thus much: A Judge muſt not ſpeak his own Imaginations, but according to Proof; he is bound ever to give Sentence *ſecundum probata*, not *probabilia*. That he undertook to ſatisfy the Biſhop, this I think is proved by one ſingle Witneſs; but yet this Action of the Defendant, I conceive to be an error in the Defendant. The Veſtry (he ſhould have known) are but private Men, and have no Juriſdiction to reform, whatſoever they have done in Matters of Repair heretofore. But if this, or ſuch like Things ſhould be permitted in the Church-Government, to be done upon private Authority, why ſhould not the like Men do the like in the Commonwealth? and then we ſhould be at an evil Paſs.

We read in the Book of the *Judges of* Iſrael, when there was no King in *Iſrael*, private Men did what was good in their own Eyes, and many erroneous Things and Slaughters fell out thereupon.

There was Cauſe (I am ſatisfied) that this Window ſhould be removed. It was made for the Picture of God the Father, and ſo it was generally conceived to be: but tho' it was idolatrous, and their bowing to the ſame was conceived to be Idolatry, they ſhould therefore have told the Biſhop of it; which ſeeing neither Mr. *Sherfield* nor the Veſtry did do, he is not in this to be excuſed. I ſhall therefore agree to ſentence him for this Fault; but I ſhall forbear to put him from his Place of Recorder in the ſaid City: It is not an Offence in him as Recorder, nor as Juſtice of Peace. I hold every Man that is ſentenc'd ſhould (as near as may be) be ſentenc'd *eo modo quo offendit*, and therefore I think not fit that he be put from either of his Places, for elſe we ſhould for this one Offence cenſure him as worthy to be cut off from his Places, and ſo good for nothing. And I ſhall forbear to bind him to the good Behaviour, for he is a Gentleman of Reputation in the Country where he dwelleth; and I have obſerved, that a Gentleman is not bound to the good Behaviour, but for very foul and enormous Offences. *But I would have him to make acknowledgment of his Fault unto my Lord Biſhop of* Saliſbury, *and before ſuch as he ſhall call unto him: And I would have him give ſome Satisfaction, and this in the very kind that he hath offended, at the Diſcretion of the Biſhop.* For the Fine of 1000 *l.* ſet by my Lord, that ſpake laſt before me, I hold it to be too much for an Error, being there appeareth no Contempt: *I ſhall therefore think, and ſo ſet* 500 *Marks to be enough.*

* *Sir* Thomas Richardſon.

* *Lord Chief Juſtice of the King's Bench.* My Lords, Mr. Attorney-General is Plaintiff againſt *Henry Sherfield* Eſq; We are not to take notice of any more Defendants, becauſe they are not proceeded againſt; for this Cauſe, my Lords, I hold it comes fitly and properly before your Lordſhips here. This is rightly *crimen Stellionatum.* There be many Covers in it; for it is of mix'd Cognizance, and therefore fit for this Court, which I ever held to be the greateſt Court, except the Parliament.

In delivering of my Mind, I ſhall crave Pardon, if I ſpeak any thing which ſhall be miſtaken. For the Fact, (as it appeareth unto me upon the Proofs) it was the breaking of a certain Window of painted Glaſs, not one of the greateſt in the Church; it was a private Window, and it was privately done by him with his black Staff.

His Motive to do it was this, There was Offence in this Window, and he conceived that it was Idolatry, or the Cauſe of Idolatry. The Offence was, that God the Father ſhould be pictured there in the Form of an old Man in blue and red. I have no Reaſon to think Mr. *Sherfield* took this to be made for God the Father; for he never was nor never can be pictured; Who knoweth him ſo well? *Moſes* himſelf ſaw but his back parts. But give me leave my Lords, as for Idolatry. This worſhipping of Idols is the greateſt Sin of all others; it is a ſpiritual Idolatry; it is to give God's Honour unto Creatures: For the Homilies of the Church, I think they are very excellent Things, (and ſo they are without doubt;) and there is an excellent Homily againſt Idolatry: ſo that Mr. *Sherfield*, and others, taking offence at the Pictures in this Window, (altho' I ſee not why it ſhould be taken for God the Father) they might, to avoid Occaſions of evil Deſire, endeavour to remove the ſame. But then I hold he ſhould have gone to the proper Judge that hath Power. And here I find fault with him, that in the twenty Years of his continued Offence thereat, he would never reſort to the Biſhop to complain thereof: This was certainly *ſcandalum acceptum, & non datum.* He ſhould have gone to the Biſhop; but for his Colour to do the ſame, by the Order of the Veſtry, I think it a meer Colour. Two withſtood this Motion, eight or ſix conſented to the taking of it down. I marvel any Queſtion at all was made of it; for I know Mr. *Sherfield* is as well beloved of the Citizens as any Man can be; and, I preſume, he might command an Order in the Veſtry: but, I ſay, the Veſtry hath nothing to do to reform, it wholly belongeth to the Biſhop. And the Power of the Church-Wardens, by the Canons and Conſtitutions, is but to inquire and preſent; but the Biſhop, the ſupreme Ordinary in his Dioceſs, and the Arch-deacon, who is *magnus Oculus Epiſcopi*, are the proper Agents in a Work of Reformation; what Miſchiefs would elſe enſue? There was a ſpecial Commiſſion in *Henry* VIIIth's Time. I know who were Commiſſioners, and have ſeen the Commiſſion: They did ſtrange Things; but I have ſeen again as ſtrange Stories of Things befallen thoſe Houſes.

In 3 *Edw.* VI. *Cap.* 10. It was enacted, that Reformation in the Churches ſhould be made by Archbiſhops and their Commiſſaries.

This was repealed by Queen *Mary*, but ſet on foot again 1 *Jac.* and theſe Times muſt follow the Wiſdom of an Act of Parliament. Again, of what dangerous Conſequence is this Act of Mr. *Sherfield*'s? If theſe Men ſhould be permitted to be Reformers, they would reform ſome Things that need no Reformation. I have ſeen, in ſome Churches in my Circuit, ſome Stories of the New Teſtament, ſome in Windows, ſome in Needle-work; and Woven-work; God forbid theſe ſhould be taken away.

The manner of his doing of it I like not. He did not take it down, but break it down in the Head and Feet, which offended him: This ſhould have been the Act of publick Authority; he preſumeth to do it in the Church, a ſacred Place, and ever privileged: Therefore it was an Offence to uſe any Violence in it, tho' but to the Windows, and therefore to be puniſhed. I think Churches too little regarded; I hold it very ill that he did it ſo in private. He might rather have taken a Glazier with him. Yet I hold clearly, he doth not diſaffect the Government. To my knowledge, he hath done good in that City ſince I went that Circuit; ſo that there is neither Beggar nor Drunkard to be ſeen there. For Eccleſiaſtical Government, he is outwardly conformable: I have been long acquainted with him; he ſitteth by me ſometimes at Church; he bringeth a Bible to Church with him (I have ſeen it) with the Apocrypha and Common-Prayer Book in it, not of the new Cut.

That he ſhould do it againſt my Lord Biſhop's ſpecial Direction to the contrary, I do not think ſo. There is but one that proves his Undertaking to ſatisfy the Biſhop. And for the Inhibition, he had no Notice of it, for aught is proved; nay, he expreſly denieth it upon his Oath, wherefore I do not believe he had Notice.

To ſpeak ſomewhat of the Offence that ſticketh upon him, the breaking of the Window; I aſſure myſelf, if Mr. *Sherfield* had gone and acquainted the Biſhop with this Order, when it was made, this Cauſe had been prevented; but done as it was, it was diſorderly done, and without Warrant. This therefore is an Offence done by the Defendant; and it is an Offence, in arrogating to himſelf Power and Authority not belonging to him, and his Zeal and good Intention ſhall not excuſe him: Zeal muſt not tranſport a Man out of his Calling, nor beyond his Bounds; if it doth, it ceaſeth to be Zeal, it is Raſhneſs and Boldneſs, it is (my Lords) Preſumption. I proceed to my Sentence, wherein I muſt crave Liberty (and in all Things whenever I ſpeak in this Place) to uſe my own Conſcience; and I ſhall ever hold this Rule, to judge and inflict Puniſhment, *ſecundum quantitatem delicti.*

For this Defendant, I think him tranſported with a little indiſcreet Zeal; and he would not ſeek Remedy for his Grievance of his Ordinary, that he might have had Leave to do this Deed, but rather do it of his own Head, and this by colour of the Veſtry's Order, nothing to the Purpoſe And this, my Lords, is rather an Error, in not doing what he ought to have done, than any great Offence in doing what he ought not.

My Lords, this I remember always, that every Puniſhment here muſt be *ad reformationem, non ad ruinam :* therefore I ſhall not agree to diſcharge him of his Recorderſhip, nor of his Place of Juſtice of Peace in that City. For binding him to the good Behaviour, I humbly crave pardon to diſſent from that ; he is a grave Bencher, and a learned Man, and a Gentleman well governed hitherto, howſoever his indiſcreet Zeal tranſported him into this Error. This is the firſt Offence that ever you heard of him. *I ſhall agree for his Submiſſion and Confeſſion of his Fault to my Lord Biſhop of* Saliſbury, *to be made before his Lordſhip, and ſuch as he ſhall call unto him :* But, my Lords, for his Fine to the King, 1000 *l.* is too much, and 500 Marks is too little ; I ſhall therefore go between both, *and ſet* 500 *l. and Impriſonment according to the Courſe of the Court.*

Secretary *Windebanke. I agree in Sentence with Mr. Chancellor of the Exchequer* 1000 *l. Fine, Acknowledgment in both Churches ; to be put out of his Place, and impriſoned.*

Secretary *Cooke.* His Majeſty's Attorney-General Plaintiff, and Mr. *Sherfield,* an antient Gentleman, is Defendant. In my Sentence I ſhall endeavour to keep a good Rule, which is this, not to make Faults where they are not, nor to make them greater than in themſelves they are.

The Information hath charged ſeven ſeveral Crimes upon the Defendant ; but of all theſe, nothing but one, touching the Defacing of ſuch Ornaments, ſticketh upon him : But is this ſo much ? This Picture was made for the Picture of God the Father: So I thought alſo, I confeſs, whoſoever was miſtaken ; for Images in Churches, there hath been heretofore much Trouble about them. The firſt Trouble that I have read of, was in or about the ſecond *Nicene* Council ; and we read, that Imagery, or Image-worſhip, grew up after it had ſlily crept in, in this manner.

Firſt they were made for Stories, to teach that to the Eye which the Word doth to the Ear. Then they began to gain ſome ſhew of Reverence at their approach unto them ; but not to the Images, the Reverence was done to God. Afterwards they came, as we read, (out of the Windows and Walls) into the Church, and at laſt upon the Altars, and then to be worſhipped and offered unto. Howbeit, this was but a relative Worſhip, as they would excuſe it ; nay, as St. *Gregory de Valentia* ſaith, they did in his Time give Co-worſhip to the Images with God : But our Church doth not allow any Adoration to be given to any Image or Picture whatſoever, nor the Image of God the Father to be in the Church.

This is the Matter of his Accuſation : So that as unto the Matter, the taking away of ſuch a Picture is no Offence ; but in the Manner of doing it, is the greatneſs of the Offence.

Reformation in a private Man, is Deformation, it is not to be permitted : I ſhall ever be as ready to puniſh ſuch as any. But that he did this of his own Head, without Leave of the Churchwardens, and againſt the Biſhop's Inhibition, it doth not appear to me as it ſtandeth before us. I conceive he had ſome Opinion that the Veſtry, or his own Authority, might allow him in that which he did, and warrant him in it ; but he ſhould then have done it according to the Authority.

I think he did this out of a little more Zeal than he thought to be in others ; and I find that he did it without acquainting the Biſhop therewith : But it is fully proved that he is conformable, and therefore it doth not appear to be in Oppoſition of the Reverend Biſhops.

I incline to my Lord the Judge's Opinion that ſpoke laſt, that it was done out of Zeal ; and he himſelf anſwereth, it was done out of Tenderneſs of Conſcience : yet I ſay, that private Men are not to make Batteries againſt Glaſs Windows in Churches at their Pleaſure, upon pretence of Reformation. Notwithſtanding, I conceive the Danger of Example to encourage others to break down ſuch Windows, will not be ſo great, as the Occaſion of Triumph to ill-affected Perſons would be, if this Court ſhould too ſeverely puniſh an Error in pulling that down which the Church diſalloweth. *Therefore an Acknowledgment to the Biſhop of* Saliſbury, *in the preſence of ſuch others as he ſhall appoint, that he hath not done well in not aſking his Leave, would do well*; *and I hold it fit it ſhould ſo be : And that he be admoniſhed to conform himſelf to the Government* ; but I acquit him (for my Part) of his Fine, and all other Puniſhment.

Sir *Thomas Jarmin.* The Cauſe before your Lordſhips, is upon Mr. Attorney General's Information againſt this Gentleman, Mr. *Sherfield* ; and it is for doing of a Thing, which, if it had been done with anſwerable Circumſtances, had been no Fault in him, *ſed bonum eſt ex integris cauſis* . So that the not doing of this Thing in a right Manner, maketh it an Evil ; but not ſo great an Evil, in my Opinion, as by our Sentence to ruin him. But it is a great Error for Men to be zealous in their private Spirits, and to put themſelves forward upon publick Actions belonging to the Supreme Government. I hold that the practical Solieciſm, by overt Actions, is the greateſt Oppoſition againſt Authority. Theſe are to be vigilantly met withal ; but for this Gentleman, ſome things here ſpoken make me pity his Caſe : Beſides his doing the Fact in ſuch Manner as he confeſſeth, there is not any one Thing elſe brought home upon him by two Witneſſes.

To ſpeak my Sentence ſhortly ; As I ſhall not ſay any thing to encourage thoſe hot-ſpirited Men, ſo I ſhall ſtill bear and remember that excellent and juſt ſaying, mentioned by one of my Lords the Judges, that we are to judge *ſecundam probata,* not *probabilia* ; and therefore *I agree with the ſame Lord in all the Sentence.*

Sir *Henry Vane.* As to the Cauſe, before this Court, at this Time, it is (my Lords) a Crime in the Defendant ; none differeth from this, that he hath done that which befitteth not his Wiſdom and Experience. I have learned long ſince, that Ignorance doth not excuſe an Offence, either in Church or Commonwealth : And I hold that this Offence of Conſcience is not to excuſe him ; for he went not to the Biſhop to complain of it, all theſe 20 Years that he was troubled at it. I heard ſome commend his Manner of doing it. I am not of that mind, he could not but know, that if he had an Order he muſt purſue it. I muſt confeſs, I do admire that he (being a Lawyer) ſhould be ignorant of the Proclamation to the contrary : But he is a learned Man, a Recorder, a Bencher, and a Parliament Man ; I have known him give grave and wiſe Counſel in that Place : All theſe aggravate his Offence, and make it Wilfulneſs in him. But for his Conformity, and yet doing a Thing contrary to his Profeſſion of Conformity, I ground my Sentence the heavier upon him, *he ſhall pay* (I think fit) 1000 *l. he ſhall make acknowledgement of his Offence in the Cathedral Church of* Sarum *before the Biſhop, Prebendaries, and Canons,* but not be put out of his Recorderſhip.

Sir *Thomas Edmonds. I agree with my Lord* Heath *for* 500 *Marks Fine, Acknowledgment before the Biſhop of* Sarum *only, and ſuch as he ſhall pleaſe to call unto him.*

Biſhop of *London.* If there be *defenſio facti,* or *confeſſio facti,* or elſe two Witneſſes, I think any one of theſe three will be a ſufficient Proof to convict a Man of an Offence ; and I have obſerved there are all theſe together, in this Cauſe againſt Mr. *Sherfield.* He confeſſeth that he broke the Windows, and ſetteth forth his Juſtification in his Anſwer to Mr. Attorney's Information ; and this was done by him with his Pike-Staff, as is teſtified by two Witneſſes, ſuch as they were ; yet they were Eye-witneſſes, which is the ſtrongeſt Teſtimony. I am perſuaded, as I am a private Man, that at leaſt he heard of the Biſhop's Inhibition ; I do not ſay, but *ignorantia facti* may excuſe a Man in ſuch a Caſe, at leaſt *a tanto,* tho' not *a toto* perchance ; but *ignorantia juris* never doth excuſe : yet, becauſe it is not directly proved that he had Notice of the Act of Inhibition, made by my Lord Biſhop, I ſhall forbear to give my Sentence touching this Particular, the rather becauſe he hath cleared himſelf of it by his Oath ; and yet I have met with as ſtrange an Equivocation in ſome of late as almoſt hath been heard of, I have not read the like ; but ſeeing there is not plain Proof, I muſt not judge him other than an honeſt Man.

Mr. *Herbert* hath defended this as well as ever any did a Cauſe to my knowledge. As for Veſtries, which were made and ſuffered firſt by Negligence doubtleſs, yet being of continuance, we cannot ſo eaſily reſtrain the Power which they uſe. I have had Experience of what I ſpeak herein, in a Pariſh Church within my Dioceſe, St. *Lawrance* by Name, there is a Veſtry : It fell out once that they could not agree upon ſome Election, I interpoſed as Ordinary ; I had no ſooner done this but I was inhibited by the Archbiſhop of *Canterbury* ; afterwards, by his Grace's means, it was referred to me to end, which I endeavoured ; but then a Prohibition at the Common Law was ſent me ; ſo that it is not an eaſy Matter to reſtrain a Cuſtom.

But it is not in the power of a Veſtry to remove or diſplace any thing in the Church that is doubtful ; and tho' they made an Order, in this Caſe, for the taking down of the Window, yet it was Mr. *Sherfield*'s Fault to go ſo diſorderly to work ; his violent and riotous breaking into the Church, and upon a conſecrated Thing, is criminal in him.

Whereas divers Things touching his Conformity have been proved, I am confident upon good Information, had the Cauſe been followed as well as defended, (but it was ill followed by them that proſecuted, and unworthy their Places) many more things might have been proved againſt him ; and that it would have appeared, he had done more Harm underhand in his Place, than Good otherwiſe. But for his Trouble of Conſcience, which ſhould impel to this Action ; it troubled not much, for he kept it in, and nouriſhed it 'till it grew, as you ſee, to a great Head, ſo that at laſt it hath brought him hither, even to the Sentence of this Court.

My Conſcience being laid at ſtake, I am not of Opinion, that Images and Pictures were not in the Church 'till the Time of *Gregory the Great :* Nor am I of Opinion that the firſt Trouble about them was at the Second Council of *Nice.* St. *Gregory,* who was 600 Years after Chriſt, in his 9th Book and 9th Epiſtle, written to . . . . . . ſaith of Images, *vetuſtas admiſſit &c.* But 200 Years before this, we find that *Gregory,* ſurnamed the *Divine,* otherwiſe called *Gregory Nazianzen,* when the Emperor laid Siege to the City of which he was Biſhop, in his Oration to the ſaid Emperor, to move him to pity, ſaith, That the Citizens, above all their Loſſes, ſpoiling of the City Walls, ruining of their Houſes and Temples, took to heart the pulling down their Statutes ; *Et hoc acerbum,* ſaith he. Nay, we find them in the Church 200 Years after Chriſt, they were upon the Chalice, and that is ever upon the Altar.

In *Tertullian*'s Time (who was one of the antienteſt Fathers) there was painted upon the Chalice the Picture of the Shepherd bringing home the loſt Sheep upon his Shoulders ; and this was objected againſt *Tertullian* himſelf, who in his latter Time fell into the Opinion and Error of the *Montaniſts,* who are againſt ſecond Marriage and Repentance after Baptiſm, affirming that no Repentance is left to him that ſinneth after Baptiſm ; againſt which Error, the Church uſed this Symbol of the Shepherd bringing home the loſt Sheep.

Again, in the Time of that ancient Father *Irenæus,* who is held to be the Scholar of St. *John,* they had the Picture of *Jeſus Chriſt* ; and they had it from the *Gnoſticks,* who had Adorations with it, and Sacrifices : and therefore the holy Father condemned that Picture, becauſe (ſaith he) the *Gnoſticks* did that to this Picture which the Heathens did to their Idol Gods. But it hath been a diſtaſteful Thing to remove Pictures and Images. We read, that the Biſhop of *Cyrene* broke the Pictures in the Churches, which his People took ſo ill, that they roſe againſt him, and were hardly appeaſed.

And of late times we have had Experience of like Miſchiefs in *France* and the *Low-Countries* about this Matter. And we know what Rebellions were raiſed in the beginning of the Reformation here in this Kingdom and in *Germany :* when *Caroloſtadius* and his Company went about to pull down, and deface the Images in the Churches, what a Stir was there ? If *Luther* himſelf had not come back and appeaſed the Multitude by his timely Advice, that the Work of Reformation was to be left to the ſupreme Magiſtrates, (which was well done of him, and a Thing wherein he ſhewed his Wiſdom) much more Miſchief would have enſued. I do not ſay theſe Things to any ſuch Purpoſes, as that Images ſhould have any Part of Divine Adoration.

When theſe were brought into the Churches, as one Side fell to worſhipping them, ſo the other Side fell to breaking and defacing them, which bred many Broils ; and amongſt the reſt, one very ſharp Contention by reaſon of the prevailing of Worſhippers of Images, was ſtirred in the Time of *Conſtantine the Great* ; for I read the Empreſs gave her Voice againſt her Son *Conſtantine* to put him off from the Empire, becauſe of his defacing of the Images, which they had in their Churches. But for that groſs Council of *Nice*, (pardon me this groſs Term, but they deſerve it in my Opinion) they decree, the ſame Honour was to be done to the Image as to the Life, whether it were the Picture of Man, or of *God*, or of *Chriſt*. And then another Decree in that Council was, that a Man muſt rather endure Penury than do Violence to a Picture: And their abſurd Diſtinction of *Latria* and *Doulia*, &c. Yet this I ſay, there is a great deal of Difference between an Image and an Idol. But then, if Men give Worſhip to them as to the other, it is unlawful.

As for the Injunctions in the Queen's Time; this was done by publick Authority, and done in every Place by the proper Judge.

And, touching the Matter in Queſtion, I do not think it lawful to make the Picture of God the Father: But 'tis lawful to make the Picture of Chriſt, and Chriſt is called the expreſs Image of his Father. I don't mean to ſay that the Picture of Chriſt, as God the Son, may be made; for the Deity cannot be pourtrayed or pictured, tho' the Humanity may. I do not think but the Repreſentation of God the Father (as in the Prophet *Daniel* he is called the Antient of Days) hath been allowed (tho' erroneouſly) to be made, like an antient old Man: And this the *Lutheran* Party hold too; but whether it be idolatrous or ſuperſtitious or no, this I hold not to be the Queſtion. And I ſhall crave Liberty not to declare [*] mine Opinion at this Time, whether it ought to be remov'd: But the Defendant, Mr. *Sherfield*, did this in Contempt, at leaſt in Neglect of the Church's Authority, and the Authority of the King's Majeſty; for the Church derive their Authority from the King, as well as the Civility. I ſhall therefore Sentence him for breaking this Window, whether it were fit or no to be in the Church; if it had been white Glaſs, it would have been the ſame thing to me; it was a violent and raging Act, and it is now a Buſineſs of great Weight and ill Conſequence, and therefore fit for the timely Cenſure of this Court. And I ſay farther, if it had been the Idol of *Jupiter*, and they had profeſſed Divine Worſhip to it, it had not have been lawful for Mr. *Sherfield*, or any private Man to deface it; and this I ſhall prove and maintain by Scripture.

The Idol of *Jupiter* was but as the golden Calf which *Aaron* made, before which the People of *Iſrael* committed Idolatry; yet we ſee Judgment was executed by the ſupreme Magiſtrate, by Command from God, and the Tribe of *Levi* was commanded to kill the Idolaters.

Then again, there was a Brazen Serpent appointed to be ſet up by the Lord himſelf; and afterwards it became an Idol, and the People committed Idolatry with it; yet none of all *Iſrael* preſumed to break it down, but *Hezekiah* the King did it. Alſo the Calves of *Jeroboam*, ſet up at *Dan* and *Bethel*, were plain Idols, yet they continued a long Time, and were not pulled down 'till *Joſiah* the King did it, and this he doth by his ſupreme Power; and the King did this by the Prieſts of the firſt and ſecond Order. Both theſe appear in their Stories in the 4th Book of *Kings*, the 18th and 23d Chapters.

As for the Second Commandment, *Thou ſhalt not make any graven Image*, or Picture, to thyſelf: No, take heed, worſhip it not howſoever it be; if thou doſt make an Image, yet thou ſhalt not worſhip it. But there is no Command or Example for breaking of Images (when they are made) without publick Authority. You ſhall ſee this plainly in that Altar ſet up by the *Reubenites* and *Gadites* at *Jordan*; this was conceived by ſome of the People to be an idolatrous Thing, at leaſt an Intention in them to ſet up another Manner of Worſhip, and *Jeruſalem* was the Place of Worſhip only: There was an Embaſſage ſent unto them, and *Phineas* and other Princes were employ'd in it; they did not preſently fall upon them and break down the Altar, tho' they had ſpecial and ſtrict Command to overthrow and break down all Idolatrous and Heathen Altars, Groves, Places of Idolatry and Images; but this they were not to do preſently, they were to tarry 'till the Land was theirs, in their own Power, as you may ſee in the 7th and 12th Chapters of *Deut.* But you will ſay theſe were for the *Jews*, but not for us in the Times of the Goſpel. In St. *Auguſtin*'s Time the People committed Idolatry with their Images, and many there were that would have pulled down the Images (the Cauſes of this Idolatry.) St. *Auguſtin* adviſeth, No, firſt preach them out of Men's Hearts, and he called upon the Miniſters ſo to do; but you ſhall not pull them down (ſaith he) 'till the ſupreme Power doth it, or Power were given them. Thus, if it were *Jupiter*'s Picture, Mr. *Sherfield* or any others are not to pull it down 'till Power be given them, And *Gerardus* the *Lutheran* is of the ſame Opinion.

The Homily againſt Idolatry (ſo much magnify'd) plainly ſhews it to belong to the ſupreme Magiſtrate, and has reference to ſuch Pictures as are upon *Walls*; but Stories upon *Glaſs Windows* were not here meant. And as for my Lord Biſhop of *Saliſbury*, his [†] Book of his worthy Lectures at *Cambridge*, upon the 4th Chapter of the Epiſtle to the *Coloſſians*, upon theſe Words, *Walk wiſely towards them that are without*, What ſaith he? Why the very ſame that St. *Auſtin* did before, that a private Man hath neither *vocationem* nor *poteſtatem* to do it; thus if he had read a little farther he ſhould have found Direction to have walked wiſely. And indeed, thoſe that are out of the Church muſt be dealt wiſely withal. When you ſee theſe Things, you cannot, as the *Iſraelites* did not, deface them, for they belong only to the ſupreme Power. And you ſhall ſee St. *Paul*'s Practice in the 17th Chapter of the *Acts* of the Apoſtles; he ſaw they had ſet up an Altar to the unknown God, yet he went not to pull it down, but to teach them that God which they knew not, even as St. *Auſtin* afterwards adviſed.

So I come to this which is the Work of the Day; this is a violent, riotous and prophane entering into the Church by him, to break this Window down with his Pike-Staff: and as the Matter ſtandeth proved to me, it ſeemeth there are theſe Circumſtances of Aggravation of his Fault.

1. The *Firſt* Circumſtance of Aggravation is, That when he went about the taking down of this Window, he went not unto the Biſhop, but choſe another way.

2. He was Twenty Years offended at it; and in all this Time, we think ſome good Spirit might have ſuggeſted unto him better Advice, if he would have followed it.

3. By his Office and Authority, his Fault is the greater and more ſcandalous.

4. By his Age, being grown grey, he ſhould have learned Wiſdom.

5. That when he went to do this, he went in private, which ſome have ſaid to be well done, but I am not of that Opinion: True, if it had been a Work of Neceſſity in him to take it down, he might have done it, but then he muſt follow his Order, and he ſhould then have taken a Glazier with him to have taken it down, and not brake it down with his Staff.

6. His Offence is the greater by his Office of Juſtice of Peace; certainly herein he was not *Conſervator pacis*, for beſides the Force and Violence, there might have been much Diſcord and Blood-ſhed about it, as was well obſerved by Mr. Attorney.

7. By the doing of this Act contrary to his Conformity, there have been the like Inſolences done in the ſame Church, for which I think there is a Cauſe againſt ſome of them depending in the *High Commiſſion Court*; there was the Tomb of a dead Biſhop there, his Bones taken up, his Skull made a Mazer in an Apothecary's Shop, (as I am inform'd) his Duſt thrown about, and all to bury a Tanner's Wife.

8. In regard of his Tenderneſs of Conſcience, which he alledged for himſelf: My Reaſon is, for that, if he were of a tender Conſcience indeed; yet in this thing I ſhall ſentence him, for not going to the Biſhop to reveal it to him; if it were but a ſhew of Tenderneſs, then ſurely there was the more Wilfulneſs in his Offence, and this can be no Excuſe.

9. His Fault is aggravated from his Profeſſion. It is an honourable Profeſſion; and as it is a great Offence in a Divine to infringe the Law of the Kingdom wherein he is born and bred up, ſo is it alſo a great Offence, if thoſe of the Profeſſion of the Law vilify the poor Laws of the Church. Thus much let me ſay to Mr. *Sherfield*, and ſuch of his Profeſſion as ſlight the Eccleſiaſtical Laws and Perſons, that there was a Time when Churchmen were as great in this Kingdom as you are now; and let me be bold to propheſy, there will be a Time when you will be as Low as the Church is now, if you go on thus to contemn the Church.

To proceed, he went into the Church. It pleaſed God to give him a fall upon the Place, and if it had not been God's Mercy he had broken his Back upon the Edge of the Pew; yet all this while theſe Things have not wrought him to any Confeſſion that he hath done amiſs; nay he ſaith, he was perſecuted for God's Cauſe (as I am informed) but I think he perſecuted the poor Sexton of the Church, they put him in Priſon, and there kept him, and would have kept him, if my Lord Biſhop had not ſent Bail; and if it had not been for the Biſhop, they would have turned him out of his Place. And then, juſt upon the Fact committed, cometh a new Lecturer to Town, and he pitcheth upon the Text, *Pſalm* cxix. ver. 121. *I have executed Judgment and Juſtice; leave me not to mine Oppreſſors*, I have been the willinger to render this Account at this Time, becauſe ſome are ready to ſlander us, as Maintainers of Popiſh Superſtition, and I know not what. *As for my Sentence, I agree with my Lord* Cottington.

Lord *Wentworth*. This is an Offence (my Lords) committed by a Man, of Learning and Judgment; the Perſons of Men and Times may aggravate Offences. Men now in theſe Days make themſelves wiſer than their Teachers; whereas it is ſaid, he did this out of Conſcience and Zeal, and with an Intent to honour God, he is out of his Element. *Uzzah* touched the Ark with a good Intention; but becauſe he did this without warrant he was ſecretly puniſhed: It is not for a Divine to meddle with *Littleton's Tenures*, nor a Lawyer with Divinity, to govern Matters in the Church. The Veſtry had no Power to reform, nor authorize Mr. *Sherfield* to do this Thing; and I hold it a very great Boldneſs in him, to juſtify his Fact under theſe Pretences; for things which Veſtries undertake to do of themſelves, if it be well done, it is well; if it be not, let them look to it. But for their frequent and ordinary tranſcending their Power, it is high time that the Biſhops be directed by the King's Majeſty, to regulate all ſuch Things, and to reduce all theſe Veſtry-men into Order and Obedience. I ſhall not forbear to puniſh an Offence of this dangerous Conſequence upon that Ground, for fear of giving an Occaſion of Triumph to ſome. I think his Impunity will be rather an Encouragement, to Men of other Minds, to ſet their Hands to the like, of which there is great Danger. I ſhall not therefore in my Sentence go any thing leſs than any of my Lords here before me have done; *That he be not any longer Recorder of that City; that he be bound to the good Behaviour; I ſee no Reaſon but a Gentlemen may be bound to the good Behaviour: For his publick Acknowledgment, I think it neceſſary to be made in both Churches; and that he pay* 1000l. *Fine to his Majeſty's Uſe.*

Sir *Robert Naunton*, Maſter of the Court of Wards and Liveries, gave not his Sentence becauſe he was not in Court the laſt Day, at the beginning of the Hearing.

Lord *Newburgh*, Chancellor of the Duchy of *Lancaſter*, forbare to give his Sentence for the ſame Reaſon.

Viſcount *Falkland agreed in his Sentence with my Lord* Cottington, *for* 1000l. *Fine unto the King*, &c.

Viſcount *Wimbleton* agreed in his Sentence with my Lord *Heath*, *for acknowledgement of his Fault to the Biſhop, and ſuch as he ſhould think fit to call to him; and to pay a Fine of* 500 *Marks to the King's Majeſty.*

Earl of *Holland*. He was not preſent at the beginning of the Hearing of the Cauſe, and therefore did forbear to give his Sentence.

Earl of *Devonſhire*. *He agreed with my Lord* Cottington *for* 1000l. *&c.*

Earl of *Dorſet*. I conceive, my Lords, that the Proſecutor of this Cauſe is much to be blamed, and did the Court legally take Notice of a Proſecutor, where the King is a Party, I ſhould give my Vote to Fine ſuch a Man: He hath here made a great Noiſe of terrible Things, (ſeven in Number) but hath not endeavoured to prove many of them. I ſhall ſpeak ſomewhat of the Matter in Queſtion that ſticketh upon him, and not meddle with what hath not been proved. And firſt is to be conſidered what was done; a Window in a

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[*] *But he ſhew'd his Opinion, when upon his Promotion to the See of* Canterbury, *he cauſed the ſame kind of Pictures to be ſet up in his Chapels at* Lambeth *and* Croydon. Ruſh. Col. Vol. 2. *p.* 273.

[†] Davenant *on the* Coloſſians, *cap.* 4, 5. *p.* 389.

Church was broken, becauſe of the Image of God the Father which was in it, in thoſe Places of the Head and Feet of the Repreſentation of the Deity; this, if it had been done by the proper Judge, had been well done. If all unlawful Pictures and Images were utterly taken out of the Churches, I think it were a good Work; for at the beſt they are but Vanities and Teachers of Lyes. For the Antient of Days in *Daniel* (I take it) this doth not give warrant to frame a Picture of God like an old Man; but it ſheweth the Eternity of God, that he was before all Times and Days. And it cannot be taken to be the Portraiture of any other; for this being made to repreſent the Creation, it muſt needs be intended for the Picture of God the Father; for what Man did help God about the Creation? This therefore is unlawful, no Man ever ſaw God, nor did he ever appear in any Likeneſs to Man. But we picture Chriſt, becauſe he took upon him Man's Nature, and was Man as well as God; and the Holy Ghoſt appeared in the Similitude of a Dove: But I wiſh there were no Image of the Father, neither in the Church, nor out of the Church.

Secondly, I note the Mind wherewith it was done, and it was out of a little too much Zeal, his Conſcience was tender. This, if it had been guided well, would have been worthy of Praiſe. I do not ſpeak this to make as if Men may take upon them to meddle in what belongeth not unto them; yet there is difference between a Fault done of Zeal, and the ſame Thing done out of Malice.

Next let us conſider the Authority whereby he did it; and herein eſpecially Mr. *Sherfield* had no Power. The Veſtry had no Power, neither could they give any to another; it was therefore an Error in him to conceive, that becauſe they uſed to meet and do Things for Repair and Ornament in the Church, that therefore they might do this, being a Piece of Reformation; I ſay it was his Error to do it without the Biſhop of the Place. I would not be miſtaken, as if I ſpeak or did any thing againſt the Authority of the Reverend Prelates; for I take it, whenſoever that Authority goeth down or decayeth, the Monarchy dieth with it, I think they are inſeparably join'd together. But this was an Opinion of his, that it was their Lay-Fee; and if he repent him of his Opinion, recant it, and depart from his Juſtification, (tho' his Anſwer be otherwiſe) I ſhall not take upon me to deſtroy a Man for ſuch an Offence.

Then in what Manner did he it? Privately and without Noiſe; and this I hold to be a Diminution of his Fault, for ſecret Evils are not ſo bad as when they are openly done; the ſame Evils done in Chambers, are not ſo bad as if they were done in the Market-Place.

And it cannot aggravate his Fault, that he is conformable: I ſay, in my Opinion it was very neceſſary for him to prove himſelf a Conformitant; and being charged in the Information to be otherwiſe minded, he did well and wiſely to clear himſelf by Proof.

I come to my Sentence.

I ſhall not ſentence him for three or four Papiſts, nor ſhall I forbear to ſentence him for three or four Schiſmaticks; the Reaſon why I ſhall not ſentence him, is to avoid the Tumults of the rude ignorant People in the Countries where this Gentleman dwelleth, where he hath been a good Governor, as hath been teſtified, and is well known, and no doubt hath puniſhed Drunkenneſs and other Diſorders; and then ſuch Perſons ſhall rejoice and triumph againſt him, and ſay, This you have for your ſevere Government: This I think would be no good Reward for his Care. The Reaſon why I ſhall ſentence him, is becauſe he hath erred in his Manner of doing this Thing, in going on his own Head without the Ordinary, to a Work of this Nature; and this I ſhall hold to be an Offence in this Defendant, or a Miſdemeanour, but not a Crime. I would not have him to loſe his Place therefore, nor to be bound to the good Behaviour; *I would notwithſtanding have him make ſuch Acknowledgment to the Biſhop of* Sarum, *and in ſuch Manner as he ſhall think fit:* but I do not ſet any Fine upon him.

Earl of *Pembroke* and *Montgomery*, Lord Chamberlain, he gave no Sentence at all.

Earl of *Arundel*, Lord Marſhall. I find Fault with this Gentleman for keeping cloſe his Offence of Conſcience, which he ſaith he had at this Window, by the ſpace of twenty Years together: He ſhould in all this Time have revealed his Mind to the Biſhop, who had been able to direct him; but upon the Matter, he goeth on his own Authority to break down this Window. This being long kept in his Heart, breaketh out to deface the Image of God in a Man. Beſides, he leaveth the Ordinary, who hath Power, and goeth to the Veſtry who hath none; and in his fanatical Humour he proceedeth, and breaketh the Order of the Veſtry. God gave him a Warning; he fell upon the Seat, and hath had Time enough to think of it ſince, and in all this Time he never came to acknowledge his Offence. *I agree therefore with my Lord* Cottington.

Earl of Mancheſter, *Lord Privy Seal.* In this Cauſe, my Lords, I ſhall propound two Things to be conſidered, The Fact itſelf, and the Circumſtance of it: For the Fact, the breaking of the Window becauſe of Idolatry, If this had been in a Man's Lay-Fee, then he had been bound to have pulled it down; but being in a Parochial Church, it is to be done by the Ordinary, or by his Appointment. This therefore being done by Mr. *Sherfield*, upon ſome Opinion that he had in the Power of the Veſtry, it was an Error in him, but pardonable. It doth not appear that this was done contrary to the Inhibition of the Biſhop, *Non notum eſt Judici, quod non notum eſt judicialiter*, he had not therefore Notice of it: For my Lord of London's aggravating Circumſtances, it is true, if the Thing were done, as it is charged in the Information, then thoſe would be all againſt him; but we ſee there were Cauſes it ſhould be taken down; it is proved ſome did adore it. How long ſoever Pictures and Images have been in the Churches, I hold it a very offenſive Thing to make ſuch a Picture, or Repreſentation of God. I will Mention but one Author, which was before all them who were named, the Prophet *Iſaiah*, *What Likeneſs or Similitude will you make of me, ſaith the Lord?* Yes; but Idolatry lies in the *Worſhipping* of the Image. Take a wiſe Man's Counſel, The painted Picture inticeth the Ignorant to Idolatry. I profeſs it would offend my Conſcience to ſee it, I am of ſuch a pure Conſcience. But there are three other Things for which I ſhall cenſure him.

1. His pretending the Order of the Veſtry.
2. That he would neglect Authority, which is near unto Contempt.
3. His Paſſion in doing it himſelf, and not by others.

This Cauſe and Sentence hath many Judges, even ſo many as hear it are Judges of it. All may take Notice, that our Votes are to maintain Order and Government, yet not to uphold Superſtition. I will be ſhort, I will Sentence the Defendant, but not Fine him; *to make Acknowledgment to the Biſhop*, not to diſrecorder him: The Fact deſerves not a Fine.

Archbiſhop of York *. May it pleaſe your Lordſhips, this Gentleman, Mr. *Sherfield*, is inform'd againſt by his Majeſty's Attorney-General, for entering with Force into the Church of St. *Edmond*'s in the City of *Saliſbury*, and there undertaking, without the Ordinary of the Place, to be a Reformer of Idolatry, in breaking a Glaſs Window in the ſame Church, which he did of his own Authority. In his Anſwer upon the Matter, he ſetteth forth a Juſtification.

* *Dr.* Neale.

Firſt he ſaith it was the Lay-Fee of the Pariſhioners; but this will not help him, for it is a Parochial Church.

Next he had Warrant for what he did, as he pleadeth, That he did it by Order of the Veſtry: I wonder what is the Veſtry, and what Power and Authority they have? It is a Place where antiently the Ornaments of the Church were kept; ſince thoſe Things were gone, there were Meetings by the Pariſhioners to agree on Matters of Repair and Aſſeſſments, and Rates for the Church and the Poor; and they did meet ſometimes in the Church, and ſometimes in the Veſtry, no Man of the Pariſh was excluded. Afterwards, to avoid Tumults and Multiplicity of Voices, ſome Biſhops had appointed, by ſpecial Inſtruments under their epiſcopal Seals, that ſuch and ſuch, to a ſet Number, ſhould be Veſtry-men, and be ſo call'd, and ſhall order Matters for the Repair of the Church, for Bread and Wine for the Communion, and ſuch like Things, as the Charges about Bells, *&c.* And here I ſhall make bold to remember a Story to your Lordſhips of what paſs'd between my Lord *Burleigh*, myſelf, and Dr. *Bancroft*, the then Biſhop of *London*, when I was Vicar of *Cheſthunt*. I was then a young Man, and I had an Opinion that there was ſomewhat in a Veſtry; and had a Purpoſe which I acquainted my Lord and honourable Patron withal, to have ſome Authority deputed us in our Veſtry, by the Biſhop of *London* our Ordinary; I had my Lord *Burleigh*'s Letter of Commendations, and ſpecial Requeſt to the Biſhop for the ſame. His Lordſhip's Anſwer which he gave me was thus: *If you have Occaſion to repair the Church or the Bells; to make Rates for the Poor, and ſuch like Things, this you may do; but if you think otherwiſe, or aim at any other Power, it ſhall not be allowed you, and you ſmell of the Preſbytery; therefore, I pray you, commend me to my Lord* Burleigh, *and tell his Lordſhip I will not incur a* Præmunire, *for I have ſomewhat to loſe.*

I conclude: The Veſtry hath no Power to make Reformation, nor can the Defendant derive any Power from them; Therefore, as for the Matter of Offence, the Picture of God the Father, no Man ever took upon him to paint the Eſſence of the Deity. But the Queſtion is, whether it be lawful to expreſs God the Father by any Repreſentation? I think it not unlawful in it ſelf. The Eternity of *Alpha* and *Omega* doth appear in Chriſt, and Chriſt is the Image of his Father. As for thoſe divine Homilies of the Church, ſet forth in King *Edward*'s Days, and that in ſpecial againſt Idolatry, we know the Times did not bear them: nor are they to be taken or underſtood, as not to allow any Manner of Pictures or Images (tho' it may ſeem ſo) of Chriſt upon the Croſs; but it is like the forbearing of Food for a Time, as St. *Paul* ſaith he would, for fear of giving Offence or Scandal unto others, who are weak; I ſay that for the Crucifix, there may be a very good Uſe made of it. As for the Purpoſe, he that ſhall look upon a Crucifix not to adore it, or give any divine Worſhip thereunto, he muſt needs think with himſelf, how can I but grieve and mourn for theſe Sins of mine, which could not be expiated but by my Saviour's Blood upon the Croſs? And then I cannot but think of the great Love of our Lord Jeſus Chriſt to Mankind, that vouchſafed to die for my Sins. And then, it ſerves to increaſe my Confidence in him, by conſidering that he has given himſelf for me, and promiſed that I ſhall not want any Thing that is good for me; and that he will not deny me my Prayers in any Thing which I aſk agreeable to his Will; ſo that this muſt needs work a deep Impreſſion on my Heart. I thus think; but when it cometh to be Superſtitious, or that ſome make it a Cauſe of Idolatry, I muſt confeſs, I would then rather want the Thing, and all the good Uſes of it, than incur the Danger of propagating Idolatry. That reverend *Jewel*, Biſhop of *Saliſbury*, in his Time had a Commiſſion, and he took down all Idolatrous Windows in the Churches, and ſet in place thereof clear Glaſs, but he left alone this Window; and ſurely, if he had thought it to be Idolatrous, he would have reformed it. And we have the Creed of *Athanaſius* which hath theſe Words, *That Chriſt is of one Subſtance with the Father*; therefore the Image of the Son is the Image of the Father, and therefore it cannot be Idolatry ſimply to make it. But grant that it was a Cauſe of Idolatry, might Mr. *Sherfield* or the Veſtry take it down? He ſaith in his Anſwer, that himſelf and four others of the Veſtry are Juſtices of the Peace, and not altogether private Men. I would aſk him this Queſtion, whether as Juſtices of the Peace, they are to meddle with Reformation in the Church? It is plain they are not; yet, as a private Man, he hath undertaken to break this Window; whereas the Agreement of the Veſtry was to take it down: Neither was it meant that he ſhould do it himſelf, but by the Glazier, and ſet up new Glaſs in the room of it; but he hath not followed this neither. My Brother, that ſitteth by me, hath very well and learnedly ſpoken of the Authority by which theſe Things ought to be done. I cannot add to what hath been ſaid by him; I ſhall therefore (becauſe much Time hath been already ſpent) only inſiſt on one Thing in the Defendant's Anſwer, and ſo conclude my Sentence. He ſaith, the Authority which the late Queen had to reform and ſet forth thoſe her Injunctions, were given to her by the Parliament. This is not well ſpoken. The Statute of 1 *Eliz.* is but an Act Declaratory, not to be taken as if without it the Queen had no Power to meddle with thoſe Things of the Church; for this Authority was inveſted in the Crown, and is ſtill without the Parliament. He that ſaid *per me Reges regnant*, giveth this Authority to the King. It is good to meet with growing Evils, we know not how great a Fire may be kindled with a ſmall Spark. I cannot therefore do otherwiſe, but agree to Fine and Cenſure him highly, having offended with ſo many Circumſtances of Aggravation, as have been well opened by divers of you Lordſhips before me; therefore my Sentence is, that *I concur with my Lord* Cottington *in all the Parts of his Sentence.*

Lord Coventry, *Lord Keeper of the great Seal of* England. This Cauſe, my Lords, I doubt not will produce a good Effect; for this great Audience conſiſting of Gentlemen from all Parts of the Kingdom, cannot but be ſatisfied that we think it not fit nor lawful to repreſent the Deity by Picture, and conſequently we condemn *Romiſh* Superſtition; and on the other ſide, that we are reſolutely bent to maintain the Government by the reverend Fathers of the Church, the Biſhops. And all this I think fit to be carefully expreſſed in drawing up the Sentence. This I muſt premiſe, that when I ſpeak my Conſcience I be not miſtaken, I am no Worſhipper of graven Images; nor on the other ſide, am I of that peeviſh turbulent Humour with others. For the Charges in the Bill, if they had been proved, I ſhould for my part have trebled the Fine ſet by any of your Lordſhips. There was never Cauſe worſe proſecuted, yet we are to conſider how much ſtandeth proved againſt the Defendant. The Proſecutor cauſeth the Information to be exhibited againſt this Defendant and ten others; but thoſe ten are not ſo much as preſſed to anſwer. Firſt, to ſpeak to thoſe Things that are not proved, but only charged upon him.

Firſt, He is charged with Inconformity, therefore it was neceſſary for him to diſcharge himſelf of it by his Proof, which he hath done, and no doubt remaineth in me to the contrary; for the Proſecutor, though apt enough to charge him with this, yet he exhibiteth not a Witneſs or Interrogatory to prove it.

Secondly, That he did this in Contempt of the Eccleſiaſtical Power, and contrary to the Lord Biſhop's Act of Inhibition; but it is not proved he had any Notice of it before the Act was done, and therefore the Oath of the Party is to be believed: nay, there was no Endeavour to prove it, ſo far as I ſee. And I like not ſo well Mr. Chancellor's moving the Biſhop to make an Act to continue this Window, if it were for any other Cauſe than to preſerve the Eccleſiaſtical Juriſdiction. Mr. Chancellor ſhould have done well to have declared this Diſlike and Scandal to the Window to my Lord Biſhop of *Sarum*, and he no doubt, would have removed it. I do not ſay the Biſhop or Eccleſiaſtical Judge is bound to give Notice of his judicial Acts in their ordinary Proceedings in Courſe of the Eccleſiaſtical Laws, and their own Juriſdictions: But if you will charge a Man upon a Contempt in a criminal Court, as here you muſt, then prove he hath Notice of the Inhibition: for elſe it is but *Ignorantia Juris*, which in the ordinary Way will not excuſe; and yet if it were *Ignorantia Juris*, I do not ſee but in ſo high a Courſe of Proſecution as in this Court, it might in ſome Caſes diminiſh a Fault: but this is *Ignorantia facti* in this Caſe.

Thirdly, That he did profanely demoliſh this Window, containing a Repreſentation of the Creation. This giveth Occaſion to look a little into the Nature of theſe Pictures; I conceive them to be unlawful and irreligious Pictures of God the Father. Two of the Witneſſes ſay they were Idolatrous, and made to repreſent God the Father; that it is God the Son's Picture, there is no Proof. I think that Opinion of making the Image of God according to that of *Daniel* (calling God the Antient of Days) in the Form of an antient Man, is (as my Lord of *London* hath ſaid) erroneouſly grounded; and alſo to bring God as he appeared unto *Daniel* to be preſented in the Creation, which was long before, is ſomewhat improper.

Fourthly, Then that Mr. *Sherfield* boaſted of it, it is not proved that he did, and it is evident that he doth not boaſt of it.

Now for what is charged upon him, and ſticketh, that under Colour of the Veſtry's Order, he did the ſame, and without the Biſhop of *Sarum*. And for an anſwer what Veſtries are, I read not of a Veſtry in our Book of Common-Law; I read much of Church-wardens, and their Doings. If it be a Meeting of the Miniſter, Church-Wardens and Pariſhioners, it is a good Meeting, and they may well deal in Matters of Reparation, not Reformation: and this is not derogatory from the Authority of the Biſhop, but ſubordinate to it. But it may be thro' the Neglect of the Prelates, the Veſtries do incroach upon their Government; and will be more diſorderly, if they be not regulated. My Lord of *London* did, in the beginning of this Cauſe, well declare, that the Archdeacon is *magnus Oculus Epiſcopi*; it were fit for theſe to do their Duties, and ſo ſuch Things ſhould not be left to be done unto theſe Men of the Pariſh, I mean to theſe Veſtry-men. Now, in the Veſtry they make an Order that this Window may be taken down by Mr. *Sherfield*. I do not ſay nor believe they have Power to Reform; yet he proveth by way of Preſcription for ſixty-nine Years they have made Reparations and Meetings. But howſoever he doth not purſue his Order; and this indeed was not Diſcretion in him. But if he had taken down white Glaſs, I do not ſee any Reaſon why I ſhould ſentence him; this being not proſecuted in an Eccleſiaſtical ordinary Courſe. The Council on both ſides have carried themſelves in the Cauſe extremely well; and for their yielding it to be a parochial Church, it is well done, and no Fault is to be put on the Party for his Proteſtation; for I cannot think but when he made his Anſwer, he was of Opinion it was a Lay-Fee, he ſweareth it; and being he now confeſſeth it to be ſubject to the Biſhop, his Fault is a great deal the leſs, in as much as it now appeareth, he doth not oppoſe the Eccleſiaſtical Authority.

I am glad to hear what I have heard this Day from my Lords who have ſpoken, and from my Lords the Reverend Biſhops. I ſay, it appeareth that nothing hath fallen from them or any here preſent, to allow the Picturing of the Deity, or the Worſhipping of Images.

I am much inclined to that Opinion of Mr. Secretary *Cooke*, *That he be ſentenced by way of Reprehenſion and Admonition*; *I hold fit that he make his Acknowledgment before my Lord Biſhop, and repair this broken Window in decent manner.* I am loth he ſhould be put to any heavy Fine, the rather becauſe he hath not been proſecuted in an Eccleſiaſtical Courſe; therefore I give no Fine at all.

The Votes of the ſaid Lords and others of his Majeſty's Privy-Council, were thus diſpoſed.

Nine agreed *to ſet* 1000 *l. Fine upon Mr.* Sherfield *the Defendant, and he ſhould be put out of his Place of Recorder, be bound to the good Behaviour, and make open Acknowledgment of his Fault in the Church of St.* Edmonds, *where the Offence was done, and likewiſe in the Cathedral Church of* Sarum, *before the Biſhop there, and the Deans and Prebends of that Church.*

And Nine others (my Lord Keeper's Voice being one) agreed that he ſhould not be diſrecorded, *that he ſhould make Acknowledgment in private to the Biſhop of* Sarum *of the ſaid Offence, and in ſuch Manner, and before ſuch Perſons as the ſaid Biſhop of* Sarum *ſhould think fit.* And for the King's Fine, theſe were again divided; *four* (whereof my Lord Keeper was one) *gave no Fine at all*, and *five did give their Voices to ſet a Fine*; *four* of them *ſet* 500 *Marks*, and one of them, *viz.* my Lord Chief Juſtice *Richardſon* ſet 500 *l.* which Fine of 500 *l.* was taken for the King, becauſe according to the Rules and Orders of the Court of *Star-Chamber*, when there is difference of Fines in an odd, the King is to have the middle Fine. Therefore the Sentence of the Court was *(and is thus entred:)*

'The Defendant being troubled in Conſcience, and grieved with the ' ſight of the Pictures which were in a Glaſs-Window in the Church of ' St. *Edmond* in *New Sarum*, one of the ſaid Pictures, to his Underſtanding, being made to repreſent *God the Father*; did procure an Order to be ' made by the Veſtry (whereof himſelf was a Member) that the Window ſhould be taken down; ſo as the Defendant did, at his own Charge, ' glaze it again with white Glaſs: and by colour of this Order, the Defendant, without acquainting the Biſhop, or his Chancellor therewith, ' got himſelf into the Church, made the Doors faſt to him, and then, ' with his Staff, brake divers Holes in the ſaid painted Window, wherein ' was deſcribed the Creation of the World; and for this Offence committed, with neglect of eſpiſcopal Authority, from whom the Veſtry ' derive their Authority, and by colour of an Order of Veſtry, who have ' no Power to alter or reform any of the Ornaments of the Church, the ' Defendant was committed to the *Fleet*, fined 500 *l.* and ordered to repair ' to the Lord Biſhop of his Dioceſe, and there make an acknowledgment ' of his Offence and Contempt, before ſuch Perſons as the Biſhop would ' call unto him.'

XXXIV. *Proceedings againſt* WILLIAM PRYNN *Eſq*;* *in the Star-Chamber, for Writing and publiſhing a Book intitled,* Hiſtrio-maſtix, *or* a Scourge for Stage-Players, *&c. againſt* MICHAEL SPARKES *for Printing, and againſt* WILLIAM BUCKNER *for Licenſing the ſaid Book; the 7th of* February, 163$\frac{2}{3}$. 9 Car. I.

THE 7th of *February* Mr. *William Prynn*, Utter-Barriſter of *Lincolns-Inn*, was brought to the Star-Chamber; together with *Michael Sparkes*, *William Buckner*, and four other Defendants, upon Mr. Attorney *Noy*'s Information; which being opened by Mr. *Hudſon* of *Grays-Inn*, did ſet forth, That about 8 *Car. Reg.* Mr. *Prynn* compiled and put in Print a Libellous Volume, entitled by the Name of *Hiſtrio-maſtix*, againſt Plays, Maſques, Dancings, *&c.* And altho' he knew well, that his Majeſty's Royal Queen †, Lords of the Counſel, *&c.* were in their publick Feſtivals, and other Times, preſent Spectators of ſome Maſques and Dances, and many Recreations that were tolerable, and in themſelves ſinleſs, and ſo publiſhed to be, by a Book printed in the Time of his Majeſty's Royal Father; yet Mr. *Prynn*, in his Book, hath railed, not only againſt Stage-Plays, Comedies, Dancings, and all other Exerciſes of the People, and againſt all ſuch as behold them, but farther and particular againſt Hunting, Publick Feſtivals, *Chriſtmas*-keeping, Bonfires, and Maypoles; nay, againſt the dreſſing up of a Houſe with Green-Ivy. And to manifeſt his evil and miſchievous Deſign in publiſhing of this Libel, he hath therein written divers Incitements, to ſtir up the People to Diſcontent, as if there were juſt Cauſe to lay violent Hands on their Prince; and hath expreſſed in many Speeches againſt his Majeſty, and his Houſhold, infamous Terms unfit for ſo ſacred a Perſon. He hath caſt an Aſperſion upon her Majeſty the Queen, and railing and uncharitable Cenſures againſt all Chriſtian People. He hath commended all thoſe that are factious Perſons, that have vented any thing in any Book againſt the State, as the factious Book, of Dr. *Leighton*, *Jo. Mariana* a Jeſuit, to draw the People from his Majeſty's Government, which is of moſt dangerous conſequence to the Realm and State. His Book is of above 1000 Pages: and he dealt with one *Michael Sparkes* for the Publiſhing, Licenſing, and Printing thereof, who is a Perſon that is a common Publiſher of unlawful and unlicenſed Books; and dealt alſo with Mr. *Buckner*, another Defendant, for the allowing of it for the Preſs; and with the other four Defendants to print part of it, and publiſh the ſame;

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* Clar. Hiſt. *Fol. Edit* Vol. I. p. 73, 158. Ruſh. Col. Vol. II. p. 220.

† *The Queen had acted a Part herſelf, in a Paſtoral at* Somerſet-Houſe: *and this Book of* Prynn'*s was ſhow'd her as level'd at her, there being a Reference in it,* Women-Actors notorious Whores; *tho' in truth the Book was publiſh'd ſix Weeks before the Queens acting.* Whitlock'*s* Mem. p. 18.

and by this means this Volume was allowed and publiſhed, to the great Scandal of the whole Realm. And to have this puniſhed according to the Demerit of the Cauſe, is the end of Mr. Attorney's Information.

Mr. *Atkins* of *Lincoln's-Inn (afterwards a Judge in the Court of* Common-Pleas) open'd Mr. *Prynn*'s Anſwer; That he the ſaid Mr. *Prynn* taking into his ſerious Conſideration the frequent Reſort of ſundry ſorts of People to common Stage-Plays about the City of *London*; and having read divers Councils, Laws and Statutes of this and other Realms, againſt the frequenting of common Stage Plays, and the Judgment and Opinion of ſeveral Divines, and other antient Authors, and divers *Engliſh Writers* allowed by publick Authority, and his own Judgment running with thoſe; not intending to reflect, or to have Relation to the King, Queen, State, or Government, or your Lordſhips, did about ſeven Years ago, compile this Book entitled *Hiſtrio-maſtix*; which is no more but a Collection of divers Arguments and Authorities againſt common Stage-Plays. That about four Years ſince, he did commit the ſame to *Michael Sparkes*, one of the Defendants, to be commended to ſuch Perſons as then had Authority to licenſe Books for the Preſs. *Sparkes* did carry it to Mr. *King*, belonging to the late Archbiſhop of *Canterbury*; and before he had peruſed this Book, Mr. *Buckner* had Authority to allow of the Books, to the Preſs: *Sparkes* brought this Book to Mr. *Buckner*, who kept it by him three Months, in which Time he did fully peruſe it. In the interim, he gave Part of the Book to *Sparkes* to print, and kept the reſt till he had peruſed it, and ſaid, that he ſhould have that alſo to the Preſs. In *October* following, he carried this Copy with the Licence, and cauſed them to be enter'd into *Stationers-Hall*, and did compound with thoſe that had Authority for the printing of this Book. It was printed publickly, and not ſecretly; and becauſe there was ſome of the Copies cloſe written, he cauſed theſe to be brought again to peruſe, to the intent that he might not be deceived in them; and as he ſaw Cauſe, corrected them accordingly. That in *Eaſter-Term* was Twelve-month, the Epiſtle, and the whole firſt Part of the Book was printed; and he had Time to examine it between *Eaſter-Term* and *Trinity*, and then he did make ſuch Alterations as he ſaw Cauſe, *viz.* in Page 711, &c. And afterwards the Second Part, and two Sheets of the Index of the Book was likewiſe printed, and theſe were likewiſe brought to Mr. *Buckner*; ſo that the whole Book, with the Index, was bound up about *Chriſtmas* following, which was *Chriſtmas* was a Twelve-month. Mr. *Buckner* ſent for Mr. *Prynn*, and the Stationer was deſirous that the Book might be publiſhed, and that he might ſend ſome Volumes to him: But Mr. *Buckner* ſaid, he could wiſh the Word *(Pity)* in ſuch a Page might be left out; and I wiſh with Mr. *Buckner*, that *Pity* may be added to every Page of the Book. So when Mr. *Prynn* ſaw all this from him, that had Licence to allow printed Books, he conceived it a ſufficient Warrant for his Proceedings. And for that which is alledged in the Information, of Mr. *Prynn*'s commending Dr. *Leighton*, for which the Doctor received a Cenſure in this Court, in the Quotation whereof, *viz.* his Book, and of others, he adhereth to their Meaning ſo far as, and wherein they are agreeable to the Law: And this Book was printed long before Dr. *Leighton* was queſtion'd in this Court. And as for encouraging of others to be factious or ſeditious, he ſaith upon his Oath, That he was ſo far from Diſloyalty, Schiſm, or Sedition, or Neglect of the King, State, or Government, that he hath with much Joy, Chearfulneſs, and Thankfulneſs to God, ever acknowledged his, and the reſt of the King's Subjects Happineſs, by the Peace we have under his Majeſty's happy Government: and this Anſwer and Intention is ſincere, tho' other Conſtruction be made thereupon. He ſaith, he hath taken his Oath of *Supremacy* and *Allegiance* in the Univerſity and Inns of Court where he hath taken his Degrees. That it never came into his Thoughts to approve of Schiſm or Sedition: and if any thing in his Book, contrary to his Meaning, hath a Miſ-conſtruction towards his Majeſty's Government, State, or your Lordſhips, he doth proſtrate himſelf at his Majeſty's Royal Feet, and crave Pardon and Grace. And he doth appeal to your Lordſhips Interpretations of thoſe Parts of his Book; and doth withal deſire your Lordſhips Favour, and to take it into your Conſideration, that he hath been a Year Priſoner in the *Tower*: And this is the Subſtance of his Anſwer.

Mr. *Jenkins* of *Gray's-Inn* opened the Anſwer for four of the Defendants. Firſt, for the poor Widow he ſaith, For any Manner of Combination, or Knowledge of this Book, or of the Contents of it, &c. ſhe knoweth nothing. For the reſt, they all ſay, They being illiterate, were not able to judge whether it were fit to paſs the Preſs, or not; that the Book was licenſed to be printed, allowed after it was printed, and before it was publiſhed, and it was entered in the *Stationers-Hall*, and the Warden there allowed and ſubſcribed it to be a Book paſſable. The Book hath been three Years in the Preſs. All this Time was ſpent before it was printed: There were Searches made during this Time, and they came unto the Preſs. They ſaw the Book there in a publick way, and not in corners, or privately printed, as is alledged in the Information; and it was printed and publiſhed, and ſome of the Books ſold by *Sparkes*: And *Sparkes* ſaith, the printing of this Book coſt him almoſt 300*l.* and ſaith upon his Oath, he ſold not many Books.

And for the Charge upon him, of being a common Printer of unlawful Books, he ſaith, He hath proſpered in his Calling; and ſome other Stationers having an Eye upon him for his Thrift, have envied him in publiſhing of Books: And leaveth it to my Lords the Biſhops, to know what Succeſs he hath had in the High-Commiſſion.

Mr. *Lightfoot* of *Gray's-Inn* opened Mr. *Buckner*'s Anſwer. He ſaith, That he was Chaplain to the late Archbiſhop of *Canterbury*, and doth approve of the Church without any Scruple, and of all the Ceremonies of *England*. Church-Muſick he doth allow of; bowing at the Name of *Jeſus*: Plays, Muſick, and Dancing, he doth eſteem them juſt and lawful. And for thoſe Cenſures againſt Eccleſiaſtical Perſons in this Book, he doth, and ever did abhor and deteſt them. He confeſſeth he licenſed Part of the Book, but never gave Order to diſperſe the Book; but when he heard it was publiſhed, he did endeavour to ſuppreſs it: And to the reſt of the Information pleadeth *Not Guilty*.

Then Mr. *Noy*, Attorney-General, ſpake as followeth: This Volume of Mr. *Prynn*'s is written by himſelf, without the help of any Man. There are Paſſages in it that reflect upon the King, State, and Government, &c. other things reflect upon the Church and Clergy; but for that there is no Charge in the Information, which I did conceive fitter to be left out, and withal I received a Command for the ſame: Therefore finding the Church ſo deeply wounded by Mr. *Prynn*, I do leave her to avenge herſelf of him, and to inflict ſuch Puniſhment on him as he deſerves. I ſhall be an humble Suitor to the Court, that they would be pleaſed to commend the Proſecution of thoſe things that concern the Church to the High-Commiſſion. There are divers Particulars wherewith he is not charged within the Information by way of Crime, and ſo it is not proper now to bring him into queſtion for them. As for mentioning of Ceremonies, &c. of Dedicating *Paul*'s to *Diana*; of the Diſcipline of the Church; the Complaint of new-erected Altars: I wonder what Altars he means, I hope the Church will examine in due Time; as alſo who he means by his *modern Innovators* in the Church, and by Cringing and Ducking to Altars, a fit Term to beſtow upon the Church; he learned it of the Canters, being uſed among them. The Muſick in the Church, the charitable Term he giveth it, is, not to be a Noiſe of Men, but rather a *Bleating of brute Beaſts*; *Choriſtors bellow the Tenor*, as it were *Oxen*; bark a *Counter-Point*, as a *Kennel* of *Dogs*; roar out a *Treble*, like a ſort of *Bulls*; grunt out a *Baſs*, as it were a number of *Hogs*: His Complaint for ſuppreſſing Repetitions by way of Conventicles; all his general Cenſure of all the Biſhops, and of all the Clergy; they ſcorn to feed the Poor; the *Silk and Sattin Divines*; very charitable Terms upon them of the Church! *Chriſtmas*, as it is kept, is a *Devil's Chriſtmas*; nay, he doth beſtow a great number of Pages to make Men affect the Name of *Puritan*, as tho' Chriſt were a *Puritan*, and ſo he ſaith in his Index. Then concerning the Images in the Church, he ſpeaketh againſt them, and putteth that now in Print, which was contained in an Anſwer in this Court. Alſo for the *Sabbath-Day*, whether to begin on *Saturday* Night, and end on *Sunday* at ſix of the Clock. Theſe are things proper to the Examination of the Church; and whatſoever becometh of the reſt of the Cauſe in this Court, yet I commend theſe things to the Conſideration of the Church. I wonder what the Man means to bring theſe things under the Title of *Stage-Plays*; *Pluralities* under the Title of *Stage-Players*. He had an End in it, he had an End in it.

Now concerning the Book itſelf: This Book ſaid Mr. *Noy*, it is the Witneſs, it doth teſtify what was his Intention, and by the Book he is to be judged. If it had been found in the Street, and of Mr. *Prynn*'s compiling, and brought to this Court, and Conſideration taken of it, the Court would proceed without a Party againſt Mr. *Prynn*. And here Mr. Attorney recited a Precedent of one that wrote a Book, and it was brought to the Council. It was demanded, who was the Accuſer? Anſwer was made, the Book was the Accuſer: Shall the Heretick go unpuniſhed? This Book it is Mr. *Prynn*'s doing, he doth put his Name to it, he ſwears that he did write it all.

Then for the Time of compiling it; ſeven or eight Years ago it was compiled, and it is grown ſeven times bigger than at the firſt. Mr. *Prynn* about eight Years ſince, ſhewed it to Dr. *Goade*, who told him ſo good Cauſes of Diſlike, that might make any reaſonable Man give it over. About ſeven Years ago he came to Dr. *Harris*, to deſire his Opinion of the Book; and he told him it was unfit and unworthy to come to the Preſs. In the Parliament-time, before the Year 1630, he gave ſome Part of it to be printed; but it came not to Mr. *Buckner* till long after. *Sparkes* ſaid, he would print any thing in Parliament-time.

Now we are to conſider two things, from the firſt compiling and printing of this Book, to the laſt: Firſt, how it grew in Volume; for after it was delivered to the Preſs, it hath grown up with divers things, which then were impoſſible to be known at that Time, when it was deliver'd to the Preſs; which appeareth by this. In 1628 was the Parliament, and in 1631 St. *George* began to look abroad into the World. This Man beſtows eight whole Pages upon St. *George*, for being ſo bold to look out. He ſaith, that St. *George* the *Arian* was a *Cappadocian*, tho' born in *Cilicia*, a Part or Province of *Cappadocia*, &c. and that St. *George*'s Advocate was an *Engliſhman*, born in *Glouceſter*; and that St. *Baſil the Great* was Biſhop of *Cæſarea* in *Cappadocia*, the native Country of St. *George the Arian*. Certainly he could not tell that St. *George* would then remove himſelf abroad, or in the Country of *Glouceſter*, &c. at that Time: But this Man did go on according to the Occaſion in 1628. A Woman, in 1628, acted a Part of a Stage-Play at *Blackfryers*; he ſpends many Pages about this.

We all know what time the Dearth was, three Years ago; he taketh Occaſion not to paſs it over. He maketh a long Diſcourſe of Plays, Maſques, &c. in the late penurious Times, how they were as expenceful as the Wars were. This is to ſhew how by Pieces it did grow bigger from Time to Time.

All Stage-Players he terms them Rogues: In this he doth falſify the very Act of Parliament, for unleſs they go abroad, they are not Rogues. The ſame Term he giveth unto Scholars acting. Mr. *Prynn* had a Purpoſe, not only in this to fall upon Stage-Plays, but upon the Body of the Common-wealth; and to infuſe it into Men's Minds, that we are now running into Paganiſm and Gentiliſm. He falleth upon thoſe things that have not Relation to Stage-Plays, Muſick, Muſick in the Church, Dancing, New-year's Gifts, whether Witchery, or not. Witchery, Church-Ceremonies, &c. indiſtinctly he falleth upon them; then upon Altars, Images, Hair of Men and Women, Biſhops and Bonfires. Cards and Tables do offend him, and Perukes do fall within the Compaſs of his Theme. St. *George* never offended him; but all this is to the end to bring a Belief among the People, that we are returning back again to Paganiſm. His end is therefore to perſuade Men to go and ſerve God in another Country, as many are gone already, and ſet up new Laws and Fancies among themſelves. Conſider what may come of it.

It may be fit enough and lawful to write againſt Plays, by Men that have a Miſſion; and they muſt do their Errand in mannerly Terms, and in the ſame Terms as other Men expect to bear with them.

Mr. *Prynn* had no Miſſion to meddle with theſe things, to ſee whether Men ſhould not return to Gentiliſm; the Terms which he uſeth are ſuch as he finds among the Oyſter-Women at *Billingſgate*, or at the common Conduit. He hath raked up all the vile Terms that could be found.

Now to prove that this is Mr. *Prynn*'s Book, read Mr. *Prynn*'s Examination, Inter *5th*, (which being read, was to this effect,) That Mr. *Prynn*, without the help of any other, did write, pen and compile the whole Book, called *Hiſtrio-maſtix*, and the Epiſtle before the Book, and the Index and Table following.

Now for the publiſhing of this Book, it doth appear by the Depoſition of Dr. *Goade*, that about eight Years ſince, Mr. *Prynn* did bring a Book to him in Writing, of about a Quire of Paper, concerning Stage-Plays, to have the ſame licenſed, but he held it unfit to be allowed; and doth well remember, that as to his Argument of the Unlawfulneſs for a Man to put on Woman's Apparel, he put Mr. *Prynn* this Queſtion; Suppoſe, Mr. *Prynn*, yourſelf, as a Chriſtian, were perſecuted by Pagans, think you not, if you did diſguiſe yourſelf in your Maid's Apparel, you did well? Who anſwered, That he thought himſelf rather bound to yield to death than to do ſo.

Dr. *Harris* alſo depoſed, That about ſeven Years ago, Mr. *Prynn* came to him to licenſe a Treatiſe concerning Stage-Plays, but he would not allow of the ſame. So this Man did deliver this Book when it was young and tender, and would have had it then printed; but it is ſince grown ſeven times bigger, and ſeven times worſe.

Noy. We ſhall now prove when it went to the Preſs. Read *Auſtin* the Stationer to Interrogatory the 28th, which being read, was to this effect; That the ſaid Book called *Hiſtrio-maſtix*, was given to this Deponent, in or about the laſt Parliament, at which time ſeven Sheets thereof were printed at this Deponent's Houſe; which this Deponent ſo printed, at the requeſt of Mr. *Prynn* and Mr. *Sparkes*, upon Mr. *Prynn*'s Information, that it was licenſed, and that he would bring the Hand of the Licenſer unto it: But this Deponent did refuſe to print any more of the ſame.

Read *Joſeph H.* to prove, that *Sparkes* would ſet upon it unlicenſed in Parliament-time, to Inter. 26. who ſaith, That the Defendant *Sparkes* did, in the time of the laſt Parliament, print, or cauſe to be printed, divers Books without Licence; whereof ſome were Mr *Prynn*'s, ſome were Mr. *Burton*'s Works; and this Deponent hath heard *Sparkes* ſay he durſt print any Thing in Parliament-time.

Another Part of the Charge was managed by Mr. *Maſon* of *Lincoln's-Inn*, reckoning up the Number of *Epithets* wherewith Mr. *Prynn* had aſperſed all Sorts of People: and he ſaid, that it was a Libel, not only againſt the State, but againſt every particular Perſon; and proved the Charge by divers Paſſages contained in the Book, *Fol.* 201, *&c.*

Afterward Mr. *Noy* proceeded in the farther making good of his Charge againſt Mr. *Prynn*.

May it pleaſe your Lordſhips,

As he hath fallen foul upon all Things, all Perſons, all Sexes; upon the Magiſtrates, upon the Houſhold of the King; ſo he hath not ſpared the King himſelf. I am ſorry I ſhall have occaſion to ſpeak any thing of it; but there is a great deal too much in his Book. My Lords, After he hath made all theſe Complaints as intolerable, he falleth upon all indiſtinctly, and never taketh upon him to diſcern, to make a diſtinction, that there may be a Toleration; but falleth foul upon every thing, that we are falling into Paganiſm; Men and Women are naught: he ſpareth not the King himſelf, but takes upon him to teach a Remedy; the Remedy is worſe than the Diſeaſe. What hateful Compariſons he bringeth with other Princes? as *Nero:* and ſpeaketh of the conſuming of the Treaſure of the Realm with Maſques, and of the late penurious Times; a baſe Word! A Declaration of Infamy upon Princes, with ſuch-like Concluſions as theſe are. When all this is done, he teacheth the Remedy not by way of Precept, but by way of Example; invites Men to read *John Mariana*, and two grave Authors more, he ſaith Men not cenſured. I am very ſorry I am to ſpeak any thing wherein the King ſhould be named, but he would not forbear it when the Pen was in his Hand; ſome of the Words are ſo naſty that I will not ſpeak them.

After Mr. Attorney General had ſpoken, he called for theſe Paſſages, amongſt others, in *Hiſtrio-maſtix*, to be read, *viz.*

To his Much-honoured Friends, the Right Worſhipful Maſters of the Bench of the Honourable Flouriſhing Law-Society of Lincolns-Inn.

‘HAVING, upon my firſt arrival here in *London*, heard and ſeen in four ſeveral Plays (to which the preſſing Importunity of ſome ill Acquaintance drew me, while I was yet a Novice) ſuch Wickedneſs, ſuch Lewdneſs as then made my penitent Heart to loath, my Conſcience to abhor all Stage-Players ever ſince; and having then likewiſe obſerved ſome woful Experiments of the lewd, miſchievous Fruits of Plays, of Play-houſes, in ſome young Gentlemen of my acquaintance; who tho' civil and chaſte at firſt, became ſo vicious, prodigal, incontinent, debauched (yea ſo far paſt all hopes of Amendment) in half a Year's Space or leſs, by their reſort to Plays, where Whores and lewd Companions had inveigled them; that after many Eſſays of their much deſired Reformation, two of them were caſt off and utterly diſinherited by their loving Parents; whom I heard oft complaining, even with Tears, that Plays and Play-houſes had undone their Children, to their no ſmall Vexation, (a good Caveat for all young Student's to keep themſelves from Play-houſes, by theſe two Youngſters Harms:) Hereupon I reſolved, out of a Deſire of the publick Good, to oppugn theſe common Vice-fomenting Evils: for which purpoſe about ſeven Years ſince, recollecting thoſe Play-condemning Paſſages, which I had met with in the Fathers and other Authors, I digeſted them into one entire written Diſcourſe; which having ſince that Time inlarged beyond its intended Bulk, becauſe I ſaw the Number of Players, Play-Books, Play-Haunters, and Play-houſes ſtill increaſing; there being above Forty thouſand Play-Books printed within theſe two Years (as Stationers inform me) they being now more vendible than the choiceſt Sermons; two old Play-houſes being alſo lately re-edified, enlarged, and one new Theatre erected: the Multitude of our *London* Play-Haunters being ſo augmented now, that all the antient Devils Chapels (for ſo the Fathers ſtyle all Play-houſes) being five in Number, are not ſufficient to contain their Troops; whence we ſee a ſixth now added to them: whereas even in vicious *Nero*'s Reign, there were but three ſtanding Theatres in Pagan *Rome*, tho' far more ſpacious than our Chriſtian *London*, and thoſe three too many. Hereupon I firſt commended it, being thus augmented, to the Licenſer, and from him unto the Preſs, where it hath lingered longer than I did expect; which being now at laſt brought forth into the World, in ſuch a Play-adoring Age, that is like to bid defiance to it; I here bequeath it to your worthy Patronage, to whom it was firſt devoted, not caring how it fares abroad, ſo it may do good and pleaſe at Home.’

In the next Place Mr. Attorney *Noy* cauſed to be read out of the Book of *Hiſtrio-maſtix*, ſuch Paſſages, as were ſcandalous to the King and Government, as *Fol.* 312, *&c.*

Mr. *Atkins*, in defence of Mr. *Prynn*, ſaid, That the Eloquence of thoſe Gentlemen who argued againſt Mr. *Prynn*, made an Expoſition which was no Part of his Intention, in which point he would endeavour to clear him; and the way was by letting their Lordſhips know, that many Paſſages in that Book are only relatively ſpoken, and not poſitive, and moſt of them are but the Affirmations of other Authors of ſeveral Kinds and Profeſſions: as where it is ſaid, that *ſuch incarnate Devils as frequent Plays*, &c. he ſpeaketh by the way of common frequenting of Plays, leſt they prove incarnate Devils; and ſo of Ladies that caſt off their Nature and Modeſty, that is relatively ſpoken by frequenting Plays, laſcivious Dancing, *&c.* and when he ſpeaketh of thoſe in a continual Propoſition, his Argument is thus:

‘That which doth ordinarily (if not always) defile the Eyes, the Ears, and Souls both of the Actors and Spectators, by ingendring, by exciting meretricious, luſtful, lewd, adulterous Deſires and Affections in their Hearts, or by inſtigating, by preparing, by inducting them to actual Uncleanneſs, muſt needs be abominable and unlawful unto Chriſtians; but theſe Stage-Plays, *&c.* therefore they muſt needs be abominable.’ And there is none but Whores, Panders, or foul incarnate Devils, who dare controul that minor Truth.

My Lords, He doth not condemn New-years Gifts, but acknowledges them to be as Tokens and Teſtimonies of Favour and Reſpect from Superiors to their Inferiors; and for Dancing (under favour) he doth not condemn it at all; he hath commended the ſame as ſingle, and dancing the Meaſures. And for dancing in great Men and Princes, he doth proteſt it was far from his thought to compare theſe Times to *Nero*'s, under ſo pious and religious a Prince as we have, and by whom we receive ſo much Happineſs. That had been ſo impious and unworthy, that he could by no means make any Apology; but as well his Perſon as his Pen ſhould have been deteſtable, if he had made any ſuch Compariſon.

And where he doth ſpeak, that Dancing and Maſquing have been near as expenceful as the Wars, in that he means in *Henry* the VIIIth's Time, and not in theſe Days; as I take it, he ſpeaks there of a Hiſtory, that doth expreſs the great Charge in that time.

I ſhall deſire, as I did begin in the opening of his Anſwer, that he may lay faſt hold upon the Rock of the King's Favour and Mercy, and Compaſſion of this Court; and what his Intentions are, they are beſt known to his own Heart, his Expreſſions known to your Lordſhips. I cannot condemn his Heart, I will not excuſe his Pen.

This, if your Lordſhips will give me leave, I ſhall ſay; I have long known him in a Society of Inns of Court, where he has lived; and for his ordinary Diſcourſes (except the Matters in this Book) they have not been factious or ſeditious. But now he is before your Lordſhips, truly for my part, I compare him to the Condition of an Aſtronomer, who fixed his Eyes ſo much upon the Stars, that he did not look to his feet, and ſo fell into a Ditch: for his Eyes were ſo fixed upon this Subject, upon the common Reſort to Stage-Plays, and the great Abuſe that comes by them, that he forgot to look down to his Hand that guided his Pen, which now bringeth him under your Lordſhips Cenſure.

That I may not offend the Patience of this Court, (the Court is full, and the Expectation is great) I will conclude with all Humility, and wiſh and crave, that he who is the ſupreme Judge, may be with your Lordſhips in this Matter, and may be over all your good Thoughts, Judgments and Sentences this Day, in this Cauſe of this poor Gentleman. And this is all I humbly offer in Defence.

The next Day of Hearing, Mr. *Holbourn*, of Counſel with Mr. *Prynn*, ſpake thus:

My Lords,

I am aſſigned Counſellor with Mr. *Prynn*. The Information is for publiſhing in Print a Libel or Volume of Libels againſt King, Queen, State, *&c.* My Lords, for Mr. *Prynn*, he doth humbly caſt himſelf at your Lordſhips Feet. For the Book, I muſt ſay, he doth humbly ſubmit himſelf to your Lordſhips; yet, my Lords, his Heart will not give him leave to ſay, that he is guilty of thoſe groſs Offences that are laid to his Charge. He confeſſeth himſelf to be juſtly brought before your Lordſhips for his ill Expreſſions, which may prove an occaſion of Scandal by Miſconſtruction, and ſo ſome dangerous Principle may be infuſed into the Subjects: And he beggeth your Lordſhips to conſider of them, according to the Intentions of his Heart, which were fair and honeſt, tho' harſh in Expreſſion, that he may receive a favourable Conſtruction for that he citeth his Authors, and their Words, and not his own. And for that he meddleth with Matters not proper to Stage-Plays, as in mentioning the Sabbath, his Meaning was, Stage-Plays upon the Sabbath-day: his mentioning Habits and Recreations, was in relation to Men putting on Womens Habits, and unlawful Recreation at Plays, and ſo he conceives them not altogether impertinent.

For the Manner of his Writing, he is heartily ſorry, that his Style is ſo bitter, and his Imputations ſo unlimited and general; yet in this he was led thereunto by Authors in the like Caſe, which he offers for his Excuſe: he hopes his Paſſion againſt theſe Abuſes by Plays may a little plead his Excuſe.

Now for the Manner and Matter alledged againſt him out of his own Book, in that he hopes your Lordſhip's Favour: He ſaith, that thoſe that are Judges of the Book for Licenſing, they are guilty of the Matter, and he hopeth that this Book doth differ from all the Books brought into this Court; for here are none brought but ſuch as are unlicenſed, and this is licenſed: And he ſubmitteth thus to that Point.

My Lords, as to the general End and Intention of his Book, he ſweareth, that the general Reſort unto Plays was the firſt Occaſion; and his End was for the Reformation of the Abuſe of it, and no otherwiſe: And then, my Lords, he hopeth he ſhall not incur your Lordſhips ſevere Cenſure. He did not ſend the Book beyond the Seas to be printed, but printed it here; and it was three Years in the Preſs, and licenſed and publiſh'd.

And, my Lords, the Declaration to the Information of this Court, ſpeaketh ſomething to his Intentions, *viz.* to whom he dedicated this Book, and he diſperſed it himſelf to Men of known Integrity; and certainly if his Heart had been guilty of thoſe foul Crimes, he would not have preſented one of theſe Books to Mr. Attorney *Noy* himſelf. He did not abſent himſelf, as one guilty of ſuch Offences would have done; he was ſo far from having Diſloyalty, that he doth commend the King and State, and that could not be with an Intention againſt King and State. And all the Charges that lie upon him for his foul Intentions, are but Inferences upon his Book, and Conſequences, and ſuch of them only that be ſtrained, and not of neceſſity.

The next thing charged upon him is Perjury, for that he ſaid, he ſhewed no Part of this Book to any before it was ſhewn to *Sparkes*; yet it was proved by Dr. *Harris* and Dr. *Goade*, that they ſaw it many Years ago. As to this he ſaith, they ſpeak only of his Book, concerning Plays, containing a Quire of Paper: and that it is true, he did ſhew them ſuch a Book: But that Book was not this Book; tho' they be of one Subject and Matter, yet they differ much in Form and Frame.

Then Mr. *Hern* ſpake on his behalf as follows:

My Lords,

We that are aſſign'd Counſel for Mr. *Prynn*, do come with great Diſadvantage, both in Number and Judgments, conſidering the great Ability of the King's Counſel, who have ſpoken againſt us. If the Conſtruction they have made be theirs, then clearly we are (as they would have us) to fall deep by your Lordſhip's Sentence.

The Weight of this Cauſe, and the Aggravations upon it by the King's Counſel, made me the laſt Day (without deſire of my Client) to crave farther Time, for we durſt not then give any Anſwer. All that I can now ſay, is, That your Lordſhips would look upon the Intentions of his Heart, in that he hath explained himſelf as fair as any Man can do by his Oath: How is it poſſible to make other Proof of the clear Intentions of his Heart, than by his Oath? His Oath is admitted as Proof againſt him, in the Acknowledgment of his Book; and ſhall it not be admitted to him, to clear the Integrity of his Heart? We beſeech your Lordſhips to look upon him, as not writing theſe things out of Perverſeneſs of Spirit, but out of the abundance of his Heart tranſported with Zeal againſt the growing Evils, which have befallen many of this Nation, and ſome of his own Acquaintance, by their frequenting of Stage-Plays. We that know him muſt ſay, as far as our Knowledge will give us leave, that in all Paſſages that have fallen from him to us, he hath expreſſed himſelf full of Devotion and Duty to his Majeſty and the Queen; and ſhall humbly take leave to offer ſome Paſſages out of his Book, which do bear Evidence, that he doth ſpeak well of both their Majeſties, and of the State; and that by Inferences and Diſtinctions there made: And what is it but Inferences made out of other Paſſages of his Book, which doth reflect upon him? Which Paſſages were opened by the Counſel, but not read.

Three Star-Chamber Days having been ſpent in the hearing of this Cauſe, the Lords ſat the fourth Day to proceed to Sentence, which held till four of the Clock in the Afternoon; and they paſſed ſuch Sentence on Mr. *Prynn*, as is expreſſed in the enſuing Speeches, which in effect comprehend all that was ſaid by others.

The firſt was of *Francis* Lord *Cottington*, Chancellor of the *Exchequer*, whoſe turn was to begin firſt to ſpeak, as being in the loweſt degree of Quality by his Place. And commonly he that beginneth, as he openeth the Matter at large, ſo he inclineth thereby many Lords to forbear making of Speeches, and only to declare themſelves to concur in Sentence with him that began firſt, or with ſome other Lord that ſpake before, as their Judgments lead them.

My Lords (ſaid my Lord *Cottington*) His Majeſty's Attorney-General hath brought Mr. *Prynn* before your Lordſhips, with other Defendants, *Thomas Buckner*, *Michael Sparkes*, &c. It is for publiſhing a Libellous Book, or Volume of Libels, to the Scandal of his Majeſty and the State. To my underſtanding it may be more properly ſaid, the great and high Malice of Mr. *Prynn*, publiſhed and declared in that Libellous Book; a Malice expreſſed in a Manner againſt all Mankind, and the beſt ſort of Mankind, againſt King, Prince, Peers, Prelates, Magiſtrates and Governors, and truly in a Manner againſt all Things. But that which hath been more remarkable, is, his Spleen againſt the Church and Government of it: therefore for that I will not ſentence him, (becauſe Mr. Attorney doth forbear to proſecute againſt him, for that which belongeth to the Church) yet it is an Argument of his great and high Malice: And when I conſider of that, which hath been ſo often repeated, that he writ this Book alone, ſurely he was aſſiſted immediately by the Devil himſelf, or rather he hath aſſiſted the Devil. He hath written a Book againſt the due Reverence and Honour, which all Chriſtians owe to our Saviour Jeſus, this doth convince my Judgment againſt him; but the Book (as Mr. Attorney ſaith) declares the Man, it is the Witneſs: And if your Lordſhips obſerve the Particulars and Style of it, you will ſay it is a ſtrange thing; the very Style doth declare the Intent of the Man, and that is (as Mr. Attorney ſaid) to work a Diſcontent and Diſlike in the King's People againſt the Church and Government, and Diſobedience to our gracious Sovereign the King. If Mr. *Prynn* ſhould be demanded what he would have, he liketh nothing, no State or Sex; Muſick, Dancing, *&c.* unlawful even in Kings; no kind of Recreation, no kind of Entertainment, no, not ſo much as Hawking, all are damned. The very truth, Mr. *Prynn* would have a new Government, he would have a new Church, he would have new Laws, new Entertainment, God knows what he would have; a new King he would have, and have all the People of his Mind, to be diſcontented with their King and Government.

Mr. *Prynn* confeſſeth he did write the Book, and it's true he did endeavour the printing of it, and the publiſhing of it, this is proved very well; yea, but Mr. *Prynn* had no other Intention but a Tenderneſs of Conſcience, he meant no hurt to the King or State, (as his Counſel ſaid:) but Mr. Attorney anſwered them, that he is not the Declarer of his Intentions, he muſt be judged by the Book, by his Words, more certainly by the effect; for all good Men do receive Scandal by this Book, and all of Mr. *Prynn*'s Humour were glad of this Book. When I conſider what kind of Libel it is, it is not like other Libels: Other Libels have been by Perſons diſcontented, ſome poor Rogues ſcattered up and down; but here's a Libel in *Folio*, and in Print, and juſtifieth itſelf by Authors with an high Hand, *That is there*, and *that is there*. And (my Lords) when I conſider thoſe high Paſſages in his Book, I proteſt unto you, they are things to be abhorred; they are not ſpoken relatively (as his Counſel would have it) but poſitively, That *our* Engliſh *Ladies, ſhorn and frizzled Madams, have loſt their Modeſty*; *that the Devil is only honoured in Dancing*; *that Plays are the chief Delight of the Devil*; *that they that frequent Plays are damned, and ſo are all that do not concur with him in his Opinion, Whores, Panders, foul incarnate Devils*, Judas's *to their Lord and Maſter*, &c. *Princes dancing in their own Perſons*, his Cenſure of them is infamous, *&c.* But the fouleſt of all is, *That this was the Cauſe of untimely Ends in Princes.*

My Lords, ſhall not all that hear theſe things think, that it is the Mercy of the King that Mr. *Prynn* is not deſtroyed? Have we not ſeen Men lately condemned to be hang'd and quarter'd for far leſs Matters? One *Pinchman*, I was myſelf employed with others in the examining of him; he confeſſed, that the Writing for which he was queſtioned, was a Sermon, that he did intend to preach: The Words were againſt the Perſon of the King, yet he never preached it; yet becauſe he had written it with an Intention to preach it, he was brought upon this Point and condemned to die. But this Book is in Print; it is againſt all Magiſtrates, and particularly againſt the King our Sovereign, and his bleſſed Conſort. And yet, my Lords, it pleaſeth his Majeſty to let Mr. *Prynn* have his Trial here. I will not trouble your Lordſhips with any more Parts of the Book: Mr. Attorney noted unto your Lordſhips, that you ſhould ſee how neceſſary it was, that Mr. *Prynn* ſhould be clean cut off, as one that hath a long time endeavoured to move the People to Diſobedience againſt the King. *&c.* So I ſay with Mr. Attorney, it is high Time that Mr. *Prynn* may be cut off, ſo far as may go with the Cenſure of this Court. My Lords, Mr. *Prynn* is better dealt withal, than he would have Princes dealt with; he hath had very fair Trials.

For his Defence, I took Notice of it likewiſe: I do remember that all thoſe Gentlemen, that were employed and aſſigned as Counſel for his Defence, every one of them began to crave Mercy of the Court; yet they came with a Defence and Juſtification, ſo far as their Cauſe would bear. Mr. *Holbourn* ſaid, That for *Players they were Rogues by the Statute*: Yet Mr. Attorney ſaid, *They are not Rogues by the Statute, unleſs they wander*, &c. My Lords, he ſaid, his Intention was againſt publick and common Plays; yet ſeek all his Book thorow, and you ſhall find it is againſt Plays in Princes Palaces. His Intention now muſt be underſtood by his Book, and by his Words; and that which he doth apply of any Author is his own. And I think his Defence did aggravate his Offence. As to his Defence againſt the Ladies, he ſaith, he ſpeaketh it relatively and not poſitively; yet he ſaith, *Our* Engliſh *Ladies are ſo and ſo whoriſh*, &c. And for that Part of his Book, wherein he condemns Murder, Mr. *Prynn* will have Murder unlawful; but Execution of Princes is not Murder, and therefore that is a lawful Act. Mr. Attorney ſaid well, the End of this Man and *John* * *Marianna*, &c. they are all one, they all cry Malice againſt Princes.

I ſhall humbly crave Pardon, and diſcharge my Conſcience, and ſhall let your Lordſhips ſee, how I underſtand the Senſe, and that ſo I am to judge; and I conceive it to be as your Lordſhips ſee, that the Malice of this Book is againſt King and State: And, my Lords, with this I ſentence Mr. *Prynn.*

I do in the firſt place begin Cenſure with his Book; I condemn it to be burnt, in the moſt publick Manner that can be. The Manner in other Countries is, (where ſuch Books are) to be burnt by the Hangman, tho' not uſed in *England*, (yet I wiſh it may, in reſpect of the Strangeneſs and Heinouſneſs of the Matter contained in it) to have a ſtrange Manner of burning; therefore I ſhall deſire it may be ſo burnt by the Hand of the Hangman.

If it may agree with the Court, I do adjudge Mr. *Prynn* to be put from the Bar, and to be for ever uncapable of his Profeſſion. I do adjudge him, my Lords, That the Society of *Lincoln's-Inn* do put him out of the Society; and becauſe he had his Offspring from *Oxford* (now, with a low Voice, ſaid the Biſhop of *Canterbury*, *I am ſorry that ever* Oxford *bred ſuch an evil Member*) there to be degraded. And I do condemn Mr. *Prynn* to ſtand in the Pillory in two Places, in *Weſtminſter* and *Cheapſide*; and that he ſhall loſe both his Ears, one in each Place; and with a Paper on his Head, declaring how foul an Offence it is, *viz.* *That it is for an infamous Libel againſt both their Majeſties, State and Government.* And laſtly (nay not laſtly) I do condemn him in 5000*l.* Fine to the King. And laſtly, perpetual Impriſonment.

There are other Defendants, *Thomas Buckner*, whom I conceive to be the Chaplain charg'd with the Licenſing of the Book. I obſerve, that Mr. Attorney hath little or nothing proſecuted againſt him. It is ſaid, he did combine with the Writer and Stationer for this infamous Libel. It doth appear that he did licenſe it, or at leaſt 64 Pages thereof; I think it be alſo true, that Mr. *Buckuer* did ſee the Book after it was printed. It is ſaid, for his Excuſe, That Mr. *Buckner* was cozen'd and ſurpriz'd by Mr. *Prynn* and *Sparkes*; but it's plain he licenſed it, or at leaſt 64 Pages: therefore I ſhall judge according to the Proof, as it is the uſual Cuſtom of this Court. I muſt judge Mr. *Buckner* to be worthy of a very ſharp Sentence, for certainly there is a very great Inconvenience fallen upon the State, for want of due Examination: To what purpoſe is there an Examination of Books, if there ſhall be a connivance and winking at the Party that doth it; I ſhall think Mr. *Buncker* not only

* *A Jeſuit.*

worthy of a ſevere Reprehenſion, but I ſhall cenſure him firſt to have Impriſonment according to the courſe of the Court, and 50 *l.* Fine to the King.

Now, my Lords, the next is *Michael Sparkes*, and he is the third; and he is the Printer of the Book, and Binder, and Publiſher thereof. In his Defence he hath ſhewed your Lordſhips a piece of the Book licenſed by Mr. *Buckner*, and ſaith, it was all licenſed, but that he proves not; but that it was entered in the *Stationers-Hall*, that he proves. But I do find, that he perſuaded Men to buy this Book after it was prohibited; and before it was prohibited he perſuaded Men to buy it, ſaying, *It was an excellent Book, and it would be called in*, and then ſell well. I do fine *Sparkes* 500 *l.* to the King, and to ſtand in the Pillory, without touching of his Ears, with a Paper on his Head to declare his Offence, and it is moſt neceſſary in theſe Times; and for the Pillory to be in *Paul's* Church-yard. (It is a conſecrated Place, ſaith the Archbiſhop of *Canterbury.*) I cry your Grace's Mercy (ſaid my Lord *Cottington*) then let it be in *Cheapſide.* For the other three, I find that Mr. Attorney doth not proſecute them; therefore, my Lords, I do not cenſure them.

The next in courſe that ſpoke after the Lord *Cottington,* was the Lord Chief Juſtice *Richardſon.*

My Lords,

Since I have had the Honour to attend this Court, writing and printing of Books have been exceedingly found fault withal, and have received a ſharp Cenſure, and it doth grow every Day worſe and worſe; every Man taketh upon him to underſtand what he conceiveth, and thinks he is no body except he be in Print. We are troubled here with a Book, a Monſter, *Monſtrum Horrendum, Informe, Ingens!*) It hath been a Queſtion who is the Author of this Book; Surely I am ſatisfied in my Conſcience he is the Author of it: but truly, give me leave, I do not think Mr. *Prynn* is the only Actor in this Book, but that there were many Heads and Hands therein beſides himſelf. I would to God in Heaven, the Devil, and all elſe that had their Heads and Hands therein beſides Mr. *Prynn*, were, *&c.* for I think they are all Ill-willers to the State, and deſerve ſevere Puniſhment as well as Mr. *Prynn* doth. This Book is the Subject of this Day's Work, and it is annexed, by Mr. Attorney, to the very Information itſelf.

For the Book, I do hold it a moſt ſcandalous, infamous Libel to the King's Majeſty, a moſt pious and religious King; to the Queen's Majeſty, a moſt excellent and gracious Queen; ſuch a one as this Kingdom never enjoyed the like, and I think the Earth never had a better. It is ſcandalous to all the honourable Lords, and the Kingdom itſelf, and to all Sorts of People. I ſay, Eye never ſaw, nor Ear ever heard of ſuch a ſcandalous and ſeditious Thing as this miſ-ſhapen Monſter is. How ſcandalous a Thing it is, hath appeared already to your Lordſhips, by the King and Queen's Counſel againſt Mr. *Prynn*; I will not for my part repeat.

Yet give me leave to read a word or two, where he cometh to tell your Lordſhips of the Reaſons why he writ this Book: Becauſe he ſaw the Number of the Plays, Play-Books, Play-Haunters, and Play-houſes ſo exceedingly increaſed, there being above *forty thouſand Play-Books*, being now more vendible than the choiceſt Sermons. What ſaith he in the Epiſtle Dedicatory, ſpeaking of Play-Books? *They are ſo big a Price, and are printed in far better Paper, than moſt Octavo and Quarto Bibles, which hardly find ſo good vent as they; and then come in ſuch abundance, as they exceed all Number, and 'tis a Year's time to peruſe them over, they are ſo multiplied:* and then he putteth in the Margin, *Ben Johnſon*, &c. *printed in better Paper than moſt Bibles. Now if this be not a Tax upon the Kingdom, to print theſe Books in better Paper than the Bible itſelf; for my part I leave it to your Lordſhips.* This Monſter, this huge miſ-ſhapen Monſter, I ſay it is nothing but Lyes, and Venom againſt all Sorts of People. It is a ſtrange Thing what this Man taketh upon him: He is not like thoſe Powder-Traitors, they would have blown up all at once; this throweth all down at once to Hell together, and delivereth them over to *Satan*. I beſeech your Lordſhips to give me leave: *Stage-Plays*, &c. (ſaith he) *none are gainers and honoured by them but the Devil and Hell; and when they have taken their wills in Luſt here, their Souls go to eternal Torment hereafter.* And this muſt be the End of this Monſter's horrible Sentence. He ſaith, *So many as are in Play-houſes, are ſo many unclean Spirits*; and that *Play-haunters are little better than incarnate Devils.* He doth not only condemn all Play-Writers, but all Protectors of them, and all beholding of them; and dancing at Plays, and ſinging at Plays, they are all damned, and that no leſs than to Hell. I beſeech your Lordſhips to give me leave but in a word to read unto you what he writes of Dancing, *&c. It is the Devil's Profeſſion; and he that entreth into a Dance, entreth into a deviliſh Profeſſion; and ſo many Paces in a Dance, ſo many Paces to Hell:* This is that which he conceiveth of Dancing. *The Woman that ſingeth in the Dance, is the Prioreſs of the Devil, and thoſe that anſwer are Clerks, and the beholders are the Pariſhioners, and the Muſick are Bells, and the Fidlers are the Minſtrels of the Devil.* I ſaid it was a ſeditious Libel; this point of Sedition is the only Thing that troubles me, and it is that which I ſhall offer to your Lordſhips: For I do know it, the good Opinion, Heart, Will and Affections of the King's People and Subjects are the King's greateſt Treaſure. Now if this be ſo, then for any Man cunningly to undermine theſe Things, to take away the Hearts of the Subjects from the King, and to bring the King into an ill Opinion among his People, this is a moſt damned Offence; and if I were in my proper Place, and Mr. *Prynn* brought before me, I ſhould go another way to work. I proteſt unto your Lordſhips, it maketh my Heart to ſwell, and my Blood in my Veins to boil (ſo cold as I am) to ſee this or any Thing attempted which may endanger my gracious Sovereign; it is to me the greateſt Comfort in this World to behold his Proſperity.

Much hath been ſpoken concerning theſe things, and ſomething by my Lord *Cottington* before me; but good my Lords, give me leave to remember you one or two Paſſages, not yet ſpoken of. He writeth thus: *That* Nero'*s acting and frequenting Plays, was the chiefeſt Cauſe that ſtirred up others to conſpire his Death.* Would any Man think, that his acting and frequenting of Plays was the chiefeſt Occaſion?

He writeth in another Place worſe than this. *Fol.* 464. Trebellius Pollio *relates, That* Martian, Heraclius, *and* Claudius, *three worthy* Romans, *conſpired together to murder* Gallienus *the Emperor (a Man much beſotted, and taken up with Plays, to which he likewiſe drew the Magiſtrates and People by his leud Examples)* as Flavius *and others conſpired* Nero'*s Murder for the ſelf-ſame Cauſe*, &c. Now, my Lords, that they ſhould be called three worthy Perſons that do conſpire an Emperor's Death, (tho' a wicked Emperor) it is no Chriſtian Expreſſion.

If Subjects have an ill Prince, marry what is the Remedy? They muſt pray to God to forgive him, and not ſay they are worthy Subjects that do kill him: If they were worthy Acts, Mr. *Prynn*, I can tell what you are, (Mr. *Prynn* ſtanding during the Cenſure behind the Lord Chief Juſtice *Richardſon*, and Archbiſhop *Neal.*) No Man will conſpire to murder a King that can be a worthy Actor; for the very Thought of it is High-Treaſon. He ſpeaketh of theſe three, that they were three worthy *Romans* that did conſpire to murder *Nero.* This is moſt horrible, and here can be no manner of Expoſition, but in the worſt Senſe: for his Excuſe, he hath made none at all, only it was not his Intention.

Good Mr. *Prynn*, you are a Lawyer. Intention! I know where the word ſtandeth equal, as that you may take the Intention this way, or that way, with the Right-hand or Left-hand, there in that Caſe you may ſpeak the Intention; but where the Words are plain and poſitive, as in your Books, here is no help of Intention in the World: your Words are plain and clear, therefore you can never make any Defence at all out of that. Not to hold your Lordſhips any longer, my Lords, it is a moſt wicked, infamous, ſcandalous, and ſeditious Libel. Mr. *Prynn*, I muſt now come to my Sentence, tho' I am very ſorry, for I have known you long, yet now I muſt utterly forſake you; for I find that you have forſaken God, and his Religion, and your Allegiance, Obedience, and Honour, which you owe to both their excellent Majeſties, the Rule of Charity to all noble Ladies, and Perſons in the Kingdom, and forſaken all Goodneſs. Therefore, Mr. *Prynn*, I ſhall proceed to my Cenſure, wherein I agree with my Lord *Cottington*, as he began very well: Firſt, for the burning of the Book in as diſgraceful a manner as may be, whether in *Cheapſide* or *Paul's Church-yard*; for tho' *Paul's Church-yard* be a conſecrated place, yet Heretical Books have been burnt in that place. And becauſe Mr. *Prynn* is of *Lincoln's-Inn*, and that his Profeſſion may not ſuſtain Diſgrace by his Puniſhment, I do think it fit, with my Lord *Cottington*, that he be put from the Bar, and degraded in the Univerſity; and I leave to my Lords, the Lord Biſhops, to ſee that done; and for the Pillory, I hold it juſt and equal, tho' there were no Statute for it. In the caſe of a high Crime it may be done by the Diſcretion of the Court, ſo I do agree to that too. I fine him 5000 *l.* and I know he is as well able to pay 5000 *l.* as one half of 1000 *l.* and perpetual Impriſonment I do think fit for him, and to be reſtrained from writing, neither to have Pen, Ink, nor Paper; yet let him have ſome pretty Prayer-Book, to pray to God to forgive him his Sins; but to write, in good faith I would never have him: For, Mr. *Prynn*, I do judge you by your Book to be an inſolent Spirit, and one that did think by this Book to have got the name of a Reformer, to ſet up the Puritan or Separatiſt Faction. I would not have Mr. *Prynn* go without a Recognition of his Offence to the King and Queen's Majeſty. I agree to the Sentence on *Buckner* and *Sparkes.*

Secretary Cook. By this vaſt Book of Mr. *Prynn*'s, it appeareth he hath read more than he hath ſtudied, and ſtudied more than he hath conſidered; whereas if he had read but one Sentence of *Solomon*, it had ſaved him from the Danger he is now like to fall into. The *Preacher* ſaith, *Be not over juſt, nor make thyſelf over-wiſe, for why wilt thou deſtroy thyſelf?* My Lords, it is a Sentence requireth much Study and Conſideration. It is moſt certain, that Righteouſneſs and Wiſdom are ſuch Virtues, as they help forward Juſtice; but when Wiſdom is mixed with a Man's own Humours, as for the moſt part it is with Fleſh and Blood, there is danger of ſtraining it too far, and that will tend to the Deſtruction of him and others. Examples are too pregnant of this, and he may take it from a good Author, even from Chriſt himſelf. When his Apoſtles, out of Zeal to their Maſter, would have called for fire from Heaven againſt the *Samaritans* that refuſed to entertain him, the Anſwer was, *You know not of what Spirit you are.* I would Mr. *Prynn* would have conſidered this.

There is a good Spirit that is meek, tempered with Modeſty and Humility, with Mildneſs and with Equity; and ſuch a Spirit is always tender, not to deſtroy, root up, overthrow, but to bind, repair and preſerve. But there is another fiery Spirit, which is always caſting of Fire, nothing but Damnation and Deſtruction; certainly ſuch a Spirit ever tends to his own Confuſion. And if this be well obſerved, every Man ſhall find it true, that ſuch a Spirit ever cometh before Deſtruction. I wiſh Mr. *Prynn* were not an ill Example of this. Certainly, my Lords, Vice and Corruption ought not only to be reprehended, but to be puniſhed ſeverely, and that ſharply too where it is; but Mr. *Prynn* ſhould have conſidered, every Man is not a fit Reprehender. He had no Invitation, nor Office, nor Intereſt to employ a Talent which doth not belong unto him. If Magiſtrates and Princes ſhould inveigh againſt all things, and tolerate nothing, we muſt live no longer among Men; and certainly, if we will be thought to live with them that are wholly virtuous, we muſt go out of the World; we have a good Author for this. But, my Lords, a Toleration muſt be uſed, and that Mr. *Prynn* would have found, if he had conſidered his own Body: Shall a Man upon every ſlight Diſtemper and Diſorder in his Body take Phyſick? Or ſhall ill Humours be purged 'till he purge all out? Certainly he will purge Spirit, Life and all away with it. And as it is in the Natural Body, ſo it is in the Politick, there muſt be a Tolerarion and Connivance; it cannot be governed without it, and we have a Warrant for it. Did not Chriſt himſelf forbid the cutting out of the Tares, leſt they ſhould pluck Corn, and deſtroy that too? I think, if Mr. *Prynn* ſhould have been aſked the Queſtion that *Naaman* did to the Prophet, he would not at all have bid *go away in Peace*, he would have threatened Hell and Deſtruction. There is a Chriſtian Wiſdom, and there muſt be a Toleration in all States. And certainly the Faults that have been tolerated in all times were greater than modeſt Plays, or modeſt Dancing. It is not my Intention, neither do I think it is the Intention of any of your Lordſhips, to apologize for Stage-Plays, much leſs for the Abuſe of them; I wiſh, and ſo

I think doth every good Man, that the Abuſe of them were reſtrained; but, my Lords, not by Railing, Curſing, Damning, Inveighing, *&c.* not only againſt the Faults and Players themſelves, but againſt all Spectators, and thoſe that come to them, and that of all degrees, and with ſuch Bitterneſs and Acrimony, that in all the Authors alledged, which are infinite, there is not to be found an Example. My Lords, I am very ſorry he hath ſo carried himſelf, that a Man may juſtly fear he is the *Timon* that hath a Quarrel againſt Mankind. But I love not much to aggravate Offences, which of themſelves are heavy enough.

He calleth his Book *Hiſtrio-maſtix*; but therein he ſheweth himſelf like unto *Ajax*, *Anthropomaſtix*, as the *Grecians* called him, the Scourge of all Mankind, that is, the Whipper and the Whip. I cannot but concur with the Cenſure already begun by my Lord *Cottington*, given againſt Mr. *Prynn*, *Buckner* and *Sparkes*.

Afterwards the Earl of *Dorſet* ſpake to this effect:

Such Swarms of Murmurers as this day diſcloſe themſelves, are they not fearful Symptoms of this ſick and diſeaſed Time? Ought we not rather with more Juſtice and Fear apprehend thoſe heavy Judgments which this minor Prophet, Prophet *Prynn*, hath denounced againſt this Land, for tolerating indifferent things, to fall upon us for ſuffering them, like thoſe Mutineers againſt *Moſes* and *Aaron*, as not fit to breathe? My Lords, it is high time to make a Luſtration to purge the Air. And when will Juſtice ever bring a more fit Oblation than this *Achan? Adam*, in the beginning, put Names on Creatures correſpondent to their Natures: The Title he hath given this Book is *Hiſtrio-maſtix*, or rather, as Mr. Secretary *Cook* obſerved, *Anthropomaſtix*; but that comes not home, it deſerves a far higher Title; *Damnation*, in plain *Engliſh*, of Prince, Prelacy, Peers and People. Never did Pope *in Cathedra*, aſſiſted with the Spirit of Infallibility, more poſitively and more peremptorily condemn Hereticks and Hereſy, than this doth Mankind. Leſt any partial Auditor may think me tranſported with Paſſion, to judge of the baſe Liveries he beſtoweth upon Court and Courtiers, I ſhall do that which a Judge ought to do, *viz.* aſſiſt the Priſoner at the Bar. Give me leave to remember what Mr. Attorney let fall the other day. I will take hold of it for the Gentleman's Advantage, That this Gentleman had no Miſſion; if he had had a Miſſion, it would have qualified the Offence. Our bleſſed Saviour, when he converſed in this World, choſe Apoſtles, whom he ſent after into the World, *Ite, prædicate*, &c. to ſhew the way of Salvation to Mankind. Faith, Hope, and Charity, were the Steps of this *Jacob*'s Ladder to aſcend Heaven by. The Devil, who hates every Man upon Earth, play'd the Divine, cited Books, wrought Miracles; and he will have his Diſciples too, as he had his Confeſſors and Martyrs. My Lords, this Contempt, Diſloyalty, and Deſpair, are the Ropes which this Emiſſary lets down to his great Maſter's Kingdom for a general Service. My Lords, as the Tenour of their Commiſſion was different, ſo are the Ways: Theſe holy Men advanced their Cauſe in former times by Meekneſs, Humility, Patience to bear with the Weakneſs and Infirmities of their Brethren; they taught Obedience to Magiſtracy, even for Conſcience-ſake; they divided not their Eſtates into Factions; they detracted from none, they ſought the Salvation of Men's Souls, and guided their Bodies and Affections anſwerably; they gave to *Cæſar* the things that were *Cæſar*'s; if Princes were bad, they prayed for them, if good, they praiſed God for them; however, they bore with them: This was the Doctrine of the Primitive Church, and this they did. I appeal to my Lords that have read this Book, if Mr. *Prynn* has not with breach of Faith, diſcharged his great Maſter's End. My Lords, when God had made all his Works, he looked upon them and ſaw that they were good. This Gentleman, the Devil having put Spectacles on his Noſe, ſays, that all is bad: No Recreation, Vocation, no Condition good; neither Sex, Magiſtrate, Ordinance, Cuſtom, Divine and Human, things animate, inanimate, all, my Lords, wrapt up *in Maſſa Damnata*, all in the Ditch of Deſtruction. Here, my Lords, we may obſerve the great Prudence of this Prince of Darkneſs, a Soul ſo fraught of Malice, ſo void of Humanity, that it gorgeth out all the Filth, Impiety and Iniquity that the Diſcontent of this Age doth contract againſt the Church and State. But it may be ſome Follower of his will ſay, It was the Pride and Wickedneſs of the Times that prompted him to this Work, and ſet his Zeal, thro' Tenderneſs of Conſcience, to write this Book. My Lords, you may know an unclean Bird by his Feathers; let him be unplum'd, unmaſk'd, pull off the deceitful Vizard, and ſee how he appeareth: this brittle Conſcience Brother, that perhaps ſtarts at the ſight of the Corner-Cap, ſweats at the Surplice, ſwoons at the Sign of the Croſs, and will rather die than put on Woman's Apparel to ſave his Life; yet he is ſo zealous for the advancement of his *Babel*, that he invents Legions, coins new Statutes, corrupts, miſapplies Texts with falſe Interpretations, diſhonours all Men, defames all Women, equivocates, lyes; and yet this Man is a holy Man, a Pillar of the Church. Do you, Mr. *Prynn*, find fault with the Court and Courtiers Habit, Silk and Sattin Divines? I may ſay of you, you are all Purple within, all Pride, Malice, and all Diſloyalty? you are like a Tumbler, who is commonly ſquint-ey'd, you look one way, and run another way: tho' you ſeemed by the Title of your Book to ſcourge Stage-Plays, yet it was to make People believe, that there was an Apoſtacy in the Magiſtrates. But, my Lords, admit all this to be venial and pardonable, this Pigmy groweth a Giant, and invades the Gods themſelves; where we enjoy this Felicity under a gracious Prince with ſo much Advantage, as to have the Light of the Goſpel, whilſt others are kept in Darkneſs, the Happineſs of the Recreations to the Health of the Body, the bleſſed Government we now have: When did ever Church ſo flouriſh, and State better proſper? And ſince the Plagues happen'd, none have been ſent among us ſuch as this Caterpillar is: What Vein hath opened his Anger? Or who hath let out his Fury? When did ever Man ſee ſuch a *Quietus eſt* as in theſe Days? Yet in this Golden Age is there not a *Shimei* amongſt us, that curſeth the Anointed of the Lord? ſo puffed with Pride, nor can the Beams of the Sun thaw his frozen Heart, and this Man appeareth yet. And now, my Lords, pardon me, as he hath wounded his Majeſty in his Head, Power and Government, and her Majeſty, his Majeſty's dear Conſort, our Royal Queen, and my gracious Miſtreſs; I can ſpare him no longer, I am at his Heart. *Oh! quantum!* &c. If any caſt infamous Aſperſions and Cenſures on our Queen and her Innocency, ſilence would prove Impiety rather than Ingratitude in me, that do daily contemplate her Virtues; I will praiſe her for that which is her own, ſhe drinks at the Spring-Head, whilſt others take up at the Stream. I ſhall not alter the great Truth that hath been ſaid, with a Heart as full of Devotion, as a Tongue of Eloquence, the other day, as it came to his part, (meaning Sir *John Finch.*) My Lords, Her own Example to all Virtues, the Candor of her Life, is a more powerful Motive than all Precepts, than the ſevereſt Laws: no hand of Fortune nor of Power can hurt her; her Heart is full of Honour, her Soul of Chaſtity; Majeſty, Mildneſs and Meekneſs are ſo married together, and ſo impaled in her, that where the one begetteth Admiration, the other Love; her Soul of that excellent Temper, ſo harmoniouſly compoſed, her Zeal in the ways of God unparallel'd; her Affections to her Lord ſo great, if ſhe offend him, it is no Sunſet in her Anger; in all her Actions and Affections ſo elective and judicious, and a Woman ſo conſtant for the Redemption of all her Sex from all Imputation, which Men (I know not how juſtly) ſometimes lay on them; a Princeſs, for the Sweetneſs of her Diſpoſition, and for Compaſſion, always relieving ſome oppreſſed Soul, or rewarding ſome deſerving Subject: were all ſuch Saints as ſhe, I think the *Roman* Church were not to be condemned: on my Conſcience ſhe troubleth the Ghoſtly Father with nothing, but that ſhe hath nothing to trouble him withal. And ſo when I have ſaid all in her Praiſe, I can never ſay enough of her Excellency; in the relation whereof an Orator cannot flatter, nor Poet lye: yet is there not *Doeg* among us, notwithſtanding all the Tergiverſations his Counſel hath uſed at the Bar? I can better prove, that he meant the King and Queen by that infamous *Nero*, &c. than he proves Players go to Hell: but Mr. *Prynn*, your Iniquity is full, it runs over, and Judgment is come; it is not Mr. Attorney that calls for Judgment againſt you, but it is all Mankind, they are the Parties grieved, and they call for Judgment.

(1.) Mr. *Prynn*, I do declare you to be a Schiſm-Maker in the Church, a Sedition-Sower in the Common-wealth, a Wolf in Sheep's Clothing; in a word, *omnium malorum nequiſſimus*. I ſhall fine him Ten Thouſand Pounds, which is more than he is worth, yet leſs than he deſerveth; I will not ſet him at liberty no more than a plagued Man or a mad Dog, who tho' he cannot bite, he will foam; he is ſo far from being a ſociable Soul, that he is not a rational Soul; he is fit to live in Dens with ſuch Beaſts of Prey, as Wolves and Tygers, like himſelf: Therefore I do condemn him to perpetual Impriſonment, as thoſe Monſters that are no longer fit to live among Men, nor to ſee Light. Now for Corporal Puniſhment, my Lords, whether I ſhould burn him in the Forehead, or ſlit him in the Noſe; for I find that it is confeſſed of all, that Doctor *Leighton*'s Offence was leſs than Mr. *Prynn*'s, then why ſhould Mr. *Prynn* have a leſs Puniſhment? He that was guilty of Murder was marked in a place where he might be ſeen, as *Cain* was. I ſhould be loth he ſhould eſcape with his Ears, for he may get a Perriwig, which he now ſo much inveighs againſt, and ſo hide them, or force his Conſcience to make uſe of his unlovely Love-Locks on both ſides: Therefore I would have him branded in the Forehead, ſlit in the Noſe, and his Ears cropt too. My Lords, I now come to this Ordure, I can give no better term to it, to burn it, as it is common in other Countries, or otherwiſe we ſhall bury Mr. *Prynn*, and ſuffer his Ghoſt to walk: I ſhall therefore concur to the burning of the Book; but let there be a Proclamation made, That whoſoever ſhall keep any of the Books in his hands, and not bring them to ſome publick Magiſtrate to be burnt in the fire, let them fall under the Sentence of this Court: for if they fell into wiſe Men's hands, or good Men's hands, there were no fear; but if among the common ſort, and into weak Men's hands, then Tenderneſs of Conſcience will work ſomething. Let this Sentence be recorded, and let it be ſent to the Library of *Sion*, (meaning a College in *London*) whither a Woman, by her Will, will allow Mr. *Prynn*'s Works to be ſent.

(2.) For Mr. *Buckner*, I believe that he had no Intention at all this Work ſhould come abroad; he is ſaid to be a conformable Man to the Church of *England:* I ſhall hardly cenſure him, he deſerveth Admonition.

(3.) For *Sparkes*, I concur in all things: The Feodary had his Office taken away from him by this Court; I ſee therefore no reaſon but that he may be barred from printing and ſelling of Books and kept wholly to binding of Books.

The * Sentence againſt Mr. *Prynn* was executed the ſeventh and tenth Days of *May* following.

* Ruſh Col. Vol. 2. p. 248.

XXXV. *The Trial of* JOHN *Lord* BALMERINO*, *in* Scotland, *for a Libel*; *the* 3*d of* December, 1634. 10 Car. I.

CURIA Juſticiariæ S. D. N. Regis tenta in Prætorio de Edinburgh tertio die menſis Decembris, 1634. *per nobilem & præpotentem Comitem, Willielmum Comitem Erroliæ, Dominum Hay, Magnum Conſtabularium Scotiæ, ac Juſticiarium Generalem ejuſdem, hac in parte ac in criminali proceſſu ſubſequent. contra Joannem Dominum de Balmerino, virtute Commiſſionis S. D. N. Regis, ſub Teſtimonio ſui Magni Sigilli ſpecialiter conſtitut, Curia legitime affirmat.*

Aſſeſſors to my Lord Juſtice General, Sir *Robert Spotſwood* of *Dunnypace*, Knight, Preſident of the College of Juſtice; Sir *John Hay* of *Barro* Knight, Clerk Regiſter; Sir *James Learmouth* of *Balcomy* Knight Baronet.

Intran. *John* Lord of *Balmerino*, delated of Airt and Part, (*i. e.* of his being Contriver and Partner) of the penning and ſetting down of a ſcandalous Libel, and divulging and diſperſing it amongſt his Majeſty's Lieges; at the leaſt of concealing and not revealing of Mr. *William Haig*, and not apprehending of him the ſaid principal Author of the ſaid infamous Libel, as is at length contained in his Dittay (*i. e.* Indictment) following.

Purſuer, Sir *Thomas Hope* of *Craighall* Knight, Advocate to our ſaid Lord, for his Highneſs's Intereſt.

Procurators in Defence, Mr. *Roger Mowat*, Mr. *Alexander Pearſon*, Mr. *Robert Macgill*, Mr. *John Niſbet*, Advocates.

My Lord *Kildryame*, Maſter of *Elphingſtoune*.
The Maſter of *Frazer*.
Sir *Thomas Ker* of *Cavers*.
Michael Elphingſtoune of *Quarrel*.
George Dundaſs Fiar of that Ilk, (*i. e.* of *Dundaſs.*)
Robert Drummond of *Meidhope*.

My Lord Advocate produced his Majeſty's Letter, commanding him to purſue the Pannel (*i. e.* the Perſon indicted) for the Crimes contained in his Dittay (*i. e.* Indictment) following; together with an Act of Seſſion, nominating the Aſſeſſors foreſaids to be Aſſeſſors to my Lord Juſtice-General: And therewith produced the ſaid Dittay or Indictment, with the Executions thereof, of the whilk the Tenour follows. And firſt the Tenour of his Majeſty's Letter, directed to his Majeſty's Advocate.

To our Right Truſty and Well-beloved Counſellor, Sir Thomas Hope *of* Craighall *Knight and Baronet, our Advocate for our Kingdom of* Scotland.

CHARLES Rex,

TRUSTY and Well-beloved Counſellor, we greet you well. After due Conſideration having reſolved to cauſe the Lord *Balmerino* be put to the Trial of ane Aſſyſe, (*i. e.* Jury) and to this purpoſe it being neceſſary that you inform yourſelf of ſuch Particulars, as concern your Charge in the legal Proſecution of that Buſineſs; it is our Pleaſure, that with all convenient diligence you inſiſt therein, by preparing of ane Indictment fit for that purpoſe, and that you carefully go on in every other thing, touching the Proſecution thereof, as you will anſwer to us upon your Truſt: And that by the Advice of the Chief Juſtice you prefix a Day for the ſame, for which theſe Preſents ſhall be your Warrant. Given at our Mannor of *Hampton-Court*, the 14th of *October*, 1634.

Follows the Act of Seſſion, nominating the ſaids Aſſeſſors, at *Edinburgh*, the ſecond Day of *December*, the Year of God 1634. the which Day the Lords of Council and Seſſion nominate, appoint, and elect Sir *Robert Spotſwood* of *Dunnypace* Knight, Preſident of the College of Juſtice; Sir *John Hay* of *Barro* Knight, Clerk of our Sovereign Lord's Regiſter Council and Rolls; and Sir *James Learmouth* of *Balcomy* Knight Baronet, Senator of the ſaid College of Juſtice; to be Aſſeſſors to *William* Earl of *Errol*, Great Conſtable of *Scotland*, and having Commiſſion from his Majeſty to be Juſtice-General in the criminal Purſuit intentit and depending before the ſaid Juſtice againſt *John* Lord of *Balmerino*.

Extractum de Libro Actorum per me Magiſtrum Alexandrum Hay, Scribam Conſilii ac Deputatum honorabilis Domini Joannis Hay de Barro Militis, Clerici Regiſtri ac Conſilii S. D. N. Regis, ſub meis Signo & Subſcriptione manualibus, ſic ſubſcribitur A. Hay.

Follows the Tenour of the Dittay:

CHARLES by the Grace of God King of *Great-Britain*, *France*, and *Ireland*, Defender of the Faith; to our Lovit (*i. e.* Beloved) *James Currie*, *Ormond* Purſevant, Meſſenger, our Sheriff in that Part conjunctly and ſeverally, ſpecially conſtitute, Greeting. Forſuameikle as it is complain'd and humbly meant to us by our Truſty and Well-beloved Counſellor Sir *Thomas Hope* of *Craighall* Knight Baronet, our Advocate for our Intereſt upon *John* Lord of *Balmerino*, That where albeit by the Common Law, as alſo by the Laws and Acts of Parliament of this Kingdom, and ſpecially by that Act and Statute of Parliament made by our umqhile (*i. e.* late) deareſt Father King *James* VI. of happy and bleſſed Memory, *Par.* 10. *chap.* 10. it is ſtatute and ordained, That all our Subjects continue themſelves in Quietneſs, and dutiful Obedience to Us and our Royal Authority, and that none of them preſume or take upon hand publickly to diſclaim, or privately to ſpeak or write any purpoſe of Reproach or Slander of our Perſon, Eſtate, or Government; or to deprave our Laws and Acts of Parliament, or miſconſtruct our Proceedings, whereby any Miſliking may be moved betwixt us and our Nobility and loving Subjects in time coming, under the Pain of Death; certifying them that does in the contrair, they ſhall be repute as ſeditious and wicked Inſtruments, Enemies to us and the Commonweal of this our Realm: And the ſaid Pain of Death ſhall be execute upon them with all Rigour, in example of others. Likeas by the 205th Act of the 14th Parliament of our ſaid umqhile deareſt Father, in the Month of *June*, 1594. the former Act of Parliament, with divers others, againſt Leaſing-makers, and Authors of Slanders and Calumnies, is ratified and approven, and ordained to be publiſhed of new again, and to be put to Execution in all time coming: with this Addition, That whoſoever hears the ſaid leaſing Calumnies, or ſcandalous Speeches, or Writs to be made, and apprehends not the Authors thereof, if it be in his power, or reveals not the ſame to Us, or to any of our Privy-Council, or to our Sheriff, Steward, or Baillie of our Sheriffdom, Stewartry, or Bailliary, Stewarts in Regality or Royalty, or to the Provoſt, or ane of the Baillies within our Burrows, by whom the ſamen may come to our knowledge, or to the knowledge of our Privy-Council; whereby the ſaids Leaſing-makers and Authors of ſcandalous Speeches, may be called, tryed, and puniſhed, according to the ſaid Acts: the Hearer and not Revealer, and not Apprehender, (if it lie in his power) and Concealer and not Revealer of the ſaids Leaſing-makers, and Authors of the ſaids ſcandalous Speeches and Writs, ſhall incur the like Pain and Puniſhment as the principal Offender, as in our ſaids Acts of Parliament at length is conteined. Notwithſtanding qhereof, it having come lately to our knowledge, in the Month of *March* laſt by-paſt, that there was a moſt ſcandalous, reproachful, odious and ſeditious Libel, found in the Hands of one Mr. *John Dunmure*, Notary in *Dundee*, and divulged and diſperſed in the Hands of ſeveral of our Subjects; whilk ſcandalous, odious, infamous, and ſeditious Libel, did not only ſeditiouſly, reproachfully, and outrageouſly tax our ſacred Perſon in our Behaviour at Parliament; but alſo contains many Points and Purpoſes of falſe Calumnies, publick Scandals and Reproaches againſt Us, our Eſtate and Government, depraving our Laws and Acts of Parliament, and miſconſtruing our juſt and glorious Proceedings in our firſt Parliament, holden by us in Perſon in the Month of *June* of before, as doth manifeſtly appear in the hail Tenour of the ſaids infamous Libel; and particularly in the particular Paſſages hereof after following: Inſuafar as albeit by the Law of God and Laws of all Nations, the Perſon of the ſupreme and ſovereign Prince is and ought to be ſacred and inviolable, and he ought to be reverenced, honoured, and feared, as God's Lieutenant on Earth; and that all Subjects are bound and tyed in Conſcience to content themſelves in humble Submiſſion to obey and reverence the Perſon, Laws, and Authority of their ſupreme Sovereign: yet the ſaid unhappy and infamous Libel, in the firſt entry thereof, begins with an outrageous upbraiding and taxing of our ſovereign Lord's Majeſty of a Point of Injuſtice or Indiſcretion in our Behaviour at Parliament, for putting of Notes (as the ſaids infamous Libel alledges) upon the Names of a number of our Subjects, who did vote contrair to the Acts of our Church-Government, paſt in Parliament. Whilk is ane fearful thing in ane Subject to pry into the Geſture of his Sovereign in his ſupreme Court: And upon a Geſture, without Speech, to infer a ground of Exprobation and Reproach to the ſovereign Prince. Next, the ſaid infamous Libel reproaches Us for refuſing to receive from ſome of our Subjects their Reaſons for diſ-aſſenting from the ſaid Acts, before their publick Hearing in Parliament: Whilk is a Point no ways compatible with the humble Obedience of a good, quiet, and peaceable Subject; but carries with it the Signal and Token of Diſcontentment, and rubs upon our ſacred Perſon and Proceedings Matter of Reproach and Scandal, tending, if it were poſſible, to diminiſh the glorious Opinion and Eſtimation of our Royal Perſon, Equity, and Juſtice, in the Hearts of our Subjects. Thirdly, the malicious Heart of the Penner, not content with the firſt Aſperſion laid upon us for putting Notes upon theſe who diſ-aſſented, does ingeminat the ſamen in ane moſt bitter Invective and viperous Style, in affirming that ſuch a thing was never of before cenſured by a Prince of ſo much Juſtice as our Sacred Majeſty: Whilk in effect is to reproach us of manifeſt Injuſtice, for doing of that, the like whereof was never done by a juſt Prince. And the Libeller, not content with theſe Reproaches, moſt villainouſly and deſpitefully belcht and vomited furth againſt our Sacred Perſon, proceeds to a moſt fearful and dangerous undermining of our Honour, Credit, and greateſt Happineſs, in affirming that there is now a general Fear of ſome Innovation intended in Eſſential Points of Religion: Albeit (bleſſed be God) it be certainly known to all our good Subjects, that We are, and in all our Actings have ſhowen Ourſelves to be a moſt devote and religious Prince, hating and abhorring in Heart and Affection all Papiſtical Superſtition and Idolatry. And the Libeller, (out of a deviliſh Humour) not content to reſtrain his Pen within the Limits of this our Kingdom of *Scotland*, as if it were too little for the compaſs of his curious and furious Brain, he enters to pry into our Eſtate of *England*, and aſſures that there is Reports of Allowance of reprinting of Books of Popery and Arminianiſm in *England*, and of the reſtraint of Anſwers made to them: And then returning to *Scotland*, moſt falſly affirms, that Arminianiſm is preached there without Cenſure. After that, he goes to the Eſtates of the Parliament, and affirms moſt falſly and calumniouſly, that divers Papiſts were admitted to Parliament, and upon the Articles, who by the Law of the Realm can be no Member of any Judicatory. Albeit it be conſtant and nottour, that none of theſe who were admitted to Parliament and upon the Articles, was profeſſed Papiſts, as will appear by the Roll of the Names of theſe who were upon the Articles. And farder, the unhappy Penner of that curſed Libel proceeding to ane higher Point of taxing and miſconſtructing of our Proceedings, he affirms that the Grievances allowed to be proponed in Convention in *Anno* 1625, were altogether ſlighted in this our firſt Parliament: Which is a manifeſt Lye and Untruth, there being nothing concerning the Publick moved at Parliament, which was not either determined by our Eſtates, or remitted to our Council. And thereafter it is as falſly affirm'd, that the Meetings of the Gentry, which were appointed for repreſenting the Grievances of the Country in the Matter of Coin and Increaſe of Theft, were interrupted in our Name: which is a manifeſt Lye and Calumny. Likeas thereafter it is moſt ſcandalouſly ſeditiouſly affirmed, that we denied Liberty to our Nobility to meet and conveen with the Lords of the Articles, againſt the Conſtitution of a free Parliament under ſuch a juſt and lawful Prince: albeit it be nottourly known, that our Nobility did enjoy all the Privileges of a free Eſtate, which pertained to them and their Predeceſſors. And ſicklike thereafter it is affirm'd ignorantly, fooliſhly, and falſly, That againſt the Cuſtom of this our Kingdom, the Biſhops did chuſe the Articles of the Nobility; albeit before the Parliament in *Anno* 1609, the Nobility did ever chuſe the Articles themſelves: which is notoriouſly falſe, and contrair to the fundamental Laws and Practices of all preceding Parliaments, whereby it is conſtitute, that ever the Clergy did chuſe the Articles of the Nobility. And thereafter he affirms, That the Biſhops did chuſe ſuch of the Nobility on the Articles, as either were Popiſhly affected, or had ſmall Knowledge of the Eſtate and Laws of this our Country: which is an impudent malicious Calumny and Falſhood; theſe who were choſen on the Articles (as will appear by their Names) being of the moſt antient of the Nobility, and moſt expert in the Laws and Cuſtoms of this our Kingdom. Thereafter the curſed and unhappy Libeller returns to his nipping and checking Style; and moſt preſumptuouſly challenges our Sacred Self upon our Speeches in Parliament, and upon our Proclamations made upon our Revocation; which was intended for Augmentation of our Patrimony, and for diſburdening of our Subjects of Taxation; and that yet nevertheleſs huge and great Taxations were impoſed, againſt the Counſel given by our umqhile deareſt Father of bleſſed Memory, in his *Baſilicon Doron,* and againſt the Practice of our deareſt Predeceſſor King *James* I. who remitted to his Subjects a great part of the Taxation granted for his Ranſom: which is a peart and miſchievous Exprobation to our Sacred Perſon, who out of the Love and tender Affection which We bear to this our antient native Kingdom and Country, vouchſafed that Grace and Favour to viſit it in our Royal Perſon, without ſparing of Coſt and Charges for our Journey, and other Neceſſaries belonging to our Coronation; which is well known far to exceed the Taxations voluntarily offered to Us by our Eſtates, in teſtimony of their humble and thankful Gratitude for ſo great a Bleſſing as the perſonal Preſence of Us their Sacred Lord and Sovereign, within this our native Soil and antient Kingdom. And as we did never enjoin nor urge any Taxation, ſo the ſame being voluntarily and humbly offer'd to us by our loving and faithful Subjects, as the Mite of their humble Affection, far within and beneath the Reſpect of ſo glorious a Benefit, yet we were pleas'd out of our Love to accept it graciouſly. And yet this ſo gracious Acceptance cannot paſs the Pen of this unhappy Libeller, but muſt be caſten up (*i. e.* reflected upon) with a falſe and deſpiteful Exprobation, as done againſt Promiſe, Proclamation, and the Practice of King *James* I. which is falſly and villanouſly affirm'd. And when the infamous Libeller has ſpent his unhappy Breath and Pen in reviling and malediċting the glorious Name of Us, his gracious Sovereign, in our Perſon and Proceedings, he thereafter challenges us for applying our former Taxations to a wrong uſe, in beſtowing the ſamen upon Parties and Perſons, whoſe Waiſtrie (*i. e.* Extravagance) and Wants, our Subjects are not oblig'd to ſupply. And with this beſides, by the way, he upbraids our Servants and Counſellors for Malverſation, in the guiding and imploying thereof: And is ſo peart and impudent in his deviliſh Style, that he ſpares not the Name of our ever-glorious deareſt Father King *James* of bleſſed Memory; but moſt falſly caſts up (*i. e.* mentions) a Promiſe alledg'd to be made by his Majeſty or his Commiſſioner, in the Parliament holden in *Anno* 1621, for diſcontinuing of the extraordinary Taxation in all time to come. And then in the end, as a venomous Waſp, he cloſes with an impudent Reproach towards us, in that which is moſt commendable in a Sovereign Prince, by taxing us in our Beneficence and Liberality to the Lords of our Seſſion, in providing honourable Maintenance to them, and in beſtowing Penſions upon our Officers; and leaves nothing within this our Kingdom, which is not drawn in within the Scourge of his deviliſh and malicious Pen and Tongue: So that it is not to be wonder'd and admir'd, that any Perſon, living under ſuch a gracious, pious, and juſt Prince, could degenerate into ſo monſtrous a Contempt of our Government, as to dare and preſume upon to think, let be (*i. e.* much leſs) to ſpeak and write ſuch deviliſh, reproachful, ſcandalous, and ſeditious Thoughts, which infeſt the very Air, and can have no other end but the breeding in the Hearts of our good and loving Subjects, a fearful Jealouſy and Diſlike, and in the end Contempt of our juſt Government. And albeit all our good Subjects be bound in Conſcience, as alſo by the Laws of this our Kingdom, to cruſh this Cockatrice in the Egg, and to abhor it as a peſtilentious Clout; yet the ſaid deviliſh Libel was found in the hands of the ſaid Mr. *John Dunmure,* Notary in *Dundee,* and was divulg'd and diſpers'd amongſt our Subjects about the foreſaid Month of *March* laſt paſt: which coming to our Notice and Knowledge, we then gave power for examining of the ſaid Mr. *John Dunmure* how the ſame came to his hands; who deponed, That he had the ſamen from the ſaid *John* Lord of *Balmerino.* Which *John* Lord *Balmerino* being alſo examin'd, he granted the ſamen to be of Verity, and therewith affirm'd, that he had the ſaid Libel from one Mr. *William Haig,* whom he thought alſo to be the Penner and Author thereof. Of the which ſcandalous Libel, the ſaid *John* Lord *Balmerino* himſelf was, and is, Author, Deviſer, Conſulter, Adviſer, Airt and Part (*i. e.* Contriver and Partner) in the penning, writing, and drawing up thereof; at the leaſt is guilty of the hearing thereof, and of the concealing and not revealing of the ſaid Mr. *William Haig,* whom he affirms to have been Author of the ſame; and alſo is moſt guilty of the not apprehending of the ſaid Mr. *William Haig,* it being in the ſaid *John* Lord *Balmerino* his power to have taken and apprehended the ſaid Mr. *William*; and, laſtly, is guilty and culpable of the divulging and diſperſing of the ſaid ſcandalous and ſeditious Libel amongſt our Subjects, in ſo far as the ſaid *John* Lord *Balmerino* knew of the penning of the ſaid ſcandalous Libel by the ſaid Mr. *William Haig,* and adviſed and gave his Opinion anent (*i. e.* about) the making of the ſamen; and in token thereof, interlin'd a part of the ſaid infamous Libel in divers Parts thereof with his own hand, which is yet extant to be ſeen by ocular Inſpection; and which interlining the ſaid *John* Lord *Balmerino* has confeſs'd to be his own Hand-writing. Likeas immediately after the forming of the ſaid moſt infamous Libel, the ſaid *John* Lord *Balmerino* receiv'd the ſame from the ſaid Mr. *William Haig,* and delivered it to the Earl of *Rothes,* of purpoſe to have the ſamen preſented to us, and caus'd Mr. *Robert Dalgleiſh* his Servant copy the ſaid infamous Libel; which Copy he deliver'd to the ſaid Mr. *John Dunmure,* in whoſe hands the ſamen was found, by occaſion whereof the ſaid infamous Libel was divulged and diſperſed amongſt our Subjects, and openly read and expoſed to their view; to the Prejudice and Derogation of our ſacred and glorious Name, by the infamous, ſcandalous, and ſeditious Paſſages and Articles contained therein. Likeas the ſaid Lord of *Balmerino* kept and detained the ſaid infamous Libel in his hand continually, from the time of the cloſing of the Parliament about the end of *June,* 1633. until the 9th of *June* 1634. laſt paſt, at which time he was challeng'd for the ſame, and did exhibit the ſaid infamous Libel, in preſence of the Lords appointed by us for his Examination. Likeas the ſaid *John* Lord *Balmerino* having conferred with the ſaid Mr. *John Dunmure,* after his firſt Examination, which was in *March* 1634, and avowing that which he had done concerning the delivering of the ſaid infamous Libel to the ſaid Mr. *John Dunmure,* and diſperſing thereof, deſired the ſaid Mr. *John Dunmure* to go and tell the Earl of *Traquair,* one of the Examinators, that better Men than the ſaid *John* Lord *Balmerino* himſelf would ſet their Faces to (*i. e.* juſtify) the ſaid Libel, at the leaſt knew of the ſamen. And albeit the ſaid *John* Lord *Balmerino* be a Nobleman of good Learning and Underſtanding, and ſo preſumed to have the knowledge of the Laws and Acts of Parliament of this our Kingdom, was bound in all Duty, after receiving of the ſaid infamous Libel from the ſaid Mr. *William Haig,* and reading thereof (which in the hail Strain and Tenour of the ſamen was of the nature of a ſcandalous and ſeditious Libel, prohibited by our Acts of Parliament) as he would have eſchewed the Danger of our Laws and Puniſhment therein contained, as Author thereof, to have revealed the ſame to us, or to ſome of our Privy Council: And alſo to have apprehended the ſaid Mr. *William Haig,* whom he affirms himſelf to have been the Author and Penner thereof: yet the ſaid Lord *Balmerino* did no ways apprehend the ſaid Mr. *William Haig,* nor yet reveal the ſaid ſcandalous Libel, it being in his power to have apprehended the ſaid Mr. *William Haig,* who was but a ſingle Perſon, and the ſaid Lord *Balmerino* being a Nobleman of Power and Credit: But the ſaid Lord, notwithſtanding thereof, did ſtill haunt and converſe with the ſaid Mr. *William Haig,* and did keep, detain, and retain the ſaid infamous Libel in his hands. Likeas the ſaid Lord *Balmerino,* after he was cited to compear before the Lords appointed for his Examination, which was upon the 7th of *June* laſt; he compearing before the ſaids Lords Examinators upon the ſaid 7th of *June,* being Saturday, he craved early of the ſaids Lords to have his Examination anent (*i. e.* about) his Knowledge of the Authors of the ſaid infamous Libel, to be continued (*i. e.* delay'd) till Monday next thereafter, which was the 9th of *June*; which being granted to him by the ſaids Lords, and he thereupon being demitted from them upon the ſaid 7th of *June,* being Saturday about twelve a Clock, he immediately thereafter met with the ſaid Mr. *William Haig,* and ſhewed to him the Warrant of his Citation. At which time the ſaid Lord of *Balmerino* having the ſaid Mr. *William Haig* in his own Houſe, and ſo in his power, did not apprehend him, whom he knew and affirmed to be the Author of the ſaid ſcandalous Libel: but by his ſhewing to him of his ſaid Warrant of Citation, which bore the ſaid Lord *Balmerino* to have been conveened before the ſaids Lords Examinators, to make anſwer anent the ſaid ſeditious Libel, found in the hands of the ſaid Mr. *John Dunmure,* he thereby gave occaſion to the ſaid Mr. *William Haig* to eſcape out of the Country, and become fugitive. Likeas the ſaid Mr. *William Haig,* immediately after the ſight of the ſaid Warrant ſhewn to him upon the ſaid 7th of *June,* being Saturday, eſcaped and fled out of the Country. and became fugitive, and remains out of the Country continually ſince ſyne, (*i. e.* ſince that time.) Likeas the ſaid *John* Lord *Balmerino* being incarcerat (*i. e.* impriſon'd) within the Caſtle of *Edinburgh,* after his firſt and ſecond Examination, as Author, Airt, Part, or Acceſſory of the ſaid infamous Libel, receiv'd ſeveral Letters from the ſaid Mr. *William Haig* furth (*i. e.* out) of the *Low Countries,* and other Places to which he eſcaped; which Letters the ſaid *John* Lord *Balmerino* kept by him, without acquainting the ſaids Lords Examinators, until the time he was challeng'd. In the which Letters and in other Letters ſent by the ſaid Mr. *William,* and intercepted by the Lords, it is affirmed and avowed by the ſaid Mr. *William,* that he had the Approbation and Allowance of the ſaid *John* Lord *Balmerino* to the making and penning thereof. By the which particular Deeds, Circumſtances, and other vehement Preſumptions particularly above expreſſed, it is clearly evinced, that the ſaid *John* Lord *Balmerino* was Author, Deviſer, Outſetter (*i. e.* Publiſher) Adviſer, Airt and Part of the penning and forming of the ſaid infamous Libel, at the leaſt Concealer and not Revealer thereof; and is alſo culpable of the not apprehending of the ſaid Mr. *William Haig,* whom he affirm'd to be the Author of the ſaid infamous Libel: As alſo of the diſperſing and divulging of the ſaid infamous Libel, in manner particularly above-declared; incurring thereby the Pain and Puniſhment of Death, ſpecified and contained in our ſaids Acts of Parliament, which ought and ſhould be inflicted upon him with all Rigour, in example to others to attempt the like. Our Will is herefore, and we charge you ſtraitly and command, that incontinent thir (theſe) our Letters ſeen, ye paſs, and in our Name and Authority, lawfully ſummon, warn, and charge the ſaid *John* Lord *Balmerino* preſently in Ward, within the Caſtle of *Edinburgh,* to compear before our Juſtice and his Deputs within the Tolbooth of *Edinburgh,* the 3d Day of *December* next to come, in the hour of Cauſe (*i. e.* when the Court is met) and there to underly our Laws for the Crimes abovewritten: To the effect that upon his Trial and Conviction, as culpable thereof, Juſtice may be miniſtred upon him conform to the Laws of the Realm; and that ye ſummon an Aſſize, (Jury) not exceeding the number of 45 Perſons, whoſe Names ye ſhall receive in a Roll ſubſcribed by our Advocate, ilk (each) Perſon under the pain of 200 Marks, according to Juſtice. Given under our Signet at *Edinburgh* the 11th Day of *November,* and of our Reign the 10th Year, 1634. *Ex deliberatione Dominorum Conſilii, ſic ſubſcribitur John Bannatine.*

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* Burnet's *Hiſtory of his own Times*, Vol. I. p. 22, &c. Ruſh. Col. Vol. II. p. 183.

Follows the Execution of the ſaid Summons.

UPON the 14th Day of *November* 1634, I *James Currie*, *Ormond* Purſevant and one of the Sheriffs in that Part within conſtitute, paſt at Command of thir (theſe our Sovereign Lord's Letters within written, and by virtue thereof charged the within written *John* Lord *Balmerino* perſonally apprehended in the Caſtle of *Edinburgh*, and delivered to him a juſt and authentic Copy of theſe his Majeſty's ſaids Letters, to compear before his Majeſty's Juſtice and his Deputs in the Tolbooth of *Edinburgh* the 3d Day of *December* next to come, in the Hour of Cauſe, and there to underlye his Majeſty's Laws for the Crimes within written; to the effect, that upon his Trial and Conviction as culpable thereof, Juſtice may be adminiſtered upon him, conform to the Laws of this Realm: And this I did after the form and tenor of our Sovereign Lord's Letters in all points, before theſe Witneſſes, Mr. *Archibald Geddes*, Conſtable of the ſaid Caſtle of *Edinburgh*, and *John Malcome*, Herald. And for the further Verification of this my Execution ſubſcribed with my Hand, my Stamp is affixed. *Sic ſub*, *Ja. Currie*, *Ormond* Purſevant.

Thereafter my Lord Advocat produced with the Summons above-written, the Copy of the infamous Libel which was found in the Hands of Mr. *John Dunmure*, Notary in *Dundee*; bearing in the end thereof, that the ſaid Mr. *John* being examined thereupon, he, by his Depoſition has granted it to be the ſamen Libel which was in his Hands: Of the which Copy, the Tenour follows.

To the King's moſt excellent Majeſty, the humble Supplication of a great number of the Nobility and others Commiſſioners in the late Parliament.

Humbly ſheweth,

THAT the Notes which your Majeſty put upon the Names of a number of your Supplicants in voting about theſe Acts, which did imply a ſecret Power to innovate the Order and Government long continued in the Reformed Church of *Scotland*; and your Majeſty's refuſing to receive from ſome of your Supplicants their Reaſons for diſſenting from the ſaids Acts before your Majeſty, and in your Hearing in Parliament, to breed a Fear of our becoming obnoxious unto your Majeſty's Diſlike, if your Highneſs ſhould ſtill remain unacquainted with the Reaſons of our Opinions deliver'd concerning the ſaids Acts: Seeing your Supplicants are confident, that your Majeſty vouchſafing to take notice of the ſaids Reaſons, would be pleaſed to acknowledge that no want of Affection to your Majeſty's Service, but a careful endeavour to conſerve unto your Majeſty the hearty Affections of a great many of your good Subjects that are tender in theſe Points of Novation, covertly thruſt upon this Church, did induce our Wiſhes and Voices to appear in Oppoſition to the ſaids Acts; and that a predominant Deſire in us to have all your Royal Deſigns here to proſper without Interruption, did abſolutely Command us to forbear any Reaſons that could have been propounded againſt many of the Concluſions in the late Parliament.

We do therefore humbly beſeech your Majeſty graciouſly to ponder the Conſiderations after-written, ſo ſhall we be encouraged (as in Duty bound) to continue our humble Prayers for your Majeſty's long and happy Reign.

Firſt, we humbly beſeech your Majeſty to conſider, That tho' theſe Acts, as they are conceived, and may concern your Majeſty's Prerogatives, and the Liberties of the Church, had never been moved or concluded (as they are) your Majeſty would have ſuffer'd no Prejudice in your Benefit, Honour, nor Power: That your Supplicants are much more free from all Suſpicion of private Ends in diſ-aſſenting, than the Contrivers of the ſaids Acts, in offering them to the hazard of Contradiction, or ſolliciting an Aſſent thereto: That in Deliberation about Matters of Importance, either in Councils or Parliaments, Opinions do often differ; and they that have been of contrary Mind to a Reſolution carry'd by the Plurality of Votes, have never hitherto been cenſured by a Prince of ſo much Juſtice and Goodneſs as your Majeſty.

We do alſo moſt humbly beſeech your Majeſty to believe, that all your Supplicants do, in moſt ſubmiſſive Manner, acknowledge your Royal Prerogative in as ample Manner as is contained in the Article 1606, made thereanent (thereabout;) and withall do conſider, that the long Experience and incomparable Knowledge your Royal Father had, in Matters of Government, as well in Church as in Common-wealth, is the very Cauſe expreſſed in the Act 1609, for giving Power to his Majeſty to preſcribe Apparel to Kirk-men, with their own Conſent. And ſince in all the Time of his Life and Government, for the ſpace of fixteen Years thereafter, he did forbear to make any change upon their former Habits; we are bold to preſume, that in his great Wiſdom he thought fit, that the Apparel uſed in time of Divine Service ever ſince the Reformation of Religion till his Death, and to this Day, ſhould be continued, as decent in the Church, and moſt agreeable to the Minds of his good Subjects in this Nation. We do alſo beſeech your Majeſty to conſider, That under the Act entitled, *A Ratification of the Liberty of the Church*, the Acts ratifying the Aſſembly of *Perth* in Parliament 1621, were declared to be comprehended: That moſt part of us being then in Parliament, did oppoſe the ſame; that Experience hath ſhewed how much theſe Articles of *Perth* have troubled the Peace of this Church, and occaſioned innumerable Evils and Diſtractions in it: That there is now a general Fear of ſome Novations intended in eſſential Points of Religion; and that this Apprehenſion is much increaſed by the Reports of Allowance given in *England* for printing Books of Popery and Arminianiſm, and the Reſtraint of Anſwers made to them; and by preaching Arminianiſm in this Country, without Cenſure; by the Admiſſion made of divers Papiſts to the Parliament and upon the Articles, who by the Laws of this Realm can be no Members of any Judicatory in it: That the Minds of moſt of your good People being in this Perplexity, your Supplicants have great reaſon to ſuſpect a Snare in the ſubtile Junction of the Act 1609, concerning Apparel, with that of 1606, anent your Royal Prerogative; which by a ſophiſtical Artifice ſhould oblige us either to vote undutifully in the ſacred Point of Prerogative, or unconſcionably in Church Novations, [*A.] which bleſſed King *James* would never have confounded, as appeared evidently in the Parliament 1617, honoured with his gracious Preſence; where his Majeſty, by the Biſhops Inſtigation, tried, urged, and paſt in Articles a Ratification of his Royal Prerogative enacted in the Parliament 1606, with Addition of an Article authorizing all things that thereafter ſhould be determined in Eccleſiaſtick Affairs by his Sacred Majeſty, with the Conſent of a competent number of the Clergy, to have the Strength and Power of Law. When this Act came to be heard in open Parliament, his Majeſty gave order to read only the Rubrick of the Act; which being done, he was then pleaſed in his fatherly Compaſſion over the tender Affections of his loyal Subjects (well known to his Majeſty, as fluctuating betwixt Love and Fear) publickly from his own Mouth to declare his princely Love and Pleaſure, for Reaſons known to himſelf, to have that Act ſuppreſs'd, tho' paſs'd in the Articles: Becauſe his Royal Prerogative being of itſelf inviolable, was already eſtabliſhed ſufficiently; and in the depth of his Wiſdom he would abſolutely prefer the Peace of the Church to the Appetite of Churchmen. And ſince we are fully perſuaded of your Majeſty's unfeigned Affection to the true Religion, and ſo do preſume that none of theſe things lawfully rejected at the Reformation [* B—C——] thereof in this Kingdom, ſhould be introduced again without Conſent of our Clergy lawfully aſſembled; and fearing that a forcible and colourable intruding thereof, would diminiſh in the Hearts of many of your loyal Subjects that Affection which is founded on their Opinion of your Majeſty's Goodneſs and Wiſdom.

* *The Pannel's interlinings you will find in the other Copy hereof.*

* *Interlined* [B of Religion C] *in the other Copy by the Pannel.*

We do therefore diſ-aſſent from the foreſaids Acts, as importing a Servitude upon this Church unpractiſed before, and giving ground for Introduction of other new indefinite Devices.

We do further offer unto your Majeſty's Conſideration, that albeit our juſt and heavy Grievances allow'd of in the late Convention of Eſtates 1625, and 1630, to have been repreſented to your Majeſty, in hopes of Refreſhment to the Country's Sufferings, have been altogether ſlighted in this your firſt Parliament; albeit your Majeſty denying your Nobility their Freedom by Authority to meet with the Lords of the Articles, may ſeem againſt the conſtitution of a free Parliament (under ſuch a juſt and lawful Prince, and contrair to the Cuſtom of your Anceſtors) which before the Parliament held in *Anno* 1609, did always elect and chuſe the Lords of the Articles from among them of their own Rank and Quality; there having been no Parliamentary Biſhops from the Reformation of Religion till then, nor were they ſuch as now do cull and ſingle out ſuch Noblemen either Popiſhly affected in Religion, or of little Experience in our Laws, as having had their Breeding abroad, and ſo none of the ableſt to be upon our Articles, but fitteſt only for the Clergy's myſtical Ends. Whereas the former Practice was ſuch, as ſeemeth moſt agreeable to Reaſon, and what every Eſtate ſhould do, that ſo they may communicate their Minds with the reſt of their Body; ſince none but Men very preſumptuous of their own Knowledge, or ſenſeleſs in themſelves, will adventure to truſt their firſt Conceptions in Matters of ſo great Importance as are the Concluſions of Parliament. Albeit the humble Supplications of the Miniſtry to your Majeſty and Eſtates of Parliament, delivered to the Clerk Regiſter, (and that your Majeſty was in all due Humility petition'd by the Miniſters of this Kingdom, both Conformiſts, and Non-conformiſts, to give them a Hearing) have been ſuppreſs'd: Albeit the Meeting of the Gentry, and happily of the Burrows too, in a joint Purpoſe to have repreſented to your Majeſty our unſpeakable Sufferings by the Abuſes of the Coin (the Maſtery of the Mint being a thing merely Regal) and Increaſe of Theft and Oppreſſion of divers Parties, and other things worthy your Majeſty's Conſideration, were in your Majeſty's Name interrupted: And finally, albeit your Majeſty was graciouſly pleaſed by your former and later Speeches in the Parliament-Houſe to declare (anſwerable to your ſeveral Proclamations, bearing that the Courſe taken by your Revocation for ſettling the Patrimony of your Imperial Crown, was, that ye ſhould not be burdenſome to your People) that your Majeſty had no purpoſe at this time to lay any burden upon this Nation, according to the wiſe Counſel of King *James* in his *Baſilicon Doron*, treating of the right Uſe of Subſidies: Albeit that the preſent Condition of your Subjects is worſe, and the Patrimony of the Crown greater, than when King *James* I. remitted to his People a great part of his Taxations, granted even for that good King's Ranſom; yet have we all as one Man conſented to all your Majeſty's Demands, and more, even to have Taxations multiply'd, without repreſenting how the former have been, or theſe may fall to be, beſtowed upon divers Parties, whoſe Waſtes and Wants your good Subjects are not obliged to ſupply; without objecting that ſome of them have been granted extraordinarily for Supplies of the *Palatinate*, which being now by the Mercy of God in a better Condition, they might have pleaded in reaſon to be thenceforth diſcontinued; without foretelling that ſome of the Subſidies are like to be means of more Proceſſes (or Suits) betwixt your Majeſty's Subjects and the Treaſurer, than matter of Profit to your Treaſury; without putting your Majeſty's in remembrance of the Impertinencies you have ſuffer'd by Men's Ambition after the publick Places of Judicatories, which none have heretofore refuſed by reaſon of the ſmall Fees due to them; without contradicting the Exceptions of your Officers Penſions, or alledging their Fees to be as ſufficient for maintaining the Dignity of their Places now, as they were before your Majeſty's Father ſucceeded to the Crown of *England*. And all this have we done implicitly, only to teſtify our ingenuous Affection to your Majeſty, and our obſequious Reſolutions to give you full Content in every thing that makes not a Breach in our Religion and Laws, or occaſioneth not Offence to the weaker ſort in the way of God's Worſhip here eſtabliſhed; and albeit we were not acquainted with any of theſe Statutes before the publick voting of 'em in Parliament. Therefore we are confident that your Majeſty finding ſuch a Harmony in our Affections to your Service in preſerving our Religion and Liberties, will be unwilling, upon any Suggeſtion of ſuch as are (or hope to be) Sharers of our voluntary Contributions, to introduce upon the Doctrine or Diſcipline of this your Mother-Church, any thing not compatible with your Majeſty's Honour, your good Peoples Conſciences, or that hath been rejected by Acts and public Practice of this Reformed Church.

Follows the ſaid Mr. *John Dunmure*'s Depoſition, written upon the end of the ſaid Copy.

Apud Edinburgh xiv *Martii* 1634. conveened *St. Andrews*, *Traquair*, Biſhops of *Edinburgh*, *Roſs*, Clerk of Regiſter.

I Mr. *John Dunmure*, Notary in *Dundee*, being examined in preſence of the Lords of his Majeſty's Secret Council above-written, depone and confeſs, That this Supplication within written, is all written with my own Hand, and is that which I delivered to Mr. *Peter Hay* of *Naughtoune* about *Lambas* laſt. And farder I depone and confeſs, That this is the juſt and true Copy of the Paper delivered to me by *John* Lord *Balmerino*, ſhortly after the end of the late Parliament, within *Edinburgh*; and that then my Lord of *Balmerino* (I being with him) ſaid to me, *Becauſe ye have given me many Papers, I will let you ſee this, and have your Judgment of it*; *but let it be* tibi ſoli, *as ye reſpect my Credit*. And that I keeped it four or five days, and copied it, and then delivered the ſame back again. I further depone, That the Paper contained the Supplication within written, in the ſame Words and Senſe: and it is not by my Lord *Balmerino*'s Hand, but by ſome other Hand.

Sic ſubſcribitur, *Joan. Dunmure.*

Written on the back of the ſaid Copy, *For the Kirk and Country in the Parliament*, 1633.

My Lord *Balmerino* produces two Warrands of the Lords of Seſſion, by their Lordſhips Deliverance of the ſeveral Dates under-written, ordaining the Procurators therein contained, to compear and defend my Lord in the criminal Proceſs above; and the ſaid Lords by their Deliverance, of the Date the 19th of *November* 1634. The Lords having conſidered the Deſire of the Supplication, *&c.* and appointed the Perſons therein condeſcended on by my Lord to be his Advocats for his Defence, *viz.* Sir *Lewis Stewart*, Mr. *Thomas Nicolſon*, *Walter Hay*, and Mr. *John Niſbet*. And by the Deliverance on the end of another Supplication given in by my Lord to the ſaid Lords, craving (upon ſome of the former Advocats refuſal) more Advocats, they by their Deliverance thereon, of the Date the 25th of *November* 1634, appoint and ordain Mr. *Roger Mowat*, Mr. *Alexander Pearſon*, and Mr. *Robert Macgill*, Advocats; and ordains, *&c.* Upon the production and reading of the which Warrands, the ſaid Lord *Balmerino* took Inſtruments.

Thereafter it was objected by my Lord's Advocats, that my Lord Regiſter could not ſit as ane Aſſeſſor to my Lord Juſtice-General in this Proceſs, becauſe not only my Lord Regiſter has been one of the Judges of the particular Committee appointed for Trial and Examination of the Pannel, before whom he has oftentimes compeared and been examined; but alſo my Lord Regiſter has given partial Counſel, and has been upon the Counſel of the adviſing and libelling of the Dittay now produced and read, and has aſſiſted in the ſame at ſeveral occaſions: and ſo by giving Information and Advice in that kind, has behaved himſelf as Party in effect, and therefore cannot be Judge nor Aſſeſſor to the Juſtice-General. And after Anſwers and Replies, the Lords by their Interloquitor repelled the firſt part of the Alleadgance, bearing that my Lord Regiſter cannot be Aſſeſſor, becauſe he was a Member upon the Committee: And as to the ſecond Member thereof, declares that they will have my Lord Regiſter to make his Judicial Declaration, and that judicially thereupon, in preſence of the Pannel, before any Anſwer be given thereto; which accordingly my Lord Regiſter does.

The Pannel, in reſpect of my Lord Regiſter's Declaration Judicial, is content that my Lord Regiſter remain Aſſeſſor to the Juſtice-General: whereupon my Lord Advocat aſked Inſtruments.

Thereafter the Pannel produced a Supplication to the Lords of Privy Council, with Deliverance thereupon, craving the Depoſitions made by the Earl of *Rothes*, Mr. *John Dunmure*, and Mr. *Robert Dalgleiſh*, from the Clerk, to be ſeen by his Procurators; and their Lordſhips, by their Deliverance thereon, dated at *Edinburgh*, 28 *November* 1634. the Lords remit to the Juſtice the anſwering of the Deſire of this Supplication. *Sic ſubſcribitur St. Andrews.*

Accordingly my Lord Advocat, at the Juſtice Ordinance, (*i. e.* by order of Court) gave up to Mr. *Roger Mowat*, one of the Pannels Procurators, two Depoſitions of Mr. *John Dunmure*, one of Mr. *Robert Dalgleiſh*, one of the Earl of *Rothes*, one of Mr. *Peter Hay*; together with four miſſive Letters, ſent by Mr. *William Haig* to the Pannel, to be reproduced Friday next, at which time they were accordingly reproduced.

Thereafter upon the ſaid *Decemb.* 5. the Dittay and infamous Libel was read, as ſpecified in the Dittay.

It is firſt alledged by Mr. *Robert Macgill*, as the Pannel's Procurator, under Proteſtation for himſelf and the reſt of his Brethren, with an Apology that he nor they allows not the leaſt ſort of inordinate Speech againſt his Majeſty, but only to free the Innocent, ~~as~~ they who are commanded by the Lords of Seſſion, and take Inſtruments upon the firſt Article of the Acts imprinted in our Sovereign's firſt Parliament, anent the ſurveying of the Laws; does alledge the Dittay cannot be inferred againſt the Pannel, upon the firſt Act ſpecially and at length ſet down (therein:) becauſe it has not been the Mind of the Legiſlator there to inflict the Pain of Death upon ſuch Reproaches as are contained in the Dittay, and alledged to be contained in the Supplication or Petition ſtyled by the Dittay *Calumnious*. For the main cauſe of making that 20th Act, Parl. 10. holden in *December* 1585. (our dread Sovereign, and his Honour, being ever propoſed) was not only to ratify the Grace given and extended to theſe Noblemen, who a little before became in at *Stirling*, as may be ſeen by the particular Acts of Parliament unprinted anent the reſtoring of thoſe Noblemen, with their followers; but much more to ſtrengthen the Nobility (as reaſon was, and the time required) againſt Captain *James Stewart*, who then had fled, and was the cauſe of their former Baniſhment; and feared by them, that he might wrong them again, if he had regained his Majeſty's Ear, becauſe that they came in ſuch a manner. And to ſtrengthen alſo the Nobility againſt any other, who ſhould take in hand the like, as to come in betwixt the Tree and the Rind; I mean, betwixt his moſt Sacred Majeſty and his Favour *&* *ſuos Comitates*, for his Nobles are ſo called, and has their Names as they who ſhould be ever accompanying his moſt Sacred Perſon. For the Deeds done *contra aliquem & Comitatu vindicantur ut Crimen Læſæ Majeſtatis, Leg. quiſquis, Cod. ad Legem Juliam Majeſtatis*, by the time.

The Strain of the Act carries alſo this, to wit, Reproaches of his Majeſty's Eſtate or Government, or depraving his Laws and Acts of Parliament, or miſconſtruing his Proceedings: but anſwering to the Queſtion, *In quem finem* ſhould theſe Reproaches have been written, whereby any Miſliking may be moved betwixt his Majeſty and his Nobility and loving Subjects? Where the word *his Nobility* is very emphatick, and the two laſt words expounds the ſamen, being exegetick of the former by a gracious Praiſe, teſtifying by the word *loving* the forgetting of the former Slip, which had been more by miſreport than in verity. Compare alſo this Act with that which was made during the ſaid Captain *James* his Grandeur, a little more than a Year preceding, *Parl.* 8. *cap.* 134. *Jac.* 6. in the which, as it were *conſulto Conſilio*, the Noblemen are omitted *ibi*; to the Reproach of his Majeſty's Council and Proceedings, to their great Prejudice who were then put away by his (*i. e.* Captain *James*'s) Counſel, and holden away by his Detractions, until they peartly enough (yet encouraged by their own Innocency) came in at *Stirling*: and incontinent did procure that tenth Parliament to be holden, in which was made the ſaid tenth Act, no more Days intervening betwixt their Return and its Sitting but the Days of Citation. And is yet more clear by the words, *Deprave his Laws and Acts of Parliament*: meaning *Act* 25 *Jac.* 2. *Parl.* 6. againſt the Apprehenders of his Majeſty's Perſon, as the Act bears; the literal Senſe whereof might infer a Dittay againſt the Committers, if it were not to deprave the Laws, if the Mind of the Legiſlator were not looked unto. So that this tenth Act cannot well be underſtood as convenient to infer the Dittay, eſpecially ſeeing he was not the Author or Penner of that alledged infamous Libel; but Mr. *William Haig*, who has clearly taken it upon him by his own Letter, as was conſtant (*i. e.* evident) to the Lords of the Committee, and is acknowledged in the Dittay by theſe words, *At the leaſt guilty of the Hearing*: wherein the Pannel's part was not much worſe than others who heard it, and yet not revealed the ſame. As alſo altho' that Remonſtrance by way of Supplication be now alledged to be ſcandalous, but then to be preferred to his Sacred Majeſty, and was offered to be given; *ergo* the Dittay cannot be inferred in this Act.

And as to the ſecond Act libelled expreſly, *Jac.* 6. *Parl.* 14. *cap.* * 209. containing divers Acts anent Leaſing-makers; we repeat the forſaid Proteſtation, and ſay, If all ſorts of inordinat Speeches (whilk let it be ſpoken with all Humility and dutiful Reverence, as not allowing any, but to ſhew the Pannel's Innocency) againſt his Majeſty our dread Sovereign and his Government, even thoſe which by Interpretation or Miſconſtruction may be inferred upon a Man's Speech, (*i. e.* contrary to) his Mind; and not only the Author of the ſame, but alſo the Hearers, not Revealers, and not Apprehenders, are underſtood to be puniſhed with Death in our Law, in the Addition of that Act, and ſo are all to be comprehended therein: then we ſhould make our Law to commit an Abſurdity, which no municipal Law ought to do; but rather an Interpretation ſhould be taken out of the Common Law and Reaſon. *Gailus ad Longum, lib.* 2. *Obſervatione trigeſima tertia, quo modo Statutorum Interpretatio facienda ſit.* The Abſurdity is, that there ſhould be Equality of Pains, and ſo Equality of Crimes, committed in Speeches (in moſt ſubmiſſive manner be it ſaid) againſt his moſt Sacred Majeſty, not only by the Authors, but alſo by the Concealers and not Apprehenders, whatever the ſcandalous Speech be. But he that hears and not reveals a higher Speech, ſhall be puniſhed as he who hears Treaſon. The Connection is cleared by this, *Quod Delictum majus a parvo dignoſcitur ex Pœna qualificata. Tractatu incerti Authoris de Læſæ Majeſtatis Crimine, quæſt.* 11. *num.* 5. *Et paſſim in Jure, ut comprobat Baldus in Capitulo primo, prima Nota ad Titulum* 38. *lib.* 2. *Feudorum de Vaſſallo qui contra Conſtitutionem Lotharii.* And the Opinion of the Civilians is exploded long ſince, *ut ſontica dignum horribili flagello.* For there are ſundry ſorts of inordinat Speeches and Contumelies againſt the Prince and the Eſtate; as theſe that are ſpoken againſt his Majeſty's Perſon and Blood outrageouſly, or in a Conſpiracy againſt the Country, underſtood in ſome manner by *Clarus, paragrapho Læſæ Majeſtatis, num.* 1. *in fine.* And here it is only that the Lawyers find the Hearers and not Revealers, and not Apprehenders, to be puniſhed by Death: *Clarus, paragrapho ultimo, quæſt.* 87. *num.* 2. *Punctus in fine.* And yet he requires *ut adſit Tractatus.* Such were the Speeches uttered betwixt *Catiline* and his Complices; *Et non nuda Verba ab Authoris Animo detorta.* In which caſe it is well ſaid, *Quod Crimen Majeſtatis a Judicibus non in occaſionem, ob Principalis Majeſtatis Venerationem habendum ſit, Leg.* 7. §. 2. *F. ad Legem Juliam Majeſtatis.* The ſecond ſort are where *directis verbis Animo injuriandi viciis improperat*, to a Prince for lack of Virtue. Where the Lawyers remit the Author, *Lege unica Cod. ſi quis Imperatori maledixerit*; (it not being yet condeſcended fully amongſt them, what is meaned by the word *Remittendum*.) But anent the Hearers, nor Revealers, and not Apprehenders, not a mum, but on the contrary, *quod nulla Pœna teneantur*. As *in omni delicto niſi Caſibus dictis*, *Clarus* ſays, *num.* 3. *Verſiculo quod tamen, dicta quæſtione* 87. Far leſs can the Hearers, not Revealers, and not Apprehenders of the Authors of the third ſort of Speeches be concluded under Death with the firſt; and that third ſort (in all Humility I ſay) where Vice and Lack of Virtue is not *improperat directis verbis*, (*tantum abeſt ut ſit animus injuriandi.*) But as a Flower or flouriſhing Weed may afford both Honey and Venom, ſo Speeches written to ane good End, by ane miſconſtructing Illation may be interpret in ane evil Senſe; as the Informer of the Dittay makes the alledged Supplication to be a contumelious and infamous Libel: which cannot be done (in all Humility and Submiſſion I ſay it) to infer the Dittay againſt this Pannel, upon the ſaid Addition in the Act 205, as Hearer, not Revealer, not Apprehender, without a manifeſt Abſurdity againſt the Law and Reaſon, as ſaid is. For even in Speech, *quamvis dixit Dominum ſuum eſſe Dominum Hominum & Beſtiarum, quod non debet Author puniri*; concluded remiſſive. *Cæſar Orcellus in advocatione ad deciſionem Mathei de afflictis* 265. *num.* 68, 69. *& idem advocatione in deciſionem* 307. *num.* 15. *Quod verba ſunt civiliter capienda & ad bonum moderanda*; *itidem in dicto*

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* *In ſome Editions 'tis* 205.

Tractatu incerti Authoris dicitur diſtinguendum inter verba narrativa & ſimpliciter enunciata quaſi prætereundo, ac alià verba diſpoſitiva ſeu poſitiones affirmatas, ut ex illis non liceat Argumentum ſumere, ex his vero liceat. Quæſt. 6. *num.* 13. *ibi nunc videndum.* But of the Particulars, and even of this General, more falls to be ſaid hereafter.

Only againſt Delators of Speeches, called *Frumentarii & Otacuſtai*, let it be remembred to the Juſtice, that ſome good Emperor *(quos infinitis illuſtriſſimus & ſacratiſſimus Imperator noſter præcurrit paraſangis)* uſed theſe Folks to know what the People thought of them, and how to amend any Slips, if any were. *Capitolinus in Antonino Philoſopho* ſays, *Erat famæ ſuæ curioſiſſimus, requirens ut verum quiſque de ſe diceret, emendans quæ bene reprehenſa viderentur, & paſſus ſe impune cavillando perſtringi, dicitur civiliter ſe egiſſe.* *Xiphilin* reports the ſame of *Titus*; *Imo Tiberius deprecatus eſt apud Senatum nimis præcipites verborum pœnas.* Yea, to this tendit King *James* V. of worthy Memory, his diſguiſing himſelf for ſuch another Inquiry; as alſo *Goran*, one of our dread Sovereign's moſt worthy Progenitors, is commended for the ſame by *Hector Boyes*. In reſpect qhereof, the Dittay is not relevantly inferred upon the two Acts of Parliament libelled.

It is farder alledged by Mr. *Roger Mowat* for the Pannel, That the ſaids two Acts of Parliament mentioned in the Dittay, and qhereupon the ſamen is founded, can be no ground in Law for this criminal Purſuit; in reſpect the ſaids two Acts, and many others of that kind, but eſpecially the laſt of the ſaids two Acts, and the Additions ſubjoined thereto, have never been in obſervance, Cuſtom, or Practice heretofore, againſt any alledged Contraveeners thereof: and therefore cannot now receive a beginning againſt this Pannel, being a Nobleman, known by the hail Courſe of his bygone Life to have been ane ſtrict obſequious Keeper and Obſerver of his Sacred Majeſty and his moſt noble Progenitors their Acts and Statutes; in ſuch ſort, that it can never be verified that ever the Pannel has been ſo much as once denounced Rebel, and put to his Majeſty's Horn, (Outlawry) for any Action or Cauſe, Civil or Criminal, whatſomever; and ſo is not preſumed to have contravened any of the ſaid two Acts, albeit the ſame had been in cuſtom and practice, as they have not. And that the ſaid two Acts, ſpecially the ſaid Addition of the laſt Act, are fallen in deſuetude, and never heretofore practiſed, is clear and evident, becauſe the contrary cannot be ſhowen: And it has been received as a moſt laudable and warrantable Cuſtom amongſt wiſe and judicious Politiques, that Laws in deſuetude and out of cuſtom are not to be introduced at an inſtant, without ſome new Intimation thereof, when neceſſity is found for re-eſtabliſhing of the ſaid Laws; but ſpecially ſuch Laws and Acts, as carry with them the Pain of Death, Forfaulture, or ſuch-like: Likeas ſome ſtrict Acts of Parliament of this kind, containing the like or more grievous Pains, being ratified by ſubſequent and poſterior Acts, the ſaid poſterior Acts have ordained Intimation to be made to the Leidges of the ſaid former Acts, Pains, and Severity thereof, before the ſaid Pains ſhould be inflicted upon the Contraveener. And it is clear, that not only the ſaid two Acts mentioned in the Dittay are not of cuſtom, and have not been practiſed, but many more, containing ſome leſs and ſome greater Pains, in the moſt part of all preceding Parliaments: For which I will only adduce ſome few, to verify and inſtance this part of my Alleadgance, (Allegation.) And firſt I alledge the 105th Act of the 7th Parliament of King *James* V. of worthy Memory, intituled, *Pains of them committing Fraud in Alienations*; which bears, about the end of the ſaid Act, That the Perſon, Seller or Giver ſhall be declared infamous, and ſhall be puniſhed in his Perſon and Goods at the King's Will. And it cannot be denyed, but that this Act hath been many times contravened, by many of good ſort, in points of double Alienations, and yet was never heretofore practiſed againſt the ſaids Contraveeners.

There is another Act of Queen *Mary*'s, of happy Memory, *Par.* 5. *cap.* 16. made againſt them that ſwears abominable Oaths; whilk Act is ratified by King *James* VI. of ever-bleſſed Memory, *Par.* 7. *cap.* 103. both the ſaid Acts bearing in expreſs words, That for the fourth Fault, Prelats, Earls, or Lords contraveening, ſhall be baniſhed or put in Ward Year and Day, at the Will of the Prince. Theſe Acts have been contraveened, yet no Purſuit for the ſaids Pains has followed thereupon.

The 2d Act of the 16th Parliament of moſt bleſſed King *James*, bears, That the ſlaying of Salmond, Smolts, Kipper, or Black-Fiſh, ſhall be a Crime of Theft in time coming, and to be puniſhed as Theft in every Quality. Which Act, if it ſhall receive force, and be put in practice upon a landed Man, (as queſtionleſs it may) it ſhall import him, or any landed Man Contraveener thereof, no leſs than Tinſel (Loſs) and Forfaultry of Life and Goods; becauſe by the 50th Act of the ſaid 11th Parliament, landed Men convict of Theft or Receipt thereof, commits Treaſon: *ergo* landed Men, Slayers of Salmond, Smolts, *&c.* in forbidden time, commits Theft, and conſequently Treaſon; which (as the Act bears) is declared to be Tinſel and Forfaulture of Life, Lands, and Goods.

Theſe and many other of this kind, every where to be found amongſt the ſaid Acts, does evince, that with reaſon the ſaid Acts libelled in the Dittay, and others of that kind, which never have been practiſed of before, cannot be received againſt the Leidges (Subjects) without a preceding Intimation; whereby good and loyal Subjects may be *in mala fide*, in caſe they be found after the ſaid Intimation to have contraveened. And ſo the ſaid two Acts, ſpecially the ſaid Addition mention'd in the laſt Act, cannot be found nor ſuſtained as warrantable Grounds in Law againſt this Pannel; being a Nobleman, not only known to be ane obſerver and not Breaker of his Sacred Majeſty his noble Progenitors their Laws, Acts, and Statutes, to draw upon him for alledged hearing, concealing, and not revealing and not apprehending of the Authors of the alledged infamous Supplication, the Pains contained in the ſaid Acts and in the ſaid Dittay, which is the Tinſel and Loſs of his Life.

It is alledged farther by Mr. *Alexander Pearſon* for the Pannel, in fortification of the Exception propounded, *Quod Leges per deſuetudinem tacito conſenſu cenſentur abrogatæ, expreſſa Lege* 32. § 1. *F. de. Ita ut ſecundum ipſas non firmatas judicare non liceat, firmantur, autem Leges cum moribus utentium approbantur, Canone in iſtis tertio diſtinctione 4ta. Et ſi hoc obtinet in Civilibus, quanto magis in Criminalibus, ubi tanto cautius agendum eſt, quanto magis periculum vertitur? Unde illud Papæ qui decrevit ut generaliter Clerici in Quinquageſim. a carnibus & deliciis jejunent, quia moribus utentium approbatum non eſt, aliter agentes tranſgreſſionis reos, non arguit Canone ſupra citato.* And therefore the Acts of Parliament whereupon the Propoſitions of the Dittay are founded, none of them, at the leaſt the laſt thereof, never having been in obſervance at no time ſince the making thereof, now by the ſpace of forty Years, even ſince the laſt Act; the Acts foreſaid, ſpecially the laſt, cannot ſuſtain the Dittay, nor infer the Pains therein mentioned.

It's anſwered by my Lord Advocat, That all the Alledgances ought to be repelled, in reſpect of the Acts of Parliament, whereupon the Dittay is founded; and that there runs no Preſcription againſt Laws, and ſpecially againſt Laws prohibitive of Crimes, which are alſo prohibit and puniſhed by the Common Law; of the nature whereof are theſe two Acts whereupon the Dittay is founded. And the Alledgance, *Quod Leges tacito conſenſu abrogantur*, is only *per contrariam Conſuetudinem idque in contradicto Judicio*, which is that which the Law calls *tacito Conſenſu*; and all the Arguments adduced in the contrary, are *ab Incommodo quod non ſolvit.* And the Indulgence of the Prince in the overſeeing the Puniſhment of Crimes in bygone time, cannot be adduced to warrant a Crime when it is purſued; and ſpecially when the Crime is of the Nature of Rebellion againſt the Prince, in his Perſon, Eſtate and Government. And albeit this be a clear and ſound Anſwer, and that no more is neceſſar; yet it is conſtant and nottourly known, that theſe Laws has been put in Execution this 34 Years bygone; as namely, againſt *Francis Tennant*, in the Year of God 1600. and againſt Mr. *Thomas Roſſe in Anno* 1618. and lately againſt Mr. *George Nicol* his infamous Libel.

It is duplyed (ſaid again) for the Pannel by Mr. *Alexander Pearſon*, That where it is alledged by my Lord Advocat, that Deſuetude cannot be obtruded againſt Acts of Parliament, which has Warrant from the Common Law; it is anſwered, that the Acts anent Crimes by Deſuetude rather loſes their Vigour than Acts of Civil Buſineſs, becauſe in Acts Criminal there is greater Hazard, as Loſs of Men's Honour and Life. As to any Precedent in Civil Law giving Warrant to the Addition of the laſt Act of Parliament, it cannot be alledged, *Quia non eſt Lex ſtatuens pœnam mortis, contra* Hearers, Concealers, and not Revealers, which is the Addition of the Act. And where it is alledged by my Lord Advocat, that Deſuetude of Laws is only *per contrariam Conſuetudinem in Judicio Contradicto*; it is anſwered, That Deſuetude of Laws is clearly expounded otherwiſe by the Citations above-rehearſed: ſo that *Leges quæ nunquam in uſum forenſium productæ ſunt & quæ moribus utentium approbantur*, are become in Deſuetude, *licet non ſit Conſuetudo in foro contradicto in contrarium.*

It is further duplyed by Mr. *Robert Macgill:* Not to dive any further into the Acts of Parliament, but reſpecting the Diſtinction already ſaid, I alledge, that the Addition of the Act 205, cannot be thought to be *in viridi obſervantia* in this our Caſe; becauſe if ſo ought to be, it ſhould much more have been practiſed againſt the Havers, Hearers, Readers and Seers of any uſing Mr. *George Buchanan*'s Books: But this hath never been uſed yet, Act 134, Parliament 8th, albeit there has been many. But ſo it is, that this has not been uſed in its own Caſe; *ergo* it ought not to be begun to be put in uſe againſt this Pannel, who let be his other Virtues, has been ever a Patron of dutiful Obedience to his and our moſt gracious and ſacred Sovereign. The Connection is clear, becauſe that Book, as ſundry reports it who has read it out of the Country, *ipſum regiminis Cardinem nititur convellere, & impingit in Regiam Prerogativam.* Further, if all ſort of Speeches (let me ſay it in all due Reverence) againſt his Majeſty and Government, come under the Acts ratified here, with the Addition againſt Havers, Hearers, Revealers, and not Apprehenders, and were *in viridi obſervantia*, who ſhould not be brought before this Judicatory, and under the compaſs of the ſaid Act? for as we live all in one Family, every Man in his own, and talk thereof, ſo live we alſo in a Commonwealth, whereof to talk ſometimes bitterly (which is not to be allowed) tho' fooliſh: And ſo the moſt part thinks that they have their own Intereſt, and will force as it were the Wiſer, nill they will they, to hear them. And anent that which my Lord Advocat ſays, *quod non valeat Argumentum ab incommodo*, it ought to be repelled in reſpect of the Place alledged out of *Gailus, Libro ſecundo, Obſervatione* 33. where he concludes, that the Argument is good againſt the Municipal Law to make it to be ruled according to the Civil Law, and to common Reaſon. And farther, that our own Municipal Laws ought to receive Limitation according to Reaſon. I repeat the foreſaid 25 *Act Jac.* 2. Item by the ſaid *Act* 134. *Par.* 8. *Jac.* 6. it is made capital to meddle in his Highneſs's Affairs and Eſtate, either preſent, bygone, or to come; ſaying further, That none of his Subjects of whatſoever Function, Degree, or Quality, preſume in time coming to meddle as ſaid is, without any Exception: then ſhall a Nobleman, who is born as it were by our Laws to meddle in ſuch Affairs as concern the Commonwealth and Country, not have ſo much Liberty as to petition his Majeſty moſt humbly in Matters of Government, for the Weal of all, as may ſeem to him, while his Reaſonings be diſcuſſed, no not in Parliament; yea, even *extra Parliamentum* his ſacred Majeſty was petitioned after his Majeſty's Revocation, howſoever it was conceived, and in whatſoever Terms: So that Puniſhment of Speeches anent Government, and the Laws, muſt receive their right Senſe. Wherefore 'till they be ſurveyed (which has been moſt royally begun long ſince by his moſt ſacred Majeſty, and now enacted in his firſt Parliament) the Rigour of the ſaid Addition ought not to be practiſed upon this Pannel; *Pars enim præcipua Legis eſt voluntas, & verborum dicitur Prærogativa, Lege non dubium. Codice de Legibus.* And *Menochius paſſim de arbitrariis Judiciis*, gives exception from Municipal Laws, according to Equity and Reaſon.

It is farther duplyed by Mr. *Roger Mowat*, to that part of my Lord Advocat's Anſwer anent the Inſtances and Practices alledged for proving of the Cuſtom and Conſuetude of the ſaid two Acts of Parliament, to wit, *Francis Tennant*, Mr. *Thomas Roſs*, and Mr. *George Nicols*; That the ſaid Practices or Inſtances cannot be reſpected, becauſe they are not produced: and if they were produced (as they are not) it ſhould be clearly ſhowen, that they met not in (did not ſuit) this Caſe, either be-

becauſe they are not founded upon the ſaid Acts of Parliament, and ſpecially upon the ſaid Addition contained in the ſaid laſt Act, or elſe becauſe the Crimes are not alike: for the firſt Crime of *Tennant's* was ane Cokiland (Libel) bearing and proporting expreſs poſitive Scandals and Reproaches, whereof he was condemned to have been the Actor and Author. And ſo whether he was purſued and convict upon the Acts or upon the Common Law, his Dittay was moſt relevant. As for Mr. *Thomas Roſs*, his Crime was alſo a moſt abominable Speech written by himſelf againſt the hail Nation *directis verbis*, qhereof he confeſſed himſelf (being upon Pannel) to be the Penner, Former, Deviſer, and Divulger; and Copies of his moſt infamous Libel affixed upon publick Places with his own hand: and ſo cannot be obtruded as a Practick or Precedent in this Caſe. As for Mr. *George Nicol* his Crime, it needs not to be anſwered, becauſe he was not pannelled nor convict; and ſo his Proceſs intented againſt him cannot be adduced as ane Practick to rule the like Caſes thereafter: and the Pain inflicted upon him was by Warrand of Council, and ſo none of the ſaids Practicks can be reſpected. In reſpect qhereof, the Argument founded upon the Deſuetude of the ſaid two Acts, and the Danger that may follow hereafter upon other Acts of that kind, *&c.* which have not heretofore been practiſed, ſtands relevant. And it's craved, that the Dangers which may enſue to good Subjects upon the Practice of the Acts before alledged, may be adverted unto, and the dangerous Sequels prevented.

Secundo, It is alledged for the Pannel by Mr. *Alexander Pearſon*, under Proteſtation forſaid, That the Writing whereupon the Subſumption of the Dittay is foundit, is not an infamous Libel *quoad accuſatum*, neither in the Pannel's part in the Particulars libelled againſt him ſeditious and calumnious; neither can he be preſumed to have had any ſuch Intention. Firſt, not ane infamous Libel *quoad accuſatum*, but an humble Supplication of ſome Lords and Commiſſioners of the late Parliament, offered to his Majeſty himſelf; whereunto the Supplicants were induced in love and tendering of his Majeſty's Honour, and in fear of their Offence to his Majeſty by their voting anent ſome Acts of the late Parliament. For removing whereof, and for ſatisfaction to his Majeſty, they did humbly beſeech his Majeſty to be graciouſly pleaſed to ponder their Reaſons for diſ-aſſenting from the ſaids Acts; and to conſider the Supplicants hearty Obſequiouſneſs to his Majeſty in other matters of the ſaid Parliament, wherein they did forbear to repreſent any thing to the contrary thereof, for teſtification of their ingenuous Affection to his Majeſty. This doing of the Supplicants is no Crime, *ſed de natura boni*; and far from any culpable Commiſſion, in meddling with things not belonging to them. And it is hard, that any Supplicants deprecating humbly his Majeſty's Offence, ſhould by ſo doing incur his Majeſty's Offence, and the Crime of Capital Puniſhment: ſpecially the Supplicants having no private Reſpects, but for the Publick, wherein they had Intereſt and ſpecial Charge; and for Conſervation of themſelves in his Majeſty's good Favour, the Loſs whereof, or the Fear of Loſs, ſhould be moſt grievous to any loyal Subjects; *Cujus Reipublicæ tantus ubique favor ut proclamant Leges quod Reipublicæ venerandæ cauſa ſecundum bonos mores ſit, etiamſi ad Contumeliam alicujus privati pertinet, quia tamen non ex mente Magiſtratus facit ut injuriam faciat, ſed ad vindictam Majeſtatis Publicæ reſpiciat, actione injuriarum non tenetur. Leg.* 13. *F. de Injuriis & famoſis Libellis.*

Eſt ergo quoad accuſatum Libellus ſupplex, & ſi Libellus ſupplex poſtulat Juri contraria, hujuſmodi poſtulata ab omnibus Judicibus refutari præcipiunt Leges & Supplicantem iterum ſuper eadem cauſa non audiendum. Leg. 3, 5, & 7. *Codice de precibus Imperatori offerendis. Sed non ideo ſupplicans reus eſt ſceleris, quia Libellus continet refutanda; nec Libellus ſupplex ideo famoſus, cum hæc fuit* ετερόγενεχ.

Non Libellus famoſus quoad accuſatum, quia non ad infamiam, ſed favoris conciliationem, ut ſupra: Item non clanculum & ſecreto, ſed profeſſo & reapſe domino Regi oblatus. Atque ideo nullo modo quoad accuſatum detractatcrius aut calumnioſus, cum detractio ſit ſeminatio mali occulte, & calumnia ſit adverſus abſentem; neutram autem committitur cum is cujus intereſt proponat querelam coram eo cujus parte ſunt de ea cognoſcere; de eo cujus intereſt Reipublicæ ejuſque ſalutis cauſa duntaxat.

Non Libellus famoſus quoad accuſatum, quia non conſtat directis aſſertionibus in quibus venit verum aut falſum, quod omnino requirit Libellus famoſus. Leg. unica, Codice de famoſis Libellis. Sed poſtulatis in quibus conſiderandum venit bonum, juſtum, & qui verum & falſum non agnoſcunt cum non fuit enunciatio.

Farder, the Pannel cannot be preſumed to have had any other Intention than the Strain and Tenour of it, as a Supplication does imply, and which is moſt beſeeming thereto; to wit, to the Voice of ane humble Supplicant. *Ea ſententia accipienda eſt ſemper, quæ rei gerendæ aptior eſt, & in ambiguis orationibus maxime ſententia ſpectanda eſt ejus, qui eas protulit. De Regulis Juris.* And it is always diſagreeing to a humble Supplicant to tax or calumniate, and therefore it cannot be ſo expounded, but ſhould be interpreted the beſt way the words may admit; *Quia de Jure in dubiis & obſcuris ,quod minimum & benignius eſt ſequimur. Leg.* 9. *F. ibidem.*

Item, The Writing aforeſaid, as in form of Supplication, was uſed alſo as a Supplication, and ſo delivered by the Pannel to the Earl of *Rothes*, to be preſented to his Majeſty, as affirmed by the Dittay itſelf, and indeed offered to his Majeſty: which, howſoever his Majeſty did not accept of then, and take the ſamen to his Conſideration; yet the Supplicants did think that the very Preſentation thereof did ſeem to aſſure the Nature of the Writing to be a Supplication: and ſcarcely even could the wiſeſt conceive ſo of the Pannel's having the Writing, as it is now interpret, againſt his Majeſty; but think that his Majeſty had paſt all Offence thereof, as the Law ſpeaks of Action of Injury, whereof the preſent Accuſation is a kind. *Leg.* 2. §. 1. *F. de Injuria, Verba Legis injuriarum, actio ex bono & æquo eſt & diſſimulatione abolitur, ſi quis enim injuriam dereliquerit, hoc eſt ſtatim paſſus ad animum ſuum non revocaverit, poſtea ex pœnitentia remiſſam injuriam non potuit recolere.* By the which it appears, that the Pannel had no ſuch Mind or Intention, as the Dittay would rub (fix) upon him in all the Progreſs of the Matter libelled againſt him. And I ſuppoſe that none will think, that by the Preſentation of the Supplication at the firſt to his Majeſty by the Supplicants, that they then by ſo doing were culpable of a Capital Crime, if the ſame had been immediately thereafter deſtroyed, and never more ſeen nor heard. And if they then were not culpable, ſhall any ſupervenient Act make them culpable, or more culpable? *minimè nunquam enim creſcit ex poſt facto præteriti delicti æſtimatio, Leg.* 130. § 1. *de Regulis Jur. Multo minus ex poſt facto oritur novum delictum, quod ab initio non fuit quoad accuſatum, aut ubi offenſa ſi qua fuit diſſimulatione abolita ſit.*

It is eiked (added) by Mr. *Robert Macgill*, If it had been leiſome (lawful) to this Pannel, as a born Counſellor, in that great Council and Parliament, and other Noblemen, to propound to his moſt Sacred Majeſty the things contained in that Supplication alledged to be ſcandalous; which are not Affirmations, but as it may ſeem, Grievances, Remonſtrances, and Expedients: then it was alſo leiſome to the Pannel, and others, to repreſent even out of Parliament to his moſt Sacred Majeſty, our dread Sovereign, what they could have propounded then, but did abſtain (therefrom) for the Reverence they carried to his Majeſty: ſpecially when they did it in moſt ſubmiſſive manner, as the hail Strain thereof bears, and out of a moſt loyal Affection. *Et prius eſt verum, ergo & poſterius.* The Verity of the Minor is plainly embraced by *Bodin, qui eſt acerrimus Regiæ Majeſtatis propugnator, Cap.* 1. *Lib.* 3. *ubi de Senatu & quod Senatori de Republica loquendum ſit, præſertim de omnibus ferè capitibus in Supplicatione hac contentis.* As to the Connection, it depends firſt on the Duty of a good Counſellor here, to whom as God has given to be endowed with Reaſon, ſo our moſt ſacred Sovereign and his Progenitors have given to be a wiſe Man and Counſellor even from his Birth. That he may learn to exerciſe his Reaſon from his Birth, for the Benefit of the Commonweal; which is the firſt Place of Honour, as *Cicero* ſays, and is that which we call Nobility; ſhall he not have as it were a Magazine of Reaſons, as may ſeem to him good, and even communicate them with others, for trying of the ſame? ſpecially at this time of ſurveying of the Laws, that according to the Time, and other Circumſtances, he may furniſh to his Majeſty his beſt Counſel in every thing that he thinks may concern the Weal of the Country wherein he lives, as by Duty even from his Birth he is bound: like to the Labourer, to whom in a rainy Day, *quæ mox Cœlo properanda ſereno maturare datur.*

Next, it depends upon the good Mind to the Commonweal, qhereof his moſt Sacred Majeſty is the Head; *ut non teneatur injuriarum qui quicquam Reipub. cauſa faciat.* Neither is that thought to be an Injury, *Lege Injuriarum* 13. § 1. *Lege quod Reip. F. de Injuriis juncti Leg. neminem* 9 *Cod. ex quibus cauſis irrogetur infamia, & Lege ex varia quarta de Delatoribus, Lib.* 2. *Cod.*

Thirdly, it does depend upon the Conception of the Words, which is by way of moſt humble Supplication. *Et verba propter adjunctam mutant naturam ſuam, Carvetta ad deciſiones: afflicti neque tam refert qualia ſunt quæ intra noſmet compoſuimus quam quomodo efferantur. Ac Quintilianus, Lib.* 2. *Et ut in aliis rebus ita in ſermone, forma dat eſſentiam ſermoni*; for even good Words may be uſed in an evil ſenſe, *ut, Heus bone vir!* But this is worthy of all Praiſe: *Et ſi non dederis Cæſar, permitte rogari, offendunt nunquam thura preceſque Deum*, Kings are Gods on Earth; and albeit by *Bodin extrema Provocatio* be counted *inter Jura Majeſtatis*, that from a King himſelf there is no Appellation (Appeal;) yet he commends the ſort of Appellation *a Philippo ad Philippum*, and alleges it to be the opinion of *Baldus, ad Legem primam & ultimam Cod. de Relationibus, & Leg.* 1. § 1. *F. de Appellationibus, viz.* to his Majeſty.

For ſeeing the alledged ſcandalous Petition was offer'd to his moſt Sacred Majeſty to be read, but not received nor read, nor after due Conſideration condemned by his Majeſty; it was not thought ſo dangerous (let me ſpeak it with Reverence) as to come under the compaſs of the Acts of Parliament, and ſo as it ought not to have been divulged: I mean, in that quiet manner, as it might not be imparted to Mr. *John Dunmure, ſub Sigillo Taciturnitatis*, and not to have been copied. And farder, the Pannel ought to be excuſed and aſſoilzed (abſolved) from the Dittay, *ſi delictum dici debeat, quod cum loquimur in delictis in quibus dolus eſt de ſubſtantia delicti, tum credulitas & ſive juſta ſive injuſta ſit cauſa, excuſet, nam videtur ceſſare animus delinquendi. Clarus § final. Quæſt.* 60. *num.* 22. *Et in delictis voluntas non finis attenditur. Gailus Lib.* [illegible]. *Obſer.* 99. *num.* 6. *At hic nullus exitus niſi bonus, idem Obſervatione undecima, quod in delictis principium non finis attenditur, num.* 18. *Ubi de homicidio perpetratur & conſilium convitia tenditur. Lege ſinon, quinta Cod. de injuriis, & cauſatur hæc actio ex affectu inferentis, Pharma. Quæſt.* 105. *Inſpect.* 3. *num.* 3. *ex Lege illud tertia,* § 2. *Leg. non ſolum* 2. *in princip. ſi quis ſervum* 26. *de injuriis ubi Pharmacius, Quod lata culpa his dolo æquiparetur & locutis multa de præſumptione doli in utramque partem, & de juramento purgationis ſubdit. Num.* 118. *dicta Inſpectione quod verba debent impropriari ad fugiendum delictum & malum animum, præſertim cum in publico dicta ſunt.* Which we ſay, when it was not concealed, but offered to be given to his moſt Sacred Majeſty; neither is it preſumed that any Man has a mind to defame his Neighbour. *Pharm. dicta Inſpect.* 2. *num.* 418, *et ſequent.* And were he not to be thought more than mad, who would draw up, inſtead of a Supplication, a Libel full of Detractions againſt his Sacred Sovereign Lord, or who would keep the ſame beſide him, let be to offer to give it to his dread Sovereign? And in the Crime of Leſe Majeſty, *Dolus malus eſt de ſubſtantia criminis*; it being ever ſaid in the *Digeſtis*, *Cujus opera dolo malo quid factum ſit in Rempublicam.* What ſhall it not be *de ſubſtantia delicti*, in this alledged Crime of detracting, not ſo evil as is alledged in the Dittay? But as the ſame agrees with a remonſtrative Supplication (let me ſay it with Reverence) wrong gloſſed, as it may concern the Pannel, (where he had ſo many probable Cauſes inducing him thereto) *Quæ qualitates & circumſtantiæ conjecturæ, cum nulla delinquendi Conſuetudine probatæ relevant contra dolum præſumptum etiam propter probibitionem. Carerius fol.* 104, 105. *viz.* That theſe things might have been propounded in Parliament; That he was a Counſellor of Eſtate; That other Noblemen thought then alſe (as) well of it as he; That it was for the Weal (at leaſt ſo apprehended by them) of the Country, in this time of ſurveying the Laws; That it was offered to be given to his Majeſty, and that under the form of a moſt humble Supplication; That other hard Supplications concerning the Eſtate had been received graciouſly by his Majeſty; That it was not then taken notice of, nor upon Conſideration condemned. And it might have been, that if any here had perchance lighted on it, they would have done worſe with it than the Pannel. For, as *Quintilian*

ſays

Conſilium & Ratio quædam acti, petita & plura perpendens, ac comparens latentibus rebus & dubiis adhibenda. Now no Right nor Virtue in itſelf can be ſeen but *quaſi facies*, as *Plato* ſays; yea, Verity, Equity, and Utility, are lain hid in the Draw-well of *Democritus: Et ut quiſque altiſſima mente eſt, ita ex altiſſimo Democriti puteo quaſi ſubmerſas Veritatem, Æquitatem, & Utilitatem, nititur haurire.* Yet ſo is the Reaſon of Man obfuſcat (darken'd) ſince his Fall, that he cannot penetrat to that Deep, for the Darkneſs; which by Diſceptation of contrary Reaſons, like two Flint-Stones ſtricken upon other, ſome Sparkles of Light flee out, for letting ſee to draw forth theſe Virtues. Wherein conſider alſo the Pannel's Carriage and his Life by-paſt; and if any thing tending to Sedition was ever heard of him, or even what effect has followed. *Qualitas enim facti ex perſona facientis præſumitur, Gloſſa finali Canone non omnis.* 5. *Queſt.* 5. *& dicta Lege ſeptima* § 1. *F. Ad Legem Julii Majeſtatis. Ubi ait Modeſtinus, nam & Perſona ſpectanda eſt, an facere potuerit, an ante quid fecerit, & an cogitaverit juſta, & jam cauſa excuſat a ſeditione quæ jam erupit. Boerius Tractatu de ſeditioſis præmiſſo* 4. *num.* 2. *Ubi utitur exemplo Möiſis & Iſraelitarum ad Aquas Miriba.* And ſhall the Pannel, who had ſo many Reaſons for him, be thought puniſhable as one ſeditious in that mean Matter of divulging as ſaid is, of a Remonſtrative Supplication? whereof but by Illation and Miſconſtructing *(ſalva pace dixerum)* it is gathered, far from the Pannel's Mind, that Sedition might have been moved. No, no, that Man is only ſtyled ſeditious, who, by direct Speeches, draws the People in Factions, and going madly before one of them, cries out the Word *(Vivat) ſcilicet hæc aut illa factio, Borrius dicto Tractatu Præmiſſo* 2. *num.* 2. *Et Carerius Fol.* 10, 31. *Pag.* 2. *num.* 3. *in fin. ubi etiam dicunt, Quod in iis quoque qui jam ſeditionem excitarunt puniendis requiritur, & ſtudioſe rumorem & tumultum conciliarent vociferatione.* Which things, ſeeing they are ſo far from the Nature of the Pannel, and from his Doings, his Intention and Mind ought to be juſtified, and conſequently he ought to be aſſoilzed from the Dittay produced.

The 6th of December 1634.

It is alledged by Mr. *John Niſbet* for the Pannel, That the Dittay is no ways relevant, becauſe nothing is libelled to infer a ſeditious and finiſtrous Intention of the Pannel, in contriving, concealing, or imparting of the Piece challeng'd; neither is it libelled, that the Pannel knowing the alledged Libel to be ſeditious and infamous, concealed or divulged the ſame: but to the contrair, it is libelled, That the Pannel, immediately after the receipt thereof, delivered it to my Lord *Rothes* to be preſented to his Majeſty, which clears the Candour of his Intention, and the Opinion he had of the Nature of the Piece, and of the uſe he thought might be made of it to propitiat his Majeſty, and not to traduce his ſacred Perſon or Government to his Subjects. And therefore, albeit he had concealed it, and divulged it, he cannot be obnoxious in the Pains of the Acts of Parliament, which are only againſt ſeditious Contrivers of ſlanderous Writings, and malicious Concealers of Writings, nottourly and to their Knowledge ſeditious, expreſly compiled by Incentives and Firebrands of Sedition, and expoſed to the view of the Subjects for that effect. For the Words of the Acts of Parliament (*To the Reproach of his Majeſty's Perſon, Eſtate and Government, ſteering up Sedition, tending to ſteer up the Hearts of the Subjects to Hatred)* implieth Intention. And the Civil and Canon Law requireth *dolum generale in omni actione injuriarium tanquam ſubſtantiale requiſitum. Gailus Lib.* 2. *Obſervatione* 99. And expreſly both in the compiling and divulging of ſeditious and infamous Libels, *Leg. Lex Cornelia* §. 1. *F. de Injuriis, Cum dolus non adeſt, niſi dolo malo quis fecerit,* (*viz.*) *Librum ad infamiam alicujus pertinentem ſcripſerit, compoſuerit, vel ediderit. Leg. illud* §. *ſane eodem titulo, Impubes & furioſus non poſſunt facere injuriam, quia neuter eſt doli capax; nam hi ſolent pati Injuriam, non facere: cum enim injuria ex effectu facientis non conſiſtit, conſequens erit dicere, hos ſive pulſant, ſive convitium dicunt injuriam feceſſe non videri. Leg.* 34. *F. de Obligationibus & Actionibus, Injuria ex effectu ſit, Inſtitutionibus de Injurius,* §. 1. *Leg.* 5. §. *ultima, F. ad Legem Aquiliam; Ubi dicit Julianus, Actionem injuriarum non competere, quia non faciendæ injuriæ cauſam fecerit, ſed monendæ, & Injuriæ non factum queritur, ſed cauſa faciendæ expreſſa. Leg.* 39. *de Furtis decreti ſecunda parte, Cauſa* 5. *Queſt.* 1. *Canone* 4. *Verba ſunt (ſi vim Chartarum quæ famoſæ ſunt) ſcilicet doloſe manifeſtaverit, ſi ad ſe quaſi authorem hujuſmodi delicti capitali ſententia ſubjugandum. Turre-Cremata & alii Doctores in verbo doloſe. Baldus conſil.* 230. *in fin. Lib.* 3. *conſil.* 443. *in fin. Lib.* 5. *Dolum in injuria requirit, ſine quo illata dici non poteſt. Idem concil.* 277. *Num.* 2. *Volumine* 5. *Reſpondet totam culpam quæ alicui dolo æqui paratur non ſufficere continet. Cravetta, concil.* 419. *num.* 1. *idem concilio, num.* 36. *Ait agens actione injuriariam debet allegari dolum & omnia jura clamitant, injuriam non fieri ſine animo injuriandi. Leg. ſi non convitii, Codice de injuriis, verba ſunt, ſi non convitii concilio probare potes, te aliquid injurioſum dixiſſe, fides veri a calumnia defenderit. Leg.* 5. §. 1. *F. de Furtis; Maleficia voluntas & propoſitum delinquentis diſtinguit. Leg.* 14. *F. ad Legem Corneliam de Sicariis; in maleficiis voluntas ſpectatur non exitus. Leg. unica Codicis, ſi quis imperatori maledixerit, ubi petulans & improbum mendacium, quo imperialia nomina laceſſuntur, non ſtatim injuria cenſetur, & eo nomine punitur; ſed diſtinguitur an ex levitate proceſſerit & ſic contemnitur, an ex inſania, & miſeratione digna cenſetur, an ex injuria & ſic remittenda declaretur. Sic injuria confunditur & reciprocatur cum animo injuriante. Omnes Doctores, Menochius concil.* 197. *Lib.* 12. *per totum.* The Caſe debated by the Doctor is coincident with the preſent, but not ſo pregnant in favour. *Arguebatur Senator ſcripſiſſe injurioſe de principe in hunc ſenſum, quod cum Senatorum Numerus utili ſanctione coarctatus fuiſſet, poſtea eſſet ampliatus importunitate & ambitione poſtulantium, mentem principis, impellente; & cum rurſus nova Conſtitutione conſultum fuiſſet, & numerus Senatorum imminutus, denique, aut demum auctus fuit, & in immenſum crevit magna cum ſupremi ordinis jactura & inutili intenſa, totiuſque ſtatus incommodo addiderat, hoſpitationibus tota die Patriam maxime gravari & forenſes nimis remanere gravatos.*

Menochius conſultus num injurioſe ſcripſerit, reſpondet, Qui Injuriarum & Male-dicentiæ accuſationem inſtituit; duo debet probari, alterum verba eſſe injurioſa, alterum prolate eſſe animo injuriandi. Et hæc Methodo oſtendit verba non eſſe injurioſa, quia laudem ducis continent cum ejus Conſtitutio dicatur optima, & potius bono zelo & pro celſitudinis utilitate prolata videntur. Deinde arguit Senatorem pœnam non incidiſſe, quia verba injurioſa etiam de ſua natura puniuntur, tantum cum animo injuriandi proferuntur, & præſumptio Juris ſtat pro eo qui protulerit aliqua verba quæ videntur injurioſa, ut dicatur ea dixiſſe abſque animo injuriendi. Ergo, ſatis ſuperque fundata eſt intentio Senatoris quod ſcripſerit prædicta, non modo non animo officiendi injuria ſereniſſimum principem, ſed potius laudandi & ſimilia verba a ſubdito bene merito de principe præſumitur prolata potius bono zelo. Secundo, quia quando verba ſunt dubia, ſtandum eſt declarationi ejus qui ea dixit: & quando ſunt dubia, ſimiliter Declaratio ab aliis verbis præcedentibus vel ſubſequentibus, vel ab utriſque. Et in caſu dicit Senatorem principem laudaſſe, cum dixerit fuiſſe in arbitrio ſuæ celſitudinis, num Senatorum numerum augeret. Addit, quod injuria requirit dolum, ſine quo illata dici nequit, & in Caſu conſtat omnem dolum abſuiſſe, quia dolus non præſumitur commiſſus contra perſonam benemeritam; non præſumitur in homine probo, non præſumitur in eo qui pro beneficio Patriæ aliqua verba protulit, quæ principis perſonam videntur afficere; non præſumitur in ſubdito, quia nihil nuquam contra principem molitus eſt. Quæ præſumptio multo magis comprobatur, quando verba voce vel ſcriptis directa ſunt ad principem: & ſi hæc in homine privato vera ſunt, quanto magis in Senatore gravi & illuſtri, qui alioqui ex his verbis conſciſſet ſibi contingere grave detrimentum? Cravetta in ſimili caſu dicit Judæos Chriſti inimicos, in dubio non præſumitur, aliquid dixiſſe ad injuriam Chriſti, quanto minus debet præſumi crimen injuriæ in ſubdito, contra ſuum dominum? Idem ibid. num. 26. *Conjunctus non præſumitur injuria, conjunctum animo injuriandi intra ſeptimum gradum, Gloſſa in Leg. veſtes, F. de injuriis. Multo minus præſumendum eſt ſubditum velle injuriare dominum ſuum: & Conſil.* 6. *Non eſt ſimile quod vir facultatibus plenus adeo ſtultus fuerit, ut prodigus eſſet perſonæ & æris, & quod dolus non ſolet committi contra tantum principem ſine cauſa. Idecius, Conſil.* 256. *Abſolvit quendam Paridem ſeditionis inſimulatum, quum nullo animo injuriandi dixerit alta voce quod princeps quidam male faciebat, & facere non poterat, quia adita dicendum poterit bono zelo moveri, & in dubio præſumendum eſt ut delictum excludatur, & quia præſumptio delicti removetur propter bonam famam & opinionem Paridis.* By all which Preſumptions, more pregnantly concurring than in any Caſe extant in Law, the Pannel's Innocency is cleared abundantly. And nothing farder can be exacted but his Declaration by Oath, which he offers moſt willingly; and by the univerſal and uncontroverted Practick of all Nations, ſeconded with like Preſumptions, importeth Abſolution: *Quia probatur animus non injuriandi, juramento ejus qui injuriam intulit. Guido. Conſil.* 223. *num* 2. *in fine. Menoch. de præſumptionibus, Lib.* 5. *Præſump.* 40. *num.* 32. *Idecius, Conſil.* 256. *Qua intentione reus verba dixerit ab ejus animo pendet, & ideo ejus declaratione cum juramento ſtandum eſt, quia dependentibus ab animo ſtatur juramento ejus de cujus animo dubitatur. Leg.* 1. *Codic. de Sicariis & aliis Legibus ab eo citatis. Godophredus ad Legem ſi non convicii, Codice de injuriis, Reo purgationis juramentum cauſa cognita defertur habita ratione perſonæ, qui injurioſus natura ſua verbis uſa eſt, Gailus, Lib.* 2. *Obſerv.* 106. *Notum eſt injuriam abſque animo non committi. & innocentiam cum animo conſtat juramento probari poſſe, & ita in Camera judicatum refert.* And therefore in reſpect of the Premiſſes, the Dittay is no ways relevant, both becauſe *Dolus* is not libelled, and becauſe the Dittay bears that the Pannel gave the Piece challenged to my Lord of *Rothes*, of Intention to be preſented to his Majeſty: Whereby the Innocency of his Intention is evidenced, and of his Acceſſion in having or divulging the Piece aforeſaid, ſince he was ſo far from thinking the Piece injurious to his Majeſty, in that he had ventured by my Lord *Rothes*'s Means, not only to acquaint his Majeſty therewith, but to preſent it as a fit Apology, to his Majeſty; as is acknowledged by the Dittay, which we accept in that part.

It is farder alledged for the Pannel, That the Hearing, Having, and not Reporting, is not relevant to infer a concealing after the Pannel's Knowledge that the King was acquainted therewith, becauſe *celamus eum qui ignorat, Leg.* 1. *F. de Actionibus empti & venditi.* And the Reaſon expreſſed in the Act of Parliament why the reporting is injoined, is, that ſeditious Pieces of that nature may come to his Majeſty's Knowledge. After which time, the Pannel was not obliged to importune his Majeſty with ſuperfluous Reports, ſeeing it is acknowledged by the Dittay, that immediately it was delivered by him to my Lord *Rothes*; and ſo acquitted himſelf of all that was incumbent to him in Duty anent the point of Revealing.

It is likewiſe alledged for the Pannel, That the Points of the alledged Libel quarrelled as outrageous to Churchmen, or to Noblemen, is not relevant to infer the Crime and Pain of infamous Libelling, becauſe they are not challeng'd by the Parties intereſted, and of the Law: *Volenti non fit injuria, & injuria diſſimulatione aboletur ſi quis deliquerit, & ad animum non revocaverit.* Secondly, There is no Act of Parliament irrogating capital Puniſhment upon the Authors of infamous Writings, reflecting againſt Subjects, but only againſt his Majeſty's ſacred Perſon, Eſtate and Government.

It was thereafter alledged, under Proteſtation *ut ſupra*, by Mr. *Roger Mowat* for the Pannel, That the Dittay is not relevant to infer the Pain libelled upon, becauſe ane humble Supplication in Name of a Number of his Majeſty's loyal Subjects, for removing of the Prejudices which his Majeſty had or might conceive againſt them as Supplicants, and for conciliating his Majeſty's gracious Favour towards them, is not ſuch ane infamous Libel as falls under the compaſs of the Acts of Parliament upon which the ſaid Dittay is founded: but the Supplication quarrelled, whereupon the Pannel is accuſed *quoad eum*, and the reſt of the ſaid Noblemen, is an humble Supplication in their Names, as a Number of his Majeſty's moſt loyal Subjects, to remove his Majeſty's Prejudices, and to conciliat his Highneſs's Favour; *ergo* no infamous Libel falling within the compaſs of theſe Acts, *quoad eos*, and the Pannel. The Major is clear by the Definition, Nature, and Qualities of ane infamous and ſcandalous Libel, (where there muſt be Maligning, Detraction, and Calumny) and by the Definition of an humble and ſubmiſſive Petition and Supplication, which differs far from an infamous Libel, and altogether heterogeneous. The Aſſumption, *viz.* that the quarrelled Supplication, whereupon the Pannel is accuſed, is an humble Petition to remove Prejudice, and to conciliat his Majeſty's gracious Favour, is evinced in the ſaid quarrelled Supplication itſelf, in the Inſcription, in the Intention of the Supplicant; and laſtly, in the humble Deſire of the Supplication, which is the Subſtance, Life, and Quinteſſence of all Petitions: the Intention and End of the Supplicants being the Eſſence of the Petition, and the harſh or hard Expreſſions of the ſaid quarrelled Supplication (being ſubmiſſive and modeſt in the Inſcription and Deſire thereof, as ſaid is) cannot infer Guiltineſs againſt the Pannel, who is not Author nor Writer thereof. And alſo any Petition, formal by a Secretary, a Lawyer, or a Writer, to be given and preſented to his ſacred Majeſty, leven tho' the Deſire thereof might ſeem juſt) being hard and difficile, or containing haſk (harſh) Expreſſions not eaſy to be underſtood by every Reader, ſhall infer Guiltineſs and Puniſhment of Death upon the Supplicants mention therein, who perchance may be abſent out of that part of the Kingdom where the Petition was founded. And if the Harſhneſs of ſome Expreſſions, contained in the ſaid quarrelled Supplication, can infer the Guiltineſs libelled, and Puniſhment of Death, upon this Pannel, the Supplication and Remonſtrance made and preſented to his moſt ſacred Majeſty by a great many of the Nobility, who then were afraid at the large Extent of his Majeſty's late Revocation and Reduction, would likewiſe fall under the compaſs of theſe Acts of Parliament. But that Supplication and Remonſtrance was accepted by his Royal Majeſty, and his Majeſty was pleaſed with it, And ſince the ſame has tended to his Majeſty's Honour and Benefit, in the Matters of Surrender, Annuity, and Plantation of the Kirks, with competent Stipends, the Connexion is proven, becauſe the humble Supplication and Remonſtrance was no leſs expoſtulative nor this, which may be eaſily cleared by peruſing the ſaid Remonſtrance itſelf; *ergo*, &c.

It is anſwer'd by my Lord Advocate, That the ſecond Alleadgance, and all the Members thereof, and Additions made to it by the Pannel's Procurators, ought to be repelled, in reſpect of the Dittay, which ſubſumes relevantly upon the two Acts of Parliament, Word by Word, as the ſame are conceived. And where it is alledged that the infamous Libel cannot be eſteemed infamous or reproachful, *quoad accuſatum*: becauſe it is conceived under the form of a Supplication, and contains not *Infamiam* or *Injuriam*, but tends to pacify his Majeſty, whom the Supplicants ſuppoſed to be offended; and that it contains nothing *poſitivè vel enunciativè circa verum vel falſum, ſed via poſtulati circa bonum vel malum*: And likewiſe where it is alledged that the Dittay is not relevant, there being nothing libelled to infer the Libel quarrelled to be ſeditious, and that the Pannel knew the ſame to be ſeditious; and that there is no *Dolus* libelled: It is anſwered, That all theſe Alleadgances ought to be repelled in reſpect of the Dittay, which is qualified according to the Qualification of the Acts of Parliament. And the Deſignation of a Supplication alters not the Nature of the Libel in the Points where it is challenged as reproachful and ſcandalous; but theſe Points being of their own nature ſcandalous and ſeditious, cannot be excuſed under the Veil and Pretence of a Supplication, eſpecially where the Reproaches are emitted againſt his Majeſty's ſacred Perſon: *Quia in minima pulſatione ſacre & ſupremæ Majeſtatis nulla admittitur excuſatio, ut ait Horoudus, Lib.* 8. *de Libellis defamatoriis: tanta eſt atrocitas Libellorum famoſorum; & Imperator Auguſtus Libellos famoſos in principem tractaverit ſub ſpecie læſæ majeſtatis. Et citat. Ciceronem. Lib.* 4. *de Republica, ubi ait noſtræ duodecim tabulæ cum per paucas res capite ſanciviſſent in his, hanc præcipue ſanciendam putaverunt, ſi quis hoc tentaviſſet ſive carmen condidiſſet quod infamiam facere flagitiumve alteri; & multo magis ubi quis modeſtiæ neſcius, & pudoris ignarus, improba petulantique ſtylo ſacræ Majeſtatis numen crediderit laceſſendum.* And this Crime is ſo odious and heinous that there needs no *Dolus* to be libelled, *quia dolus præſumitur*. And for the colouring of the Supplication, it is altogether impertinent; becauſe that would elude the Law, ſeeing every Man who reſolves to abuſe the ſacred Perſon of the ſovereign Prince, has it in his power to give what Name he pleaſes to his ſcandalous and odious Conceptions, whether to deſign them by ane Epiſtle, by ane Hiſtory, by a Petition, by an Admonition, and laſtly, if he pleaſes, by a Vow, to cover his Crime under the Maſk of Piety. And for Supplications, the Law is clear, That albeit they be offered to the ſupreme Prince, yet if they contain a Reproach and Scandal to a Subject, they are puniſhed, *Lege apud Labionem, F. de Injuriis & famoſis Libellis*, §. 29. *cujus hæc ſunt verba; Si quis libello dicto principi famam alienam fuerit inſectatus, tenetur Injuriarum.* And therefore much more, where a Subject dares preſume to make offer to his ſovereign Lord of a Supplication; and in it preſume to tax or reproach his Majeſty's Perſon, his Geſtures, his Speeches, his Promiſes in his ſupreme Parliament, and to lay Aſperſions upon his glorious Honour, Majeſty, and Dignity; which, with the reſt of the Points of the Libel, there repeated, are as many aggravant Qualities to infer the Atrocity of this infamous and ſeditious Libel. And *Pharma*, in his 30 *Concil. num.* 34, 35, 37, & 62. diſputes at length this Queſtion, *An ſub ſpecie voti Libellus famoſus excuſetur?* And concludes, *Quod quæſitus color infamiæ ſub velamine petitionis magis aggravat & injuriam & animum injuriandi.* And no Man can be able to deny but the Definition of ane famous Libel is moſt competent to this particular Caſe, which is *ubi vel delictum, vel vitium, vel defectus improperatur alieni perſonæ.* And not only one, but all theſe concur in the particular Qualifications contained in the Dittay; and of the Law, *Actus ſumunt denominationem a potentiori, præcipuè in actu mixto.* And read this infamous Libel, it ſhall be found in the Strain of it, and the moſt powerful Poſitions, to aim ſtill at his Majeſty's Perſon, Eſtate, and Government; which are ſo much more inexcuſable, that they were needleſs; and not only needleſs, but contrary and deſtructive of the Narration and Concluſion, which ſeems to tend for pacifying his ſacred Majeſty. For if the Purpoſe of the Supplicants had been to propitiat his Majeſty, their Sorrow and Grief for his Majeſty's ſuppoſed Offence, and an humble Deprecation of his Majeſty's Wrath, had been fit and uſeful means to procure their wiſhed Deſire: But in place of theſe, to enter irreverently and outrageouſly upon the Geſture of the Prince, upon his Acts and Geſtures in Parliament, upon the cenſuring and miſconſtruing of his Proceedings, and drawing the hail Body of the Eſtate under the Aſperity and Atrocity of their ſeditious Speeches; it is a Thing without Example. And where it is alledged, That this Petition was preſented to his Majeſty by the Earl of *Rothes*; and if any Injury was therein, it was removed by Diſſimulation: it is anſwered, That Diſſimulation never removes Injury, but upon preceeding Knowledge. But there is no notice thereof to his Majeſty, becauſe refuſed: And, as I am credibly informed by theſe who have heard it out of his ſacred Majeſty's moſt gracious Mouth, his Majeſty has declared that his Majeſty remembers well the time that the Earl of *Rothes* made offer of that Supplication to his Majeſty; and that his Majeſty's Anſwer to him was, *My Lord, ye know what is fit to you to repreſent, and I know what is fit to me to hear and conſider; and therefore do, or do not upon your Peril.* And the Circumſtance of preſenting to his Majeſty can have no place to extenuat, but rather to aggravat the Crime; becauſe the Pannel in his own Depoſitions has declared, that after reading thereof by the Earl of *Rothes* and him, it was thought of ſuch a Strain as was not to be repreſented to his Majeſty; and therefore the repreſenting, after it was diſallowed, increaſes the Offence. And where it is alledg'd, if his Majeſty had received it, that no Crime nor Puniſhment might have been inferred againſt the Preſenter; 'tis formally contrair, in reſpect of the odious and ſeditious Conception thereof, which would have deſerved the Puniſhment of Law in greater meaſure: in reſpect whereof, the ſaid hail Alleadgances ought to be repelled.

It is duplyed by Mr. *Alexander Pearſon* for the Pannel, That where it is replyed by my Lord Advocate, that the alledged and infamous Libel, tho' under the Title and Form of Supplication, yet the ſame being indeed ſcandalous and reproachful, that it cannot eſcape under that Cover: It is anſwered, That the alledged Libel cannot be thought ſcandalous, *quoad Supplicantes*, neither doth it affirm the Particulars libelled by the Dittay *cum hoc in ſe non habent*; being a Supplication which of its own nature ſpeaks not but as it ſeeks, and no more than it ſeeks: and whatever Reaſons or Motives it proports to perſuade, it ends in a humble Requeſt for a gracious Anſwer from his Majeſty: That it cannot be ſaid to affirm directly, which ane infamous Libel of its own nature requires, *Dicta Lege unica Codice de famoſis Libellis.* The Words of the Law is, *ſi ejuſmodi aſſertionibus fides veri opitulata non ſit*: Therefore requires Aſſertions direct, which is not in the alledged Libel: but proports Reaſons and Motives, laying out the ſame to the View and Conſideration of his Majeſty, if thereby graciouſly and favourably it may obtain its Deſire. Where it is replied by my Lord Advocat, That *Dolus* needs not be libelled, *Quia delictum & injuria præſumitur facta animo injuriandi & ſic doloſe*; it is anſwered, That giving and not granting the ſame, *Injuria præſumitur animo injuriandi in dubio tantum, & niſi probetur contrarium. Clar.* § *Injuria, num.* 17. But to the preſent Caſe it is by the moſt evident Preſumptions, above rehearſed in the Defences made for the Pannel, clearly manifeſted, That there was no mind in the Supplicants and Pannel of Injury or Wrong; therefore cannot be preſumed to have offered any injurious and ſcandalous Libel to his Majeſty, or done any thing thereanent with that mind.

And where it is replied by my Lord Advocat, That if the Supplicants had a purpoſe of deprecating his Majeſty's Offence, and intreating his Majeſty's gracious Favour, they had made choice and uſe of fit Means to come to that End, and not by ſcandalous Speaking or Reproaching:

It is anſwered, What fitter means can a Supplicant uſe for intreating of Favour, than by humble Supplication? And that which my Lord Advocat calls ſcandalous Reproaches in the alledged Libel, is Grievances, and Remonſtrances thereof, humbly preſented to his Majeſty, and not aſſertive Reproaches, *ut ſupra*. And where it is alledged, That Diſſimulation removes not Injury, but upon preceding Knowledge; and that his Majeſty did not read nor take to Conſideration the Supplication foreſaid preſented: it is anſwered, That the Supplication offered to his Majeſty, altho' his Majeſty took not the ſame to Conſideration, ſeems to aſſever the Nature of the Writing to be a Supplication, and was a great Inducement to the Supplicants to think that his Majeſty had paſſed all Offence thereof conceived. And where it is alledged by my Lord Advocat upon the Pannel's Depoſition, wherein it is alledged that the Pannel and the Earl of *Rothes* together, after the reading the Supplication; thought it not fit that it ſhould be preſented to his Majeſty; it is anſwered, That the Pannel's alledged Depoſition proports not the Earl of *Rothes* and his together reading of the Supplication; likeas it is of truth, that the ſaid Supplication was offered to his Majeſty by the Earl of *Rothes*, before the Pannel and the Earl of *Rothes* had any thoughts or purpoſe of ſuppreſſing of it: and howſoever the Pannel had had once a mind of ſuppreſſing the ſame, yet he thereafter knowing that it was indeed offered to his Majeſty, was a great inducement to the Pannel to eſteem and think of it as ane Supplication.

It is further duplyed by Mr. *John Niſbet*, for the Pannel; Where it is replyed by my Lord Advocat, That it is ſubſumed relevantly, and the Dittay is qualified according to the Qualifications in the Acts of Parliament; That Dole being eſſentially required in all Actions of Injury, albeit Acts of Parliament, by reaſon of their Shortneſs, are not ſpecifick in the Expreſſion thereof; they muſt be interpret conform to the common Strain of Law, *Quia in Statutis pœnalibus aliquid delictum capitaliter, etiamſi quod de dolo non fiat mentio, dolus requiritur, & non ſufficit lata culpa. Phar. Queſt.* 86. *Num.* 15, 25. *pro qua opinione citat & quamplures doctores, qui aiunt ſe liberaſſe aliquos a pœna mortis, & eſſe mente tenendum ad Confuſionem Judicum Imperatorum, qui credunt non eſſe recedendum a verbis Statuti: & ſubjungit, num.* 27. *Ibid. Multo magis cum Statutum imponit pœnam pro eo quod de Jure communi non punitur.* As the preſent Caſe, the Points of not reporting, and not apprehending, are puniſhable by no other Law in the World; and that the Siniſtrouſneſs of the Intention is neceſſary to be libelled, it is conſiſtent with Reaſon, becauſe the Crime conſiſts thereof; *Et ideo oportet ponere in Libello, quia non probat hoc eſſe quod aliquando contingit abeſſe. Codice de Probationibus Leg. Neq*; as the preſent Caſe. A ſeditious Concealing or Having, is not relevantly libelled by the having of a Piece alledged ſeditious, becauſe a Man may have a ſeditious Piece, and yet not be a ſeditious Concealer, becauſe he may be of opinion that it is not ſeditious. And it were hard in Law or Reaſon, upon the Errors of Opinion, to infer the Guilt of ſo attrocious a Crime, which, as all Crimes, requires ane expreſs Conſent. And by the Law, *Nihil eſt tam contrarium conſenſui, quam error, F. de Juriſdictione omnium judicum Leg. ſi per errorem & errantis nulla eſt voluntas, Codice de Juris, & Facti Ignorantia.*

And where it is replyed by my Lord Advocat, That the Deſignation alters not the Nature of the alledged Libel, it is duplyed, that the Deſignation of the foreſaid Libel, joined with the Strain and Faſhion of it, vindicates the Pannel's Innocency in the conceiving and uſing of it; becauſe it would appear to any Man to be a Supplication, and not an infamous Libel, ſeeing it is addreſſed to his Majeſty, whoſe royal and exceſſive Goodneſs excludes all Preſumption of Injury, and of the Law. *Subditi contra principem ſuum fraudem committi voluiſſe non præſumitur. Menoch. concil.* 404. *num.* 27. *Cravetta concil.* 309. *num.* 6. It beginneth at ane humble Supplication of his Majeſty, and concludeth with a hopeful Aſſurance, that his Majeſty will liſten thereto: And therefore, *cum exordine principii interpretemur fidem. Baldus in Leg. quinta Codice de Commiſſis. Multo magis ex principio & fine reliqua interpretanda ſunt*; *& ex extremis media præſumuntur. Menoch. de Præſumptionibus, Lib.* 6. It contains ample Elogies of his Majeſty's Royal Goodneſs, and Juſtice of his bleſſed Father and their Predeceſſors. *Et ideo verba debent intelligi de Actu uniformi, non difformi*; *id eſt, uniformitur in Laudem, & Decus, & non partim in laudem, partim in vituperium. Cravetta concil.* 9. *num* 27. *& Verba debent potius impropriari & intelligi ſecundum fictionem Juris, delictum fugiatur. Ibid. & Pharm. Quæſt.* 105. So that it is clear, that the Supplication proves not a naked and tranſparent Veil of Deſignation, but probable Grounds reſulting upon the Strain of the Piece itſelf. Whereas my Lord Advocat aggravates the Circumſtance of the Perſon injured, being his ſacred Majeſty, the Laws adduced convinces the Odiouſneſs of the Crime, when it is nottour? but extenuats the Preſumption, that the Pannel ſhould have been tainted therewith, becauſe ſo ſacrilegious a Crime is not preſumed: *& maxime petulans & improbum mendacium*, convinces not ane injurious Intention againſt a Prince. And the Emperors have left place to prove the Candor of Intention, notwithſtanding the moſt expreſs and formal Injuries of Words. *Leg. unica Codice, Si quis Imperatori maledixerit.* And where it is replyed by my Lord Advocat, that *Dole* is preſumed; it is duplyed, *Quod animus Injuriandi non præſumitur*; *& incumbit injuriato eum probare, Jacobus de Bello Viſu, Lib.* 1. *Cap.* 3. *Actor habet neceſſarium ponere in Libello quod animus injuriandi interceſſeret.* And all the *Pretorian* Edicts require formally *Dolum Malum, F. de ſervo corrupto, Lib.* 3. *& Edictum contra corrumpentem album, F. de Juriſdictione omnium Judicum. Leg.* 7. *§ Doli Mali. Edictum de vi publica qui Dolo Malo, F. ad Legem Juliam de vi. publica, Leg.* 10. *Et in Crimine Majeſtatis ad Leg. Juliam Majeſtatis. Et ceſſat Dolus quia non præſumitur, Leg. Dolum, Codice de Dolo. Pharm. Queſt.* 105. *Inſpectione* 3. *&* 121. *In Libello debet exprimi, Quod Injurians animo Injuriandi fecerit, quando ſumus in Perſonis in quibus malus injuriandi animus non præſumitur. Salicelus in Leg. ſi non convitii Codice de injuriis, Num.* 4. *diſtinguit utrum is qui injuriam feciſſe dicatur, talis ſit Perſona qui Præſumptionem injuriæ faciat ceſſare, an vero talis qui non ſacit.* And far more when the Perſon that is injured concurs to exclude the Preſumption of Injury. *Princeps qui tranſcendit omnem Injuriæ effectum & affectum. Cravet concil.* 9. *Etiam Judæus non præſumitur aliquid dixiſſe ad injuriam Chriſti.*

Whereas it is replyed by my Lord Advocat, That if the Deſignation of a Supplication ſhould be admitted to palliate ane injurious Intention, the Law would be eluded, *Quæſtio Colore infamiæ ſub velamine Petitionis*; it is duplyed, That the Inconveniency cannot be obtruded in this Caſe, becauſe the like Preſumptions of Innocency will not be concurrent.

Where it is replyed by my Lord Advocat, That the impudent Preſumption in preſenting a Piece of that Strain to his ſacred Majeſty, aggravates the Crime; It is duplyed, That the Citation adduced by my Lord Advocat, aggravates only the Intention, *& animum injuriandi*, when it is conſtant; but infeebles the Preſumption, That Noblemen of their Quality and Wiſdom ſhould have adventured to preſent a Piece that they thought of that Nature; ſeeing it cannot be preſumed, that they ſhould have thought that the Name of a Supplication would have ſatisfied or eluded the King's Majeſty's Sagacity, and make them to eſchew due Puniſhment.

The Lord Juſtice-General continued the Court till *Tueſday* next the 9th. At which time, when it was replyed by my Lord Advocat the laſt Day of the Proceſs upon the Law, *Item apud Labionem*, That the Nature of a ſeditious or infamous Libel is not compatible with the preſenting to his Majeſty, *Quia Libellus poteſt dare principi, & nihilominus in eo fama aliena laceſſit.*

It is as yet duplyed thereto by the ſaid Mr. *John Neſbet* for the Pannel, That the Caſe meets not, becauſe the Law adduced is of a Libel preſented to the Prince, and reflecting upon ane other Perſon than the Prince himſelf: And it has never been heard that any has been ſo inconſiderate as to preſent his own Dittay to a Prince.

Whereas it is replyed by my Lord Advocat, That the moſt of the alledged Libel adduced by the Supplicants, to enforce their Intention in propitiating his Majeſty, is impertinent and deſtructive of the Concluſion itſelf; and therefore, *Denominatio ſumenda eſt a potentiori, præcipue in actu mixto:*

It is duplyed, That in Law Words deſtructive of a Proteſtation, *Relevantur per Proteſtationem (Verbi gratia.)* The Word *Mentiris, ſalvo honore, ſi ſubſeſſent conjecturæ per quas talis proteſtatio adjuvaretur, quod ſcilicet proteſtans non haberet animum injuriandi. Clarus, §. Injuria, num.* 13. And albeit in Matter of Notion and Form, *Concluſio ſequitur deteriorem partem Syllogiſmi*; yet *in practico Syllogiſmo*, the Concluſion being *the* To *πρακτικον*, *tranſmittit ab intellectu practico*, to be eſpouſed and embraced by the Will, is moſt conſiderable; and the Impertinence of *Midſes* uſed to enforce the ſame, is acknowledged by all Moraliſts to be an Eſcape of Imprudency in the Pre-election, and not of Guilt in the Intention. And whereas my Lord Advocat contends, *Quod denominatio ſumenda eſt a potentiori*; it is anſwered, *quod expreſſa Elogia* are more powerful than ſtrain'd Conſequences. And an expreſs Supplication contained in the hail Strain of the Piece, ſhould preponderat ſome incident Glance: *Et quando verba injurioſa non principaliter, ſed in conſequentiam prolata ſunt, etiam quando ſunt de ſua natura injurioſa* (as is not in this preſent Caſe) *præſumuntur dicta vel ſcripta ſine animo injuriandi. Mur. Conc.* 107. *num.* 10.

Whereas it is replyed by my Lord Advocat, That the Definition of the infamous Libel, is quadrant againſt the Piece quarrelled:

It is duplyed, That albeit a Piece, *ubi delictum vel vitium vel defectus improperatur alicui*, be materially infamous; yet formally and in relation to a Guilt and a Crime, *Dolus malus* is neceſſarily required, as an eſſential Ingredient in the Definition of an infamous Libel. *Dambauderius in practica, cap.* 138. *num.* 1. *Scriptis fit injuria cum doloſè & malicioſè componuntur & ſcribuntur Cantilenæ, Rythmi, Libelli, Comædiolæ aut Cantiunculæ, quibus alterius laceratur nomen & fama*; *& libellus famoſus & compoſitio facta in ſcriptis in infamiam alicujus, ejus quod quis probare non vult, & in publico jactat, vel in loco ubi inveniatur. Phar. Quæſt.* 105. *Inſpect.* 2. *num.* 1. *Et ad eſſentiam libelli famoſi videtur requiri, quod fuerit poſitus in publice, vel loco ubi inveniatur. Ibid. num.* 485, *& Canone, Cauſ.* 5. *Quæſt.* 1. *Qui in alterius famam publicè ſcripturam aut verba contumelioſa confinxerit, flagelletur.* And albeit in Law *calumniari* materially *eſt falſa crimina intendere, ad Senatus Conſultum, Turpilianum, Leg.* 1. §. 1. nevertheleſs *non utique qui non probat quod intendit protinus videtur calumniari, nam ejus rei inquiſitio arbitrio cognoſcentis committitur, qui reo abſoluto de accuſatoris conciliis incipit quærere qua mente ductus ad accuſationem proceſſerit, F. ad Senatus Conſultum, Turpilianum, Leg.* 1.

Where it is replyed, That the preſenting of ſuch a Piece aggravates the Crime, and the odious Conception thereof is puniſhable notwithſtanding the Preſentation; it is duplyed for the Pannel, That the preſenting of it by ſo worthy a Nobleman put the Pannel, *in bona fide*, to think it not a Piece of that Nature whereof it is alledged to be, and to overpaſs, at the leaſt to miſtake the Odiouſneſs of the Conception of it, if there be any.

It is eiked (added) by Mr. *Robert Macgill* for the Pannel, with Proteſtation, as ſet down from the beginning, not repeating that which I have ſaid; but remitting the moſt honourable and wiſe Judges *(quia via jam eſt præmunita)* to theſe Things ſet down before by me, touching every Particular, as they have been worthily replyed by my Lord Advocat.

And firſt, anent the Qualification contained in the Acts of Parliament.

It is anſwer'd, Firſt, That the firſt Act libelled is only againſt Delators, as ſaid is, and expounds the Act 83 *Jac.* 5. *Parl.* 6. as might be cleared by the Time wherein that Act was alſo made: But he remits it to the Conſideration of the Judges. Secondly; It is anſwer'd, That their being no Qualification ſet down in this firſt Act of Parliament, but a general Law, that general Law ought to receive the Qualification according to the Diſtinction propounded by me, in all Humility, of inordinat Speeches againſt a Prince, in the laſt part of my firſt Exception, in reſpect of the Abſurdity of the Parity of Crimes, and Pains which would follow, if it were not ſo limited: And remits, as before, to *Gailus*, anent the Interpretation of municipal Laws. And what ſhall the general Rules of the Law (miſcalled by ſome *Regulæ Leſbiæ)* receive their own Exceptions according to Reaſon; and the municipal Laws, which even in the moſt ſubſtantial Points of the Commonweal, will alter three or four times in an Age, according to the Circumſtances, *(nam ex moribus Legis*;) ſhall they, ſay I, ſtand good in a general Senſe contrary to Reaſon? Which I count to be the Judgment of the Lawyers. See in the laſt part of my Duply, ſtrengthening my firſt Exception; where it is ſhewn that the Word *Government*, in the 134th Act, and ſo in this Act, ought not to be underſtood againſt Counſellors and Lords of Parliament: Which is followed out largely in my ſecond Exception, and ſo ought not to be underſtood in any other Act, to make them Contraveners, where they had *optimum animum*, and according to their Opinion only might be thought to have erred, *quod humanum eſt*, as was alledged by Mr. *John Niſbet*; *Neque id prius quam rationis ad veritatem eliciendam inter ſe confligant.*

The Second is anent the Colour or Maſk of Supplication; remits that to the Practicks alledged by Mr. *John Niſbet* out of the *Conſultus* of *Menochius* touching Government, ſet down ſo rudely, *ut ſit addita ſupplicatio*, and as it were, dropp'd out of the Gall of Bitterneſs. And yet notwithſtanding the Lawyers Verdict was to abſolve the Nobleman. Remits alſo to the laſt part of my firſt Exception in the End, anent the Expoſition of Words and Sentences, taught likewiſe in the ſecond Exception, and anent the Form of Speaking and Prayer, eſpecially where *contra præſumptionem doli.* It is clearly evinced that the Pannel had not *animum doloſum*, but rather a very good Will and Intention, which he (as we ſay in a Proverb) wiſhes moſt humbly might be taken in part of Payment. And remits that anent Preſumption of Dole, which my Lord Advocat ſaid in the fourth Place to my ſecond Exception, *Parte ſecunda*, That whether it be neceſſar to libel, or not, yet ſeeing it is, *de ſubſtantia delicti, & credulitas a cauſa ſive injuſta excuſet a delicto, quia abeſt animus delinquendi*, as *Clarus* has there alledged, *ergo*, to be aſſoilzed as Author, *&c.*

And to the Third, adduced by my Lord Advocat, anent the Definition of an infamous Libel, and the Puniſhment of Injuries againſt private Perſons, and far more againſt Princes; we diſallow altogether ſuch inordinate Speeches, and ſay, That they ought to be puniſhed as the Lawyers have defin'd according to the Mind of the Speaker or Penner. But that the Difinition of an infamous Libel cannot agree herein, ſo far as concerns the Pannel, it is not to be thought; *quia directis & conceptis verbis, malicioſe & perditiſſimo animo*, muſt Injuries be impropriat: Which, in all Humility, the Pannel thinks not to be here; and remits to my ſecond Exception. And that a capital Pain ought to be inflicted upon all ſort of inordinate Speeches or Writings, and all ſorts of Speakers and Writers, and upon the Havers, Hearers, and not Revealers, indiſtinctly, even againſt Princes; let me ſay it, with all Reverence, as my Lord Advocat would inſinuate by the Places adduced, it is not the Lawyers Mind.

The fifth, alledged by my Lord Advocat, goes back again upon an alledged Diſguiſing. But we deny that any thing adduced either anent Supplication or Vow agrees with our Caſe, were nothing can be ſaid to be *improperat directis verbis*, (elſe the Pannel had been a mad Man:) But by a wreſting way *(ſalva pace dixerim)* may be thought by ſome to infer Injury. And here again remits to theſe parts of my Exceptions, *ut ſupra*, anent the Expoſition of Words.

The ſixth is anent our moſt ſacred Sovereign his Refuſal; wherein remits to that part of my Exception anent the appealing from a Prince to himſelf, eſpecially by a Counſellor; *Donec intelligatur quid velit ſupplicatio, & rationes hinc inde adductæ, quaſi ex adverſo acies manum inter ſe conferant.* As to his Majeſty's own Declaration, the Pannel ſeals his Mouth with the Finger of *Harpocritus*, and reverences his Majeſty's Sayings as Oracles, and in all Humility, accepts them as an Acknowledgment of the Offer made.

The laſt, I think, are the Pannel's own Depoſitions; wherein diſtinguiſh the Diſallowing and the Times and all ſhall agree. He diſallowed of it firſt, as that of the General; it was rejected by his moſt ſacred Majeſty: But the Pannel thought that it might have been keeped till a more convenient Time, according to the Appellation alſo mentioned, and till *cauſa audita* it had been condemned. And the Pannel depones, That before ever the Principal came back, the Copy was ſurreptitiouſly purchaſed by Mr. *John Dunmure*, in falſifying his Promiſe.

It is triplyed (replyed the third time) by my Lord Advocat, that the Duplies in the whole Parts and Members thereof are impertinent; becauſe the Exception was founded upon the Form and Deſignation of the infamous Libel, That being deſigned a Supplication, it could not contain Matter of ane infamous Libel; which Exception was anſwered with this Reply, That the Dittay is directly ſubſumed upon the Acts of Parliament, *viz.* That this, which they call a Supplication, is a Writing containing Reproaches and Scandals againſt the Perſon, State, and Government of our gracious Sovereign, as the Dittay bears; and no more was neceſſarily to be replyed but upon the Acts of Parliament. And yet, for informing the Mind of the Judge, it was cleared both by the expreſs Text of the Civil Law, and by the Judgment of the beſt Juriſts, and verſed in Criminals, That the Deſignation purges not the infamous Speeches conceived in a Supplication to the Prince, being to the Infamy of ane Subject, much leſs to the Diſhonour of the ſupreme and ſovereign Prince. And this is not pertinently anſwered by no part of the Duply; but both the Acts of Parliament and Civil Law concurring, ſtand in full force to elide the Exception. And the Points urged by the Duply, has nothing to do with the Exception, but are Points extraneous, founded upon Intention, libelling of Dole, Preſumption in favours of the Pannel, and others, in whoſe name it was alledged the ſaid Supplication was drawn up; which I may juſtly term preſumption: For whatſoever diſtinction they have in their Quality from others, it is from the Bounty and Favour of their ſupreme Prince and Sovereign, who is the Fountain and Source of all Honour and Dignity. And good reaſon that they bruik (enjoy) all their Privileges, in all Cauſes with all Perſons, except where they come in conteſtation with their ſupreme Sovereign: and there, as *Godophred* writes, *ad Legem Juliam Majeſtatis, ubi Majeſtas pulſata, defenditur nulla dignitas*; *nullum Culmen, nulla Fortuna eſt immunis.* And in this caſe, where Reproaches, Scandals, and Aſperſions are laid upon our gracious Sovereign, the Excuſe of Nobility, that it may be preſumed that they did it not *malo Animo,* is rather an Accuſation than an Excuſe; becauſe no Subject is ſo bound to know the true Reſpects of Humility, and Reverence, and Obedience due to the Sovereign Prince, as thoſe to whom his Majeſty hath communicated a Shadow of his glorious Honour. And as to the Inſtance adduced out of *Menochius*, we have nothing to do with it; for it is likely, he that anſwered ſo, had not ſuch a Law as we have. And as to the Inſtance adduced out of *Lex Unica, ſi quis Imperatori maledixerit*, that by that Law there is no place left to the Accuſed to purge himſelf of his evil Intention, that is true in the Caſe of the Law, but has nothing ado with us, *ubi non eſt lubricum linguæ quod facile ad pœnam non eſt trahendum*; but a malicious and ſeditious Writing, compiled of purpoſe to the Reproach of their Gracious Sovereign. And in Writings of this kind, as *Haroudus* expreſſes in his 18th Title, Fol. 208. there are no worſe Reproaches and *Convitia* (ſays he) than thoſe which are done by Writing, than thoſe which are done upon manifeſt Deliberation; becauſe the ſame proceeds upon ane evil and ſeditious Purpoſe, and pierces deeply, and abides longer than the Injury by Words. And for all the reſt of the Inſtances and Authorities of the Civil Law, I oppone the two Acts of Parliament, which are the only grounds of this Libel; in ſo far as it concerns the Authors of the infamous Libel, the not apprehending the Authors thereof, the concealing and not revealing of the ſame. And as to the mention made in the entry of the Dittay of the Common and Civil Law, the ſame is wholly in reſpect of the divulging and diſperſing of the ſaid infamous Libel, whereof our ſaid Acts of Parliament make no expreſs mention. And where we have our own Laws, and Acts of Parliament, as we have in this Caſe, theſe muſt be the only Rule of judging. And the Exception and Duply, albeit they have many Quotations of the Common Law, yet all needleſs and impertinent; ſince they are not adduced to purge that part of the Dittay which is founded upon the Common Law. But in the Points diſputed, we have good warrand to adhere to our own Acts of Parliament, (except in ſo far as we are forced by the Objections made by the Pannel's Procurators to clear the doubtful and ambiguous Terms of their Exception and Duply) becauſe by Act of Parliament, made by King *James* I. *Par.* 3. *cap.* 48. and by King *James* IV. *Par.* 6. *cap.* 79. it is ſtatute and ordained, That all the Leidges be governed by the King's Laws, and no others. And his Majeſty's Advocat offers, whenever it ſhall pleaſe my Lord Juſtice-General to command him to clear any Speech that is founded upon the Common Law, that he ſhall do the ſame by word.

It is quadruplyed (pleaded the fourth time) by Mr. *Alexander Pearſon*, for the Pannel, That where my Lord Advocat triplyes a part of his Lordſhips Reply to have received no Anſwer by the Duplies made for the Pannel; to wit, that part thereof, which bears, that the Writing quarrelled, altho' in Form and Title a Supplication, yet does contain reproachful Speeches, *&c.* it is anſwered, That the alledged infamous Libel, in ſo far as it concerns the Pannel, cannot be eſteemed but as a Supplication, in reſpect of the Duply and the Reaſons contained therein, which I need not repeat here.

Where it is triplyed by my Lord Advocat, That our Duply is impertinent; it is quadruplyed, That if there be any Impertinency, his Lordſhip is to be blamed therewith, for having occaſioned it by ane unneceſſary Reply. And for the Points urged by us for the Pannel, to clear his Intention,. and to vindicate him from the Preſumption of Injury, in compiling or being acceſſory to the Piece quarrelled, not extraneous, both becauſe the Acts of Parliament require Intention, by the intentional words *to the Reproach*, *ſteering of Sedition*, &c. And albeit they ſhould contain nothing thereof, a ſiniſtrous Intention being required in the Eſſence of the Crime, it muſt neceſſarily have been libelled conform to the Paſſages already cited in our Duply.

Whereas my Lord Advocat triplyed, That the Character of Nobility accuſed *non excuſat* in this caſe; it is quadruplyed, That that is only where the Crime is conſtant, (*i. e.* evident:) And that eminent Quality ever wants the Preſumption, than any inveſted therein ſhould injure their ſacred Prince; whereof they are not only a Shadow, but noble and myſtical Members, as is cited already.

Where it is triplyed by my Lord Advocat, that the Caſe adduced out of *Menochius*, is not pertinently adduced here, becauſe there was no Law; it is quadruplyed, That the Queſtion reſulted upon the Common Law, which ordains due Puniſhment upon the Authors of infamous Libels, and chiefly againſt Princes. And the caſe was not ſo pregnant in favour of the party whom he abſolves, becauſe he was the Author, and had expoſed to the view of all the World the Piece there challenged. And we adhere to the Author's Opinion; and inſtances, how it has never been found to be an undutiful part in Juriſconſults and Advocats, to vindicate Pieces quarrelled to be injurious.

And where it is triplyed by my Lord Advocat, that the Inſtance *Lex Unica* quadrats not; it is quadruplyed, That the Inſtance of the preſent Caſe is more pregnant, becauſe the Caſe of the Law adduced, *improba & petulantia Mendacia*, are challenged: And in the preſent Caſe the Piece challenged: is not expreſly injurious; and all that can be inferred upon the Pannel, is an indirect and imprudent Acceſſion thereto.

And where it is triplyed by my Lord Advocat, that the Allegations of the Duply are impertinent, becauſe not alledged for the Points of the Common Law not expreſſed in the Acts of Parliament; 'tis quadruplyed, That there are alledged in our Duplies for all, and refers ourſelf to our Duplies.

To the whilk it is quintuplyed (anſwered the fifth time) by my Lord Advocat, That the Words of the Act of Parliament has no reſpect to the Intention of the Perſon, but only expreſs the Effect of the Reproaches which tend to move Diſlike betwixt his Majeſty and his good Subjects. And it is granted in the Quadruply by Mr. *John Niſbet*, That they are materially reproachful, and not formally.

It is ſextuplyed by Mr. *John Niſbet* for the Pannel, that the Words *to the Reproach*, imply Dole and Intention; becauſe the Crime prohibited by the Act of Parliament conſiſts eſſentially thereof, and is cleared by all the Allegations adduced, and more expreſly by other Acts of Parliament of that nature, as the 60th Act of Queen *Mary*, 6 *Parl.* whereof the Words are, *Tending to ſtir the Hearts of the Subjects to Hatred*, which are emphatically Words of Intention. And whereas my Lord Advocat would inforce an Acknowledgment of material Injury in our Quadruply, we diſclaim it, and maintain that it cannot be evinced therewith; and albeit it were, there reſts a relevant Defence in Law upon the Innocency and Candour of Intention.

Thirdly, It is alledged by *Roger Mowat* for the Pannel, for a third principal Defence to that part of the Subſumption of the Dittay, Qualifications, and Condeſcendings thereof, bearing that the Pannel himſelf was and is Author, Deviſer, Conſulter, Adviſer of the infamous Libel, and Airt and Part of the penning, writing, and updrawing thereof; at leaſt is guilty of the hearing, and of the concealing, and not revealing the Author thereof; and moſt guilty of the not apprehending of Mr. *William Haig*, whom the Pannel affirmed to be the Author of the ſaid Libel, it being in his power to have apprehended him; and alſo is guilty of the divulging and diſperſing thereof, in ſo far as the ſaid Pannel knew of the penning of the ſaid Libel, gave his Opinion to the making thereof, and in token thereof interlined a part of the ſame in divers Parts with his own Hand, which by ocular Inſpection is to be ſeen, and which the Pannel has alſo confeſſed by his Depoſition under his Hand, as the ſaid Dittay in that part bears, *&c.*

That the Pannel ought and ſhould be *ſimpliciter* aſſoilzed (abſolved) therefrom: And 1ſt, That the ſaid Pannel cannot be criminally purſued as Author and Deviſer of the ſaid Libel; becauſe by the Pannel's own Depoſition, taken by the Lords of the Committee on the 9th of *June* 1634, the Pannel has deponed, That the ſaid Mr. *William Haig* was the Author of the ſaid Libel. Likeas the ſaid Mr. *William* his miſſive Letter, all written and ſubſcribed with his own Hand, dated at *Camphire* the 27th Day of the ſaid Month of *June*, which Letter was directed to the Pannel, and exhibited by him before the ſaid Committee, bears the ſaid Mr. *William* his Grant that he was the Penner of the ſaid Supplication or Libel; and takes the Crime upon him in ſolliciting his Friends by his other Letters and Miſſives, likewiſe produced to the ſaid Lords of Committee, to deal for purchaſing and obtaining to him a Remiſſion for the ſaid alledged Crime. And ſo the ſaid Mr. *William* having not only confeſſed himſelf to be the Author, but having dealt with and ſollicited his ſaid Friends for a Remiſſion, as ſaid is, the ſaid Dittay can never be ſuſtained againſt the Pannel as Author and Deviſer thereof; which miſſive Letters are in the Purſuer's own Hand. *Item*, The ſaid Pannel ought likewiſe to be abſolved from that part of the ſaid Dittay, bearing to be Conſulter, Adviſer, and Airt and Part of the penning, writing, and drawing up of the ſaid quarrelled Libel; becauſe the ſaid two Acts of Parliament, whereupon the ſaid Dittay is founded, make no mention of Conſulters or Adviſers. And Acts of Parliament, ſpecially in this kind, are ſtrictly to be taken, and ſuffer no Extenſion beſide that which is expreſly ſet down therein. 2dly, Giving, (granting) the ſaid Acts might be extended to Conſulters and Adviſers, (as they cannot) yet *Abſolvitur* ought likewiſe to be granted from the alledged Conſulting and adviſing by the Pannel, and his being Airt and Part of the penning, writing, and drawing up of the ſaid Supplication now quarrelled; becauſe the ſaid Pannel being examined by the ſaid Committee upon the ſaid 9th of *June* laſt, and being then interrogat who was Author and Penner of the ſaid Libel, not only has deponed, *ut ſupra*, That it was the ſaid Mr. *William Haig*, who gave the ſaid Libel to him, and who (as he thought) was the Author thereof: but being thereafter interrogat upon another Interrogator the ſame Day, if the ſaid Mr. *William* had any Command to draw up the ſaid quarrelled Supplication or Libel, or if the Pannel or any of his Knowledge, was at the forming thereof, the Pannel has alſo deponed upon his ſaid great Oath to the ſaid Interrogators, That the ſaid Mr. *William Haig* had no Warrant from him, nor knew he of any Warrant given to the ſaid Mr. *William*, or that any was preſent at the forming thereof. Which clearly evinces and manifeſts that the Pannel was neither Author, Deviſer, Conſulter,

ſulter, Adviſer, nor Airt and Part of the penning and writing of the ſaid Libel; ſeeing the ſaid Pannel being brought before the ſaid Committee, and urged by them to give his Oath upon the ſaid Points, he has given the ſame, he has deponed, *ut ſupra*, denying all the ſaid ſeveral Points. After the giving of the which Oath of Verity, and ſubſcribing the ſame, as the ſame produced by my Lord Advocat bears, no Dittay or Purſuit, criminal or civil, can now or hereafter be ſuſtained againſt the Pannel upon theſe Points, whereupon already he has given his ſaid Oath; becauſe no other manner of Probation can be receiv'd againſt him, to prove contrair to his ſaid Oath, given before the ſaid Committee in manner aforeſaid. And where it is libelled in the ſaid Dittay, and Qualifications thereof, That the Pannel is Author, Conſulter, Adviſer, Airt and Part of the penning and writing, at the leaſt guilty of the hearing, concealing, &c. not revealing, not apprehending, &c. in ſo far as the Pannel knew of the penning thereof by the ſaid Mr. *William Haig*, adviſed and gave his opinion anent the making of the ſaid Libel, and in token thereof interlined it in divers Parts with his own Hand, &c.

It is alledged, That the Pannel ought to be *ſimpliciter* abſolved from the ſaid Qualification libelled in theſe Words, in ſo far as the Pannel knew of the penning of it, adviſed and gave his Opinion anent the making of the ſame; becauſe that is likewiſe directly contrair to the Pannel's Depoſition foreſaid, proceeding upon the ſaid Interrogator, mov'd by the ſaid Committee wherewith he was interrogat, If Mr. *William Haig* had any Warrant or Command from him to draw up the ſaid Libel, and if the Pannel, or any of his Knowledge, was at the forming thereof. Whereunto the Pannel has made anſwer, and upon his ſaid great Oath deponed, That Mr. *William Haig* had no Warrant from him, nor knew he of any given to him, or that any was preſent at the forming thereof. And ſo the Pannel by his Depoſition, upon his ſaid Oath, having deponed, That Mr. *William Haig* had no Warrant from him, nor knew he of any Warrant given to him, or that any was preſent at the forming thereof; the ſaid criminal Purſuit can never be ſuſtained to infer thereby that the Pannel is Author, Conſulter, Deviſer, Adviſer, Airt and Part of the penning, writing and drawing up; becauſe that is altogether denied by the ſaid Pannel, as his ſaid Depoſition clearly bears. And being denied upon his great Oath, as ſaid is, that part cannot be ſuſtained upon the ſaid Qualification and Inference libelled; it being impoſſible, *per rerum naturam*, that the ſaid Dittay in theſe Points can any way be proven by any other Probation whatſoever, after giving his ſaid Oath.

Court adjourn'd till to-morrow the 10*th Inſtant.*

Intrant. *the ſaid* 10*th Day.*

The Pannel and Procurators (*as before*) *compear'd the ſaid Day.*

Quarto, It was alledged by Mr. *Roger Mowat* for the Pannel, As for his fourth principal Defence againſt that part of the Dittay, bearing, That the Pannel knew of the ſaid alledged infamous Libel, adviſed and gave his Opinion to the making of the ſame, and in token thereof interlined a part thereof in divers parts with his own Hand, as may be ſeen by ocular Inſpection, and as his Confeſſion in the Depoſition bears; that *Abſolvitur* ſhould be granted from that part, bearing that the Pannel knew of the penning thereof, becauſe that is directly contrair to the Pannel's Depoſition, before repeated, which does contain an expreſs Denial of his Knowledge of the forming of the ſaid Libel, or that any was preſent at the forming thereof. And to that part of the Qualification libelled, bearing, That in token that the Pannel knew of the penning thereof, he interlined a part with his own Hand; it it alledged, *Nullo modo relevat*, unleſs it had been relevantly libelled in the Dittay, that the Pannel interlined the ſaid Lines the time of the forming of the ſaid Libel, or ſhortly thereafter, which is not ſaid: For mending and interlining to be a token againſt the Mender or Interliner of a Writing, that he knew of the penning thereof, and gave Opinion to the making of the ſame, muſt neceſſarily be libelled to have been at or immediately after the writing of the ſame. Which cannot be urged upon the Pannel in this Particular, becauſe by his Depoſition, given upon the 16th of *June*, 1634, upon an Interrogator wherewith he was interrogat, whether he had interlined ſome Lines in the ſaid quarrelled Supplication, which was exhibited by him before the Lords of Committee, and whether he did the ſame before he ſhew'd it to Mr. *John Dunmure*, or to the Earl of *Rothes*, has deponed, That the ſaid Mr. *John Dunmure* never ſaw the ſaid interlined Libel, but only the Copy, which was caſt in the Fire after the redelivery thereof; and deponed, That the ſaid interlined Copy lying then before the ſaid Lords, and now in my Lord Advocat his Purſuer's hands, was that Copy which was deliver'd by the Pannel to the Earl of *Rothes*, but was not interlined 'till long after the Earl of *Rothes* redelivered the ſame; and deponed, That never one ſaw it ſince the ſaid interlining. And ſo it being that Copy which ſhould have been preſented to his Majeſty, and which was offered to be preſented, it is not likely nor probable, and with reaſon cannot be affirmed to have been interlined before the time of the ſaid Offer of preſenting. And ſo the ſaid interlined Libel cannot be counted a Token (as the Dittay bears) of the Pannel's Knowledge of the penning of the ſaid Libel, and of his adviſing and giving his Opinion to the making thereof. Likeas, *in rei veritate*, the ſaid Interlining was after the ſaid Mr. *John Dunmure* was firſt queſtioned in *March* laſt, by the ſpace of nine Months, or thereby, after that the ſaid Supplication was offer'd to have been preſented to his Majeſty. And ſo a private Interlining of the ſaid Copy by the Pannel, by adding or mending ſome few Words, which neither in Matter nor Form can be quarrelled, being ſo long after the intended Offer thereof made to his Highneſs, cannot be a token againſt the Pannel, as is libelled, to make him to have been upon the Knowledge of the penning, and to have given his Advice and Opinion to the making thereof; *Hoc attento*, That the ſaid interlined Copy was never ſeen by any, but by himſelf, after the ſaid Interlining, which ſimply he produced the ſame to the ſaid Committee, which in Law he could never have been compelled to do, if he had expected that any ſuch Advantage had been taken thereupon, to his heavy Prejudice. For the Pannel did never fear nor ſuſpect that the ſaid Committee would have deſired or induced him to have exhibit and produced before them a Paper, the Production whereof might have imported no leſs to him than the Probation of the alledged Crime, committed in the Dittay, to make him thereby guilty and puniſhable by Death. And it is nottour that the Pannel did, at the ſaids Lords Deſire, produce the ſame to them, upon their Promiſe that it ſhould not enſnare the Pannel, ſeeing in Law he was neither obliged to produce any Writing, nor to declare, nor to give his Oath upon any Interrogators demanded of him; neither would he have done it, if he had known (as now in Experience he finds) that it might and would have brought upon him the ſaid alledged Crime and Puniſhment of Death.

It is added by Mr. *Alexander Pearſon* for the Pannel, in fortification of the ſaid fourth Exception propounded for the Pannel: Firſt, For that Part thereof, bearing, That the Pannel the 9th of *June* laſt deponed, upon his great Oath, that Mr. *William Haig* had no Warrant of him for drawing up of the ſaid Supplication, and that he knew nothing of the forming thereof; that the Purſuer cannot be heard now upon that part of the Dittay, to purſue the Pannel, becauſe of the Pannel's Oath and Declaration foreſaid, which cannot in Law and Reaſon be called again in queſtion; *propter jurisjurandi religionem, quod ſpeciem tranſactionis continet majoremque habet authoritatem quam res judicata, & dato jurejurando, non aliud queritur quam juratum ſit. Leg.* 1, 2, & 5. § 2. *F. de Jurejurando.* Where it is alledged by the Dittay, That by the Letters ſent by Mr. *Haig* to the Pannel, it is affirmed by Mr. *Haig* that he had the Allowance of the Pannel to the making and penning thereof, *non relevat*, becauſe Mr. *Haig* being Author and Penner of the alledged infamous Libel, by his own Grant in his miſſive Letter, dated 27 *June*, and alſo acknowledged ſo by the Dittay, Mr. *William Haig*'s Declaration foreſaid (no ways granting the ſame) can no ways be reſpected, or have force againſt the Pannel; *Quia de jure ſocius aut particeps criminis adverſus ſocium fidem non facit, Leg. Quoniam, Cod. de Teſtibus. Leg. Si Filium, Cod. de Liberati Cauſa.*

It is alledged by Mr. *John Niſbet*, that the Dittay is not relevant, in ſo far as it qualifies the Pannel to be Author of the Piece challenged by the Interlining thereof; becauſe the Interlining in one Point only, convinceth that he hath not been Author of the reſt. *Secundo*, The Interlining has no Contingency with the Point challenged, but is a ſmoothing of ſome apparent Shrewdneſs in Conception. And in a word, the Dittay is no ways relevant in ſo far as it qualifies any Acceſſion by the Pannel's Depoſitions; becauſe it is affirmed by the Pannel, that he was induced to depone, upon aſſurance that he ſhould not be enſnared. And of the Law, *Confeſſio emanata ſub ſpe impunitatis non importat Condemnationem; Clarus*, §. *final. Quæſt.* 55. *num.* 8. & 9. *Ubi affert opinionem Imolæ id aſſerentis, eſſe æquiorem; Pharm. Quæſt.* 81. *num.* 280. *Confeſſio emanata ſub promiſſione impunitatis non ſufficit ad condemnandum, nec in foro conſcientiæ nec contentioſo; & confitentem non afficit: Eadem Quæſtione, num.* 42. *Hiplitus in* §. *Poſtquam, num.* 15.

It is anſwered by my Lord Advocat, That the Exceptions proponed againſt that part of the Dittay, bearing the Pannel to be Author, Adviſer, Conſulter, Deviſer, and Airt and Part of the penning, writing, and drawing up of the infamous Libel, ought to be repelled in the hail Members thereof.

And firſt, where it is alledged, that my Lord is not Author, becauſe that he has deponed, that *Haig* is Author, and *Haig* by his Letter has granted himſelf to be Author; becauſe that is not a Defence, but a Denial: for both *Haig* and the Pannel might be Authors and Contrivers of an infamous Libel. And therefore the Dittay in this Point is relevant, and conſequently muſt be put to the Knowledge of ane Aſſize, (Jury) before whom the Probation and Verification of the Dittay is to be uſed; and before whom it is eaſy to ſhew and clear, that neither the Pannel's Depoſition can liberat him, nor yet *Haig*'s Letter, who in the Defence is granted by the Procurators to be *Socius Criminis*. And giving (granting) the Juſtice would take the Diſpute of this to himſelf, which is proper to the Aſſize; yet if any Moment ſtood in *Haig*'s Letter, it muſt be taken *complex*; for by the ſame Letter he affirms, that the Pannel was Adviſer of the ſaid ſeditious Libel.

And where it is alledged, that Deviſer, Conſulter, and Adviſer, are not contained in the Acts of Parliament whereupon the Dittay is founded, ought to be repelled in reſpect of the Act of Parliament of K. *James* VI. his Majeſty's gracious Father of eternal Memory, *Parl.* 12. *cap.* 151. wherein it is declared, That all criminal Libels ſhall contain the Parties complained upon to be Airt and Part of the Crimes libelled: which is in this Caſe *per expreſſum* libelled; and the words of Adviſer, Conſulter, Deviſer, *ſunt ſynonyma &* ὁμολογα.

And where it is alledged, that the Pannel in his Depoſition has denied that he was either Author or Adviſer, that is a Denial *ut ſupra*, and not a Defence againſt the Relevancy. And where it is alledged, that the Pannel having deponed by Oath, that no other Probation can be uſed *contra Jusjurandum*; it is anſwered, That it is againſt all Law, Reaſon, and Cuſtom, to oppone *Jusjurandum in Criminalibus*. For then after Examination by the Judge, which is ever taken upon Oath, no Criminal ſhould paſs the Knowledge of ane Aſſize; and it were a Proclamation of univerſal Impunity if Oath ſhould determine the Trial.

But that which is alledged by the Pannel and his Procurators *ſuper Jurejurando*, has only place *in Civilibus & in Jurejurando delato per Actorem*, which cannot have any reſpect in this Caſe. And it is nottourly known, that *Anchindrine* and *Garrarie* not only deny'd upon Oath, but abode by the Denial in the Torture and Queſtion; and yet notwithſtanding their Oath, and Denial by Oath, were put to the Knowledge of an Aſſize, and convicted. And where it is alledged, againſt the Specification in the Libel of this firſt Point of Author, that Knowledge, Adviſing, and Interlining, are not relevant; I declare that I adhere in the firſt place to the general Subſumption of the Dittay upon the Act of Parliament, whereby it is ſubſumed that the Pannel is Author, Adviſer, Conſulter, Deviſer, and Airt and Part of the ſeditious Libel: and proteſt, that notwithſtanding of whatſoever Defence is or ſhall be propounded againſt the Qualifications, (albeit the ſame might be found relevant, which cannot be in Reaſon and Juſtice) That the ſaid General ſhall paſs to the Knowledge of ane Aſſize, as relevant *per ſe*. Under which Proteſtation, I proceed to make anſwer to the Defences made againſt the Qualifications.

And firſt, where it is alledged that this Clauſule, bearing the Pannel knew of the penning of the ſaid ſcandalous Libel by *Haig*, and adviſed and gave his Opinion anent the making thereof; that the ſamen is contrair to the Pannel's Depoſitions, given by him upon Oath, (as ſaid is;) I anſwer, That this impugns not the Relevancy of the Dittay concerning the Qualification, and therefore muſt paſs to the Knowledge of an Aſſize. And as to the Pannel's Depoſitions, whether they be conform or diſconform to the Libel, *non eſt hujus loci*; becauſe neither is the Dittay founded upon them, nor are they uſed by me as Purſuer, neither as a Part of the Libel or Proof of the Libel.

And where it is alledged, that that Part of the Qualification anent the Pannel's Interlining is not relevant, except it be condeſcended *quo tempore* interlined, if *in ipſo actu vel ſtatim poſt actum*; it is anſwered, That this part of the Qualification is uſed jointly with the reſt. And there is no neceſſity of condeſcending, becauſe *quocunque tempore* interlined, it is a ſufficient Evidence of the Concurſe, Conſent, and Adviſing to *Haig*, Maker thereof; eſpecially in reſpect it was drawn up by him, *viz. Haig*, in name of the Pannel, and others having Intereſt in that Writing, which is truly an infamous Libel, and termed in a ſiniſtrous Notion by name of a Supplication: Likeas the Pannel his Procurators has in their ſecond Defence maintained this Action of Law, That *Principium & Finis tanquam duo Extrema includunt Medium*. And therefore the Pannel's Knowledge, as the firſt Imitation of that infamous Libel, and his receiving the ſame from *Haig* immediately after the penning thereof, and receiving to be preſented to be his Majeſty to their uſe who were alledged Supplicants, and the Interlining thereof *ex poſt facto*, (albeit not interlined before the Delivery thereof to the Pannel) is relevant in Law with the reſt of the Members of the Qualification *per ſe*, by and attour (over and above) the General, to ſuſtain this Dittay, to make the Pannel Author, Adviſer, Deviſer, Conſulter, and Airt and Part of the penning and drawing up of the ſaid infamous Libel: ſpecially ſeeing it will be conſtant (*i. e.* evident) by the Depoſitions, when the ſame ſhall be uſed before the Aſſize, that the ſame was not interlined *longo intervallo* after delivery thereof by *Haig* to the Pannel, but very ſhortly after *in tempore quaſi continuo*. And where it is alledged, That this Interlining was not till after nine Months after the Receipt thereof from *Haig*, that is not, nor cannot be verified, nor has no warrant in the Depoſitions. And where it is alledged, That this interlined Libel cannot be uſed againſt the Pannel, becauſe it was never deliver'd to *Dunmure*, nor never ſhewn to any, till the Pannel produc'd it before the Committee, and it was produced under Promiſes that it ſhould not be uſed to the Pannel's prejudice; and that the Pannel was not obliged to anſwer, neither to have produced the ſame before the Committee: It is certain the Committee urged nothing from the Pannel but by good Warrant and to which the Pannel was obliged to Anſwer upon his Allegiance; and the Denial to give ane Anſwer to his Majeſty's Commiſſioners, who had Warrant under his ſacred Hand and Seal, which was exhibited to the Pannel, would have inferred againſt the Pannel a more dangerous Crime than that he is now accuſed upon, by declining of his Majeſty's Judgment, and of his Majeſty's Commiſſioners. And for the Committee, they urged nothing from the Pannel but a plain, true, ſincere, and ſpeedy Declaration of his Knowledge of the Author and Contriver of the ſaid ſcandalous Libel, which, as it was incumbent for the Committee in obedience to his Majeſty's Warrant to them, ſo it could breed no Snare nor Prejudice farder, nor he did burden himſelf by his own Confeſſion; in reſpect whereof, the Exceptions ought to be repelled.

It is duplyed by Mr. *Roger Mowat* to my Lord Advocat his Reply, made to the Defences proponed againſt that part of the Dittay whereby it is alledged, That the Pannel cannot be convened as Author, Conſulter, Adviſer, &c. but that the ſaid Defence ought to be repelled, and the hail Members thereof. And firſt, That the ſaid firſt part of the Defence is not a Defence, but a Denial of that part of the Dittay; and that the Denial muſt be referred to an Aſſize, and diſputed there, and not here; and that the ſame is not relevant, becauſe albeit the Pannel has alledged another Author, yet they might be both Authors of the ſaid Libel. It is anſwered, That the ſaid Alleadgance ſtands relevant, notwithſtanding the Reply, becauſe the ſaid Defence in that part is not ſimply a Denial, but is a Denial very pregnant, inſtantly verifying that the Pannel cannot be ſaid to be the Author, and ſo criminally to be purſued; becauſe by his Depoſition before the ſaid Committee, he has not only denied upon Oath that he is the ſaid Author, but has likewiſe inſtantly verified the ſame, condeſcended upon the true Author; and not only has ſimply condeſcended upon the ſaid Author, but has likewiſe inſtantly verified the ſame: which Verification being proponed with the ſaid Defence, is both relevant and competent now only to be decided before my Lord Juſtice, and not before the Aſſize, ſeeing it is a peremptor Exception inſtantly verified. And whereas the ſaid Reply bears, That the ſaid Author Mr. *William Haig*'s Letter, bearing that the Pannel was Adviſer, is to be taken complex, there is no ſuch Speeches nor Words mention'd or contained in the ſaid Letter, which muſt now be produced, becauſe it has been ſeen by the Pannel, that it may ſay for it ſelf. And whereas my Lord Advocat alledges, That the Aſſize is only Judges to the Probation, and that he prove before them that the Pannel was Author, Adviſer, &c. of the ſaid alledged infamous Libel; that ought to be repelled in reſpect of the Alleadgance propounded for the Pannel, founded upon his Depoſitions and *Haig*'s Letter: which Depoſitions and Letter being already produced, and delivered to the Pannel, and uſed, and Liberty granted to propound his Defences thereupon, the Defence is ſo proponed, that it may be either found relevant or repelled. And it cannot but be found relevant, becauſe a Pannel being purſued for a Crime, as Author thereof, this is a moſt uſual and relevant Defence, that he cannot be convened as Author. But he muſt be abſolved from that Point, becauſe he offers him inſtantly to prove ane other Author: Upon whom he likewiſe inſtantly condeſcends; and not only condeſcends, but inſtantly verifies and proves. And ſo the Exception being relevantly propounded, and inſtantly verified, as ſaid is, it muſt be here found relevant, and likewiſe proven, and cannot be referred to the Inqueſt. And where it is replied by my Lord Advocat, That that part of the Defence founded upon the Pannel's Depoſitions, bearing that he has confeſs'd ane other Author, and giving his Oath thereupon cannot be reſpected, being but his own Depoſitions and Declarations, and cannot work in his own favours; it is duplyed, That that part of the ſaid Anſwer and Reply ought to be repelled, in reſpect of the ſaid Defence founded thereupon; eſpecially ſeeing the ſaid Depoſitions were given before the ſaid Committee, who were appointed by his Majeſty for trial of the ſaid Author. And the ſaid Depoſitions being a part of the ſaid Trial, the Purſuer cannot be heard to quarrel them, eſpecially ſeeing they are uſed by the Purſuer againſt the Pannel, and are now as his Evidence. And if the Purſuer uſe them againſt the Pannel, it is lawful for the Pannel to make his uſe thereof, ſo far as makes for him, in reſpect whereof the Alleadgance ſtands relevant in that part founded upon the ſaid Depoſitions. Which, together with the ſaid miſſive Letter written by Mr. *Haig*, and which the Pannel propounds *conjunctim*, to prove his Alleadgance, verifies clearly that part thereof: And ſo being both relevant and proven, is ſufficient to elide (quaſh) that part of the Dittay, That the Pannel ſhould not be found convenable as Author. And whereas my Lord Advocat in his Reply anſwers, That the ſaid firſt Defence, or firſt part thereof, is not relevant, bearing that it is alledged for the Pannel, That he cannot be convened as Author, ſeeing there is another Author condeſcended upon, and proven; becauſe it is replied that they might both be Authors of the ſaid alledged Libel: It is duplyed, That that part of the ſaid Reply ought to be repelled, in reſpect of the Dittay it ſelf, wherein it is not libelled that they are both Authors, but only that the Pannel is Author; and when it ſhall be ſo libelled, it ſhall have an Anſwer. And where it is replied by my Lord Advocat, That that part of the Defence, bearing that Conſulters and Adviſers are not contained in the Acts of Parliament, upon which the Dittay is founded, ought to be repelled in reſpect of the 151ſt Act of the 12th Parl. of King *James* I. of happy Memory, wherein it is declared, that all criminal Libels contains Airt and Part: To that it is duplyed, That the Defence ſtands relevant notwithſtanding of the ſaid Anſwer; and that the Pannel can no ways be drawn within the compaſs of the ſaid two Acts, except upon that which is eſpecially contained therein; and Conſulters and Adviſers are not contained therein. And as to that contained in the other Act of Parliament, cited anent Airt and Part, it is anſwered, That they are different: And if they be alike, Airt and Part ſhould only be mentioned in the Dittay, and not in the other with Conſulting and Adviſing, which are clearly ſeveral Points, and muſt be ſeverally elided; in reſpect whereof, that part of the ſaid Alleadgance ſtands relevant. And where it is replied, That the Pannel's Depoſitions, alledged in the Exception, to verify that he was not Conſulter, Adviſer, &c. becauſe that the ſaid Depoſitions bears that he knew not of the penning, and gave no Advice thereto, that that Part of the ſaid Alleadgance is likewiſe denied *ut ſupra*, and not a Defence: It is replied, That as my Lord Advocat repeats his Reply againſt the Denial, ſo for the Pannel the ſaid Defence and Duply, made in fortification thereof, are here repeated; eſpecially that part of the Duply founded upon the ſaid Depoſitions, bearing that the ſaid Depoſitions are uſed by my Lord Advocat againſt the Pannel, and therefore muſt work in his favour alſo. Where it is replied to that part of the Alleadgance, bearing that the Pannel cannot be convened as Author and Deviſer, becauſe he has given Advice, and in token thereof has mended and reformed a part of the ſaid Libel; that that cannot be reſpected, becauſe of the Reaſon contained in the ſaid Exception, bearing that it is contrary to the Depoſitions, and that it impugns not the Relevancy: It is anſwered and duplyed to the ſaid Reply, That the ſame ought to be repelled, in reſpect of that part of the Alleadgance which is founded upon the Pannel's Depoſition, and needs not impugn the Relevancy, becauſe it is peremptor for that part; and as it is relevant, ſo it is inſtantly proven by the ſaid Depoſitions, and elides that Member of the Dittay, being peremptorily proponed, and inſtantly verified and proven by the ſaid Depoſitions. And albeit it be replied by my Lord Advocat, That the ſaid Depoſitions are not uſed by him neither as Part nor Proof of the Libel, yet it is contrair, becauſe they are mentioned in ſome part of the Libel, and ſo uſed. And as for Proof, they cannot be yet uſed as ſuch, till the Relevancy be diſcuſſed. But albeit my Lord Advocat ſhould not uſe them, yet the Pannel uſes the ſame; and the ſaid Depoſitions may be found a lawful Probation to him of any thing that he ſhall found thereupon.

And where it is alledged by my Lord Advocat in his Reply, That that part of the Defence uſed by the Pannel againſt the Interlining libelled, that the ſame is not relevant, becauſe not libelled when interlined, as that part of the ſaid Alleadgance bears; and it is anſwered by my Lord Advocat, That that part of his Lordſhip's Qualification is uſed jointly with the reſt; and that *quocunque tempore* interlined is an Evidence of the Pannel's Concurſe with *Haig*, in reſpect it was done by *Haig* in name of the Pannel and the reſt of the Supplicants: To that it is duplyed, That that part of the Alleadgance proponed for the Pannel ſtands relevant, notwithſtanding of that part of the Reply made thereto; and that it is yet contended for the Pannel, that it is no ways relevant to alledge *quocunque tempore* interlined thereupon, to infer againſt the Pannel that he was Author, Deviſer, and Airt and Part of the penning: for common Senſe evinces, that to be Airt and Part of the penning or deviſing of a Writing, muſt be done either the time of the forming of the ſaid Writ, or very ſhortly after, otherwiſe Interlining can never infer Author, Deviſer, or Airt and Part of the penning. And it is clearly ſet down in the ſaid Alleadgance, that great time intervened betwixt the Author's penning and deviſing of the ſaid Libel, and the Pannel's interlining of it; for it is clear and nottour to my Lord Advocat and the Lords of the Committee, by clear Depoſitions before them, that the ſaid interlined Libel was that ſame which was intended to have been preſented to his Majeſty by the Earl of *Rothes*, and that it was not interlined during the hail time the ſaid Earl had the ſame, and for a long time after. And ſo that part of the ſaid Dittay is no ways relevant to infer the ſaid Pannel to be Author for the ſaid Interlining, becauſe the time of the ſaid Interlining is not libelled *quando*, and that it was at the time of the Penning, or immediately after.

And where it is anſwered, That the ſaid Libel was done by *Haig* in name of the Pannel and the reſt, that part of the Anſwer ought to be repelled, as altogether irrelevant, not bearing that it was done at their Command; for to do any Deed in name of another Perſon, cannot be counted that Perſon's Deed in whoſe name it was done. And where it is replied, that the General is relevant, without that part of the Qualification anent the Interlining after that the Pannel received it from *Haig*, eſpecially ſeeing it will be conſtant by the Depoſitions, when they will be produced before the Aſſize, that there was no interlining *longo intervallo*, but ſhortly: To that it is duply'd, It ought to be repelled in reſpect of the Alleadgance, and the Qualifications therein contained, bearing clear and undeniable Circumſtances of the time of the Interlining; and likewiſe in reſpect of the ſaid Depoſitions, whereupon that part of the ſaid Alleadgance is founded, and which now the Purſuer uſes by propounding his Reply thereupon. And ſeeing both the Purſuer and the Pannel condeſcends upon the ſaid Depoſitions as a Probation of that part, that part of the Dittay cannot be referred to the Aſſize, to be proven before them, anent the time of the ſaid Interlining; but as the Defence is relevant, as it is proponed, and ought and ſhould be ſo found, ſo the Depoſitions may be preſently received as the Probation thereof, being inſtantly verified and proven, as ſaid is. And where it is anſwered, That the nine Months, contained in the Alleadgance, alledged to have intervened betwixt the penning and interlining, is not verified; it is duplyed, That, firſt, Relevancy muſt precede Probation: *Secundo*, That the ſaid Space and Time may be gathered out of the Circumſtances contained in the ſaid Alleadgance and Depoſitions: and laſtly, The Pannel's own Declaration muſt be taken thereupon, ſeeing the Purſuer ſhews nothing in the contrary. And this Judicatory admits no Dyet to prove any thing that is found relevant, which is not proven *inſtanter*. And where it is alledged againſt that part of the Pannel's Alleadgance, bearing, That the ſaid interlined Copy was never ſeen before it was produced before the Committee; and that the Pannel had Promiſe not to be ſnared, and needed not to have produced it, except he had pleaſed; and that it is replied by my Lord Advocat, That all that was urged from the Pannel by the Committee was by good Warrant, whereunto he was obliged to anſwer upon his Allegiance; and that the Denial to anſwer before them would have inferred againſt the Pannel a more dangerous Crime, if he had refuſed; and the Committee only urged a true Declaration anent the Author: It is duplyed, That the Pannel is not to diſpute now anent the Warrants of the ſaid Committee, and upon the Crime that might have followed if he had denyed to anſwer, and whether he might have declined them or not. But this he duplies in fortification of that part of the Alleadgance, That albeit he had neither declined the ſaid Committee (as he did not) nor had oppoſed in any caſe their Powers or Warrants; yet he might have lawfully proponed before them this Defence, which to his great and heavy prejudice he did omit, That of Law and Reaſon he was not obliged, nor could not been urged to have made any Depoſitions, nor given Anſwers to Interrogators anent any Demand concerning the ſaid Libel quarrelled; becauſe his Anſwers and Depoſitions might have been the Ground of a Criminal Purſuit againſt him (as now it is.) And ſo with Reaſon he might have been ſilent, and the ſaids Lords of Committee could have taken no exception againſt him for his ſaid Silence. And therefore that part of the ſaid Pannel's Alleadgance ſtands relevant, notwithſtanding of the Anſwer bearing that he could not have been compelled to have made any Depoſition either upon his Oath or Declaration, if he had remembered, and had alledged the Danger that was to follow and enſue thereupon. In reſpect whereof, the ſaid Replies, and every one of them, ought to be repelled, in reſpect of the ſaid Alleadgances and Duplies made in fortification thereof.

It is farder duplyed for the Pannel by Mr. *Alexander Pearſon*, That where it is replyed by my Lord Advocat to that part of the laſt Defence, bearing that Mr. *William Haig*, the Author and Penner of the alledged Libel, by his own Grant in his miſſive Letter, and alſo acknowledged by the Dittay, that his Declaration that the Pannel gave his Allowance to the penning and forming of the ſaid alledged Libel, cannot be reſpected, nor have any Faith, *quia Particeps Criminis adverſus Socium, fidem non facit*; whereupon my Lord Advocat infers a Grant againſt the Pannel, of his giving Allowance to Mr. *Haig* in the forming of the alledged Libel: To which it is anſwered, That the Inference and the Conſequence is not good, and has no force; becauſe the foreſaid Defence does no ways inforce a Grant of Allowance by the Pannel to the forming of the alledged Libel, but does only import that Mr. *William Haig*, the Author and Penner thereof, that his Declaration (not granting any) bearing the Pannel to have given Allowance to him in forming the alledged Libel, cannot be reſpected, nor have any Faith at all againſt the Pannel, himſelf being clearly the Author and Penner thereof; *quia Particeps aut Socius Criminis adverſus alium, fidem non facit*.

It is alſo farder duplyed for the Pannel by the ſaid Mr. *Alexander Pearſon*, That where it is replyed by my Lord Advocat, that it is againſt Law and Reaſon to oppone *Juſjurandum in Criminalibus*, and that the Oppoſition of an Oath given has only place *in Civilibus*; it is anſwered, that the contrair is true in Law, to wit, That Cauſes Criminal are ſometimes even decided by Oath of Party by clear Law. Firſt, *Leg.* 25. § 5. *F. de Jurejurando: Verba Legis, Si quis juraverit ſe non capuiſſe, non debet adjuvari hoc Jurejurando in actione Furti, quia aliud eſt Furtum feciſſe, quod vel clam fieri poteſt. Et Leg.* 6. § 5. *F. de his qui notantur Infamia: Verba Legis, Sed & ſi Jurejurando delato juraverit quis non deliquiſſe, non erit notatus; nam quodammodo Innocentiam ſuam Jurejurando approbant, quibus luce clarius eſt. Et in Cauſis Criminalibus Juramentum deferri, ergo etiam Cauſas Criminales per Juramentum delatum decidi.* And it is alike, *utrum Juſjurandum a Judice an a parte delatum ſit, utrumque enim deciſorium eſt Litis; expreſſa Leg.* 1. *F. de Jurejurando: Verba, Maximum Remedium expediendarum Litium in uſum venit Jurisjurandi Religio, quia vel ex pactione ipſorum litigantium, vel ex authoritate Judicis deciduntur Controverſiæ: & Ratio quia Judex non defert Juramentum niſi in ſupplementum, & ubi res aliter probari non poteſt.* And therefore that part of the Defence foreſaid ſtands good and relevant, notwithſtanding of the Reply.

It is likewiſe duplyed by Mr. *John Niſbet* for the Pannel: Where it is replyed by my Lord Advocat, that the opponing of the Pannel's Depoſitions, wherein he diſavows that he is Author, Deviſer, conſcious or acceſſory to the framing of the alledged Libel, is not a Defence, but a Denyal; it is duplyed, That ſundry Points of the Dittay being qualify'd, by the Pannel's Depoſition, there reſults to him a relevant Defence in Law, upon the Indiviſibility and complex taking of his Depoſitions, *quia Confeſſio non poteſt pro parte acceptari, & pro parte ſperni: Bartol. in Leg. Aurelius, §. Idem quæſiit, num.* 2. *F. de Liberatione Legata. Pharm. Quæſt.* 81. *num.* 168. *& aliis numer. Quando eſt Præſumptio quod qualificato confitente occiderit ad ſui defenſionem, ut parte ſi occidens ſit vir probus, nullamque occidendi & offendendi cauſam habebat, & quia occiſus erat homo rixoſus; talis qualificata Confeſſio non poteſt dividi, nec pœna extraordinaria imponi, & ſic confitens omnino abſolvendus eſt.*

Whereas it is replyed by my Lord Advocat, that the Relevancy of the Qualification, and the Conformity and Diſconformity of the Pannel's Depoſitions, is not proper to be debated here, but muſt be remitted to the Aſſize; it is duplyed, That all Diſpute and Debate of Law muſt be decided by the Judge, and is not pertinent to be agitated before the Aſſize, who are only Judges *Facti, & Quæſitores* to make inquiry into the Verity of the Deed.

Whereas it is replyed by my Lord Advocat, that Interlining *vel in actu ipſo, vel poſt actum quocunque tempore*, of a Piece drawn up for the uſe of the Pannel and others intereſted, evidences the Pannel's acceſſary Concurſe in the forming and deviſing the Piece; it is duplyed, That it is moſt unreaſonable, becauſe it ſhould follow, that interlining of any Piece or Book ſhould import Concurſe in the firſt framing of it, which is contrair to Reaſon.

Whereas it is replyed by my Lord Advocat, That *Principium & Finis tanquam duo Extrema Medium includunt*; as is acknowledged by us in the Uſe of that Maxim; and conſequently that the firſt Intimation of the Pannel's Knowledge, and the immediate receiving of the Piece challenged, and Interlining *ex poſt facto*, are relevant to make the Pannel Author, or Airt and Part: it is duplyed, That that Maxim is uſed by us in the Interpretation of ſundry Paſſages of a Piece done *unico Contextu*, which therefore muſt be preſumed to be done *uno Animo & uno Stylo*, by the Analogy of the two Extremes interpreting the Midſt; and can never be uſed to make diſparat Acts, to join prepoſterouſly, to prove Acceſſion in forming and deviſing, ſeeing the firſt Imitation alledged by my Lord Advocat is of Knowledge, which preſuppoſeth a thing to be done.

Where it is replied by my Lord Advocat, that the Libel produced before the Lords of the Committee with the Pannel's Depoſitions, notwithſtanding Promiſe and Aſſurance that they ſhould not be uſed, may be uſed by my Lord Advocat, and that the Procedure of the Lords of Committee is moſt warrantable, that the Pannel was obliged to anſwer by his Alleadgance; it is duplyed, That the warrantable Procedure of the Committee is not conteſted, nor cannot be; and that the Pannel, albeit he could not decline his Majeſty's Commiſſioners, might very well in Reaſon and Law have refuſed to depone his own Dittay. And we adhere to the former Citations, averring that the Aſſurance given by Judges ſhould ſecure Pannels againſt any uſe that could have been made of their Depoſitions.

It is added to the Duplies by Mr. *Robert Maegill*, That where my Lord Advocat has replied, that the Oath of a Party to be indicted may be urged in Criminals, *quod hoc vix ſit auditum in Jure, Clarus* §. *ult. Quæſt.* 63. *& Quæſt.* 45. *num.* 9. And if it hath been practiſed in ſome parts, as likewiſe in this Country in the Examination of theſe who are to be indicted, *Conſuetudo illa eſt vetuſtas erroris quæ non adeo ſuo momento valitura, aut ut Legem vincat aut Rationem. Apud Gregorium, & Codice Juſtiniano, quæ ſit longa Conſuetudo.* The Reaſon of the Law is, that the maintaining of our Life is ſo natural, that what will we not ſay for the defence of it? *Et ſupra omnia evitandum eſt Perjurium.* And the Reaſons of the Practicians is nothing, which is leſt Crimes ſhould be unpuniſh'd: for upon Probation by Writing, Witneſſes or other Confeſſion, *quæ non eſt jurata*, or upon Preſumptions *luce meridiana clariores*, an alledged Criminal may be put to the knowledge of any Aſſyze; or otherwiſe the Queſtion may be uſed *ad eliciendam veritatem*. And where Celerity of Puniſhment may be objected rather or a Man perjure himſelf, *vindictæ Tarditas Supplicii gravitate compenſetur*. But accepting the Practique to be ſo, I ſay, that *in Confeſſione jurata nullo pœnæ metu propter Impunitatem promiſſam*. The Maxim of the Law muſt be here received, *quod approbo, non reprobo*; eſpecially ſeeing the Pannel was ſo ſimple and careleſs in reſpect of his Innocency, that he remitted the forming of his Depoſitions to the Lords of Committee themſelves, he being then removed the time of the dyting and writing of them, and did ſubſcribe them *fide implicita*.

Where it is replyed, that adviſing and deviſing may be attributed or qualified by any ſubſequent Deed to the alledged Crime; it is anſwered by that of *Salluſt, Et antequam incipias conſulto*, &c. and ſo it is *in Mandato*. And as to the Ratihabition, *eſt fictio Juris*; and it is to be underſtood *in Criminibus manifeſtis, & non ubi quæritur de nomine Criminis*; as in our Caſe. And remits to the Diſtinction alledged in the hinder part of the firſt Exception.

It is duplyed by Mr. *Roger Mowat* to the two Practiques of *Auchindrane* and *Carrarie* alledged by my Lord Advocat, That they ſuit not this Caſe, ſaying that Depoſitions ſhould not prove in favour of the Pannel, becauſe if any Depoſitions were given by theſe two Perſons (not granting the ſame) they were given after their Indictment for the Crimes of Murder; but here the Depoſitions are given before any Crime known. Secondly, If any Depoſitions were given, they were the voluntary Depoſitions of the Party, not demanded by the Judge. Thirdly, it is not replyed, that theſe Delinquents proponed any Defence upon their Depoſitions, and craved their ſaid Depoſitions to verify the ſaid Diſpute. Laſtly, it was not there alledged and offered to be proven, That there was ane other Author of the ſaid Murder, which was their Crime; whereupon if they had condeſcended and offered to prove the ſame, their Depoſitions would have been further reſpected. In reſpect of which clear Differences of theſe Delinquents from this Caſe, no reſpect can be had to the Practiques alledged.

The Dyet continued till to-morrow the 11*th Inſtant.*

Curia legitime affirmata, *the ſaid* 11 *of* December 1634. *Parties and Procurators as before.*

The King's Majeſty's Advocat having heard the Duplies made to his Lordſhip's Reply, declares that he finds nothing worthy therein to be anſwered, except one Point of Law moved very impertinently anent the

Diviſion of Confeſſion in Criminals, and another made in *facto* anent the Challenge made to the Committee in an alledged Promiſe made to the Pannel at the time of his Examination. And for the firſt, which is diſputable *in jure*, if it had been pertinent to the purpoſe, his Majeſty's Advocat declares he would have triplyed thereto in writing, and is ready, upon my Lord Juſtice's Deſire, to clear it to his Lordſhip. And as to the other part *in facto*, 'tis more pertinent to be cleared before the Aſſyze. And therefore he ſuperſedes his Anſwer, except he be enjoined thereto by my Lord Juſtice-General.

Quinto, It is alledged by Mr. *Roger Mowat* for the Pannel againſt the ſecond Alternative of the Dittay, That the Pannel ought to be aſſoilzed, and cannot be put to the knowledge of an Aſſyze, for alledged hearing, concealing, and not revealing, and not apprehending of the Author of the alledged infamous Libel, and alledged divulging and diſperſing thereof, as the Dittay bears: becauſe giving, and not granting, that the foreſaid Supplication quarrelled might be found ſcandalous againſt Mr. *William Haig*, the known Author thereof; yet *quoad* this Pannel, who is not, nor cannot be found the Author, it cannot be ſo declared, becauſe the Addition of the Act 1594, militats only againſt ſuch Writings as are manifeſtly, clearly, and without doubt or difficulty evident and ſeen, and known to be infamous Libels, and at the very firſt ſight may appear ſuch unto every ordinary Underſtanding. But the quarrelled Supplication being of a dutiful ſtrain, and ſuch as might be miſtaken even by very underſtanding Readers and Hearers, the addition of the ſaid Act can no ways be extended to the Hearers, Concealers, not Revealers and not Apprehenders. But ſo it is, that the ſaid quarrelled Supplication was delivered by the ſaid Author to the Pannel as an humble Supplication, and given by him to the Earl of *Rothes* as an humble Supplication, and returned to him under the ſame name: likeas the Pannel is content to make Faith anent his Knowledge and Conception thereof, that he received and retained the ſame *eo nomine*; and therefore cannot be put to an Aſſyze upon theſe Points, ſeeing they are Points that cannot in reaſon be found capital by the Common and Civil Law, but by the ſaid Addition, which was made in turbulent Times, and never took effect, but in continual deſuetude, as has been ſaid before. And it were very hard, upon ſuch ane Act, never practiſed heretofore, to make Noblemen and others his Majeſty's good Subjects obnoxious to a Capital Crime. And albeit the ſaid quarrelled Supplication might now be found to be infamous, yet the finding it now to be ſuch, ought not, nor cannot be drawn back to infer the Pain of Death upon thoſe who *bona fida* did not think it ſuch, as now it is ſaid to be by the ſaid Dittay; they having *juſtam & probabilem Ignorantiam*, by doing that which truly they did, thereby not to have incurred the hard and rigorous Cenſure of the ſaid Act of Parliament. Secondly, It is alledged, that *Abſolvitur* ought to be granted *ut ſupra* to the Pannel, becauſe the Supplication quarrelled was never declared heretofore infamous: and before it had been declared infamous and ſcandalous, and by the ſaid Declarator the Pannel had been certified of the Danger, the alledged Having and Hearing thereof cannot be now ſuſtained as a relevant Ground to infer this Criminal Purſuit and Pains of Death againſt him. And with reaſon it ſhould have been firſt ſo declared againſt him, that he, and others his Majeſty's loyal and good Subjects, being lawfully warranted by the ſaid Declarator, might have thereafter eſchewed to have offended in that kind. Thirdly, *Abſolvitur* ought to be granted, becauſe the ſaid quarrelled Supplication was intended and offered to be preſented to his Sacred Majeſty; which intended Offer of the ſaid Supplication by the Earl of *Rothes*, put the Pannel *in tuto*, that he could never have ſuſpected any Crime or Puniſhment for hearing, keeping, *&c.* to have followed after the ſaid intended Offer: and ſo was thereby *in optima fide* to hear, keep, and not to reveal any thing thereanent. The making of the which Offer to his Royal Majeſty, in the Pannel's Judgment, did then vindicat him that he thought nor conceived not the ſaid Supplication ſcandalous or ſeditious; ſeeing it is preſumed that no Man of Judgment or ordinary Senſe and Reaſon, would be ſo fooliſh as to offer his own Dittay to his Prince.

And that the Pannel's Innocency may farther appear, and that his Opinion and Judgment of the ſaid quarrelled Supplication, as he offers to declare the ſame then to have been, may be truſted above all other Preſumptions that can be adduced in the contrair; it is to be remarked, and gravely and wiſely conſidered by the Judges, that the Purſuer in effect has no other Evidence nor Probation of the ſaid Particulars libelled in the ſaid Dittay againſt the Pannel, but ſuch as proceed from his own Depoſitions made before the ſaid Committee: which Point is ſo conſiderable, that in reaſon no advantage ſhould ariſe thereupon againſt him, ſeeing he was not obliged thereto, but of his own accord. And as in Law a Perſon accuſed criminally cannot be compelled either to depone or declare at the command of the Judge, ſo the Depoſitions given by this Pannel before the ſaid Committee, ſhould not be reſpected, in ſo far as the ſame may be made ane Ground of the ſaid Dittay, which concludes and infers no leſs againſt the Pannel nor the Pain of Death. And for the Point of concealing and not revealing the ſaid Writ, *de facto* the ſame was revealed by the Pannel to the Earl of *Rothes*, in ſo far as the ſame was appointed to to be preſented to his Sacred Majeſty, and thereby to have been revealed to his Highneſs: likeas accordingly the Earl of *Rothes* did offer to preſent the ſame, as ſaid is. In reſpect whereof, *abſolvitur* from the ſaid concealing and not revealing; *abſolvitur* likewiſe for not apprehending, becauſe, as is ſaid before, the Pannel is ready to declare, that in his Judgment and Conception he did not think the ſaid quarrelled Supplication to be ſuch as it is libelled by the Dittay, for the Reaſons before adduced. And in that reſpect it was hard for him as a private Man to take upon him to apprehend the Author of a Writing, which before he had not conceived to fall within the compaſs of the ſaid Act of Parliament. For albeit in Matters of Treaſon all good Subjects are obliged in Duty under all higheſt Pain to diſcover and delate Authors and Practiſers thereof; yet in other Matters, in Writing, and ſuch like, wherein are doubtful and ambiguous Expreſſions, which may ſuffer divers Interpretations and Conſtructions according to the Humours, Capacities, and Conceptions of the Readers; there is no ſuch Neceſſity poſed by the ſaid Acts of Parliament libelled, nor by the Makers of the ſame, that a Writing coming to a Man's hands, whereof he makes not the right Senſe and Meaning as others do make thereupon, that the ſaid Writing not rightly underſtood by him, ſhall thereupon be a Ground of a Criminal Purſuit to make him loſe his Life for not taking, or not apprehending, or not revealing the Author of the ſaid Writ. The Preparative ſeems dangerous and ſingular; it would therefore be carefully adverted unto, ſpecially at this Time, and in this Caſe; whenas the putting of the ſaid Act in practice, ſeems to have the firſt beginning upon this Pannel. And the taking and apprehending of Leidges has heretofore been dangerous to ſundry Apprehenders; and is inſtanced by the Earl of *Queenſbury* and the Laird of *Geichtis* Practices, for taking of Leidges at their own hands.

It is anſwered to that part of the ſaid Dittay anent Mr. *Haig*'s apprehending of his own Danger upon the ſimple ſight of the Committee's Letter by the Pannel, that that cannot make the Pannel acceſſary to his Eſcape, no more nor his own Conſent anent the penning of the ſaid quarrelled Supplication can make the Pannel Airt and Part of the forming and penning thereof; ſeeing the ſaid Pannel's ſecond Depoſition bears that he was neither upon the Counſel nor Knowledge of his Eſcape, and knew not of it 'till three or four Days after he was gone. That Part of the Dittay anent the Pannel's receiving of Mr. *Haig*'s Letter, is no way relevant to infer the Pain and Crime libelled againſt the Pannel. Firſt, Becauſe this is not a Matter of Treaſon, wherein receiving and writing of Letters are prohibit. Secondly the Pannel was not prohibit by the Lords of the Committee to receive any Letters. Thirdly, the ſaid Letters are produced and delivered to the ſaids Lords, which in Rigour of Law he needed not to have done. Fourthly, Being produced, they prove nothing againſt the Pannel, but are clearly in his Favour; becauſe Mr. *Haig* profeſſes himſelf therein to be Author and Penner of the ſaid Supplication. And where it follows in the ſaid Dittay, that it is affirmed and avowed in ſome of the ſaid Miſſives, That Mr. *Haig* had the Pannel's Approbation and Allowance to the making and penning of the ſaid Supplication, that is altogether irrelevant, as having no Warrand from the ſaid miſſive Letter, which contains no ſuch Affirmation as is libelled. And the Pannel craves the Letter, bearing that Paſſage preſently to be read, ſeeing it is in my Lord Advocat's hands; which deſire ſhould be granted, becauſe the Pannel has ſeen it, with the reſt of his ſaid Miſſives, by Warrand from my Lord Juſtice and his Aſſeſſors.

It is added by Mr. *Alexander Pearſon* to the Exception, That the Pannel is not guilty of concealing, not revealing and divulging of the alledged infamous Libel, becauſe the Writing quarrelled being in form of a Supplication, and uſed as a Supplication by Offer made thereof to his Majeſty, who then gave no Signification of any Offence therewith, the Pannel is not, nor cannot be counted formally a Concealer, not Revealer, or Divulger of an infamous Libel, there being no ſuch Knowledge nor Opinion anent the Writing foreſaid of the Pannel: *Quia injuriam poteſt facere nemo, niſi qui ſcit ſe injuriam facere. Leg.* 3. §. 3. *F. de Injuriis. Sed accuſatus non habebat hanc ſcientiam, ſed juſtam cauſam credendi*, to think of it otherwiſe as a Supplication, for the Reaſons above rehearſed. And as when any is accuſed of Theft, it is a good Defence to ſay, *Quod domini voluntate & conſenſu rem contrectant, ſaltem putavit dominum conſenſurum, ſive id falſo, ſive id vero putet*; *expreſſa Leg.* 46. § 7. *de Furtis, maxime dum ſuberat infra cauſa ita credendum.* So by the like Reaſon in the matter of meddling with the infamous Libel, it muſt defend the Pannel, That he had no Knowledge or Conſcience of ane infamous Libel, and that he had juſt and probable Cauſes to think of it as a Supplication, *ſive id falſo ſive id vero putavit, & generaliter ubi de obligando queritur, propenſiores eſſe debere nos (ſi habeamus occaſionem) ad negandum, ubi deliberando ad liberationem, ait Arianus, Leg.* 47. *de Obligationibus & Actionibus: ergo in re præſenti rapienda eſt occaſio ad liberationem accuſati.* Specially anent the Divulging, becauſe this Point of Dittay anent Divulging, is not founded upon any Acts of Parliament, but only upon the Common and Civil Law, and therefore ſhould be decided by the ſaid Law: by which the Defence now alledged for the Pannel is very relevant. Farder, that part of the Dittay, bearing that the Pannel by ſhowing to Mr. *Haig* of the Warrant of his Citation, did thereby give him occaſion to eſcape furth of the Country, is not relevant; becauſe that which of itſelf is good, may give occaſion to Evil: And the Pannel's ſhewing the Warrant of his Citation, is no more nor if being verbally cited, he had told Mr. *Haig* of his Citation, which is no Crime.

It is added by Mr. *John Niſbet*, that the Dittay ſubſuming concealing of the Piece quarrelled, is contrary to itſelf, bearing the imparting of it to my Lord *Rothes*, of purpoſe to preſent to the King's Majeſty.

It is added, that the not apprehending the Author of an infamous Libel, is not relevantly qualified, by the not taking of *Haig*; ſeeing it is not libelled, that the alledged Libel was declared to be of that nature, or conſpicuouſly or nottourly, at leaſt to the Pannel's knowledge, an infamous Piece; and that it was in the Pannel's power to apprehend the Author without incurring any hazard of Law, for the injurious Interpellation or Apprehending of any Perſon, whom he was not able to convince to be Author: ſpecially ſeeing the not apprehending of the Author of a treaſonable Piece cannot import any Guilt againſt the not Apprehender, who is not able to convince the Author of the Crime by lawful Probation, and therefore not obliged to apprehend, ſince he cannot do it without the danger of Retaliation, in caſe he ſuccumb; *James* VI. *Par.* 2. *cap.* 49. And in Law, *Qui injurioſe interpellit in Judicio civili tenetur Injuriam, F. de Injuriis, Lege* 19. *Et ſi Liber pro Fugitivo apprehenſus ſit, apprehendens punitur.* And by the like Reaſon the Apprehender of a Party, whom he cannot convince by lawful Probation, is puniſhable; and in the Civil Law, he is obnoxious in the Pains of *Lex Julia de Vi publica*, and of *Lex Cornelia de Injuriis.*

Secondly, The apprehending injoined by Act of Parliament is only ſubſidiary, when a Party is declared Author, and cannot be well apprehended by the Judge: And a Party that is ready to delate the Author of an infamous Piece, to the end that he may be apprehended by the Judge, he is not obliged to apprehend him ſummarly.

Thirdly, The not apprehending of the foreſaid Author is excuſable; becauſe the Pannel was enjoined by the Lords of the Committee not to divulge the buſineſs whereupon he was convened, and to keep all things ſecret until his Depoſition.

It is farther eiked by Mr. *Robert Macgill*, anent the not apprehending, That the Pannel ought to be aſſoilzed therefrom, becauſe Freedom is ſo natural and favourable, that even amongſt the *Romans* many of their Magiſtrates had not *Prehenſionem*; and that which the Tribunes of the People had, it was alſo for the People's Freedom. *Gellius*, *lib.* 13. *cap.* 12. Wherein it is certain of the Law, *quod nec magiſtratibus licet aliquid injurioſe facere, quin injuriarum teneantur. Leg. nec Magiſt.* 32. *F. de Injuriis. Unde etiam Captura debet eſſe ex decreto Judicis & Judicia, quæ reſultant ex proceſſu generalis Inquiſitionis debent eſſe ſufficientia ad Capturam, decerniturque Captura ex facti qualitate & debet proceſſus eſſe informatus licet reus, qui capiendus eſt, non citatus ſit: Clar.* §. *ultima*, *Quæſt.* 28. & *Quæſtione* 20. *num.* 2. *Quod in delictis enormibus id ita hodie ſervatur.* If then it be ſo, *in Magiſtratibus Capturam jubentibus*, can it be thought that any municipal Law can command Apprehenſion, *niſi in Caſibus de Jure, & ratione competentibus?* And ſo *in Criminibus Decorum enormitate jam ſatis conſtat* (where the Pannel profeſſes before God) *& Juſjurandum purgativum de Jure recipitur. Leg. Lex Cornelia* 5. § 8. *de Injuriis.* That he never remembered of ſuch an Act, he could never have imagined at that time the Piece quarrelled to have been of ſuch a ſort, much leſs to be treaſonable; and remits here to the Diſtinction of Crimes propounded in the laſt part of my firſt Exception, where Crimes and Pains ought to be ruled in Reaſon even in municipal Laws; and except in ſuch ſeditious Speeches, which is the firſt ſort of inordinat Speeches againſt a Prince, *Ubi & tractatus adeſſe debet, ut in Conjuratione Catilinæ*; no Lawyer did ever think the Haver, Hearer, and not Revealer, not Apprehender, to be puniſhable by Death; *& ut videtur abſurdum.* All municipal Laws ought to receive their own Limitations according to Reaſon: and remits here to the ſecond part of my Duply, in fortification of my firſt Exception, grounded upon *Gailus*, *lib.* 2. *Obſervatione* 33. anent the Interpretation of municipal Laws; and to the Limitation exponing the Act 134. which forbids any Man, of whatſoever Quality, to ſpeak in time coming anent the Government: which would be abſurd, if it received not its own Limitation to ſpeak (about it) in Council and Parliament. And repeats here again the gracious Acts of our dread Sovereign anent the ſurveying of the Laws.

It is anſwered by my Lord Advocat to the fourth Exception propounded againſt that part of the Dittay, whereby the Pannel is indicted and is puniſhable by Death; and that by the Act of Parl. 94. for not apprehending of *Haig* the Author of the infamous Libel, and for not revealing of the ſame, ought to be repelled in the hail Members thereof. And notwithſtanding the ſame, the Dittay in that part is ſeverally and *per ſe* relevant, ought to be put to the knowledge of an Aſſize; becauſe it is ſubſumed in the Dittay preciſely, according to the Words of the Act, That the Pannel, who knew *Haig* to be Author, did not apprehend, but concealed him and it, and not revealed them; and alſo gave occaſion to *Haig* of his Eſcape; and ſince his Eſcape, received divers Letters from him, which were concealed till the Pannel was interrogat thereupon by the Committee. And where it is alledged in the Exception, that the Dittay is not relevant in this point, not condeſcending that the infamous Libel was declared to be an infamous Libel; and in particular, that the Dittay in that part is contrair to itſelf, which bears the Pannel to be guilty of concealing; and yet bears alſo that he delivered it to the Earl of *Rothes*, to be preſented to his Majeſty: It is anſwered, That the Dittay is relevant, becauſe it ſubſumes directly according to the Act of Parliament, which ſpeaks not of an infamous Libel declared to be ſo, but of an infamous Libel of Speeches, which are ſo really in the ſelf. And there is no Contrariety in the Dittay, becauſe giving to the Earl of *Rothes* is concealing, except it were qualified that the Earl of *Rothes* were ſuch a Perſon to whom the Act of Parliament ties the Hearer to reveal, which he is not, not being of his Majeſty's ſecret Council. And where it is alledged that the true Meaning and Senſe of the Act is only to be underſtood of Reproaches and infamous Libels, which are certainly, conſpicuouſly, and nottourly ſo, and not of ſuch Speeches and Libels which are of a doubtful and ambiguous, or indifferent nature, which at the firſt View and Hearing could not appear to all Men to be infamous and ſcandalous: It is anſwered, That *Ubi Lex non diſtinguit, nec nos diſtinguere debemus.* And ſeeing the Act comprehends Reproaches and ſcandalous Libels, which are ſo really, *& non opinione*, the Judge and Aſſize are obliged to judge and proceed according to the nature of the thing prohibited, as it's ſo really, and not to leave place to fruſtrate the Execution of the Law under the Veil of Opinion. And of the Law, *ignorantia juris neminem excuſat ne quidem in delictis, licet ſit ignorantia probabilis præcipue in atrocioribus*; of which nature this is. Neither can the Pannel pretend excuſe upon the Incertainty, Obſcurity, or Ambiguity of the infamous Libel; becauſe this infamous Libel, by the firſt View, Reading, and Inſpection thereof, might and ſhould have appeared to him to have been of that nature. And no Nobleman, or whatſomever Subject of whatſomever Quality, being of the Pannel's Knowledge, Learning, and Underſtanding, can or could juſtly pretend any Doubt or Scruple; but that the ſaid infamous Libel was, in the firſt View and Reading thereof, of the nature of a ſcandalous Libel, puniſhed by death. And albeit in infamous Libels againſt Subjects there might be ſome Shadow of Excuſe, by reading and looking upon the ſame, and receiving thereof either for Curioſity, or to learn the Quickneſs of a Wit evil ſet in the penning of ſuch infamous Libels: But ſuch Excuſes are damnable in infamous Libels which touch with the leaſt Aſperſion or Blame the Honour, Credit and glorious Eſtimation of our gracious Sovereign. Likeas the Pannel cannot pretend Ignorance, in ſo far as he granted in his Depoſitions, that after his receiving thereof from *Haig*, when he did communicate the ſame with the Earl of *Rothes*, that they found the ſame of ſuch a Strain as ought not to be preſented to our gracious Sovereign. And where it is alledged that this Act of Parliament 94, in the Points of the Addition anent not apprehending and not revealing, are not of Crimes puniſhable to death by the Common Law; and that the ſame has been in long deſuetude, and out of uſe; that ought not to be reſpected, becauſe we are ruled by the Laws of the Kingdom, by the Acts made by King *James* the Firſt and King *James* the Fourth, before alledged; and there is no Preſcription in Law. And where it ſeems to be adduced to infer *probabilem ignorantiam*, it is anſwer'd, *Quod omnis ignorantia juris eſt improbabilis & punibilis.* And where it is alledged the Pannel *habebat ignorantiam facti eamque probabilem quæ excuſat in delictis*; in ſo far as albeit this infamous Libel was puniſhable to death in the Perſon of the Author, yet it cannot be puniſhable to death in the Pannel, not being Author as he alledges, becauſe it was delivered to him as a Supplication, to be preſented to his Majeſty; and that he preſented it to the Earl of *Rothes*, who made offer thereof to his Majeſty; and after returned it to the Pannel, which (as the Pannel alledges) put him *in tuto & in bona fide* not to apprehend *Haig*, not to reveal it to any of his Majeſty's Council as a ſcandalous and infamous Libel, becauſe he did not conceive it to be ſo; and is content to depone upon his great Oath, That he did not know, nor apprehend the ſame to be an infamous Libel: It is anſwered, That the Nature and Strain of the infamous Libel muſt be the Rule of Puniſhment or Impunity, and not the Opinion of the Pannel; the Reproaches, Exprobrations, and ſcandalous Aſperſions thereby put upon his Majeſty's ſacred Perſon, Eſtate, and Government, being ſo nottour, evident, and conſpicuous, that neither the Pannel, nor none of his Knowledge and Judgment, could pretend Excuſe or Ignorance in the reading thereof; *Et eſt ignorantia maxime inexcuſabilis neſcire hoc quod omnes ſciunt*: but ſpecially in the Pannel, who adverted to it narrowly, and heard it not ſimply ſpoken, but had it delivered to him in writing, which he keeped, copied, and adviſed with, and found the Strain thereof of that nature, as was not fit to be preſented to his Majeſty. And where it is alledged, That the Pannel cannot be puniſhable to death for not apprehending of *Haig*, and not revealing of him and his infamous Libel, except it had been declared to have been infamous, and *Haig* to have been the Author thereof; and that the apprehending of *Haig* in a matter ſo obſcure and doubtſome, would have been dangerous to the Pannel *per* Τοιαυτοπαθίαν or Retaliation, ordained by the Act of Parliament of King *James*, his Majeſty's bleſſed Father, of happy Memory, *Parl.* 2. *cap.* 49. It is anſwered, That Act of Parliament requires no other Declarator but the real Nature and Quality of the Speeches and infamous Libel; neither could there have been Danger in apprehending, being warranted by the Law. And where it is alledged, That all depends upon the Pannel's Depoſitions, which he made voluntarly for Satisfaction of the Lords of Committee, and that therefore he muſt have yet place to clear his own Depoſitions; and that for clearing thereof, he is ready to depone, by his great Oath, that at the Receipt of the ſaid infamous Libel, he received the ſame as a Supplication, and ſo keeped it, and retained it: It is anſwered, That the moſt ſubſtantial Part of the Dittay is founded upon the nature of the infamous Libel, and not upon the Pannel's Depoſitions; wherein his Denial of Knowledge upon Oath cannot liberat him from the Puniſhment of Death contained in the Act of Parliament.

And where it is alledged, that albeit the Juſtice ſhould find this Libel to be infamous now, yet it cannot be drawn back to the time of his Receipt from *Haig*; it is anſwered, That it needs no Declaration of Judge, and conſequently is not to be drawn back, but was ſo from the beginning.

And where it is alledged, That albeit in Matters of Treaſon all Subjects are obliged to delate, yet not in Matters which are doubtſome, but certain; it is anſwered, That this is certain, *& de jure & de facto: de jure*, becauſe commanded to apprehend under the Pain of Death; *de facto*, becauſe of the ſaid infamous Libel, which is really and of the own nature ſo.

And where it is alledged, that *Credulitas in Furtis præbet cauſam probabilem*, for the which the Text of the Laws are adduced; it is anſwered, *Quod illa Credulitas probanda eſt aliter quam per Juramentum rei.*

And where it is alledged, that *proniores eſſe debemus ad liberandum*; it is anſwered, That this has no place *in atrocioribus*, and which are ſo clear and manifeſt as this.

And where it is alledged, that the Pannel ought to be aſſoilzed for not apprehending and not revealing, becauſe he did reveal it to the Earl of *Rothes*, who did make offer of it to his Majeſty; it is anſwered, *Quod nullo modo relevat*, in reſpect of the Act of Parliament which ordains the revealing to be to a Counſellor, which *Rothes* was not. And the offer to his Majeſty by the Earl of *Rothes non relevat*, except it be alledged, that the Earl of *Rothes* offered it to his Majeſty as a ſcandalous Libel, to be puniſhed conform to the Act of Parliament; which is not nor cannot be alledged. And ſuppoſing that this revealing by the Earl of *Rothes* to his Majeſty might be ſuſtained as lawful for procuring Impunity from the Act, which is not granted; yet the Pannel is puniſhable to death upon the other Member, for not apprehending of *Haig*, whom he in his Depoſitions declared to have been the Author thereof, and whom he might have apprehended, both at the time of receipt thereof, and alſo at the time when the Pannel ſhewed to *Haig* the Warrand of his Citation before the Committee, he having him then in his power. And where it is alledged, that he could not apprehend him then, in reſpect of the Command given to the Pannel by the Committee, to acquaint no Perſons with the Cauſes of his Warning; that cannot be adduced for an Excuſe, but rather makes the Pannel inexcuſable, becauſe he tranſgreſſed the Command of the Committee in ſhowing of the Warrand to *Haig*, and yet did not apprehend him; but ſhowing of the Warrand, gave him occaſion to eſcape. And where it is alledged, that giving of occaſion is not relevant, and alſo that receiving Letters from him (not being in a Matter treaſonable) is not puniſhable; it is anſwered, That theſe Circumſtances are not eſſential Parts of the Dittay *per ſe*, but uſed as Adminicles to aggravate the Pannel's Crime in not apprehending of *Haig*, and entertaining with him Correſpondence after his flight.

And where it is alledged the Letters, if they were produced, would prove nothing againſt the Pannel, but in his favours, *non eſt hujus loci*, becauſe now we are only upon the Relevancy of the Dittay. But when they ſhall be uſed in the proper Place before the Aſſize, it will be clear, that the ſame make rather againſt than for the Pannel, in reſpect whereof the ſaid fourth Exception, and hail Members thereof ought to be repelled.

It is duplyed by Mr. *Roger Mowat*, in fortification of the Defence proponed for the Pannel, bearing, that giving and not granting that the foreſaid Supplication quarrelled, might be found ſcandalous againſt *Haig* the Author; yet *quoad* the Pannel cannot be found, becauſe the Addition of the Act 94 militats only againſt clear Writings, clearly known to be infamous; and at the firſt this appears not ſo, being of a doubtful Strain, as the Exception bears.

Whereunto it is replied, that the hail Members of the Dittay, anent hearing, not revealing, not apprehending the Author, are ſeverally relevant, in reſpect of the Act of Parliament; whereupon it is ſubſumed, that the Pannel knew *Haig* to be the Author, and did not apprehend him, but concealed and revealed neither him nor the ſaid alledged Libel, and ſicklike occaſioned his Eſcape, and received Letters from him ſince. It is duplyed, that the ſaid fourth Alleadgance proponed for the Pannel, ſtands relevant in the hail Members thereof, notwithſtanding of the ſaid Reply founded upon the ſaid Act of Parliament; and the Pannel refers himſelf to the ſaid Exception and hail Members thereof, to be judicially pondered and conſidered. And farther alledges, that the ſaid Reply is not relevant, bearing that that Part of the Subſumption of the Dittay is founded upon the ſaid Act, bearing, that the Pannel knew *Haig* to be the Author, and did not apprehend him: Becauſe albeit the Pannel knew him to be the Author, as his Depoſition bears in theſe words, that he took him to be the Author; yet it followeth, not by good Conſequence in Law or Reaſon, that he took him to be the Author of this as a ſeditious and ſcandalous Libel, as my Lord Advocat in his Replies bears hardly upon us, which were to take *Controverſum pro Confeſſo*: And ſo the Pannel ſtill abiding by his former Defence, acknowledges, that if he had known the Libel to have been infamous, he was tied to the ſtrict Obſervance of the Act of Parliament made againſt Libels of that nature and kind. But ſeeing the Pannel was ſtill denied all ſuch Knowledge as is inforced upon him by the Dittay and Reply, and that it is againſt Reaſon that any furder Knowledge of a Writing ſhould be inforced upon a Party, otherwiſe than he declares himſelf, and has declared *ab initio*; for he has ſtill affirmed, and yet does affirm, that he never conceived that quarrelled Writ to have been infamous, or to have carried or rubbed any Aſperſions upon his ſacred Sovereign; which if he had perceived, he would rather have loſt his Life before he had concealed one jot thereof, as he was bound in Duty. And ſo ſeeing the Gloſs and Commentar of his Knowledge of the ſaid Libel, muſt always be referred to himſelf, and not by the Gloſs made in the Dittay, importing no leſs than the loſs of his Life; the ſaid Reply ought to be repelled, unleſs it were alledged that the Pannel, by his Knowledge and by his Underſtanding, had perceived the ſaid Libel to be as the Dittay bears, which he profeſſes he never did. For if this Ground hold, that all Men reading Writings ſhould have a like Knowledge thereof; and that any reading a Writing ſhould underſtand all the Senſe or Commentaries that could be made thereupon, or elſe to incur ſuch Pains as might follow; this Inconvenience might enſue, that Bairnes, or mere Ignorants or Fools, reading Writings of this kind and nature, might incur the ſelf-ſame Dangers; which is a great Inconvenience, for certainly they know no better: and by their Knowledge they apprehended not the Danger, which wiſer and more learned Men prying more narrowly thereinto, did perceive and find out. For it has pleaſed God to give every Man his own particular Knowledge, and not all Knowledge to one. And except it were replied, that the Pannel either by Word or Writing had ſignified or expreſſed any other Knowledge or Conception of the ſaid quarrelled Writing, which may verify againſt him that he acknowledged the ſame to be ſcandalous, as the Dittay bears, the ſaid Reply ſhould be repelled as irrelevant. And the Conception and Knowledge of the ſaid Writing muſt neceſſarily be referred to the Pannel's own Declaration, whoſe Life and Fortune cannot be taken away upon another Man's Expoſition of a Writing, which the Pannel is content to make Faith that it never entered in his Judgment or Senſe to know that to have been the Meaning; which if he had known, he could not but at the firſt view have fulfilled and obeyed the Law ſet down in the ſaids Acts, as his Diſpoſition, and his Carriage, and his bygone Actions clearly evince, and needs no further queſtioning. In reſpect whereof, the ſaid Reply ought to be repelled, as altogether irrelevant, for the Reaſons before alledged.

And where it is replied by my Lord Advocat, That the giving of the ſaid infamous Libel by the Pannel to the Earl of *Rothes*, is *de facto* concealing, except the ſaid Earl were ſuch a Perſon to whom the Act tyes the Hearer to reveal; which he is not, becauſe he is not ane Counſellor: to that it is duplyed, That the ſaid Reply is no ways relevant, becauſe albeit the ſaid Act of Parliament expreſſes a number of kinds of Perſons in place, to whom the Crimes prohibit by the ſaid Act are to be revealed; yet it excludes not other Perſons, but that ſuch Crimes may be revealed to them as well as to the Perſons contained in the Act: and the revealing thereof to other Perſons would be counted good Service, and not taken for a Fault in the Revealer. Secondly, The ſaid Earl, to whom the ſaid Writ was revealed, albeit he be not Privy Counſellor, yet by the Laws of this Country he is born a Counſellor, and was ſo at the making the ſaid Act, as all the Earls in *Scotland* were then: and therefore the revealing to the ſaid Earl may be eſtimat to have been done conform to the ſaid Act. Thirdly, The ſaid Earl is ane Sheriff, and by the Act of Parliament the ſaids Crimes are ordained to be revealed to Sheriffs, as one of the Perſons mentioned in the ſaid Act: and therefore the Delivery of the ſaid quarrelled Writ to the Earl of *Rothes* by the Pannel, is clear revealing, and not concealing; at the leaſt is ſuch revealing, that in Law and Juſtice ſhould liberat and free the Pannel from the Crime libelled in the Dittay, and from the heavy Pain that follows thereupon, being no leſs than the Loſs and Tinſel of his Life.

And where it is replied by my Lord Advocat to that part of the ſaid Defence, bearing that the Act of Parliament is of notorious and known ſeditious Libels, and not of doubtſome and ambiguous Writs, which in reading may ſuffer divers Senſes and Conſtructions, of the which laſt kind it is alledged that the Writ quarrelled is: to the which it is replied, *Ubi Lex non diſtinguit, neque nos diſtinguere debemus.* And ſeeing the Act comprehends Reproaches and ſcandalous Libels, which are really ſo, *&* *non in Opinione*; the Judge and Aſſyze ſhould proceed according to the thing prohibited, and not leave place to the Veil of Opinion: To that part of the ſaid Reply it is duplyed *ut ſupra*, That albeit the ſaid Act comprehends reproachful and ſcandalous Libels, which are really ſo; yet it follows not, for the Reaſons adduced in the firſt Duply made to my Lord Advocat's firſt Reply immediately preceding, which I here repeat *brevitatis cauſa*: for here is all the Controverſy, Whether my Lord Advocat's Opinion in the Dittay, or the Pannel's Opinion in the Defence againſt the Dittay, ſhall carry the greateſt force, ſeeing they are both different Opinions. And it ſeems moſt favourable and moſt reaſonable, that a Nobleman's Life being quarrelled and drawn in queſtion and hazard upon the Interpretation and Commentary, that the Pannel ſhould have the preference anent the Interpretation, for preſervation of his Life, Honour, and Eſtate; eſpecially in reſpect that it is not only ſimply offered, that he would declare the true meaning, which he always knew and underſtood, of the ſaid Writing, but likewiſe offers to make Faith thereupon. And as this is moſt reaſonable, ſo it ought to be favour'd upon the Pannel's part in this Caſe, ſo heavy and ſo dangerous to him; for it is not denyed, but the Act prohibits the hearing, having, concealing, &c. of infamous and ſcandalous Writings; but this Writing *quoad eum* cannot be called ſo: neither prohibits the Act, that Readers of ſuch Writings ſhould otherwiſe read, know and underſtand the ſame, nor according to the Knowledge that it has pleaſed God to give them.

And to that part of the Reply, bearing that the Pannel cannot pretend Excuſe upon the Uncertainty and Ambiguity of the ſaid quarrelled Writing, becauſe by the firſt view it might and ſhould have appeared to him to have been of that nature; albeit in Libels againſt Subjects there might be ſome Excuſe by reading, retaining, and looking upon 'em; yet the Pannel cannot pretend Ignorance after the receiving thereof from *Haig*, and communicating the ſame to the Earl of *Rothes*, that they found it of ſuch a ſtrain, as ſhould not be preſented: It is duplyed, That this part of my Lord Advocat's Reply doth unwillingly force the Pannel to fall upon the Expoſition of the Words of the ſaid Libel; which cannot be eſchewed, in reſpect of that part of the Reply, bearing that by the firſt view it might and ſhould have appeared to him to have been of the nature of a ſeditious Libel: which the Pannel flatly refuſes, and is formally contrair, becauſe he never took it to be ſo; for the firſt words of the ſaid quarrelled Writ are thir, (theſe) *To the King's moſt excellent Majeſty, the humble Supplication of the Lords and others Commiſſioners of the late Parliament, humbly ſheweth*, &c. And theſe being the firſt words of the ſaid Writing, if in reaſon it may be affirmed that the Pannel cannot pretend Excuſe, becauſe by the firſt view that Writing containing theſe words; if, I ſay, it might and ſhould have appeared to him to have been a ſeditious Writing, the Pannel remits himſelf about it to the wiſe and judicious Deliberation of the Judges and noble Auditors. For as it has been oft ſaid before, and now not to be repeated, the Pannel declares that he never took the ſaid Writing in his Opinion and Judgment for any other kind of Writing or Libel, but for ane humble Supplication and Remonſtrance, in all humility to have been preſented to his ſacred Majeſty; and which accordingly was delivered to the Earl of *Rothes*, to have been preſented and by him offered to his Majeſty, and refuſed in manner contained in my Lord Advocat's own Declaration of his ſacred Majeſty's own Speech and Words uttered to the ſaid Earl of *Rothes*, the time of the offering thereof: whereupon the Pannel takes Inſtruments. And ſo the ſaid quarrelled Writing not being at the firſt view ſeditious, as is libelled in the Dittay, and contained in the Reply, but in the ſaid firſt Words being a moſt humble Supplication; the Pannel moſt juſtly pretends Excuſe, that ſeeing *de facto* the ſaid firſt words are not ſeditious at the firſt view, that therefore he ought not to be convened by this Dittay, as Haver, Hearer, and Concealer of the ſaid ſeditious Writing; but ought to be ſuffered and permitted to make his own Interpretation, that he never thought it ſo; and therefore cannot be purſued criminally upon his Life therefore, as the Dittay bears.

And at that part of the Reply, bearing that albeit in Libels againſt Subjects there might be ſome Excuſe by reading, receiving, and looking upon the ſame; yet the Pannel cannot pretend Ignorance, in reſpect of his Depoſitions, after receiving from *Haig*, by communicating the ſame to the Earl of *Rothes*, that they found it of ſuch a ſtrain as ſhould not be preſented: to that it is duplyed, That the ſaids Depoſitions make nothing againſt the Pannel; for the Pannel did never deny the Receipt of the ſaid quarrelled Writing from *Haig*, nor that he did communicate the ſame to the Earl of *Rothes*, and that they found it of ſuch a ſtrain as ſhould not be preſented. But the Times being diſtinguiſhed, the Doubt is ſoon ſolved: for the Depoſitions apparently expreſs not the Times. For the Pannel did not depone, That before delivery of the ſaid quarrelled Writing to the Earl of *Rothes*, and before the Earl of *Rothes* his intended Offer thereof to the King's Majeſty, that they found it of ſuch a ſtrain as ſhould not be preſented: but that Conference betwixt the Earl of *Rothes* and the Pannel, was long after the intended Offer and Refuſing. At which time, upon the Occaſion of the Harſhneſs and Miſconſtruction of ſome Words, that Speech was uttered betwixt them; and from that time furth, nothing further followed. And therefore the Pannel's Depoſition makes nothing for the ſaid Argument. That the Pannel could not pretend Ignorance: in reſpect whereof, the ſaid Reply, and hail Members thereof, out to be repelled.

It is farther duplyed by Mr. *Alexander Pearſon*, That where it is replied by my Lord Advocat, that the Pannel's Opinion of the Writing, and the alledged probable Cauſe of his Ignorance to be a ſcandalous Libel, adduced, cannot defend the Pannel from concealing, *&c.* becauſe the Writing in itſelf is really ſcandalous, and at the firſt view might and ſhould have appeared in that nature to any Man of the Pannel's Underſtanding; and who can pretend Opinion *neſciendo hoc quod omnes ſciunt?* It is anſwered, That the Pannel's Opinion of the Writing, and the probable Cauſes of his Ignorance of the ſame to be ſcandalous, does defend the Pannel from the Crimes libelled, not only for the Reaſons and Laws already adduced, in the matter of Injury and other Crimes, which are moſt pregnant; but alſo becauſe no Capital Crime whatſoever is or can be committed *ſine dolo*, whereof the Pannel is altogether free in all ſorts thereof; *Et a dolo vero & a dolo præſumpto ex qualitate facti. A dolo vero*, which the Pannel's innocent Intention evinceth in the Defences proponed for him in the ſecond Exception; and there he is purged abundantly, for the Reaſons contained therein, which are here repeated *brevitatis cauſa*.

The Juſtice and Aſſeſſors continues this Dyet till to-morrow, the 12*th Inſtant.*

Curia legitime affirmata, *the ſaid 12th of* December, 1634, *&c.*

It is alledged by the ſaid Mr. *Alexander Pearſon*, and duplyed by the Pannel, *Secundo*, That the ſaid Pannel is free *a dolo præſumpto, quia tunc præſumitur dolus ex qualitate facti, ubi quis facit quod ſcit vel ſcire debet ſe non debere facere: At in propoſito noſtro nulla ſcientia nec conſcientia criminis in accuſato, nec ignorantia ejus quod omnes intelligunt.* But moſt juſt and probable Cauſe of Ignorance of the Writing to be ſcandalous, which would have affected even the wiſeſt and moſt ſagacious then; although now *ex poſt facto*, by Pregnancy and Vivacity of Spirit, the Writing quarrelled being ſearched unto exactly, the ſame being interpret by the Dittay, and urged upon the Pannel as ſeditious; which Interpretation now of it, cannot make damnable the Eſtimation and Opinion of the Writing quarrelled, which it had of before amongſt Men of common Underſtanding, to make culpable of capital Crime: *Quia Injuriarum Æſtimatio non addit tempus quo judicatur, ſed ad id quo facta eſt referre debet; Expreſſa Leg.* 21. *F. de Injuriis. Et nunquam creſcit ex poſt facto præteriti Delicti Æſtimatio.* And it is hard that the Pannel, upon Error of Judgment, ſhould incur capital Puniſhment.

Where it is replyed by my Lord Advocat, That the Pannel cannot pretend Ignorance of the Writing quarrelled, becauſe by his Depoſition the 7th of *June*, he has declared that he thought it not fit to be preſented to his Majeſty; it is anſwered, That the Reply is not relevant, and that the Pannel then thinking it not fit to be preſented, hinders not but the ſaid Writing being thought fit by others to be preſented to his Majeſty, and indeed offered to his Majeſty, the Pannel thereby was confirmed the more to think of it as a Supplication, and may make the Defences thereupon, upon his Credulity foreſaid.

Where it is reply'd by my Lord Advocat, *Quod omnis Ignorantia juris eſt improbabilis & punibilis*, and that the Pannel can pretend no probable Ignorance thereof; it is anſwered, That the addition of the Act of Parliament 94, anent Concealers, whereupon this part of the Dittay is only founded, had never Strength nor Vigour of Law, (never being yet practiſed againſt any ſince the firſt making thereof) but being as it were by deſuetude aboliſhed, *ut ſupra* in our firſt Exception, ſhews that the Ignorance thereof is neither improbable, nor puniſhable againſt the Pannel.

Where it is replyed by my Lord Advocat to that part of the fourth Exception, bearing *quod Credulitas in furtis præbet cauſam probabilem*, and that by parity of Reaſon it ſhould have place alſo in the matter of infamous Libels; to the which it is replyed, *Quod illa Credulitas aliter probanda eſt quam per Juramentum Rei:* It is anſwered, That the Pannel urges not his Credulity of the Writ quarrelled upon his own Declaration only, but alſo upon other Circumſtances, Evidences, and Preſumptions, already adduced in the ſaid fourth Exception and former Defences; which clearly evinces the Pannel's Credulity, and the Juſtneſs thereof.

Where it is replyed by my Lord Advocat to that part of the Exception, proporting the Words of the Law where it is ſaid, *Ubi de obligando & liberando quæritur, propenſiores eſſe debemus ad liberandum*; to the which it is replyed, That the Law cited has no place in clear and manifeſt Crimes, as this is: It is anſwered, that the Reply takes *Controverſum pro Confeſſo*, That the Crime whereupon the Pannel is accuſed is clear and manifeſt, which it is not; but in the Notion of a Crime (if any there be, which we do not grant) the ſame is moſt abſtruſe and obſcure: and if any Clearneſs be, it is for the Pannel's Innocency; in reſpect whereof, the Exception ſtands relevant, notwithſtanding of the Reply.

It is further duplyed by Mr. *Roger Mowat*, to the Reply made by my Lord Advocat to that part of the ſaid fourth Defence, bearing that the Pannel is not puniſhable for not apprehending and not revealing, upon an Act become in deſuetude, becauſe the Leidges are ruled by the Laws of the Kingdom, as the Acts of K. *James* I. and K. *James* IV. bears; and that there is no Preſcription in Laws, and that *omnis Ignorantia juris eſt improbabilis & punibilis:* It is duplyed, That albeit the Leidges are and ſhould be ruled by his Majeſty's Laws, yet where Laws are become in deſuetude, and have never been practiſed, the Leidges ought to be certified thereof, and new Intimation ought to be made, as in the firſt Defence at length is contained. And neither of theſe can be alledged in this preſent Caſe; and therefore the dangerous Conſequence of this and the like Laws ought to be prevented before the ſame be practiſed, which is the Mind of the Law-giver. And to that, bearing that there is no Preſcription in Laws; it is duplyed, That Deſuetude muſt be eſtimat equipollent to the Preſcription of Laws obſcure, or that are not in daily cuſtom. And where it is replyed againſt probable Ignorance, *Quod omnis Ignorantia juris eſt improbabilis & punibilis*; it is duplyed, That *Ignorantia juris in damnis vitandis non nocet:* and this is our Caſe. And where it is replyed to that part of the ſaid fourth Defence, bearing that the Pannel had probable Ignorance, the Defence ought to be repelled, becauſe the Nature and Strain of the quarrelled Writing muſt be the Rule of the Puniſhment or Impunity, and not the Opinion of the Pannel; *Et quod eſt Ignorantia maxime inexcuſabilis neſcire hoc quod omnes ſciunt:* It is duplyed to the ſaid Reply, That the Pannel ſtill contends that the Nature and Strain of the Supplication quarrelled may be the Rule of his Puniſhment and Impunity, according to his Opinion of the right Meaning and Senſe that he made thereof, for the Reaſons already adduced in the former Duplies immediately preceding; wherein the Pannel contends, that with reaſon he himſelf muſt be the only Trucheman and Interpreter of the ſaid Writing, in caſe any other Commentar or Interpretation be made thereof, containing ſuch a Senſe and Meaning, as being received and admitted, will bring upon him the Puniſhment of Death: which Duply is here repeated *brevitatis cauſa.*

And where it is replyed, That the Reproaches and Exprobrations therein contain'd are ſo nottour, that the Pannel nor none of his Judgment could pretend Ignorance on the reading thereof; it is duplyed *ut ſupra*, That the Pannel refuſes his having knowledge of any ſuch Reproaches, and profeſſes his Ignorance thereof; albeit he read the ſame, and others likewiſe of better Judgment than himſelf, who did never obſerve nor find out the like, according to their Judgment and Underſtanding. Which Reproaches and Scandals, if they had perceived and remarked, (as they did not) would have touched them as near as any other of his Majeſty's Subjects whatſoever of their Quality or Degree: but ſeeing the Pannel, and the reſt of the Hearers and Havers of the ſaid quarrelled Supplication, pretend their Ignorance foreſaid of any ſuch Knowledge, as is now expreſſed in the ſaid Dittay; the Purſuer can never be heard to force any other Knowledge upon them, to that end that they may be found guilty of the Crime libelled, and Puniſhment of Death therefore.

And where it is replyed, That it is *Ignorantia maxime inexcuſabilis neſcire hoc quod omnes ſciunt*; it is duplyed, That my Lord Advocat will do well to apply that Rule to the preſent Caſe, and ſhow *quod ſit hoc quod omnes ſciunt.* For if his Lordſhip means by his Dittay, then that Rule can have no place here, becauſe no Man knew any ſuch Gloſſes or Interpretation of the ſaid Supplication, but the Purſuer himſelf, before the coming furth of the ſaid Dittay. And if before that time many were of another opinion, concerning the meaning of the ſaid Supplication; then my Lord Advocat cannot be heard to ſay, that it was *Ignorantia maxime inexcuſabilis* in the Pannel *neſcire hoc quod omnes ſciunt*, ſeeing no Man knew that which was ſet down in the ſaid Dittay, but my Lord Advocat himſelf: and many knew, and yet know, that the ſaid quarrelled Supplication in their Judgments and Conceptions carried with it no ſuch Meaning or Conſtruction.

And where it is replyed, That the Pannel's Defence, founded upon his Depoſitions which he made voluntarly for ſatisfaction of the Committee, cannot be reſpected, becauſe the moſt ſubſtantial parts of the Dittay are founded upon the ſaid quarrelled Supplication, and not upon the Pannel's Depoſitions; and that his Denial of Knowledge by Oath, cannot liberat him from the Pain of Death: It is duplyed, That albeit many ſubſtantial Points of the ſaid Dittay be founded upon the ſaid Supplication, yet they are founded upon the Pannel's Depoſitions alſo. And albeit the ſaid Dittay quarrels and impugns the ſaid Supplication in ſundry Paſſages, which the Pannel doth not maintain as they are expreſſed in the Dittay, becauſe when he and the other Supplicants read and heard the ſaid Supplication, they found no ſuch meaning in it; and they leave the Defence of that Commentary to the Author himſelf, and declare *ut ſupra* by their Judgment they found it not of ſuch a ſtrain as the Dittay bears: The Declaration ought now to be received, for clearing of the Pannel and remanent Supplicants from all Suſpicion of ſuch Knowledge as the Dittay bears upon them, for the Reaſons foreſaids, contained in the former Defences and Duplies. In reſpect whereof, the ſaid Reply ought to be repelled, in reſpect of the ſaids Depoſitions already given, and of the Pannel's Declaration upon Oath, which he now offers to give.

Where it is replyed to that part of the ſaid Defence, bearing that albeit the ſaid alledged Libel ſhould be now found to be infamous, yet cannot be drawn back, That there needs no Declarator of the Judge; conſequently may be drawn back, becauſe it was infamous from the beginning: it is duplyed, That the Defence ſtands relevant notwithſtanding the Reply. Which Defence bears expreſly that the Pannel and other Supplicants received the ſaid Libel (now quarrelled) as an humble Supplication; and in token of their ſaid Knowledge addreſſed the ſame to be preſented to his Sacred Majeſty, as the ſaid Defence bears. And ſo what has been found out ſince to be therein by the Purſuers, and thoſe of deeper Wit and Knowledge than the Pannel and other Supplicants, cannot be laid to their charge; for whom all Preſumptions are moſt clear and evident, that the Pannel had never ſo much as one Thought or Opinion, as is contained in the Dittay.

Where it is replyed to that part of the Exception founded upon the Inſtance of Treaſon, as the ſame bears; it is duplyed, That my Lord Advocat in that Anſwer takes *Controverſum pro Confeſſo*, ever taking this for a ground that the Supplication is ſeditious and ſcandalous, and ſo to be reputed and holden againſt the Pannel and others in the like Caſe, which is ſtill denyed, for the Reaſons before adduced. Where it is anſwered by my Lord Advocat, That that part of the ſaid Defence anent the revealing to the Earl of *Rothes* is not relevant, in reſpect of the Act of Parliament; it is duplyed, and ought to be repelled in reſpect of the former Duplies anſwering this Point, That Earls, the time of making the ſaid Act, were born Counſellors; and that the Earl of *Rothes* was a Sheriff, which the Act allows.

And where it is replyed, That the Offer to his Majeſty *non relevat*, except it were alledged that he offered it as a ſcandalous Libel; it is duplyed, That the ſaid Reply is no ways relevant, becauſe it was ſufficient by preſenting it to his Royal Majeſty to reveal the ſame in that manner: And it cannot be now known whether it would have been ſo thought by his Sacred Majeſty, albeit he refuſed the ſamen; but it is certain that the Pannel and the Preſenter would never have preſented the ſame, if they had thought it ſcandalous. And that part of the Defence, bearing that it was revealed by the preſenting, needs not to bear that it was offered to be preſented as ſcandalous, for that was not their End, neither had they any ſuch Meaning by the ſaid preſenting; their Intention being, as is contained in the ſaid Defence, to have it preſented as an humble Supplication, to receive a gracious Anſwer, as other Remonſtrances had gotten before. And ſo there is no neceſſity to alledge it was to be preſented as a ſcandalous Libel.

And where it is replyed, That (granting) the ſaid Revealing to his Majeſty might have been ſuſtained as lawful, yet the Pannel is guilty of Death for not apprehending; it is duplyed, That the ſaid Reply is not relevant, becauſe if the ſaid revealing was lawful, *ergo* there was no neceſſity of apprehending; for the words of the Act of Parliament anent the Prohibition are alternative. And albeit, as it is anſwered before, that the Pannel thought Mr. *Haig* to be Author, yet in reſpect of this Conception of the ſaid Libel, he thought him not to be ſuch an Author as merited Apprehenſion, becauſe the ſaid Libel in his opinion fell not within the ſaid Act of Parliament. And repeats his former Anſwer, and the two Practicks about the apprehending of free Leidges; adding thereunto the late Lord *Maxwell*'s Practick, who having apprehended by virtue of a Commiſſion, was notwithſtanding forefaulted therefore.

To the Reply, bearing that my Lord Advocat granted that the Circumſtances of the Receipt of *Haig*'s Letter are not eſſential Parts of the Dittay *per ſe*, but uſed as Adminicles to aggravat the Pannel's Crime of not apprehending, and giving him occaſion to eſcape, and entertaining of Correſpondence with him thereafter: it is duplyed, That the Pannel and his Procurators accept of the ſaid Anſwer, and proteſt that no reſpect be had thereto, as ane eſſential part of the Dittay. And the alledged Correſpondence is no ways relevant, not bearing that the Pannel did write Letters to *Haig*: for Correſpondence muſt be mutual, otherwiſe it can be no Correſpondence.

Where it is replied, *quod non eſt hujus loci* to produce *Haig*'s Letter; it is duplyed, That 'tis *maxime hujus loci* to be produced, if that part of the Dittay founded upon it be found relevant, becauſe they were already produced by Warrand of my Lord Juſtice; and being now produced, nothing ſhall be found in them to carry any Warrand for that part of the ſaid Dittay. And being produced to the Pannel, and his Procurators for their Information and Defence, muſt yet be produced to be compared with the ſaid Dittay. For if they ſhall find that the Dittay and the Letter do not agree, then that part of the ſaid Dittay founded upon the ſaid Miſſive will not be ſuſtained, and ſo cannot be put to the knowledge of an Inqueſt. In reſpect whereof, the hail Replies and all the Members thereof ought to be repelled.

It is duplyed by Mr. *John Niſbet*; Where it is replyed by my Lord Advocat, That the Diſpute againſt the Relevancy of the Qualification is ſuperfluous, becauſe the general Subſumption conform to the Act of Parliament is *per ſe* relevant: it is duplyed, That the General is not relevant, *quia non oportet in Criminibus vagari, Leg. Libellorum, F. de Accuſationibus: Et Locus, & Tempus, & Minutia Delicti exprimenda ſunt; alioqui Accuſatio ipſo jure eſt nulla. Clarus, §. final. Quæſt.* 12. *num.* 8.

Whereas it is replyed by my Lord Advocat, That the Dittay is not contrair to itſelf, becauſe of the acquainting his Majeſty by my Lord *Rothes*'s means does not expiat and purge the concealing, my Lord *Rothes* not being one of theſe Perſons to whom the Delators of ſuch Pieces, and Authors thereof, is appointed by the Act of Parliament: it is duplyed, That theſe Perſons are only ſpecified for receiving of ſuch Delations *in ſubſidium*, where the Revealer knows not any other ſummar and ſecret way to acquaint his Majeſty; and not to tye them to an unneceſſary Circuit, where by a more compendious way his Majeſty may be acquainted, and the Authors ſuppreſt. And we repreſent the Inconvenient to enſue, if Parties by whoſe means his Majeſty has been acquainted with Pieces of that kind, ſhall be obnoxious to the Pains of the Act for not ſeeking a Bailly or Sheriff, to tell unto them that which by other and more direct means is ſhown to his Majeſty.

Whereas it is replyed by my Lord Advocat, That the Acts of Parliament require not a judicial Declarator of the nature of ſuch Pieces, nor the former Knowledge of the Party challenged, but without diſtinction puniſh the not Revealers and not Apprehenders of the Authors of Pieces materially ſeditious; *Et ubi Lex non diſtinguit, nec nos diſtinguere debemus:* it is duplyed, That Statutes being particular Concluſions of Law, preſuppone *Principia univerſalia & prima*, and imply intrinſecally the common Notions of Law and Reaſon. And therefore ſeeing in Reaſon there cannot be a Crime of concealing, unleſs the Piece or Author alledged to be concealed were either declared to be, or to the Pannel's knowledge were ſuch as he ought to reveal, becauſe *celare* is relative to knowledge; it is not relevantly ſubſumed that *Haig* was Author of ane Piece materially ſcandalous, and that the Pannel revealed him not, unleſs a former Knowledge were aſſumed likewiſe. And the Law itſelf furniſheth a Ground for this Diſtinction, becauſe the Word *Concealing* importeth Knowledge: *Et ſtatuta punientia delicta capitaliter non habent locum niſi dolo interveniente, etiam quod de dolo non fiat mentio. Paulus de Caſtro in Lege Nemo, num.* 5. *Codice de Epiſcopis & Clericis, Ubi perſtringit imperitiam judicum qui verbis ſtatutorum mordicus inherent, & multo magis cum dolus requiritur, vel expreſſe vel tacite, tunc enim nec lata culpa ſufficit, tacite autem requiritur dolus, cum ſtatutum utitur verbis, nullus audeat vel præſumat.* Which are expreſly in the Act of the 10th Parliament; and muſt of neceſſity be conſidered to underſtand the Addition contained in the Act of the 14th Parliament; *Idque multo magis in delictis quæ de ſua natura requirunt dolum prout eſt falſum injuria & ſimilia. Phar. Quæſt.* 87. *per totam.* Whereas it is replied, *Quod Judex debet procedere ſecundum naturam rei prohibitæ*, and ſhould not leave place to elude the Law *ſub velo opinionis*; it is duplyed, That by all Statutes of that nature Crimes are only obviated and prohibited: And the Judge ſhould proceed to try whether Crimes be committed, or not, and not to condemn Eſcapes or Errors of Judgment, which are not arbitrary to the Will to ſhun, but depend upon the Diſpoſition of Organs and Repreſentation of Fantaſms, which are exhibited *ab intellectu agente*, and *neceſſitate intellectum patientem* to ane Aſſent, where it is furniſhed with no probable Grounds to elide the ſame; as is known even to the Novices in Philoſophy by that trivial Maxim, *Intellectus per aſſenſum præmiſſarum convincitur ad aſſentiendum concluſioni, ſaltem quoad ſpecificationem.* And where my Lord Advocat would expoſe the Weakneſs of the Pannel's Judgment in not diſcovering the nature of ſeditious Pieces, to enforce the Puniſhment of a Crime, it is duplyed, That the Law is not eluded by the ſlender Pretence of Opinion; but the Pannel's Conception of the Piece, verified by his Oath, and by all poſſible Preſumptions, which we have at length deduced, muſt liberat him from the Guilt and Pain of the Crime, ſeeing in Law *carent animo injuriandi ex quo crimen conſiſtit*, verified by the Oath of the Party; and any aſſiſting Preſumption imports *abſolvitur*, as is already ſhewn by the forecited Laws, and the Harmony of Doctors. And whereas it is replied, *Quod ignorantia juris non excuſat in delictis atrocioribus*; it is duplyed, That *ignorantia juris* being at the moſt *lata culpa, æquiparatur dolo, & non excuſat in actionibus deſcendentibus ex contractu, vel quaſi, ſed excuſat in criminibus vel delictis, quia voluntas, quæ maleficia diſtinguit, ſpectatur, non veritas vel exitus. Leg. Divus Hadrianus, F. ad Legem Corneliam de Sicariis. Phar. Quæſt.* 87. *Ubi regulariter dolum requirit, & ubi abeſt dolus, pœnam aſſerit ceſſare, idque etiam in crimine Læſæ Majeſtatis, num.* 10. *& per totam.* And the Atrocity of the Crime excludes not a probable Excuſe, *Quia cauſa quælibet, etiam levitas, credulitas excuſat a dolo regulariter. Phar. Quæſt.* 90. *num.* 1. *Et non ſolum ſi ſit levis ſed colorata & irrationabilis imo etiam temeraria & beſtialis. Idem ibid. num.* 3. *Ubi refert doctores concordantes Claudius Battandiæ, Reg. Si fatua credulitas a dolo excuſat cum vehementibus præſumptionibus probatur, num.* 1. *&* 2. *Et cauſa levis excuſat in crimine injuriarum, & ad excuſandum ſufficit error verus vel præſumptus. Phar. dicta Quæſt. num.* 29. *Et levis cauſa excuſat etiam in crimine Læſæ Majeſtatis. Ibid. num.* 26. *Et multo magis in iis qui de ſua natura nec de jure civili reprobata ſunt:* As is the Points of not apprehending and concealing. *Ibi enim dolus non preſumitur, & ſi quis ſic egerit ſine dolo & animo delinquendi creditur agentis aſſertioni ex quo habet pro ſe juris præſumptionem. Num.* 14. *& num.* 90. *Et ignorantia juris excuſat a dolo. Num.* 91. *Et craſſa ſupina & affectata excuſat ex opinione Baldi & Tiraquelli, quo citat Num.* 99. *Niſi ſint circa ea quæ ſint de jure naturali gentium & divina prohibita.* Whereas it is replyed, That the Pannel cannot pretend Ignorance in reſpect of the Piece conſpicuouſly infamous, and of the Pannel's Sufficiency and Qualifications, and in reſpect of the Perſon injured, being his ſacred Majeſty; and therefore excludes all Excuſe upon Curioſity, or any other reſpects, excuſable by the Law, and, at laſt, in reſpect of the Pannel's diſapproving of the Piece in his own Depoſitions: It is duplyed, That the Piece is not nottourly infamous for the Reaſons adduced. And here we proteſt, That my Lord Advocat's odious decyphering of the Piece, neceſſitates us to vindicate not itſelf, but the Conception that the Pannel had, and that any Man may have, that is not pre-occupied with the unnatural Gloſſes of the Dittay. And for the Pannel's Qualifications, it evinceth that he would not have delivered a Piece nottourly infamous to be preſented to his Majeſty, as is acknowledged by the Dittay, and ſo to have endangered his Honour and Life, if he had had any ſuch Conception of it. And for the Pannel's diſproving of the Piece, it convinceth not his ſiniſtrous Intention in uſing or having a Piece diſprovable, becauſe it is not deponed that he diſproved it as ſeditious or infamous, but *quando verba confeſſionis ſunt dubia, poſſunt & debent declarari & interpretari per confitentem, & in meliorem partem. Phar. Quæſt.* 81. *num.* 38. *Et confeſſio dubia & incerta interpretatur in bonam partem in favorem confitentis, & ſecundum illius intentionem. Bald. in Leg. unica num.* 23. *Codice de Confeſſis.* And the Pannel declares that he diſproved it not as ſeditious, but fit to be ſuppreſs'd, in reſpect of his Majeſty's Will expreſſed to my Lord *Rothes* anent Pieces of that Strain. Whereas it is replyed by my Lord Advocat, That the Defect of the common Law, in the Points of concealing and not apprehending, cannot be obtruded, and that there can be no Preſcription of Laws; yet there is Antiquation and Deſuetude, as we have before ſhewn: And the Defect of the Common Law is adduced as a probable Candour of the Deſuetude in Points debording from the Common Law. Whereas it is replyed by my Lord Advocat, That the nature of the Piece muſt rule, notwithſtanding of the Pannel's Conception thereof, becauſe it is only required that the Piece ſhould be really ſeditious; it is duplyed, That in matter of Crime the Intention and Conception is moſt conſiderable, as is already inculcat; and when there is a Queſtion anent the Credulity of the Party, his Credulity is probable by Oath, *Barad.* §. *Recte Lege inter omnes, F. de Furto*; eſpecially where there concur ſome Preſumptions. Whereas it is replyed, That *ignorantia eſt inexcuſabilis neſcire quod omnes ſciunt*; and that the Pannel's narrow Advertency and Canvaſſing of the Piece challenged, in reading, copying, adviſing, interlining, join'd with his Opinion anent the Preſentation thereof, excludes all Preſumptions of Ignorance: it is duplyed, That it cannot be ſaid *quod omnes ſciunt*, ſeeing my Lord *Rothes*, a Nobleman of eminent Quality and Sufficiency, made offer, at leaſt mention thereof, as a Supplication to his Majeſty, for the Pannel's Opinion. It is already anſwered for his perpending of the Piece; it is ſo far from aggravating or convincing his Knowledge of the Piece to be of that nature, that he is confident that indifferent and impartial Judgments, the more they advert to the Strain of it, they will be the more edified of the Nature of it, that it is not ſo nottourly injurious. And therefore the Pannel proteſts that his Procurators may vindicate his Conceptions of it, and remonſtrate the ſtrange Inferences that the Dittay makes of it. Where it is replyed by my Lord Advocat, That apprehending is warranted and enjoined by the Acts of Parliament, and therefore not dangerous; it is duplyed, That apprehending is warranted, when Parties are able, by lawful Probation, to bind upon the Perſons apprehended the Guilt of the Crime for which they delate and apprehend them. And that even in the Crime of Leſe Majeſty there is no Warrant to apprehend Parties, albeit known to the Apprehenders guilty of the Crime, unleſs they be able to qualify and prove the Guilt under the Pain of Τοιαυ̃λοϖαθία and Retaliation in caſe they ſuccumb. Where it is replyed, That the moſt material Parts of the Dittay are founded upon the nature of the Piece itſelf, and not upon the Pannel's Depoſitions; it is duplyed, That howſoever there reſults a relevant Defence in Law upon the Pannel's *Abſentia animi*, which is probable by his Oath, aſſiſted with Preſumptions; and is admitted in the moſt ſtrict Inquiſitions, as is conſtant by the uniform and conſtant Harmony of all Criminaliſts. Whereas it is replyed by my Lord Advocat, That there needs not a Declarator of the Judge to be drawn back; it is duplyed, That in all Countries where the concealing of Heretick Books is puniſhed, a judicial Declarator is neceſſarily required; and the private Opinion and Miſtaking of Parties before Declarator was never cenſured, much leſs puniſhed.

Whereas it is replyed by my Lord Advocat, That the Maxim, *Proniores debemus eſſe ad liberandum non habet locum in atrocioribus & delictis contra Principem*; it is duplyed, That we retort this Anſwer, *ubi lex non diſtinguit nec diſtinguere debemus. Et non delinquit qui in dubio contra fiſcum reſpondet, F. de jure fiſci; & turpe eſt & principi injurioſum credere inventum qui principem omnibus benefacientem, neminem ledentem, injuria velit efficere; & quavis excuſatio etiam leviſſima & maxime fatua in criminibus atrociſſimis admittitur.*

It is added by Mr. *Robert Macgill* to the preceding Duplyes, That where my Lord Advocat replieth, that *Juris ignorantia non excuſat*; that the ſaid Rule may be underſtood *in Jure, quod uſu invaluit:* For even if in theſe petty Statutes anent the inflicting of pecunial Pains contained in the 9th Act, *Parl.* 21. 1612. a new Intimation of them is thought fitting to put the Leidges in *mala fide* before they be practiſed, what then in this Act, and ſome others, under the compaſs whereof ſundry here may fall, ſhall there not an Intimation be required where Life, Honour, and Lands, are in danger, and a capital Pain to be inflicted for to put the Leidges *in male fide? Item*, Where it is replyed, *Quod nec ignorantia facti excuſat propter præſumptum dolum*; it is anſwered, that the Pannel's *Ignorantia facti* is *ab omni doli præſumptione aliena*; who could never think that under the general Law, contained in the Addition, could come in all ſort of inordinate Speeches, and all ſort of Hearers, Concealers, and not Apprehenders. And for the excuſing of any Dole that can be preſumed, he adduces the

Knowledge of Law and Reaſon, which ought to expone all municipal Laws, *ut evitetur abſurdum*; which is, that all ſorts of inordinate Speeches or Writs, even againſt a Prince, and all Concealers and not Apprehenders, ſhould be puniſhed alike: For the *Prætor* ſays, *Si quis adverſus ea fecerit, prout quaque res erit, animadvertam.* *Leg. item apud Labionem* 15. *G.* 251. 28. *Ubi de pœnarum diſtinctione ex circumſtantiis juxta Legem aut facta* 16. *in principio, F. de pœnis, quam conſideratione affectus & animus facientis maximum habet momentum, Leg. illa* 3. §. 1. *dicta Leg.* 15. §. 38. *Lege ſi quis certum* 26. *in fine, F. de injuriis.* So that my Lord Advocat's Reply anent Credulity, that it excuſes not, and that it is not a ſufficient Warrant *ad juramentum purgativum*, and that it ought not to be here received; the ſame ought to be repelled, becauſe *Credulitas ſive juſta ſit Cauſa ſive injuſta excuſat ubi dolus requiritur*, as in our Caſe. *Clarus*, §. *finali, Quæſt.* 60. *num.* 22. *Et quod recipiatur juramentum purgativum concurrentibus aliis ad animi boni probationem indiciis conſtat per Phar. Quæſt.* 105. *Inſpect.* 3. *poſt num.* 111. *Leva vero judiciaria ſufficere, ait Alexander, Conc.* 115. *Columna penultima, Volumine quarto. Et a delicto etiam conventicula, & malæ congregationes, cauſam vel levem excuſare ait Cravetta, Conc.* 4. *num.* 26. But ſo it is, there may be many good Reaſons alledged, wherefore the Pannel had a good Mind, as that all which is in this quarrelled Petition, might have been proponed in Parliament. And the reſt of the Reaſons adduced in my ſecond Exception, *adeo ut dolus non ſit præſumendus* againſt the Pannel; neither is the Argument good that the Pannel diſallowed it, or thought it not fit for a time, *ergo* he thought it ſeditious *negatur ſequi.* And becauſe my Lord Advocat, in all the Members almoſt of his Reply, returns upon this, That the Piece of it ſelf is really ſeditious; and that Obſcurity and Ambiguity of Words may receive Evaſion and Excuſe among Subjects, but not in the Caſe of the Pannel: I anſwer, That the Exception ſtands good, notwithſtanding of the Reply, in reſpect of the Examples and Caſes following. And, firſt, I confeſs that ſuch inordinate Speeches and Writings as were uttered betwixt *Catiline* and his Complices againſt a Government, and againſt a Prince's Progenitors, or his Perſon, in that ſort are puniſhable both in the Perſon of the Speaker and Penner, as alſo of the Hearer, not Revealer, and not Apprehender; wherein the Caſe of this Addition is verified: and no others are Hearers, not Revealers, and not Apprehenders. *Clarus*, §. *ultima, Quæſt.* 87. *num.* 2, & 3. But mark in a ſecond Caſe, *Quod nobilis qui directis verbis & aſſertionibus dixit, ait, ſcripſit, principem ſuum non habere animum remunerandi*; by *Matheus, De Afflictis, deciſione* 307. *num.* 27. is not thought puniſhable by the ordinary Judge: but *remittendus, ut in Leg. unica, ſi quis principi maledixerit ubi tamen improperatur defectus liberalitatis, quæ eſt præcipua virtus in principibus*; as our Saviour himſelf affirms, *Luke Chap.* 22. 'Ευεργέται, Bountiful. The third caſe is of him who ſpake or writ that which by Interpretation might be miſconſtructed to ane evil Senſe, as was ſaid in the ſecond Part of my firſt Exception: And remits alſo to that Comment of *Menochius*, adduced by Mr. *John Niſbet*. And where my Lord Advocat would eſchew, by ſaying that *Menochius* had not ſuch a Law as we, and that we ought to be governed by our own Laws; remits to the end of my firſt Exception anent the Expoſition of all municipal Laws, according to Reaſon. *Ubi Gaylus* expones the Maxim, *Ubi Lex non diſtinguit nec nos diſtinguere debemus, & ut vitetur abſurdum paritatis*; our Laws may be ſo expounded. *Ergo* if the Authors of theſe laſt Speeches and Writings be ſcarcely puniſhed, far leſs ought the Hearers, not Revealers, and not Apprehenders; for even in Apprehenſion, *quæ eſt captura oportet ut conſtet de criminis enormitate*, which is not here.

It is triplyed by my Lord Advocat, That he finds no neceſſity to triply. But if the Juſtice, and his Lordſhip's Aſſeſſors, require any thing to be explained in that which is duplyed, upon ſignification of their Pleaſure, he ſhall be ready to expend all Doubts *verbo*, which he did.

The Juſtice General continues this Dyet till to-morrow the 13*th*.

The ſaid 13*th of* December, 1634. *The Juſtice continued the Dyet till the* 16*th of* December, 1634.

Curia legitime affirmata, &c. *and Procurators in Defence, as before.*

Mr. *Roger Mowat*, as Procurator for the Pannel, repeats only the former Defences, and Duplies of them, anent the revealing by the Pannel to the Earl of *Rothes* of the Supplication or Petition contained in the Dittay, and the Earl of *Rothes* his offering thereof to the King's Majeſty; and that the Act of Parliament is ſatisfied thereby, which does not exclude the revealing to other Perſons, nor are mentioned in the ſaid Act: But affirms poſitive all manner of revealing, whereby knowledge may come to his Majeſty, which is the End of the ſaid revealing, ſufficient, as ſaid is, in ane Act of this kind, which has never been in cuſtom. And ſo revealing being clear, as ſaid is, there needed no apprehending.

My Lord Advocat repeats his former Anſwers, That the revealing is not clear nor relevant; and albeit it were, that the not apprehending makes the Pannel guilty, and ſo to fall under the Puniſhment contained in the Act of Parliament libelled.

It is alledged by Mr. *John Niſbet* under Proteſtation, That the vindicating of the Libel challenged from the Gloſſes of the Dittay, ſhall not import any Approbation thereof, either by the Pannel or his Procurators; but in ſo far as they are neceſſitat, by my Lord Advocat's Replies, to vindicat the Pannel's Innocency in the Hearing, or any other Acceſſion to the ſaid Libel challenged. It is firſt replyed by my Lord Advocat in his Replies, bearing that the Nature of the Piece is ſo notoriouſly infamous that at the firſt view it is apparent to the moſt ſhallow and ordinary Underſtanding, to be injurious to his Majeſty in all the Points libelled: It is duplyed thereto, That the Points of the alledged Libel import no Reproach to his Majeſty's Perſon, Eſtate, or Government, in the Pannel's Conception, for theſe Reaſons: Firſt, That Point anent Geſture is not reproachful, becauſe *ſubjecta ſunt talia qualia prædicata demonſtrant, Bartolin. Primario Leg.* 3. *F. de Inſtructo vel Inſtrumento Legato.* And there is no injurious Attribute enumerat, to defame his Majeſty's Geſture; but it is only affirmed, that his Majeſty's Notes bred a Fear, which is ane Attribute of Cauſality, and not of Quality. Secondly, The Intention of his Majeſty's Noting could no be conceived by the Pannel to be ane taxing of his Majeſty of any Point of Indiſcretion or Injuſtice, unleſs the Act of Noting had been qualified in the alledged Libel to be unjuſt or indiſcreet; which were ſacrilegious to think of a Prince eſtranged from his Country, and from the Occaſions of Knowledge and Knowing of his Subjects: for he may in Juſtice and Wiſdom remark the Opinions of the Lords of Parliament, and thereby probably to found a Conjecture of their Inclinations to his Majeſty's Service. Thirdly, The alledging the Noting of the Names of the Diſ-aſſenters could not at the firſt be conceived to imply an officious prying into the Geſture of the Prince, but rather a loyal Fear of incurring the King's Diſpleaſure; taking hold of a ſimple Geſture, whereby his Majeſty might have ſeemed to have taken notice of their Untowardneſs to his Majeſty's Service. Fourthly, There is no ground of Reproach inferred upon his Geſture, as the Dittay bears. It is duplyed to that Point anent his Majeſty's Refuſal to hear the Reaſons of ſome Diſ-aſſenters, That the firſt part of the Anſwer to the former Point quadrats here. Secondly, The alledged Refuſal of his Majeſty to hear the Reaſons of the Diſ-aſſenters, cannot be ſo readily conceived to rub matter of Reproach upon his Majeſty's ſacred Perſon or Proceedings; but in the contrair argues his Majeſty's Royal Goodneſs in not accepting the ſcrupulous prepoſterous Anticipations of Reaſons before voting in Parliament, as being derogatory from the antient and hereditary Liberty of Noblemen's Votes, and from his Majeſty's Royal Bounty, ready to acquieſce in the free Opinion of his Eſtates; and far from a previous and partial eſpouſing of either part of any debatable Point, before the final Deciſion in Parliament. And as for the Inference of Fear to become obnoxious to his Majeſty's Diſpleaſure, it is not ane Inference of ane Reproach, but rather of a dutiful Love, which debords (runs out) oft-times into a needleſs Fear.

It is anſwered to that Point of the Dittay challenging that Paſſage, *viz. That the oppoſing of Reſolutions carried by plurality of Votes, was never cenſured by a Prince of ſo much Juſtice*, contains no Subject of Reproach; but on the contrair, ane ample and due Acknowledgment of his Majeſty's undoubted Goodneſs and Juſtice, uſed as an Argument to deprecat his Majeſty's Cenſure, as incompatible with his Majeſty's Goodneſs, and the Example of other Princes like to his Majeſty.

It is anſwered to that Point of the Dittay bearing that his Majeſty's Honour is undermined by the affirming a general Fear of Innovation in eſſential Points of Religion, That his Majeſty's Honour is not ſtained; becauſe there is nothing affirmed to have been done by his Majeſty, which might occaſion any ſuch Fear; and the Panick and groundleſs Fear of Subjects, reflects no Reproach upon a blameleſs Prince. Secondly, It is affirmed that there is Fear of Novation intended, but not by his Majeſty, as is clear by the Motives of that Fear adduced by the Supplicants, *viz. That there is Allowance of printing* Arminian *Books*; which is not poſitively affirmed, but upon report, and the Impunity of *Arminian* Preaching, which reflects upon Churchmen only, to whom it is incumbent to advert to the Printing and Preaching of Orthodox Tenents. And therefore albeit it were falſe, cannot fall under the compaſs of the Acts of Parliament, as ſeditious and reproachful to his Majeſty, his Eſtate, Perſon, and Proceedings.

It is anſwered to the Point of Admiſſion of Papiſts upon the Parliament and Articles, That in the Pannel's Conception it reflects not againſt his Majeſty, and therefore is not relevant to infer the Crime of ſeditious Libelling, or Acceſſion thereto. *Item*, It is anſwered to that Point of the Dittay, bearing the King's Majeſty's Proceedings to be miſconſtructed in the alledged Prohibition of the Gentry to meet, That his Majeſty's Royal Procedure is not taxed as unjuſt; but without dyving upon the words of Juſtice or Injuſtice of the Interruption of thoſe Meetings, it it is only inſinuat, that albeit in Parliament they might have objected againſt the Interruption of thoſe Meetings, and had occaſion to oppoſe his Majeſty's Will, as they thought, that theſe Meetings ſhould be interrupted, they contented themſelves and were not refractory. And herein, and in the hail Strain of the following Points, (in the Pannel's Conception) it is only an Endeavour to ſhew that the diſ-aſſenting from ſome Acts, was not from any Faction and Waywardneſs to oppoſe his Majeſty's Will, as they feared he might have been poſſeſſed with; ſeeing in other Points, wherein they had occaſion, and probable grounds in their opinion to oppoſe it, they were ſilent. Moreover, it is anſwered for this Point, and all others following, *Quod in cauſa criminali quando verba poſſint interpretari ad bonum vel malum, in dubio debent intelligi ad bonum, & excludetur præſumptio delicti. Cravetta, Concil.* 9. *num.* 21. *Et ſecundum ſujectam materiam, Leg. Protullus, F. de Uſufructu: Et quando verba dubia ſunt, non debent intelligi captioſe in damnum proferentis, ſed ſecundum ipſius mentem; & convenit animadvertere, qua mente quid dicatur, & multo magis quid concipiatur. Leg. penult. F. ad exhibendum. Et quando verba ſunt dubia, ut videntur injurioſa, vel non, ſtandum eſt declarationi ejus qui ea dixit vel ſcripſit. Menoch. Concil.* 197. *lib.* 12. *Multo magis ejus qui imprudens & bona fide iis uſus eſt. Et quando verba ſunt dubia, declaratio ſumitur a verbis præcedentibus vel ſubſequentibus, vel utriſque. Menoch. Concil. citat. num.* 7. And therefore if the Strain of the Words, the Nature of the Subject being a Supplication, the Declaration of the Pannel's Conception of them, and other enſuing words which declared them, be adverted unto; it will be found the Pannel is excuſable, if in this Conception they import no Reproach to his Majeſty: for the hail laſt part of the Supplication reſolves in an Enunciation *de poſſibili præterito.* We might have repreſented *quo verificatur ratione præſentis*; and therefore if at the time of the Parliament they had Power to repreſent theſe things, the Enunciation of that Power cannot import Calumny or Reproach to his Majeſty. And ſeeing the actual Repreſentation of theſe things could have imported no Injury to his Majeſty, *quia ubi licentia loquendi niſi in dando Conſilio & Senatu? Menoch. Concil.* 107. *num.* 2. far leſs could the affirming of their Forbearance from ane Act not injurious in itſelf, have been conceived or interpreted to be reproachful to his Majeſty. And whereas it is libelled, that the Prohibition of the Nobility and Gentry to meet amongſt themſelves, or with the Lords of the Articles, is falſe; *non relevat*, becauſe it is not poſitively affirmed that they were prohibit, but only that they might have repreſented the Prohibition of theſe Meetings. For the Verity of the which Enunciation, and the Defence of it from being reproachful, the Power of repreſenting is ſufficient with any probable ground to believe that theſe Meetings were prohibit, whether upon Surmiſes, or upon any other occaſion. And laſtly, it is declared afterwards, that they forbear to make uſe of theſe Reaſons, which they might have probably repreſented, to give his Majeſty full Content in every thing that in their opinion maketh not a Breach in our Religion or Laws: whereby the Juſtneſs and Lawfulneſs of all they conſented to or forbore to oppoſe, is clearly acknowledged: And that it appeared to the Pannel, and may appear to any, that they might have oppoſed the King's Procedure. 'Tis not to traduce it as unjuſt in Points which they both by their Silence acquieſced unto, and expreſly acknowledge that they import no Breach in our Religion and Laws, but to ſhow how probably they might have oppoſed divers Points thereof, if they had been poſſeſſed with a ſeditious Spirit of Oppoſition, and thereby carried to diſ-aſſent from other Acts, as they feared his Majeſty might have been moved to believe.

It is anſwered to the Point of ſlighting the Grievances of the Country, That his Majeſty's Proceeding is not taxed, becauſe it is not ſaid that they were proponed in Parliament, and rejected or ſlighted; but only whereas in the Convention of the Eſtates the Perſon chiefly intruſted by his Majeſty undertook to acquaint his Majeſty therewith, and to procure Redreſs, nevertheleſs no notice was taken thereof, and they were ſlighted not by his Majeſty, but by thoſe who undertook to acquaint his Majeſty, and therefore reflects only upon them.

It is anſwered to that Point of the Dittay bearing the ignorant and falſe Affirmations, that before the 1609 Year of God, the Noblemen made choice of ſome of their Rank to be on the Articles, the Supplicant's Ignorance, in the Pannel's Conception, lays no Aſperſion upon his Majeſty or his Proceedings.

It is anſwered to that Point of the Dittay, bearing the taxing of the undutiful Choice made by the Biſhops, of Noblemen inſufficient, or unexperimented, to be upon the Articles, That it is not injurious in the Pannel's Conception to his Majeſty, in his Perſon, Eſtate, or Government. Secondly, Repeats the general Anſwer, that it is not poſitively affirmed of the Biſhops, that they did undutifully, or that the Noblemen elected upon the Articles were Popiſh or Ignorant; but that they had probable grounds in their opinion to think ſo, and to repreſent.

It is anſwered to the Point of reproaching of his Majeſty for the Acceptance of the Taxations, That in the Pannel's Conception his Majeſty is not challenged upon his Speeches in Parliament, nor upon the Narrative of his Proclamations, nor by the Antitheſes of King *James* I. his Practice: But his Majeſty's Speeches in Parliament, his Proclamations, King *James* I. his Practice, and the Parallel of the Eſtate of the Country, and the End of Taxations under either King, and his Majeſty's Father of worthy Memory, is adduced in the Pannel's Conception as ſpecious Reaſons wherewith they might have oppoſed the granting of the Taxations, if they had had ane diſloyal Intention to mar his Majeſty's Ways and Benefits.

It is anſwered to the Point of challenging of his Majeſty for Employment of his Taxations, and for his Liberality in rewarding his Officers, That in the Pannel's Conception it is not ſpoken poſitively and by way of Reproach, as the former Points, ſhewing how far the Diſ-aſſenters were from Averſeneſs or Tepidneſs in his Majeſty's Service; ſeeing without expatiating on the common Head uſual on ſuch occaſions, againſt the granting Taxations without enquiring of the Reaſons and Cauſes of granting the Taxations; without repreſenting the Inconvenience to enſue, they all unanimouſly favoured his Majeſty's Benefit.

It is added by Mr. *Robert Macgill*, That the Remedies apply'd to a Diſeaſe, muſt be thought both by the Phyſician, and the Patient or ſick Man, meeteſt and moſt fitting for the curing of the Diſeaſe. But ſo it is, that the Pannel and Supplicants were ſick of a Diſeaſe; and therefore they in curing by the Remedies as were thought fitteſt and moſt helpful by them, contained in the Supplication, muſt be thought therein to have had a good Mind, and that they thought and uſed the Remedies according to the nature of the Diſeaſe, as being moſt fit. Their Diſeaſe was Fear of Diſpleaſure from his Majeſty; for we muſt not think according to the *Stoicks*, That only *vires animi quas phantaſias Philoſophi appellant, quibus mens hominis prima ſtatim ſpecie rei ad animum accedentis pellitur, non voluntatis ſint, neque arbitrii:* But that alſo *aſſentiri & co-opinari incidunt in virum ſapientem.* But ſo it is, that this Diſeaſe was filial, *erga Patrem Patriæ:* And like Bairnes who are dung *(i. e.* Children that are beat) go back again to their Father, ſo the Pannel and other Supplicants having by chance looked upon the Piece quarrelled, did think it a very good Remedy to appeaſe his moſt ſacred Majeſty, their Father. As it is reported of the Spear of *Achilles*, that he who wounded them with Fear, might cure the ſame Wound, in ſhewing that they might have repreſented Grievances, which are Diſeaſes, to the only Phyſician. And in our Acts of Parliament, Declamations are forbidden *ad Plebem:* ſo it muſt be thought of Writings alſo, in the Conception of the Pannel, *quæ per Plebem diſtribuuntur atque ita divulgantur*, which is not in our Caſe; *ergo, &c.*

It is anſwered by his Majeſty's Advocat, That all ought to be repelled, in reſpect of the Dittay, and of the particular Points of Reproaches, which not ſo meikle (much) as by the Conception or Meaning of the Pannel can be juſtified. And all which is opponed, is either againſt the relevancy of the Dittay, which is remitted to the Juſtice; or againſt the Verification thereof, which is proper to the Aſſyze. And if the Juſtice and Aſſeſſors deſire a more ſpecial Anſwer to be made to the Particulars, the King's Advocat offer'd to clear the ſamen by word in hearing of Parties.

It is laſt alledged by Mr. *Roger Mowat* for the Pannel, That that part of the Dittay anent the Pannel's alledged divulging and diſperſing of the ſaid alledged Libel, is not relevant to infer the Crime and Puniſhment concluded in the ſaid Dittay; becauſe divulging and diſperſing are not contained in the Acts of Parliament whereupon the Dittay is libelled, and ſo cannot be the Ground and Warrand thereof. Secondly, In ſo far as the Dittay bears, that the ſaid Libel was divulged by giving the ſaid Copy to *Dunmure*; giving, and not granting, that divulging is warranted by the ſaid Acts, or can be ſuſtained as a Warrand againſt the Pannel to infer the ſaid Crime and Pain, that cannot be called divulging, becauſe *Dunmure*'s own Depoſitions bear not, that he received the ſaid Libel from the Pannel to copy or divulge, but that he took it up only to read upon very ſtrict Conditions; which being the true manner of his Receipt thereof from the Pannel, cannot be called properly divulging: becauſe to divulge, properly, is to affix *in loco publico*, as Mr. *Thomas Roſs* did, whom my Lord Advocat cited; who affixed his ſeditious Paſquils, and Invectives againſt his Nation, whereof he was the confeſſed Author, upon the public parts and places of the Town and Univerſity of *Oxford.* Or to divulge is to tyne, (drop) and caſt down Papers in Kirks, Tolbooths, or High-Streets, as did *Francis Tenant*, likewiſe cited by my Lord Advocat; who left and of purpoſe tynt (dropt) his infamous Miſſives in the Kirks. And it is univerſally maintained, that the delivering of a Libel or Writing to one only, cannot infer divulging; albeit it is not granted that the Pannel delivered the ſaid Writ to *Dunmure.*

To that Part of the ſaid Dittay bearing that the ſaid Libel was divulged by delivering thereof to the Earl of *Rothes*; it is anſwered, That that was not divulging, becauſe it is confeſſed in the ſaid Dittay, that it was delivered to the Earl of *Rothes* to have been preſented to his Sacred Majeſty: And it is contended, as before, That that which is affirmed in the ſaid Dittay to be divulging, is more properly to be called revealing, as indeed it was. So that it is retorted, to free the Pannel not only of divulging, but of all Crime for hearing or not apprehending; becauſe if the Pannel delivered it, as the Dittay bears, to have been preſented to his Sacred Majeſty, *ergo* not as infamous, reproachful, or ſcandalous: which muſt be preſumed by all manner of Preſumptions in favour of the Pannel, that he did not conſent to the preſenting thereof to his Highneſs, as being in his leaſt Thought or Imagination ſcandalous, or otherwiſe as the Dittay bears; but only to have been revealed to his Sacred Majeſty as a Piece which he and the other Supplicants did think and conceive might have been graciouſly accepted, as others of that kind had formerly been received by his gracious Majeſty.

To that part of the Dittay bearing the copying thereof by Mr. *Robert Dalgleiſh*, the Pannel's Servant; it is anſwered, *Quod non relevat* to infer divulging, becauſe the ſaid Mr. *Robert* his Depoſition bears, that he did only deliver the Copy to my Lord his Maſter, and did no farder. Neither depones he, that my Lord did any farder but took the Copy from him; which in no ſenſe can be properly called divulging, for the Reaſons before adduced.

To that part of the ſaid Dittay bearing Mr. *John Dunmure*'s keeping the ſaid Copy in his hands, by the ſpace and in manner libelled; it is anſwered, *Non relevat*, becauſe it is not, *ut ſupra*, that the Pannel gave him the Copy, but that he took it, as the Depoſition bears. And what he did thereafter without any Warrand, Command, or Allowance of the Pannel, cannot be laid to the Pannel's charge, but to his own; ſeeing the manner of his receiving and divulging thereof, is nottourly known to have been againſt his Promiſe, or without the Knowledge or Conſent of the Pannel, by abuſing his Truſt given to him by the Pannel, tho' innocently, who was free of all his ſubſequent Proceedings. And there being no Fraud or Malice in that point upon the Pannel's part, who was wronged by *Dunmure*, tho' innocently; that cannot be called the Pannel's divulging: for who lives, and may not be deceived and abuſed in that manner as he was, tho' innocently, on *Dunmure*'s part?

To that part of the Dittay anent Mr. *John Dunmure* his Anſwer to the Earl of *Traquair*; it is anſwered, That the ſame cannot be reſpected as relevant to infer divulging, becauſe the Pannel's Depoſition bears that he gave no Warrand nor Direction to *Dunmure* to return anſwer to the ſaid Earl: but that in diſcourſe with *Dunmure*, the Pannel anſwered not thoſe words, *That as honeſt Men would put their Faces thereto (i. e.* juſtify it) *as the Pannel himſelf*; but the Pannel's Anſwer only was in theſe words, *That as honeſt Men as the Pannel himſelf knew of it:* meaning of the Earl of *Rothes* and other Supplicants, who had intended to cauſe make offer of the ſame to his Royal Majeſty, and accordingly did make offer thereof by the ſaid Earl of *Rothes.*

And to that part of the ſaid Dittay, concluding that the ſaid Pannel being a Nobleman of good Learning and Underſtanding, ſhould have revealed, ſhould have not concealed, ſhould have apprehended the Author; it is alledged, *Non relevat ut ſupra*, and *Abſolvitur* ought to be granted from that Concluſion, for the Reaſons mentioned before in the Defences and Duplies made for the Pannel, who ſtill contends that as he never did conceive or underſtand the ſaid Supplication, as the Dittay inforces and bears the ſame upon him; ſo his own Commentary and Declaration anent his Meaning and Senſe thereof, ought only to be received, to free and vindicat him from the Crime and Pains libelled. In reſpect whereof, the ſaid Dittay anent the Point of divulging can no ways be reſpected as relevant, but *Abſolvitur* ought to be granted to the Pannel therefrom.

It is added by Mr. *Alexander Pearſon* to this laſt and fifth Exception, That the Point of Dittay anent divulging is not relevant, and cannot infer the Pains concluded by the Dittay, becauſe the ſaid Point of Dittay is not founded upon any Act of Parliament mentioned in the Propoſition thereof, but only upon the Civil Law, which the Leidges cannot nor are obliged to know in all the Sanctions thereof; ſpecially ſeeing by divers Acts of Parliament, to wit, King *James* I. *Parl.* 3. *cap.* 48. King *James* IV. *Parl.* 6. *cap.* 79. by the which it is ſtatute, That all the King's Leidges live and be governed under the King's Laws and Statutes of the Realm only, and not by any Laws of other Countries: And therefore cannot infer the Pains concluded by the Dittay.

Farder, The Pannel ought to be aſſoilzed from that Point of the Dittay of divulging, becauſe the Pannel is not nor cannot be counted formally Divulger of the alledged infamous Libel; he not having Knowledge or Opinion of the Writ quarrelled, that it was infamous: but having juſt and probable Cauſe to think of it otherwiſe, *ut ſupra.* And as Credulity by the Civil Law defends in Theft, ſo by the like reaſon it ought to defend the Pannel here, anent divulging, as is confirmed in the fourth Exception proponed for the Pannel, which I here repeat, and which Defence is moſt relevant by the Civil Law, whereupon only this Point of Dittay is urged, and therefore ſhould elide the ſame.

Item, Farder, The Civil Law does not make any to be Divulger of an infamous Libel, but after Knowledge of the ſame to be infamous; which is clear by the Ordinance of the Law ſet down in *Lege Unica, Codice de famoſis Libellis*, which commands the Finder of any infamous

Libel preſently to deſtroy it; which the Finder cannot do, but after knowledge of the Writ to be ſuch. And 'tis alſo clear by the Prohibition of the ſaid Law, bearing, *Si vim earum manifeſtaverit*; which requires divulging of an infamous Libel, in the form and ſtrength thereof. In reſpect whereof, the Pannel ought to be aſſoilzed from that Point of divulging.

It is added by Mr. *John Niſbet*, That divulging is not relevantly qualified in Law, by the imparting of the alledged Libel to my Lord *Rothes* and to Mr. *John Dunmure*; becauſe it was imparted to neither of them in quality of an infamous Libel, but to my Lord *Rothes* in the contrair quality of ane Supplication, to be preſented by him to his Majeſty, as is acknowledged in the Dittay; and to Mr. *John Dunmure* as a Confident of the Pannel's, under Promiſes of Secrecy; which Proceedure and Qualities of imparting are far from the nature of divulging; for the word itſelf implieth a publick Diſperſion, and the expreſs Law requireth *manifeſtationem publicam & doloſam publicationem*; *Canone qui in alterius*, *Cauſa* 5. *Quæſt*. 1. *Doloſum. Canone* 4. *eadem Cauſa & eadem Quæſt. Et Libellus famoſus dicitur Paſquillus*, *quod in Urbe Roma ad truncam Paſquini cujuſdam ſtatuam affigi ſolet. Harprechtus in tractatu Criminali*, §. *Injuria. Sectione de famoſo Libello*, *Et qui Libellum famoſum ab alio acceptum viciſſim alii*, *& uni tantum ſecreto tradidit*, *Libelli famoſi pœna non eſt plectendus*, *quia ex traditione ſecreto facta non obſcure colligitur animus non diffamandi*; *& quia Libellum famoſum non dicitur publicaſſe*, *niſi qui cum pluribus impertitus eſt. Harprechtus*, *ibidem*.

It is added by Mr. *Robert Macgill*, That the divulging qualified in the Dittay is not relevant according to the Civil Law, where a Publication and Out-ſetting is required: *Pharm. Quæſt*. 105. *Inſpect*. 11. *num*. 485, 487. And the reaſon is, *quod Convicium dicatur quaſi Convolium*, *Leg. Item*, *apud Labionem* 15. §. 4. *F. de Injuriis*, *ubi* §. *ſequenti ait dici vociferationem in unum collatum*: *additis* §. 8. *&* 11. *&* 12. *Quod oportet in Cœtu dici*, *& cum vociferatione vulgare*, *etiam Nænio Marcello eſt in vulgus dare*, *& quaſi multis audientibus ac non taciturnus dicere*. Then *ei diſperſionem & diviſionem ſuperaddunt*, *ut ſit in plurium manus ſparſio ab una eademque facta*, *& maxime ſi in Plebem diſtributio fiat*, *unde ſævitque animis ignobile Vulgus. Quippe ut Cicero pro Plancio*, *non eſt conſilium in vulgo*, *non ratio*, *non diſcrimen*, *non diligentia*. And even in that title of the ninth Book of the *Cod. de Seditioſis*, it is added, *Et his qui Plebem contra Rempublicam audent colligere*. And ſo have I ſaid not long ſince, that theſe private Writings, and the diſperſing of them, muſt be underſtood in our Acts of Parliament, as the Declamations therein mention'd, that is, to the meaneſt and commoneſt ſort; and that to ten at leaſt, *quia non dicitur notorium niſi per decem ſaltem tranſeat*; *Boerius Tractatu de Seditioſis*, *Præmiſſ*. 7. *quippe quod populus dici non poſſe*, *niſi ſint decem*: *Ibidem Præmiſſ*. 3. And remits here what I have ſaid *de Seditioſis*, in the end of my ſecond Exception. But ſo it is, that the communicating of the Piece quarrelled to Mr. *John Dunmure*, in that mean ſort as is contained in the Depoſition, and conſequently in the Dittay, cannot be thought a divulging in manner above expreſſed; *ergo* the Pannel ought to be aſſoilzed from that Part of the Dittay.

It is anſwered by my Lord Advocat, That the Alleadgeance ought to be repelled, in reſpect of the Dittay, which in this part anent divulging is founded upon the common Law, *Leg. Unica de famoſis Libellis*. And which Common Law, in the caſe where we have no particular Law nor Statute of our own, is obligatory againſt the Leidges. And the Acts of Parliament cited by the Defenders, That the Leidges ſhall be ruled by the Laws of the Kingdom allenarly, (only) and not by the Laws of other Kingdoms, excludes only the particular Laws of particular Kingdoms; but excludes not neither the Laws of God, neither the Laws of Nature, neither the Laws of Nations, nor the Common Law: Otherwiſe, odious Crimes againſt which there are no Municipal Laws, as *Sodomia*, *Plagium*, *privati Carceres*, *&c*. ſhould be unpuniſhable. And as to the Exception proponed againſt the Relevancy, and the Alleadgance of the Civil Law anent divulging *uni*; oppones the Dittay, bearing the divulging thereof to three particular Perſons in manner therein libelled.

It is duplyed by the Pannel and his Procurators, That the Point of divulging being founded only upon the Civil Law, if it were ſuſtained, is only relevant to infer the Pain of the Civil Law, which is not capital, *Niſi non libellus famoſus continet delicta capitalia in alium improperata. Secus in eo improperetur delictum non capitale*, *aut alia quævis Culpa. Gloſſa in Leg. unica. Codice de famoſo libello*, *in verb. ſi quis famoſum. Phar. Quæſt*. 105. *num*. 11. And of the Canon Law, which has ever had more Force with us: *Pœna etiam atrociſſimi Libelli eſt tantum flagellatio. Canone*, *Qui in alterius*, *Cauſa* 5. *Quæſt*. 1.

It is farder duplyed by Mr. *Roger Mowat*, to that Part of my Lord Advocat's Reply, bearing, That the Alleadgance made againſt divulging ought to be repelled, in reſpect of the Dittay, bearing the divulging by the Pannel to three ſeveral Perſons: It is duplyed thereto, That the ſaid Reply ought to be repelled, in reſpect of the ſaid Alleadgance proponed againſt the ſaid Member of divulging, and hail Qualifications thereof, to the ſaids three Perſons; whereunto there is no Anſwer given by my Lord Advocat. And therefore remits the ſaid Alleadgance, and hail Members of it, as yet unanſwered, to be conſidered by the Judge as moſt relevant in itſelf. In reſpect whereof, the ſaid Alleadgance, and hail Members thereof, ſtands relevant, notwithſtanding of the Reply.

It is triplyed by my Lord Advocat, That the Pain by the Common Law is capital; and the Quotation by Mr. *John Niſbet* is a Gloſs, without Warrant. And albeit ſome reſpect might be had to an infamous Libel againſt a Subject, yet none in that which concerns our Sovereign, tending to the Diſturbance of the Eſtate and publick Peace.

It is quadruplyed by Mr. *John Niſbet*, That we oppone the Gloſſes aforeſaids acknowledged and followed by all the Doctors, and founded upon the Equity of Retaliation; and oppone likewiſe the foreſaid Citations out of the Canon Law it ſelf, and the hail Title of the Canon Law *de Maledictis*, where Detractors of the Pope himſelf are only obnoxious to the Pain of Flagellation.

The Juſtice continues till to-morrow the 17*th Inſtant*.

Curia legitime affirmata, the ſaid 17th of *December*, 1634, *&c*.

My Lord Advocat, after ſome Speech delivered by the Pannel's Procurators, *verbo* declared to my Lord Juſtice-General, That what was ſpoken was only a ſummary Recapitulation of that which is at length ſet down by the Pannel's Procurators in their Defences; and offered to his Lordſhip, if it were his Lordſhip's Pleaſure that he, as Purſuer, ſhould clear by his Anſwer *verbo*; and otherwiſe, that my Lord Juſtice, with Conſent of his Aſſeſſors, would cloſe (put an end to) all farder Writing, and declare that no more ſhould be added, but that *Interloquitor* may be pronounced of that which is proponed and written already. To the which my Lord Juſtice made Anſwer, That there was no Neceſſity to anſwer farder than is ſaid and written already.

It was thereafter humbly craved by the Pannel and his Procurators, That if any thing ſhould occur to be demanded whereupon he deſired to be heard before *Interloquitor*, that my Lord Juſtice would be pleaſed to hear him, he proponing the ſame, *verbo* in his Lordſhip's Audience.

My Lord Juſtice-General, with Advice of his Lordſhip's Aſſeſſors, declares that all farder Writing in this Matter ſhall ceaſe before the Dittay be found relevant, and referred by *Interloquitor* to an Aſſize; and continues *Interloquitor* upon the Exceptions proponed in this Proceſs, and Anſwers made thereto, till *Friday* next, the 19th of *December* inſtant.

The ſaid 19*th of* December *it was continued till the next Day*, *the* 20*th*.

The ſaid 20*th of* December, 1634, Curia legitime affirmata, &c. *Pannel and Procurators as above*.

My Lord Juſtice-General and his Lordſhip's Aſſeſſors having read and conſidered the Dittay, hail Exceptions, Replies, Duplies, with all that is proponed for the Pannel by his Procurators in this Proceſs, and my Lord Advocat's Anſwers made thereto; by *Interloquitor* repel the firſt Exception proponed by the Pannel and his Procurators againſt the Relevancy of the Dittay, in reſpect of the Acts of Parliament ſtanding unrepealed. Repel the ſecond Exception in reſpect of the Dittay, and Acts of Parliament whereupon the ſame is founded. Repel the third Exception in reſpect of the Dittay, and that there may be more Authors than one; and likewiſe ſuſtain theſe Words of the Dittay, *That the Pannel is Adviſer*, *Deviſer*, *and Conſulter*, in reſpect they all ſignify one thing with Airt and Part. And as to the Qualification of the Interlining, ſet down therein, remit the ſame to the Aſſize, as proper to be cognoſced by them, with the hail remanent Qualifications and Preſumptions contained in the ſaid Dittay, to be proven to the ſaid Aſſize. Repel the fourth Exception in reſpect of the Dittay, and ſcandalous and reproachful Libel mentioned therein; which my Lord Juſtice, with Advice of his Lordſhip's Aſſeſſors, find to be of that nature, notwithſtanding of any thing propounded in the contrair in the Pannel's favour. As to the laſt Exception, repel the ſamen, and ſuſtain that Point of the Dittay anent the divulging of the infamous Libel, to be tryed and proven *conjunctim* with any one of the reſt of the Articles of the ſaid Dittay found relevant, as ſaid is, to infer the Puniſhment preſcribed by the Act of Parliament; and declare, That if it ſhall be only proven *per ſe*, to be puniſhed *per pœnam arbitrariam*. And in reſpect of the former *Interloquitor*, ordain the Dittay to paſs to the Tryal of an Aſſize. And for that effect, continues this Matter to the 11th Day of *February* next to come; and ordain the Pannel to be returned to his Ward within the Caſtle of *Edinburg*.

Curia legitime affirmata, the ſaid 11th of *February*, 1635.

John *Lord* Balmerino *delated of the Crimes contained in his Dittay*, *contained in his preceding Proceſs*.

The Juſtice Deputs (*being* Alexander Colvil *of* Blair, *and Mr*. James Robertoun, *Advocat*) *foreſaids*, *with Advice of the Aſſeſſors*, *before mentioned*, *continue this Dyet*, *anent the Trial of the ſaid* John *Lord* Balmerino, *for the Crime ſpecified in his Dittay*, *to the* 11*th of* March *next to come*. *The Perſons of Aſſize are warned*, &c.

The ſaid 11*th of* March, *it is continued till the* 18*th of* March, 1635. *And the ſaid* 18*th Day*, *in reſpect of the Abſence of Mr*. Roger Mowat, *the Pannel's principal Procurator*, *by reaſon of Sickneſs and the Gout*, *the Juſtice continued the Dyet till the* 20*th of* March *thereafter*, 1635.

The ſaid 20*th of* March, 1635. *Pannel and Procurators as before*.

The Names of the Perſons of Aſſize (Jury.)

William Earl *Mareſchal*.
James Earl of *Murray*.
William Earl of *Dumfreis*.
Mungo Viſcount of *Stormond*.
John Earl of *Lauderdale*.
John Earl of *Traquair*.
George Lord *Forreſter* of *Corſtorphine*.
James Lord *Johnſtoun*.
Sir *Alexander Strachan* of *Thorntoun*, Knt.
Sir *Robert Grier* of *Lagg*.
Sir *John Charters* of *Amisfield*.
Sir *Alexander Niſbet* of *Weſtniſbet*, Knt.
Sir *Patrick Agnew* of *Lochnair*, Knt.
Sir *James Baille* of *Lochend*.
John Gordon of *Buſkie*.

It is alledged by the Pannel and his Procurators, That the Earl *Mareſchal* cannot be admitted upon the Aſſize, becauſe he has received Information and particular Inſtruction of the Pannel's Guiltineſs of the Crimes given up in the Dittay, and particular Direction what to do in caſe he paſs upon the Aſſize; which they refer to the Nobleman's own Oath and Declaration: who being ſworn, declared that he received no ſuch Inſtruction or Information of any Perſon. Whereupon, being purged of partial Counſel, the Juſtice admits him upon the Aſſize.

It is alledged againſt the Earl of *Dumfreis*, that he cannot be received upon the Aſſize, becauſe he has given out his prejudged Opinion againſt the Pannel, affirming, before any Probation led, that the Pannel is guilty of the Dittay; which the Pannel referred to his Lordſhip's Oath, alledging that in Law a Declinator is only to be proven againſt ane Aſſizer by his Oath: And farder affirms, that the ſaid *William* Earl of *Dumfreis* has been ſollicited and dealt with by Prayer to find the Pannel guilty of the Dittay. Which being referred to the ſaid Earl his Oath, he denied any ſuch Matter, that he either gave out Speeches of the Pannel's Guiltineſs, or that he was ſollicited or dealt with by Prayer, or otherwiſe; the Juſtice admits him, in reſpect of his Declaration.

It is alledged againſt my Lord *Blantyre*, that he cannot be upon his Aſſize, becauſe he has publickly reported to ſundry, that the Pannel to his Judgment is guilty of the Dittay, and cannot be cleared thereof; which they refer to his Lordſhip's Oath: who being ſworn, declared that he could not deny that he had ſpoken ſuch Speeches. Whereupon he was repelled, and ordained to ſtand aſide.

It is alledged by the Pannel and his Procurators againſt my Lord *Johnſtoun*, the Laird of *Lag*, the Laird of *Amisfield*, the Laird of *Thorntoun*, the Laird of *Weſtniſbet*, that they cannot be received upon the Aſſize, becauſe they have all been ſollicited by Prayer and Requeſt to find the Pannel guilty; and that the Lord *Johnſtoun* has declared to ſundry, that if he were on his Aſſize, he could not but find him to be guilty: likewiſe, affirmed by *Thorntoun*, that as the Dittay is founded upon the Acts of Parliament, the Pannel muſt be guilty, and none can acquit him thereof; and that *Weſtniſbet* had affirmed in publick Conference, by his bewrayed Opinion, that he would file (convict) the Pannel, and do his Endeavour cauſe others file him of the Dittay. Whereupon the forenamed Perſons having by their Oaths denied the Premiſſes, the Juſtice thereupon having purged them of partial Counſel, admits them upon the Aſſize. Whereupon my Lord Advocat aſked Inſtruments. Likewiſe admits my Lord of *Traquair*, notwithſtanding of the Declinator proponed againſt him *verbo*, by the Pannel's Procurators.

My Lord Advocat, for verifying of the Dittay, 1ſt, Repeats the Acts of Parliament whereupon the Dittay is founded, (*viz.*) the 10th Act of the 10th Parliament of his Majeſty's deareſt Father, King *James* the Sixth, holden at *Linlithgow* the 10th Day of *December*, 1585; the other Act being the 205th Act of his Majeſty's 14th Parliament, holden at *Edinburgh* upon the 8th Day of *June*, 1594.

2dly, Produces his Majeſty's Warrant or Letter, direct for examination of Mr. *John Dunmure*, whereof the Tenour follows:

To the Right Reverend Father in God, our Right Truſty and Well-beloved Counſellor; To our Right Truſty and Right Well-beloved Couſins and Counſellors; To the Reverend Fathers in God, our Truſty and Well-beloved Counſellors; and to our Truſty and Well-beloved Counſellor, the Archbiſhop of St. Andrews, *Primate and Metropolitan of all* Scotland; *the Earl of* Mortoun *our Theſaurer, the Earl of* Traquair *our Deputy-Theſaurer, the Biſhops of* Edinburgh *and* Roſs; *and to Sir* John Hay *of* Baro, *our Clerk-Regiſter of our ſaid Kingdom.*

CHARLES *Rex.*

RIGHT Reverend and Reverend Fathers in God, our Truſty and Well-beloved Counſellors, Right Truſty and Right Well-beloved Couſins and Counſellors, and Truſty and Well-beloved Counſellors; We greet you well. Having ſeen the Copy of a Petition, which hath been in the Hands of Mr. *Peter Hay* of *Naughtoun:* And he being required by us to declare from whom he had the ſaid Petition, hath done the ſame by naming one *Dunmure*, dwelling in *Dundee*, a Notary there: It is our Pleaſure, that you call them before you; and having received the ſaid Mr. *Peter Hay* his Information, and examined the ſaid *Dunmure* concerning the Author of that Petition, and who may be any wiſe acceſſary unto it, you inform yourſelf ſo far as you can in all things concerning it, and certify us what ye find thereanent, that we may cauſe take ſuch further Order with theſe that ſhall be found to have had hand therein, as we ſhall think fitting. And for your ſo doing, theſe Preſents ſhall be your ſufficient Warrant. *From our Court at* New-Mercat, *the 3d of* March, 1634.

3dly, Repeats the infamous Libel produced by Mr. *John Dunmure* before the Lords of the Committee upon the 14th Day of *March* 1634, with his Depoſition made in preſence of the Committee that ſame Day; which infamous Libel, with his ſaid Depoſition, is produced by his Majeſty's Advocat upon the 3d Day of *December* 1634, before my Lord Juſtice, and is regiſtrat in this Proceſs that Day.

4thly, Produced the Double (Copy) of the infamous Libel, interlined by the Pannel, whereof the Tenour follows.

[*This is exactly the Double of the former, only with the Addition of the Pannel's Interlinings, which are theſe; Firſt, at Letter* A, *on the* 14*th Page (or* 411 *of this Vol.) there is interlined by his Lordſhip theſe Words, which are not mentioned in the former Double,* viz. In ſuch a Caſe as this, it hath not been unworthy to have repreſented to your Majeſty's Obſervation, that. *And at this Mark alſo theſe Words are wanting in this Double, which the former has,* viz. Which bleſſed King *James* would never have confounded. *And betwixt Letter* B *and* C, *on the ſame Page thus,* B of Religion C, *is interlined in this Double. And the laſt interlined Words in this Double are to come in as marked on the* 412th *Page, betwixt* C *and* D, *theſe Words,* viz. To ſuffer to be introduced.]

Item, Produces Mr. *John Dunmure*'s two Depoſitions, made the 15th of *March* 1634, and the 7th of *June* after, whereof the Tenour follows:

I Mr. *John Dunmure* confeſs and declare, That the Copy of the Petition, remonſtrat to the King's moſt ſacred Majeſty, to have been delivered by me to Mr. *Peter Hay* of *Naughtoun*, was intruſted by me to him upon his Faith and Promiſe never to have been imparted or divulged to any other, and that he ſhould redeliver to me the ſame, after the Reading and Conſideration thereof: And that I extracted the ſaid Copy with my own Hand againſt the Direction, and by (without) the Knowledge of him from whom I had the firſt Copy and Warrant thereof. So help me God. And this for Amplification of my Confeſſion of the ſaid Matter, made in Preſence of the Lords Commiſſioners, Receivers thereof, the 14th of *March* inſtant, by thir Preſents written and ſubſcrived with my Hand at *Edinburgh* the 15th of *March*, 1634.

Sic ſubſcrib. Joan. Dunmure.

At *Edinburgh*, 7 *June*, 1634. Sederunt, *St. Andrews*, the Earl of *Roxburgh*, *Traquair*, *Brechin*, Clerk-Regiſter, Advocat.

THE which Day Mr. *John Dunmure*, being deeply ſworn upon his Knees, ratified and approved his former Depoſition of the Date the 15th of *March*, 1634; and declares, That at the time he received his ſaid Supplication of my Lord *Balmerino*, the ſaid Lord *Balmerino* deſired him that he would take it, and give him his Opinion thereof; and as he loved his Credit, he would keep it, and ſhew it to no Man living, but only give his own Opinion there-anent: And declares that there was nothing ſpoken about the copying thereof; but is perſuaded, if that my Lord *Balmerino* had known that he would have copied it, he would never have given the ſame out of his hand. And depones, after the Receipt thereof he abode three Days in *Edinburgh*, and during that time copied the ſame, and did return the ſame to my Lord *Balmerino*; but no ways told him that he copied the ſame. And depones, he ſhewed the ſame to no Perſon, nor had no purpoſe to divulge it, but did take it home with him to *Dundee*, and did keep it cloſe and ſecret by himſelf by the ſpace of ſix Weeks, till the Laird of *Naughtoun* came to him in his own Chamber in *Dundee* of purpoſe to aſk his Advice in ſome Affairs, in reſpect he was his ordinary Writer, as his Cuſtom was: And depones, that after ſome Conference with the Laird of *Naughtoun*, he took the ſame out of his Pouch (Pocket), and ſaid to the Laird, He knew that he was a Man of Judgment, and well-acquainted with the Affairs of the Kingdom; and ſaid, Here is a Paper whereof he would be glad to have his Judgment, providing he would keep it ſecret, and return the ſame back again: Which the Laird faithfully promiſed. Whereupon the Deponer gave the ſaid Paper to the Laird. Whereupon he began to read: And before he had ended it, he ſaid to the Deponer, Mr. *John*, I intreat you heartily that I may have this Paper to *Naughtoun*, that I may read it, and conſider it at leiſure. To the which the Deponer anſwered he would, providing he would keep it ſecret, and ſhew it to no Man, as he had promiſed: which the Laird of *Naughtoun* faithfully promiſed to do. And declares upon his great Oath, That if he had known the Laird would not have keeped it ſecret, he would not have given it for all the World. As alſo depones, That within a Month or five Weeks after the Deponent went to the Laird of *Naughtoun*'s Houſe, as he was going through *Fife*, and craved the Paper back with great Earneſtneſs; who anſwered, Tritle, tratle, ye need not be ſo curious; that there was a Gentleman at his own Table told him that there was three Copies thereof going through *Fife*, and my Lord *Balmerino* had given one thereof to Mr. *William Scott*, another to Mr. *Alexander Henderſon*, and the third that the Gentleman would not name. And the Deponer declares, After that time he met *Naughtoun* divers time in *Dundee*, and aſked the Paper back, which he ever ſhunned. And declares, About *October* laſt *Naughtoun* came to the Deponer's Chambers in *Dundee*, and told him that he had given the Paper to my Lord *St. Andrew*; at which the Deponer was mightily moved. *Item*, depones, After his firſt Declaration he went to my Lord *Balmerino*, who after Conference with him, my Lord *Balmerino* deſired him to go to the Earl of *Traquair*, and tell him that better Men nor my Lord *Balmerino* himſelf would ſet their Faces thereto.

Sic ſubſcrib. Joan. Dunmure.

St. Andrews, *J. Morton*,
Roxburgh, *Traquair*,
Da. Epiſc. *Brechin*,
J. Hay, *Tho. Hope.*

5thly, Produces three Depoſitions ſubſcrived by the Pannel and the Lords of Committee, one dated the 9th of *June* 1634; the ſecond the 16th of *June* 1634; and the third the 1ſt of *Auguſt* 1634. Of the which three Depoſitions the Tenour follows, *viz.*

Apud Edinb. the 9th of *June* 1634. Sederunt *St. Andrews*, Theſaurer, *Roxburgh*, *Traquair*, *Brechin*, Clerk-Regiſter, Advocat.

THE which Day *John* Lord *Balmerino* being examined upon his great Oath, depones as after follows: *Imprimis*, depones, That the Libel produced is the juſt Copy of the Libel given by him to Mr. *John Dunmure*, ſo far as he remembers. *Item*, Being interrogat to what uſe he gave him the ſame, and upon what occaſion, depones, That Mr. *John Dunmure* having given to him the Copy of my Lord *Brechin* his Sermon preached at his Majeſty's Coronation, and Mr. *John* having ſeen the Paper, he gave it to him to look upon, but to keep it to himſelf alone, and to ſhow it to no other, as he reſpected his Lordſhip's Credit: And depones, That he never knew that Mr. *John Dunmure* had copied the ſame. *Item*, Being interrogat from whom he had the Paper he gave to Mr. *John Dunmure*, depones, As he remembers he received the principal of the ſame from Mr. *William Haig*. *Item*, Being interrogat who was Author and Penner of the ſaid Libel, depones, That it was Mr. *William Haig* who gave it him, and, as he thinks, was the Author thereof. *Item*, Being interrogat to what uſe Mr. *William Haig* gave his Lordſhip that Paper, depones, That Mr. *William Haig* ſaid he thought it a fit Supplication to be preſented to his Majeſty; which he had made out of ſome Collections which he had gathered upon ſome Conferences which he had with ſundry Perſons the time of the Parliament. *Item*, Being interrogat what he did with the Paper which he received from Mr. *William Haig*, depones, he received two of them from Mr. *William Haig*, whereof one was to be preſented to the King, if it had been thought expedient, which he delivered to my Lord of *Rothes*; and the other he cauſed his Man Mr. *Robert Dalgleiſh* copy; and gave Mr. *Haig* his own back again, which he thinks he deſtroyed. And the Paper which he ſhewed Mr. *John Dunmure*, was it which his Man wrote, as he remembers. *Item*, Being interrogat if Mr. *William Haig* had any Warrand or Command to draw up the ſaid Supplication, or if any Lord or any of his knowledge was at the penning thereof, depones, That he had no Warrand from him, nor knew of any Warrand given to him, nor that any was preſent at the forming thereof. *Item*, Declares that the Earl of *Rothes* and the Deponer having read the Supplication, thought it no ways fit to be preſented to his Majeſty, but to be abſolutely ſuppreſt. *Item*, Being interrogat if he had any of the ſaids Copies, declares, After the receipt of

Mr. *John Dunmure* his Copy, he caſt the ſamen in the Fire; and for the other, he did diligence to ſeek the ſamen out and find it, and exhibit the ſamen to the Lords: and declared, that he had no more concerning that purpoſe. *Item*, Being interrogat if he gave any Copies of the ſaid Supplication, or ſhewed it to any Perſon, depones, That he neither gave Copies thereof, nor ſhewed it to any except to the Earl of *Rothes* and Mr. *John Dunmure*.

Sic ſubſ. Balmerino.

St. Andrews, *Morton*, *Roxburgh*,
Traquair, *Da* Ep. *Brechin*,
J. Hay, *Thomas Hope*.

Follows the Tenour of the ſecond Depoſition.

Apud Edinb. decimo ſexto Junii, 1634.

THE whilk Day *John* Lord of *Balmerino* being examined upon his Oath if he knew any thing of Mr. *William Haig* his going out of the Country, depones, That he knew nothing of his away going till Wedneſday laſt; that a Man of the Lady *Yeaſter*'s told him, when he was going to *Balcleugh*'s Burial, that Mr. *William Haig* was gone out of the Country. *Item*, Being inquired anent that part of Mr. *John Dunmure*'s Depoſition, That after his firſt Declaration he went to the Deponer, who after conference with him deſired him that he would go to the Earl of *Traquair*, and ſay, *That better Men than the Deponer himſelf will ſet their Faces thereto*: the ſaid Lord *Balmerino* depones, That he never gave Mr. *John Dunmure* ſuch a Commiſſion, but only told him in conference, That there were better Men than the Deponer himſelf who knew of that matter. And being inquired what theſe were that he meaned of, depones, That it was the Earl of *Rothes*, to whom he delivered the Supplication, conform to the former Depoſition. *Item*, Being inquired whether he had interlined ſome Lines in the ſaid Libel which was exhibited by him to the Lords, and whether he did the ſame before he ſhewed it to Mr. *John Dunmure*, or to the Earl of *Rothes*, depones, That it was the Earl of *Rothes* to whom he delivered the Supplication, conform to his former Depoſition. *Item*, Being inquired whether he had interlined ſome Lines in the ſaid Libel which was exhibited by him to the Lords, and whether he did the ſame before he ſhewed it to Mr. *John Dunmure* or to the ſaid Earl of *Rothes*, depones, That Mr. *John Dunmure* never ſaw this interlined Libel, but only the Copy which was caſt in the Fire after the redelivery thereof: And depones, That the Copy interlined lying before the Lords was the Copy delivered by him to the Earl of *Rothes*, but was not interlined while the Earl of *Rothes*'s redelivery thereof to him; and depones, That never any ſaw it ſince the interlining thereof.

Sic. ſubſ. Balmerino.

St. Andrews, *Morton*, *Roxburgh*,
Traquair, *Da.* Ep. *Brechin*,
J. Hay, *Thomas Hope*.

Follows the Tenour of his Lordſhip's third Depoſition.

Apud Edinb. the firſt Day of *Auguſt* 1634. Sederunt, *St. Andrews*, Theſaurer, *Roxburgh*, *Stirling*, *Traquair*, Biſhops of *Edinburgh*, *Roſs*, Clerk-Regiſter, the King's Advocat.

THE which Day *John* Lord *Balmerino* being aſked upon his great Oath, if he ſhewed to Mr. *Haig* the Warrand of his Appearance before the Lords upon *Saturday* the 7th of *June*, depones, That after Dinner Mr. *Haig* came to his Houſe, and aſked by what Warrand he was convened before the Lords; and the Deponer took the Warrand out of his Pocket, and ſhewed the ſame: And adheres to his former Depoſition, anent Mr. *Haig* his parting, or to the purpoſe thereof. *Item*, Being interrogat if he received any Letters from Mr. *Haig* ſince his parting, deponed, That he received at his back coming from *Balcleugh*'s Burial a Letter from his Lady, direct from Mr. *Haig*, but without either Date or Place, which he produced: as alſo received from *Thomas Haliburton* a Letter direct from Mr. *Haig*, with ſome Note concerning my Lord *Jedburgh*'s Buſineſs. And ſick like depones, he received a Letter from *Adam Watt*, which concerned ſome Buſineſs betwixt my Lord *Yeaſter* and Mr. *Haig*; and in the end deſired the Deponer to aſſiſt Sir *Lewis Stewart*, and other Friends that he had written unto for procuring of him a remiſſion: which Letter, after the Deponer had dealt with the Lord *Yeaſter*, he cancelled and burnt. And laſt grants he received a Letter from *Camphire* the 27th of *June*, which he received from Mr. *Robert Bruce*; which he exhibits, and which Letter bears Mr. *Haig* has granted that he was the Penner of the ſaid Supplication, and therefore proteſts that the ſame may be delivered up and given to him. And being aſked anent that part of the ſaid Letter, which bears that the Earl of *Rothes* and ſuch other honeſt Men that did once approve the ſaid Supplication, if the Deponer did ever allow and approve the ſamen; anſwers, that he did never allow nor approve the ſamen to be preſented to his Majeſty, but thought it fit to be ſuppreſt. And in the reſt adheres to his former Depoſitions.

Sic. ſubſ. Balmerino.

The ſame Day, in preſence foreſaid, it being aſked whether he did allow and approve the ſame himſelf, in the Matter and Subſtance; he declared, that he neither allowed nor allows the ſamen, and declares he condemns the ſame both in Matter and Form.

Sic ſubſ. Balmerino.

St. Andrews, *Morton*, *Roxburgh*,
Stirling, *Traquair*, *Da.* Ep.
Edinb. *Jo. Roſſe*, *J. Hay*,
Thomas Hope.

6thly, Produces Mr. *Robert Dalgleiſh*, Servitor to the Pannel, his Depoſitions, dated *July* 3, 1634. whereof the Tenor follows.

Apud Edinb. 3 *July* 1634.

THE which Day Mr. *Robert Dalgleiſh* being ſworn upon his Knees, and the Libel being ſhewn to him, denies that he knows the Handwriting or the Writer: grants that my Lord *Balmerino* being in his place of *Barnetown* ſhortly after the Parliament, and being to go to *Edinburgh*, about Four after Noon delivered to the Deponer a Paper to be copied, which he did copy that ſame Night, and ſent it with the Copy thereof to his Maſter incloſed in a Paper, the next day in the Morning. And being aſked if that he had copied another to himſelf, grants that he had made another Copy which he keeped to himſelf, which he did without the command or knowledge of his Maſter; which Copy he exhibited preſently in preſence of the Lords. *Item*, Being demanded if he did communicat that Copy which he keeped to himſelf to any other, depones upon his great Oath, That he did neither ſhow nor give the Copy thereof to any other: but grants, while he was copying the ſame in *Barnetown*, Mr. *William Colvill* Miniſter of the Pariſh came in and read the ſame, but got no Copy thereof. As alſo depones, That ſince the beginning of the Trial about *Paſch (Eaſter)* laſt, the Lady *Balmerino* aſked of the Deponer if he had keeped a Copy of the foreſaid Libel to himſelf, and deſired a ſight thereof; and when ſhe heard the ſame read, ſhe ſaid that he was a Fool in keeping, and bad him caſt it in the fire.

Sic ſubſc. Mr. *Robert Dalgleiſh.*

St. Andrews, *Mortoun*, *Roxburgh*,
Stirling, *Traquair*, *Jo. Roſſen*,
J. Hay, *Thomas Hope*.

7thly, Produces *Mark Caſs* his Depoſition, dated *apud Edinb.* the 31ſt of *July* 1634.

Sederunt, *St. Andrews*, *Roxburgh*, *Stirling*, *Traquair*, *Roſſe*, Clerk of Regiſter, Advocat.

THE whilk Day *Mark Caſs*, Writer, being examined upon his great Oath, depones, That about eight or ten days before Mr. *Haig* his going away furth of the Country, he being in Mr. *Haig*'s Chamber, Mr. *Haig* aſked him what News: to whom he anſwered, he had no News, but that he heard that my Lord *Balmerino* was troubled for a Petition that had been written. Likeas Mr. *Haig* aſked him if he knew who was Writer thereof, whilk he depones that he anſwered him he knew not, neither did he know. Thereafter Mr. *William Haig* told him that he was the Penner thereof, and took out the Paper and read it over to him, and ſaid that *Rothes* and *Balmerino* knew the Paper, becauſe it ſhould have been preſented to the King. *Item*, Being aſked if he knew of Mr. *Haig*'s away going, depones, That upon *Sunday* the eighth of *June* the Deponer being in *Newbottle* Kirk at the Communion, Mr. *Haig* ſent a Boy to him before the ending of the Sermon in the Afternoon, and deſired him to come out to him; who came out and met with him in the Hall of *Newbottle*, but ſpake nothing with him there. And then they went out together to the Green of *Newbottle*, where he told the Deponer that he was to go to the South Country, and that he had received for his comprizing of *Maxwellheugh*, diſponed by him to the Earl of *Roxburgh*, the Sum of Twenty Thouſand Marks, which he had paid to Mr. *John Sharp* and others; and that there reſted yet Eight Thouſand Four Hundred and ſome odd Marks: And that he had taken the Deponer his Name to the Bond thereof to his own uſe, and that he would truſt him with it till his Return; and then delivered to him the Bond thereof, and ſaid to him that he would return ſhortly. *Item*, Depones, that he received a Letter from Mr. *William Haig* from *Yarmouth*, in which there was incloſed a Letter direct from Mr. *William Haig* to *Thomas Haliburton*, which he ſent to the ſaid *Thomas*: And the Contents of the Letter to himſelf was, that he deſired the Deponer to aſſiſt his Nephew, the ſaid *Thomas Haliburton*, to get a Trunk carried to *Holland* by the Addreſs of Mr. *Robert Bruce*; and that he ſhould make the ſaid *Thomas* forbear to do it, if I ſhould find by Sir *Lewis Stewart* the appearance of the quitting of this Service. And depones, That he ſhewed this Letter to *Thomas Haliburton*, who was then preſent in *Edinburgh*, and declared to the ſaid *Thomas*, that he would not ſpeak the ſaid Sir *Lewis Stewart* in ſuch a buſineſs; and rave (tore) out ſo much of the Letter as concerned Sir *Lewis Stewart*, and deſired the ſaid *Thomas* that he would take it to him, becauſe Sir *Lewis* knew Mr. *Haig* his Hand-writing: which the ſaid *Thomas* refuſed, and ſaid that Sir *Lewis* would believe him but (*i. e.* without) the Letter: And immediately after he read the hail Letter in preſence of the ſaid *Thomas*. *Item*, Remembers that the Letter did bear that he was preſently going abroad. *Item*, Remembers that he receiv'd from Mr. *William Haig* ſince his parting in all three Letters, whereof the ſaid Letter was one, and the other two which he exhibited to the Lords.

Sic ſubſ. Mark Caſs, with my Hand.

At *Edinb.* the 31ſt of *July* 1634. Sederunt, *St. Andrews*, Theſaurer, *Roxburgh*, *Traquair*, *Edinburgh*, *Roſſe*, Clerk-Regiſter, Advocat.

THE foreſaid Deponent depones, That the 20000 Marks paid to Mr. *William Haig* upon the *Saturday*, was employed as after follows, *viz.* Eight Thouſand Four Hundred Marks to Mr. *John Sharp*; then reſted Eleven Thouſand and Six Hundred Marks, whereof there was lent to the Earl of *Lothian* Seven Thouſand Six Hundred Marks, and Four Thouſand Marks to the Lord *Balmerino*; qherefore (for which) the Deponer received Bonds which are blank in the Name, in the Deponer's hands. *Item*, The Deponer produced two Letters from Mr. *Haig*, one of the Date *nono Junii* from *Bimerſide*, with a Command to him to receive a Packet to be delivered to my Lord *Balmerino*; which Packet to his knowledge and memory *Adam Watt* delivered to my Lord *Balmerino*. *Item*, The other Letter of the 23d of *June*, dated from no place, which the Deponer received from *Adam Watt*, who had in hand a a Letter to my Lord of *Lothian*, which he received: and delivered a Letter to my Lord *Balmerino*, and another to the Earl of *Traquair*; which Letters were received by *Adam Watt* from Sir *Lewis Stewart*. *Item*, Depones upon his great Oath, That he never opened the little Coffer, nor Trunk; but once that he opened the little Coffer, and took out the Keys of the Trunks, but never ſtirred the Papers, nor none others to his knowledge: but that he heard that *Thomas Haliburton* had looked in the Coffer before, but knows not whether he took any Papers out or not. *Item*, Declares that ſince Mr. *William Haig* his away going, there came a Trunk of his home, which is in *William Dick* his hands, whereof he has the Key; and that he never opened the ſame, but allenarly (only) once at the deſire of Mr. *Alexander Johnſtoun* Advocat, who alledged he had ſome Clothes and other Gear therein, which he had put in Mr. *Haig*'s Trunk when Mr. *Haig* and he was at *London* the laſt Vacance. And the Deponer grants he received the Key of the Trunk from *William Frier*, incloſed in a Letter from *London* written by the ſaid *William Frier*, and dated before Mr. *Haig*'s going away out of the Country. *Item*, The Deponer remembers, that Mr. *Haig* told him that the Pamphlet was written by a Man employed by the Lady *Limplum* for that effect.

Sic ſubſ. Mark Caſs, with my Hand.

St. Andrews, *Mortoun*, *Roxburgh*,
Traquair, *Da.* Ep. *Edinb.*
Jo. Roſſen. J. Hay.

8thly, Produces four Letters from Mr. *Haig* to the Pannel, dated 27 *June*, 1 *July*, 10 *July*, and 1 *Auguſt*, 1634. Of the which four Letters, the Tenour follows.

To the Right Honourable my ſingular good Lord my Lord Balmerino, *Theſe*, *at* Barnetown; *to be ſent to him by Mr.* George Lawſon, *or* Adam Watt *Writer in* Edinburgh.

My Lord,

NOW that it has pleaſed God to bring me ſafely through the Seas, though ſlowly (in three Days and three Nights from *Yarmouth)* to this place, I begin with theſe to pray your Lordſhip either to uſe your Talent to get me home otherwiſe, or to give vigour to that way I wrote to your Lordſhip from *Yarmouth*. I thought it fit to be taken, to get a compendious way to an end of my Troubles by their means, who for private reſpects have given the name of a Crime to that Supplication, which tho' I cannot deny the penning of, yet would not have brought to me any Inconvenience, if it had either been uſed as once intended, or, after changed of purpoſe, kept from thoſe baſe Bodies that put it into the hands of ſuch, as have been able to make hard Conſtructions of it. And ſeeing for whatſoever I now ſuffer in my private Fortune, in my weak Body, or in my Name, by the Contrivance or Knavery of Mr. *John Dunmure*, I may juſtly blame your Lordſhip; I do here adjure your Lordſhip, by the Perſuaſion I have of your own Integrity, of your honourable Mind and Good-will to me-wards, and by your Knowledge of the Pains I have been ever willing to take for an ingenuous Furtherance of all that concerns my Lord of *Somerſet* amongſt us; even to take pains to obtain to me a Remiſſion, for doing that which is termed a Crime, and that by means of theſe that have termed it ſo; and make them ſenſible, that it ſhall be more for their credit ſo to make an end of the buſineſs, than to drive me to ſuch Defences and Apologies as the publiſhing of will gall them, more than the blazing of the Supplication. Withal it may pleaſe your Lordſhip to repreſent to my Lord of *Rothes*, and ſuch other honeſt Men, as I know did once approve that Supplication, that ſince a hard Character is made of it by theſe that have wreſted in the King's Ire the Senſe of it, they ſhould do right both to themſelves, their Prince, and Country, by another Petition to repreſent that whereas they intended to have delivered to his Majeſty the foreſaid Supplication by ſuch as did diſſent to that Church-Article, and changed purpoſe, becauſe the Paper could not hold all their Subſcriptions, and other good Reſpects, very compatible with their moſt humble Duties to his Majeſty; yet ſince the foreſaid Supplication has come to his Majeſty's hands by ſuch as have made wrong Conſtructions of it, therefore to conclude craving humbly that his Majeſty would give them leave to be Interpreters of their own Language, and the Deſire of their Petition, (for the Reaſons it containeth) which is, that no private reſpect, but mere Affection to his Majeſty, did rule their whole Carriage in the late Parliament. But in this I ſubmit my Deſire to your Lordſhip and their Judgment and Pleaſure. Howſoever, ſince I ſuffer for that which truly had their allowance, I think they are in honour bound to uſe diſcreet means to relieve me off this Croſs, at leaſt to help my poor Eſtate in ſome meaſure to bear out the burden of it. I ſuffer enough in the Toil of my Body, and Wounds given to my Name, though your Lordſhips amongſt you free me of all the Charges that will be inevitable to me in this Courſe: a little Help from each honeſt Man that will poſſibly pity me, would do this buſineſs. Thus your Lordſhip may ſee there lieth a heavy Burden on my Stomach, when it is brought ſo low as to beg; yet I ſhall rather ſtarve than diſcover ſo much to any other than your Lordſhip, to whom only I can lay open the ſilly and low Thoughts that Miſery, and the Fear of it, may bring to,

My Lord,

Camphire, 27 *June*, 1634. *Your Lordſhip's moſt Reſpecting Servant*,

William Haig.

Poſtſcript. Whatſomever Bonds are in Moneys to my behoof, I do not think one Groat thereof mine, till my Lord *Yeaſter* be ſatisfied; which will be eaſily done, (upon the grounds I have ſent a Note of to *Mark Caſs*) if your Lordſhip move him to a Submiſſion, (wherein *Mark Caſs* and *Thomas Haliburton* ſhall take burden for me) but we will never end otherwiſe. Pray my Lord of *Rothes* to help your Lordſhip to induce him to a Submiſſion to any that your Lordſhip and he can condeſcend upon; and tell him of his old Letter to my Lord of *Anchram*, That he ſhould ſettle with me at any Man's ſight I liked. But get him to a Submiſſion in writing for his good as well as mine; for if God pleaſe to call me, he will find that he ſhall not make ſo good a Condition, as he may do now.

The Second Letter.

My Lord,

JUST as I had done cloſing of my Letters written to your Lordſhip with others at *Camphire*, the Conſervator newly arrived here from *London* came to my Chamber in ane Inn kept by his Mother-in-Law; and hearing I was arrived there from *Scotland*, was very curious to aſk News. And becauſe I could tell him nothing, at laſt wondering, aſked me by way of queſtion, If I heard nothing of a Petition, which a number (35) ſaid he of Lords had reſolved to give to the King, craving a Relief of the Act made in the Church-buſineſs, and a Diſcharge of any further Payment and Taxations. I laughed, and told him that I durſt aſſure him there was no ſuch matter. That cannot be, ſaid he, for I have this from ſuch as has beſt Intelligence about the Court; and have ſeen a Letter, bearing under the hand of one of the Commiſſioners, That they had had my Lord *Balmerino* that day before them, who had behaved himſelf very modeſtly, and was to be before them the next day, where they hoped to get good Satisfaction in all they were about. Then I anſwered, I heard your Lordſhip was called for by ſome of the Council, but had not learned, nor ſo much as aſked for what: and that the Council might have many things ado with your Lordſhip that I was ignorant of, and could not in good manners inquire. I proteſt, ſaid he, that is a buſineſs in all Men's Mouths about Court; and I wonder, ſaid he, you have not heard of it. I have not truly, ſaid I: And ſo we left that Theme, and drunk together, and within a quarter ane hour after I left that Town, and to one *Alexander Speir*, a Factor in it, a Packet to Mr. *Robert Bruce*; under whoſe Cover there is a Letter of the 27th of *June* to your Lordſhip, the Contents whereof I will not repeat here, but beſeech your Lordſhip to have reſpect unto it, as well in ſo far as it beſeecheth your Lordſhip to uſe your Talent for ſhortning my Troubles, as in the care I humbly beſeech your Lordſhip to take to induce my Lord *Yeaſter* to a Submiſſion, without which there is no hope of any Concluſion with him. I will long to hear from your Lordſhip what poſture this buſineſs works itſelf unto, and what ſucceſs I may expect in the way I am contented be taken to end my Troubles, by their means that has occaſioned them. Thus having nothing to ſay but what I have formerly written, and beſeeching your Lordſhip not to be ſwear (ſlow) in writing to me, (under Cover to my Lord of *Auton*, *James Howſtoun* or *James Wright* Merchants in *Amſterdam*, or to *Alexander Speir* in *Camphire*, or to *William Murehead* by the way of *London)* I crave leave, and reſt,

My Lord,

Amſterdam, *July* 1, 1634. *Your Lordſhip's moſt Reſpecting Servant*,

William Haig.

Directed to the Right Honourable my ſingular good Lord, my Lord Balmerino, *Theſe*, *at* Barnetown.

The Third Letter.

My Lord,

I Know that Repetition of my Deſires expreſt in my Letters to your Lordſhip from *Yarmouth*, *Camphire*, and *Amſterdam*, were enough to accuſe me of Diſtruſt of your Lordſhip's either Memory or Good-will to me-wards. Wherefore theſe are only to beſeech your Lordſhip to let me know what poſture that buſineſs is in, which occaſioned my Voyage hither; and what iſſue I may expect by your Lordſhip's means, and ſuch others as I have written unto there, as well of the troubles I am now under, as of that Buſineſs I prayed your Lordſhip to manage with my Lord *Yeaſter*. I intend to fix about *Delft* before the 27th Inſtant, and ſtick there till I hear from *Scotland* or *England* what I may expect. So your Lordſhip may put all you write to me under Cover to Mr. *John Forbes* a Miniſter (tho' now ſilenced by Order from *Canterbury*) of the *Engliſh* that are about their Staple in that place, Mr. *Robert Bruce*, or Mr. *Alexander Colvill*, by *David Junken*'s means; and otherwiſe alſo will get them ſent to Mr. *Forbes*, and he will make them find me: ſo will *William Murehead*, if your Lordſhip pleaſe write that way too.

My Lord,

Croning 10 *July* 1634. *Your Lordſhip's moſt Reſpecting Servant*,

William Haig.

Directed, on the back thereof, To the Right Honourable my ſingular good Lord, my Lord Balmerino, *Theſe*, *at* Barnetown.

The Fourth Letter.

My Lord,

I Send here to your Lordſhip my Lord *Jedburgh*'s Diſcharge for the Crop 1633, and his Daughter *Mary*'s Receipt for 100*l.* with a Protection for my Lord *Jedburgh*, to be made uſe of, as your Lordſhip has occaſion. His Lady was ſpeaking to me to procure her a Houſe near *Newbottle*, called *Bryankirk*; which cannot be, becauſe my Lord of *Lothian* has lent it to his Uncle Sir *John Murray*. But I intend to ſpeak to *Mark Caſs*, and try if he can ſpare *Cockpen*; which being near *Coal*, and out of *Tiviotdale* way, I think were very convenient for my Lord *Jedburgh*, ſince he ſuits ſome Houſe in *Lothian*, to be free of the Importunity of his *Tiviotdale* Creditors, and other Inconveniencies his dwelling at *Jedburgh* makes him obnoxious unto. There is alſo within this Packet Mr. *Lewis* his Diſcharge of 600 Marks to my Lord *Jedburgh*, and a Note of Mr. *Lewis* his Writings, with an Aſſignation to be ſubſcribed by my Lord *Jedburgh*, for Recovery of ſome Moneys he paid for Mr. *John Home*: I intended it for Mrs. *Anne*'s help, before your Lordſhip and I went to *Tiviotdale*; and when his Brother Captain *Home* was aſſiſting his Chief's Proceſs, and was likely to have adventured to pay that Sum for Mr. *John*, if he had found him preſſed (being then in *Edinburgh)* by ſome good Caption. It ſhall be well done to make the beſt uſe of it yet that can be. I have alſo incloſed in this Packet Mr. *Cornelius Aneſlie*'s Diſcharge for 200 Marks for the Intereſt of his Money preceding *Whitſunday* laſt: I was not able to pay the Principal till the 7th of *June*, and then he refuſed; I hope to do it honeſtly at *Mertimas*, before which time I hope to return armed againſt all Inconveniences that Coſt or Powet ſhall be able to put upon me, by evil interpreting what was well meaned. I have left to my Nephew *Thomas Haliburton* the Key of my Chamber and Trunks, with direction to be given to your Lordſhip to be made uſe of during my abſence; whereof I ſhall write to your Lordſhip the reaſon at more length by the firſt occaſion. I reſt,

My Lord,

Your Lordſhip's moſt Affectionate
and Reſpecting Servant,

William Haig.

Direction on the back, To the Right Honourable my ſingular good Lord, my Lord Balmerino, *Theſe*, 1 Aug. 1634.

Produced to the Lords Examinators by my Lord *Balmerino*.

9thly, Produces three Extracts of Parliament, qhereof two containing the Names of the Earls and Lords preſent at Parliament 1633, together with the Names of the Articles at that ſame Parliament; of the which three Extracts, the Tenour follows.

The Names of the Lords of the Parliament.

Archbiſhops; *St. Andrews*, *Glaſcow*. Biſhops; *Dunkell*, *Murray*, *Roſſe*, *Brechin*, *Galloway*, *Dumblaine*, *Caithneſs* by *Dunkell* his Proxy, *Iſles*, *Argyle*, *Orkney*. Duke of *Lennox*. Marquiſs of *Hadintoun*, Marquiſs of *Huntley* by the Duke of *Lenox* his Proxy, Marquiſs of *Douglaſs*.

Earls; *Argyle* by *Mortoun* his Proxy, *Erroll*, *Mareſchall*, *Sutherland* by the Duke of *Lennox* his Proxy, *Mar* by *Hadingtoun* his Proxy, *Buchan* by the Marquiſs of *Hadingtoun* his Proxy, *Rothes*, *Elingtoun*, *Caſſiles*, *Glencairne* by *Rothes* his Proxy, *Murray* by *Lauderdale* his Proxy, *Nithſdale*, *Wintoun*, *Linlithgow*, *Perth*, *Dumfermling*, *Wigtoun*, *Kinghorne*, *Abercorne*, *Tillebarne*, *Keille* by *Kinowll* his Proxy, *Galloway* by *Traquair* his Proxy, *Seaforth*, *Annandale*, *Lauderdale*, *Carrick* by *Traquair* his Proxy, *Lothian*. Viſcounts; *Falkland* by *Stirling* his Proxy, *Dunbar* by *Traquair* his Proxy, *Stormounth*, *Drumlanerk*. Lords; *Lindſay*, *Gray* by *Mortoun* his Proxy, *Yeaſter*, *Semple*, *Sinclair*, *Herries*, *Elphinſtoun* by *Balmerino* his Proxy, *Ogilvy*, *Torphichen*, *Spynie*, *Lindores*, *Loudon*, *Kinloſs* by *Mortoun* his Proxy, *Balimerinoch*, *Burlie*, *Halyrood-houſe*, *Cowper*, *Cranſtoun*, *Deſkfoord* by *Cranſtoun* his Proxy, *Melvill*, *Carneige*, *Ramſay*, *Naper*, *Cameron* by *Traquair* his Proxy, *Newburgh* by *Stirling* his Proxy, *Weemes*, *Corſtorphin*, *Forfar*, *Rae* by Viſcount of *Air* his Proxy, *Dalzell*.

Commiſſioners for the Burroughs; Sir *George Forreſter* of *Corſtorphin*, and Mr. *Patrick Hamiltoun* of *Little Preſtoune*, for *Edinburgh*, Principal; Sir *Patrick Murray* of *Elebank*, and Sir *John Hamiltoun* of *Preſtoune*, for *Hadingtoune*; Sir *Alexander Niſbet* of that Ilk, and *John Home* of *Rentoun*, for *Berwick*; *William Dowglaſs* of *Calvers*, and Sir *Walter Riddell* of that Ilk, for *Roxburgh*; *James Murray* Fiar of *Philliphaugh*, and *James Pringle* of *Whitebank*, for *Selkirk*; *James Hay* of *Smithfield*, and *James Naſwith* of *Poſſo*, for *Peebles*; Sir *James Lockhart* Younger of *Ley*, and *Gawn Hamiltoun* of *Raploch*, for *Lanerick*; Sir *Robert Grierſon* of *Lagg*, and Sir *John Charters* of *Amisfield*, for *Dumfries*; Sir *Patrick Agnew*, of *Lochnair* Knight Baronet, for *Wigtoun*; Sir *William Cunninghame* of *Cunninghamehead*, and *James Chalmers* of *Gaitgirth*, for *Air*; Sir *Lodovick Howſtoun* of that Ilk, and *James Murihead* Younger of *Lachope*, *Dumbarton*; *Hector Bannatyne* of *Keymes*, and *John Stewart* of *Eſcoke*, for *Bute*; Sir *Archibald Stewart* of *Blackhall*, and *Patrick Fleeming* of *Barreichine*, for *Renfrew*; *Archibald Edmingſtoun* of *Duntreath*, for *Stirling*; Sir *Walter Dundaſs* of that Ilk, and *William Drummond* of *Richartoun*, for *Linlithgow*; Sir *Archibald Ogilvie* of *Inchmarten*, for *Perth*; Sir *Robert Grahame* of *Morphie*, for *Kincarden*; Sir *Alexander Irvine* of *Drum*, and *Thomas Crombie* of *Kemno*, for *Aberdeen*; Sir *John Machenzie*, of *Tarbit*, for *Invernеſs*; *John Campbell* Fiar of *Calder*, and *John Dunbar* of *Moyne*, for *Nairne*; Sir *Thomas Urquart* of *Cromartie*, for *Cromartie*; Sir *John Scrimger* of *Duddope*, and *Duncan Cambel* Fiar of *Anchinbreck*, for *Argyle*; Sir *Laughlane Maclane* of *Morvere*, for *Tarbet*; Sir *John Leſlie* of *Newtoune*, and *Thomas Myretoune* of *Cambo*, for *Fyfe*; Sir *Harry Wood* of *Bonnitoun*, and Sir *William Grahame* of *Claverhouſe*, for *Forfar*; *John Gordon* of *Innermarkie*, for *Bamff*; Sir *Patrick Macgie* of *Large*, for the Stewartry of *Kirkubright*.

Sic. ſubſ. J. Hay, Cl. Regiſt.

The Lords of the Articles.

Pro Clero; Archb. *St. Andrews*, Archb. *Glaſgow*. Biſhops, *Murray*, *Roſſe*, *Dumblaine*, *Brechin*, *Iſles*, *Argyle*. *Pro Nobilibus*; Duke of *Lenox*, Marquiſs of *Hamilton*, Marquiſs of *Dowglaſs*, Earl of *Mareſchal*, Earl of *Wintoun*, Earl of *Roxburgh*, Earl of *Lauderdale*, Viſcount of *Air*. *Pro Baronibus*; Sir *George Forreſter* of *Corſtorphin*, Sir *Patrick Murray* of *Elebank*, Sir *Patrick Ogilvie* of *Inchmarten*, Sir *John Leſlie* of *Newtoune*, *William Dowglaſs* of *Cavers*, Sir *James Lockhart* Younger of *Ley*, Sir *Robert Grierſon* of *Lagg*, Sir *John Scrimger* of *Duddope*. *Pro Burgis*; *John Sinclair* and *Gilbert Kirkwood*, *Andrew Gray*, Mr. *Alexander Wedderburne*, *Paul Menzies*, *Gabriel Cunninghame*, *Mr. James Cockburne*, Mr. *John Hay*, *Andrew Bell*.

Sic ſubſ. J. Hay, Cl. Regiſt.

And laſt produced ane Note of Articles in Parliament *in annis* 1600, 1606, 1607, 1617, and 1621. whereof the Tenour follows.

IN the Parliament held at *Edinburgh* the Year of God 1600 Years, the Noblemen after named were choſen to be of the Lords of the Articles, *viz.* The Duke of *Lennox*, the Earl of *Mareſchal*, the Lord *Seaton*, the Lord *Newbottle*, the Earl of *Erroll*, the Earl of *Mar*, the Lord *Levinſtoun*, Lord *Fyvie*.

Sic ſubſ. J. Hay, Cl. Regiſt.

IN the Parliament holden at *Edinburgh* in the Month of *June* 1606, the Noblemen after named were choſen to be of the Lords of the Articles, *viz.* Marquiſs of *Hamiltoun*, Marquiſs of *Huntley*, Earl of *Argyle*, Earl of *Erroll*, Earl of *Mar*, Earl of *Glancairne*, Earl of *Linlithgow*, Lord *Glames*.

Sic ſubſ. J. Hay, Cl. Regiſt.

IN the Parliament holden at *Edinburgh* in the Month of *March* 1607, the Noblemen after named were choſen to be of the Lords of the Articles, *viz.* Earl of *Argyle*, Earl of *Angus*, Earl *Mareſchal*, Earl of *Mar*, Earl of *Kinghorne*, Earl of *Lothian*, Lord *Elphinſtoun*, *Roxburgh*, *Blantyre*.

Sic ſubſ. J. Hay, Cl. Regiſt.

IN the Parliament holden at *Edinburgh* in the Month of *May* 1617, the Noblemen after named were choſen to be of the Lords of the Articles, *viz.* Duke of *Lennox*, Marquiſs of *Hamiltoun*, Marquiſs of *Huntley*, Earl of *Argyle*, Earl of *Montroſs*, Lord *Ogilvy*, Lord *Sanquair*, Lord *Scoone*.

Sic ſubſ. J. Hay, Cl. Regiſt.

IN the Parliament holden at *Edinburgh* in the Month of *June* 1621, the Noblemen after named were choſen to be Lords of the Articles, *viz.* the Earl of *Angus*, the Earl of *Mortoun*, the Earl of *Nithſdale*, the Earl of *Wigtoun*, the Earl of *Roxburgh*, the Earl of *Balcleugh*, Lord *Scoone*, Lord *Carnegy*.

Sic ſubſ. J. Hay, Cler. Regiſt.

After the Production whereof, his Majeſty's Advocat affirms, That the Writs now produced for Verification of the Dittay, the ſaid Dittay is thereby verified in the hail Points thereof, referred to the Aſſize; and in reſpect thereof proteſts, if they cleange (clear) upon ſo clear Probation, for *wilful Error*.

Thereafter it was alledged by the Pannel, That the Earl of *Rothes*'s Depoſition ought to be produced and read.

To the which it is anſwered by my Lord Advocat, That he uſes not the ſame as a Point of his Probation.

To the whilk it is duplyed, That it will ſerve (being read and produced) for clearing of the Pannel's Innocency; and that by *Interloquitor* of before, the ſaid Depoſition was by the Juſtice's *Interloquitor* produced and given up to the Pannel; and therefore it is moſt neceſſary to be produced to the Aſſize, and cognoſced by them.

Thereafter my Lord Advocat, for eſchewing of Delays, did produce the Earl of *Rothes* his Depoſition, with this Proteſtation, That he uſes not the ſamen as a Verification of the Dittay, but only for ſatisfying of the *Interloquitor* given out by the Juſtice before, and to cut off all occaſion of Clamour that any part of the Proceſs were withdrawn; and when the Pannel ſhall found any Alleadgance or Objection thereupon, he ſhall have a ſufficient Anſwer. Of the which Depoſition the Tenour follows.

At Edinburgh, *the 3d of* July, 1634.

THE which Day *John* Earl of *Rothes*, being ſworn upon his great Oath, and the Libel being ſhewn to him, grants that this is the Libel that was ſhewn to him by or from my Lord *Balmerino*; which he took and read till about twenty Lines in the beginning, and no farder, in preſence of the Earl of *Caſſiles* and the Lord *Yeaſter*, being with him in Coach, going to *Dalkeith*: who finding it of ſuch a Strain, and having told them that his Majeſty had given him an expreſs Command to ſuppreſs all that was of that nature, the Deponer and they, all in one Voice, thought it ſhould be ſuppreſs'd; and the Deponer did put it in his Pocket. And having occaſion that ſame Day to meet his Majeſty at *Dalkeith*, and his Majeſty falling in Conference with him anent Information made to his Majeſty againſt him, he purged himſelf clearly to his Majeſty; and having received from his Majeſty of before ſtrait Commandment for ſuppreſſing all Petitions of the nature of that which was moved in the time of the Parliament, he ſhewed to his Majeſty that he had faithfully done the ſame ever ſince, and added thir Words; *Sir, there is a Petition given me preſently to be looked upon and conſidered, which I have in my Pocket, which I have according to your Majeſty's Command ſuppreſs'd; if your Majeſty be pleaſed to look upon it.* Which his Majeſty anſwered, *It is no matter: I have no leiſure: I am going to the Park.* And declares, that it remained in his Pocket unlooked upon by him, or any other, by the ſpace of eight Days, or thereabouts: After the which he returned the ſame back again, incloſed in a Paper which was ſealed, to my Lord *Balmerino*, to whom before he had told his Judgment of it, that it was altogether to be ſuppreſs'd. And depones upon his great Oath, That he neither ſhewed it to any, nor gave any Copy thereof to any; but remembers before he ſent it to my Lord *Balmerino*, he cauſed copy it by his own Servant, which is yet extant, uncommunicated to any, and whereof he had no memory at all, till he heard that Mr. *Peter Hay* of *Naughton* had ſhewn it to others; and then he ſearched the ſame, and found it out. *Item*, Being interrogat if he knew the Hand-writ of the Libel, or who was the Author or Penner thereof; depones, he knows not the Writer thereof, and knew not certainly who was the Author and Penner thereof, till he heard that Mr. *William Haig* was bruited, *(i. e.* named) for the penning thereof, of whom he had ever Suſpicion, becauſe he has ever been buſy upon ſuch idle and fooliſh Toys. And being aſked if he gave his Advice anent the penning thereof to Mr. *William Haig*, or any other; depones upon his great Oath, that he neither gave his Advice to him, or any other, anent the penning thereof, but ever thought it fit to be ſuppreſt; and declares, that he never knew any Conſultation either before or after anent the ſame. And the ſaid Earl of *Rothes* promiſed with all diligence to ſend the Copy which he has incloſed to the Lords; and promiſed upon his Oath and Honour not to copy the ſame.

Sic ſubſ. Rothes.

My Lord Advocat declares that he uſes not the laſt Part of *Mark Caſs* his Depoſition.

It is objected and alledged by Mr. *Alex. Pearſon* againſt the Probation of the Dittay adduced, Firſt, To the Probation of the firſt Part thereof againſt the Pannel, as Author, Conſultor, *&c.* that the Pannel's alledged Interlining does not prove him to be Conſultor with Mr. *Haig*, in the penning and firſt drawing up thereof, becauſe the alledged Interlining is long after, yea, after the Offer made thereof to his Majeſty, to whom no Subject can be preſumed to repreſent a Supplication interlined. And oppones to that Point of Dittay, the Pannel's Depoſition the 16th of *June*, which bears the Interlining not to have been made while after the Earl of *Rothes*'s Redelivery of the Writing to the Pannel, which was more than ſix or ſeven Months after. Oppones alſo the other Copy of the Writing quarrelled, produced by my Lord Advocat, which wants the Interlining, and which evinces the Interlining not to have been at the penning and forming thereof, and conſequently the alledged Interlining proves not the Pannel's Advice in the penning and firſt drawing up thereof.

Item, The alledged Interlining proves not the Pannel to be Conſultor anent the ſcandalous Libel, becauſe the ſaid alledged Interlining is not of any matter of Reproach or Scandal, whereupon the ſaid Libel is now challenged, or can be challenged, and ſo has no Acceſſion thereto as ſcandalous; and therefore proves not the Pannel's Advice anent the ſcandalous Libel.

Item, The alledged Interlining proves not that Point of the Dittay, becauſe by the Pannel's Depoſition, 16 *June*, never Man ſaw it ſince the Interlining thereof; and therefore nothing can be enforced or concluded thereupon, and is alike as if the ſame had never been interlined: For even an infamous Libel found with a Party in ſecret, who did ſuppreſs the ſame, and never manifeſt it to another, does not make or prove him guilty of the infamous Libel.

That part of the Dittay, bearing, That by Letters ſent by Mr. *Haig* to the Pannel, it is affirmed by Mr. *Haig*, that he had the Allowance of the Pannel to the penning of the Writ quarrelled, is noways proven by the miſſive Letter, nor by any of them. And where the ſaid Miſſives, or any of them may ſeem to concern any purpoſe of Allowance of the Writing quarrelled, that is no ways of the Pannel's Allowance, nor can be ſo expounded; for the Letter from *Camphire*, dated 27 *June*, directed to the Pannel himſelf, and which ſpeaks of their Allowance in the third Perſon, extends not to the Pannel, and makes not the Allowance therein mentioned (if any be) to be the Pannel's Allowance.

Farder, Altho' the ſaid Miſſive affirmed as the Dittay bears, yet the ſame can no ways be reſpected, nor make Faith againſt the Pannel for his Conviction; becauſe Mr. *Haig* being guilty as Author, his alledged Declaration, if any be, (no ways granting the ſame) can be no Probation at all againſt the Pannel; becauſe it is an undoubted Maxim in Law, *Quod ſocius aut particeps Criminis adverſus alium fidem non facit*: Accomplice in a Crime's Declaration cannot make Probation againſt any other whom he alledges to be guilty.

To the firſt part of the Dittay, and Probation thereof, oppones the Dittay itſelf, which bears Mr. *Haig* to be Author, and which makes point of Dittay againſt the Pannel for not apprehending of Mr. *Haig*, Author thereof. Oppones alſo Mr. *Haig*'s Grant that he was Author and Penner thereof, contained in his miſſive Letter, 27 *June*. Oppones alſo Mr. *Haig* his fleeing furth of the Country for the ſame Cauſe; and ſince his Flight, his intreating of his Friends for procuring to him a Remiſſion for it, as is proported in the Pannel's Depoſitions the 1ſt of *Auguſt*. Oppones alſo the Pannel's Oath and Declaration the 9th of *June*, wherein he has deponed, That Mr. *Haig* had no warrant from him, and that he knew nothing of the forming of it. Oppones alſo *Mark Caſs* his Depoſition, which bears Mr. *Haig* to have confeſſed to him that he was the Penner thereof.

It is alledged by Mr. *John Niſbet* againſt the Verification of the Dittay, That the Pannel's Depoſitions cannot be uſed to verify the Dittay, inferring capital Guilt and Puniſhment upon the Pannel, becauſe the Pannel was induced to depone under Promiſe and Aſſurance of Impunity: And in Law, a Confeſſion elicit upon Promiſe of Impunity, cannot inforce capital Guilt, as is abundantly aſtructed in the Diſpute. It is likewiſe alledged by him that *Dunmure*'s Depoſition, *Dalgleiſh*'s Depoſitions, and *Haig*'s Letters, cannot be uſed againſt the Pannel, becauſe they being all involved in the ſame Acts whereupon the Pannel is indicted, they cannot prove againſt the Pannel to diſburden themſelves; ſeeing in Law theſe with whom ſcandalous Pieces are found are preſumed to be Authors, unleſs they condeſcend upon the Author or Deliverer of theſe Pieces to them.

It is alledged by Mr. *Alexander Pearſon*, That the ſecond Part of this Dittay againſt the Pannel, as guilty of hearing, concealing, not apprehending, divulging of ane infamous Libel, *&c.* is not proven, becauſe there is nothing adduced againſt the Pannel, to prove the Pannel's Knowledge of the Writing quarrelled to be ſcandalous or ſeditious, without which the Pannel is not, nor cannot be counted guilty of the Crimes libelled. And oppones thereto the juſt and probable Cauſe contained in the ſecond Exception, and remanent Defences proponed for the Pannel, which the Pannel had moving him to think otherwiſe of the Writing quarrelled; to wit, The Writing itſelf in Title, Form, Strain, Beginning and Ending, and in all, an humble Supplication; the ſame being firſt deliver'd to the Pannel as a Supplication to be preſented to his Majeſty. [The Pannel's Depoſition 9 *June*.] Next was deliver'd by the Pannel to the Earl of *Rothes* of purpoſe to be preſented to his Majeſty. [The Pannel's Depoſition foreſaid; and alſo affirmed by the Dittay it ſelf.] Laſt it was offered by my Lord of *Rothes* to his Majeſty; as the Earl of *Rothes*'s Depoſition bears, 3 *July*: Whilk Offer of my Lord of *Rothes* to his Majeſty is acknowledged by my Lord Advocat, conform to his Lordſhip's Anſwer in the Defences proponed for the Pannel. Oppones alſo the Pannel's Quality, Life, and Converſation, which is in ſuch a far diſtance from the Crimes libelled, that it excludes all Preſumption and Probability thereof againſt the Pannel.

To that Point of the Dittay aggravating the Pannel's not apprehending Mr. *Haig*, by the Pannel's ſhewing to him the Warrant of his Citation before the Committee, and thereby giving him occaſion to eſcape; oppones the Pannel's Depoſition of the 16th of *June*, which bears that the Pannel knew nothing of Mr. *Haig* his going off the Country before the third Day after Mr. *Haig*'s Eſcape.

That Part of the Dittay bearing the Pannel to be guilty of divulging and diſperſing of the alledged infamous Libel, is not proven. 1ſt, The Pannel his cauſing Mr. *Robert Dalgleiſh* his Servant copy the ſame, proves not the Pannel's diſperſing thereof in publick; Mr. *Robert Dalgleiſh* being the Pannel's Houſhold Servant, and he having copied the ſame *infra privatos parietes*, which proves not diſperſing in publick. 2dly, The Delivery of the Writ quarrelled to the Earl of *Rothes* of purpoſe to be preſented to his Majeſty, proves no ways divulging of a ſcandalous Libel: But the Delivery thereof, qualified as ſaid is, and followed with ane real Offer thereof made to his Majeſty, cuts away its being offer'd as a ſcandalous Libel, and divulging thereof; both becauſe of his Majeſty's ſacred Perſon, which is far tranſcendent above all preſumed Injuries, and alſo *quia calumnia eſt adverſus abſentem*. Farder, ſince in Law and Reaſon, Intention of Law and Reaſon differences Crimes by the Purpoſe of the Party, let the Purpoſe of the Pannel difference now this his Act, which does make the ſame to be preſentation of a Supplication, and not divulging of an infamous Libel. 3dly, The Delivery of the Writ by the Pannel to Mr. *Dunmure* proves not divulging; and oppones thereto the Pannel's Depoſition of the 9th of *June*, which bears that the Pannel gave the Writ to *Dunmure* to look upon to himſelf alone, and to ſhew it to no other, and that he never knew that *Dunmure* had copied the ſame, till *Dunmure* was called in queſtion for it. Oppones likewiſe Mr. *Dunmure*'s Depoſition, which bears in this ſame manner. Oppones alſo the Law *Quod in maleficiis voluntas ſpectatur, non exitus*; and that the Pannel's purpoſe is declared by his Depoſition foreſaid.

It is anſwered by my Lord Advocate, That the Interlining is not found relevant *per ſe*, but with the remanent Circumſtances; and ſo far as Interlining is libelled, (which is indefinitely, without reſpect of time, whether before or after ſhewing of it to *Dunmure*) it is clearly proven by the Pannel's own Depoſition, and by ocular Inſpection of the ſcandalous Libel produced by the Pannel, which is interlined with his own Hand in two divers Places. And for proving the Pannel to be Author, Adviſer, *&c.* his receiving it immediately from *Haig*, delivering it to the Earl of *Rothes*, interlining of it *quocunque tempore*, diſperſing of it to *Dunmure*, and giving the Power of it to *Dalgleiſh* his own Man, is ſufficient to verify that part of the Dittay. To the whilk is added *Haig* his Confeſſion in his Letter, which in two Paſſages thereof bears, that it was allowed by them in whoſe Name the ſame was framed, of the which Number the Pannel was one. Where it is alledged that the not apprehending is not verified, or concealing of *Haig*, *&c.* becauſe it is not proven that the Pannel had Knowledge that it was a ſcandalous Libel; it is anſwered, That the Pannel knew *Haig* to be Author, which is proven by his Depoſitions; and the Juſtice by *Interloquitor* has found it to be a ſcandalous Libel, and there is no neceſſity to prove his Knowledge. And as to divulging, it is not found relevant *ſolo*, but being conjoined with any part of the Dittay; and it is proven *in terminis*, as it is libelled by the Pannel's Depoſitions. And as to the Pannel's Intention, it is not a part of the Dittay, the Pannel being verified to have been Author or Deviſer, not Apprehender of *Haig*, or Concealer of him, or Divulger of the ſcandalous Libel; which is clearly proven by the Writs produced. And therefore alledges that the Aſſize, notwithſtanding of their Objections proponed, ought to find the Dittay clearly proven; otherwiſe, proteſts for wilful Error and Remeid of Law.

It is duplyed by Mr. *John Niſbet* for the Pannel, Whereas it is replyed by my Lord Advocat, that the Receipt of the Piece from the Author immediately after compiling of it, joined with Interlination, and the Author's Teſtimony of the Pannel's approving of it, verifies the Pannel's Concourſe with the Author in framing the Piece found ſcandalous; we oppone the Pannel's reiterat Depoſitions, bearing that he had no Acceſſion in the framing, and gave no previous Warrant to the Framer, and diſclaiming Knowledge of the framing of it, which muſt elide all the Preſumptions adduced by my Lord Advocat; ſeeing it is incontraverted in Law, that a qualified Confeſſion cannot be disjoined, as is clearly proven in my Diſpute, chiefly ſince the Pannel has deponed ſo ingenuouſly, without any Obligation in Law, and upon Aſſurance foreſaid.

Whereas it is replyed by my Lord Advocat, That the Pannel intruſting of his Man Mr. *Robert Dalgleiſh* with the Piece, his imparting of it to *Dunmure*, and to my Lord of *Rothes*, verifies divulging, oppones our Diſpute, and the Authorities of the Laws cited by us, requiring a publick Expoſing, and a fraudulent Intention to defame. And we oppone the Condition of the Pannel's Delivery of it to *Dunmure*, that it ſhould be *illi ſoli*; *Dunmure*'s copying of it without the Pannel's Knowledge; then of the Pannel's Delivery of it to *Dunmure*, to found his Opinion in Judgment; all clearly verified by *Dunmure*'s Depoſition.

Where it is replied by my Lord Advocat, That *Haig*'s Evaſion, the Pannel's Knowledge that he was Author of the Piece now found ſcandalous, verifies the Point of not apprehending the Author; and that it is not neceſſary to prove the Pannel's Knowledge of the Piece: It is duplyed, That we oppone the uncontraverted Practick of all Countries where apprehending of Parties is enjoined, and reſetting is prohibit; that Declarator ſhould precede, as in Authors of heretical Books, forbidden to be received by the Law; becauſe every Man is not able to diſcern thoſe Pieces, which are debated and contraverted amongſt the learnedeſt. And we oppone the Pannel's own Depoſitions, bearing that he knew not aſſuredly *Haig* to be Author thereof, but thought only he was Author; and therefore not obliged to apprehend ſummarly and abruptly. In reſpect hereof the Aſſize can no ways find the Pannel guilty of the Dittay, and alledged Crime ſpecified therein.

The Aſſize, by Plurality of Votes, elects and choiſes *John* Earl of *Traquair* Chancellor, (Foreman.)

Whilks Perſons of Aſſize being received, ſworn, and admitted, after Accuſation of the ſaid *John* Lord *Balmerino* by Dittay of the Crimes foreſaids, mentioned and ſet down therein, and Production, and reading judicially of the Writs, and Probation uſed and produced by his Majeſty's Advocat for verifying thereof, they removed all together, furth of Court to the Council-Houſe of *Edinburgh*; where firſt, by Plurality of Votes, they elected and chuſed the ſaid *John* Earl of *Traquair* Chancellor. Thereafter received and voted upon the hail Points of the ſaid Dittay; and being riply and at length adviſed therewith, and with the Writs and Probation uſed and produced by his Majeſty's Advocat for inſtructing of the ſame, and with the Objections made by the Pannel and his Procurators there-againſt, and Anſwers made by his Majeſty's Advocat to the ſaid Objections, all read in their Preſence, and Audience re-enter'd again in Court; where they by Report and judicial Declaration of the ſaid *John* Earl of *Traquair*, Chancellor of the ſaid Aſſize, found, pronounced, and declared the ſaid *John* Lord of *Balmerino* to be cleared and acquit of the firſt part of the ſaid Dittay, wherein he is indicted as Author, Deviſer, Conſulter, Adviſer, Airt and Part of the forming and penning of the infamous or ſcandalous Libel mention'd thereintil: As alſo of not apprehending of Mr. *William Haig*, whom he affirms in his Depoſition to have been Author of the ſaid Libel: And likewiſe to be cleared, aſſoilzed, and acquit of the divulging and diſperſing of the ſaid ſcandalous Libel amongſt our ſovereign Lord's Subjects, in manner ſpecified in the ſaid Dittay. And laſt, found, pronounced, and declared the ſaid *John* Lord of *Balmerino* to be allenarly filed and convict of the Hearing of the ſaid infamous Libel, Concealing and not Revealing of the ſaid Mr. *William Haig*, affirmed by him to be the Author thereof.

The Juſtice-General upon conſideration of the ſaid *John* Lord *Balmerino* his Conviction by the fore-named Perſons of Aſſize of the foreſaid Point of Dittay, anent the Hearing of the infamous Libel therein contained, Concealing and not Revealing of Mr. *William Haig*, Author and Penner thereof, found and declared, by Advice of his Lordſhip's Aſſeſſors, That the ſaid *John* Lord of *Balmerino* has therethrough incurred the Pain of Death contained in the Acts of Parliament; ſuſpending always the Execution thereof, until the Time his Majeſty's gracious Will and Pleaſure be ſhown and declared thereanent: to whoſe ſacred Majeſty the Manner, Time, and Place of the Execution of the ſaid Sentence is remitted by the Juſtice: and the ſaid *John* Lord of *Balmerino* ordained in the mean time to be returned to Ward within the Caſtle of *Edinburgh*, to remain therein while his Majeſty's Pleaſure be ſignified[*].

The King being informed hereof, was pleaſed to grant him a Pardon.

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[*] Ruſh. Col. *Vol.* II. *Pag.* 281.

XXXVI. *Proceedings in the Star-Chamber againſt Dr.* John Baſtwick, *Mr.* Henry Burton, *and* William Pyrnn, *Eſq*;[*] *for ſeveral Libels, the* 14*th of* June 1637. 13 Car. I. *Wrote by their Friends.*

AN Information was exhibited in the Star-Chamber by the Attorney-General, againſt *John Baſtwick* Doctor in Phyſick[†], *Henry Burton* Batchelor of Divinity, and *William Prynn* Barriſter at Law, Defendants, for writing and publiſhing ſeditious, ſchiſmatical and libellous Books againſt the Hierarchy. They prepared their Anſwers, but the Counſel being backward for fear of offending the Court, they petitioned they might ſign their Anſwers themſelves, which was denied; and the 28th of *April* the Court ordered them to put in their Anſwers by *Monday* ſevennight under their Counſels hands, or elſe the matters of the Information to be taken *pro confeſſo*. Mr. *Prynn*, *May* 5. again petitioned them, that having been for above a Week debar'd acceſs to his Counſel, and his Servant who ſhould ſollicit for him being detain'd cloſe Priſoner in a Meſſenger's Hands, and it being difficult to get his Counſel to repair to him during the Term; he having been a Barriſter at Law, pray'd he might (according to former Precedents in that Court) have liberty to put in his Anſwer by the Day prefix'd, under his own Hand, and not under his Counſels, who refuſed it out of Fear and Cowardice; for which he alledged theſe Reaſons.

1. *Cloſe*, Dr. *Layton*, and others, had been allow'd this, and there is but one Precedent againſt it; where, upon a ſpecial Reaſon, and in caſe of a Woman, not of a Man, much leſs of a Lawyer, it was denied.

2. Upon an *ore tenus* in this Court, in many Caſes at the Council-Table, in Parliament, and in the King's-Bench upon Indictments and Informations (eſpecially in Caſes of Felony or Treaſon) the Defendants make their Defence without Counſel.

3. Counſel is allow'd not of Neceſſity but Favour, as a Help to the Defendants; but when they find them no help, but that they adviſe them to their prejudice, why may they not anſwer without them?

4. Every Anſwer in the Eye of the Law, is the Defendant's, not the Counſel's.

5. Shall an innocent Man ſuffer without Conviction, thro' the Want, Fear, Neglect, Ignorance, Diverſity of Opinions, or Treachery of Counſel?

6. The Law of Nature teacheth every Creature, Man eſpecially, to defend himſelf, and in the preſent Caſe the Defendant's Anſwer reſteth upon Books, matters of Divinity, and other Points, wherein Counſel have little Skill: How can they defend him in a Cauſe they underſtand not?

7. At the General Day of Judgment, every Man ſhall be allowed to make Anſwer for himſelf, much more ſhould earthly Judges allow the ſame, where others will not or dare not.

8. By the judicial Law among the *Jews*, and by the civil Law among the *Pagan Romans*, every one might anſwer for themſelves: *Naboth*, *Suſanna*, *Chriſt*, and others, tho' unjuſtly condemned, yet were not condemn'd as guilty for not anſwering by Counſel.

9. St. *Paul* when he was ſlandered and accuſed by *Ananias* the High-Prieſt, and *Tertullus*, and ſeveral times before *Felix*, *Feſtus*, and King *Agrippa* (three Heathen Magiſtrates) was ſuffered to ſpeak for himſelf without any Counſel aſſign'd.

The Defendant therefore hopes, he being accuſed in this Court, by the *Engliſh* Prelates and High Prieſts Inſtigations, of Sedition and other ſuch like Crimes, as St. *Paul* was, ſhall enjoy the ſame Privilege and Freedom before *Chriſtian* Judges, as St. *Paul* had among *Pagans*; which his Adverſaries will not be againſt, unleſs they will be deemed more unreaſonable than *Ananias* himſelf: eſpecially the Defendant having been a Barriſter and Counſellor at Law formerly, and admitted in this Court to put in Anſwers under his Hand in other Men's Caſes.

Upon reading this and a Petition from Dr. *Baſtwick* to the ſame purpoſe, alledging his Counſel refuſed to ſign his Anſwer, the Court adher'd to their former Order, that they ſhould by *Monday* put in their Anſwers under Counſels hands, or elſe to be taken *pro confeſſo*. *Prynn* and *Baſtwick* thereupon left their Anſwers under their own Hands at the Office, and tender'd another Draught thereof to the Court.

Before this Petition of Mr. *Prynn*, he and the two other Defendants put in a Croſs-Bill under all their Hands, againſt the Archbiſhop of *Canterbury* and others of the Prelates, wherein they charged them with uſurping upon his Majeſty's Prerogative Royal, with Innovations, licenſing Popiſh and Arminian Books, *&c.* and ſet forth the Subſtance of their Anſwers. The Bill being ingroſs'd and ſigned by them, Mr. *Prynn* tender'd it to my Lord Keeper, praying it might be accepted without Counſels Hands, who durſt not ſign it: The Lord Keeper upon reading the Croſs-Bill refuſed to admit it, but delivered it to the King's Attorney. The Archbiſhop nettled thereat, demanded the Opinion of the Judges, whether they could not be puniſh'd as Libellers; who all but one anſwer'd negatively: for it was tender'd in a legal way, and the King's Courts are open to all Men. The Archbiſhop then apply'd to the Court of Star-Chamber, and inform'd them, That in ſome Books and Pamphlets lately publiſhed, his Grace and the other Biſhops are ſaid to have uſurped upon the King's Prerogative, and proceeded in their Courts contrary to Law. He pray'd the Court would require the Judges to give their Opinions therein; and the Court accordingly deſir'd their Opinions in the Points following:

1. Whether Proceſs may not iſſue out of the Eccleſiaſtical Courts in the Names of the Biſhops? The Judges anſwered affirmatively.

2. Whether a Patent under the Great Seal be neceſſary for keeping Eccleſiaſtical Courts, and for Citations, Suſpenſions, Excommunications and other Cenſures? Whether Citations muſt be in the King's Name, and under his Seal of Arms? The like for Inſtitutions, Inductions, and Corrections of Eccleſiaſtical Offences? They anſwer'd that a Patent under the Great Seal is not neceſſary in any of theſe Caſes; nor is it neceſſary that Summons, Citations, or other Proceſs Eccleſiaſtical, or Inſtitutions, Inductions, or Corrections of Eccleſiaſtical Offences ſhould be in the King's Name, or with his Stile, or under his Seal, or that their Seals of Office have in them the King's Arms, the Statute of 1 *Edw.* 6. *Ch.* 2. being not now in Force.

3. Whether Biſhops, Arch-Deacons, *&c.* may keep any Viſitation, without Commiſſion under the Great Seal? They anſwer'd they may. Which Opinion of the Judges being certified into the Star-Chamber under the Hands of eleven of the twelve, the Court, at the Prayer of the Attorney-General, ordered the ſaid Certificate to be recorded there, and in the other Courts at *Weſtminſter*, the High Commiſſion and other Eccleſiaſtical Courts; and afterwards the original Certificate to be deliver'd to the Archbiſhop of *Canterbury*, to be preſerv'd among the Records of his Court.

Dr. *Baſtwick* having left his Anſwer at the Office as aforeſaid, the Court taking notice that it was five Skins and a half of Parchment cloſe written, and (as was alledg'd) contained much ſcandalous defamatory matter, ordered, That all the Matters of the Information, wherewith he was charged, ſhould be taken *pro confeſſo*. Dr. *Baſtwick* notwithſtanding petition'd again, that his Anſwer might be accepted under his own Hand, but to no purpoſe: And Mr. *Prynn* in a ſecond Petition deſiring of the Court not to require Impoſſibilities of him, his Counſels Hands not being at his Command (for thus the moſt innocent Man may be betray'd and condemn'd, through the unfaithfulneſs, wilfulneſs, fear, corruption, or default of Counſel) he pray'd them to deal with him as they would be dealt with themſelves, were they (which God forbid) in his Condition, and as they would have Chriſt proceed with them at the Day of Judgment. He craved only ſo much Favour and Juſtice as Chriſt found before *Pilate*, and *Paul* before *Felix*, *Feſtus*, and *Agrippa*, or as every Traytor or Felon enjoys in the Court of Juſtice, to anſwer for himſelf, when his Counſel will not, cannot, or dare not; eſpecially in this weighty Cauſe highly concerning his Majeſty's Royal Prerogative, the Safety of Religion, and the Good of the whole Realm. He pray'd the Croſs-Bill and Anſwers of him and the other Defendants againſt the Prelates late dangerous Encroachments, Innovations, Practices and Oppreſſions, may be accepted under the Defendants own Hands; and the Petitioner (upon granting his Petition) ſhould ever pray for their Lordſhips, *&c.* The Court hereupon commanded Mr. *Holt*, one of Mr. *Prynn*'s Counſel, to repair to him in the *Tower*, and take Inſtructions for his Anſwer; and the Lieutenant of the *Tower* was ſent for and check'd by the Lords for ſuffering Mr. *Prynn* to dictate ſuch a Petition; and one *Gardener* who writ it from his Mouth by the Lieutenant's Licence, was the ſame Evening, by a Warrant from the Archbiſhop and others, apprehended by a Purſuivant, detain'd about fourteen Days, and not releaſed till he had given Bond to appear when call'd.

Mr. *Prynn* upon Mr. *Holt*'s repairing to him, gave him his Fee, and Inſtructions for drawing his Anſwer; and the ſame being agreed on and ſettled by Mr. *Holt*, and *Tomlins* his other Counſel, Mr. *Holt*'s Clerk ingroſs'd it, but *Holt* then refuſed to ſign it, ſaying he had expreſs Order to the contrary, and would not do it for 100*l.* and in the mean time *Tomlins* went into the Country. Mr. *Prynn* thus deluded, requeſted the Lord Keeper, the Chief Judge of that Court, to command Mr. *Holt* who had drawn it, to ſign it; but the Lord Keeper anſwer'd, he had no Power to command Counſel to ſign an Anſwer. And the Court *May* 19, poſitively ordered that for their Contempt in not putting in their Anſwers, the matters againſt *Baſtwick* and *Prynn* ſhould be taken *pro confeſſo*, and the Cauſe againſt them ſhould be heard the firſt Sitting of the next Term. As for Mr. *Burton*'s Anſwer, it was ſign'd by Mr. *Holt*; but after it had been near three Weeks in Court, upon Mr. Attorney's ſuggeſtion that it was ſcandalous, the Court referr'd it to the two Chief Juſtices *Bramſton* and *Finch*. The latter revil'd *Holt* exceedingly, and told him he deſerv'd to have his Gown pull'd over his Ears for drawing it: *Holt* reply'd, it was only a Confeſſion or Explanation of the Charge in the Bill, and a Recital of Acts of Parliament, and how that could be ſcandalous or impertinent he could not conceive. But the two Juſtices certified it to be all ſcandalous and impertinent, except the uſual Words in the beginning, *The ſaid Defendant by Proteſtation not confeſſing*, &c. and the Words in the latter end, containing his Plea of *Not Guilty*, the common Averment that he was ready to prove the matters of Anſwer, his Prayer of a favourable Interpretation, and to be diſmiſſed. So all the Body of his Anſwer, containing about 40 Sheets of Paper, was expung'd, and nothing but the Head and Feet remain'd: And by his Plea of *Not Guilty* to all, he was made to deny what he had confeſſed, and juſtified in his Anſwer: And the Examiner coming to him afterwards to the Fleet, with Interrogatories grounded on his Anſwer, he refuſed to be examin'd unleſs his Anſwer might be admitted as it was put in, or he permitted to put in a new one. The Court order'd the Examiner to repair to him a ſecond time with the Interrogatories, but he perſiſting in his Refuſal to be examin'd, for that the Anſwer now in Court was none of his, the Court order'd the matter of the Information and Interrogatories to be taken againſt him *pro confeſſo*; and on the 13th of *June* the Court order'd the Cauſe againſt all the three Defendants to be heard the next Day, and that in the mean time they ſhould have Liberty with their Keepers to attend their Counſel. This was look'd upon as ſhort warning by ſome, who affirm'd, that by the Courſe of the Court, a *Subpœna ad audiendum judicium* ſhould have been ſerv'd upon them fifteen Days at leaſt before the Day of hearing, which was not done. However Mr. *Prynn* made uſe of his Liberty, and repair'd to Mr. *Tomlins* (then newly return'd) with his Anſwer newly drawn up and ingroſs'd as aforeſaid, who ſign'd it, but Mr. *Holt* ſaid he durſt not; then Mr. *Prynn* tender'd it thus ſign'd to Mr. *Goad* at the Office, but he utterly refuſed to take it.

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[*] Clar. Hiſt. Vol. I. p. 73. 158.

[†] Ruſh. Col. Vol. 2. p. 380.

Mr. *Burton* in his Anſwer, ſet forth the Subſtance of his Sermon which he preach'd the fifth of *November* in his Pariſh Church in *Friday-ſtreet*, touching the Innovations brought into the Church.

Dr. *Baſtwick* in his Anſwer term'd the Prelates Invaders of the King's Prerogative, Contemners of the Scriptures, Advancers of Popery, Superſtition, Idolatry, Profaneneſs, Oppreſſion of the King's Subjects, in the impious performance whereof they ſhew'd neither Wit nor Honeſty; Enemies of God and the King, and Servants of the Devil.

Mr. *Prynn*'s Anſwer was much againſt the *Hierarchy*, but in more moderate and cautious Expreſſions.

June 14. The Lords being ſet in their Places in the Star-Chamber, and the three Defendants brought to the Bar, to receive their Sentences, the Lord Chief Juſtice *Finch* looking earneſtly on Mr. *Prynn*, ſaid, I had thought Mr. *Prynn* had no Ears, but methinks he hath Ears; which cauſed many of the Lords to take the ſtricter View of him, and for their better Satisfaction, the Uſher of the Court was commanded to turn up his Hair, and ſhew his Ears: Upon the ſight whereof the Lords were diſpleaſed they had been formerly no more cut off, and caſt out ſome diſgraceful Words of him. To which Mr. *Prynn* reply'd, My Lords, there is never a one of your Honours, but would be ſorry to have your Ears as mine are.

L. Keeper. In good faith he is ſomewhat ſaucy.

Mr. *Prynn*. I hope your Honours will not be offended, pray God give you Ears to hear.

L. Keeper. The Buſineſs of the Day is to proceed on the Priſoners at the Bar.

Mr. *Prynn* then humbly deſir'd of the Court to give him leave to make a Motion or two, which being granted, he moved,

Mr. *Prynn*. *Firſt*, That their Honours would be pleaſed to accept of a Croſs-Bill againſt the Prelates, ſigned with their own Hands, being that which ſtands with the Juſtice of the Court, which he humbly craves; *and ſo tender'd it.*

L. Keeper. As for your Croſs-Bill, it is not the Buſineſs of the Day; hereafter if the Court ſhall ſee juſt Cauſe, and that it ſavours not of libelling, we may accept of it: for my part I have not ſeen it, but have heard ſomewhat of it.

Mr. *Prynn*. I hope your Honours will not refuſe it, being it is on his Majeſty's behalf. We are his Majeſty's Subjects, and therefore require the Juſtice of the Court.

L. Keeper. But this is not the Buſineſs of the Day.

Mr. *Prynn*. Why then, my Lords, I have a ſecond Motion, which I humbly pray your Honours to grant; which is, that your Lordſhips will be pleaſed to diſmiſs the Prelates here now ſitting, from having any Voice in the Cenſure of this Cauſe (being generally known to be Adverſaries) as being no way agreeable with Equity or Reaſon, that they who are our Adverſaries, ſhould be our Judges. Therefore we humbly crave they may be expunged out of the Court.

L. Keeper. In good faith, it is a ſweet Motion, is it not? Herein you are become libellous. And if you ſhould thus libel all the Lords and Reverend Judges, as you do the moſt Reverend Prelates, by this your Plea, you would have none to paſs Sentence upon you for your Libelling, becauſe they are Parties.

Mr. *Prynn*. Under Correction, my Lord, this doth not hold, the Caſe is not alike, for here are only one or two Members of the Court, who are ſaid to be libelled againſt, and your Lordſhip your ſelf in your Caſe againſt *Norton*, abſented yourſelf from the Hearing, becauſe a Party, which is uſually done by the Lords in like Caſes. But this prevailed nothing.

Mr. *Prynn*. Then I have a third Motion, which is, that your Lordſhips will receive my Anſwer to the Information ſign'd, with one Counſel's Hand, which as ſoon as I could get ſign'd, I tender'd at the Office, but it was refus'd.

L. Keeper. Your Anſwer comes now too late, proceed to the Buſineſs of the Day. Read the Information, which was read, being very large, and having theſe five Books thereto annexed, Dr. *Baſtwick*'s *Latin* Apology, his Litany, Mr. *Burton*'s Book entitled, *An Apology for an Appeal to the King's moſt Excellent Majeſty, with two Sermons for God and the King*, preached on the 5th of *November* laſt: *The News from* Ipſwich, *and the Divine Tragedy, recording God's fearful Judgments againſt Sabbath-Breakers*. The King's Counſel being five, took each of them a ſeveral Book.

Mr. *Attorney* began with Dr. *Baſtwick*'s *Latin* Apology; next unto the Attorney, Serjeant *Whitfield* falls upon Mr. *Burton*'s Book, ſaying, In good faith, my Lords, there is never a Page in this Book, but deſerves a heavier and deeper Cenſure than this Court can put upon him.

Next followed the Archbiſhop, who in like manner deſcanted on the News from *Ipſwich*, charging it to be full of pernicious Lyes; and eſpecially vindicating the honour of *Matthew Wren*, Biſhop of *Norwich*, as being a Learned, Pious, and Reverend Father of the Church.

Next followed the King's * Sollicitor, who deſcanted upon the Divine Tragedy; to which part of it concerning God's Judgments on Sabbath-Breakers, he ſaid, That they ſat in the Seat of God, who judged theſe Accidents which fell out upon Perſons ſuddenly ſtruck, to be the Judgments of God for Sabbath-breaking. He enlarged himſelf upon that Paſſage which reflected upon his Majeſty's late Attorney-General, Mr. *William Noy*, who, (he ſaid) was moſt ſhamefully abuſed by a Slander laid upon him, as if God's Judgment fell upon him, for ſo eagerly proſecuting Mr. *Prynn* for his *Hiſtriomaſtix*, which Judgment was this; that he laughing at Mr. *Prynn*, while he was ſuffering upon the Pillory, was ſtruck with an Iſſue of Blood in his Privy Parts, which could never be ſtop'd till the Day of his Death, which follow'd ſoon after: but the Truth of this, my Lords, you ſhall find to be as probable as the reſt, for we have here three or four Gentlemen of good Credit and Rank, to teſtify upon Oath that he had that Iſſue long before. And the Sollicitor call'd out for Room to be made for the Gentlemen to come in, but none ſuch appear'd.

*Mr. Littleton.

Laſtly follow'd Mr. *Herbert*, who deſcanting upon Dr. *Baſtwick*'s Litany, concluded jointly with the reſt, that it deſerved a heavy Cenſure.

L. Keeper. You hear, Gentlemen, wherewith you are charged, and now leſt you ſhould ſay you cannot have Liberty to ſpeak for yourſelves, the Court gives you leave to ſpeak what you can, with theſe Conditions.

Firſt, That you ſpeak within the Bounds of Modeſty.

Secondly, That your Speeches be not libellous.

They all three anſwer'd, they hoped ſo to order their Speech, as to be free from any immodeſt or libellous ſpeaking.

L. Keeper. Then ſpeak in God's Name, and ſhew Cauſe why the Court ſhould not proceed in Cenſure (as taking the Cauſe *pro confeſſo.*)

Mr. *Prynn*. I expected ſome particular Charge to be proved againſt me: Dr. *Baſtwick* and Mr. *Burton* are charged with particular Books to the Information annex'd, but none of the Books are laid to me; my ſole Offence, for which the Information muſt be taken *pro confeſſo*, is my not putting in my Anſwer under Counſel's Hand by a Day prefix'd; whereas I enter'd my Appearance, and took out a Copy of the Information, which being taken out, I endeavoured to draw up my Anſwer; but being ſhut up cloſe Priſoner, I was deſerted of all means by which I ſhould have done it: for I was no ſooner ſerv'd with the *Subpœna*, but I was ſhortly after ſhut up cloſe Priſoner, prohibited of Pen, Ink and Paper, and ſo diſabled to draw up my Anſwer, or Inſtructions for Counſel; my Servant who ſhould ſollicit for me was in Priſon, without being admitted to Bail, my Friends deny'd Acceſs, and my Chamber twice ſearch'd; and after I had drawn ſome Inſtructions, and part of my Anſwer (having then obtain'd Liberty of Pen and Ink) they were taken away by Mr. *Nicolas*, Clerk of the Council; your Lordſhips refus'd to let me put in my Anſwer under my own Hand, tho' a Counſellor at Law, contrary to former Precedents; your Lordſhips did at laſt aſſign me Counſel, but they neglected to come to me, and when by order of the Court Mr. *Holt* came to me in the *Tower*, I gave him my Fee and Inſtructions, and afterwards Mr. *Holt* and my other Counſel agreed upon my Anſwer, caus'd it to be ingroſs'd, and promis'd to ſign it, but Mr. *Holt* refuſed to do it then; afterwards Mr. *Tomlins* ſigned it, and it was carry'd to the Office, but they refuſed it. Here it is, I tender it upon my Oath, which your Lordſhips cannot deny with the Juſtice of the Court.

L. Keeper. We can give you a Precedent, that this Court hath proceeded and taken a Cauſe *pro confeſſo*, for not putting in an Anſwer in ſix Days; you have had a great deal of Favour ſhew'd you, in affording you longer time, and therefore the Court is free from all Calumny or Aſperſion for rejecting your Anſwer, not ſign'd with Counſels Hands.

Mr. *Prynn*. But one Word or two, my Lords, I deſire your Honours to hear me: I put a Caſe in Law, If an Award be made that *A* ſhall together with *B* and *C* enter into a Bond of 100*l.* to *S*, the Award is void, becauſe *A* hath no Power to compel *B* and *C* to enter into ſuch a Bond: my Caſe is the ſame, The Court order'd me to put in my Anſwer under Counſels Hands; I endeavour'd it, they refuſed to ſign it, I had no Power to compel them, and deſir'd the Court to order them to ſign it; but the Court reply'd they had no Power to force them; how then could I, a cloſe Priſoner, compel them, if the Court could not? By this means the moſt innocent Perſon in the World may be made guilty of what Crimes you pleaſe. I appeal to Mr. *Holt*, if I have not uſed all my Endeavours to get him to ſign my Anſwer.

Mr. *Holt*. There was ſo long time ſpent ere I could do any thing after I was aſſign'd his Counſel, that it was impoſſible his Anſwer could be drawn up in ſo ſhort a time as was allotted; for after long expectation, ſeeing he came not to me, I went to him, where I found him ſhut up cloſe Priſoner, ſo that I could not have Acceſs to him; whereupon I motioned to the Lieutenant of the *Tower* to have free Liberty of Speech with him concerning his Anſwer, which being granted me, I found him very willing and deſirous to have it drawn up; whereupon I did move in this Court for Pen and Paper, which was granted, the which he no ſooner had gotten but he ſet himſelf to draw up Inſtructions, and in a ſhort time ſent me 40 Sheets, and ſoon after I received 40 more; but I found the Anſwer ſo long, and of ſuch a nature, that I durſt not ſet my Hand to it, for fear of giving your Honours diſtaſte.

Mr. *Prynn*. My Lords, I did nothing but according to the Directions of my Counſel, only I ſpake my own Words: my Anſwer was drawn up by his Conſent, it was his own Act, and he did approve of it; and if he will be ſo baſe a Coward, to do that in private which he dares not acknowledge in publick, I will not have ſuch a Sin lie on my Conſcience, let it reſt with him. Here is my Anſwer, which tho' it be not ſign'd with their Hands, yet here I tender it upon my Oath, which you cannot in Juſtice deny.

L. Keeper. Your Caſe is good Law, but ill apply'd; the Court deſires no ſuch long Anſwer, but whether you are Guilty or not Guilty.

Mr. *Prynn*. By the Statutes of *Phil.* and *Mar.* and of *Eliz.* in the Caſe of Libelling the King or Queen, the Party's Confeſſion, or two Witneſſes Face to Face are required, elſe no Conviction, and here is neither; nor is there in all the Information one Clauſe that doth particularly fall on me, but only in general. There is no Book laid to my Charge, and ſhall I be condemn'd for a particular Act, when no Accuſation of any particular Act can be brought againſt me? This were moſt unjuſt and wicked. Here I tender my Anſwer to the Information upon my Oath; my Lord, you do impoſe Impoſſibilities upon me, I could do no more than I did.

L. Keeper. Well, hold your peace, your Anſwer comes too late: What ſay you, Dr. *Baſtwick*?

Dr. *Baſtw*. My Honourable Lords, methinks you look like an Aſſembly of Gods, and ſit in the place of God: Ye are called the Sons of God; and ſince I have compared you to Gods, give me leave a little to parallel the one with the other, to ſee whether the Compariſon between God and you doth hold in this noble and righteous Cauſe. This was the Carriage of Almighty God in the Cauſe of *Sodom*, before he would pronounce Sentence, or execute Judgment, he would firſt come down, and ſee whether the Crime was altogether according to the Cry that was come up. And with whom doth the Lord conſult, when he came down? With his Servant *Abraham*, and he gives the Reaſon; for I know (ſaith he) that *Abraham* will command his Children and Houſhold after him, that they ſhall keep the way of the Lord to do Juſtice and Judgment. My good Lords, thus ſtands the Caſe between your Honours and us this Day: there is a great Cry come up into your Ears againſt us from the King's Attorney; why now be you pleaſed to deſcend and ſee if the Crime be according to the Cry, and conſult (with God) (not the Prelates, being the Adverſary part; who, as it is apparent to all the World, do proudly ſet themſelves againſt the ways of God, and from whom none can expect Juſtice or Judgment) but with righteous Men, that will be impartial on either ſide, before you proceed to Cenſure, which Cenſure you cannot paſs on us without great Injuſtice before you hear our Anſwers read. Here is my Anſwer, which I here tender upon my Oath: My good Lords, give us leave to ſpeak in our own Defence. We are not conſcious to ourſelves, of any thing we have done that deſerves a Cenſure this Day in this Honourable Court, but that we have ever laboured to maintain the Honour, Dignity, and Prerogative Royal of our Sovereign Lord the King; let my Lord the King live for ever. Had I a thouſand Lives, I ſhould think them all too little to ſpend for the maintenance of his Majeſty's Royal Prerogative. My good Lords, can you proceed to Cenſure before you know my Cauſe? I dare undertake, that ſcarce any one of your Lordſhips have read my Books: and can you then Cenſure me for what you know not, and before I have made my Defence? O my Noble Lords! is this righteous Judgment? This were againſt the Law of God and Man, to condemn a Man before you know his Crime: The Governor before whom St. *Paul* was carried (who was a very Heathen) would firſt hear his Cauſe before he would paſs any Cenſure upon him; and doth it beſeem ſo Noble and Chriſtian Aſſembly to condemn me before my Anſwer be peruſed, and my Cauſe known? Men, Brethren, and Fathers, into what an Age are we fallen? I deſire your Honours to lay aſide your Cenſure for this Day, to inquire into my Cauſe, and hear my Anſwer read; which if you refuſe to do, I here profeſs, I will clothe it in *Roman* Buff, and ſend it abroad unto the View of all the World, to clear mine Innocency, and ſhew your great Injuſtice in this Cauſe.

L. Keeper. But this is not the Buſineſs of the Day; why brought you not in your Anſwer in due time?

Dr. *Baſtw*. My Lord, a long time ſince I tender'd it to your Honour, I failed not in any one particular: And if my Counſel be ſo baſe and cowardly, that they dare not ſign it for fear of the Prelates (as I can make it appear) therefore have I no Anſwer? My Lord, here is my Anſwer, which tho' my Counſel out of a baſe Spirit dare not ſet their Hands unto, yet I tender it upon my Oath.

L. Keeper. But, Mr. Doctor, you ſhould have been brief; you tender'd in too large an Anſwer, which (as I heard) is as libellous as your Books.

Dr. *Baſtw*. No, my Lord, it is not libellous tho' large; I have none to anſwer for me but my ſelf, and being left to myſelf, I muſt plead my Conſcience in anſwer to every Circumſtance of the Information.

L. Keeper. What ſay you, Mr. Doctor, are you Guilty, or not Guilty? anſwer yea, or no: you needed not to have troubled yourſelf ſo much about ſo large an Anſwer.

Dr. *Baſtw*. I know none of your Honours have read my Book; and can you with the Juſtice of the Court, condemn me before you know what is written in my Books?

L. Keeper. What ſay you to that was read to you even now?

Dr. *Baſtw*. My Lord, he that read it did ſo murder the Senſe of it, that had I not known, what I had written, I could not tell what to have made of it.

L. Keeper. What ſay you to the other Sentence read to you?

Dr. *Baſtw*. That was none of mine, I will not father that which was none of my own.

L. Dorſet. Did not you ſend that Book, as now it is, to a Nobleman's Houſe, together with a Letter directed to him?

Dr. *Baſtw*. Yea, my Lord, I did ſo, but withal you may ſee in my Epiſtle ſet before the Book, I did at firſt diſclaim what was not mine. I ſent my Book over by a *Dutch* Merchant, who it was that wrote the Addition I do not know, but my Epiſtle ſet to my Book, made manifeſt what was mine, and what was not; and I cannot juſtly ſuffer for what was none of mine.

L. Arund. My Lord, you hear by his own Speech the Cauſe is taken *pro confeſſo*.

L. Keeper. Yea, you ſay true, my Lord.

Dr. *Baſtw*. My Noble Lord of *Arundel*, I know you are a Noble Prince in *Iſrael*, and a great Peer of this Realm; there are ſome honourable Lords in this Court, that have been forced out as Combatants in a ſingle Duel; it is between the Prelates and us, at this time, as between two that have appointed the Field. The one being a Coward goes to the Magiſtrate, and by virtue of his Authority diſarms the other of his Weapons, and gives him a Bullruſh, and then challenges him to fight. If this be not baſe Cowardice, I know not what belongs to a Soldier. This is the Caſe between the Prelates and us, they take away our Weapons (our Anſwers) by virtue of your Authority, by which we ſhould defend ourſelves, and yet they bid us fight. My Lord, doth not this ſavour of a baſe cowardly Spirit? I know, my Lord, there is a Decree gone forth (for my Sentence was paſſed long ſince) to cut off our Ears.

L. Keeper. Who ſhall know our Cenſure, before the Court paſs it? Do you propheſy of your ſelves?

Dr. *Baſtw*. My Lord, I am able to prove it, and that from the Mouth of the Prelates own Servants, that in *Auguſt* laſt it was decreed, that Dr. *Baſtwick* ſhould loſe his Ears. O my Noble Lords! is this righteous Judgment? I may ſay, as the Apoſtle once ſaid, What whip a *Roman!* I have been a Soldier able to lead an Army into the Field, to fight valiantly for the Honour of their Prince: Now I am a Phyſician, able to cure Nobles, Kings, Princes and Emperors; and to curtalize a *Roman*'s Ears like a Cur, O my honourable Lords! is it not too baſe an Act for ſo noble an Aſſembly, and for ſo righteous and honourable a Cauſe? The Cauſe, my Lords, is great, it concerns the Glory of God, the Honour of our King, whoſe Prerogative we labour to maintain and to ſet up in a high manner, in which your Honours Liberties are engaged: And doth not ſuch a Cauſe deſerve your Lordſhips Conſideration, before you proceed to cenſure? Your Honours may be pleaſed to conſider, that in the laſt Cauſe heard and cenſured in this Court, between Sir *James Bagg* and the Lord *Mohun*, wherein your Lordſhips took a great deal of Pains, with a great deal of Patience, to hear the Bills on both ſides, with all the Anſwers and Depoſitions largely laid open before you; which Cauſe when you had fully heard, ſome of your Honours now ſitting in Court, ſaid, you could not in Conſcience proceed to Cenſure, till you had taken ſome time to recollect yourſelves. If in a Cauſe of that nature, you could ſpend ſo much time, and afterwards recollect yourſelves before you would paſs Cenſure; how much more ſhould it move your Honours to take ſome time in a Cauſe wherein the Glory of God, the Prerogative of his Majeſty, your Honours Dignity, and the Subjects Liberty is ſo largely ingaged? My good Lords, it may fall out to be any of your Lordſhips Caſes to ſtand as Delinquents at this Bar, as we now do: It is not unknown to your Honours, the next Cauſe that is to ſucceed ours, is touching a Perſon that ſometimes hath been in greateſt Power in this Court: And if the Mutations and Revolutions of Perſons and Times be ſuch, then I do moſt humbly beſeech your Honours to look on us, as it may befal your ſelves. But if all this will not prevail with your Honours, to peruſe my Books, and hear my Anſwer read, which here I tender upon the Word and Oath of a Soldier, a Gentleman, a Scholar, and a Phyſician, I will clothe them (as I ſaid before) in *Roman* Buff, and diſperſe them throughout the Chriſtian World, that future Generations may ſee the Innocency of this Cauſe, and your Honours unjuſt Proceedings in it; all which I will do, tho' it ~~coſt me~~ my Life.

L. Keeper. Mr. Doctor, I thought you would be angry.

Dr. *Baſtw*. No, my Lord, you are miſtaken, I am not angry or paſſionate; all that I do preſs, is, that you would be pleaſed to peruſe my Anſwer.

L. Keeper. Well, hold your Peace. Mr. *Burton*, what ſay you?

Mr. *Burton*. My good Lords, your Honours (it ſhould ſeem) do determine to cenſure us, and take our Cauſe *pro Confeſſo*, although we have laboured to give your Honours Satisfaction in all Things. My Lords, what you have to ſay againſt my Book, I confeſs I did write it, yet did I not any thing out of Intent of Commotion or Sedition: I delivered nothing but what my Text led me to, being choſen to ſuit with the Day, namely the 5th of *November*; the Words were theſe, &c.

L. Keeper. Mr. *Burton*, I pray ſtand not naming Texts of Scripture now; we do not ſend for you to preach, but to anſwer to thoſe things that are objected againſt you.

Mr. *Burton*. My Lord, I have drawn up my Anſwer to my great Pains and Charges, which Anſwer was ſigned with my Counſels Hands, and received into the Court, according to the Rule and Order thereof. And I did not think to have been called this Day to a Cenſure, but have had a legal proceeding by way of Bill and Anſwer.

L. Keeper. Your Anſwer was impertinent.

Mr. *Burton*. My Anſwer (after it was entered into the Court) was referred to the Judges, but by what means I do not know. Whether it be impertinent, and what Cauſe your Lordſhips had to caſt it out, I know not; but after it was approved of, and received, it was caſt out as an impertinent Anſwer.

L. Finch. The Judges did you a good Turn to make it impertinent, for it was as libellous as your Book, ſo that your Anſwer deſerved a Cenſure alone.

L. Keeper. What ſay you, Mr. *Burton*, are you Guilty, or not?

Mr. *Burton*. My Lord, I deſire you not only to peruſe my Book here and there, but every Paſſage of it.

L. Keeper. Mr. *Burton*, Time is ſhort, are you Guilty, or not Guilty? What ſay you to that which was read? Doth it become a Miniſter to deliver himſelf in ſuch a railing and ſcandalous way?

Mr. *Burton*. In my Judgment, and as I can prove it, it was neither railing nor ſcandalous; I conceive that a Miniſter hath a larger Liberty than always to go in a mild ſtrain: I being the Paſtor of my People, whom I had in charge, and was to inſtruct, I ſuppoſed it was my Duty to inform them of theſe Innovations that are crept into the Church, as likewiſe of the Danger and ill Conſequence of them: As for my Anſwer, ye blotted out what ye would, and then the reſt which made beſt for your own Ends, you would have to ſtand; and now for me to tender only what will ſerve for your own Turns, and renounce the reſt, were to deſert my Cauſe, which before I will do, or deſert my Conſcience, I will rather deſert my Body, and deliver it up to your Lordſhips to do with it what you will.

L. Keeper. This is a Place where you ſhould crave Mercy and Favour, Mr. *Burton*, and not ſtand upon ſuch Terms as you do.

Mr. *Burton*. There wherein I have offended through human Frailty, I crave of God and Man Pardon: And I pray God, that in your Sentence, you may ſo cenſure us, that you may not ſin againſt the Lord.

Thus the Priſoners deſiring to ſpeak a little more for themſelves, were commanded to Silence. And ſo the Lords proceeded to Cenſure.

L. Cottington. I condemn theſe three Men to loſe their Ears in the *Palace-yard* at *Weſtminſter*; to be fined five Thouſand Pounds a Man to his Majeſty; and to perpetual Impriſonment in three remote Places of the Kingdom; namely, the Caſtles of *Carnarvan*, *Cornwal*, and *Lancaſter*.

L. Finch. I condemn Mr. *Prynn* to be ſtigmatiz'd in the Cheeks with two Letters (*S* & *L*) for a ſeditious Libeller. To which all the Lords agreed. And ſo the Lord Keeper concluded the Cenſure.

Archbiſhop Laud's *Speech*.

My Lords,

I Shall not need to ſpeak of the infamous Courſe of *libelling* in any kind:

Nor of the *Puniſhment* of it, which in ſome Caſes was *capital* by the *Imperial Laws*. As appears: *Cod. l.* 9. *T.* 36.

Nor how *patiently* ſome great Men, very great Men indeed, have borne *animo civili* (that's *Suetonius*'s Word) *laceratam exiſtimationem*, the tearing and rending of their Credit and Reputation, with a gentle, nay, a generous Mind. In *Jul.* c. 75.

But of all *Libels*, they are moſt *odious* which pretend *Religion*; as if that of all things did deſire to be defended by a *Mouth that is like an open Sepulchre*, or by a Pen that is made of a ſick and a loathſome Quill.

There were Times when *Perſecutions* were great in the *Church*, even to exceed *Barbarity* itſelf: Did any *Martyr* or *Confeſſor*, in thoſe Times, *libel* the *Governours?* Surely no; not one of them to my beſt *Remembrance:* yet theſe complain of *Perſecution* without all ſhew of Cauſe, and in the mean time *libel* and rail without all meaſure. So little of kin are they to thoſe which *ſuffer for* Chriſt, or the leaſt part of *Chriſtian Religion.*

My Lords, It is not every Man's *Spirit* to hold up againſt the *Venom* which *Libellers* ſpit. For St. *Ambroſe*, who was a ſtout and worthy Prelate, tells us, not that himſelf, but that a far greater Man than he, that's King *David*, had found out (ſo it ſeems in his *Judgment* 'twas no matter of ordinary Ability) *grande inventum*, a great and mighty Invention, how to ſwallow and put off thoſe bitter *Contumelies* of the
In 1. *Apol. David.* c. 6. *Tongue*; and thoſe of the *Pen* are no whit leſs, and ſpread farther. And it was a great one indeed, and well beſeemed the Greatneſs of *David.* But I think it will be far better for me to look upward, and *practiſe* it, than to look downward, and *diſcourſe* upon it.

In the mean time I ſhall remember what an *Antient* under the Name of St. *Jerome* tells me, *Indignum eſt & præpoſterum*, 'tis unwor-
Ad Ocean. de ferend. Opprob. thy in itſelf and prepoſterous in demeanour, for a Man to be aſhamed for *doing good*, becauſe other Men glory in *ſpeaking ill.*

And I can ſay it clearly and truly, as in the *Preſence of God*, I have done nothing, as a *Prelate*, to the uttermoſt of what I am conſcious, but with a *ſingle Heart*, and with a *ſincere Intention* for the good *Government* and *Honour* of the *Church*, and the Maintenance of the *orthodox Truth* and *Religion* of *Chriſt* profeſſed, eſtabliſhed, and maintained in this *Church* of *England.*

For my *Care of this Church*, the reducing of it into *Order*, the upholding of the *external Worſhip of God* in it, and the ſettling of it to the *Rules* of its *firſt Reformation*, are the *Cauſes* (and the ſole Cauſes, whatever are pretended) of all this malicious *Storm*, which hath loured ſo black *upon Me*, and ſome of *my Brethren.* And in the mean time, they which are the only, or the chief *Innovators* of the Chriſtian World, having nothing to ſay, accuſe us of *Innovation*; *they themſelves* and their *Complices*, in the mean time, being the greateſt *Innovators* that the *Chriſtian World* hath almoſt ever known. I deny not but others have ſpread more dangerous *Errors* in the *Church* of *Chriſt*; but no Men, in any Age of it, have been more guilty of *Innovation* than they, while themſelves cry out againſt it: *Quis tulerit Gracchos?*

And I ſaid well, *Quis tulerit Gracchos?* for 'tis moſt apparent to any Man that will not wink, that the *Intention* of *theſe Men*, and their *Abettors*, was, and is, to raiſe a *Sedition*; being as great *Incendiaries* in the *State* (where they get power) as they have ever been in the *Church*; *Novatian* himſelf hardly greater.

Our main *Crime* is (would they all ſpeak out, as ſome of
Burton *Apol.* them do) that we are *Biſhops*; were we not ſo, ſome of us
p. 110. might be as *paſſable* as other Men.

And a great Trouble 'tis to them, that we maintain that our *Calling of Biſhops* is *Jure Divino*, by divine Right; of this I have ſaid enough, and in this Place, in *Leighton*'s Caſe; nor will I repeat. Only this I will ſay, and abide by it, that the *Calling of Biſhops* is *Jure Divino*, by divine Right, tho' not all *Adjuncts* to their *Calling.* And this I ſay in as direct *Oppoſition* to the *Church* of *Rome*, as to the *Puritan Humour.*

And I ſay farther: That from the *Apoſtles Times*, in all Ages, in all Places, the *Church of Chriſt* was governed by *Biſhops*; and *Lay Elders* never heard of till *Calvin*'s new-fangled Device at *Geneva.*

Now this is made by theſe Men, as if it were *contra Regem*, againſt the King, in Right or in Power.

But that's a mere *ignorant Shift*; for our being *Biſhops*, *Jure Divino*, by divine Right, takes nothing from the *King's Right or Power over us.* For tho' our *Office* be from *God* and *Chriſt immediately*, yet may we not *exerciſe* that *Power*, either of *Order* or *Juriſdiction*, but as *God* hath *appointed* us, that is, not in his *Majeſty*'s, or any *Chriſtian King's Kingdoms*; but by and under the Power of the *King* given us ſo to do.

And were this a good *Argument* againſt us, as *Biſhops*, it muſt needs be good againſt *Prieſts* and *Miniſters* too; for themſelves grant that their *Calling* is *Jure Divino*, by divine Right; and yet I hope they will not ſay, that to be *Prieſts* and *Miniſters* is againſt the *King*, or any his *royal Prerogatives.*

Next, ſuppoſe our *Callings*, as *Biſhops*, could not be made good *Jure Divino*, by divine Right; yet *Jure Eccleſiaſtico*, by eccleſiaſtical Right, it cannot be denied. And here in *England* the *Biſhops* are confirmed, both in their Power and Means, by *Act of Parliament.* So that here we ſtand in as good Caſe, as the preſent *Laws* of the *Realm* can make us. And ſo we muſt ſtand, till the *Laws* ſhall be repealed by the ſame *Power* that made them.

Now then, *ſuppoſe* we had no other String to hold by (I ſay ſuppoſe this, but I grant it not) yet no Man can *libel* againſt our *Calling* (as theſe Men do) be it in *Pulpit*, *Print*, or otherwiſe, but he *libels* againſt the *King* and the *State*, by whoſe *Laws* we are eſtabliſhed. Therefore, all theſe *Libels*, ſo far forth as they are againſt our *Calling*, are againſt the King and the *Law*, and can have no other Purpoſe than to ſtir up *Sedition* among the People.

If theſe Men had any other *Intention*, or if they had any chriſtian or charitable Deſire to *reform* any thing amiſs; why did they not modeſtly *petition his Majeſty* about it, that in his *princely Wiſdom* he might ſet all things right, in a *juſt* and *orderly* manner? But this was neither their *Intention*, nor *Way:* for one clamours out of his *Pulpit*, and all of them from the *Preſs*, and in a moſt virulent and *unchriſtian* manner ſet themſelves to make a *Heat* among the People; and ſo by *Mutiny*, to effect that, which by *Law* they cannot; and by moſt falſe and unjuſt *Calumnies* to defame both our *Callings* and *Perſons.* But for *my part*, as I pity their Rage, ſo I heartily pray *God* to *forgive* their Malice.

No *Nation* hath ever appeared more jealous of *Religion*, than the People of *England* have ever been. And their *Zeal to God's Glory* hath been, and at this Day is a great *Honour* to them. But this *Zeal* of theirs, hath not been at all times and in all Perſons, alike guided by *Knowledge.* Now *Zeal*, as it is of *excellent* Uſe where it ſees its Way, it is ſo very *dangerous* Company where it goes on in the *dark*[*]: And theſe Men, knowing the *Diſpoſition* of the People, have laboured nothing more than to miſinform their *Knowledge*, and miſguide their *Zeal*, and ſo to fire that into a *Sedition*, in hope that they, whom they cauſeleſly hate, might miſcarry in it.

For the *main Scope* of theſe *Libels* is, to kindle a *Jealouſy* in Men's Minds, that there are ſome great Plots in hand, *dangerous Plots* (ſo ſays Mr. *Burton* expreſly) to change the *Orthodox Religion* eſta- Page 5.
bliſhed in *England*; and to bring in I know not what, *Romiſh Superſtition* in the room of it. As if the *external decent Worſhip of God* could not be upheld in this *Kingdom*, without bringing in of *Popery.*

Now by this *Art* of theirs, give me leave to tell you that the *King* is moſt deſperately abuſed and wounded in the Minds of his *People*; and the *Prelates* ſhamefully.

The King moſt deſperately: for there is not a more cunning Trick in the World, to *withdraw* the People's Hearts from their *Sovereign*, than to perſuade them that he is changing *true Religion*, and about to bring in groſs *Superſtition* upon them.

And the Prelates ſhamefully: for they are charged to *ſeduce*, and lay the Plot, and be the *Inſtruments.*

For his Majeſty firſt. This I know, and upon this *Occaſion* take it my *Duty* to ſpeak: there is no *Prince* in *Chriſtendom* more ſincere in his *Religion*, nor more conſtant to it, than the *King.* And he gave ſuch a Teſtimony of this at his being in *Spain*, as I much doubt whether the beſt of that *Faction* durſt have done half ſo much as his *Majeſty* did, in the face of that *Kingdom.* And this, you, my *Lord*, the Earl of *Holland*, and other Perſons of *Honour*, were Eye and Ear Witneſſes of, having the Happineſs to *attend* him there. And at this Day, as his *Majeſty* (by *God*'s great Bleſſing both on him and us) *knows* more, ſo is he more *ſettled* and more confirmed, both in the *Truth* of the *Religion* here eſtabliſhed, and in *Reſolution* to maintain it.

And for the Prelates: I aſſure my ſelf, they cannot be ſo baſe as to live *Prelates* in the Church of *England*, and labour to bring in the *Superſtitions* of the Church of *Rome* upon themſelves and it. And if any ſhould be ſo *foul*, I do not only leave him to *God's Judgment*, but (if theſe *Libellers*, or any other, can *diſcover* that his baſe and *irreligious* Falſhood) to *Shame* alſo, and ſevere *Puniſhment* from the *State:* and in any *juſt* way, no Man's *Hand* ſhall be more, or ſooner againſt him, than *mine* ſhall be.

And for myſelf: To paſs by all the *ſcandalous Reproaches* which they have moſt *injuriouſly* caſt upon me, I ſhall ſay this only;

Firſt, I know of no Plot, nor *Purpoſe* of *altering* the *Religion* eſtabliſhed.

Secondly, I have ever been far from attempting any thing that may *truly* be ſaid to *tend* that way in the leaſt Degree: And to theſe two I here offer my *Oath.*

Thirdly, If the King had a mind to change *Religion*, which I know he hath not, (and God forbid he ſhould ever have) he muſt ſeek for other *Inſtruments.* For baſely as theſe Men conceive of me, yet, I thank God, I know my Duty well both to God and the King: and I know that all the *Duty* I owe to the *King*, is under *God.* And my great Happineſs it is (tho' not *mine* alone, but your *Lordſhips* and all his Subjects with me) that we live under a *gracious* and *religious King*, that will ever give us leave to ſerve *God* firſt, and him next. But were the Days otherwiſe, I thank *Chriſt* for it, I yet know not how to ſerve any Man againſt the *Truth* of God, and I hope I ſhall never learn it.

But to return to the Buſineſs: What is their *Art* to make the World believe a *Change* of *Religion* is endeavoured? What? why, *forſooth*, they ſay, there are great *Innovations* brought in by the *Prelates*; and ſuch as tend to the advancing of *Popery.*

Now that the *Vanity* and *Falſhood* of this may appear, I ſhall humbly deſire your *Lordſhips* to give me leave to recite briefly all the *Innovations* charged upon us, be they of leſs or greater *moment*; and as briefly to anſwer them. And then you ſhall clearly ſee, whether any *Cauſe* hath been given of theſe unſavoury *Libels*; and withal, whether there be any ſhew of *Cauſe* to fear a *change of Religion.* And I will take theſe great pretended *Innovations* in order as I meet with them.

Firſt, I begin with the *News from* Ipſwich.

Where *the firſt Innovation is, that the laſt Year's Faſt was enjoyned to be without Sermons in* London, *the Suburbs, and* Page 2.
other infected Places, contrary to the Orders for other Faſts in former Times: whereas Sermons are the only Means to humble Men, &c.

To this I ſay, *1ſt.* That an *After-age* may, without *Offence*, learn to avoid any viſible *Inconvenience* obſerved in the former. And there was viſible *Inconvenience* obſerved in Men's former flocking to *Sermons* in *infected Places.*

Secondly, This was no particular *Act* of the *Prelates*; but the Buſineſs was debated at the *Council-Table*, being a matter of *State*, as well as of *Religion.* And it was concluded for no *Sermons in thoſe infected Places*, upon this *Reaſon*; that *infected Perſons* or *Families*, known in their own *Pariſhes*, might not take occaſion upon thoſe *by-days* to run to other *Churches*, where they were not known, as many uſe to do, to hear ſome *humorous* Men preach: for on the *Sundays*, when they better kept their own *Churches*, the *Danger* is not ſo great altogether.

Nor, *3dly*, is that true, that *Sermons* are the *only means* to *humble* Men. For tho' the *preaching of God's Word*, where it is performed according to his *Ordinance*, be a great means of many good *effects* in the *Souls* of Men; yet no *Sermons* are the only *means* to *humble* Men. And ſome of their *Sermons* are fitter a great deal for other *Operations:* namely, to ſtir up *Sedition*, as you may ſee by Mr. *Burton*'s; for this his printed *Libel* was a *Sermon* firſt, and a *Libel* too. And 'tis the beſt part of a *Faſt* to abſtain from ſuch *Sermons.*

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[*] *You may ſee it in the Example of St.* Paul *himſelf, whoſe very Zeal in the darkneſs of his Underſtanding, which he then had, made him perſecute Chriſt and his Church,* Act. xxii. 3, 4. *And he was very dangerous Company then; for he breathed out Threatnings againſt the Diſciples,* Act. ix. 1. *So true is that of St.* Greg. Naz. Orat. 21. Zelus Iracundiam acuit: *All Zeal puts an Edge to Anger it ſelf. And that muſt needs be dangerous in the dark.*

Page 3. 2. *The ſecond Innovation is, That* Wedneſday *was appointed for the Faſt-day, and that this was done with this Intention, by the Example of this Faſt without preaching, to ſuppreſs all the* Wedneſday Lectures *in* London.

To this I anſwer, 1*ſt*, That the appointing of *Wedneſday* for the *Faſt-day* was no *Innovation*; for it was the Day in the *laſt Faſt* before this: and *I my ſelf* remember it ſo, above forty Years ſince, more than once.

Secondly, If there had been any *Innovation* in it, the Prelates named not the *Day*: My Lord-Keeper, I muſt appeal to your Lordſhip; the *Day* was firſt named by your Lordſhip, as the *uſual* and *fitteſt* Day: And yet I dare ſay, and ſwear too, that your Lordſhip had no aim to bring in *Popery*; nor to ſuppreſs all, or any the *Wedneſday-Lectures* in *London*. Beſides, theſe men live to ſee the *Faſt* ended, and no one *Wedneſday-Lecture* ſuppreſſed.

Page 3. 3. *The third Innovation is, that the Prayer for ſeaſonable Weather was purged out of this laſt Faſt-book, which was* (ſay they) *one cauſe of Shipwrecks and tempeſtuous Weather.*

To this I ſay, *firſt* in the general; this *Faſt-book*, and all that have formerly been made, have been both made and publiſhed by the Command of the King, in whoſe ſole power it is *to call a Faſt*. And the Archbiſhop and Biſhops to whom the ordering of the *Book* is committed, have power under the King to *put in*, or *leave out*, whatſoever they think fit for the preſent *Occaſion*; as their Predeceſſors have ever done before them. Provided that nothing be in contrary to the *Doctrine* or *Diſcipline* of the *Church* of *England*.

And this may ſerve in the general for all *Alterations*, in that or any other *Faſt-book*, or Books of Devotion upon any particular Occaſions, which may and ought to *vary* with ſeveral *times*; and we may, and do, and will *juſtify*, under his Majeſty's Power, all ſuch *Alterations* made therein.

Secondly, For the *Particular*. When this *laſt Book* was ſet out the Weather was very *ſeaſonable*; and it is not the Cuſtom of the Church, nor *fit* in *itſelf*, to pray for *ſeaſonable* Weather when we *have* it, but when we *want* it. When the *former Book* was ſet out the Weather was extreme ill, and the Harveſt in *danger*; now the Harveſt was in, and the Weather good.

Thirdly, 'Tis moſt *inconſequent* to ſay, that the leaving that Prayer out of the *Book* of *Devotions*, cauſed the *Shipwrecks* and the *Tempeſts* which followed. And as bold as they are with *God Almighty*, in ſaying it was the *Cauſe*, ſure I am, God never told them that was the Cauſe. And if God never revealed it, they cannot come to know it: yet had the *Biſhops* been *Prophets*, and foreſeen theſe *Accidents*, they would certainly have prayed againſt them.

Fourthly, Had any Miniſter found it *neceſſary* to uſe this *Prayer* at any one time during the Faſt, he might with eaſe, and without danger, have ſupplied that want, by uſing that *Prayer* to the ſame purpoſe which is in the ordinary *Liturgy*.

Fifthly, I humbly deſire your Lordſhips to weigh well the *Conſequence* of this great and dangerous *Innovation*. The Prayer for fair Weather was left out of the *Book* for the *Faſt*; therefore the Prelates intend to bring in *Popery*. An excellent *Conſequence*, were there any ſhew of Reaſon in it.

Page 3. 4. *The fourth Innovation is, That there is one very uſeful Collect left out, and Clauſe omitted in another.*

To this I anſwer, *firſt*, as before: It was *lawful* for us to *alter* what we thought fit.

And *ſecondly*, Since that Collect made mention of *Preaching*, and the *Act* of *State* forbad Sermons on the *Faſt-days in infected Places*; we thought it fit, in purſuance of that *Order*, to leave out that Collect.

And *thirdly*, For the Branch in the other, which is the *firſt Collect*, tho' God did deliver our Forefathers out of *Romiſh Superſtition*, yet (God be bleſſed for it) we were never *in*. And therefore that *Clauſe* being *unfittingly* expreſſed, we thought fit to paſs it over.

Page 3. 5. *The fifth Innovation is, That in the ſixth Order for the Faſt, there is a Paſſage left out concerning the Abuſe of Faſting in relation to Merit.*

To this I anſwer, That he to whom the *ordering* of that *Book* to the Preſs was committed, did therefore leave it out, becauſe in this Age and Kingdom there is little Opinion of *meriting by Faſting*.

Nay, on the contrary, the contempt and ſcorn of all *Faſting* (ſave what *humourous* Men call for of themſelves) is ſo rank, that it would grieve any Chriſtian Man to ſee the neceſſary *Orders* of the *Church* concerning *Faſting*, both in *Lent*, and at other ſet times, ſo vilified as they are.

Page 3. 6. *The ſixth Innovation is, That the Lady* Elizabeth *and her princely Children are daſhed* (that's their Phraſe) *out of the new Collect, whereas they were in the Collect of the former Book.*

For this *firſt*, The *Author* of the *News* knows full well that they are left out of the Collect in the latter Editions of the *Common Prayer-book*, as well as in the *Book* for the *Faſt*. And this was done according to the *Courſe* of the *Church*, which *ordinarily* names none in the *Prayer*, but the *right Line deſcending*. Yet this was not done till the King himſelf commanded it; as I have to ſhew under his Majeſty's Hand.

Secondly, I beſeech your Lordſhips to conſider what muſt be the *Conſequence* here: The Queen of *Bohemia* and her Children are left out of the Collect, therefore the Prelates intend to bring in *Popery*; for *that* (you know) they ſay *is the end of all theſe Innovations*. Now if this be the End and the *Conſequence*, truly the *Libellers* have done very dutifully to the King, to *poiſon* his People with this Conceit, that the Lady *Elizabeth* and her *Children* would keep *Popery* out of this Kingdom, but the *King* and his *Children* will not. And many as good *Offices* as theſe have they done the King quite thorow theſe *Libels*, and quite thorow his Kingdoms. For my part, I honour the Queen of *Bohemia*, and her *Line*, as much as any Man whatſoever, and ſhall be as ready to ſerve them; but I know not how to depart from my *Allegiance*, as I doubt theſe Men have done.

Page 3. 7. *The ſeventh Innovation is, That theſe Words* (who art the Father of thine Elect and of their Seed) *are changed in the Preface of that Collect, which is for the Prince and the King's Children.* And with a moſt ſpiteful Inference, that *this was done by the Prelates to exclude the King's Children out of the number of God's Elect*. And they call *it an intolerable Impiety, and horrid Treaſon.*

To this I *anſwer*, *firſt*, That this *Alteration* was made in my *Predeceſſor*'s time before I had any *Authority* to meddle with theſe things, farther than I was *called* upon by him.

Secondly, This is not therefore to lay any Aſperſion upon my *Predeceſſor*, for he did in that but his Duty; for His *Majeſty* acknowledges it was done by his *ſpecial Direction*, as having then no *Children* to *pray* for.

And *thirdly*, this *Collect* could not be very *old*, for it had no Being in the *Common Prayer-book* all Queen *Elizabeth*'s time, ſhe having no Iſſue.

The truth is, it was made at the coming in of King *James*; and muſt of neceſſity be *changed* over and over again, *pro ratione temporum*, as Times and Perſons vary. And this is the *intolerable Impiety and horrid Treaſon* they *charge* upon *us*.

In this *Method* the *Innovations* are ſet down in the *News* from *Ipſwich*. But then in Mr. *Burton*'s News from *Friday-ſtreet* (called his *Apology*) they are in another Order, and more are added. Therefore with your *Lordſhip*'s leave I will not repeat any of theſe, but go on to the *reſt*, which Mr. *Burton* adds.

8. *The eighth Innovation is, That in the Epiſtle the Sunday before Eaſter, we have put out* In, *and made it,* At *the Name of* Jeſus *every Knee ſhall bow: which Alteration*, he ſaith, *is directly againſt the Act of Parliament.* Burton's Apology, Pag. 2.

Here give me leave to tell you, 'tis *At the Name of Jeſus*, in the late learned *Tranſlation* made in King *James*'s time. About which many learned Men of beſt note in the *Kingdom* were imployed, beſides ſome *Prelates*.

But to this I anſwer: firſt, 'Tis true, the *Common Prayer-book* was *confirmed* by *Act of Parliament*, and ſo all things contained in it, at the paſſing of that *Act*. But I hope if any thing were falſe *printed* then, the *Parliament* did not intend to paſs thoſe Slips for current.

Secondly, I am not of opinion, that if one *word* be put in for another, ſo they bear both the ſame *Senſe*, that there is any great matter done againſt the *Act of Parliament*.

Thirdly, This can make no *Innovation*. For In *the Name*, and At *the Name of Jeſus*, can make no *eſſential Difference* here. And Mr. *Prynn* (whoſe *darling* buſineſs it hath long been to *cry* down the *Honour* due to the *Son* of God, at the *mentioning* of his *ſaving Name Jeſus*) knows the *Grammar Rule* well, *In a place, or at a place*, &c.

Fourthly, If there were any Error in the change of *In* into *At*, I do here *ſolemnly proteſt* to you, I know not how *It* came: for *Authority* from the *Prelates*, the *Printers* had none; and ſuch a Word is eaſily changed in ſuch a *negligent Preſs* as we have in *England*. Or if any *altered* it purpoſely, for aught I know, they did it to *gratify* the *preciſer* ſort; for therein they followed the *Geneva Tranſlation*, and printed at *Geneva* 1557 *. where the words are, *At the Name of Jeſus*. And that is eighty years ago; and therefore no *Innovation* made by us. * In Octavo.

Fifthly, This I find in the *Queen's Injunctions*, without either word, *In* or *At*, *Whenſoever the Name of Jeſus ſhall be in any Leſſon, Sermon, or otherwiſe pronounced in the Church* ('tis enjoined) *that due Reverence be made of all Perſons, young and old, with lowlineſs of Courſy, and uncovering of the Heads of the Menkind, as thereunto doth neceſſarily belong, and heretofore hath been accuſtomed.* So here is *Neceſſity* laid upon it, and *Cuſtom* for it, and both expreſſed by *Authority* in the very *beginning* of the *Reformation*; and is therefore no *Innovation now*. *Injunction* 52.

9. *The ninth Innovation is, That two places are changed in the Prayer ſet forth for the fifth of* November; *and ordered to be read* (they ſay) *by Act of Parliament. The firſt place is changed thus, From, Root out that Babyloniſh and Antichriſtian Sect which ſay of* Jeruſalem, &c. *Into this form of Words; Root out that Babyloniſh and Antichriſtian Sect, (of them) which ſay*, &c. The ſecond place went thus in the old: *Cut off thoſe Workers of Iniquity, whoſe Religion is Rebellion. But in the Book printed* 1635, *'tis thus altered: Cut off thoſe Workers of Iniquity, who turn Religion into Rebellion*, &c. Page 3.

To this I ſay *Firſt*, 'Tis a *notorious untruth*, that this *Book* was *ordered* to be *read* by *Act of Parliament*. The *Act of Parliament* indeed is *printed* before it; and therein is a *Command* for *Prayers* and *Thankſgivings* every *fifth of November*, but not one word or ſyllable for the *Form of Prayer*. That's left to the *Church*, therefore here's no *Innovation* againſt that *Act of Parliament*.

Secondly, The *Alteration* firſt mentioned, that is, *That Sect*, or *that Sect of them*; is of ſo ſmall *conſequence*, as it is not worth the ſpeaking of. Beſides, if there be any thing of *moment* in it, 'tis anſwered in the next.

Thirdly, Both for *that* and the *ſecond place*, which ſeems of more *moment*; and ſo for the reſt not only in that *Book*, but that other alſo for his *Majeſty's Coronation*; *his Majeſty* expreſly commanded *Me* to make the *Alterations*, and ſee them *printed*. And here are both the *Books* with his *Majeſty's Warrant* to each of them. So that herein I conceive I did not *offend*, unleſs it were that I gave not theſe Men *notice* of it, or aſked them leave to obey the King.

Againſt this there can be but two *Objections*, ſhould *Malice* it ſelf go to work. *The one is, that I moved his Majeſty to command the change. And the other, that now, when I ſaw my ſelf challeng'd for it, I procured his Majeſty's Hand for my ſecurity.*

To theſe *I anſwer* clearly; *Firſt*, That I did not move the *King*, *directly*, or *indirectly*, to make this *change*.

And *Secondly*, That I had his *Majeſty*'s Hand to the *Book*, not *now*, but *then*, and before ever I cauſed them to be *printed*, as now they are. And that both theſe are *true*, I here again *freely* offer my ſelf to my *Oath*.

And yet *Thirdly*, That you may ſee *his Gracious Majeſty* uſed not his *Power* only in *commanding* this *change*, but his *Wiſdom* alſo; I ſhall adventure to give you my *Reaſons*, ſuch as they are, why this *Alteration* was moſt *fit*, if not *neceſſary*.

My *firſt Reaſon is*, In the *Litany* of *Henry* VIII. † and alſo under *Edward* VI. ‡ there was this *Clauſe*; *From the Tyranny of the Biſhop of* Rome, *and all his deteſtable Enormities, from all falſe Doctrine*, &c. *Good Lord deliver us.*

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† *It was put into the Litany of* Henry VIII. *his Time, as appears in his Primer, with his Injunction before it.*

‡ *And 'tis in both the Service-Books of* Edw. VI. *both that which was printed,* 1549; *and in that which was after,* An. 1552.

But in the *Litany* in Queen *Elizabeth*'s time this *Clauſe* about the *Pope* was left out, and it ſeems of purpoſe, for avoiding of *Scandal:* And yet the Prelates for that were not accounted *Innovators*, or Introducers of *Popery*. Now 'tis a far greater *Scandal* to call their Religion *Rebellion*, than it is to call their chief Biſhop *Tyrant*.

And this Reaſon is drawn from *Scandal*, which muſt ever be avoided as much as it may.

My *ſecond* Reaſon is, That the Learned make but *three* Religions to have been of old in the World, *Paganiſm*, *Judaiſm*, and *Chriſtianity*. And now they have added a *fourth*, which is *Turciſm*, and is an abſurd mixture of the other three. Now if this *ground* of theirs be true (as it is generally received) perhaps it will be of dangerous conſequence ſadly to *avow*, that the *Popiſh* Religion is *Rebellion*. That ſome *Opinions* of theirs teach *Rebellion*, that's apparently true, the other would be thought on, to ſay no more. And this Reaſon well weighed, is taken from the very *Foundations* of Religion itſelf.

My *third* Reaſon is, Becauſe if you make their Religion to be *Rebellion*, then you make their Religion and Rebellion to be all *one*. And that is againſt the ground both of *State*, and the *Law*. For when divers *Romiſh* Prieſts and Jeſuits have deſervedly ſuffered death for *Treaſon*, is it not the conſtant and juſt Profeſſion of the State, that they never put any Man to death for *Religion*, but for *Rebellion* and *Treaſon* only? Doth not the State truly affirm, that there never was any Law made againſt the *Life* of a *Papiſt*, *quatenus* a *Papiſt* only? And is not all this ſtark *falſe*, if their very Religion be *Rebellion?* For if their Religion be *Rebellion*, it is not only *falſe*, but *impoſſible*, that the ſame Man in the ſame Act ſhould ſuffer for his *Rebellion*, and not for his *Religion*.

And this King *James* of ever bleſſed Memory underſtood paſſing well, when (in his *Premonition* to all Chriſtian Monarchs) he ſaith, *I do conſtantly maintain that no Papiſt either in my Time, or in the Time of the late Queen, ever died for his Conſcience*. Therefore he did not think, their very *Religion* was *Rebellion*. Tho' this *Clauſe* paſſed through *Inadvertency* in his Time: And this *Reaſon* is grounded both upon the *Practice* and the *Juſtice* of the *Law*.

Page 336.

Which of theſe *Reaſons*, or whether any other better, were in his Majeſty's Thoughts, when he commanded the *Alteration* of this *Clauſe*, I know not. But I took it my *Duty* to lay it before you, that the King had not only *Power*, but *Reaſon* to command it.

Page 3.

10. The *Tenth Innovation is, That the Prayer for the Navy is left out of the late Book for the Faſt.*

To this I *ſay*, there is great *Reaſon* it ſhould. For the *King* had no declared *Enemy* then, nor (God be thanked) hath he *now*. Nor had he *then* any *Navy* at Sea; for almoſt all the *Ships* were come in, before the *Faſt-book* was ſet out.

But howſoever, an excellent *Conſequence* it is, if you mark it; the *Prayer* for the *Navy* was left out of the *Book* for the *Faſt*, therefore by that, and ſuch like *Innovations*, the *Prelates* intend to bring in *Popery*. Indeed, if that were a piece of the Prelates Plots to bring in *Popery* from beyond Sea, then they were mightily overſeen that they left out the Prayer for the *Navy*. But elſe what *Reaſon* or *Conſequence* is in it, I know not, unleſs perhaps Mr. *Burton* intended to befriend Dr. *Baſtwick*, and in the *Navy* bring hither the *Whore of Babylon* to be ready for his *Chriſtening*, as he moſt profanely ſcoffs.

Well; I pray God the time come not upon this *Kingdom*, in which it will be found, that no one thing hath *advanced* or *uſhered* in *Popery* ſo faſt, as the *groſs Abſurdities* even in the *Worſhip of God*, which theſe *Men*, and their *like*, *maintain* both in *Opinion* and *Practice*.

Page 105.

11. *The 11th Innovation is, The reading of the ſecond Service at the Communion-Table, or the Altar.*

To this *firſt* I can truly ſay, That ſince my own *Memory*, this was in *uſe* in very many Places, as being moſt *proper* (for thoſe *Prayers* are then read which both precede and follow the *Communion*) and by little and little this *ancient Cuſtom* was *altered*, and in thoſe Places firſt where the *Emiſſaries* of this *Faction* came to *preach*. And now if any in *Authority* offer to *reduce* it; this *ancient Courſe* of the *Church* is by and by called an *Innovation*.

Secondly, With this the *Rubricks* of the *Common Prayer-Book* agree: for the *firſt Rubrick* after the *Communion* tells us, that upon *Holy-days*, tho' there be no *Communion*, yet all elſe that's appointed at the Communion ſhall be read. *Shall be read?* That's true, but where? Why, the laſt *Rubrick* before the *Communion* tells us, that the Prieſt, ſtanding at the *North ſide* of the *holy Table*, *ſhall ſay the Lord's Prayer*, *with that which follows*. So that not only the *Communion*, but the *Prayers* which *accompany* the *Communion* (which are commonly called the *ſecond Service*) are to be read at the *Communion-Table*. Therefore if this be an *Innovation*, 'tis made by the *Rubrick*, not by the *Prelates*; and Mr. *Burton*'s Scoff that this *ſecond Service muſt be ſerved in for Dainties*, ſavours too much of *Belly* and *Profanation*.

Page 105. [*Then the ſecond Service, as Dainties, muſt be ſaid there.*] Page 105.

12. One thing ſticks much in their Stomachs, and they call it an *Innovation* too. And that is, *bowing*, *or doing Reverence at our firſt coming into the Church*, *or at our nearer Approaches to the holy Table*, *or the Altar*, (call it whether you will) in which they will needs have it, *that we worſhip the holy Table*, *or God knows what*.

To this I anſwer, *firſt*, That *God* forbid we ſhould *worſhip* any thing but God himſelf.

Secondly, That if to *worſhip God* when we *enter* into *his Houſe*, or *approach his Altar*, be an *Innovation*, 'tis a very *old one*.

Num. xx. 6.

For *Moſes* did *Reverence* at the very *Door* of the *Tabernacle*; *Hezekiah*, and all that were preſent with him, when they had made an *end of Offering*, *bowed* and *worſhipped*; *David* calls the People to it with a *Venite*, *O come let us worſhip and fall down, and kneel before the Lord our Maker:* And in *all* theſe Places (I pray mark it) 'tis *bodily Worſhip*.

2 Chron. xxix. 29.
Pſal. xcv. 6.

Nor can they ſay, that this was *Judaical* Worſhip, and now not to be *imitated*. For long before *Judaiſm* began, *Bethel*, the *Houſe of God*, was a place of *Reverence*, therefore certainly, of, and to God.

Gen. xxviii. 17, &c.

And after *Judaical Worſhip* ended, *Venite*, *Adoremus*, as far upwards as there is any Track of a *Liturgy*, was the *Introitus* of the Prieſt all the *Latin Church* over.

And in the daily *Prayers* of the *Church* of *England*, this was *retained* at the *Reformation*; and that *Pſalm*, in which is *Venite*, *Adoremus*, is commanded to begin the *Morning Service* every Day. And for aught I know, the *Prieſt* may as well leave out the *Venite*, as the *Adoremus*; the *calling* the People to their Duty, as the *Duty* itſelf, when they are come.

Therefore even according to the *Service-book* of the *Church* of *England*, the *Prieſt* and the *People* both are called upon, for *external* and *bodily Reverence* and *Worſhip* of God in his *Church*. Therefore they which do it, do not *innovate*. And yet the *Government* is ſo *moderate* (*God* grant it be not too *looſe* there while) that no Man is *conſtrained*, no Man *queſtioned*, only *religiouſly* called upon, *Venite*, *Adoremus*, *Come*, *let us worſhip*.

For my own part, I take myſelf *bound* to *worſhip* with *Body*, as well as in *Soul*, whenever I come where God is *worſhipped*. And were this *Kingdom* ſuch as would allow no *holy Table* ſtanding in its proper place (and ſuch *places* ſome there are) yet I would *worſhip God* when I came into *his Houſe*. And were the *Times* ſuch as ſhould beat down Churches, and all the *curious carved Work thereof*, *with Axes*, *and Hammers*, (and ſuch *Times* have been) yet would I *worſhip* in what Place ſoever I came to *pray*, tho' there were not ſo much as a Stone laid for *Bethel*. But this is the *Miſery*; 'tis *Superſtition* now-a-days for any Man to come with more *Reverence* into a *Church*, than a *Tinker* and his *Bitch* come into an *Ale-Houſe*; the *Compariſon* is too *homely*, but my *juſt Indignation* at the *Profaneneſs* of the Times, makes me ſpeak it.

Pſal. lxxiv. 6.

And you, my *honourable Lords* of the *Garter*, in your great *Solemnities*, you do your *Reverence*, and to *Almighty God*, I doubt not, but yet it is *Verſus Altare*, towards his *Altar*, as the greateſt *Place* of God's *Reſidence* upon Earth. (I ſay the *greateſt*, yea greater than the *Pulpit*; for *there* 'tis *Hoc eſt corpus meum*, This is my Body; but in the *Pulpit*, 'tis at moſt but, *Hoc eſt Verbum meum*, This is my Word. And a *greater Reverence* (no doubt) is *due* to the *Body*, than to the *Word* of our *Lord*. And ſo, in *relation*, *anſwerably* to the *Throne*, where his *Body* is uſually *preſent*, than to the *Seat*, whence his *Word* uſeth to be *proclaimed*. And *God* hold it *there* as *his Word*; for as too many Men uſe the Matter, 'tis *Hoc eſt verbum Diaboli*, This is the Word of the Devil, in too *many* Places; (witneſs Sedition, and the like to it.) And this *Reverence* ye do when ye enter the *Chapel*, and when you *approach* nearer to *offer*. And this is no *Innovation*, for you are *bound* to it by your *Order*, and that's not *new*.

And *Idolatry* it is not, to *worſhip* God towards his *holy Table*; for if it had been *Idolatry*, I preſume Queen *Elizabeth* and King *James* would not have *practiſed* it, no not in thoſe *Solemnities*. And being not *Idolatry*, but true *divine Worſhip*, you will, I hope, give a poor *Prieſt* leave to *worſhip God* as *yourſelves* do: for if it be *God's Worſhip*, I *ought* to do it as well as *you*; and if it be *Idolatry*, you *ought not* to do it more than I.

I ſay again, I hope a poor *Prieſt* may *worſhip God* with as lowly *Reverence* as you do, ſince you are *bound* by your *Order*, and by your *Oath*, according to a *Conſtitution* of *Henry the fifth*, (as appears) to give due *Honour and Reverence*, *Domino Deo*, *& altari ejus*, *in modum virorum eccleſiaſticorum*; that is, to the *Lord your God*, and to *his Altar* (for there is a *Reverence* due to that too, tho' ſuch as comes far ſhort of *divine Worſhip*) and this in the *Manner*, as *eccleſiaſtical Perſons* both *worſhip* and do *reverence*.

In Libro Nigro Windeſorienſi. p. 65.

The *Story* which led in this *Decree* is this: *King Henry the fifth*, that *noble and victorious Prince*, returning *gloriouſly* out of *France*, ſat at this *Solemnity*; and finding the *Knights of the Order* ſcarce bow to *God*, or but *ſlightly*, and then *bow* towards *him* and his *Seat*, *ſtartled* at it (being a *Prince then* grown as *religious* as he was before *victorious*) and after aſking the *Reaſon*, (for till *then* the *Knights* of the *Order* never *bowed* toward the *King* or his *Seat*) the Duke of *Bedford* anſwered, It was *ſettled* by a *Chapter Act three years* before. Hereupon, that great *King* replied, *No*; *I'll none of this*, *till you the Knights do it* ſatis bene, *well enough*, *and with due Performance to Almighty God*. And hereupon the fore-named *Act* proceeded, that they ſhould do *this Duty to Almighty God*, not *ſlightly*, but *ad modum virorum eccleſiaſticorum*, as *low*, as *well*, as *decently* as *Clergymen* uſe to do it.

Now if you will turn this off, and ſay, it was the *Superſtition* of that *Age* ſo to do; Biſhop *Jewel* will come in to *help me* there. For where *Harding* names divers *Ceremonies*, and *particularly bowing* themſelves, and *Adoring* at the *Sacrament*, I ſay, *Adoring* at the *Sacrament*, not *adoring* the *Sacrament*; there Biſhop *Jewel* (that *learned*, *painful*, and *reverend Prelate*) *approves all* both the *Kneeling* and the *Bowing*, and the *Standing up* at the *Goſpel* (which as *antient* as it is in the *Church*, and a common *Cuſtom*, is yet *fondly* made another of their *Innovations:*) And further the *Biſhop* adds, *That they are all commendable Geſtures, and Tokens of Devotion, ſo long as the People underſtand what they mean, and apply them unto God*. Now with us the *People* did ever *underſtand* them *fully*, and apply them to God, and to none but God, till theſe *factious* Spirits, and their *like*, to the great *Diſſervice* of God and his Church, went about to perſuade them that they are *ſuperſtitious*, if not *idolatrous* Geſtures: as they make every thing elſe to be, where *God* is not ſerved *ſlovenly*.

Bp. *Jewel's* Reply to *Harding's* Anſwer, *Art.* 3. *Div.* 25.

13. *The thirteenth Innovation is, The placing of the holy Table altarwiſe, at the upper end of the Chancel*; that is, *the ſetting of it North and South, and placing a Rail before it*, to keep it from Profanation, *which*, *Mr.* Burton ſays, *is done to advance and uſher in Popery.*

P. 4, 5, 105.

To this I anſwer, That 'tis no *Popery* to ſet a Rail to keep *Profanation* from that *holy Table:* nor is it any *Innovation* to place it at the *upper end* of the *Chancel* as the *Altar* ſtood. And this appears both by the *Practice* and by the *Command* and *Canon* of the Church of *England*.

Firſt, By the *Practice* of the Church of *England*. For in the *King's Royal Chapels*, and *divers Cathedrals*, the holy *Table* hath ever ſince the *Reformation* ſtood at the *upper end* of the *Choir*, with the *large* or *full ſide* towards the People.

And tho' it ſtood in moſt *Pariſh* Churches the *other way*, yet whether there be not more Reaſon, the *Pariſh* Churches ſhould be made *con-*

formable to the *Cathedral* and *Mother* Churches, than the *Cathedrals* to them, I leave to any *reaſonable* Man to *judge*.

And yet here is nothing done either by *Violence* or *Command*, to take off the *Indifferency* of the ſtanding of the *holy Table* either way, but only by *laying* it *fairly* before Men, how fit it is there ſhould be *Order* and *Uniformity*; I ſay, ſtill reſerving the *Indifferency* of the Standing.

But howſoever I would fain know, how any *diſcreet moderate* Man dares ſay, that the placing of the *holy Table Altar-wiſe* (ſince they will needs call it ſo) is done either *to advance* or *uſher in Popery?* For did Queen *Elizabeth* baniſh *Popery*, and yet did ſhe all along her *Reign*, from *firſt* to *laſt* leave the *Communion-Table* ſo ſtanding in her own *Chapel Royal*, in St. *Paul*'s and *Weſtminſter*, and other Places; and *all* this of *purpoſe to advance* or *uſher in* that *Popery* which ſhe had driven out?

And ſince *her Death* have two *gracious* Kings kept out *Popery* all their *Times*, and yet left the *holy Table* ſtanding *as it did* in the *Queen's Time*, and all of *purpoſe* to *advance* or *uſher in Popery* which they *kept out?*

Or what's the Matter? May the *holy Table* ſtand this way in the King's *Chapel* or *Cathedrals*, or *Biſhops Chapels*, and not elſewhere? *Surely*, if it be decent and *fit* for *God's Service*, it may ſtand *ſo* (if *Authority* pleaſe) in *any Church*. But if it *advance* or *uſher in any Superſtition* and *Popery*, it ought to *ſtand ſo* in none.

Nor hath any King's *Chapel* any *Prerogative* (if *that* may be called one) above any *ordinary Church* to *diſſerve God* in by any *ſuperſtitious Rites*. Where, give me leave to tell you, that the *King* and his *Chapel* are moſt *jeeringly* and with *Scorn abuſed*, in the laſt Leaf of Mr. *Burton*'s *mutinous Appeal*; for ſuch it is.

Secondly, This appears by the *Canon* or *Rule* of the *Church* of *England* too; for 'tis plain in the laſt *Injunction* of the Queen, That the *holy Table ought* to ſtand at the *upper end* of the *Quire*, *North and South*, or *Altar-wiſe*. For the Words of the *Queen's Injunctions* are theſe:

The holy Table in every Church (mark it I pray, not in the *Royal Chapel* or *Cathedrals only*, but in *every Church*) *ſhall be decently made and ſet in the Place where the Altar ſtood*. Now the *Altar* ſtood at the *upper end* of the *Quire*, *North and South*, as appears before by the *Practice* of the Church. And there to ſet it otherwiſe, is to ſet it *croſs* the Place, *not In* the Place where the *Altar* ſtood: and ſo *Stulti dum vitant vitia*---- weak men, as theſe *Libellers* are, run into one *Superſtition* while they would avoid another; for they run upon the *Superſtition* of the *Croſs*, while they ſeek to avoid the *Superſtition* of the *Altar*. So you ſee here's neither *Popery* nor *Innovation* in all the *Practice* of Queen *Elizabeth*, or ſince.

Theſe Words of the Injunction are ſo plain, as that they can admit of no Shift.

And give me leave to tell you, that a very learned *Prelate* of this *Church*, and *one* whom, *I think*, theſe Men will not *accuſe*, as a Man like to *advance* or *uſher in Popery*, is of the ſame *Opinion*: 'Tis my Lord the Biſhop of *Saliſbury*.

Some Difference was lately riſing about placing the *Communion-Table* in a *Pariſh Church* of his *Dioceſe*. The *Biſhop* carefully to prevent all *Diſorder*, ſends his *Injunction* under his *Hand* and *Seal* to the *Curate* and *Church Wardens*, to *ſettle that* Buſineſs: In which he hath theſe *two* Paſſages *remarkable*. I have *ſeen* and *read* the *Order*.

May, 17, 1637.

The *firſt Paſſage* is this: *By the Injunction of Queen* Elizabeth (ſaith he) *and by* Can. 82. *under King* James, *the Communion Table ſhould ordinarily be ſet and ſtand with the ſide to the Eaſt-Wall of the Chancel.* Therefore this is no *Innovation*, ſince there is *Injunction* and *Canon* for it.

The *other* Paſſage is this: *'Tis Ignorance* (ſaith that learned Biſhop) *to think that the ſtanding of the holy Table there reliſhes of Popery.* Therefore, if it do not ſo much as *reliſh* of *Popery*, it can neither *advance* it, nor *uſher it in*. And therefore this is a moſt odious *Slander* and *Scandal* caſt upon *Us*.

So here's *enough* both for the *Practice* and *Rule* of the Church of *England* ſince the *Reformation*. Now *before* that Time, both in this and other *Churches* of *Chriſtendom*, in the *Eaſt* and *Weſt*, *ordinarily* the *holy Table* or *Altar* ſtood *ſo:* againſt this Mr. *Burton* ſays little.

But the *Lincolnſhire* Miniſter comes in to play the *Puritan* for that. Concerning which *Book* (falling thus in my way) and the *nameleſs Author* of it, I ſhall only ſay theſe *two things*.

The *one* is, That the *Author prevaricates* from the *firſt* Word to the *laſt* in the Book; for he takes on him both for the *Name* and for the *Placing* of the *holy Table*, and the like, to prove that *generally* and *univerſally*, and *ordinarily* in the whole *Catholick Church*, both *Eaſt* and *Weſt*, the *holy Table* did not ſtand at the *upper end* of the *Quire* or *Chancel*. And this he muſt *prove*, or he doth nothing.

Now when he comes to make his *Proofs*, they are almoſt all of them *particular*, *few* or *none general* and *concludent*; for he neither brings *Teſtimonies* out of the general and received *Rituals* of the *Eaſtern* and *Weſtern Churches*, nor of *Fathers* and *Hiſtories* of the *Church*, which ſpeak in *general* Terms of *all*, but where they ſpeak of *particular Churches* only.

So that *ſuppoſe* the moſt that can be, that is, ſuppoſe his *Quotations* be all *truly* alledged, and true too in the *Senſe* that the *Miniſter* takes them (tho' in *very truth*, the *Places*, *moſt* of them, are neither *truly* alledged, nor ſenſed) yet they are but *Exceptions* of, and *Exemptions* from the *general Practice*. And you know both in *Law* and *Reaſon*, *Exceptio firmat Regulam in non exceptis*. So that upon the ſudden I am not able to *reſolve*, whether this Miniſter hath done more *wrong* to himſelf or his *Readers*, for he hath *abuſed* both.

The *other* is, That in the *Judgment* of very *many learned* Men, which have peruſed this Book, the *Author* is clearly conceived to *want* a great deal of that *Learning* to which he *pretends*; or elſe to have written this *Book* wholly, and reſolvedly againſt both his *Science* and his *Conſcience*.

And *for my own Part*, I am fully of *Opinion*, this *Book* was *thruſt* now to the *Preſs*, both to *countenance* theſe *Libellers*, and, as much as in him lay, to *fire* both *Church* and *State*.

And tho I *wonder not* at the *Miniſter*, yet I ſhould *wonder* at the *Biſhop* of the *Dioceſe* (a Man of Learning and Experience) that he ſhould give *Teſtimony* to ſuch a Buſineſs, and in ſuch *Times* as theſe.

And *once more*, before I leave the *holy Table*, *Name*, and *Thing*, give me leave to put you in mind, that there is *no danger* at all in the *Altar*, *Name*, or *Thing*. For at the *Beginning* of the *Reformation*, tho' there were a *Law* for the taking down of the *Altars*, and ſetting up of *holy Tables* in the room of them; yet in ſome Places the *Altars* were *not ſuddenly removed*. And what ſays the *Queen* in her *Injunction* to this? Why ſhe ſays, *That there ſeems no Matter of great Moment in this, ſaving for Uniformity, and the better Imitation of the Law in that behalf.* Therefore for any *Danger* or *Hurt* that was in the *Altars*, *Name*, or *Thing*, they might *even then* have been left ſtanding, *but for Uniformity, and the Imitation of the Law.*

Injunct. *ultim.*

But howſoever, it follows in the ſame *Injunction*, *that when the* Altar *is taken down*, *the holy Table* ſhall *be ſet* In, *(not* croſs) *the Place where the Altar ſtood*; which (as is aforeſaid) muſt needs be *Altar-wiſe*.

14. The *fourteenth* and *laſt Innovation* comes with a *mighty Charge*, and 'tis taken out of an *Epiſtle* to the *Temporal Lords* of his *Majeſty's Privy Council*. Of which *Epiſtle* we got one *Sheet*, and ſo (for aught I yet know) that *Impreſſion* ſtaid: In that *Sheet* is this *Charge*; the *Words* are,

The Prelates, to juſtify their Proceedings, have forged a new Article of Religion brought from Rome, *which gives them full Power to alter the Doctrine and Diſcipline of our Church at a Blow*, (as they interpret it) *and have foiſted it* (ſuch is their Language) *into the beginning of the twentieth Article of our* Church. *And this is in the laſt Edition of the Articles*, Anno 1628. *in Affront of his Majeſty's Declaration before them*, &c.

The *Clauſe* (which they ſay is *forged* by us) is this: *The Church* (that is, *the Biſhops*, as they expound it) *hath Power to decree Rites and Ceremonies, and Authority in Matters of Faith.* (The Word is *Controverſies of Faith*, by their leave.) *This Clauſe* (ſay they) *is a Forgery fit to be examined, and deeply cenſured in the Star-Chamber. For 'tis not to be found in the* Latin *or* Engliſh *Articles of* Edward VI. *or Queen* Elizabeth, *ratified by Parliament.*

And then in the Margin thus, *If to forge a Will or Writing be cenſurable in the Star-chamber, which is but a Wrong to a private Man; how much more the Forgery of an Article of Religion, to wrong the whole Church, and overturn Religion, which concerns all our Souls?*

This is a *heavy Charge*, my Lords, but I thank God the *Anſwer's* eaſy.

And truly I grant, that to *forge* an *Article* of *Religion* in *Whole* or in *Part*, and then to thruſt it upon the *Church*, is a moſt *heinous Crime*, far worſe than the *forging of a Deed*; and is certainly *very deeply cenſurable* in this *Court*. And I would have humbly beſought you, that a *deep Cenſure*, might have been laid upon it, but that this *Sheet* was found after, and ſo is not annexed to the *Information*, nor in *Judgment* at this *preſent* before you.

But then, *My Lords*, I muſt tell you, I hope to make it as *clear* as the *Day*, *that* this *Forgery* was not, *that* this *Clauſe* mentioned was added by the *Prelates* to the *Article*, to gain *Power* to the *Church*, and ſo to ſerve *our Turns*. But that that *Clauſe* in the *beginning* of the *Article* was by theſe Men, or at leaſt by ſome of their *Faction*, *raſed out*, and this to weaken the *juſt* Power of the Church to ſerve *their Turns*.

They ſay (to *juſtify* their *Charge)* that this *Clauſe* is not to be found in the *Articles*, *Engliſh* or *Latin*, of either *Edw.* VI. or Queen *Elizabeth*.

I anſwer, The *Articles* of *Edw.* VI. and thoſe made under Queen *Elizabeth differ* very much. And thoſe of *Edw.* VI. are not now *binding*. So whether the *Clauſe* be *in* or *out* of *them*, 'tis not much *material*.

But for the *Articles* of the Church of *England*, made in the *Queen's* Time, and now in *Force*, that *this Clauſe* for the *Power* of the *Church* to *decree Ceremonies*, *and to have Authority in Controverſies of Faith*, ſhould not be found in *Engliſh* or *Latin Copies*, till the *Year* 1628, that it was ſet forth with the *King's Declaration* before it, is to me a *Miracle*; but *your Lordſhips* ſhall ſee the *falſhood* and *boldneſs* of theſe Men.

What! Is this *affirmative Clauſe* in no *Copy*, *Engliſh* or *Latin*, till the *Year* 1628? *Strange!* Why, *my Lords*, I have a *Copy* of the *Articles* in *Engliſh*, of the *Year* 1612, and of the *Year* 1605. and of the *Year* 1593. and in *Latin* of the *Year* 1563. which was one of the *firſt printed Copies*, if not the *firſt of all*. For the Articles were *agreed* on but the 29*th Day of* January.

Anno 1562-3 { According to the *Engliſh* Account.
According to the *Julian* Account.

And in all theſe, this *affirmative Clauſe* for the Churche's *Power* is *in*. And is not this ſtrange *boldneſs* then to *abuſe* the World, and falſly to ſay 'tis in no *Copy*, when *I myſelf*, out of my own *Store*, am able to ſhew it in ſo *many*, and ſo *antiently?*

But, *My Lords*, I ſhall make it plainer yet: For 'tis not fit concerning an *Article* of *Religion*, and an *Article* of ſuch *Conſequence* for the *Order*, *Truth*, and *Peace* of this *Church*, you ſhould *rely* upon my *Copies*, be they never ſo *many* or never ſo *ancient*.

Therefore I ſent to the *publick Records* in my *Office*; and here under my *Officer*'s Hand, who is a *publick Notary*, is returned me the *twentieth Article* with this *affirmative Clauſe* in it. And there is alſo the whole *Body* of the *Articles* to be ſeen.

By this your *Lordſhips* ſee how free the *Prelates* are from *forging* this part of the *Article*. Now let theſe Men quit themſelves and their *Faction*, as they can, for their *Index Expurgatorius* and their foul *Raſure* in leaving out this *part* of the *Article*. For to *leave out* of an *Article* is as great a *Crime* as to *put in*; and a *main Raſure* is as *cenſurable* in this *Court* as a *Forgery*.

Why, but then, my *Lords*, what is this *Myſtery of Iniquity?*

Truly, I cannot certainly tell; but as far as I can, I'll tell you.

The *Articles* you ſee were *fully* and *fairly* agreed to, and *ſubſcribed* in the *Year* 1562-3. But after this, in the *Year* 1571, there were ſome that *refuſed* to *ſubſcribe*; but why they did ſo, is not *recorded*. Whether it were about this *Article* or any other, I know not. But in Fact this is manifeſt, that in that *Year* 1571, the *Articles* were *printed* both in *Latin* and *Engliſh*, and this *Clauſe* for the *Church* left out of both. And certainly this could not be done, but by the *malicious Cunning* of that *oppoſite Faction*. And tho' I ſhall ſpare *dead* Men's *Names* where I have not certainty; yet if you be *pleaſed* to *look back* and *conſider* who they were that *governed* Buſineſſes in 1571, and *rid* the Church almoſt at their *Pleaſure*, and how *potent* the *Anceſtors* of theſe *Libellers* began *then* to *grow*, you will think it no *hard* matter to have the *Articles* printed, and *this Clauſe left out.*

And yet 'tis plain, That, after the ſtir about *Subſcription* in the *Year* 1571, the *Articles* were *ſettled* and *ſubſcribed* unto at laſt, as in the *Year* 1562, with this *Clauſe* in them for the Church: For looking farther into the *Records* which are in *mine own* Hands, I have found the *Book* of 1562-3, ſubſcribed by *all* the *lower Houſe of Convocation*, in this very *Year* of *Contradiction*, 1571. Dr. *John Elmar* (who was after *Lord Biſhop of London)* being then *Prolocutor: Alexander Nowel Dean of St. Paul's*, having been *Prolocutor* in 1562-3, and yet living, and preſent and ſubſcribing in 1571. Therefore, I do here openly in *Star-Chamber* charge upon that *pure Sect* this *foul Corruption* of *falſifying the Articles* of the Church of *England*; let them take it off as they can.

I have now done, and 'tis time I ſhould, with the *Innovations* charged upon the *Prelates*, and fit to be anſwered here.

Some few more there are, but they belong to matter of *Doctrine*, which ſhall preſently be anſwered, *Juſto Volumine*, at large, to *ſatisfy* all *well-minded* People. But when Mr. *Burton's Book*, which is the *main one*, *is anſwered*, (I mean his *Book*, not his *Railing)* neither *Prynn*, nor *Baſtwick* nor any *Attendants* upon *Rabſhakeh* ſhall *by me* or *my Care* be *anſwered.* If this *Court* find not a way to *ſtop* theſe *Libellers Mouths* and *Pens*, for *me* they ſhall *rail* on till they be *weary.*

Yet *one* thing more, I beſeech *you*, give *me* leave to *add*. *'Tis* Maſter Page 175. *Burton's Charge* upon the *Prelates*, *That the Cenſures formerly laid upon Malefactors, are now put upon God's Miniſters for their Virtue and Piety.*

A *heavy Charge* this too. But if he, or *any Man* elſe, can *ſhew* that any Man hath been *puniſhed* in the *High Commiſſion*, or elſewhere, by the *Prelates*, for *Virtue* and *Piety*, there is all the reaſon in the World *we* ſhould be *ſeverely puniſhed* our ſelves. But the truth is, the *Virtue* and *Piety* for which theſe *Miniſters* are *puniſhed*, is for preaching *Schiſm* and *Sedition*, many of their *Sermons* being as bad as their *Libels*; as *Burton*'s *Libel* was one of his *Sermons* firſt. But whether this ſtuff have any *affinity* with *Virtue* and *Piety*, I ſubmit to any *Chriſtian Reader.*

And yet Mr. *Burton* is ſo *confident* of his *Innocency*, even in this *Cauſe* wherein he hath ſo *foully* carried himſelf, that he breaks forth into theſe Page 7. words: *I never ſo much as once dreamed, that Impiety and Impudency itſelf, in ſuch a Chriſtian Sate as this is, and under ſuch a gracious* Prince, *durſt ever thus publickly have called me in queſtion, and that upon the open Stage*, &c.

You ſee the *boldneſs* of the *Man*, and in as *bad a Cauſe*, as (I think) in *this kind* ever *any Man* had.

I ſhall *end* all with a Paſſage out of St. *Cyprian*; when he, then *Biſhop* of *Carthage*, was *bitterly railed* upon by a pack of *Schiſmaticks*, *his* Lib. 1. Ep. 3. *Anſwer* was, and 'tis now *mine:* They have *railed* both *bitterly* and *falſly* upon *me*, and yet *Non oportet me paria cum illis facere*; it becomes not me to anſwer them with the like, either *Levities* or *Revilings*, but to *ſpeak* and *write* that only which becomes *Sacerdotem Dei*, a *Prieſt* of God.

Neither ſhall I in this *give way* (tho' I have been *extremely* vilified) to Pſal. 37. 8. either *Grief* or *Paſſion* to *ſpeak*, *remembring* that of the *Pſalmiſt*, *Fret not thyſelf, elſe ſhall thou be moved to do evil.*

Neither yet by *God's Grace* ſhall the *Reproaches* of *ſuch* Men as *theſe*, make me *faint* or *ſtart aſide*, either from the *right Way* in matter of *Practice* (they are St. *Cyprian*'s words again) or *à certâ regulâ*, Ib. p. 10. from the certain Rule of *Faith.*

And ſince in *former* Times, ſome ſpared not to call the *Maſter* of the Houſe *Beelzebub*, how much more will they be *bold* with *them* of his *Houſhold*, as it is in St. *Matthew*. And ſo *bold* have theſe St. Mat. 10. 25. Men been; but the next *words* of our *Saviour* are, *Fear them not.*

I humbly crave *pardon* of your *Lordſhips* for this my *neceſſary length*, and give you *all* hearty Thanks for your *noble Patience*, and your *juſt* and *honourable Cenſure* upon theſe Men, and your *unanimous diſlike* of them, and *defence* of the Church.

But becauſe the *Buſineſs* hath ſome *Reflection* upon *my ſelf*, I ſhall *forbear* to *Cenſure* them, and *leave* them to God's *Mercy*, and the King's *Juſtice.*

On the 30*th of* June *following, the Sentence was executed, when Dr.* Baſtwick, *Mr.* Prynn, *and Mr.* Burton *were conveyed to the Pillory in the* Palace-yard, Weſtminſter.

DR. *Baſtwick* and Mr. *Burton* firſt meeting, they did cloſe one in the other's Arms three times, with as much Expreſſions of Love as might be, rejoicing that they met at ſuch a place, upon ſuch an occaſion, and that God had ſo highly honoured them, as to call them forth to ſuffer for his glorious Truth.

Then immediately after, Mr. *Prynn* came, the Doctor and he ſaluting each other, as Mr. *Burton* and he did before. The Doctor then went up firſt on the Scaffold, and his Wife immediately following came up to him, and ſaluted each Ear with a Kiſs, and then his Mouth. Her Huſband deſired her not to be in the leaſt manner diſmayed at his Sufferings: And ſo for a while they parted, ſhe uſing theſe words, Farewel my deareſt, be of good comfort, I am nothing diſmayed. And then the Doctor began to ſpeak theſe words.

Dr. *Baſtwick.* There are many that are this Day Spectators of our ſtanding here, as Delinquents, tho' not Delinquents, we bleſs God for it. I am not conſcious to my ſelf wherein I have committed the leaſt Treſpaſs (to take this outward ſhame) either againſt my God, or my King. And I do the rather ſpeak it, that you that are now Beholders may take notice how far Innocency will preſerve you in ſuch a Day as this is; for we come here in the ſtrength of our God, who hath mightily ſupported us, and filled our Hearts with greater Comfort than our Shame or Contempt can be. The firſt occaſion of my Trouble was by the Prelates, for writing a Book againſt the Pope, and the Pope of *Canterbury* ſaid I wrote againſt him, and therefore queſtioned me: but if the Preſſes were as open to us as formerly they have been, we would ſhatter his Kingdom about his Ears: But be ye not deterred by their Power, neither be affrighted at our Sufferings; let none determine to turn from the Ways of the Lord, but go on, fight couragiouſly againſt *Gog* and *Magog*. I know there be many here who have ſet many days apart for our Behalf (let the Prelates take notice of it) and they have ſent up ſtrong Prayers to Heaven for us, we feel the Strength and Benefit of them at this time; I would have you to take notice of it, we have felt the Strength and Benefit of your Prayers all along this Cauſe. In a word, ſo far I am from baſe Fear, or caring for any thing that they can do, or caſt upon me, that had I as much Blood as would ſwell the *Thames*, I would ſhed it every Drop in this Cauſe; therefore be not any of you diſcouraged, be not daunted at their Power; ever labouring to preſerve Innocency, and keep Peace within, go on in the ſtrength of your God, and he will never fail you in ſuch a Day as this: As I ſaid before, ſo I ſay again, had I as many Lives as I have Hairs on my Head, or Drops of Blood in my Veins, I would give them all up for this Cauſe. This Plot of ſending us to thoſe remote Places, was firſt conſulted and agitated by the Jeſuits, as I can make it plainly appear. O ſee what Times we are fallen into, that the Lords muſt ſit to act the Jeſuits Plots! For our own parts, we owe no Malice to the Perſons of any of the Prelates, but would lay our Necks under their Feet to do them good as they are Men, but againſt the Uſurpation of their Power, as they are Biſhops, we do profeſs ourſelves Enemies till Dooms-day.

Mr. *Prynn* ſhaking the Doctor by the Hand, deſired him that he might ſpeak a word or two. With all my heart, ſaid the Doctor.

The Cauſe (ſaid Mr. *Prynn*) of my ſtanding here, is for not bringing in my Anſwer, for which my Cauſe is taken *pro confeſſo* againſt me. What Endeavours I uſed for the bringing in thereof, that God and my own Conſcience, and my Counſel knows, whoſe Cowardice ſtands upon Record to all Ages. For rather than I will have my Cauſe a leading Cauſe, to deprive the Subjects of that Liberty which I ſeek to maintain, I rather expoſe my Perſon to a leading Example, to bear this Puniſhment: And I beſeech you all to take notice of their Proceedings in this Cauſe. When I was ſerved with a *Subpœna* into this Court, I was ſhut up cloſe Priſoner, that I could have no acceſs to Counſel, nor admitted Pen, Ink or Paper to draw up my Anſwer by my Inſtructions, for which I fee'd them twice (tho' to no purpoſe) yet when all was done, my Anſwer would not be accepted into the Court, tho' I tender'd it upon my Oath. I appeal to all the World, if this were a legal or juſt Proceeding. Our Accuſation is in point of Libel (but ſuppoſedly) againſt the Prelates; to clear this now, I will give you a little Light what the Law is in point of Libel (of which Profeſſion I have ſometimes been, and ſtill profeſs myſelf to have ſome Knowledge in.) You ſhall find in caſe of Libel, two Statutes: The one in the ſecond of Queen *Mary*, the other in the ſeventh of Queen *Elizabeth.* That in the ſecond of Queen *Mary*, the Extremity and Height of it runs thus, That if a Libeller doth go ſo far and ſo high as to libel againſt King or Queen by Denomination, the Height and Extremity of the Law is, that they lay no greater Fine on him than an hundred Pounds, with a Month's Impriſonment, and no corporal Puniſhment, except he doth refuſe to pay his Fine; and then to inflict ſome Puniſhment in lieu of that Fine at the Month's end. Neither was this Cenſure to be paſſed on him, except it were fully proved by two Witneſſes, who were to produce a Certificate of their good Demeanor for the credit of their Report, or elſe confeſſed by the Libeller. You ſhall find in that Statute 7 *Eliz.* ſome further Addition to the former of 2 *Mariæ*, and that only in point of Fine and Puniſhment, and it muſt ſtill reach as high as the Perſon of the King or Queen. Here this Statute doth ſet a Fine of two hundred Pounds; the other but one: This ſets three Months Impriſonment, the former but one: So that therein only they differ. But in this they both agree, namely at the end of his Impriſonment to pay his Fine, and ſo to go free without any further queſtion: But if he refuſe to pay his Fine, then the Court is to inflict ſome Puniſhment on him correſpondent to his Fine. Now ſee the Diſparity between thoſe Times of theirs and ours. A Libeller in Queen *Mary*'s time was fined but an hundred Pounds, in *Queen Elizabeth*'s time two hundred: In Queen *Mary*'s days but a Month's Impriſonment; in Queen *Elizabeth*'s three Months, and not ſo great a Fine if they libelled againſt King or Queen. Formerly the greateſt Fine was but two hundred Pounds, tho' againſt King or Queen: now five thouſand Pounds, tho' but againſt the Prelates, and that but ſuppoſedly, which cannot be proved: Formerly, but three Months Impriſonment; now perpetual Impriſonment: Then, upon paying the Fine, no corporal Puniſhment was to be inflicted; but now, infamous Puniſhment with the loſs of Blood, and all other Circumſtances that may aggravate it. See now what Times we are fallen into, when that libelling, if it were ſo, againſt Prelates only, ſhall fall higher than if it touched Kings and Princes.

That which I have to ſpeak of next, is this: The Prelates find themſelves exceedingly aggrieved and vexed againſt what we have written concerning the Uſurpation of their Calling, where indeed we declare their Call not to be *Jure Divino.* I make no doubt, but there are ſome Intelligencers or Abettors, within the Hearing, whom I would have well to know and take notice of what I now ſay. I here in this place make this Offer to them, That if I may be admitted a fair Diſpute, on fair Terms, for my Cauſe; that I will maintain, and do here make the Challenge againſt all the Prelates in the King's Dominions, and againſt all the Prelates in Chriſtendom, (let them take in the Pope, and all to help them) that their Calling is not *Jure Divino.* I will ſpeak it again, I make the Challenge againſt all the Prelates in the King's Dominions, and all Chriſtendom to maintain, that their Calling is not *Jure Divino.* If I make it not good, let me be hanged up at the Hall Gate: Whereupon the People gave a great Shout.

The next thing that I am to ſpeak of, is this: The Prelates find themſelves exceedingly aggrieved and vexed againſt what I have written in point of Law, concerning their Writs and Proceſs, That the ſending forth of Writs and Proceſs in their own Name, is againſt all Law and Juſtice, and doth intrench on his Majeſty's Prerogative Royal, and the Subjects Liberties. And here now I make a ſecond Challenge againſt all the Lawyers in the Kingdom, in way of fair Diſpute, that I will maintain, the Prelates ſending forth of Writs and Proceſs in their own Names, to be againſt all Law and Juſtice, and intrencheth on his Majeſty's Prerogative Royal, and Subjects Liberty. Leſt it ſhould be forgotten, I ſpeak it again, I here challenge all the whole Society of the Law, upon a fair Diſpute, to maintain, that the ſending forth of Writs and Proceſs in the Prelates own Names, to be againſt all Law and Juſtice, and intrencheth on the King's Prerogative Royal, and the Subjects Liberty. If I be not able to make it good; let me be put to the tormentingeſt Death they can deviſe.

We praiſe the Lord, we fear none but God and the King: Had we reſpected our Liberties, we had not ſtood here at this time: it was for the general Good and Liberties of you all that we have now thus far engaged our own Liberties in this Cauſe. For did you know how deeply they have intrenched on your Liberties in point of Popery; if you knew but into what Times you are caſt, it would make you look about you: and if you did but ſee what Changes and Revolutions of Perſons, Cauſes and Actions, have been made by one Man, you would more narrowly look into your Privileges, and ſee how far your Liberty did lawfully extend, and ſo maintain it.

This is the ſecond time that I have been brought to this Place; who hath been the Author of it, I think you all well know: For the firſt time, if I could have had leave given me, I could eaſily have cleared myſelf of that which was then laid to my Charge; as alſo I could have done now, if I might have been permitted to ſpeak: that Book for which I ſuffered formerly, eſpecially for ſome particular Words therein written, which I quoted out of God's Word and antient Fathers, for which notwithſtanding they paſſed Cenſure on me; that ſame Book was twice licenſed by publick Authority, and the ſame Words I then ſuffered for, they are again made uſe of, and applied in the ſame Senſe by *Heylin*, in his Book lately printed and dedicated to the King, and no Exceptions taken againſt them, but are very well taken.

7 *Feb.* 1633.

Hiſtriomaſtix.

Dr. *Baſtwick*. And there is another Book of his licenſed, wherein he rails againſt us three at his pleaſure, and againſt the Martyrs that ſuffered in Queen *Mary*'s days, calling them Schiſmatical Hereticks; and there is another Book of *Pocklington*'s licenſed: they be as full of Lyes as Dogs be full of Fleas; but were the Preſſes as open to us as they are to them, we would pay them, and their great Maſter that upholds them, and charge them with notorious Blaſphemy.

Altare Chriſtianum.

Mr. *Prynn*. You all at this preſent ſee there be no degrees of Men exempted from ſuffering: Here is a reverend Divine for the Soul, a Phyſician for the Body, and a Lawyer for the Eſtate: I had thought they would have let alone their own Society, and not have meddled with any of them. And the next (for ought I know) may be a Biſhop. You ſee they ſpare none of what Society or Calling ſoever, none are exempted that croſs their own Ends. Gentlemen, look to yourſelves; if all the Martyrs that ſuffered in Queen *Mary*'s days are accounted and called ſchiſmatical Hereticks and factious Fellows; * what ſhall we look for? Yet ſo they are called in a Book lately come forth under Authority. And ſuch factious Fellows are we, for diſcovering a Plot of Popery. Alas poor *England*, what will become of thee, if thou look not the ſooner into thine own Privileges, and maintaineſt not thine own lawful Liberty? Chriſtian People, I beſeech you all, ſtand firm, and be zealous for the Cauſe of God, and his true Religion, to the ſhedding of your deareſt Blood, otherwiſe you will bring your ſelves, and all your Poſterities, into perpetual Bondage and Slavery.

Now the Executioner being come to ſear him and cut off his Ears, Mr. *Prynn* ſpake theſe Words to him: Come Friend, come, burn me, cut me, I fear not. I have learned to fear the Fire of Hell, and not what Man can do unto me: Come ſear, ſear me, I ſhall bear in my Body the Marks of the Lord Jeſus: Which the Executioner performed with extraordinary Cruelty, heating his Iron twice to burn one Cheek: and cut one of his Ears ſo cloſe, that he cut off a piece of his Cheek. He ſaid, *The more I am beaten down, the more am I lift up.*

Upon the day for Execution, Mr. *Burton* being brought into the *Palace-yard*, unto a Chamber that looked into the Yard, where he viewed three Pillories there ſet up: Methinks (ſaid he) I ſee *Mount Calvary*, where the three Croſſes (one for Chriſt, and the other two for the two Thieves) were pitched: And if Chriſt were number'd among Thieves, ſhall a Chriſtian (for Chriſt's Cauſe) think much to be numbered among Rogues, ſuch as we are condemned to be? Surely, if I be a Rogue, I am Chriſt's Rogue, and no Man's. And a little after, looking out at the Caſement towards the Pillory, he ſaid, I ſee no difference between looking out of this ſquare Window and yonder round Hole. Pointing towards the Pillory, he ſaid, It is no matter of difference to an honeſt Man. And a little after that, looking ſomewhat wiſhly upon his Wife, to ſee how ſhe did take it, ſhe ſeemed to him to be ſomething ſad; to whom he thus ſpake: Wife, why art thou ſo ſad? To whom ſhe made anſwer, Sweetheart, I am not ſad. No, ſaid he? See thou be not, for I would not have thee to diſhonour the Day, by ſhedding one Tear, or fetching one Sigh, for behold there, for thy Comfort, my triumphant Chariot, on which I muſt ride for the honour of my Lord and Maſter: And never was Wedding-day ſo welcome and joyful a Day as this Day is; and ſo much the more, becauſe I have ſuch a noble Captain and Leader, who hath gone before me with ſuch undauntedneſs of Spirit, that he ſaith of himſelf, I gave my Back to the Smiters, my Cheeks to the Nippers, they pluck'd off the Hair, I hid not my Face from Shame and Spitting, for the Lord God will help me, therefore ſhall I not be confounded: therefore have I ſet my Face like a Flint, and I know I ſhall not be aſhamed. At length being carried toward the Pillory, he met Dr. *Baſtwick* at the foot of the Pillory, where they lovingly ſaluted and embraced each other; and parting a little from him, he returned and moſt affectionately embraced him the ſecond time, being heartily ſorry he miſſed Mr. *Prynn*, who was not yet come before he was gone up to his Pillory, which ſtood alone next the Star-Chamber, and about half a Stone's Caſt from the other double Pillory, wherein the other two ſtood; ſo as all their Faces looked Southward, the bright Sun all the while, for the ſpace of two Hours, ſhining upon them. Being ready to be put into the Pillory, ſtanding upon the Scaffold, he ſpied Mr. *Prynn* new come to the Pillory, and Dr. *Baſtwick* in the Pillory, who then haſted off his Band, and called for a Handkerchief, ſaying, What ſhall I be laſt, or ſhall I be aſhamed of a Pillory for Chriſt, who was not aſhamed of a Croſs for me? Then being put into the Pillory, he ſaid, Good People, I am brought hither to be a Spectacle to the World, to Angels, and Men; and howſoever I ſtand here to undergo the Puniſhment of a Rogue, yet except to be a faithful Servant to Chriſt, and a loyal Subject to the King, be the Property of a Rogue, I am no Rogue. But yet if to be Chriſt's faithful Servant, and the King's loyal Subject, deſerve the Puniſhment of a Rogue, I glory in it, and I bleſs my God, my Conſcience is clear, and is not ſtained with the Guilt of any ſuch Crime as I have been charged with, tho' otherwiſe I confeſs my ſelf to be a Man ſubject to many Frailties and human Infirmities. Indeed that Book intitled, *An Apology for an Appeal, with ſundry Epiſtles and two Sermons, for God and the King*, charged againſt me in the Information, I have and do acknowledge (the miſprinting excepted) to be mine, and will by God's Grace never diſclaim it whilſt I have Breath within me. After a while, he having a Noſegay in his hand, a Bee came and pitched on the Noſegay, and began to ſuck the Flowers, which he beholding, and well obſerving, ſaid, Do ye not ſee this poor Bee? She hath found out this very place to ſuck Sweetneſs from theſe Flowers; and cannot I ſuck Sweetneſs in this very place from Chriſt? The Bee ſucking all this while, and ſo took her Flight. By and by, he took occaſion from the ſhining of the Sun, to ſay, You ſee how the Sun ſhines upon us, but that ſhines as well upon the Evil as the Good, upon the Juſt and Unjuſt, but that the Sun of Righteouſneſs (Jeſus Chriſt, who hath healing under his Wings) ſhines upon the Souls and Conſciences of every true Believer only; and no Cloud can hide him from us, to make him aſhamed of us, no not of our moſt ſhameful Sufferings for his ſake: And why ſhould we be aſhamed to ſuffer for his ſake who hath ſuffered for us? All our Sufferings be but Fleabitings to that he endured: he endured the Croſs and deſpiſed the Shame, and is ſet on the right Hand of God. He is a moſt excellent Pattern for us to look upon, that treading his Steps, and ſuffering with him, we may be glorified with him. And what can we ſuffer, wherein he hath not gone before us even in the ſame kind? Was he not degraded, when they ſcornfully put on him a Purple Robe, a Reed into his Hand, a thorny Crown upon his Head, ſaluting him with, *Hail King of the Jews*, and ſo diſrobed him again? Was not he deprived when they ſmote the Shepherd, and the Sheep was ſcattered? Was not Violence offered to his ſacred Perſon, when he was buffeted and ſcourged, his Hands and his Feet pierced, his Head pricked with Thorns, his Side goared with a Spear, *&c*? Was not the Croſs more ſhameful, yea and more painful than a Pillory? Was not he ſtript of all he had, when he was left ſtark naked upon the Croſs, the Soldiers dividing his Garments, and caſting Lots upon his Veſture? And was he not confined to perpetual cloſe Impriſonment in Man's Imagination, when his Body was laid in a Tomb, and the Tomb ſealed, leſt he ſhould break Priſon, or his Diſciples ſteal him away? And yet did he not riſe again, and thereby brought Deliverance and Victory to us all, ſo as we are more than Conquerors thro' him that loved us? Here then we have an excellent Pattern indeed.

One ſaid unto Mr. *Burton*, Chriſt will not be aſhamed of you at the laſt day. He replied, He knew whom he had believed, and that Chriſt was able to keep that he had committed to him againſt that Day. One aſked him how he did? He ſaid, Never better, I bleſs God, who hath accounted me worthy thus to ſuffer. The Keeper keeping off the People from preſſing near the Pillory; he ſaid, Let them come and ſpare not, that they may learn to ſuffer. The ſame Keeper being weary, and ſitting him down, aſked Mr. *Burton* if he were well, and bad him be of good Comfort. To whom he replied, Are you well? If you be well, I am much more, and full of Comfort, I bleſs God. Some aſked him if the Pillory were not uneaſy for his Neck and Shoulders? He anſwered: How can Chriſt's Yoak be uneaſy? This is Chriſt's Yoak, and he bears the heavier end of it, and I the lighter; and if mine were too heavy, he would bear that too. O good People, Chriſt is a good and ſweet Maſter, and worth the ſuffering for! And if the World did but know his Goodneſs, and had taſted of his Sweetneſs, all would come and be his Servants; and did they but know what a bleſſed thing it were to bear his Yoke, O who would not bear it? The Keeper going about to eaſe the Pillory by putting a Stone or a Brickbat between, Mr. *Burton* ſaid, Trouble not your ſelf, I am at very good Eaſe, and feel no Wearineſs at all: And eſpying a young Man at the Foot of the Pillory, and perceiving him to look pale on him, he ſaid, Son, Son, what is the matter you look ſo pale? I have as much Comfort as my Heart can hold, and if I had need of more, I ſhould have it. One aſked him a while after, if he would drink ſome *Aqua Vitæ*. To whom he replied, that he needed it not; for I have, ſaid he, (laying his Hand upon his Breaſt) the true Water of Life, which like a Well doth ſpring up to eternal Life. Pauſing a while, he ſaid with a moſt chearful and grave Countenance, I was never in ſuch a Pulpit before, but little do ye know (ſpeaking to them that ſtood about him) what Fruits God is able to produce from this dry Tree. They looking ſtedfaſtly upon him, he ſaid, Mark my Words, and remember them well, I ſay, Little do you know what Fruits God is able to produce from this dry Tree; I ſay, remember it well, for this Day will never be forgotten; and thro' theſe Holes (pointing to the Pillory) God can bring Light to his Church. The Keeper going about again to mend the Pillory, he ſaid, Do not trouble yourſelf ſo much: But indeed we are the Troublers of the World. By and by, ſome of them offering him a Cup of Wine; he thanked them, telling them he had the Wine of Conſolation within him, and the Joys of Chriſt in Poſſeſſion, which the World could not take away from him, neither could it give them unto him. Then he looked towards the other Pillory, and making a ſign with his Hand, cheerfully called to Dr. *Baſtwick*, and Mr. *Prynn*, aſking them how they did? Who anſwered, Very well. A Woman ſaid unto him, Sir, every Chriſtian is not worthy this Honour, which the Lord hath caſt upon you this Day. Alas (ſaid he) who is worthy of the leaſt Mercy? But it is his gracious Favour and free Gift, to account us worthy in the Behalf of Chriſt to ſuffer any thing for his ſake? Another Woman ſaid, There are many hundreds which by God's Aſſiſtance would willingly ſuffer, for the Cauſe you ſuffer for this Day. To whom he ſaid, Chriſt exalts all of us that are ready to ſuffer Afflictions for his Name with Meekneſs and Patience; but Chriſt's military Diſcipline in the uſe of his ſpiritual Warfare, in point of Suffering is quite forgotten, and we have in a manner loſt the Power of Religion, in not denying our ſelves, and following Chriſt as well in ſuffering as in doing. After a while Mr. *Burton* calling to one of his Friends for a Handkerchief, returned it again, ſaying, It is hot, but Chriſt bore the Burden in the Heat of the Day; let us always labour to approve ourſelves to God in all things, and unto Chriſt, for therein ſtands our Happineſs, come of it what will in this World.

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* *The Archbiſhop of* Canterbury *being informed by his Spies what Mr.* Prynn *ſaid, moved the Lords then ſitting in the Star-Chamber, that he might be gagged, and have ſome further Cenſure preſently executed upon him; but that Motion did not ſucceed.*

One ſaid to Mr. *Burton*, The Lord ſtrengthen you. To whom he replied, I thank you, and I bleſs his Name he ſtrengthens me. For tho' I am a poor ſinful Wretch, yet I bleſs God for my innocent Conſcience in any ſuch Crime as is laid againſt me; and were not my Cauſe good, and my Conſcience ſound, I could not enjoy ſo much unſpeakable Comfort in this my Suffering, as I do, I bleſs my God. Mrs. *Burton* ſending Commendation to him by a Friend: He returned the like to her, ſaying, Commend my Love to my Wife, and tell her I am heartily chearful, and bid her remember what I ſaid to her in the Morning; namely, That ſhe ſhould not blemiſh the Glory of this Day with one Tear, or ſo much as one Sigh. She return'd Anſwer, That ſhe was glad to hear him ſo chearful; and that ſhe was more chearful of this Day than of her Wedding-day. This Anſwer exceedingly rejoiced his Heart, who thereupon bleſſed God for her, and ſaid of her, ſhe is but a young Soldier of Chriſt's, but ſhe hath already endured many a ſharp Brunt, but the Lord will ſtrengthen her unto the end: And he having on a pair of new Gloves, ſhewed them to his Friends thereabout him, ſaying, My Wife yeſterday of her own accord bought me theſe Wedding Gloves, for this is my Wedding-Day.

One ſaid to him, Sir, by this Sermon (your Suffering) God may convert many unto him. He anſwered, God is able to do it indeed. And then he called again to Dr. *Baſtwick* and Mr. *Prynn*, aſking them how they did; who anſwered as before. Some ſpeaking to him concerning that Suffering of ſhedding his Blood: He anſwered, What is my Blood to Chriſt's Blood? Chriſt's Blood is a purging Blood, but mine is corrupted and polluted with Sin. One Friend aſked another ſtanding near Mr. *Burton*, if there ſhould be any thing more done unto him? Mr. *Burton* over-hearing him anſwered, Why ſhould there be no more done? For what God will have done muſt be accompliſhed. One deſired Mr. *Burton* to be of good cheer: He thus replied, If you knew my Cheer, you would be glad to be Partaker with me; for I am not alone, neither hath God left me alone in all my Sufferings and cloſe Impriſonment ſince firſt I was apprehended. The Halberd-men ſtanding round about, one of them had an old ruſty Halberd, the Iron whereof was tacked to the Staff with an old crooked Nail; which one obſerving, and ſaying, What an old ruſty Halberd is that? Mr. *Burton* ſaid, This ſeems to me to be one of thoſe Halberds which accompanied *Judas* when he went to betray and apprehend his Maſter. Mr. *Burton* ſaid again, I am perſuaded that Chriſt my Advocate, is now pleading my Cauſe at the Father's Right Hand, and will judge my Cauſe tho' none be found here to plead it, and will bring forth my Righteouſneſs as the Light at Noon-day, and clear my Innocency in due time. A Friend aſked Mr. *Burton*, if he would have been without this particular Suffering? To whom he ſaid, No, not for a World. Moreover, he ſaid that his Conſcience in the Diſcharge of his miniſterial Duty and Function, in admoniſhing his People to beware of the creeping in of Popery and Superſtition, exhorting them to ſtick cloſe unto God and the King in Duties of Obedience, was that which firſt occaſioned his Sufferings; and he ſaid, As for this Truth I have preached, I am ready to ſeal it with my Blood, for this is my Crown both here and hereafter. I am jealous of God's Honour, and the Lord keep us that we may do nothing that may diſhonour him, either in doing or ſuffering; God can bring Light out of Darkneſs, and Glory out of Shame: And what ſhall I ſay more; I am like a Bottle which is ſo full of Liquor, that it cannot run out freely; ſo I am ſo full of Joy, that I am not able to expreſs it.

In concluſion, ſome told him of the Approach of the Executioner, and prayed God to ſtrengthen him. He ſaid, I truſt he will, why ſhould I fear to follow my Maſter Chriſt, who ſaid, I gave my Back to the Smiters, and my Cheek to the Nippers that plucked off my Hair; I hid not my Face from Shame and Spitting, for the Lord God will help me, therefore ſhall I not be confounded; therefore have I ſet my Face like a Flint, and I know that I ſhall not be aſhamed.

When the Executioner had cut off one Ear, which he had cut deep and cloſe to the Head in an extraordinary cruel manner; yet he never once moved and ſtirred for it, tho' he had cut an Artery, ſo as the Blood ran ſtreaming down upon the Scaffold, which divers Perſons ſtanding about the Pillory ſeeing, dipped their Handkerchiefs in, as a thing moſt precious, the People giving a mournful Shout, and crying for the Surgeon, whom the Croud and other Impediments for a time kept off, ſo that he could not come to ſtop the Blood; he all the while held up his Hands, ſaid, Be content, it is well, bleſſed be God. The other Ear being cut no leſs deep, he then was freed from the Pillory, and came down, where the Surgeon waiting for him, preſently applied remedy for ſtopping the Blood after a large Effuſion thereof, yet for all this he fainted not, in the leaſt manner, tho' through expence of much Blood he waxed pale. And one offering him a little Wormwood-water, he ſaid, It needs not; yet through Importunity he only taſted of it, and no more, ſaying, His Maſter, Chriſt, was not ſo well uſed, for they gave him Gall and Vinegar, but you give me good ſtrong Water to refreſh me, bleſſed be God. His Head being bound up, two Friends led him away to an Houſe provided him in *King-ſtreet*, where being ſet down, and bid to ſpeak little, yet he ſaid after a Pauſe, This is too hot to hold long: Now leſt they in the Room, or his Wife ſhould miſtake, and think he ſpake of himſelf concerning his Pain, he ſaid, I ſpeak not this of myſelf; for that which I have ſuffered is nothing to that my Saviour ſuffered for me, who had his Hands and Feet nailed to the Croſs: and lying ſtill a while, he took Mr. *Prynn*'s Sufferings much to heart, and aſked the People how he did, for, ſaid he, his Sufferings have been great. He aſked alſo how Dr. *Baſtwick* did, with much Compaſſion and Grief, that himſelf (being the firſt that was executed) could not ſtay to ſee how they two fared after him.

Soon after the Execution of the Sentence, they were ſeverally ſent Priſoners to the reſpective Caſtles of *Carnarvon*, *Launceſton* in *Cornwal*, and *Lancaſter*, and afterwards on the 27th of *Auguſt* following, it was ordered by the King and Council, That Dr. *Baſtwick* ſhould be removed to the Caſtle or Fort of the Iſles of *Scilly*, Mr. *Burton* to the Iſle of *Guernſey*, and Mr. *Prynn* to which of the two Caſtles of the Iſle of *Jerſey* the Governor ſhould think fit; and that none be admitted to have Conference with them, or to have Acceſs to them, but whom the Captains of the ſaid Caſtles or their Deputies ſhould appoint; they not to be allowed Pen, Paper, or Ink, nor any Books, but the Bible and Common-Prayer Book, and other Books of Devotion, conſonant to the Doctrine and Diſcipline of the Church of *England*; no Letters or Writings to be brought them, but what ſhall be open'd, nor any to be ſent from them: that the Wives of *Baſtwick* and *Burton* ſhould not land or abide in any of the ſaid Iſlands, and if they did, they ſhould be detain'd in Priſon till further Order from the Board; and the Conductors of the ſaid three Priſoners, either by Sea or Land, to ſuffer none but themſelves to ſpeak to them in their Paſſage. Accordingly they were ſent to the ſaid three Iſlands, where they remained till the beginning of the Long Parliament 1641, when upon their reſpective Petitions they were ſent for up, diſcharged and reſtored. Their Petitions were as follow.

To the Honourable the Knights, Citizens, and Burgeſſes of the Commons Houſe of Parliament;

The humble Petition of William Prynn, *late Exile and cloſe Priſoner in the Iſle of* Jerſey,

In all humbleneſs ſheweth,

THAT your Petitioner, tho' not conſcientious to himſelf of any voluntary or apparent Offence againſt the Laws of the Realm, (to which he ever ſtudied to conform himſelf) thro' the malicious Practices and Perſecutions of ſome *Prelates and Church-men*, (eſpecially the now *Archbiſhop of Canterbury*, and *Peter Heylin*, Doctor in Divinity) whoſe Errors and Innovations, contrary to the Doctrine and Diſcipline of the Church of *England*, and Extravagancies in the High Commiſſion, and other Eccleſiaſtical Courts, your Petitioner for his own relief, being there unjuſtly proſecuted, (had to his weak power oppunged) hath within eight Years laſt paſt, undergone two heavy Cenſures in the Star-Chamber Court.

The firſt upon an Information there exhibited againſt your Petitioner, by Mr. *Noy* deceaſed, then Attorney General, for ſome miſconſtrued Paſſages, inoffenſive in themſelves, and in your Petitioner's true Intention, being for the moſt part the words of other approved Authors, compriſed in a Book, ſtyled *Hiſtriomaſtix*, written by the Petitioner, againſt common Interludes, and licenſed for the Preſs by Mr. *Thomas Buckner*, Houſhold Chaplain to the then Archbiſhop of *Canterbury*, authorized by the State to licence Books, and by him exactly peruſed, and approved both in the written and printed Copy, before its Publication, and ſo confeſſed the Information; for which authorized Book and Paſſages, your Petitioner, before the hearing of the Cauſe, was not only impriſoned in the Tower of *London*, without Bail or Mainprize, for a whole Year's ſpace, denied acceſs to his Counſel, convenient time to examine Witneſſes, and make Breviats to inſtruct his Counſel (the Information being general, and reciting no particular Clauſes of the Book excepted againſt) the only means of his Defence illegally ſuppreſſed, ſome of his Counſel tampered with to make no Juſtification, contrary to your Petitioner's Inſtructions and Deſire, whereby his Cauſe was miſcarried; but alſo at the Hearing, by reaſon of thoſe malicious and perverſe Gloſſes on the ſaid Paſſages, which the ſaid *Heylin* had collected and preſented to his Majeſty's learned Counſel, who repeated his Inſtructions only, your Petitioner was fined 3000 Pounds to his Majeſty, expelled the Univerſity of *Oxford*, and *Lincolns-Inn*, degraded from his Profeſſion of the Law, wherein he never offended, ſet in the Pillory in the *Palace-Yard* at *Weſtminſter*, where he loſt one of his Ears, and two days after on the Pillory in *Cheapſide*, where he loſt the other Ear: and had his ſaid Licenſed Books there publickly burnt before his Face, by the *Hangman*, in a moſt diſgraceful manner; and adjudged after to remain a Priſoner during his Life.

That after the ſaid Cenſure, to defame and injure your Petitioner the more, he was charged wrongfully in the Decree, as cenſured for Perjury, (tho' not taxed for it by the Court) and between his Sufferings in the Pillory, the Books of his Study (twice ſurveyed, and reſtored to him by Order from the Lords) before any Fine eſtreated, by a Warrant out of the High Commiſſion, ſigned by the ſaid Archbiſhop and others, were ſeized on by *Croſs* a Meſſenger, who carried them to his Houſe; with which Warrant your Petitioner charging the ſaid Archbiſhop upon occaſion, in the open Court of Star-Chamber; he there publickly diſavowed the ſame (tho' your Petitioner can yet produce it under his own Hand) promiſing withal, that the Books ſhould be reſtored forthwith; which notwithſtanding were all ſtill detained by his Means, till they were extended and ſold for your Petitioner's Fine: who ſhortly after, by an Order out of the ſaid Court ſent to the *Tower* to be executed, was there ſhut up cloſe Priſoner, and Dr. *Reeves* ſent thither to ſearch his Chamber for the Pamphlet, which the ſaid Archbiſhop would wrongfully have fathered upon your Petitioner, whoſe Friends have been unjuſtly proſecuted in the Exchequer, and elſewhere, ſundry Years, for his Fine aforeſaid.

And your Petitioner further ſaith, that about *Eaſter* was three Years, during his Impriſonment in the *Tower*, by means of the ſaid Archbiſhop, a new Information was exhibited in the ſaid Court againſt your Petitioner, and others, with certain Books thereto annexed; *Denying the Prelates Juriſdiction over other Miniſters, to be* Jure Divino. *Charging them with many Errors and Innovations in Religion, Uſurpation upon his Majeſty's Prerogative, and Subjects Liberty*, Abuſes, and Extortions, in the High Commiſſion, and other Eccleſiaſtical Courts, ſuppreſſing Preaching, *and painful* Miniſters without a Cauſe; Licenſing *Popiſh*, *Arminian*, and other erroneous Books againſt the Sabbath; ſetting up Altars, Images, and Crucifixes;

removing and railing in Communion Tables, and bowing down to them, altering the Book of Common Prayer, the Books for the Gunpowder-Treaſon, and late Faſt, in ſome material Paſſages in favour of Popery and Papiſts. Which things, (tho' very notorious, and oft complained againſt by this Honourable Houſe, in former and late Parliaments) were yet reputed ſcandalous. And tho' neither of the ſaid Books was particularly charged on your Petitioner, in the ſaid Information, nor any Witneſs produced to prove him either Author, or Diſpoſer of any of them; yet by denying your Petitioner liberty to draw up his own Anſwer, (tho' once a Barriſter at Law) when as his aſſigned Counſel refuſed to do it, by cloſe impriſoning your Petitioner, and his Servant, by debarring him Pen, Ink, and Paper, whereby to anſwer, or inſtruct his Counſel; ſearching his Chamber, and taking away part of his Anſwer there found; denying him acceſs to his Counſel, and conference with his Co-defendants, even at Counſel, tho' jointly charged with him; rejecting the Croſs-Bill exhibited by him for his Defence; threatning Maſter *Holt*, one of your Petitioner's aſſigned Counſel, ſent by the then Lord Keeper to the *Tower*, to draw up your Petitioner's Anſwer, and commanding him not to ſign it, after it was engroſſed, whereupon he refuſed to ſubſcribe it, contrary to his Promiſe to your Petitioner; and by refuſing to accept your Petitioner's Anſwers to the ſaid Information, ſigned with his own, and Maſter *Tomlins*, the other of his Counſel's Hands, tho' tendered by your Petitioner, both at the Star-Chamber Office, and in the open Court at the Hearing; the ſaid Information, for default of Anſwer (tho' two Anſwers were thereto tendered by your Petitioner) was taken *pro confeſſo* againſt your Petitioner, and he thereupon *Fined five thouſand Pounds to his Majeſty*, *Pilloried*, *Stigmatized on both Cheeks*, *Mutilated and Diſmember'd*, *in a moſt barbarous manner*, *and the ſmall remainder of his Ears*, *left after his firſt Execution*, *cut off*, *to the hazard of his Hearing*, *and Life*; *and adjudged to perpetual cloſe Impriſonment in the Goal of* Carnarvon Caſtle *in* North-Wales, *a naſty Dog-hole*, *far remote from your Petitioner's Friends.* Which Sentence was unduly drawn up and executed upon your Petitioner, as his Attorney's Clerk informed, before it was entered into the Book, or your Petitioner could get any Copy of it, to except againſt the ſame, as he had juſt Cauſe.

That immediately after the Execution of the ſame Sentence, your Petitioner ſent to the ſaid Archbiſhop to deſire him to releaſe or bail his Servant (who was detained cloſe Priſoner for ten Weeks ſpace in the Meſſenger's Hands, and oft examined and ſollicited, by fair Promiſes and Threatnings, cauſeleſsly to accuſe your Petitioner againſt whom they wanted Evidence) that ſo he might attend him during his Sores, which the ſaid Archbiſhop out of his Grace and Charity utterly refuſed; ſaying that he intended to proceed againſt his ſaid Servant in the High Commiſſion, where he hath ever ſince vexed, cenſured, and banded him from Priſon to Priſon, only for refuſing to accuſe and betray your Petitioner.

That after the ſaid heavy Sentence, your Petitioner by an Order in the ſaid Court (by way of Addition to the ſaid Cenſure) was inhibited the uſe of Pen, Ink, and Paper, and all Books; except the Bible, and the Book of Common-Prayer, and ſome few Books for private Devotion; and before his Wounds were perfectly cured, he was by order remov'd from the *Tower* to *Carnarvan*; and ſome of his Friends in *Cheſter*, who viſited him there in his Paſſage, in the Preſence of his Conductors, who had no order to reſtrain any Perſon from reſorting to him, were for this very cauſe ſent for by a Meſſenger, to appear before the Lords of the Privy-Council, and likewiſe cited into the High Commiſſion at *York*, where they were impriſoned and fined, to the ruin of their Eſtates, and injoined to make a publick Recantation in the Cathedral Church, and in the Town-Hall of *Cheſter*: The ſaid Commiſſioners further decreeing, that three Pictures of your Petitioner found in *Cheſter*, ſhould be publickly burnt at the High Croſs there, which was done accordingly.

That your Petitioner, ſince his ſaid Sentence, hath been publickly reviled at, and libelled againſt, both by the High Commiſſioners at *York*, and in ſundry Churches, both at *Cheſter* and elſewhere, and in divers licenſed printed Books, compiled by the ſaid *Heylin*, and publiſhed by the Archbiſhop's Privity or Command; and that ſundry of his Friends Houſes, Studies, Books, and Writings have been violently broken up, ranſacked and taken away, and themſelves proſecuted in the High Commiſſion, out of Malice, for the relation they had to your Petitioner.

That after your Petitioner had continued ſome ten Weeks ſpace cloſe Priſoner in *Carnarvan*, he was about three Years ſince, by a Warrant from the Lords of the Council, made in the Summer Vacation, (to which the ſaid Archbiſhop's Hand was firſt ſubſcribed) order'd by way of Exile, to be imbarked and tranſported with all privacy into one of the Caſtles in the Iſle of *Jerſey*, and his Conductors thereby charged not to admit any Perſon whatſoever, but themſelves only, to ſpeak with your Petitioner in his Paſſage: Whereupon, after ſome Injuries there receiv'd by Mr. *Griffith*, the King's Attorney in thoſe Parts, who endeavoured to ſeize upon the Furniture of his Chamber for his own uſe, your Petitioner was imbarked among Papiſts, in a bruiſed ſhipwreck'd Veſſel, full of Leaks, and after fourteen Weeks Voyage in the Winter Seaſon, through dangerous Storms and Seas, which ſpoiled moſt of his Stuff and Bedding, and threatning often Shipwreck to him, he arrived at the ſaid Iſle, and was conveyed cloſe Priſoner into Mount *Orgatile* Caſtle there, where the Lieutenant-Governor, by another extra-judicial Order, to which the ſaid Archbiſhop's Name was firſt, was ordered to keep your Petitioner cloſe Priſoner in a Chamber, ſuffer none but his Keepers to ſpeak with him, to intercept all Letters to him; to permit him neither Pen, Ink, nor Paper, either to write to his Friends for Neceſſaries, or to petition for Relief, and to permit him no Book but the Bible, and thoſe aforenamed Books, without giving any order for his Diet there: ſo that being deprived of his Calling and Eſtate, exiled and ſhut up cloſe Priſoner among Stangers, remote from all his Friends, denied all Addreſs to him by Perſon or Letters, he had certainly periſhed in his almoſt three Years cloſe Impriſonment there, had not the extraordinary Providence and Goodneſs of God, which he ſhall ever adore, and the noble Charity of thoſe under whoſe Cuſtody he did remain, furniſhed him with ſuch Diet and Neceſſaries, as preſerved him both in Health and Life, in this his cloſe Impriſonment and Exile.

May it therefore pleaſe this Honourable Houſe, to take theſe your Petitioner's almoſt eight Years tragical Grievances, of new and dangerous Example, into your moſt ſad and juſt Conſiderations, that ſo they may not become Precedents to the prejudice of Poſterity; to grant him Liberty to ſend for and examine all neceſſary Witneſſes: to order all Clerks, Regiſters, and other Officers of the Star-Chamber, or elſewhere, ſpeedily and freely to grant him the Copies of ſuch Orders, Decrees, and Writings, as his Cauſe ſhall require, to releaſe him upon Bail (being now but a Priſoner only upon an extrajudicial Order of the Lords, and not by Virtue of any Sentence or Decree in Court) to grant him Liberty to plead and proſecute his own Cauſe, ſince Counſel hath ſo often failed him, and to give him ſuch Satisfaction and Relief as the Juſtice and Equity of his Cauſe ſhall merit.

And your Petitioner ſhall ever pray for your Safeties,
William Prynn.

To the Honourable the Knights, Citizens, and Burgeſſes of the Commons Houſe of Parliament;

The humble Petition of John Baſtwick, *Doctor in Phyſick, lately retained cloſe Priſoner and Exile, in the Iſland of* Scilly;

Moſt humbly ſheweth,

THAT your Petitioner having about ſix Years ſince ſet out a Book in *Latin*, called *Elenchus Religionis Papiſticæ*, with an Addition thereunto, called *Flagellum Pontificis, & Epiſcoporum Latialium*; being thereunto provoked by one *Richard Short*, a Papiſt that maintained the Pope's Supremacy, the Maſs, and papal Religion: In which Book your Petitioner (for preventing all Miſinterpretations of his pious and good Intentions therein) in his Epiſtle to the Reader, fully declared himſelf, That your Petitioner meant nothing againſt ſuch Biſhops as acknowledged their Authority from Kings and Emperors; yet, becauſe your Petitioner (the better to ſhew the papal Uſurpation over other Princes) therein only maintained by way of Argument (as other orthodox Writers of that Subject have done) a Parity of the ſaid Biſhop of *Rome*, or all other Biſhops or Preſbyters, by the Word of God, denying his and their Supremacy over other Miniſters to be by the Divine Inſtitution:

Thereupon a Purſuivant, by Authority from the High Commiſſion Court, came into your Petitioner's Houſe at *Colcheſter* in *Eſſex*, in his Abſence, and the ſaid Purſuivant, aſſiſted with the then Bailiffs and Conſtables of *Colcheſter*, aforeſaid, ranſacked his ſaid Houſe, together with his Cheſts and Trunks, and with great Violence broke open your Petitioner's Study, which was in his Apothecary's Houſe, and took and carried away divers of your Petitioner's Books, Writings, Letters, and what elſe the Purſuivant pleaſed, without making of Reſtitution of them to your Petitioner.

And then your Petitioner was proſecuted in the ſaid High Commiſſion Court, principally for his ſaid Book; where after a long and chargeable Proſecution, he was the 12th of *February* 1634, fined 1000*l.* to the King, excommunicated, debarred to practiſe Phyſick, the chiefeſt Means of his livelihood; his ſaid Book ordered to be burnt; that he ſhould pay coſts of Suit, and be impriſoned till he ſhould make a Recantation. The which heavy Cenſure was only for the ſaid Book, wherein your Petitioner maintained the Prerogative of a King againſt the Papacy. Whereas one *Thomas Chawney*, of *Eſſex*, lately wrote a Book in Maintenance of the papal Religion, and in Defence of the Church of *Rome*, and avers it to be a true Church; the which Book is dedicated to the Archbiſhop of *Canterbury*, and was and is patronized and defended by the ſaid Archbiſhop, and the ſaid *Chawney* never troubled for it. After which Cenſure declared as aforeſaid, all the Biſhops that were then preſent, denied openly that they held their Juriſdiction from his Majeſty; and affirmed, that they had it from God only. And the Archbiſhop of *Canterbury*, among other erroneous Sayings uttered by him, maintained the ſaid *Chawney*'s Book; and maintained that the Church of *Rome* was a true Church, and that it erred not in Fundamentals: And he, and other the ſaid Biſhops, there defamed the holy Scriptures, and abuſed reverend Maſter *Calvin*. In regard whereof, and for the vindicating of your Petitioner's Innocency in the Matters for which he was moſt unjuſtly cenſured, as aforeſaid, your Petitioner publiſhed in print another Book in *Latin*, intitled, *Apologeticus ad Præſules Anglicanos*, expreſſing the Truth of his Proceedings, and Speeches of his ſaid Cenſure. For which laſt mentioned Book, and his Book called the *Litany*, not then in Print, an Information was exhibited againſt him and others in the Star-Chamber, to which your Petitioner's Anſwer being drawn and engroſſed, was only ſubſcribed by himſelf, becauſe he could get no Counſel to ſet their Hands to it; your Petitioner tendered the ſaid Anſwer firſt at the Star-Chamber Office, and after in open Court at the Star-Chamber Bar, but it would not be accepted for want of Counſellors Hands to it; contrary to former Precedents. But the Court of Star-Chamber took the ſaid Information *pro confeſſo*, and cenſured your Petitioner 5000*l.* *Fine to the King*, *to ſtand in the Pillory*, *and to loſe both his Ears*, *and to be cloſe Priſoner in* Launceſton Caſtle *in* Cornwal. All which hath been executed upon him with great Extremity, to the Peril of his Life. After all which Extremity, your Petitioner (by what Order he knoweth not, it being no part of his Cenſure in Star-Chamber) was tranſported from the ſaid Caſtle to the Iſland of *Scilly*, a Place ſo barren that it affords not ordinary Neceſſaries; where he hath been in cloſe Durance for three Years or more, and not ſuffered to have any of his Friends come at him, his very Wife being prohibited, by the Lords of the Council's Order, under pain of Impriſonment, not to ſet her Foot upon any part of the ſaid Iſland to enquire of his Welfare. So that your Petitioner hath been exiled from his Wife and divers ſmall Children three Years and more; beſides the great Straits and Miſeries which he hath ſuſtained during the ſaid Time. All which is contrary to the Law of God and Man, and the Liberties of a free Subject; and to the utter undoing of your Petitioner, his Wife, and Children.

May it therefore pleaſe this honourable Aſſembly, to take theſe preſſing Grievances of your Petitioner into your Conſiderations, and to afford him ſuch Relief therein, as in your grave Wiſdoms ſhall ſeem conſonant to Juſtice and Equity; and to aſſign him for Counſel, Mr. *Atkins*, Mr. *Ludbore*, Mr. *Tomlins*, Mr. *Gurdon*, and Mr. *Randal*, to aſſiſt him in this his Complaint; and to order that your Petitioner may take out *gratis*, ſuch Copies of the ſaid Cenſures, Warrants, and Orders, and other the Proceedings in the ſaid ſeveral Courts, as ſhall or may any way concern this his ſad, yet moſt juſt Complaint, with Warrant from this honourable Houſe, to bring in his Witneſs.

And your Petitioner, as in Duty bound, ſhall ever pray for your Proſperities.
John Baſtwick.

The humble Petition of Henry Burton, *late Exile, and cloſe Priſoner in* Caſtle-Cornet, *in the Iſle of* Guernſey,

In all humbleneſs ſheweth,

THAT whereas your Petitioner, on the 5th of *November* 1636, did preach two Sermons in his own Pariſh Church in St. *Matthew Friday-ſtreet*, *London*, for the which he was, in *December* then next following, ſummoned to appear before Dr. *Duck*, one of the Commiſſioners for Cauſes Eccleſiaſtical, at *Chiſwick* in the County of *Middleſex*; where (with the Regiſter of the High Commiſſion Court) the ſaid Dr. *Duck* tendred to the Petitioner the Oath *ex Officio*, to anſwer to certain Articles there preſented: Which Oath the Petitioner refuſing to take, did then and there appeal from the ſaid Court unto the King's Majeſty; which Appeal the ſaid Dr. *Duck* did admit, and the ſaid Regiſter, by Dr. *Duck*'s Direction, did then and there enter in Writing.

Notwithſtanding which ſaid Appeal, a ſpecial High Commiſſion Court was ſhortly after called at *London*, conſiſting of four or five Doctors; where the ſaid Commiſſioners proceeded illegally to ſuſpend the Petitioner in his Abſence; by means whereof, as of the Threatnings of the ſaid Commiſſioners, he was inforced to keep his Houſe, until a Sergeant at Arms, with divers Purſuivants, and other armed Officers, aſſiſted by Alderman *Abell*, then Sheriff of *London*, beſet the Petitioner's Houſe at eleven o'Clock at Night, and violently broke open his Doors with Iron Crows, and the like, and ſurprized him in his Houſe; he making no Reſiſtance at all. Where having firſt ſearched his Study, and taken away ſuch Books as they pleaſed, they carried your Petitioner to Priſon; whence, the next Day, being the ſecond of *February*, by a pretended Order from the Lords of the Council, he was conveyed to the *Fleet*, and there kept cloſe Priſoner.

During which Impriſonment, an Information was exhibited againſt the Petitioner and others, in his Majeſty's Court of Star-chamber; whereby he was charged, *inter alia*, with the publiſhing of a certain Book, containing, *An Apology for an Appeal*, with his ſaid two Sermons, intitled, *God and the King*. Wherein he taught Subjects to yield all manner of due Obedience to their lawful King, and reproved all lawleſs Innovations in Religion, *&c.* Which Information the Petitioner upon his Oath under the Hand of *M. Holt*, being then of his Counſel, aſſigned by ſpecial Order from the ſaid Court, did put in his Anſwer; wherein he alledged ſuch things only as his ſaid Counſel conceived to be material, and pertinent to his juſt Defence in publiſhing the ſaid Book; but denied all other Matters in the ſaid Information contained. Which ſaid Anſwer being admitted and received in Court, the Petitioner (being then a cloſe Priſoner) not only attended the exhibiting of Interrogatories, according to the Cuſtom of that Court, but withal, after ſome univerſal Delay, did write unto the King's Attorney to haſten them; but before the Examiner came, the Petitioner heard that his ſaid Anſwer was referred to Sir *John Bramſton*, Kt. Lord Chief Juſtice of the *King's-Bench*, Sir *John Finch*, then Chief Juſtice of the *Common Pleas*, and was by them wholly expunged as impertinent and ſcandalous, ſave only the not Guilty. And the Petitioner underſtanding the Anſwer he was to make to the Interrogatories was to be reckoned as a Part of his Anſwer, admitted in Court, but afterwards expunged as impertinent and ſcandalous, as aforeſaid: ſo as if he ſhould then have anſwered the Interrogatories, he ſhould thereby have aſſented to the ſaid Act of the ſaid Judges, and ſo the Condemnation of his Cauſe before the Hearing; whereby he ſhould have contradicted his former Oath, that his ſaid Anſwer was a true Anſwer; and ſo ſhould juſtly have brought himſelf under the Guilt of wilful Perjury, and his Cauſe under juſt Cenſure. For that very Reaſon he held himſelf not bound, as he conceived, to anſwer the Interrogatories; for that his ſaid Anſwer was ſo expunged, and the *(Not Guilty)* as the Foot ſo tied to the Head without the main Body, and that in the Judge's own Words, as the Petitioner could not in any ſort take or acknowledge it now for other than the Judge's own Anſwer; as may appear upon Record in the ſame Court.

Neverthelеſs the Court taking the ſame Information *pro Confeſſo*, and refuſing to permit a Copy of the Petitioner's own true Anſwer, as alſo of his Reaſons of not anſwering the Interrogatories, both which at his Cenſure he tendered to the Court, deſiring they might be then and there publickly read the 14th of *June*, 13 *Caroli Regis*, proceeded to Cenſure; whereby your Petitioner was cenſured *in a Fine of* 5000l. *to his Majeſty, to be deprived of his eccleſiaſtical Benefice, degraded from his miniſterial Function and Degrees in the Univerſity, and ordered to be ſet on the Pillory, where both his Ears were to be cut off*; *confined to perpetual cloſe Impriſonment in* Lancaſter-Caſtle, *debarred the Acceſs of his Wife or any other to come to him but his Keeper, and denied the Uſe of Pen, Ink, and Paper.* All which, except the Fine, was executed accordingly. And after his cloſe Impriſonment for twelve Weeks in the common Jail in the ſaid Caſtle, he was, by what extrajudicial Order he knows not, tranſported by the Conduct of one *Brian Burton*, appointed by the High Sheriff of *Lancaſter*, who uſed your Petitioner very baſely and deceitfully, in that his Tranſportation, which was in the Winter Seaſon through dangerous Seas, to the apparent Hazard both of his Health and Life, to the ſaid Caſtle of *Guernſey*, where he remained a cloſe Priſoner and Exile almoſt three whole Years; his Wife utterly prohibited, upon pain of Impriſonment, to ſet her Foot upon any part of the Iſland where ſhe might but inquire how her Huſband did; contrary to the Laws of God and the Liberties of this Kingdom.

May it therefore pleaſe this honourable Houſe, to take the Petitioner's ſad Cauſe into Conſideration; and for better Manifeſtation of his Grievance in this Cauſe, to aſſign him for Counſel Mr. Sergeant *Atkins*, Mr. *Tomlins*, and Mr. *Gordon*, to aſſiſt him in his Cauſe, and to command that he may take out ſuch Copies *gratis* out of the ſaid ſeveral Courts as do or may concern his Cauſe.

And your Petitioner, as in Duty bound, ſhall daily pray for your Proſperities.
Henry Burton.

Theſe Petitions being read, they were referr'd to the Committee appointed for inquiring into the Proceedings of the Star-Chamber and High Commiſſion Court, and upon their Report the Houſe came to the following Reſolutions.

As to Dr. Baſtwick, *Feb.* 22, 1640.

1. *Reſolved*, That the Precept made by the Archbiſhop of *Canterbury* and others, High Commiſſioners for Cauſes Eccleſiaſtical within the Realm of *England*, for the apprehending the Body of Dr. *Baſtwick*, and ſearching for and ſeizing his Books; and the Meſſengers Actings thereupon in ſearching Dr. *Baſtwick*'s Houſe, and ſeizing his Books and Papers, are againſt Law and the Liberty of the Subject.

2. *Reſolved*, That the Sentence given againſt Dr. *Baſtwick* by the High Commiſſioners, and the Proceedings whereupon that Sentence is grounded, and the Execution of that Sentence, are againſt Law; and that the Sentence is void, and that Dr. *Baſtwick* ought to be reſtored to the Exerciſe and Practice of Phyſick, and to have Reparation and Recompence for his Damage and Loſs ſuſtained by the ſaid Sentence and Execution.

3. *Reſolved*, That all thoſe ſeveral Commiſſioners of the High Commiſſion Court which voted againſt Dr. *Baſtwick*, in the Sentence pronounced againſt him, ought to give Satisfaction to Dr. *Baſtwick*.

The Houſe afterwards reſumed the Debate concerning Dr. *Baſtwick*. Whereupon it was farther,

4. *Reſolved*, That the Proceedings againſt Dr. *Baſtwick* are againſt the Law and Liberty of the Subject, as alſo the Sentence againſt him ought to be reverſed, the Fine of 5000*l.* diſcharg'd, and he have Reparation for his Loſſes and Sufferings.

5. *Reſolved*, That the Orders and Warrants from the Council Board for Dr. *Baſtwick*'s Exile, and transferring him from the Caſtle of *Launceſton* to the Iſle of *Scilly*, and his Impriſonment there, are againſt the Law and Liberty of the Subject, and that he ought to have Reparation for his Loſſes and Damages ſuſtain'd by thoſe Orders, and that Impriſonment.

Preſent at the Sentence in the Star-Chamber theſe Lords and Privy-Counſellors following:

The Lord Keeper,	*Lord Treaſurer*,	*Lord Privy Seal*,
Duke of Lenox,	*Marquis* Hamilton,	*E. of* Arundel *and* Surry,
Earl of Pembroke,	*Earl of* Dorſet,	*Earl of* Bridgwater,
Earl of Holland,	*Earl* Moreton,	*Viſcount* Wimbleton,
Lord Cottington,	*Lord* Newburgh,	*Sir* Henry Vane,
Sir Thomas Jermin,	*Mr. Secretary* Coke,	*Mr. Secret.* Windebank.

As to Mr. Burton;

1. *Reſolved*, That the four Commiſſioners, Dr. *Duck*, Dr. *Worrall*, Dr. *Sams*, and Dr. *Wood*, proceeded unjuſtly and illegally in ſuſpending Mr. *Burton ab Officio & Beneficio*, for not appearing upon the Summons in the firſt Proceſs.

2. *Reſolved*, That the breaking open Mr. *Burton*'s Houſe, and arreſting his Perſon without any Cauſe ſhewed, and before any Suit depending againſt him in the Star-Chamber, and his cloſe Impriſonment thereupon, are againſt the Law and Liberty of the Subject.

3. *Reſolved*, That *John Wragg* hath offended in ſearching and ſeizing the Books and Papers of Mr. *Burton*, by colour of a general Warrant dormant from the High Commiſſioners, and that the ſaid Warrant is againſt Law and the Liberty of the Subject; and that Serjeant *Dendy* and Alderman *Abel* have offended in breaking open the Houſe of Mr. *Burton*, and ought reſpectively to make him Reparations for the ſame.

4. *Reſolved*, That Mr. *Burton* ought to have Reparation and Recompence for Damages ſuſtain'd by the aforeſaid Proceedings from Dr. *Duck*, &c.

5. *Reſolved*, That the Warrant from the Council-Board, dated at *Whitehall Feb.* 2. 1636, for the commiting Mr. *Burton* cloſe Priſoner, and the Commitment thereupon, is illegal, and contrary to the Liberty of the Subject.

6. *Reſolved*, That the Archbiſhop of *Canterbury*, Biſhop of *London*, and the Earl of *Arundel*, the Earl of *Pembroke*, Sir *Henry Vane*, Secretary *Cooke*, and Secretary *Windebank*, do make Reparation to Mr. *Burton* for his Damages ſuſtain'd by his Impriſonment.

As to Mr. Prynn;

1. *Reſolved*, That the Sentence given againſt Mr. *Prynn* in the Star-Chamber *February* 17, 9 *Car.* is illegal, and given without juſt Cauſe, and ought to be reverſed; and that Mr. *Prynn* ought to be diſcharged of the Fine of 5000*l.* impoſed by the ſaid Sentence, and of all Extents thereupon, and of his Impriſonment decreed by that Sentence.

2. *Reſolved*, That Mr. *Prynn* ought to be reſtored to his Degrees in the Univerſity of *Oxford*, and to the Society of *Lincolns-Inn*, and to the Exerciſe of his Profeſſion of an Utter Barriſter at Law, and to his Chamber again at *Lincolns-Inn*.

3. *Reſolved*, That Mr. *Prynn* ought to have Reparation for ſuch Damages and Prejudice as he hath ſuſtained by the ſaid Sentence and Proceedings.

4. *Reſolved*, That the Sentence given againſt Mr. *Prynn* in the Star-Chamber, 14 *Junii* 1637, 13 *Car.* is illegal, and given without any juſt Cauſe, and therefore ought to be reverſed; and that he ought to be diſcharged of the Fine and Impriſonment thereby decreed, and that he ought to have Reparation and Recompence for the Damages ſuſtained by that Sentence, and the Execution thereof.

That the Warrant dated 27 *Aug.* 13 *Car.* for the Tranſportation of Mr. *Prynn* from *Carnarvan-Caſtle* to the Iſle of *Jerſey*, and his Impriſonment there, and other Reſtraints therein mentioned, are againſt the Law and Liberty of the Subject, and that he ought to be diſcharged of that Impriſonment, and to have Reparations for his Damages ſuſtained thereby.

5. *Reſolved*, That the Impriſonment of Mr. *Prynn*, by a Warrant dated the 1ſt of *Feb.* 1632, under the Hands of *Thomas* Lord *Coventry*, Lord Keeper of the Great Seal of *England*; *Richard* Lord Archbiſhop of *York*, *Henry* Earl of *Mancheſter*, *Edward* Earl of *Dorſet*; *Henry* Lord Viſcount *Falkland*, *William* Lord Biſhop of *London*, *Edward* Lord *Newburgh*, and Sir *Thomas Jermin*, is unjuſt and illegal, and that they ought to give Mr. *Prynn* Satisfaction for the Damages ſuſtain'd by his Impriſonment.

XXXVII. *Pro-*

XXXVII. *Proceedings in the Caſe of* SHIP-MONEY, *between the King and* JOHN HAMPDEN * *Eſq*; *in the* Exchequer, 1637. 13 Car. I.

The Speech of Thomas *Lord* Coventry, *Lord Keeper of the Great Seal of* England; *by Command from his Majeſty, to all the Judges of Aſſize of* England, *in the* Star-Chamber, June 17. 1635.

My Lords the Judges,

THE Term being done and ended, the Aſſizes are at hand: You are to divide your ſelves for your ſeveral Circuits. Circuits are for the Service of the King and the Good of the People; they are the Execution of the King's Laws, and Adminiſtration of Juſtice. In the Term, the People follow and ſeek after Juſtice; but in the Circuit, Juſtice followeth and ſeeketh after the People. So gracious is the Frame and Conſtitution of the King's Government, that twice a Year, at the leaſt, Juſtice followeth the Subjects home to their own Doors; which, as it is a great Eaſe to the Trouble, Charge, and Travail of the Country, ſo it giveth the People a better Knowledge of Juſtice; and the End of it, that they may bleſs God and the King for the ſame.

It hath been the Cuſtom, that before your Circuit you ſhould receive ſuch Directions as the King, or his Council, thinks ſeaſonable to impart unto you, for the Service of the King and Weal of the People: In the declaring whereof, I ſhall ſay little of the juſt Acts you are to do between Party and Party, only that you do equal Right between Poor and Rich; the Particulars are left unto your ſelves, as they happen in your Circuits. But ſince you are ſent by the King to hear the Cauſes of the People, it is his Majeſty's Pleaſure, that you ſo hear and order the ſame, that they may have no Cauſe to complain to his Majeſty either for Denial or Delay of Juſtice.

Of the Trial of Capital Offenders, I ſhall ſay as little; that Part of Juſtice moveth in a Frame, and if all Officers under you did their Parts, you ſhould walk in ſo ſtraight a Path, that you would find it very hard to tread awry: therefore you had need to heed them narrowly, leſt they pervert Juſtice. Look to the Corruptions of the Sheriffs and their Deputies: the partiality of Jurors; the bearing and ſiding with Men of Countenance and Power in their Country. When you meet with any ſuch, your Proceedings ought to be ſevere and exemplary againſt them, otherwiſe Juſtice ſhall be overborn, howſoever in your own Perſons you bear your ſelves with never ſo much Uprightneſs.

And becauſe the Time of Aſſize is very ſhort, and expireth in a few Days, it is neceſſary that you afford as much Time as may be unto thoſe Buſineſſes that are moſt general, and moſt concern the Publick; the Trials of *Niſi prius*, and particular Cauſes, they are in the Number of thoſe things that are not to be left undone: but thoſe things that concern the general and publick Good, you are to account them as the weightier Matters of the Law; and therefore you are to take them into your prime and chief Care and Cogitation. Now among thoſe, I ſhall commend unto you in the firſt place, The preſenting and convicting of Recuſants; for as it concerneth Religion, ſo it hath relation to his Majeſty's Profits, which are two great Motives, to which you may add a third, becauſe the King hath many Years ſince aſſigned theſe Forfeitures to the Publick Defence.

In the next place, I do require you, that you make a ſtrict Inquiry after Depopulations and Incloſures; a Crime of a crying Nature, that barreth God of his Honour, and the King of his Subjects: Churches and Houſes go down together. His Majeſty knoweth and taketh notice, that according to former Directions given you in this Place, you have given it in Charge to the Grand Inqueſts to inquire of theſe things, but to little Effect; and without doubt the Freeholders of *England* do hate and deteſt them. Depopulation is an Oppreſſion of an high Nature, and commonly done by the greateſt Perſons, that keep the Jurors under and in Awe; and that is the Cauſe there are no more preſented and brought in queſtion: but however your Charge and Inquiry, touching this Point, hath not taken effect worthy his Majeſty's Care and your Pains, yet his Majeſty willeth, that you do not ceaſe, but enquire on ſtill; for it is his Reſolution, againſt all Oppoſition, to make all Men ſee he hath a Care of this overſpreading Evil, and of the Means of his People having Churches and Towns demoliſhed, and his People eaten up like Bread, to ſatisfy the greedy Deſires of a few, who do waſte as profuſely, as they gather together unconſcionably, and bring unto their Poſterity that Woe which is pronounced againſt thoſe that lay Houſe to Houſe, and Field to Field, to dwell alone in the midſt of the Earth.

The next thing that I ſhall mention unto you, is, the rectifying and reforming of Alehouſes and Tippling-houſes, and thoſe I account one of the greateſt Peſts of the Kingdom. Firſt, therefore, let none be enabled to ſet up or continue without Licenſe: There are a kind of People that do take upon them Licenſes, Recognizances, or Laws, or what you will, and who have been a great deal the worſe, becauſe they ſee a great Multitude tolerated that have no Licenſe; and therefore I give it in charge, to take a Courſe that none be permitted unleſs they be licenſed: And for the licenſed Alehouſes, let them be but a few, and in fit Places; if they be in private Corners and ill Places, they become the Dens of Thieves, they are the publick Stages of Drunkenneſs and Diſorder. In Market-Towns, or in great Places or Roads, where Travellers come, they are neceſſary.

Next unto this, let thoſe that be licenſed be held ſtrictly to it, according to Law. It hath been obſerved, and very truly, that in the Taverns, Inns, and Alehouſes in *England*, by the Falſhood of their Meaſure, and their unjuſt Prices, they have drawn more Money from the Gueſt, than out of the Exciſe of Ale and Beer are drawn out in *Holland*. A ſtrange thing, that People for a publick Work, for any thing that is good, ſhould be loth to part with any thing, and yet, with open Eyes, to ſee themſelves deceived by ſuch baſe and leud People.

Next unto this, let Care be taken in the Choice of Alehouſe-keepers, that it be not appointed to be the Livelihood of a great Family: one or two is enough to draw Drink, and ſerve the People in an Alehouſe; but if ſix, eight, ten or twelve, muſt be maintained by Alehouſe-keeping, it cannot chooſe but be an exceeding Diſorder, and the Family by this means is unfit for any other good Work or Employment. I have not Skill enough to underſtand all the Inconveniencies that come from this one ill Fountain, and my Memory will not contain what I have ſo many times obſerved of them myſelf; but your Lordſhips have a Knowledge and Experience of them, therefore I will leave them unto you: only this, that becauſe in many Places theſe ſwarm by Default of the Juſtices of the Peace, that ſet up too many, and there are none (except your ſelves at the Aſſizes) all the Year long can meet with this Evil, but the Juſtices of the Peace. And if the Juſtices of Peace will not obey your Charge herein, certify their Default and Names, and I aſſure you they ſhall be diſcharged. I once did diſcharge two Juſtices for ſetting up one Alehouſe, and ſhall be glad to do the like again upon the ſame Occaſion.

In the next place, I will commend unto you the Puniſhment of Vagabonds and Wanderers; to beguile the Alehouſes of ſuch unruly Gueſts; it would make ſome Way of Amendment to thoſe Alehouſes: and it cannot be deny'd, but the Law hath appointed Hands enough to do this Work; the Conſtable, Headborough, Tything-men, and the reſt of the inferior Officers, and the Watchmen, who may do all with a particular Warrant from the Juſtices of Peace; and the Juſtices of the Peace are bound to call them to an Account, and to puniſh them for their Neglect. If this were done, and other Officers were choſen as they ought to be, not People of little Wealth, and as little Underſtanding, but that they were elected out of the better ſort of Yeomanry, and the Watches kept by able Men, I am ſure that theſe looſe People that wander up and down will quickly be gone: therefore you may do well to let it be known in the Country, that the Lords of Leet, and thoſe that have the Elections of Conſtables and Officers, they are, by the Law, anſwerable for their Choice. There have been Precedents, that where an inſufficent Coroner hath been choſen by a County, the whole County hath been anſwerable to the King for the Coroner's Fault. And if the Lords of Leet, and their Homagers, and thoſe that make choice of the Conſtables and Officers, were ſometimes awakened by ſoon ſeizing of their Leets, or Fine, or *Quo warranto*, I make no doubt, but the Country would be better ſerved many Years after, for ſome ſuch Service done; therefore I could wiſh that this were made known unto the Country, that the Lords, and thoſe that chooſe them, were anſwerable for their Defaults.

Now for bringing looſe People in Order, the Houſe of Correction hath need to be looked unto, and be put in readineſs, that thoſe that are idle may not want Work. *Ducere volentes, trahere nolentes.* And for the Houſes of Correction, as it is in ſome Countries, it were convenient they were placed near the Jail; that not idle Perſons only, but the Priſoners of the Jail alſo might be made to work, and eat the Labour of their own Hands: this, as it hath been formerly, ſo it is now commended by his Majeſty to ſee it effected ſo ſoon as may be.

The binding out of Apprentices is a thing fit to be preſſed throughout all your Circuit. Oppoſition hath been made againſt it by ſome, tho' without any Ground or Law: Sometimes the Parents are not willing to leave their Children, tho' they have not Meat to feed them at home; ſometimes the Pariſhioners are not willing to give them Clothes, and thoſe that bind them are negligent; and all theſe muſt be over-ruled, and made ſmart for their Oppoſition and Neglect.

In a word, you are to call upon all to whom it belongeth, but eſpecially to the Juſtices of the Peace, to ſee his Majeſty's printed Order be put in execution. You are to juſtify your ſelves, what Juſtices of the Peace are diligent in it, and who neglect, and ſo to certify to the Lords of the Council.

I have but one thing more to give you in Charge, and it is a thing of great Weight and Importance; it concerneth the Honour of his Majeſty and the Kingdom, and the Safety of both. Chriſtendom is full of War, and there is nothing but Rumours of War: what hath been done of late Years abroad by Fire and Sword, it were a Pity and Grief to think of; yet we have, by the Goodneſs of God and his Majeſty's provident Care, all this while enjoyed a moſt happy Peace and Plenty. As it is a good Precept in Divinity, ſo it holdeth in Policy too; *Nunc tua res agitur, jam proximus ardet:* which if we obſerve, to defend our ſelves, it would be a Warning to all Nations, and we ſhould be the more aſſured to enjoy our Peace, if the War abroad do make us ſtand upon our Guard at home. Therefore no queſtion it hath ever been accounted the greateſt Wiſdom for a Nation to arm, that they may not be enforced to fight; which is better than not to arm, and to be ſure to fight. Therefore his Majeſty in theſe doubtful Times, hath not only commanded, that all the Land-Forces of the Kingdom ſhould be ſet in order and readineſs, but to ſet to Sea a Royal Fleet at his Majeſty's great Charge, but with the Aſſiſtance of the Maritime Places of this Kingdom.

The Cauſes and Occaſions, and Times of War, with the Preparations and Ordering of them, is proper to the King; and dutiful Obedience in ſuch things does beſt become the Subject. And yet his Majeſty hath vouchſafed, even by his Writ, to declare enough to ſatisfy all well-minded Men, and to expreſs the Clearneſs of his Princely Heart, in aiming at the general Good of his Kingdom.

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* Clarend. *Hiſt. Vol.* I. *p.* 185.

The Dominion of the Sea, as it is an antient and undoubted Right of the Crown of *England*, ſo it is the beſt Security of the Land; for it is impregnable ſo long as the Sea is well guarded: therefore, out of all queſtion, it is a Thing of abſolute Neceſſity, that the guarding of the Sea be exactly looked unto; and thoſe Subjects whoſe Minds are moſt fixed upon the Honour of their King and Country, will with no patience endure to think of it, that this Dominion of the Sea, which is ſo great an Honour, ſhould be either loſt or diminiſhed. Beſides, for ſafety ſake, the Dominion of the Sea is to be kept, and the Seas guarded. The Wooden Walls are the beſt Walls of this Kingdom; and if the Riches and Wealth of the Kingdom be reſpected for that Cauſe, the Dominion of the Sea ought to be reſpected: for elſe, what would become of our Wool, Lead, and the like, the Prices whereof would fall to nothing if others ſhould be Maſters of the Seas? There is a Caſe in the Book of Aſſize, *Fol.* 43. which putteth me in mind of certain Men that went down into the Country, and carried a Report, that no Wool ſhould paſs over the Sea that Year; upon this Wool fell to ſo low Prices, that the Men that carried the Report were queſtioned and fined. And now if a Report alone, and that a falſe one too, wrought ſuch an Effect upon the Wools in *England*, think what would be wrought by a real Loſs of the Dominion of the Sea in all our Commodities, if our Trade ſhould be at the Command of other Princes and States. Therefore, as his Majeſty, out of his great Wiſdom, hath found it expedient to ſet to Sea that Fleet that is now upon the Sea; ſo his Majeſty being engaged both in his Honour, and the Honour of the Kingdom, he findeth it to be of abſolute neceſſity to ſtrengthen this with a greater Strength and more Shipping the next Year. Therefore, upon Advice with his Council, he hath reſolved, that he will forthwith ſend forth new Writs for the Preparation of a greater Fleet the next Year, and that not only to the Maritime Towns, but to all the Kingdom beſides: For ſince that all the Kingdom is intereſted both in the Honour, Safety and Profit, it is juſt and reaſonable that they ſhould all put to their helping Hands.

Now that which his Majeſty requireth from you, and doth command, is, That in your Charges at the Aſſizes, and in all Places elſe, where Opportunity is offered, you take an occaſion to let the People know how careful and zealous his Majeſty is to preſerve his Honour, and the Honour of this Kingdom, and the Dominion of the Sea; and to ſecure both Sea and Land by a powerful Fleet, that foreign Nations may ſee, that *England* is both ready and able to keep itſelf, and all its Rights. And you are to let them know how juſt it is, that his Majeſty ſhould require this for the common Defence; and with what Alacrity and Cheerfulneſs they ought, and are bound in Duty, to contribute unto it; that foreign Nations may obſerve the Power and Readineſs of this Kingdom, which will make them ſlow to contend with us either by Sea or Land, and that will be the beſt way to confirm unto us a firm and ſure Peace.

This is the Subſtance of all that which I received in Commandment from his Majeſty; there are many Things elſe that concern the Publick, but your Judgments are well verſed in them. Theſe are the Particulars I had command to mention unto you, ſo I will trouble you no further, but leave them to your grave Conſiderations.

The Speech of Thomas *Lord* Coventry, *Lord-Keeper of the* Great-Seal *of* England, *to all the Judges of Aſſize of* England, *by Command from the King, in the* Star-Chamber, Feb. 14, 1636.

Together with the King's Letter and Caſe, touching Ship-Money, *and the Judges Opinions thereupon.*

My Lords the Judges,

THE Term being now at an end, and the Aſſizes at hand, his Majeſty hath commanded, That according to the Cuſtom in former Times, ſo now in this Place you ſhould receive ſome Directions for the Execution of Juſtice in all Parts of the Kingdom whereto you reſort. This (as it may juſtly be) is a great Comfort to his Majeſty's Subjects, to ſee his Majeſty's Care herein; which as it is a Teſtimony of their own Happineſs, in receiving Juſtice from the King himſelf, the Fountain of Juſtice, ſo it may as juſtly add Strength and Encouragement to you when you go your Circuits, not only to be armed with your own Authority by Commiſſion, but with your Prince's Inſtructions.

In the doing of Juſtice, you will find Things of ſeveral Natures and Degrees: In ſome Places before you, Communicative Juſtice beareth ſway, as in that which concerns *Meum & Tuum:* In other, Diſtributive Juſtice, as in *Præmium & Pœnam*; ſome concern one and a few; others concern the Multitude; others concern the King and all the King's People. In ſome Pleas Things are brought before you that are *ad nocumentum* of this or that particular Town; ſome *ad nocumentum totius Regni*. Some Things are brought before you that are *contra pacem Regis*, and others *contra coronam & dignitatem Regis*; and in this variety of Buſineſs, as there are many of a leſſer and lower Degree, yet not to be omitted, ſo you have *Graviora Legis*, upon which you ought to pitch your Mark; *hæc oportet fieri, illa non omitti.*

In that Juſtice which you are to do between Party and Party, his Majeſty doth require you, as in all his Courts here, ſo in your Circuits to adminiſter impartial Juſtice, and repreſs vexatious and wrangling Suits, not worthy the Dignity of your own Perſons, and the Court where you ſit; for thoſe Actions, as they empty the Spleen on the one ſide, ſo they never fail to empty the Purſe on both ſides.

But beſides the doing of Juſtice between Man and Man, there is much more expected from your Lordſhips; for the publick Buſineſs of the Country is of much more Importance than the Trial of a *Niſi Prius*, and fitting you ſhould eſteem them ſo: And therefore it is his Majeſty's Command, That thoſe Services which concern himſelf and the Publick, may be timely thought of, and not poſted off to the End of the Aſſize.

Now before all Things, the Advancement of Religion and Piety towards God, the Peace of the Church, and the Execution of thoſe Laws that tend to thoſe Ends, ought to have the firſt Place. As oft as I have had occaſion to ſpeak to you here, I have ſeldom ſpared to give you a Charge of the Laws againſt Recuſants; and I muſt reiterate it now: for if you convict them not in the Country, there is likely to be little Reformation, or Profit to his Majeſty; and whoſoever they be that will not be found in the Church, it behoveth you that you take order they be found in the *Exchequer*.

In the next place, that you proceed roundly againſt Capital and Felonious Offenders, eſpecially Robbers on the Highways, who now march in Troops after a high hand. As a good Judge ought in Court to ſhew Severity to thoſe in the Jail, alſo the ableſt and activeſt Men in the County ought to do their utmoſt Endeavours for the apprehending of thoſe Offenders as are abroad; that when you are there or here in the Term, the Service may proceed in a good Way, and you be made a Terror to Malefactors, as ſome of your Predeceſſors have been; for if your Care be not great, Malefactors will abound: therefore you muſt ſhew a ſevere and conſtant way of Juſtice when they are found, and it will ſoon abate their Pride, wherewith they now bear up themſelves; and fit it is with an unanimous Conſent you agree of one Courſe; for if there be a Remiſſneſs in any one Circuit, it leaveth a way to Malefactors to overthrow all Reformation, and Juſtice is thereby diſcouraged.

In the next place, Care muſt be had of thoſe Laws which concern Luxury and Idleneſs, the ſuppreſſion and puniſhing of Vagabonds, the ordering and employing of Houſes of Correction, the ſuppreſſing of Alehouſes and Tippling-houſes, and binding out of Apprentices. If theſe were well and conſtantly obſerved, they would ſave many able Bodies that die miſerably at the Gallows, and cut off a multitude of Enormities that peſter the Commonwealth, and leſſen the Number of Thieves and Robbers; and therefore your Lordſhips ſhould do well to have a ſpecial care of the Execution of thoſe Laws. And this giveth me occaſion to put you in mind of thoſe printed Orders publiſhed by his Majeſty in the Year 1630, wherein at firſt there was a Direction given for an Account to be made by the Sheriff and Juſtices of the Peace; this ſame was orderly kept in divers Places, in others not ſo well. It was afterwards adviſed by yourſelves, that the way of Account ſhould be changed, and that you ſhould receive it at the Aſſizes, and preſent it to the Council-Board; yet it is my part to tell you, that it hath not ſo appeared by the Account that is come to the Council-Table, and it is expected a better be given by you the next Term.

Now in reſpect the publick Service dependeth much upon the Juſtices of the Peace in the County, it will be neceſſary that you caſt your Eye upon them, that they give due Attendance at the Aſſizes: it is their Duty to do it, and yours to inforce it upon them. An Aſſize laſteth but a few Days, but the Inſtructions that they may receive from you in that ſhort time, may be of great uſe for the County for the whole Year: Alſo that you examine whether they give due Attendance at the Quarter-Seſſions. Altho' there is an expreſs Article in their Oath that they ſhould give it; I hear many neglect it: Therefore it is a Thing very fitting, and well worthy your Labour, that at the Beginning of every Aſſize, you truſt not to the Clerk of the Peace his Information, but that your ſelves do caſt an Eye upon his Book, and command him to return the Names of ſuch Juſtices of Peace as you find by his Book were abſent at the Quarter-Seſſions. Fit it will be that you let them know, that to prefer a Riding, or Bowling, or Hunting-match, before their Attendance at the Quarter-Seſſions, is little leſs than Perjury; and if your Admonition will not ſerve the turn, a Remedy ſhall be taken. In the third place, it is neceſſary for you to inquire how they attend the Monthly Meetings, or other times of publick Service; for this I am ſure of, they are all within one Commiſſion, and have the ſame Oath, and the ſame Attendance is impoſed upon all; and why the greateſt Number exempt themſelves, and leave the public Service upon a few, I know not; but if I may know the particular Men (of which I hope I ſhall henceforward by your Lordſhips) I ſhall rid them out of Commiſſion, and put others in their Places.

My Lords, I have but one Particular more, and that is of great Importance; whereof by ſpecial Direction and Command from his Majeſty, I am to ſpeak unto you at this time. All of you are the Witneſſes of his Majeſty's Proceedings, tho' the Candour and Clearneſs of his own Heart exceedeth your Teſtimony, and your Teſtimony is not only fit to be declared in this Place, but in all the Places of this Realm.

His Majeſty hath now the third time ſent forth Writs * to require the Aid of his Subjects for the guarding of the Dominion of the Sea, and Safety of the Kingdom. This his Majeſty did upon great Deliberation and Advice, and upon important and weighty Reaſons. In the firſt Year when the Writs were directed to the Ports and Maritime Places, they received little or no Oppoſition; but in the ſecond Year, when they went generally thro'-out the Kingdom (tho' by ſome well obeyed) have been refuſed by ſome, not only in ſome Inland Counties, but in ſome of the Maritime Places; and Actions have been brought againſt ſome that have been imployed in the execution of theſe Writs. I ſuppoſe that no Man will expect that *Arcana Regni*, the private Reaſons of a Prince, ſhould either upon this or other Occaſions be made publick; but ſo many Reaſons as were fit to be opened, were formerly declared by me in this place to you the Judges of this Realm.

The *Firſt* was, That the whole Kingdom is concerned in point of Safety; admitting there were no other Counſel or Attempt againſt us, but only to interrupt us in the Dominion of the Seas, our moſt ſecure and ſafe Defence, better either than Caſtles or Forts; which if it be commanded by others, it lays us open to much Peril and Danger.

Secondly, The whole Kingdom is concerned in point of Honour: for it is one of the moſt ancient and honourable Rights of the Crown of *England*, even the Dominion of the Sea. And all Records do ſhew, how the Kings and People of *England* have ever been careful that this Honour ſhould never periſh: and certainly the whole Kingdom is concerned in point of Trade and Profit; for the Traffick does not only enrich the Maritime Parts, but the Inland Towns; and if Trading fail, the Inland Places will find it in the fall of the Prices of Wool, Lead, and other Staple Commodities. This Experience ſheweth daily, when upon every Stop of the vent of Cloth, there come ſuch Outcries by the Weaver, the Fuller, the Spinner, and

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* *See the particular Taxation in* Ruſh. Col. Vol. 2. p. 453.

Wool-growers themſelves; and the Authority of the Law ſheweth the ſame: 43. in the Book of Aſſize, which your Lordſhips know better than I, it appears that certain Men went into the Country, and caſt out a Fame, that for that Year no Wool ſhould be tranſported beyond the Seas; preſently upon this the price of Wool fell, and thoſe Men were called in queſtion, and were adjudged in a Fine for it. Now if a Rumour did ſo much abate the Trade in the Heart of the Kingdom, what would the Loſs of the Dominion of the Sea do, which expoſeth us, and all our Trade, to the Mercy of our Neighbours? Therefore ſince the whole Kingdom is concerned in point of Honour, Safety, and Profit, what Reaſon is there but that all ſhould contribute to the Maintenance of it? This, or to the like Effect, I did formerly declare to you the Judges by his Majeſty's Command; and his Majeſty received Satisfaction, in that you made a full Declaration thereof in your Circuits: and this I may ſay, for the moſt part, the Subjects have ſhewed themſelves moſt dutiful and obedient in this Service of his Majeſty; and this Year the Sum impoſed upon the County of *York*, being twelve thouſand Pounds, is brought in already by the Sheriff, and ſo is moſt part of *Lancaſhire*, and other Shires: but when his Majeſty heard of ſome Refuſals, tho' he had Cauſe to be ſenſible of it, yet he was far from being tranſported with Paſſion, but thought good to reſort to the Advice of you his Judges, who are ſworn to give him faithful and true Counſel in that which pertaineth to the Law; and this his Majeſty, as well for the Direction of his own Courſe, as for the Satisfaction of his Subjects, required you to deliver your Opinions herein, to which you returned an Anſwer under your Hands. And becauſe the Command which you received from the King, is expreſſed in a princely Letter under his own Signature, I ſhall not take upon me to repeat it, you ſhall hear it read.

Which being delivered by my Lord-Keeper to one of the Clerks in Court, was read in hæc Verba.

CAROLUS *Rex*,

TRuſty and Well-beloved, we greet you well. Taking into our Princely Conſideration, that the Honour and Safety of this our Realm of *England*, the Preſervation whereof is only intruſted to our Care, was, and is now more nearly concerned than in former Times, as well by divers Counſels and Attempts to take from us the Dominion of the Sea, of which we are ſole Lord and rightful Owner; the Loſs whereof would be of greateſt Danger and Peril to this Kingdom, and other our Dominions: We, for avoiding theſe and the like Dangers, well weighing with ourſelves, that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, there the Charge and Defence ought to be borne by all the Realm in general; did, for prevention of ſo publick a Miſchief, reſolve with our ſelves to have a Royal Navy provided, that might be of Force and Power, with Almighty God's Bleſſing and Aſſiſtance, to protect and defend this our Realm and our Subjects therein, from all ſuch Perils and Dangers; and for that purpoſe We iſſued forth Writs under our Great Seal of *England*, and directed to all our Sheriffs of all our ſeveral Counties of *England* and *Wales*, commanding thereby all our ſaid Subjects, in every City, Town and Village, to provide ſuch a Number of Ships, well-furniſhed, as might ſerve for this our Royal Purpoſe; and which might be done with the greateſt Equality that could be. In Performance whereof, tho' generally throughout all the Counties of this our Realm, we have found in our Subjects great Chearfulneſs and Alacrity, which we graciouſly interpret as a Teſtimony, as well of their dutiful Affections unto us, and to our Service, as the Reſpect they have to the Publick, which well becometh every good Subject; nevertheleſs finding that ſome few, haply out of Ignorance what the Laws and Cuſtoms of this our Realm are, or out of a Deſire to be eaſed and freed in their Particulars, (how general ſoever the Charge ought to be) have not yet paid and contributed the ſeveral Rates and Aſſeſſments that were ſet upon them, and foreſeeing, in our Princely Wiſdom, that from hence divers Suits and Actions are not unlikely to be commenced and proſecuted in our ſeveral Courts at *Weſtminſter*: We, deſirous to avoid ſuch Inconveniencies, and out of our Princely Love and Affection to all our Subjects, being willing to prevent ſuch Errors as any of our loving Subjects may happen to run into, have thought fit, in a Caſe of this Nature to adviſe with our Judges, who we doubt not are all well ſtudied and informed in the Right of our Sovereignty. And becauſe the Trials in our ſeveral Courts, by the Formality in Pleading, will require a long Protraction, we have thought it expedient, by this our Letter directed to you all, to require your Judgments in the Caſe, as it is ſet down in the incloſed Paper, which will not only gain Time, but alſo be of more Authority to over-rule any prejudicate Opinions of others in the Point.

Given under our Signet at our Court at White-hall, *the Second Day of* February, *in the Twelfth Year of Our Reign.* 1636.

This being thus Read, the Lord-Keeper commanded the Caſe incloſed to be read, being as followeth.

CAROLUS *Rex*,

WHEN the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger; Whether may not the King, by Writ under the Great Seal of *England*, command all the Subjects of this Kingdom, at their Charge, to provide and furniſh ſuch Number of Ships, with Men, Victuals and Munition, and for ſuch Time as he ſhall think fit, for the Defence and Safeguard of the Kingdom from ſuch Danger and Peril; and by Law compel the doing thereof, in caſe of Refuſal or Refractorineſs? And whether, in ſuch a Caſe, is not the King ſole Judge, both of the Danger, and when and how the ſame is to be prevented and avoided?

The Judges Anſwer.

May it pleaſe your Moſt Excellent Majeſty,

WE have, according to your Majeſty's Command, every Man by himſelf, and all of us together, taken into Conſideration, the Caſe and Queſtion, ſigned by your Majeſty, and incloſed in your Royal Letter: And We are of Opinion, That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, your Majeſty may, by Writ, under the Great Seal of *England*, command all the Subjects of this your Kingdom, at their Charge, to provide and furniſh ſuch Number of Ships, with Men, Munition, and Victuals, and for ſuch Time as your Majeſty ſhall think fit, for the Defence and Safeguard of the Kingdom from ſuch Danger and Peril: And that by Law your Majeſty may compel the doing thereof, in caſe of Refuſal or Refractorineſs. And we are alſo of Opinion, That in ſuch Caſe, Your Majeſty is the ſole Judge, both of the Danger, and when, and how the ſame is to be prevented and avoided.

Jo. Brampſton,
Jo. Finch,
Hump. Davenport,
Jo. Denham,
Rich. Hutton,
W. Jones,
Geo. Crooke,
Tho. Trevor,
Geo. Vernon,
Fra. Crawley,
Rob. Berkley,
Fra. Weſton.

The ſaid Caſe, with the Judges Opinions thereunto, (formerly in private deliver'd to his Majeſty) being thus publickly made known by my Lord-Keeper, who, withal, cauſed their ſeveral Names to be read, as they were in order ſubſcribed; (all the Judges being preſent ſave only Judge *Crooke)* the Lord-Keeper ſpake as followeth.

My Lords,

This being the Uniform Reſolution of all the Judges of *England*, with one Voice, and ſet under their own Hands; I ſay, this being ſo reſolved, as they do here expreſs upon every Man's particular ſtudying the Caſe, and upon a general Conference amongſt themſelves, it is of very great Authority: for the very Lives and Lands of the King's Subjects are to be determined by theſe Reverend Judges; much more a Charge of this Nature, which God knows cannot be burdenſome to any, but is of ſingular Uſe and Conſequence, and for the Safety of the whole Kingdom. The Command from his Majeſty is, that I ſhould publiſh this your Opinion in this Place, and give Order, That it ſhould be entered in this Court, in the High-Court of *Chancery*, and in the Courts of *King*'s-*Bench*, *Common-Pleas*, and *Exchequer*; for this is a Thing not fit to be kept in a Corner: And his further Command is, that You the Judges do declare and publiſh this general Reſolution of all the Judges of *England*, thro' all Parts of the Kingdom, that all Men may take notice thereof, and that thoſe his Subjects which have been in an Error, may inform themſelves, or be reformed. You have great Cauſe to declare it with Joy, and you can hardly do it with Honour enough to the King, that in ſo high a Point of his Sovereignty, he hath been pleaſed to deſcend, and to communicate with you his Judges; which ſheweth, that Juſtice and Sovereignty, in his Majeſty, do kiſs each other. His further Pleaſure is, That you let all know it is not his Purpoſe by this Reſolution to ſtop, or check, the Actions or Suits which any have brought, or ſhall bring, concerning this; for it is his Majeſty's Command, that all ſuch as proceed in any Action about the ſame, have equal and meet Juſtice, and that they be ſuffered to proceed in Courſe of Law, ſo as you call the King's Learned Counſel unto their Proceedings, that they may not be ſurprized.

Now, my Lords, I have little more to ſay, but this I am ſure of, that if any contrary Opinion ſhall yet remain amongſt Men, it muſt proceed from thoſe that are Sons of the Law, *(Fœlices eſſent artes*, &c.) and you the Judges of the Realm have been accounted the Fathers of the Law; then, in good Faith, it will ill become the Son to diſpute againſt the Father. Having thus delivered unto You, what I received in Command from his Majeſty, as his Majeſty doth, ſo do I, leave it to your Judgments.

By Writ. Of the Term of the Holy Trinity, *in the* 13th *Year of King* Charles.

‘ MEmorandum; that the Writ of our Lord the King under the
‘ Seal of the *Exchequer*, by the conſent of the Barons here, iſſued
‘ out in theſe words.

‘ ſſ. *Charles* by the Grace of God, of *England*, *Scotland*, *France* and
‘ *Ireland* King, Defender of the Faith, *&c.* To the Sheriff of *Bucks*
‘ greeting. Whereas ſeveral and divers Sums of Money, ſpecified in the
‘ Schedule to this Writ annexed, by virtue of our Writ under our Seal
‘ of *England*, bearing Date the fourth Day of *Auguſt* in the eleventh
‘ Year of our Reign, were aſſeſſed and charged upon ſeveral Perſons in
‘ the ſaid Schedule named, for and towards the providing of a Ship of
‘ War, together with the Rigging and other things thereunto belonging,
‘ in the ſaid Writ particularly mentioned; which ſaid ſeveral Sums of
‘ Money being ſo aſſeſſed and charged, and unpaid and not ſatisfied,
‘ the Names of the ſaid ſeveral Perſons, together with the ſeveral Sums
‘ of Money charged upon them, were certified into the Court of our
‘ *Chancery* by our Writ of *Certiorari*, bearing Date the ninth Day of
‘ *March* in the 12th Year of our Reign, iſſuing under our great Seal afore-
‘ ſaid: And by our Writ of *Mittimus* under the ſaid Seal, bearing Date
‘ the 5th Day of the Month of *May* Inſtant, were ſent into our *Exche-*
‘ *quer* for further Proceſs thereupon to be had, as by the Tenor of the
‘ ſaid Writ, bearing Date the 4th Day of *Auguſt* in the 11th Year of
‘ our Reign, and by the Writ of *Certiorari*, and Certificates thereupon
‘ made, ſent into our ſaid *Exchequer*, and there of Record, remaining in
‘ the Cuſtody of our Remembrancer, more fully doth appear: We com-
‘ mand you, that you do not, by reaſon of any Liberty, omit entring
‘ thereupon; and by good and lawful Men of your Bailiwick, make
‘ known to the ſeveral Perſons aforeſaid, named and ſpecified in the ſaid
‘ Schedule, that they appear before the Barons of the *Exchequer* at *Weſt-*
‘ *minſter* on the *Octave* of the Holy Trinity enſuing; to ſhew and pro-
‘ poſe, if they have or know any thing to ſay for themſelves, why they
‘ ought not to be charged with the aforeſaid ſeveral Sums of Money upon
‘ them aſſeſſed in manner and form aforeſaid, and not paid, in the ſaid
‘ Schedule ſpecified, and to ſatisfy the ſame; and further, to do and re-
‘ ceive in the Premiſſes, what our Court ſhall then there think fit to be
‘ ordered; and there bring then this Writ, and the Names of thoſe by
‘ whom you have ſo made known unto them. Witneſs *Humphrey Daven-*
‘ *port*, Knt. at *Weſtminſter*, the 22d Day of *May*, in the 13th Year of our
‘ Reign. *By the Roll.*

‘ Memorandum of the ſame Year of the King in the Record Roll of this *Eaſter*, and by the Baron *Fenſhaw*, and the Tenour of the aforeſaid Schedule in the aforeſaid Writ mentioned as touching *John Hampden*, followeth in theſe words, *viz.* A Schedule of the Names of certain Perſons in the County of *Bucks*, and of certain Sums of Money upon them aſſeſſed, and charged for and towards the providing of a Ship of War, together with the Rigging and other things thereunto belonging; by the virtue of a certain Writ under the Great Seal of *England*, bearing Date the 4th Day of *Auguſt* in the 11th Year of *Charles* our now Lord the King, and certified into the Court of *Chancery* of our ſaid Lord the King to be unpaid, by virtue of a Writ of *Certiorari*, iſſuing out under the Seal aforeſaid, bearing Date the 9th Day of *March* in the 12th Year of his Reign; and by Writ of *Mittimus* under the ſaid Seal ſent into the *Exchequer* of our ſaid now Lord the King, for further Proceſs thereupon to be made, as by the Tenour of the aforeſaid Writ, bearing Date the 4th Day of *Auguſt* in the abovеſaid 11th Year of our ſaid now Lord the King, and by the Writ of *Certiorari*, and the Certificates thereupon made ſent into the ſaid *Exchequer*, and there of Record remaining in the Cuſtody of the Remembrancer of our Lord the King, more fully doth appear: ſſ. *Stoake Mandivile*, *ſſ. J. Hampden* Eſq; 1*l.* At which Day *Anthony Cheſter* Bart. Sheriff of the County aforeſaid, as touching the aforeſaid *John Hampden*, returned, that he by *Nicholas Aris*, *Robert Alexander*, *Richard Harriſon*, and *William Heyborne*, good and lawful Men of his Bailiwick, made known to the aforeſaid *John Hampden* amongſt other things, that he appear before the Barons within written, at the Day and Place within contained; to ſhew and propoſe, if he hath or knoweth of any thing to ſay for himſelf, why he ought not to be charged with the aforeſaid Sum upon him aſſeſſed, and not paid, in the ſaid Schedule ſpecified, and to ſatisfy the ſame, as it is further commanded him. And now, that is to ſay, from the day of the Holy Trinity, upon three Weeks the aforeſaid *John Hampden* in the aforeſaid Schedule named, here cometh in his proper Perſon, and prayeth *Oyer* of the Writ of *Scire Facias* aforeſaid, the Return of the ſame, and the Schedule unto the ſame annexed, and they are read unto him. He likewiſe prayeth *Oyer* of the aforeſaid Writ, bearing Date the 4th Day of *Auguſt* in the 11th Year of *Charles* our ſaid now Lord the King in the Writ of *Scire Facias* mentioned, and it is read unto him in theſe Words, ſſ. *Charles* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* To the Sheriff of our County of *Bucks*, the Bailiff and Burgeſſes of the Burrough and Pariſh of *Buckingham*, the Mayor, Bailiff and Burgeſſes of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, and the good Men in the ſaid Burroughs, Pariſh, and their ſaid Members; and in the Towns of *Agmondeſham*, *Wendover*, and *Great Marlowe*, and in all other Burroughs, Villages, Hamlets, and other Places in the ſaid County of *Bucks*, greeting. Becauſe we are given to underſtand, that certain Thieves, Pirates, and Sea-Robbers, as well *Turks*, Enemies of Chriſtianity, as others confederated together, wickedly take away and deſpoil the Ships, Goods, and Merchandizes, not only of our Subjects, but alſo of the Subjects of our Allies upon the Sea, which of old uſed to be defended by the *Engliſh* Nation; and at their pleaſure have carried away the Men therein, enſlaving them in a moſt wretched Captivity: And whereas we ſee them daily preparing Shipping further to annoy our Subjects, and to aggrieve the Kingdom, unleſs a more ſpeedy Remedy be applied, and their Endeavours more vigorouſly obviated: Conſidering alſo the Dangers which every where in theſe Times of War hang over us; ſo that it behoves us and our Subjects to haſten the Defence of the Sea and Kingdom with all poſſible Expedition: We being willing by the help of God, in the higheſt degree to provide for the Defence of the Kingdom, the Protection of the Sea, the Security of our Subjects, the ſafe Convoy of Shipping and Merchandize coming to our Kingdom of *England*, and going from the ſaid Kingdom to foreign Parts: And ſince we and our Progenitors, Kings of *England*, have hitherto been Lords of the Sea aforeſaid; and it would in the higheſt manner concern us, if this Royal Honour ſhould in our days be loſt, or any ways diminiſhed; ſince alſo this Burden of Defence which touches all, ought to be borne by all, as hath been accuſtomed to be done by the Law and Cuſtom of the Kingdom of *England*: We firmly enjoin and command you the aforeſaid Sheriff, Bailiffs, Burgeſſes, Mayor, good Men, and all others whomſoever above mentioned, in the Burroughs, Towns, Villages, Hamlets and Places aforeſaid, and their Members, in the Faith and Allegiance whereby you are bound to us, and as you love us and our Honour, as alſo under the forfeiture of all things you can poſſibly forfeit to us, that you cauſe to be fitted out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well ſkilful Officers as able and experienced Mariners, a hundred and fourſcore at leaſt; as alſo with a ſufficient quantity of Cannon, Muſkets, Gunpowder, Pikes and Spears, and other Arms neceſſary for War, with double Tackling; as alſo with competent Victuals for ſo many Men, until the 1ſt Day of *March* now next enſuing; and from thence for ſix and twenty Weeks at your Coſts, as well in Victuals, as the Men's Wages, and other things neceſſary for War by that time, on account of defending the Sea at our Command in Company with the Admiral; to whom we ſhall before the aforeſaid firſt Day of *March*, commit the Cuſtody of the Sea, to be and remain where he on our behalf ſhall appoint; and that you cauſe the ſame to be brought into the Port of *Portſmouth* before the ſaid firſt Day of *March*, ſo that they may be there that Day at fartheſt; thence to proceed with our Ships, and the Ships of other loyal Subjects for the Protection of the Sea, the Defence of you and yours, to repel and vanquiſh all thoſe whoſoever they are, that endeavour to moleſt and annoy on the Sea our Merchants and other loyal Subjects aforeſaid, coming into our Dominions on account of Traffick, or returning thence to their own Country. We have alſo appointed you the Sheriff of our County of *Bucks*, the Bailiff and Mayor of the Burroughs and Pariſh aforeſaid, or any two or more of you, of whom our Will is, that you the aforeſaid Sheriff of our County of *Bucks* be one, within thirty days after the Receipt of this Writ, to aſſeſs as much of the Charges aforeſaid upon the aforeſaid Burroughs of *Buckingham* and *Chipping Wiccombe* alias *Wiccombe* with their Members, as ought ſeverally to be laid on or aſſeſſed. And if ſuch Aſſeſſment within the aforeſaid thirty days ſhall not happen to be made by you, two or more of you; then we have appointed you the aforeſaid Sheriff of our County of *Bucks*, to make ſuch Aſſeſſment upon the aforeſaid Burroughs, and Pariſh, and Members, as you ſhall ſee reaſonable to be done. And our Will is, that of your ſo doing, you the aforeſaid Sheriff of *Bucks* wholly certify under your Seal the Mayor and Bailiffs aforeſaid. We have alſo appointed you the aforeſaid Bailiff of the Burrough and Pariſh of *Buckingham*, to aſſeſs every Man in the ſaid Burrough and Pariſh, and in the Members thereof, and the Land-Tenants in the ſame, not having the Ship aforeſaid, or any Share thereof, or not ſerving therein, to contribute to the Expences about Proviſion of the neceſſary Premiſſes; and to aſſeſs and lay upon the aforeſaid Burrough and Pariſh with the Members thereof, ſo as aforeſaid, that is to ſay, every one of them according to their Eſtate, Goods, and Employment, and the Portions on them aſſeſſed by Diſtreſſes, or other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint; and all thoſe whom you ſhall find rebellious and refractory in the Premiſes to impriſon, there to remain till for their Delivery we ſhall further think fit to direct. We have alſo appointed you the aforeſaid Mayor of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, to aſſeſs every Man in the ſame Burrough, and in the Members thereof, and the Land-Tenants in the ſame, not having the Ship aforeſaid, or any Share thereof, or not ſerving therein, to contribute to the Expences about Proviſion of the neceſſary Premiſſes; and to aſſeſs and lay upon the aforeſaid Burrough with the Members thereof, ſo as aforeſaid, that is to ſay, every one of them according to their Eſtate and Goods, or Employment, and the Portions on them aſſeſſed by Diſtreſſes, or other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint; and all thoſe whom you ſhall find rebellious and refractory in the Premiſſes to impriſon, there to remain till for their Delivery we ſhall further think fit to order and direct. And moreover, we have appointed you the aforeſaid Sheriff of our County of *Bucks* to aſſeſs every Man in the aforeſaid Towns of *Agmondeſham*, *Wendover*, and *Great Marlow*, and in the Members thereof, and in all the other Towns, Villages, Burroughs, Hamlets, and other Places in the aforeſaid County of *Bucks*, and the Land-Tenants in the ſame, not having the Ship aforeſaid, or any Share thereof, or not ſerving in the ſame, to contribute to the Expences about the Proviſion of the neceſſary Premiſſes, and to aſſeſs and lay upon the ſaid Towns, Villages, Burroughs, Hamlets and Places, with the Members thereof, ſo as aforeſaid, that is to ſay, every one of them according to their Eſtate and Goods, or Employment; and the Portions on them aſſeſſed by Diſtreſſes or other due Ways and Means to levy, and Collectors in that Behalf to nominate and appoint; and all thoſe whom you ſhall find rebellious and refractory in the Premiſſes to impriſon, there to remain till for their Delivery we ſhall further think fit to order and direct. And further, we command you all, that you diligently apply your ſelves to the Premiſſes, and effectually do and execute the ſame, as you ſhall anſwer the contrary at your Peril. But our Will and Pleaſure is, not that under Colour of our Mandate aforeſaid, you cauſe to be levied from the ſaid Perſons more than ſhall ſuffice for the neceſſary Expences of the Premiſſes; or that any one who ſhall levy any Money of the Contributors to the Charges aforeſaid, detain the ſame or any Part thereof in his own Poſſeſſion, or preſume to appropriate it to other Uſes under any Pretence or Colour whatſoever. It being our Will, that if more ſhall be collected than is ſufficient, that the ſame be paid back again to thoſe who ſhall have ſo paid the ſame, according to every Man's reſpective Share and Proportion. Witneſs my ſelf at *Weſtminſter* the 4th Day of *Auguſt* in the 11th Year of our Reign. He prayeth alſo *Oyer* of the aforeſaid Writ of *Scire facias* above mentioned, and it is in like manner read unto him. ſſ. *Charles*, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* To thoſe who were Sheriffs of our County of *Bucks* between the 4th Day of *Auguſt*, in the 11th Year of our Reign, and the firſt Day of *March* then next enſuing, to thoſe who were Bailiffs of the Burrough and Pariſh of *Buckingham*, and the Mayor and Bailiffs of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, in the ſaid County of *Bucks*, within the time aforeſaid, greeting. Whereas by our Writ made under our Great Seal of *England*, bearing Date the aforeſaid 4th Day of *Auguſt* in the 11th Year aboveſaid, for the Defence of the Kingdom, the Protection of the Sea, the Security of our Subjects, and the ſafe Convoy of the Ships and Merchandize coming to our Kingdom and paſſing thence to foreign Parts; we commanded the Sheriff of our County of *Bucks*, the Bailiff of the Burrough and Pariſh of *Buckingham*, as alſo the Burgeſſes of the ſaid Burrough, the Mayor and Bailiffs of *Chipping Wiccombe* alias *Wiccombe*, as alſo the Burgeſſes of the ſaid Burrough, and the good Men in the ſaid Burroughs and Pariſh, and in the ſaid Burroughs and Pariſh and Members of the ſame, and in the Towns of *Agmondeſham*, *Wendover*, and *Great Marlow*, and in all other Places, Towns, Burroughs, Villages, Hamlets, and other Places in the ſaid County of *Bucks*, that you ſhould cauſe to be fitted out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well ſkilful Officers as able and experienced Mariners, a hundred and fourſcore at leaſt, as alſo with a ſufficient Quantity of Cannons, Muſkets, Pikes and Spears, Gunpowder, and other Arms neceſſary for War, with double Tackling, as alſo with competent Victuals for ſo many Men, at a certain Day in the ſaid Writ contained, and from thence for ſix and twenty Weeks at the Coſts of the Men and Land-Tenants of the Burroughs, Pariſh, Towns, Villages, Hamlets, and other Places above mentioned in the ſaid County of *Bucks*, as well in Victuals, as the Men's Wages, and other things neceſſary for War, by that time, for defending the Sea; and that you ſhould cauſe the ſame to be brought into the Port of *Portſmouth* within the time in the ſaid Writ limited. And whereas by the ſaid Writ, we appointed the Sheriff of our County of *Bucks* aforeſaid, the Bailiff of the

Burrough and Pariſh of *Buckingham* aforeſaid, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe* aforeſaid, or any two or more of them, of whom our Will was that the Sheriff of our ſaid County of *Bucks* ſhould be one, to aſſeſs as much of the Coſts aforeſaid, upon the aforeſaid Burrough and Pariſh of *Buckingham*, and upon the aforeſaid Burrough of *Chipping-Wiccombe* alias *Wiccombe*, with their Members, as ought ſeverally to be laid on, or aſſeſſed. And whereas we appointed the Bailiff of the Burrough and Pariſh of *Buckingham*, and the Mayor of the Burrough of *Chipping Wiccombe* alias *Wiccombe*, ſeverally and reſpectively to aſſeſs every Man in the ſaid ſeveral Burroughs and Pariſh, and the Members thereof, and the Land-Tenants in the ſame, not having the Ship aforeſaid or any Share thereof, or not ſerving therein, to contribute to the Expences about the Proviſion of the neceſſary Premiſſes: And upon the aforeſaid Burrough and Pariſh of *Buckingham*, and upon the aforeſaid Burrough of *Chipping-Wiccombe* alias *Wiccombe*, ſo as aforeſaid, then to be ſeverally and diſtinctly laid, that is to ſay, every one of them according to their Eſtate and Goods, or Employment, and the Portions upon them aſſeſſed by Diſtreſſes, or other due Ways and Means to levy, and Collectors in that behalf to nominate and appoint, in Manner and Form as in the ſaid Writ was commanded. And whereas by our ſaid Writ we moreover appointed the Sheriff of our ſaid County of *Bucks* to aſſeſs every Man in the aforeſaid Towns of *Agmondeſham*, *Wendover*, *Great Marlowe*, and in the Members thereof, and in all the other Towns, Villages, Burroughs, Hamlets, and other Places in the aforeſaid County of *Bucks*, and the Land-Tenants in the ſame, to contribute to the Expences about the Proviſion of the neceſſary Premiſſes, and the other things to do and execute in Manner and Form as by the ſaid Writ was commanded. And becauſe ſome Men and Land-Tenants in the ſaid County, Burroughs, Pariſh, Towns, Villages, Hamlets, and other Places, by ſeveral Taxations, and Sums of Money, by you upon them reſpectively laid and aſſeſſed towards the Contribution of the Burden aforeſaid, according to the Exigency of the Writ aforeſaid, have not yet paid and ſatisfied the ſame, but have refuſed and yet gainſay to pay the ſame, as we are informed. And whereas our late Will was to be certified as well of the Names of the Men and Land-Tenants who had been aſſeſſed towards the Contribution of the Expences aboveſaid, and had not paid the Money ſo aſſeſſed, as alſo of the ſeveral Portions or Sums of Money laid upon them. You nevertheleſs in contempt of us, have ſent nothing upon the Return of our Writ limited. We therefore command you, the late Sheriff of our County of *Bucks*, as we heretofore have commanded you, that you certify to us, as well of the Names of the Men, and Land-Tenants, in the aforeſaid County, by Virtue of our ſaid Writ by you reſpectively aſſeſſed, as the Sums of Money on them ſo aſſeſſed, which they have not yet paid, nor ſatisfied, but refuſe to pay the ſame; as alſo of the ſeveral Portions and Sums of Money, by you the aforeſaid late Sheriff of our County of *Bucks* upon them aſſeſſed, reduced into Writing, with all things touching the ſame, into our *Chancery*, diſtinctly and openly, under your Seals, without delay, or at fartheſt before the ſix and twentieth Day of *April* next enſuing, whereſoever you ſhall then be, together with this Writ. And we command you the aforeſaid late Bailiff of the Burrough and Pariſh of *Buckingham*, and the Mayor of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, as we heretofore have commanded you, that you ſeverally certify us, as well of the Names of the aforeſaid Men and Land-Tenants in the Burrough and Pariſh of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, by virtue of our ſaid Writ firſt above mentioned by you reſpectively aſſeſſed, as the Sums of Money on them ſo aſſeſſed, which they have not yet paid, nor ſatisfied, but refuſe to pay the ſame; as alſo of the ſeveral Portions and Sums of Money by you upon them reſpectively aſſeſſed, reduced in like manner into Writing, with all things touching the ſame, into our *Chancery* aforeſaid, diſtinctly and openly without delay, or at fartheſt before the ſix and twentieth Day of *April* next enſuing, whereſoever you ſhall then be, together with this Writ. Witneſs my ſelf at *Weſtminſter*, the ninth Day of *March*, in the twelfth Year of our Reign. *EYRE*. At which Day, *Peter Temple* and *Heneage Proby* return'd the aforeſaid Writ, by Indorſement, thus, *ſſ.* The Execution of this Writ appears in certain Schedules to this Writ annexed. The Tenor of which Schedules as to the aforeſaid *John Hampden* return'd by the aforeſaid *Peter Temple*, follows in theſe Words. ſſ. *Bucks*, *ſſ.* I *Peter Temple* Knight and Baronet, who was Sheriff of the County of *Bucks*, that is to ſay, between the 4th day of *Auguſt*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, *&c.* and the twenty-ſecond Day of *February* then next following; on which Day I went out of my Office of Sheriff of the County of *Bucks* aforeſaid; by virtue of the ſaid Writ of our Lord the King to this Schedule annexed, do certify unto our ſaid Lord the King into his *Chancery*, that by virtue, and according to the Exigency of the Writ of our ſaid Lord the King iſſued out of his *Chancery*, and there inrolled of Record, and, amongſt others, directed to the Sheriff of the ſaid County of *Bucks*, bearing Date the fourth Day of *Auguſt*, in the eleventh Year aforeſaid; have aſſeſſed upon ſeveral Men and Land-Tenants of the County of *Bucks* aforeſaid, whoſe Names are underwritten, the ſeveral Portions and Sums of Money at their particulars placed below, to contribute to the Expences about the providing of the Ship in the ſaid Writ mentioned; which ſaid Portions and Sums of Money, or any parcel thereof, before my going out of my Office of Sheriff of the County aforeſaid, the ſaid Men and Land-Tenants, or any of them whoſe Names are under-written, have not paid, but have refuſed to pay the ſame to my Hands, or the Hands of the Collector by me in that behalf appointed, by virtue of the Writ laſt mentioned, *viz. Stoake Mandiville*, *ſſ.* Mr. *John Hampden*, Eſq; 1*l.* And the Tenure of the other Schedule by the aforeſaid *Heneage Proby* in like manner returned, and to the ſaid Writ annexed alſo, follows in theſe Words: ſſ. *There is to be accompted upon by the Aſſeſſors, High Conſtables, Petty Conſtables within the ſaid County in general, which cannot be accompted for by Sir* Peter Temple, *being as it is conceived ſhort four Pounds.*

‘ I *Heneage Proby* Eſq; who was Sheriff of the County of *Bucks*, between the twenty-ſecond Day of *February*, in the eleventh Year of the Reign of our Lord *Charles* now King of *England*, &c. and from the ſaid Day and Year, to the firſt Day of *March* then next following; by virtue of the Writ of our ſaid Lord the King to this Schedule annexed, do certify unto our ſaid Lord the King into his *Chancery*, that the Men and Land-Tenants of the County of *Bucks* aforeſaid, or any one of them whoſe Names are expreſſed in certain Schedules to this Writ annexed, who were aſſeſſed by Sir *Peter Temple* Knight and Baronet, late Sheriff of the County of *Bucks* aforeſaid, whilſt he was in the Office of Sheriff of the County aforeſaid, in the ſeveral Portions and Sums of Money placed at their ſeveral Names above, to contribute to the Expences about the providing of the Ship; by virtue, and according to the Exigency of the Writ of our ſaid Lord the King, iſſued out of his *Chancery*, and there inrolled of Record, directed amongſt others to the Sheriff of the ſaid County of *Bucks*, bearing Date the fourth Day of *Auguſt*, in the eleventh Year aforeſaid, have not paid, but have refuſed to pay the ſame to *Heneage Proby* being Sheriff of the ſaid County of *Bucks*, next after the going out of Sir *Peter Temple* Knight and Baronet, from the Office of Sheriff of the ſaid County, or to the Hands of the Collector in that behalf appointed by virtue of the Writ laſt mentioned. And further, the aforeſaid *John Hampden* in like manner prayeth *Oyer* of the aforeſaid Writ of *Mittimus*, of which mention is made in the Writ of *Sciri Facias*, aforeſaid, and it is read unto him in theſe Words: ſſ. *Charles* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, *&c.* To the Treaſurer and Barons of his *Exchequer*, Greeting: By the tenor of a certain Writ of ours made under our Great Seal of *England*, bearing Date the fourth Day of *Auguſt*, in the eleventh Year of our Reign, inrolled in the Rolls of our *Chancery*; by which we commanded the Sheriff of our County of *Bucks*, the Bailiff and Burgeſſes of the Burrough and Pariſh of *Buckingham*, the Mayor or Bailiff and Burgeſſes of the Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and the good Men in the ſaid Burroughs, Pariſh, and the Members thereof, and in the Towns of *Agmondeſham*, *Wendover*, and *Great Marlowe*; and in all other Burroughs, Towns, Villages, Hamlets, and other Places in the ſaid County of *Bucks*; that for the Defence of the Kingdom, the Protection of the Sea, the Security of the Subjects, and ſafe Convoy of the Ships and Merchandize coming to our Kingdom of *England*, and thence going to foreign Parts, they ſhould fit out one Ship of War of the Burden of four hundred and fifty Tuns, with Men, as well ſkilful Officers as able and experienc'd Mariners, a hundred and fourſcore at leaſt; as alſo with a ſufficient Quantity of Cannons, Muſkets, Gunpowder, Pikes and Spears, with other Arms neceſſary for War, and with double Tackling; as alſo with competent Victuals for ſo many Men, at a certain Day, and from thence for ſix and twenty Weeks at the Coſts of the Men and Land-Tenants of the Burroughs, Pariſh, Towns, Villages, Hamlets, and other Places above mentioned in the ſaid County of *Bucks*, as well in Victuals as the Men's Wages, and other things neceſſary for War for that time, on account of the Defence of the Sea under our Command, in Company of the Admiral to be and remain; and that they ſhould cauſe the ſame to be brought into the Port of *Portſmouth* about the time limited in the ſaid Writ; and that they ſhould reſpectively aſſeſs every Man in the ſaid Burrough and Pariſh of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and in the reſt of the Burroughs, Towns, Villages, Hamlets, and other Places in the ſaid County of *Bucks*, and the Members thereof, and the Land-Tenants in the ſame, to contribute to the Expences about the Proviſion of the neceſſary Premiſſes, and other things to do and execute in Manner and Form as was commanded by the ſaid Writ: We ſend to you being preſent the incloſed Writ; for that the Safety of our Kingdom of *England*, and our People thereof were in Danger, which we have taken care to have iſſued out of our *Chancery* amongſt other Writs, to make ſuch Proviſion and Aſſeſſment thro' every County, City, Burrough, Town, Village, Hamlet, and Places of our Kingdom of *England*, and of *Wales*, and the Members thereof, out of our *Chancery* aforeſaid lately iſſuing, and there in like manner inrolled. And alſo a certain other Writ of ours to certify us into our *Chancery*, as well of the Names of the Men and Land-Tenants in the aforeſaid Burrough and Pariſh of *Buckingham*, and Burrough of *Chipping-Wiccombe* alias *Wiccombe*, and in the reſt of the Burroughs, Towns, Villages, Hamlets, and places of the ſaid County of *Bucks*, who by our Command aforeſaid were aſſeſſed to contribute towards the Proviſion of the Premiſſes, and have not paid the Sums of Money upon them ſo aſſeſſed; as alſo of the ſeveral Portions and Sums of Money ſo charged and laid upon the ſaid Men and Land-Tenants; as likewiſe certain Certificates by virtue of the ſaid Writ reduced in writing, and ſent into our *Chancery*. We alſo ſend you being preſent the incloſed, commanding you, that having inſpected the Writs and Certificates aforeſaid, you further cauſe to be done thereupon for the levying, collecting, and receiving all and ſingular the aforeſaid Sums of Money of the aforeſaid Contribution as yet unpaid, as by Right, and according to the Law and Cuſtom of our Kingdom of *England* hath been uſed to be done. Witneſs my ſelf at *Weſtminſter* the fifth Day of *May*, in the thirteenth Year of our Reign. *EYRE*. As in the ſaid Writs and Schedules thereunto annexed, certified into the *Exchequer* of our ſaid Lord the King, and there in the Cuſtody of the Remembrancer of our ſaid Lord the King remaining of Record, more fully is contained. Which being read, heard, and by him underſtood, the ſaid *John Hampden* complaineth, that by colour of the ſeveral Writs, their Returns and Schedules to them annexed, he hath been grievouſly vexed and diſquieted, and that unjuſtly; becauſe he ſaith, that the aforeſaid ſeveral Writs above mentioned, their Returns and Schedules to them annexed, and the Matter in them contained, are not ſufficient in the Law to charge the ſaid *John Hampden* on or with the payment of the aforeſaid Sum of twenty Shillings on him in the Schedule aforeſaid, in the manner and form aforeſaid taxed and aſſeſſed, or any Parcel thereof; to which he hath no neceſſity,

‘ or is obliged by the Law of the Land to make Anſwer: Whereupon by reaſon of the Inſufficiency of the aforeſaid ſeveral Writs above-mentioned, their Returns, the Schedules to them annexed, and the Matter in the ſaid Writs and Schedules contained, he the ſaid *John Hampden* prayeth Judgment, If our ſaid now Lord the King ought, or is willing further to aſſeſs or charge him with the aforeſaid twenty Shillings, or any Parcel thereof.

Rob. Holborne.

‘ And *John Banks* Knight, Attorney-General of our now Lord the King, who ſueth for our ſaid Lord the King, being preſent here in Court, the ſame Day in his proper Perſon, ſaith, that the aforeſaid ſeveral Writs, and their Returns, and the Schedules aforeſaid to the ſame annexed, and the Matter in the ſame contained, are ſufficient in the Law to charge the aforeſaid *Jahn Hampden* with the aforeſaid twenty Shillings upon him aſſeſſed in the Form, and for the Cauſe aforeſaid; which ſaid Matter, he the ſaid Attorney-General of our ſaid Lord the King, for and in behalf of our ſaid Lord the King, is ready to verify; and which Matter the aforeſaid *John Hampden* doth not deny, nor any wiſe make Anſwer thereunto, but wholly refuſeth to admit the Verification thereof, and therefore prayeth Judgment; and that the aforeſaid *John Hampden* be charged with the ſaid twenty Shillings, and ſatisfy the ſame."

John Banks.

The Firſt Day's Argument of Mr. St. John, *on the Behalf of Mr.* Hampden, *before all the Judges in the* Exchequer-Chamber, *in the great Caſe of* Ship Money.

May it pleaſe your Lordſhips,

P*ASCH' xiijo* Car' a *Sciri Facias* iſſued to the Sheriff of *Bucks*, reciting, that whereas ſeveral Sums of Money mentioned in a Schedule to that Writ annexed, by a Writ under the Great Seal of *England*, dated *4to Auguſti* 11 *Car'* ſeſſed upon ſeveral Perſons for providing of a Ship of War, were not paid: And that upon a *Certiorari* dated *9no Martij* 13 *Caroli*, theſe Sums and the ſeveral Perſons upon whom they were aſſeſſed, were certified into the *Chancery*, and from thence by *Mittimus* dated *5to Maij*, were ſent into the *Exchequer*, that Proceſs might be iſſued againſt theſe Defaulters: Thereupon the Sheriff is commanded, *Quod ſciri faceret* to thoſe ſeveral Perſons to appear in the *Exchequer Octab' Trinitat'* 13 *Caroli*, to ſhew Cauſe why they ſhould not pay thoſe Sums aſſeſſed upon them.

The Sheriff returns, *Quod ſciri fecit John Hampden* Eſq; who was aſſeſſed at 20*s*. and he hath not paid it. Mr. *Hampden* hath appeared and demanded *Oyer* of the *Scir' fac'* of the Schedule of the Writ dated *4to Auguſti*, the *Certiorari* and the *Mittimus*, and of their ſeveral Returns, and hath thereupon demurred in Law.

The Writ dated *4to Auguſti* 11 *Car'* becauſe it is the Ground of the iſſuing forth the *Sci fa'*, and ſo by neceſſary Conſequence, is that which firſt occaſioned any Proceſs againſt him, it will be the Subject from whence will be fetch'd all that ſhall be ſaid either for or againſt my Client. I will endeavour by breaking it into Parts, more clearly to preſent it to your Lordſhips View.

The Thing commanded is, that this County ſhould provide a Ship of War of 450 Tuns, with 180 Men, Guns, Gunpowder, double Tackling, Victuals, and all other things neceſſary, and to bring her to *Portſmouth* by the firſt of *March* following, and from that time to provide her of Victuals, Mariners Wages, and all other Neceſſaries for ſix and twenty Weeks. For effecting this, there is Power given to aſſeſs each Perſon within the County *ſecundum Statum & Facultates*, and to bring in theſe Seſſes by Diſtreſs, *& quos Rebelles invenirent* to impriſon their Perſons.

My Lords, if the Writ had ſtaid here, and gone no further, the Command tho' full in Word, it had been void in Law, becauſe as yet it appears not for what End this Ship was to be provided. 40 *Aſſ. Plow.* A Commiſſion to ſeize Mens Goods notoriouſly ſuſpected of Felony, before Conviction, adjudged void, becauſe therefore the Command, without Cauſe ſhewn, and that ſufficient in Law too, would be void.

In the ſecond Place therefore they are ſet down to be theſe: *Pro Defenſione Regni, Tuitione Maris, Securitate Subditorum, & ſalva Conductione Navium*, both outward and inward, the Sea being infeſted with Pirates, and more Shipping being daily prepared *ad Regnum gravandum*; theſe are the Ends.

In the third Place, the Legality of it, that every Man *ſecundum Statum & Facultates* ſhould be hereunto aſſeſſed, is thus inforced. *Firſt*, from Cuſtom and continued Uſe, in theſe Words; That the Sea *per Gentem Anglicanam ab olim defendi conſuevit.* And *Secondly*, this Uſe proved to be from a common ground of Equity; *Onus defenſionis, quod omnes tangit, per omnes debet ſupportari:* And the Rule of Equity back'd by the Common Law in theſe Words, *Prout per legem & conſuetudinem Regni Angliæ fieri conſuevit.* The Argument ſtands thus; All have Benefit by Defence of the Realm, and therefore by Law the Charge ought to be borne by all.

Then it is further inferred, that every Man, even by his Allegiance, is bound to contribute to this Charge, the Command being *in fide & legiancia quibus nobis tenemini.* Of theſe Parts the Writ conſiſts, which all being put together, in brief declare the Scope and End of the iſſuing forth thereof to be the Defence and Safety of the Kingdom; a thing ſo neceſſary, that it muſt needs be legal: For it is too near and too narrow a Conceit of the Wiſdom and Policy of the Law to think, that whilſt the Care thereof ſhould be confined only to the Preſervation of the general Members of the Body Politick from the Wrongs and Preſſures that might be offered from others to the Fellow-Members, that in the mean time it will leave the Whole to the Violence and Will of Enemies: ſo that whilſt each Subject, conſidered as a Part of the Whole, hath a known and ſure Eſtate in Lands, and real Property in his Goods, not to be impeached by any whatſoever within the Realm; yet conſidered all together as they make the *Unum Compoſitum*, they ſhould have in them only *Præcariam Poſſeſſionem*, or Tenancy at Will in regard of Foreigners. My Lords, this cannot be; for the Law is ſo careful herein, that even afar off it foreſees and prevents all Dangers in this kind; and that is the Reaſon that an Alien, tho' a Friend, hath not Capacity to purchaſe any Land in the Realm. And if the Law be ſo quick-ſighted, as that to prevent but Poſſibility of Danger, it keeps ſuch Strangers from having any Land within the Realm, which deſire to come by it peaceably and for valuable Conſiderations; by this we may eaſily ſee the great Care it hath to prevent apparent Dangers, which uſually proceed from open Force and Violence. Which further appears by the Greatneſs of the Puniſhment which the Law inflicts upon Offenders in this Kind, which is High-Treaſon, of all other the greateſt. 13 *Eliz. Dyer* 298. *Story* conſpired beyond Sea with a foreign State to invade the Realm; and tho' nothing was attempted, yet it was adjudged High-Treaſon. And 21 *Ed.* 3. *fo.* 23. and 45 *Ed.* 3. 24. a Man killed a Captain that was going with twenty Men at Arms to the King in his Wars, and it was adjudged to be High-Treaſon. And ſo by ſome Opinions in Print it is, to burn or ſink any of the King's Ships. By the Greatneſs of the Puniſhment for the Breach of the negative part of the Law, we might underſtand the Peremptorineſs and Force of the affirmative part. So that, my Lords, in this Caſe the Queſtion is not *de Re*, for by the Law the Safety of the Realm is to be provided for; *Salus Populi ſuprema lex:* Neither is the Queſtion *de Perſonis*, either in reſpect of the Perſons who are to bear the Charge of it, or of the Perſons whom the Law hath intruſted with the Care and Power of this common Defence.

For the firſt, that is, the Perſons that are to bear this Charge, that in the Writ, *Quod omnes tangit per omnes debet ſupportari:* The Reaſons of the Writ are weighty, and agreeable to the Rule both of the Civil and Common Law, *Qui ſentit commodum, ſentire debet & onus:* So that I conceive the Burden lies upon all. In reſpect of our *Bona Naturæ*, our Lives and Perſons be equally as dear to one as another: In reſpect of our *Bona Fortunæ*, ſo *ſecundum Statum & Facultates*; becauſe the greater the State and Means of Livelihood, the greater the Benefit by the Defence. The Law in this Caſe of Defence againſt the Invaſion of living Enemies, being the ſame with that againſt our Soil and Ground by the Inundations and Outrages of the Sea and freſh Water; for by the Law, as appears by the Commiſſion of Sewers, as well before the Statute of 28 *Hen.* VIII. as ſince to the repairing of a Bank or Cauſey, River, or other Sewer, all are chargeable that have *Defenſionem, Commodum, vel, Salvationem qualitercunque.* All that have Defence muſt be aſſeſſed, the Aſſeſs muſt be equally diſtributed, and therefore laid upon every Man within the Level, *Pro rata portionis Tenuræ ſuæ, ſeu pro quantitate Communis Paſturæ vel Piſcariæ*; the more Land, Common, or Benefit of Fiſhing each Man hath, according to the Proportion thereof the Aſſeſs muſt be. So that, my Lords, in the ſecond place, the Queſtion will not be, Whether my Client by Law be exempted from the Charge of the Defence of the Realm; for with other his Majeſty's Subjects he ought to help to bear the common Burden, and more or leſs may be laid upon him proportionably to his Eſtate and Means of Livelihood.

Neither, *Thirdly*, is there any Queſtion to be made, but the Law hath intruſted the Perſon of his Royal Majeſty with the Care of this Defence. The Defence and Protection which we have in our Bodies, Lands, and Goods, againſt any within the Realm, we know it is from him; for all Juriſdiction legal, both Eccleſiaſtical and Civil, which defends us in them, is wholly in his Majeſty. The ſame it is in caſe of Foreign Defence, even by the *Jus Gentium*, as appears in the Text, by the Peoples deſiring that they might be like other Nations, by having a King that might go in and out before them, and fight their Battles. That the King, and that legally, calleth the Kingdom *Regnum Noſtrum*, and every City and great Town *Civitatem & Villam noſtram: Quoad Proprietatem* it cannot be, becauſe they are the ſeveral Land-Owners; it muſt be ſo therefore principally in this reſpect, *Quoad Protectionem & Defenſionem.* Neither hath the Law inveſted the Crown with this Height of Sovereignty only as a *Honorarium*, for the greater Splendor of it, but likewiſe as a Duty of the Crown, or *Pars Miniſterii*, for the Good and Safety of the Realm, which in many of the ancient Commiſſions of Sewers, before the Statute of 28 *Hen.* VIII. is thus expreſſed, The King *ratione Regiæ Dignitatis & per Juramentum eſt aſtrictus ad providendum Salvationi Regni undiquaque*; ſo that both in Honour, and by his Oath he is bound to provide for the Safety of the Realm, and that *circumquaque.*

My Lords, by the Law the King is *Paterfamilias*, which by the Law of Œconomick is, not only to keep Peace at Home, but to protect his Wife and Children, and whole Family from Abroad. It is his Vigilancy and Watchfulneſs that diſcovers who are our Friends, and who are our Foes; and that after ſuch Diſcovery firſt warns us of them; for he only hath Power to make War and Peace.

Neither hath the Law only entruſted the Care of Defence to his Majeſty, but it hath likewiſe, ſecondly, put the *Armat' Poteſtat'* and Means of Defence wholly into his Hands: for when the Enemy is by him diſcovered and declared, it is not in the power of the Subject to order the Way and Means of Defence, either by Sea or by Land, according as they ſhall think fit; for no Man without Commiſſion or ſpecial Licence from his Majeſty, can ſet forth any Ships to Sea for that purpoſe; neither can any Man without ſuch Commiſſion or Licence, unleſs upon ſudden coming of Enemies, erect a Fort, Caſtle, or Bulwark, tho' upon his own Ground; neither, but upon ſome ſuch emergent Cauſe is it lawful for any Subject, without ſpecial Commiſſion, to arm or draw together any Troops or Companies of Soldiers, or to make any general Collections of Money of any of his Majeſty's Subjects, tho' with their Conſent.

Neither, in the third place, is his Majeſty armed only with his primitive Prerogative of *Generaliſſimo* and Commander in Chief, that none can advance towards the Enemy, until he gives the Signal, nor in other manner than according to his Direction; but alſo with all other Powers requiſite for the full Execution of all things incident to ſo high a Place, as well in Times of Danger as of actual War. The Sheriff of each County, who is but his Majeſty's Deputy, he hath the *Poſſe Comitatus*; and therefore it muſt needs follow, that the *Poſſe Regni* is in himſelf.

My Lords, not to burn Day-light longer, it muſt needs be granted that in this Buſineſs of Defence, the *Suprema Poteſtas* is inherent in his Majeſty, as part of his Crown and kingly Dignity. So that as the Care and Proviſion of the Law of *England* extends, in the firſt place, to Foreign Defence; and, ſecondly, lays the Burden upon all; and, for aught I have to ſay againſt it, it maketh the Quantity of each Man's Eſtate the Rule whereby this Burden is to be equally proportioned upon each Perſon: So likewiſe hath it, in the third Place, made his Majeſty ſole Judge of Dangers from Foreigners, and when and how the ſame are to be prevented; and, to come nearer, hath given him Power by Writ under the Great Seal of *England*, to command the Inhabitants of each County to provide Shipping for the Defence of the Kingdom, and may by Law compel the doing thereof.

So, my Lords, as I ſtill conceive, the Queſtion will not be *de Perſonâ*, in whom the *Suprema Poteſtas* of giving the Authorities or Powers to the Sheriff, which are mentioned in this Writ, doth lie, for that is in the King: But the Queſtion is only *de Modo*, by what Medium or Method this Supreme Power, which is in his Majeſty, doth infuſe and let out itſelf into this Particular; and whether or no in this Caſe ſuch of them have been uſed, as have rightly accommodated and apply'd this Power unto this Writ in the intended Way of Defence: For the Law of *England*, for the applying of that Supreme Power which it hath ſettled in his Majeſty to the particular Cauſes and Occaſions, hath ſet down a Method and known Rules, which are neceſſarily to be obſerved.

In his Majeſty there is a twofold Power, *Voluntas* or *Poteſtas Interna* or *Naturalis*, and *Externa* or *Legalis*, which by all the Judges of *England*, 2 *Ric.* III. *fo.* 11. is expreſſed *per Voluntatem Regis in Camera*, and *Voluntatem Regis per Legem.*

My Lords, the Forms and Rules of Law are not obſerved in this Caſe; this Supreme Power not working *per Media*, it remains ſtill in himſelf as *voluntas Regis interna*, and operates not to the Good and Relief of the Subject that ſtandeth in need. To inſtance: his Majeſty is the Fountain of Bounty; but a Grant of Lands without Letters Patent transfers no Eſtate out of the King, nor by Letters Patent, but by ſuch Words as the Law hath preſcribed. His Majeſty is the Fountain of Juſtice; and tho' all Juſtice which is done within the Realm, flows from this Fountain, yet it muſt run in certain and known Channels. An Aſſize in the *King*'s-*Bench*, or an Appeal of Death in the *Common-Pleas*, are *coram non Judice*, tho' the Writ be by his Majeſty's Command; but ſo of the ſeveral Juriſdictions of every Court. The Juſtice whereby all Felons and Traitors are put to death, proceeds from his Majeſty; but if a Writ of Execution of a Traitor or a Felon be awarded by his Majeſty without Appeal or Indictment preceding, an Appeal of Death will lie by the Heir againſt the Executioner. If the Proceſs be legal and in a right Court, yet I conceive that his Majeſty alone, without Aſſiſtance of the Judges of the Court, cannot give Judgment. I know that King *John*, *Henry* III. and other Kings, have ſat in the *King*'s-*Bench* and in the *Exchequer*, but, for aught appears, they were aſſiſted by their Judges: This I ground upon the Book, Caſe 2 *Ric.* 3. *fo.* 10, 11. where the Party is to make Fine and Ranſom at the King's Will and Pleaſure. This Fine by the Opinion of the Judges of *England*, muſt be ſet by the Judges before whom the Party was convicted, and cannot be ſet by the King. The Words of the Book are thus: *In Terminis & non per legem per ſe in Camera ſua, nec aliter coram ſe, niſi per Juſticiarios ſuos, & hoc eſt voluntas Regis, ſcilicet per Juſticiarios ſuos & per legem ſuam,* to do it.

And as without the Aſſiſtance of his Judges, who are his ſettled Counſel at Law, his Majeſty applies not his Laws and Juſtice in many Caſes; neither is this ſufficient to do it without the Aſſiſtance of his great Council in Parliament. If an erroneous Judgment was given before the Statute of 27 *Eliz.* in the *King*'s-*Bench*, the King could not relieve his grieved Subject any way but by Writ of Error in Parliament: neither can he out of Parliament alter the old Laws, or make new, or make any Naturalizations or Legitimations, nor do ſome other things: And yet is the Parliament his Majeſty's Court too, as well as other his Courts of Juſtice: It's his Majeſty that gives Life and Being to it, for he only ſummons, continues and diſſolves it, and he by his *le Veut* enlivens all the Actions in it; and after the Diſſolution of it, by ſupporting his Courts of Juſtice, he keeps them ſtill alive, by putting them in execution. And altho' in the Writ of Waſte, and in ſome other Writs, it is called *Commune Concilium Regni*, in reſpect that the whole Kingdom is repreſentatively there; and, ſecondly, that the whole Kingdom have Acceſs thither in all things that concern them, other Courts affording Relief but in ſpecial Caſes; and, thirdly, in reſpect that the whole Kingdom is intereſted in, and receives Benefit by the Laws and Things there paſſed: Yet it is *Concilium Regni* no otherwiſe than the Common Law is *Lex Terræ*, that is *per modum Regis*, whoſe it is, if I may ſo term it, in a great Part, even in point of Intereſt, as he is the Head of the Commonwealth, and whoſe it is wholly in Truſt for the Good of the whole Body of the Realm; for he alone is truſted with the Execution of it. The Parliament is the King's Court, and therefore in the Summons the King calls it *Parliamentum noſtrum*. So the Returns of the Knights and Burgeſſes, *Quod ſint ad Parliamentum Domini Regis. Fleta Lib.* 2. *Cap.* 2. *Habet Rex curiam ſuam in concilio ſuo in Parliamentis ſuis*; and therefore the Pleadings there anciently were uſually wont to begin for the moſt part, *Queritur Domino Regi*; of Petitions by private Perſons, *Supplicavit Domino Regi*, tho' for Relief againſt others. Inquiſitions and *Venire fac'* returnable there ſometimes *Coram Domino Rege & Concilio ſuo*, as appears by infinite Precedents in the Parliament Pleas of *Edward* the Firſt and *Edward* the Second's Time, both in the *Tower*, and many Caſes adjourned into the *King*'s-*Bench*.

The Patents paſs'd by Authority of Parliament, and likewiſe the Acts of Parliament, had anciently ſo much of the King's Name and Style in them, that as it appears in the Prince's Caſe in the eighth Report, it was a hard matter, otherwiſe than by Circumſtances, to know whether they had any thing of the Parliament in them or not. And from thoſe Times even until now, the Alteration is nothing in Subſtance, for the Acts for the moſt part are thus: *It is enacted by our Sovereign Lord the King, with the Aſſent of the Lords Spiritual and Temporal, and Commons.* The King both then and ſtill is *Pars agens*, the reſt are but *Conſentientes.*

My Lords, to apply all to the Caſe in queſtion: By the Caſes before cited it appears, that what was done in Parliament by the Law Phraſe and Dialect, is ſaid to be done by the King; for as the Civilians ſay of the Senate, that it is *Pars Corporis Cæſaris*, ſo we of the Parliament, that it is *Pars Corporis Regis*. The Maxim of *Juſtinian*, *Quod Principi placet legis vim habet*, is agreed by *Bracton* and all the Civilians. And yet both he and many of them ſay, that thoſe muſt paſs the Senate, and tho' done in the Senate, yet they be *Placita Principis*. So it is, altho' when we ſpeak *ut Vulgus*, we ſay Fines are ſaid to be ſet by the King's Court; yet the Law, when it ſaith that they be done and ſet, ſaith they be done and ſet by the King. By the ſame Reaſon therefore, tho' when we ſpeak *ut Vulgus*, we ſay ſuch a Thing is done by the Parliament, yet in the legal Account theſe are done by the King: the *Medium*, or way of doing of them, is with the Aſſiſtance or Conſent of his great Council in Parliament.

The ſecond thing which I obſerve is this: By the Caſe before cited it appears, that without the Aſſiſtance in Parliament, his Majeſty cannot in many Caſes communicate either his Juſtice or his Power unto his Subjects.

Hence, thirdly, it neceſſarily follows, as I conceive, that the kingly Dignity doth moſt appear and manifeſt itſelf there; which was the Opinion of all the Judges of *England*, declared in a Parliament 34 *Hen.* VIII. as appears by *Crompton*'s Juriſdict. *fo.* 10. who by the King's Commandment meeting together about Point of Privilege of Parliament, the King afterwards in declaring of their Opinions, doth it in part of the Caſe in theſe Words: *Further, We be informed by our Judges, that we at no time ſtand ſo highly in our Eſtate Royal, as in time of Parliament, wherein we as Head, and you as Members, are conjoined and knit together in one Body Politick.* Which Declaration of it ſhews likewiſe that it was the King's own Opinion, that he at no time ſtood ſo highly in his Eſtate, as in the Time of Parliament.

It appears not by the Record, that this Writ, which giveth Power to ſell and alter the Property of the Defendant's Goods, iſſued from his Majeſty ſitting in his Eſtate Royal in Parliament, and therefore cannot be intended by your Lordſhips and the Court ſo to do. If therefore it hath iſſued from his Majeſty in the *Chancery*, otherwiſe than in Parliament, where he ſtands in the Height of Sovereignty and Perfection, that he hath not ſo much as a *Poſſe nocere*; the Queſtion is, Whether it be erroneouſly iſſued, yea or no.

My Lords, I have now put the Caſe, which altho' in this particular Caſe it concerns the Defendant only; yet in Conſequence, as it appears, it concerns both his Majeſty and the whole State, and that in Matters of the greateſt and higheſt Nature poſſible. His Majeſty is concerned in the Way and Manner of Execution of the higheſt and greateſt Truſt which the Law hath repoſed in him, the Safety and Preſervation of the Kingdom; the Subject is concerned in that, wherein he is moſt tender, in the Property of what he hath.

My Lords, the Greatneſs and Weight of the Caſe puts me in this *Dilemma*: Not to argue it, were to deny that full Submiſſion to the Command of ſome of your Lordſhips that are ſitting in the Court, neither ſhould I do my Client that Service which he expects. If I proceed, the Caſe is too weighty and too great for me to argue. But I know the ſafeſt way is Obedience, and that the Court cannot expect much from me. Having therefore already put the Caſe, I will go on in the next place to ſtate it, and afterwards to argue it.

The Queſtion being concerning the Validity of the Command in the Writs, which extends ſo far as to the altering of the Property of the Subjects Goods without their Conſent; and yet this being for a Thing ſo neceſſary as the Defence of the Kingdom both at Land and Sea; for the Ends of iſſuing forth of the Writ are, *Pro Defenſione Regni, Tuitione Maris, Securitate Subditorum, ſalva Conductione navium*, both outward and inward.

In the ſtating of this great Queſtion, I will in the firſt place endeavour to preſent your Lordſhips thoſe known and undoubted Ways and Means, whereby the Law hath provided for the Defence of the Realm both at Land and Sea, without the Way in the Writ.

The firſt whereof is by Tenure of Lands. The Services which hereby grow due are of two ſorts; Service in Kind, which tends immediately to Action in Times of War, ſome whereof are for Land-Service, and ſome for Sea-Service. The ſecond are ſuch as ſupply his Majeſty for that purpoſe.

The ſecond Way is thoſe many Prerogatives which the Law hath ſettled in the Crown, and made peculiar unto it for the Defence of the Kingdom in general.

The third is the particular Supplies of Money for the Defence of the Sea alone in Times of Danger, both ordinary and extraordinary, the Thing principally intended in the Writ. Theſe, my Lords, will be the Materials, whereupon afterwards I ſhall ſtate the Queſtion.

In that of Tenure, I ſhall begin with the Service, and thoſe which tend immediately to Action in Times of War.

The Kings of this Realm, as they are the Head of the Commonwealth in general, ſo are they the Head and Root from whence all Tenures ſpring; for as our Books agree, all the Lands within the Realm are held mediately or immediately of the Crown. As therefore the Law hath appropriated the Defence of the Kingdom to the Kings thereof, ſo hath it, as one of the principal Ways for effecting thereof, truſted them with the Reſervation of ſuch Tenures, as might ſerve for that Purpoſe.

Amongſt which, intending firſt to ſpeak of Land-Service, I will begin with the Tenures of Knights-Service; every Man that holds by this Service, from a whole Knight's Fee to any part thereof, ought to find a Man completely armed for the War. Neither doth the finding of Arms ſatisfy this Tenure: for he that holds by a whole Knight's Fee, ought to be forty Days in the Service; and he that holds by a Moiety of a Knight's Fee twenty Days; and ſo in proportion. In the Books of the Knights Fee of *Hen.* II. *Edw.* I. and *Hen.* VIth's times, in the *Exchequer*, it appears, that there were many thouſand Knights Fees held of the Crown. And in the *Red Book* it is ſaid, that it was *in ore omnium*, that in the Conqueror's Time there were thirty Thouſand held of him: ſome ſince have computed them to threeſcore Thouſand, which perhaps may be with the Addition of thoſe that were held of common Perſons, which are not of thoſe upon which I ſhall inſiſt.

But it may be objected, that in reſpect theſe Services are reſerved by the King, that therefore they were not inſtituted only for the Defence of the Realm, but may be exacted for foreign Wars, or other-where for his Majeſty's peculiar Service, as he ſhall think fit: which may be inferred both from the Name which our old Books and Deeds ſtyle this Service by, when due to the Crown, that is, *forinſecum ſervitium*; and, ſecondly, from the Uſe thereof, it having been performed in *Normandy*, *Gaſcoyne*, *Tholouſe*, and *Ireland*, as appears by the *Red Book*, and many Caſes put together in the Inſtitutes, in the Chapter of Eſcuage.

To the firſt Objection of the Name, the Anſwer is clear; for antiently, when thoſe that held immediately of the Crown by this Service, did infeoff others of the Land ſo held, deſiring to free themſelves of the Burden of this Service, beſides the Service which they reſerved to themſelves, they likewiſe commonly in the Conveyance, made Proviſion for their own acquittal againſt the King, and the Feoffee took the whole Burden thereof upon himſelf: and therefore in the Book of Knights Fees of *Hen.* II's Time, in ſo many hundred Certificates of thoſe that held immediately of the King, *William London* of *Wilts* certifies this; *Quod nullum Militem habeo Feofatum, ſed debeo defendere feodum meum per ſervitium Corporis mei.* Of this Nature are three or four others. All the reſt after certifies, by how many Knights Fees he holds: them likewiſe he certifies that *Defendit*, &c. of the King by ſuch and ſuch *Milites Feofatos.* And in theſe Deeds of Feoffment, after the Reſervation to the Feoffor, was this Clauſe; *& faciend' inde*, ſometimes *Forinſecum ſervitium*, ſometimes *Regale ſervitium.* Bract. *lib.* 2. *fol.* 36, 37. and *Fleta*, lib. 3. *cap.* 14. ſaith, that it is called *Regale ſervitium, quia eſt ſervitium Domini Regis*; and by them *Regale ſervitium*, and *ſervitium Domini Regis*, are all one and the ſame thing. To that therefore I ſhall need to give no further Anſwer. By the ſame Authors it is called *Forinſecum, quia capitur foris ſive extra ſervitium, quod ſit Domino Capitali*; and that is the meaning of the Word; and that it is called *Forinſecum*, in regard the Service is to be done *Foris*, that is, out of the Kingdom, is cleared to your Lordſhips by theſe Caſes, *P'* 49 *Hen.* III. *Com.* 31. *Ed.* 1. *Rot.* 32. *Dorſ. Com. Hill.* 33. *Ed.* 1. *Rot.* 52. *Dorſ.* Cornage, which we know is to wind a Horn within the Realm, in all thoſe three Caſes is called *ſervitium Forinſecum Domini Regis Cornagij*; and *Caſtleguard* in the County of *Northumberland*, at the Caſtle of *Bamburgh*, called *Forinſecum ſervitium Domini Regis.*

To the ſecond Part of this Objection, that this Service hath been often performed beyond Sea; for the preſent I ſhall give Anſwer thereunto but in part, by telling your Lordſhips, without making Proof thereof, that Eſcuage, which is all the Penalty that lies upon the Tenant for his Default, cannot be aſſeſſed but in Parliament; which, if it be ſo, proves that the King cannot command this Service, otherwiſe than for the Good and Defence of the Realm, in regard that if it be otherwiſe, no Eſcuage can be aſſeſſed without conſent in Parliament; which by intendment, according to the Good the Kingdom is likely to receive by the Service, will proportionably leſſen or increaſe the Eſcuage.

My Lords, That this Service was inſtituted for the Defence of the Realm, appears by the Care the Law hath always taken for the Increaſe and Preſervation of theſe Services; ſo that if the Lord purchaſe part of the Land, yet the whole Service remains; which being entire, and to be done by the Body of a Man, in that of being a Steward or Bailiff, or other private Service, makes an Extinguiſhment of the Whole. The Authorities in Point are many; the Statute of *Mortmaine* 7 *Ed.* I. the Miſchief by conveying Lands to Houſes of Religion is there expreſſed to be, *Quod ſervitia quæ ex hujuſmodi feodis debentur, & quæ ad defenſionem Regni ab initio proviſa fuerunt, indebite ſubtrahantur.* And beſides the Declaration that they are for the Defence of the Realm, that Statute likewiſe promiſes for the Increaſe of them; for if the Lord enters not within a Year and a Day after the Feoffment, the King is to enter; and as the Words of the Statute are *alios inde feoffavimus per certa ſervitia nobis inde ad defenſionem Regni noſtri facienda*, the Words are obſervable, *per ſervitia nobis inde facienda*; for tho' the Service be to be done to the King, it is to be done *ad defenſionem Regni.* This explains the Charter of *Hen.* I. inrolled in the Red Book in the *Exchequer*, and cited in *Mat. Paris*, in the firſt Leaf of *Hen.* I's Reign; where the King frees Knights-Service Lands from all Gelds and Taxes; that being eaſed of this Burden, *apti & parati ſint ad Servitium meum, & ad defenſionem Regni mei.* In the Black Book in the *Exchequer*, *fo.* 3. Scutage is thus defined, *ut inveniente in Regnum hoſtium machinatione*, it is then due: ſee *Bracton* in his ſecond Book *fol.* 36 and 37. that they are ſo, *Propter exercitum & Patriæ tuitionem*, and to be performed *certis temporibus cum caſus & neceſſitas evenerit.* Bract. fol. 162. *Les Fees de chartre fuerunt purveans ad defence de notre Realme.* The Books are expreſs, the 35 *Hen.* VI. 41. 8 *R. fol.* 105. *Talbot*'s Caſe, 6 *Rep. fol.* 2. *Bruerton*'s Caſe, *Inſtitut. pl.* 103. *Co.* Preface to the ninth Report.

For the further clearing of what is ſaid already, and what I am to add, it is obſervable, that theſe Services are not created *ex proviſione hominum*, but *ex proviſione legis*; for as it is in 33 *Hen.* VI. 7. and ſixth *Rep. fol.* 7. *Wheeler*'s Caſe, if the King grants Land without reſerving any Service at all, or *abſque aliquo inde reddendo*, the Patentee ſhall hold the Land by Knights-Service *in Capite.* The Book of 24 *Ed.* III. 65. *Stamford Prerogat. fol.* 10. *Inſtitut. pl.* 73. it's ſaid the firſt Kings of this Realm had all the Lands of it in their own hands; which appears likewiſe by this, that all the Lands within the Kingdom are held mediately or immediately of the Crown. In the transferring theſe Lands to the ſeveral Inhabitants, we ſee, by the Caſes before cited, that the Care and Proviſion of the Law was, that all ſhould by Tenure of the Crown be made liable to the Defence of the Kingdom. I ſhall briefly therefore ſhew how the Kings of this Realm have executed the Truſt for the Defence of both Land and Sea.

And firſt, a little further to proſecute the Land-Service, becauſe the Tenure by Knights-Service ties the Tenant only to forty Days Service, and that for the Defence of the Realm only in general; they therefore reſerved divers other Tenures for particular and certain Services; as Grand-Serjeanties, ſome whereof, as in the *Inſtitutes*, *fol.* 106. is obſerved were for Service of Honour in times of Peace; and ſome for Military Service, of which laſt ſort, as appears in the Book of Serjeanties in the *Exchequer*, and many Rolls of them in the *Tally-Office*, were very many; ſome whereof were to carry the King's Banner, ſome to ſummons the Tenants *ad exercitum*, ſome to be of the Vanguard, ſome of the Rear; ſome to ſerve in *Wales*, ſome in *Scotland*, ſome *infra quatuor maria*, ſome *infra Cinque Portus Angliæ.* Of theſe are Services of all ſorts neceſſary for an Army; and in reſpect of the Multitude of theſe Military Serjeanties over others, as forgetting them, *Brit. fol.* 164. in his Definition of Grand-Serjeanty, ſaith, that they are *Pur defence del Royalme*; and *Fleta lib.* 3. *cap.* 16. *Magna Serjeantia Regem tantum reſpiciunt & Patriæ defenſionem.* Beſides the Grand-Serjeanties, of this nature likewiſe are the Tenure of Cornage, to give warning of the Enemies coming into the Kingdom, and the Tenures by *Caſtle-Guard:* Theſe by *Littleton* were eleven Thouſand, to defend the Caſtles when the Enemy enters the Realm, within Forts and Bulwarks of the Realm. Mr. *Camden p.* 515. obſerves, there were 1115 in *Henry* II's Time, whereof a great part, and eſpecially ſuch as were upon the Sea-Coaſts and Frontiers of *Scotland* and *Wales*, the Places of greateſt danger, were the King's. And beſides theſe Grand-Serjeanties that were to be perform'd by the Bodies of Men, there are Petty-Serjeanties for finding of Armour of all ſorts for the War.

My Lords, That the former Kings did execute this Power of Tenures for the Defence of the Realm, according to the Truſt the Law repoſed in them, appears further in this, that in the Places of greateſt Danger there ever were moſt of them. All along the Sea-Coaſts of *Kent* and *Suſſex*, neareſt of all others to *France*, are the Cinque-Ports, which for their Sea-Service have all the Juriſdiction within themſelves, that the Inhabitants for weakening theſe Parts, might not be compelled to travel out of them for any Matters of Juſtice, and divers other Privileges; both to invite the People to live there, and to encourage them to the Defence of thoſe Parts. And *Dover* Caſtle, the Key of the Kingdom, as of greateſt Conſequence, ſo hath it two hundred Tenures by *Caſtle-Guard*, wanting very few, beſides divers Tenures for the repairing of the Caſtle; which appears by the Record called the Quire of *Dover*, remaining in the *Exchequer*; which that it is a Record, and determines the Service of the Cinque-Ports, as *Doomſday-Book* doth the Tenures of the antient Demeſne, appears in *Comm'* 27 *Edw.* I. *Rot.* 35. and by another Record added to that Quire of *Dover*, 20 *Edw.* IV. it likewiſe appears, that in the time of war the King is to maintain in that Caſtle, one thouſand Foot, and one hundred Horſe. Next, to come to the borders of *Scotland*, there we find the Franchiſement of the Biſhoprick of *Durham*, inſtituted likewiſe for that purpoſe, for the defence of thoſe parts; which *William* the Conqueror, as *Malmſ. fo.* 157. obſerves, firſt made a County Palatine; and *Walther* Biſhop thereof, *Ducem pariter & Epiſcopum, ut refrænaret Rebellionem Gentis gladio, & reformaret mores eloquio.* And beſides all this, in all the Counties of *Cumberland*, *Northumberland*, and *Weſtmoreland*, are more ſuch Tenures for the Defence of the Realm, than in any of the Inland Counties, and thoſe likewiſe moſt proper for Bodies. *Com. Pa.* 31 *Edw.* I. *Rot.* 32. It's there found by Inquiſition returned into the *Exchequer* out of Parliament, that every Lord of a Town within the County of *Northumberland*, held by Cornage when the *Scots* entred the Realm. Mr. *Camden* in his *Britannia*, *pag.* 794, and 799. mentioning the great number of Petty-Baronies and Caſtles all along thoſe Marches, which *Brit. fol.* 87. and *Inſtit. fol.* 73. ſay were inſtituted for the Defence of the Realm; obſerves here likewiſe the Policy of the Law, and likewiſe in the many Serjeanties there, in advancing of the King's Army, to be of the Vanguard, and in the Retreat in the Rear, thoſe People beſt knowing the Ways and Paſſages of the Country.

Whence, my Lords, when we come to the Marches of *Wales*, there we find another County *Palatine*, I mean that of *Cheſter*, and the Care of *Cheſter* and his Barons to oppoſe the *Welſh* Invaſions upon theſe Marches; beſides the like Services, as upon the Borders of *Scotland*, there were likewiſe many Lords Marchers of ſeveral Baronies, who had Adminiſtration of all Juſtice within themſelves, *ſecundum legem Marchiæ:* and for their Service to be done againſt the *Welſh*, they had two ſpecial Privileges, that is, the third Penny of all the Spoils in the War, as was adjudged in Parliament, the 20 *Edw.* I. *Banc. Regis Rot.* 123. in that great Caſe between the Earls of *Gloceſter* and *Hereford*, and in the Parliament Book, 20 *Edw.* I. And, *Secondly*, all the Priſoners that they took in the Wars, *per conſuetudinem Marchiæ*, belonged to the Takers of them. *Trin.* 25 *Edw.* I. *Rot.* 28. *Co.* Roger de Kownwell, *in partibus Montgomery*, *in guerra Walliæ*, 23 *Edw.* I. had taken three *Welſh* Priſoners; and becauſe, by the King's Command, they were releaſed of their Impriſonment, it is there adjudged, that the King ſhould pay him forty Pounds in recompenſe thereof. And ſo it was adjudged, *Com' Hill.* 25 *Edw.* I. *Rot.* 11. *dorſ.*

My Lords, His Majeſty is in the actual Poſſeſſion of theſe Military Services, by taking the Profits of Wards, Marriages, Releaſes, Licences, Forfeitures for Alienations, and *primer ſeiſin*, as Fruits of them.

That the Profits of Wards and Marriages are to be ſpent in Wars, for the Defence of the Realm, as well as for the bringing up the Ward, the Books are, 35 *Hen.* VI. 41. *Brit.* 162. That the King receives the Profits, becauſe he is not able to do the Service. If the King's Ward was within Age, when the Tenants were ſummoned *ad exercitum*, he paid no Eſcuage, as is adjudged, *M.* 20. *Edw.* I. *Rot.* 9. & 20. *Comm'* and *M.* 23 *Edw.* I. *Br. irrot.* So it is for Reliefs and Licences; and Forfeitures of Alienation of the King's Tenant without his Conſent might not be altered; and for *primer Seiſin*, the King was to receive the Profits till the Tenant, by his Homage, had aſſured the King of his Service; the Summons always commanding him to be at the Place of Rendezvous, *in fide & homagio quibus nobis tenemini.* All theſe things being but Fruits that fall from theſe Military Services.

My Lords, Now to come to the Sea-Service, the Care and Execution of this Truſt by Tenures, was extended likewiſe to the Defence of the Sea. The Town of *Lewis* in *Suſſex* holds by this Service, *quod ſi Rex ad mare cuſtodiend' ſuos mittere voluiſſet*, they paid ſo much Money, *& hos habebant qui in navibus arma cuſtodiebant.* This, my Lords, is in *Doomſday-Book:* In *Colcheſter* every Houſe to pay 6*d. per. ann. ad victum Soldior' Regis, ad expeditionem terræ vel maris.* Warwick, *Si Rex per mare contra hoſtes ibat*, the Town was to find four Boatſwains. *Saliſbury*, then to pay ſo much Money, *ad paſcendum Buſtecorlos Domini Regis*, which, as *Florentius* explains the Word, be *Miniſteros Nauticos.* *Gloceſter*, and other Places ſuch a Weight of Iron, *ad Claves navium Regis.* Others, to find Horſes to carry Armour and Weapons to the Ships. My Lords, of this nature are many in that Book, which particularly to mention, to gain Time, I will omit.

That the Tenures of this kind after the Conqueror's Time, continued in uſe, and were well known, appears by the Regiſter *fo.* 2, where, amongſt other Services, is this of Shipping alſo inſtanced in theſe Words; *Quod clamat tenere de nobis per liberum ſervitium inveniendi nobis quinque Naves per annual' Servitium.* In the Iter-Roll of *Eſſex*, 13 *Ed.* I. *Rot.* 7. it is preſented that the Town of *Maldon tenet per Serjeantiam inveniendi unam navem quandocunque Rex neceſſe habuerit ire vel mittere propter negotium Regni.* And from the Time they came to the Place of their Rendezvous, to ſtay in the Service forty Days, *ſumptibus propriis.* And being there preſented, that they made Default at the *Welſh* War, they plead they had no Summons.

So, my Lords, in the Book of *Serjeanties* of *Edward* the Firſt's Time, in *Kent*, the Town of *Killingborne* is to find one Ship; and in the County of *Berks*, *Fulke Caudry* holds the Mannor of *Padworth*, *per ſerjeantiam inveniendi ſervientem* to perform Sea-Service, *Bract.* 20. 8 *Ed.* II. *Rot.* 40. *William Dier*, in the County of *Suſſex*, to find a certain Proportion of Cordage. *Iter Cantiæ*, 21 *Edw.* I. *Rot.* 46. *Solomon de Campis* holds *per ſerjeantiam tenendi Caput Domini Regis*, when he is at Sea, *ſi neceſſe fuerit*; and ſo *Rot.* 30. another in the ſame Iter-Roll. The *Cinque Ports* and their Members are to find twenty Men, and a Maſter, *bene armatos & bene ariatos*; from the Time that they come to their Rendezvous, they are to continue in the Service fifteen Days, at their own Charge, and afterwards ſo long as the King pleaſeth; but after the fifteen Days, the King is to pay the Maſter 6*d.* a Day, and the reſt 3*d.* a Day for their Wages. This Service appears by the Record of the Quire of *Dover* before-mentioned, and the Patent Roll 7 *Hen.* VII. both which Records imply, that this Service of theirs cannot be exacted, otherwiſe than for the Defence of the Sea; for it cannot be demanded but once in a Year, nor then neither, *niſi neceſſe fuerit.* *Parl. Pet.* 1 *Edw.* III. *Rot.* 4. the Barons of the Ports, in conſideration of this Sea-Service, pray a Confirmation of their Liberties, *pro ſalvatione dicti Navigii & Regni*; and commonly when the Land-Service was ſummoned, theſe were likewiſe ſummoned to the ſame Service at Sea, as appears by the cloſe Rolls, 28 *Edw.* I. *M.* 15. 31 *Edw.* I. and 34 *Edw.* I. *M.* 15, 16. In all which Years the Land-Service was ſummoned for *Scotland*, and the Summons both for the one and the other run in the ſame Words, commanding them to be at the Place, *cum toto ſervitio veſtro quod nobis debetis*, which ſhews it to be a Service by Tenure. That theſe Services of theirs are for the Defence of the Realm, and likewiſe that there are many other of the like Nature beſides theſe, which by a ſuperficial reading of two or three Iter-Rolls, I have cited, appears by the Parliament-Roll, 13 *Ed.* III. *pars* 1. *M.* 11. where it is declared in theſe Words, That the *Cinque Ports* and other great Towns and Havens are franchiſed, *pur eſtre & mure inter nous & Aliens*, if it ſhall fall out that they ſhall endeavour, *notre enter & aſſay & ſunt tenus a ceo faire.* My Lords, a fuller Declaration than this there cannot be, that both the Ports, and Havens, and Sea-Towns, are bound to the Service of Shipping, for the extraordinary Defence of the Realm, as well as the ordinary.

I have now done with the Service in kind; and becauſe theſe which immediately tend to Action alone, were not ſufficient to defend the Real; and this in the Frame and firſt Conſtitution of the Commonwealth being foreſeen, and that the Land, or *Fundus Regni*, the moſt viſible and conſtant Supplies of our Wants, was beſt able to ſupply this likewiſe; therefore beſides them, there were divers other Tenures created for that Purpoſe. Thoſe which I am next to ſpeak of, are ſuch as ſupply his Majeſty with Money for that Purpoſe.

In the *Black Book* in the *Exchequer*, lib. 1. cap. 7. it is ſaid, that in particular *Regni ſtatu ad ſtipendia & donativa Militum & alia neceſſaria & caſtellis*, and other Lands *in quibus agricultura non exercebatur pecunia numerata ſucceſſebat.* It might from hence be colourably inferr'd, that in reſpect *ex proviſione Legis*, upon the King's paſſing of Lands, a Tenure for Knights Service for the Defence of the Realm was to be reſerved; that in caſe upon ſuch Grants, Rents only, without any ſuch Tenure, were reſerved, yet that Money ſhould be imploy'd for Soldiers Wages, and other neceſſary Affairs of the Commonwealth, *ad ſtipendia Militum & alia neceſſaria.* But not to preſs this further, it is plain, that all Men within the Kingdom were not equally inheritable, either to the Body or Propriety of Lands or Goods, but that there are Degrees and Ranks, and each differing from other in all theſe. *Firſt*, Villains. *Secondly*, Freeholders, either by Knights Service, or Free Socage. *Thirdly*, Tenants of ancient Demeſne, and that held by Burgage within Cities and Burrough Towns.

Firſt, For the Villain, we know, that as to his Lord he had Freedom in neither; in reſpect of his Body, he could not *ire qua voluit*; but the Lord at his Will might impriſon him, and in reſpect of his Land and Goods he might tax him *de haut & de baſs.*

Secondly, The Freeholders, the greateſt Part of the Realm, always had an abſolute Freedom in them both.

The third Sort, and thoſe are the Tenants in ancient Demeſne and Burghers, they had an abſolute Freedom in their Perſons, but qualified in the other of Property, not taxable at the Will, as Villains, but for the Defence and other neceſſary Affairs of the Realm, they might be taxed without Conſent in Parliament. My Lords, that theſe had a divided Eſtate from other free Tenants, is clear. And firſt, for Tenants in ancient Demeſne: It is to be queſtioned whether ſuch Land be ancient Demeſne, yea or no; the Iſſue is in theſe Words, whether it be ancient Demeſne or frank Fee. By this it appeareth they have not a frank and free Eſtate, as the others have; and as all our Books agree, they have no Vote in Parliament, for they have no Voice in the Election of Knights, nor pay to the Expences of the Knights that ſerve in Parliament, nor Soldiers granted in Parliament, *Na. Brev.* 79. and 14. It is often diſputed in our Books, whether Acts of Parliament extend to them, unleſs they be eſpecially named; neither can they ſue at Common-Law for any thing that concerns the Freehold, but only by a Writ of Right cloſe within themſelves. And therefore *Bracton*, fo. 209. calls them *villanos Privilegiatos.* The ſame it is of Burgeſſes within Cities and Burroughs; and therefore the Statute of *Merton* makes it a Diſparagement for the Lord to marry his Ward, *villanis & aliis ſicut Burgenſibus*, *Na. Br.* 7. and other Books. No Aſſizes will lie for ſuch Lands, but they are impleadable without Original Writ, by a Bill of freſh Force; and as a Chattel, they may deviſe their Land. By the Statute 1 *Ed.* II. *de militibus*, for ſuch Land and ancient Demeſne, no Man is compellable to take the Order of Knighthood. Much more might be brought in Proof of this, which I omit.

My Lords, all our Books agree, the Tenants in ancient Demeſne were to plow and manure the King's Lands, being his Demeſne. In a Manuſcript that I have ſeen, the Author ſaith, that he hath an ancient Manuſcript which ſaith, "That the Corn, and other Victuals, ariſing hereby, "was to ſtore the King's Gariſons and Caſtles; and conſidering the "Numbers of thoſe Gariſons, there being above a Thouſand of them in "the King's Hand at the Conqueſt, as appears by *Doomſday-Book*, and "that thoſe Mannors for the moſt part are great, and the greateſt Part of "the Socage-Tenures, till *Henry* IId's Time, as appears by the *Black* "*Book*, lib. 1. *cap.* 23. were to find Victuals of all Sorts, in kind, for "the Proviſion of the King's Houſhold, and were in his Time turned into "Rents." Altho' this may ſeem probable, yet becauſe I have not ſeen the Manuſcript, I will inſiſt no more upon it.

That for which theſe, and the Tenures of Burgage in the King's Cities and Burroughs, were mentioned in the raiſing of Monies for the neceſſary Affairs of the State; that theſe were anciently talliable without their Conſent in Parliament, is ſo plain and frequent in the *Exchequer* Rolls, as that I intend to cite nothing in Proof thereof; it will be admitted by them that argue on the other Side. That which I ſhall endeavour to prove is, that theſe were not talliable at the King's Will and Pleaſure, but only for the Defence and other Neceſſities of State, *Na. Br.* fo. 15. 49 *Ed.* III. 22. They be not talliable, *de haut & baſs*, as Villains are; and therefore *Bracton*, fo. 209. calls them *villanos Privilegiatos*, lib. Parl. fo. 112. *talliare & rationabile auxilium dare pro neceſſitate.* *Na. Br.* 14. *talliable pur grand Cauſe.* Rot. Parl. 6 *Edw.* III. Commiſſions to tax Cities and Burroughs and ancient Demeſne, upon Petitions of the Commons revoked, and Writs in due Form to be ſent; and for the time to come, the King ſhall not aſſeſs, but in ſuch a manner, *come ad eſtre fait en temps de ſeux Anceſtors & come il denera pur reaſon.* The Occaſion not requiring it, I ſhall ſay nothing of it, when theſe Taxes were diſuſed. My Lords, I have now done with the Tenures, the firſt Way whereby the Law hath provided for the Safety of this Realm; which of themſelves not enabling the Kings intruſted therewithal ſufficiently to do it, the Law therefore, beſides the Honours, Caſtles, Mannors, and other conſtant Revenues of the Crown, for the Supportation of the ordinary Charges thereof, hath appointed unto it divers Prerogatives, for the Extraordinary, and for this of the Defence of the Realm, as one of the chiefeſt of them; theſe Prerogatives then have an Influence into the States of all the Subjects in the Realm, and are ſo many, that, to gain Time, I will omit to mention any of them.

That which I will inſiſt upon, will be to prove, that the Things coming to the Crown by this Prerogative Way, are to be employed for the Defence, and other publick Affairs of the Realm.

In his Majeſty there is a double Capacity, Natural and Politick. All his Prerogatives are *Jure Coronæ*, and of all ſuch Things he is ſeiſed *Jure Coronæ*; and therefore, as in other Corporations, ſuch Things are *Patrimonia & bona publica*, to be employed for the common Good, ſo likewiſe by the ſame Reaſon here. The Reaſon why the King hath Treaſure Trove, and Gold and Silver Mines in the Earth in the Caſe of Mines, is declared to be, becauſe the King is hereby to defend the Kingdom: and in the *Inſtitute*, in the Title of *Socage fo.* 28. 137. the Reaſon of many of the reſt, *Quia theſaurus Regis eſt fundamentum belli & Firmamentum Pacis:* This I conceive to be the Reaſon, that by the Statute 14 *Ed.* 3. *cap.* 1. Eſcheats, Wardſhips, Cuſtoms, and Profits ariſing of the Realm of *England* ſhould be declared to be ſpent for the Safeguard of the Realm, more than the Profits of the King's Mannors and Lands; and of the Difference made in the *Comm' M.* 3. *Rich.* 2. *London*, between *Rectas promiſſiones Regni*, which by the Advice of the Lords of the Council were to be ſpent in the Houſhold, and the other Profits of the Crown to be ſpent *Circa ſalvationem & defenſionem Regni.* In the Parliament Roll. 6 *Rich. N.* 42. the Commons petition that the King will live of his own Revenues; and that Wards, Marriages, Releaſes, Eſcheats, Forfeitures, and other Profits of the Crown, may be kept to be ſpent upon the Wars for the Defence of the Kingdom: which ſheweth, that there was always a Difference made between the Profits ariſing of the King's Mannors and Lands, and that which roſe by the Prerogative, caſual and accidental Ways. My Lords, I have now done with theſe.

The third Way the Law hath provided for the Defence of the Kingdom, is particular Supplies of Money for the Defence of the Sea alone in times of Danger, both ordinary and extraordinary; for beſides the Supplies of Money before-mentioned, which are to be employed for the Good and Defence of the Realm in general, as in the other Caſes where the Law putteth the King to any particular Charge for the Protection of the Subject, it always inables him thereunto, and yields him particular Supplies of Money for the Maintenance of the Charge; ſo here the Courts of Juſtice, for the Preſervation of us in our Rights, are ſupported at his Charge; and that is the Reaſon why he hath all Fines and Amerciaments, the Goods of Outlaw'd Men in perſonal Actions, *Bract. Lib.* 3. *cap.* 13. *fol.* 129. and Fines for purchaſing of Original Writs, & *pro licentiis concordandi*, which in Suppoſition of Law, are paid for not proceeding, and Troubling the Court without Cauſe. The King's Juſtices who are maintained in their Places at the King's Charge, theſe are the *vectigal' Juſticiar'*. The Defence of the Realm extends it ſelf to many Particulars of the Church, and of Religion; and therefore in the Summons of Parliament, the Cauſe of the calling the Parliament is always declared to be *Pro defenſione Eccleſiæ Angliæ* in particular, as well as *Totius Regni.* His Majeſty therefore hath the Temporalities of Biſhopricks, *Sede vacante*, a great Prerogative, and that which Patrons have not; with an Addition of the Firſt-Fruits and Tenths of them, and all other Eccleſiaſtical Promotions and Benefices in *Henry* the Eighth's Time, and likewiſe the Tithes of all Lands which lie not within any Pariſh.

For Defence of the Land alone, beſides thoſe Military Services before-mentioned, the Profits of Wards and Marriages, which, as I have read, no other Chriſtian Prince hath as a Fruit of them, are received for that Purpoſe. So it is for the Sea, in *Rot. Sco.* 10 *Ed.* 3. *M.* 16. it is ſaid that the King and his Anceſtors are *Domini Maris Anglicani & Defenſores contra hoſtium invaſiones ante hoc tempus exiſtentes.* For the ſupporting of this Charge therefore, they have not only had the Grand Cuſtoms of the Mark and Demy-Mark upon the Wool, Wool-Fells and Leather, and the Priſage; that is, one Tun of Wine before the Maſt, and another abaft the Maſt of every Ship, which were even due by the Common Law, as appears by the Book of my Lord *Dyer*, 1 *Eliz.* 165. and Sir *John Davies* Reports, *fo.* 8, *&* 9. and implied by *Mag. Char. cap.* 30. that Merchants may trade *per Rectas & antiquas Conſuetudines*; but likewiſe divers others Things were afterwards granted by Act of Parliament in Addition to them. As Firſt, the Petty-Cuſtoms began 31 *Ed.* I. and were made Perpetual by the Statute of 27 *Ed.* 3. *cap.* 26. and likewiſe divers Aids and Subſidies, which are an Increaſe of Cuſtom upon the Staple Commodities of Wool, Wool-Fells, *&c.* Leather, and Tonnage upon Wines, and Poundage, and Increaſe upon all other things either imported or exported, either by Denizens or Aliens. That which in this kind was taken by his Majeſty in the 11th Year of his Reign, when this Writ iſſued forth, was three hundred thouſand Pounds and upwards. The Aids and Subſidies, and likewiſe the Tonnage and Poundage anciently granted upon particular Occaſions only, and afterwards to the late Kings and Queens for their Lives by Act of Parliament, and now taken by his Majeſty, and likewiſe the new Impoſition, altogether makes up the aforeſaid Sum of three hundred thouſand Pounds. Of the Legality thereof I intend not to ſpeak, for in caſe his Majeſty may impoſe upon Merchandize what himſelf pleaſeth, there will be leſs Cauſe to tax the Inland Counties; and in caſe he cannot do it, it will be ſtrongly preſumed, that he can much leſs tax them. The proving theſe two things herein will ſerve my turn:

That his Majeſty *de facto* takes them, and that this judicially appears to your Lordſhips in the Court; and, Secondly, that theſe and the ancient Cuſtoms, are for the Defence of the Sea.

For the Firſt, it was declared by his Majeſty in the laſt Parliament, and annexed to the Petition of Right as part of it, that his Majeſty took them, and could not be without them; whereof he likewiſe deſired the Judges to take notice, and that they might ſo do, it is inrolled both in this and other the Courts of *Weſtminſter-Hall.*

For the ſecond, that the Grant of Cuſtom is principally for Protection of Merchants at Sea againſt the Enemies of the Realm, and Pirates, the common Enemies of all Nations, Sir *John Davies* Reports, *fo.* 9, *&* 12; and that thoſe, and likewiſe the Impoſitions are for that purpoſe, was held by many of the Judges in the Argument of *Ball*'s Caſe 7 *Jac.* in the *Exchequer*, in the Caſe of Impoſitions upon Currants, and likewiſe by the King's Counſel, when the ſame Caſe afterwards came to be debated in Parliament, and was one of the main Reaſons urged by them for the Maintenance of that Judgment. That the Aids and Subſidies, and likewiſe Tonnage and Poundage, before they were granted for Life, were not only for the Protection of Merchants, and the ordinary Defence of the Sea, but alſo for the Defence thereof in times of extraordinary Danger, and from Invaſion from Enemies, appears by the ſeveral Grants of them in the Parliament Rolls. *Rot. Parl.* 1 *Rich.* II. *pars* 2. *M.* 9, *&* 27. the Kingdom being in Point to be loſt by the Enemies of *Spain* and *France*, and divers others there mentioned, who made War againſt us both at Land and Sea, a Subſidy upon the grand Cuſtoms was granted, as the Words are, *pur le defence & reſcous del Kingdome*; this was for two Years, and Perſons aſſigned to receive and expend the Money. *Comm' Mich.* 3. *Rich.* II. *London: William Wallworth* and *John Philpot*, Citizens of *London*, appointed the Treaſurers of it, upon their Account, ſhew the Particulars how this Money was expended, *circa ſalvationem & defenſionem Regni*, and were diſcharged. *Rot. Parl.* 3 *Rich.* II. *M.* 16, *&* 17. The ſame Cauſe continuing, Enemies intended to blot out the Name of the *Engliſh* from under Heaven, the Subſidy continued for a Year longer. *Rot. Parl.* 5 *Rich.* II. *pars* 2. *M.* 14, *&* 15. Tonnage and Poundage granted *aſſint pre ſoit apply ſur ſafegard del Mers*, and the King at the Petition of the Commons appoints Receivers. 6 *Rich.* II. *M.* 13. the Commons complain, that notwithſtanding the Grant of Tonnage and Poundage, the Sea is not kept, and therefore Perſons named and aſſigned in Parliament to receive the Money, and to do it. 10 *Rich.* II. *M.* 1. Tonnage and Poundage for a Year. 11 *Rich.* II. *M.* 6, *&* 12. Tonnage and Poundage and Subſidy for a Year. 12 *Rich.* II. *M.* 20. both for a Year. 14 *Rich.* II. *M.* 16. both for a Year. 17 *Rich.* II. *M.* 12. both for three Years. 20 *Rich.* II. *M.* 28. Subſidy for five Years, and Tonnage and Poundage for three Years. 2 *Hen.* IV. *M.* 9. both for two Years. 6 *Hen.* IV. *M.* 9, *&* 10. both for two Years, upon Condition to ceaſe if the King before St. *Hilary* provide not a ſufficient Army for the Sea. 8 *Hen.* IV. *M.* 9. and 9 *Hen.* IV. *M.* 16. both for two Years for the common Commodity and Defence of the Realm. 13 *Hen.* IV. *M.* 10, *&* 11. for one Year, ſo as the ſame be confeſſed to proceed out of their own Good Will, and not out of Duty. 5 *Hen.* V. for four Years, upon many Conditions. 1 *Hen.* VI. *M.* 9. for two Years. 3 *Hen.* VI. *M.* 17. Subſidy for three Years, Tonnage and Poundage for one Year. 4 *Hen.* VI. *M.* 22. 6 *Hen.* VI. *M.* 11. for two Years Tonnage and Poundage; and 6*s.* 8*d.* upon every Man within a Pariſh-Church that hath twenty Nobles, and 6*s.* 8*d.* upon every Knights-Fee held immediately of the King. 8 *Hen.* VI. *M.* 15. Tonnage and Poundage to continue until the next Parliament. 9 *Hen.* VI. *M.* 14. both, and for two Years. 10 *Hen.* VI. *M.* 21. for two Years. 23 *Hen.* VI. *M.* 16. for four Years, and double upon Strangers. 27 *Hen.* VI. *M.* 20, *&* 23. for five Years. 37 *Hen.* VI. *M.* 8, *&* 42. Tonnage and Poundage firſt granted for Life; and *M.* 41. aſſigned into the Subjects Hands for three Years for the good of the Seas.

My Lords, either by the Grant itſelf of them, or by the Declaration of the Cauſe of the calling of the Parliament, it appears, that theſe were all granted upon extraordinary Occaſions: and when they come to be granted for Life, as appears by the Rolls and printed Statutes of 12 *Ed.* IV. *cap.* 13. they were not only granted for the ordinary Defence of the Realm, and principally of the Sea; but likewiſe that the Kings might always have in readineſs a Stock of Money in their Hands to withſtand an Invaſion, as is declared by the very Words of thoſe Statutes.

My Lords, his Majeſty is in Poſſeſſion of them, and was pleaſed by his Proclamation printed 1626, declaring the Cauſe of the Diſſolution of the laſt Parliament, as appears *Page* 17, to declare that they were always granted to his Progenitors, for the guarding of the Seas, and Safety and Defence of the Realm; and Page 18, is graciouſly pleaſed in theſe words, to declare that he doth, and muſt ſtill purſue thoſe Ends, and undergo that Charge for which they were firſt granted to the Crown; and Page 44, that he receives them for the guarding of the Seas, and Defence of the Realm.

My Lords, I have now done with the Ways which I firſt propounded, whereby the Law hath provided for the Defence of the Realm. I ſhall add this only, That by the Statute of *Wincheſter*, which was made in 13 *Edw.* I. every Man *ſecundum ſtatum & facultates*, for the Words of the Statute are according to the quantity of his Lands and Goods, is to find Horſe and Armour for the Defence of the Realm; for that the Statute in this Particular, extends not only to the keeping of the Sea, but likewiſe to the Defence againſt Foreigners, is declar'd in the Parliament Roll of 3 *Rich.* II. *M.* 36. and by the Statute of 5 *Hen.* IV. in the Parliament Roll *M.* 24. not printed, *juxta quantitatum terrarum & bonorum*, againſt Invaſions each Man is to find Armour. And by the Statute 1 *Ed.* III. *cap.* 5, theſe Men upon ſudden coming of ſtrange Enemies into the Realm, may be compelled to march out of their own Counties where they live: whether they may be compelled ſo to do without Wages, I ſhall have occaſion afterwards to ſpeak. How far the Statute of *Wincheſter* and 5 *Hen.* IV. for Arms upon the Statutes of 4 and 5 *Phil. & Mar. cap.* 2. and 1 *Jac. cap.* 25. are in force, I ſhall not ſpeak.

My Lords, I ſhall now proceed to the ſtating of the Queſtion. *Bracton* in the Beginning of his Book ſaith, That *in Rege neceſſaria ſunt hæc duo, Arma & Leges quibus utrumque tempus Bellorum & Pacis recte poſſit gubernare. Glanvill*, in the Beginning of his Book, ſaith, *Reg' Majeſtatem Armis contra gentes ſibi regnoque inſurgentes oportet eſſe decorat'*—His Majeſty, as he is Lord of Sea and Land, ſo by that which hath been ſaid, it appears that he is armed for the Defence of both.

My Lords, The Reaſons in the Writ, as they are weighty, ſo from theſe known Supplies, whereby the Law hath provided for the Safety of the Realm, they will all of them be confeſſed; and yet thereby receive Anſwer, that the Law hath foreſeen and provided the Supplies accordingly without the Way in the Writ.

Firſt, The Command in the Writ being *In fide & legiancia quibus nobis tenemini*, it's thence inferred, that each Subject's Allegiance binds him to contribute to the Defence of the Realm. In the old Cuſtoms of *Normandy*, cap. 43. Allegiance binds *ad concilii & auxilii adjumentum.* This, tho' it be principally perform'd by the Parliament, both in Advices and Aids, yet beſides theſe extraordinary, by that which hath been ſaid, we ſee both by the Tenures in kind, and pecuniary Supplies, that, without the Aſſiſtance thereof, our Perſons, Lands, and Goods, by his Majeſty's Command alone, are made contributory thereunto, and that in a large Proportion. *Secondly*, The Rule whereby this Contribution muſt be regulated, as in the Writ, *ſecundum ſtatum & facultates*, that likewiſe is ſatisfied, and that both for Sea and Land.

For Land, in caſe either the Statute of *Wincheſter*, or 5 *Hen.* IV. be on foot, then in Words that of finding Arms, *juxta quantitatem terrarum & bonorum.* So, *Secondly*, in reſpect of the Tenures, by Knights-Service, by the Wards, Marriages and Reliefs; theſe, I confeſs, concern the Tenant only; but thoſe other Tenures *in Capite* and *Grand Serjeanty*, theſe concern all others, in reſpect of the Licenſes of Alienation, and of the Wardſhips of Lands, held of other Lords, and that all the Tenants are become hereby wardable. And, *Thirdly*, in reſpect of the Prerogatives before mentioned; for the greater the Subject's Eſtate is, the greater Influence they have into it, and proportionably raiſe more Profit out of it.

In reſpect of the Sea, this is ſo by the Cuſtoms, Aids, Subſidies, Tonnage and Poundage, before mentioned; for the Charge of theſe is not born by the Merchants alone, but by each Subject within the Kingdom, and that *ſecundum ſtatum & facultates ſuas.*

For, *Firſt*, in reſpect of the Export: The greater the Eſtate, the more Wool and Wool-fells, and Leather, Lead, and other Commodities; if that be done by the Owner, he bears the immediate Charge; if by the Merchant, according to that Proportion is his Abatement in Price to the Owner. So it is for Goods imported; for the greater the Eſtate and Means of Livelihood are, the more each Perſon buys of theſe, and at a dearer Rate. This is cleared by the Petition of the Commons in Parliament 22 *Ed.* III. *Rot.* 22. *M.* 41. that the Merchants had granted to the King forty Shillings upon a Sack of Wool, *en charge del people & nemy des Marchants.* And by the Statute 36 *Ed.* III. cap. 11. that no Subſidy or Charge be granted to the King by the Merchants upon Wool, without Aſſent in Parliament.

Hence likewiſe that other Ground of Equity in the Writ, *quod omnes tangit ab omnibus debet ſupportari*, receives Anſwer: For as all have Benefit by the Defence, ſo is the *Compenſatio publica*, we ſee it comes from all. The fuller Anſwer is the Parliament Summons of 23 *Ed.* I. for Proviſion againſt the *French*, who intended *Linguam Anglicanam omnino delere.* Rot. Clauſ. 23 *Ed.* I. *M.* 14. *Lex juſtiſſima provida & circumſpectione ſacrorum principum ſtabilita*, ſtatut' *Quod omnes tangit ab omnibus approbatur*; the Charge muſt be born by all, ſo it muſt be approved by all.

If his Majeſty be intruſted with the Defence of the Realm, as in the great Caſe between the Earls of *Hereford* and *Gloceſter*, it is ſaid, that, *incumbit Domino Regi ſalvatio populi ſibi commiſ.* and that *per jurament' eſt aſtrictus ad providendum ſalvationem Regni circumquaque*, becauſe no Man goeth to War at his own Charge. We ſee by that which is already ſaid, that the Law hath provided the *Stipendia Miniſterii*; which that they do bind his Majeſty to the Defence and Safety of the Kingdom, not only in point of Care and Vigilancy, but even in point of Charge too, I ſhall endeavour to prove to your Lordſhips and the Court.

Allegiance we owe as an Act of Reciprocation; for as it binds the Subject to Tribute and Subjection, ſo therefore the King to the Charge of Protection by the Expence of theſe, *Rex ad tutelam corporum & bonorum erectus.* The Supplies he hath, for theſe Purpoſes, tie him to the Supportation of the Laws, and the Execution of Juſtice. 20 *Ed.* I. in the Caſe before mentioned between the Earls of *Gloceſter* and *Hereford*, it is ſaid, that *Dominus Rex eſt omnibus & ſingulis de regno ſuo Juſtitiæ debitor*; which that he is ſo, even in point of Charge, appears in his Majeſty's Supportation of the Courts of Juſtice, and the Salaries not only to your Lordſhips, and other the inferior Miniſters of Juſtice, and anciently to the Sheriffs, but likewiſe many other

Ways. 4. *Hen.* VII. cap. 12. the King ſhall not let for any Favour of Charge, but that he ſhall ſee his Laws fully executed. *Parl.* 23 *Ed.* I. *Rot.* 12. *Exchequer*, A Clerk that attended a Committee of Grievances recover'd Salary from the King, altho' the Commiſſion was for the Relief of that County. This I conceive to be the Reaſon of the Declaration in the Statute of 14 *Ed.* III. cap. 1. and other Statutes, That Aids, tho' granted in Parliament, for Defence, ſhall not be brought into Example; in that it might be conceived, that the Commons were to bear that Charge which principally belonged to the King. *Pat.* 48 *Hen.* VII. *M.* 8. it is recited, That whereas a late Parliament *in Articulo neceſſitatis pro defenſione regni contra hoſtilem adventum alienigenarum*, the Commons granted him a large Subſidy, *ultra quam retroactis temporibus facere conſueverant*; now the King *eorum indempnitati proſpicere volens*, grants, that *non cedat in præjudicium nec in poſterum trahatur in conſuetudinem.* In *Wiſeman*'s Caſe, in the ſecond Report, *fo.* 15. it's reſolved that a Covenant to ſtand ſeized to the Uſe of Queen *Elizabeth*, that ſhe is the Head of the Commonwealth, and hath the Care of repelling foreign Hoſtility, is not good, becauſe, ſaith the Book, the King is bound to do that *ex Officio. Com.* 315. One Reaſon why the King is to have Royal Mines, alledged by all that argued for the King, is, becauſe he is at his own Charge to provide for the Defence of the Realm, which he cannot do without Money. In the Earl of *Devon*'s Caſe, *Co.* 11. 91. 6 *Inſtitut.* fo. 28, & 131. *Theſaurus Regis* is called *Nervus Belli.* For the Practice, the Proof of the particular Charges, the ſeveral Kings have been at for Defences of all ſorts, would be ſo tedious, that I will omit the citing of any thing in this kind. Sir *John Davies* Reports, *fo.* 12. many Authorities, and in the Treatiſe *de Regalibus*, pag. 81. *Principes totam Navigationem pro vectigalibus præſtare coguntur.*

But becauſe his Majeſty, in the forementioned Proclamation, pag. 18, and 44, is graciouſly pleaſed to profeſs, that he holds himſelf obliged to undergo the Charge of the Defence of the Realm, and of the Sea in particular, I ſhall ſpare any further Proof in this.

If that in the Writ, that the Sea *per Gentem Anglicanam ab olim defendi conſuevit*, be not anſwered by the *Scotiſh* Roll of 10 *Ed.* III. before recited, which ſays, that the King and his Anceſtors *Maris Anglicani defenſores antehac conſtiterunt*, nor by what is now ſaid, if it be admitted, yet that even the Charge of this Defence is born *per gentem Anglicanam*, is before proved.

The next, and one of the main things whereupon I ſhall ſtate my Queſtion, is this. His Majeſty is in the actual Poſſeſſion, not only of the Service in kind, for the Defence of the Land, by taking of the Benefit of the Wardſhips, Marriages, Reliefs, Fines, and Licenſes of Alienations, and *primer Seiſin*, and of the Prerogatives beforementioned, but likewiſe of the Services of the *Cinque Ports*, unleſs they be releaſed ſince 7 *Hen.* VII. (for then their Services were ſummoned) and of the Tonnage and Poundage, and other Duties, for the Defence of the Sea: It appears not by any part of the Writ, nor by any thing in the Record, that either the Services of the *Cinque Ports* were ſummoned, or that any Money at all of his Majeſty's was expended, either for this Service, or at any other time for the Defence of the Sea. My Lords, I deſire to be underſtood, I do not affirm that none was expended; only this appears not to your Lordſhips and the Court: All that can be inferred from the Writ to this Purpoſe is, that this Ship for *Bucks*, is commanded to be at *Portſmouth* by ſuch a Day *ad proficiſcend' exinde cum Navibus dicti Domini Regis & Navibus alior' fidelium ſubditorum ſuorum.* By this it appears not to the Court, that tho' the Ships are the King's, that they are to be ſet forth at the King's Charge; for the Charge may be born by the Subject, for ought appears.

Neither, *Secondly*, doth it appear, how many theſe Ships were, whereby the Charge, in caſe it were born by the King, might in any Proportion appear to be anſwerable to the Supply beforementioned. Thoſe other Ships, *aliorum fidelium ſubditor' noſtror' Regis*, as in Truth they were not thoſe of the *Cinque Ports*, neither can they be ſo intended, unleſs it had been ſo expreſſed.

The Service of the *Cinque Ports*, and Tonnage and Poundage, and other Duties, are the ordinary ſettled and known Ways by the Law appointed for the Defence of the Seas; the Way in the Writ by ſeſſing and altering the Property of the Subjects Goods without their Conſent, as in the Writ, muſt needs be granted to be a Way more unuſual and extraordinary. Againſt the Legality of it, I ſhall thus frame my Argument by Way of Admiſſion: *Firſt*, That in caſe the Service of the Ports had been ſummoned, and the Money by the forementioned Ways raiſed had been expended upon the Defence, and they had not been ſufficient, that tho' in this Caſe the Writ had been legal; yet, as now it is, it is not. *Rylie*'s Caſe in the 10th *Report* fol. 139. and *Trin.* 18 *Ed.* II. *Banc. Regis* 174, adjudged, that ſo long as he that is bound by Tenure, or Preſcription, is able to do it, the whole Level cannot be aſſeſſed to the repairing of a Wall or Bank. It's a Maxim, *Lex non facit Salutem*, nor that we are to run to extraordinary, when the ordinary Means will ſerve the Turn; theſe Rules are often put in our Books, I intend to inſtance but in one or two Caſes.

The Common Law is the common Reliever of Perſons wrong'd; that in *Chancery* is extraordinary, and therefore no Man can ſue there, when he may have Remedy at the Common Law. The ordinary Way of Trial for Life is by Indictment and a Jury; when therefore this may be done, and that the Sheriff, with the *Poſſe Comitatus*, is able to keep the Peace, it cannot be done by Martial Law, or by Judgment of the King and Peers in Parliament without Indictment, as was adjudged in the Caſe of the Earl of *March*, *Trin.* 28 *Ed.* III. *Banco Regis Rot.* 21. My Lords, the Reaſon of this Maxim of Law is, as I conceive, theſe Actions extraordinary are done *extra ordinem*, and done only in Times of Neceſſity, when we are not tied to any Rules of Law, and therefore not to be brought into Example, nor have any Warrant but only that of Neceſſity; nor any Rule to guide them but what, *pro hic & nunc*, ſhall ſerve for the bringing of them about: The ſame Power then that may once do them, in the omitting of the ordinary Way, may, by the ſame Rule, always do them, and ſo by Conſequence, how far ſuch Power is tied at any time, or in any thing, to any Rules of Law, I ſhall humbly ſubmit to your Lordſhips Conſideration. My Lords, I have now done ſtating the Queſtion, thoſe things whereupon I ſhall ſpend the reſt of my Time are theſe.

Firſt, Admitting that the ordinary Means abovementioned had been all uſed, and that they had not been ſufficient; whether in this Caſe his Majeſty, without Conſent in Parliament, may in this Caſe of extraordinary Defence, alter the Property of the Subjects Goods for the doing thereof?

In the next Place, I ſhall endeavour to anſwer ſome Objections which may be made to the contrary.

In the third Place, for qualifying of this, I ſhall admit, that in ſome Caſes the Property of the Subjects Goods for the Defence of the Realm, may be alter'd without Conſent in Parliament; and ſhall ſhew what they are in particular, and compare them and the preſent Occaſion together.

In the fourth Place, becauſe of ſome Precedents of the Matter of Fact, and likewiſe of all Authorities that may ſeem to prove a Legality in this Particular of Shipping for Defence of the Sea, whatever it be in the General, I ſhall therefore endeavour to anſwer to ſuch of them as I have met withal.

For the *Firſt*, that to the altering of the Property of the Subjects Goods, tho' for the Defence of the Realm, a Parliamentary Aſſiſtance is neceſſary. In this it muſt be granted in the firſt place, that the Law ties no Man, and much leſs the King, to Impoſſibilities: And *Secondly*, that the Kingdom muſt be defended.

As therefore the Law hath put this great Truſt upon his Majeſty, ſo when the Supplies which by the Ways before-mentioned it hath put into his Hands fail therein, it hath provided other Ways for a new Supply.

The firſt thing that I ſhall preſent unto your Lordſhips and this Court, are the Aids and Subſidies granted in Parliament. That amongſt the *Ardua Regni negotia*, for which Parliaments are called, this of the Defence not only is one of them, but even the chief, is cleared by this; That of all the reſt none are named in particular in the Summons, but only this: For all the Summons of Parliament ſhew the Cauſe of the calling them to be, *pro quibuſdam arduis negotiis nos & defenſionem Regni noſtri Angliæ & Eccleſiæ Anglicanæ concernentibus*; and in the Concluſion the Party ſummoned to be there, *Sicut honorem noſtrum & ſalvationem & defenſionem Regni & Eccleſiæ diligit.* And in all the ancient Summons of Parliament, when Aid was demanded, the particular Cauſe of Defence, and againſt what Enemy in ſpecial, was mentioned.

My Lords, to gain time, I will inſtance but one or two of each King's Reign. *Clauſ.* 23 *Ed.* I. *M.* 4. *dorſ.* that the *French ad expugnandum Regn' noſtr' Claſſe maxima & bellatorum copioſa multitudine Regn' noſtrum invadunt & linguam Anglicanam omnino proponunt*, &c. *Clauſ.* 3 *Ed.* II. *M.* 3. *dorſ.* and 7 *Ed.* II. *M.* 8. *dorſ.* that the *Scots* had enter'd, burnt and deſtroy'd the *Marches*, and put them to a Tribute. *Clauſ.* 1 *Ed.* III. *pars* 2. *M.* 6. and 22 *Ed.* III. *M.* 31. *dorſ.* that the *Scots* and *French* had invaded the Realm. *Clauſ.* 7 *Hen.* IV. *M.* 29. *dorſ.* that the *French* were with a great Fleet, *Quaſi in ore Thameſis*, to invade the Kingdom, and the King to go in Perſon; after this King's Reign, the Summons was as now it is.

That theſe *Ardua defenſionem Regni concernen'*, are the Aids and Means of Defence, and not the Way and Manner of doing it, as their Counſel therein, is clear. In the Parliament Roll 6 *Rich.* II. *M.* 9. This of the Manner and Way and Proſecution of the War being given in Charge to the Commons to adviſe upon, they anſwer this, *Nec doit, nec ſoluit appertaine al eux mes al Roy.* *Rot. Parl.* 13 *Ed.* III. *pars* 1. *M.* 11. the ſame being given in Charge to the Commons, they pray *que ils ne ſont charge al Councel doner al choſes del queux ils n'ont pas conuzance:* And ſo *Rot. Parl.* 21 *Ed.* III. *M.* 5. they excuſe themſelves, and ſay, that this belongs to the King and his Council.

And that theſe *ardua circa defenſionem*, were the Aids, is expreſſed in Words in ſome of the Summons. *Clauſ.* 7 *Ed.* II. *M.* 8. *dorſ.* the Cauſe of the Parliament to withſtand the *Scots*, and that in *tam arduis debetis extendere manus adjutrices opportun' auxil' faciendo. Clauſ.* 31 *Ed.* III. *M.* 21. *dorſ.* that *circa neceſſariam defenſionem Regni quam ad dictum negotium expediend' auxilium neceſſar' nos habere oportet. Clauſ.* 5 *Rich.* II. *M.* 2. *dorſ.* the King being to make a Voyage *pro defenſione Regni*, which could not be done without borrowing great Sums of Money; therefore the Parliament was called to adviſe about the Aſſurance. So that, my Lords, it is clear, that the Law hath provided this Parliamentary Way for ſupplying of the King's Wants for the extraordinary Defence, and hath likewiſe put the Power of uſing of it into his Majeſty's own Hands, for he may call Parliaments when, and ſo often as he pleaſeth.

My Lords, as the Parliament, *Firſt*, are beſt qualified and fitted to make this Supply; (for ſome of each Rank, and that thro' all the Parts of the Kingdom, being there met, his Majeſty having declared the Danger, they beſt know the States of all Men within the Realm, and are fitteſt, by comparing the Danger and Mens Eſtates together, to proportion the Aid accordingly;) and, *Secondly*, are fitteſt for the Preſervation of that Fundamental Propriety which the Subject hath in his Lands and Goods; becauſe each Subject's Vote is included in whatſoever there is done: So that it cannot be done otherwiſe, I ſhall endeavour to prove to your Lordſhips both by Reaſon and Authority.

My Firſt Reaſon is this, that the Parliament by the Law is appointed as the ordinary Means of Supply upon extraordinary Occaſions, when the ordinary Supplies will not do it. If this in the Writ therefore may without reſorting to that be uſed, the ſame Argument will hold as before, in reſorting to the Extraordinary by way of the Ordinary, and the ſame Inconveniency will follow.

My Second Reaſon is taken from the Actions of former Kings in this of the Defence. The Aids demanded by them, and granted in Parliament even for this purpoſe of the Defence, and that in times of imminent Danger, are ſo frequent, that I will ſpare the citing of any of them. It's rare in a Subject, and more in a Prince, to aſk and take that of Gift, which he may and ought to have of Right.

The ſecond Way was Loans and Benevolences demanded by them, with Promiſe of Repayment both for the ordinary and extraordinary Defence of the Realm; and that as well of all the Subjects equally, as of ſome few. *Pat.* 48 *Hen.* III. *M.* 16. a Commiſſion to the Earl of *Leiceſter* and others, *contrahendi mutuum in nomine noſtro de denariis & victualibus*, and other things *in munitionem Navium ponendis & Nautarum ſtipendiis contra hoſtilem adventum Alienigenar' in Regnum noſtrum, & ad defenſionem & tuitionem ejuſd' Regni*; and promiſeth Repayment. *Viſis computis* in the *Exchequer*, 26 *Ed.* I. *Rot.* 100. the King borrows of the Merchants 28966*l.* *pro defenſione Regni*, and promiſeth Repayment, *Hil.* 31 *Ed.* I. *Rot.* 4. and *Trin.* 31 *Ed.* I. *Rot.* 41. divers Sums borrowed *pro defenſione*, and Repayment promiſed. *Br. irrot.* 34 *Ed.* I. *Rot.* 82. ten thouſand Pounds paid by the King at one time for Money borrowed, this I confeſs is *Arduis Regni negotiis. Br. irrot.* 11 *Ed.* II. *Rot.* 1. the *Scots* having entered the Kingdom, *diverſa homicidia, incendia, & deprædationes perpetrantes*, the King being in Perſon to go againſt them, writes to his Council to provide Money; and they, *diverſas vias pro denariis providendis exquirentes*, reſolve to borrow. *P.* 12 *Ed.* II. *Commun'* for the ſame Cauſe a Loan upon all Merchants Strangers. *Rot. Scot.* 1 *Ed.* III. *M.* 3. the *Scots* having entered the Realm and taken divers Caſtles, and threatned a Conqueſt of *England*, and *Quia creſcit ſumptuum multitudo in tantum quod Theſaurus noſter ad ſuſtentationem exercituum noſtr' nequaq' ſufficit*, he borrows. *Clauſ.* 14 *Ed.* III. *M.* 8. the King had borrowed 3333*l.* *pro ſalvatione & defenſione Regni*, *& vult promptam ſolutionem fieri prout decet*; and now aſſigns it to be paid out of the Cuſtoms. *Walſingham*, Pag. 179. 44 *Ed.* III. the King *Siniſtro uſus concilio magnas ſummas pecuniæ* of all ſorts *mutuo petiit*, *aſſeverans quod in defenſionem Eccleſiæ & Regni illas expenderet*; but the People would not lend. *Clauſ.* 5 *Rich.* II. *M.* 12. *dorſ.* the King *pro defenſione Regni*, being to make a Voyage to Sea, deſired to borrow Money, and a Parliament called to give Aſſurance. 7 *Hen.* IV. *Rot. Franc.* Money borrowed *pro defenſione*, *volens promptam & ſecuram ſolutionem fieri. Rot. Parl.* 11 *Hen.* VI. *M.* 13. ten thouſand Pounds borrowed *pro defenſione* and ſpent, and the Parliament order the Security. *Rot. Parl.* 15 *Hen.* VI. *M.* 3. ten thouſand Pounds borrowed *pro defenſione* by the King. *Stat.* 11 *Hen.* VII. *cap.* 10. it appears that a Benevolence had been deſired by *Hen.* VII. for the Defence of the Realm, and wherein he went in Perſon. The known Commiſſion to Cardinal *Wolſey* for the Benevolence in *March*, 16 *Hen.* VIII. it was to withſtand *Infeſtiſſimos hoſtes* of *France* and *Scotland*, who intended to invade the Realm; and that the King's Coffers were now empty, and therefore they have Power *Communicandi & inducendi*, *perſuadendi & practicandi cum ſubditis Regis ſuper amicabilem pecuniarum conceſſionem.* 2 pars Pat. 37 Hen. VIII. *cum pro ſuſtentatione ingentis oneris noſtrarum Copiarum*, *quas in preſenti tam per mare quam per terram conficere*, *& in promptu habere cogimur ad reſiſtend' propellend' hoſtem noſtrum Francorum Regem*, *in defenſionem tutelam & ſecuritatem dilectorum ſubditorum noſtrorum*, *quorum ill' damnum & interitum omnibus viis & modis molitur*, *Statut' & ex conſenſu & ſcientia concilii noſtri decrevimus aliquam opem de dictis ſubditis noſtris petere*, *& eand' cum eorum benevolentia recipien' pro eorum cujuſlibet facultate miniſtrand' nihil dubitans quin ſponte & liberaliter quiſq*; *pro ſua portione & facultate elargiturus ſit*, *eoque magis & citius quod id totum conſumat' & cedat in ſuam ipſorum defenſionem*; and the Power is given to levy it as a Benevolence only. By the Statute of 35 *Hen.* VIII. *cap.* 12. it appears that for the Defence *Hen.* VIII. had borrowed divers Sums of Money.

The third Way was by anticipating their Rents. *Trin.* 29 *Ed.* I. *Rot.* 58. in the *Exchequer*, Writs went to all the Sheriffs of *England*, *pro ſalvatione Regni ejuſq*; *incolarum ſalvatione*, *& inimicorum depreſſione*; that all the Profits ariſing out of their Counties, and the Rents of all the King's Tenants due at *Michaelmas*, be paid at *Midſummer*, and Allowance promiſed in the next half Year's Rent; and that this *ad tam ardua negotia neceſſaria*, *& in conſuetudinem non trahatur*.

My Lords, that not one or two, but ſo many Kings, and of ſuch Power and Wiſdom as many of them were, and that in a Matter of ſuch Conſequence, and in times of Neceſſity, ſhould ſo far deſcend from their Greatneſs, or ſo far prejudice their Right, as to borrow that of the Subject, which, without being beholden unto them, they might take of Right, and bind themſelves to Repayment, and all without any *ſalvo* of their Right, your Lordſhips will conceive that it can hardly be imagined.

My third Reaſon is taken from the Incertainty of the Way intended by the Writ; for the Law delighting in Certainty, to the end that the Subject might be ſure of ſomewhat that he might call his own, hath made all thoſe Things that the King challengeth as peculiar to himſelf from the Subject, either certain in themſelves, or elſe reducible to a Certainty either by the Judges, Jury or Parliament, (or ſome other Way than by his Majeſty himſelf) as indifferent between the King and his People. In this I intend not ſuch Things as are common to the King with the Subject, of which Nature are the Aids for marrying the King's eldeſt Daughter, or Knighting his eldeſt Son; for theſe are due to ſeveral common Perſons that are Lords of a Mannor, as well as to the King, as appears by the Statute of *Weſtm'* 1. 3 *Ed.* I. *cap.* 35. *M.* 28. and are not due by any ſpecial Prerogative, but by Tenure; and yet the Common Law for avoiding Exceſs therein, calls it *Rationabile auxilium*; and even this by the Statute of *Weſtm'* 1. 3 *Ed.* I. *cap.* 35. is put into Certainty; and the Cauſe of making the Statute, as therein is expreſſed, is, becauſe the People were grieved by paying more than was requiſite; and thereby that which was reaſonable, became an unreaſonable Aid. This Statute was general, and named not the King in particular; but the Statute 25 *Ed.* III. *cap.* 11. is only in caſe of the King, and *Na. Br. fo.* 82. gives the Reaſon of the making of that Statute, becauſe the King before did diſtrain for more than was fit, and therefore by reaſon of the Exceſs, was reſtrained to a Certainty as well as the Subject. Neither are the Taxes and Talliages upon Cities and Burroughs, or ancient Demeſne againſt this, in reſpect of the Baſeneſs of their Tenures beforemention'd. And Secondly, becauſe the Subject that is Lord of ſuch Burrough and Mannor of ancient Demeſne, hath them as well as the King, as appears by the Caſe of *New-Saliſbury*, 33 *Ed.* I. in the Parliament Book, and in the New Parliament Roll, 8 *Ed.* II. for the Burrough of *Cirenceſter*, and *Br. Trin.* 33 *Ed.* I. *Rot.* 22. and *Na. Br.* 97. Theſe things which are peculiar to the King, either they be certain in themſelves, as are Treaſure-Trove, Deodands, Wrecks, and the like, where the King is to have the thing itſelf; and ſo if it be in Money, as the Demy-Mark; when in a Writ of Right the Tenant prayeth, that the Seiſin may be inquired, Fines *pro licentia concordandi*, it is the tenth Part by the Law comprized in the Writ of Covenant, and the Poſt-Fine one half ſo much more, and Fines for purchaſing Original Writs ii*s.* viii*d.* where the thing demanded is forty Pounds, or ten Shillings where one hundred Pounds, and ſo in proportion. Or elſe it is reducible to a Certainty, as in all Caſes where the Party is to be amerced, tho' he is is *miſericordia dom' Regis*, yet the Jury muſt find the Amerciament; and when he is to make Fine and Ranſom *ad voluntatem Domini Regis*, yet this Fine muſt be ſet by the Judges: when the Tenant by Knight-Service makes default in the Summons *ad exercitum*, which is to pay Eſcuage for the Default; this cannot be ſet but in Parliament, as I ſhall prove hereafter.

My Lords, to apply all to the Thing in queſtion, there is a Cauſe for raiſing Money for the Defence of the Realm, *non definitur in lege*, what will ſerve the Turn. If his Majeſty, as in the Writ, may without Parliament lay 20*s.* upon the Defendant's Goods, I ſhall humbly ſubmit it to your Lordſhips, why by the ſame Reaſon of Law it might not have been 20*l.* and ſo *ad infinitum*; whereby it would come to paſs, that if the Subject hath any thing at all, he is not beholden to the Law for it, but it is left entirely in the Mercy and Goodneſs of the King.

My Lords, I am now come to the ſecond kind of Proofs, and that is by Authorities. The Caſes which in the firſt Place I will inſiſt upon, will be to prove it by Induction: for if I ſhall prove that his Majeſty without Parliament cannot tax his People for ſetting forth of Land-Forces for Defence, for making and maintaining of Forts and Caſtles for Defence, for Victuals for a defenſive Army, for Maintenance of Priſoners taken in a defenſive War, for Pledges and Hoſtages given by Foreign States for the keeping of Peace; if it cannot be in all or any of theſe Particulars, the five Supports of a defenſive War; I ſhall then offer it to your Lordſhips, whether it can be done at all.

Before I proceed to theſe Particulars, I ſhall obſerve thus much, my Lords, in the general; that if thoſe that hold by ancient Demeſne and Burgage, which are but baſe Tenure, cannot be taxed *niſi ſur grand cauſe*, and that have many Privileges in point of Eaſe and Profit in Conſideration thereof, as they have; much leſs then can the Tenants by Knights-Service and Socage, that are free Tenants, and have no Privilege in Support of the Charge, be taxed. And as they are not taxable, but *ſur grand cauſe* in the general, ſo neither in particular for this of Defence, as is proved by that of Eſcuage; for if his Majeſty without Conſent in Parliament, cannot tax his own Tenants, nor proportion the Fine according to his Pleaſure, when the Tenant holds the Land *ad exercitum*, for the Defence of the Kingdom, much leſs can he do it where there is no Tenure for that Purpoſe. That Eſcuage cannot be ſet without Parliament, is firſt the Statute of *Running Mead*, *Nullum Scutagium vel auxilium ponatur in Regno noſtro niſi per commune concilium Regni noſtri*; which tho' it be not printed, yet it is of Record, and inrolled in the *Red Book* of the *Exchequer*, and cited in *Mat. Paris*, *p.* 343. And that as well before the Confirmation of it, 9 *Hen.* III. as ſince, it hath been by the Judges reputed to be a Statute and of Force, appears by the Book of 5 *Hen.* III. *Mordam.* 53. where it is pleaded, and called by the Name of *Magna Charta*, and allowed; and *M.* 19 *Ed.* I. *finiente* 20. *incipiente Banc. Regis Rot.* 56. in the Caſe of *Ralph de Tunney*, it's pleaded by the Name of *Magna Charta Johannis Regis de Running Mead*, and allowed.

In the Book of Knights-Fees of *Ed.* I's Time, there is a Writ cited, which went to the Sheriff of *Hereford* thus; *Datum eſt nobis intelligi quod plures ſunt qui tenent per ſervitium Militarium de nobis*, *qui contradicunt ſolvere Scutagia quæ nobis ſunt conceſſa per commune concilium Regni noſtri*; therefore he is commanded to levy them. *Comm' M.* 8 *Ed.* II. *Rot. dorſ.* many Proceſſes iſſued for the levying of Eſcuage granted in *Ed.* I's Time ſuperſeded, and quite releas'd; the Reaſon entered on the Roll is, *Quia dictum ſervitium non fuit communiter factum*; that is, as I conceive, that it was not done *per commune Concilium Regni:* The Books are expreſs, 13 *Hen.* IV. *Com. Banc. Na. Br.* 83. *Inſtitut. Sect.* 97.

My Lords, that thoſe that held in Socage or Fee-Farm, or not by ſo many Knights-Fees as they were diſtrained for, were always diſcharged, as appears by infinite Precedents, I ſhall make no Uſe of it, as the manner of entering theſe Diſcharges upon the Roll; it is obſervable, that he is diſtrained *ac ſi teneret per ſervitium Militare*, whereas he holds the Lands in Socage, *pro quibus ſervitium aliquod Regi in exercitibus ſuis facere non debet*, and in ſome Rolls that *Ratione alicujus authoritatis*, he ought not to be diſtrained; therefore *Quia Dominus Rex non vult illum in hac parte injuriari prout juſtum eſt*, the Diſtreſſes are releaſed. Amongſt divers Precedents for this, I ſhall cite but one or two, *Br. Trin.* 34 *Ed.* I. *Rot.* 20. the Abbot of *Abington* and *John Arden*, the Iter-Roll of *Suſſex*, 7 *Ed.* I. *Rot.* 107. of *Gilbert Gifford.* My Lords, if the King might have raiſed Money, and ſeized Money for finding of Soldiers, or for their Arms, this manner of Entry, as I humbly conceive, would never have been ſuffer'd.

I am now come to the firſt Particular that I have inſtanced; that is, the charging the Subject for finding of Soldiers to go out of their County for the Defence of the Realm. My Lords, in that I ſhall in the firſt place admit theſe three Things.

1. That every Man after the Statute of *Wincheſter*, *ſecundum ſtatum & facultates*, was to find all manner of Arms, as well for the Defence of the Realm againſt Foreigners, as for the Peace; and that I have before proved by that of 3 *Rich.* II. *M.* 16. and after by the Statute 5 *Hen.* IV.

2. That upon ſudden coming of ſtrange Enemies, theſe are compelled to travel out of their own Counties, is the Statute of 1 *Ed.* III. *cap.* 5. and ſo for appeaſing of any notable Rebellion, when the King for the doing thereof goes in Perſon, as appears by the Statute 11 *Hen.* IV. *cap.* 1. and 18.

3. I ſhall admit, that ſo long as they remain at home, and go not out of their Countries, they are to have no Wages; and that the Maritime Shires, and thoſe that border upon *Scotland* and *Wales*, were not to be at the King's Charge, ſo long as they remained at home in their own Counties for the Preſervation of them; but that they were in that Caſe themſelves to bear the Charge againſt Foreign Invaſion, as of making Hue and Cry, aſſiſting the Sheriff when he took the *Poſſe Comitatus*, and all other Things concerning the keeping of the Peace.

But that the Subjects are taxable either for Wages or Victuals, or otherwiſe for finding of Soldiers out of their Counties, tho' for Defence of the Kingdom, or that any are compellable to do it at their own Charge, I ſhall humbly deny. The Statute 1 *Ed.* III. ſays, that in this Caſe it ſhall be done, as uſually hath been done in times paſt, for the Defence of the Realm. My Lords, I ſhall not deny, but that before *Edward* III.'s time Commiſſions have iſſued out of the Chancery for that purpoſe; againſt which Matters of Fact, not only to ballance them, but even to weigh them down, it's as clear that whole Armies, ſome of them of 30000 at the leaſt, over and above them that were ſummoned by their Tenure, have been maintained at the King's Charge, from the time that they have departed out of their Counties, during the whole time of their Service, and that not only with Promiſes of Payment, but that they were paid *ex Theſauro Regis*, out of the *Exchequer*; and many times upon failure of Payment, Victuals, Wages, and other Things, upon Suit for them in the *Exchequer*, full Payment has been made; of which ſort in moſt Kings Reigns there are many Caſes.

My Lords, this is the Anſwer that I give to the Commiſſions to the Country, That *de facto* the King was at the Charge uſually for defenſive War. By the Statute 19 *Hen.* VIII. *cap.* 1. thoſe that have Annuities of the King muſt attend him when the King in Perſon goes for the Defence of the Realm, or againſt Rebels: But there is a ſpecial *Proviſo*, that they ſhall have Wages of the King from the time they ſet out till they come to the King, allowing twenty Miles a Day, and afterwards as long as they ſhall remain in the Service. Upon a Rebellion in the North 28 *Hen.* VIII. againſt which the King intended to go in Perſon, Privy-Seals were ſent to moſt of the Gentry to attend the King with the beſt Retinue that they could make, and likewiſe to bring the Bills of their Expence, and Payment promiſed, as appears by many of thoſe Privy-Seals remaining in the Palace-Treaſury. And beſides the Indentures themſelves, whereof I have ſeen many, it appears by the Statute 2 & 3 *Ed.* VI. *cap.* 2. that the Retainer of Soldiers at the King's Charge, was as well for Defenſive as Offenſive Wars; and alſo by the Statute of 3 *Hen.* VIII. *cap.* 5.

My Lords, in the next Place I ſhall endeavour the Proof hereof by clear Authorities. The Statute of 25 *Edw.* III. *cap.* 8. is, that none ſhall be compelled to find Arms, but ſuch as hold by ſuch Service, if it be not by Grant in Parliament. That this was not *introductivum novæ legis*, appears by a Petition whereupon the Statute is made, that it is *encounter le droit del Roylme.* That the Common Law was ſo before the Statute, and likewiſe in caſe of a Defenſive War, appears by the Authorities following: *P.* 26 *Ed.* I. *Rot.* 35. *dorſ.* the *Scots* entering the Borders, a Commiſſion iſſued *Reginaldo de Gray*, to preſs Soldiers in *Lancaſhire*; he certified by his Letter inrolled there, *que ſans denieres preſt*, he could not procure them to march out of thoſe Parts; and therefore Order is taken in the *Exchequer* to ſend Money. That the *Scots* had now invaded the Kingdom, appears by *Br. irrot' m.* 26 *Ed.* I. *in Scaccar.* where Commiſſions are inrolled for many Thouſands to be levied for this War at the King's Wages. *Bra. Trin.* 32 *Ed.* I. *Rot.* 18. *Communia.* The Wardens of the Marches of *Cumberland* and *Weſtmorland* write to the Barons of the *Exchequer*, that whereas the *Scots* lay near the Marches with a great Army, and that the People of theſe Counties would not march out of their Counties without Wages and Victuals, that they would provide for both. 2 *Pars Pat.* 10 *Ed.* II. *M.* 26. and 9 *Ed.* II. *in Parl.* a Grant to find one Soldier for ſixty Days at the Charge of the Town againſt an Invaſion of the *Scots.* Now the King grants, *Quod hujuſmodi conceſſio non reddat in præjudicium, nec trahatur in exemplum in futuro.* At the Time when this Aid was granted, the *Scots* had entered the Realm, and waſted the Biſhoprick of *Durham*, as appears in 14 *Ed.* II. *Banc' Reg. Rot.* 60. *Rot. Scot.* 12 and 13 *Ed.* II. *M.* 7. and 13. The ſame Indempnity upon the like Occaſion of Defence, when they found the Soldiers *ad rogatum Regis*, and the King commanded the Chancellor to declare as much. *Clauſ.* 13 *Ed.* III. *M.* 38. *dorſ. pars* 1. the Abbot of *Ramſey* diſcharged *pro Cuſtodia Maritima* in the County of *Norfolk*, becauſe he remained in his own County of *Huntington*, *cum equis & armis*, for the Defence thereof, with this, that therefore it was not *rationi conſonans* to charge him farther. The ſame it is *Rot. Fra.* 21 *Ed.* II. *M.* 1. *Pars* 1. *Oxon.* becauſe they were *prompti & parati* at home to defend the County. But the Practice, it ſeems, not agreeing with the Right in the Parliament, 20 *Ed.* III. *M.* 12. the Commons complain, that Commiſſions had iſſued out of the *Chancery* to charge the People in this Particular and otherwiſe, without Conſent in Parliament, and pray, that they may diſobey ſuch Commiſſions. The Anſwer is, that the Commons had heretofore promiſed to aſſiſt the King with their Bodies and Goods in the War with *France*, and likewiſe for the Defence of the Realm; and that the great Lords, conſidering the Neceſſity as well for Defence as for the King's Wars, agree thereunto, and yet promiſe that this which is done in *ceſt Neceſſite, ne ſoit troit en conſequence n' enſample.* My Lords, this is a full Declaration of the Right, even when for the Defence, and yet ſome practiſe to the contrary. Before the making of the Statute 25 *Ed.* III. procured the Complaints in this Particular, in the Parliament 21 *Ed.* III. *M.* 22 *Ed.* III. *Pat.* 8 *Hen.* III. *Fulcaſius de Brent inimicus publicus & excommunicatus*, that impriſoned the Juſtices Itinerant in *Bedford-Caſtle*, and held the Caſtle againſt the King; the King, *propter graves & manifeſtos exceſſus quibus regnum multipliciter perturbavit*, beſieged the Caſtle; and whereas the Clergy, *de mera gratia*, had granted the King Aid for the doing thereof, *Rex nolens gratiam ſic nobis exhibitam ad debitum retorqueri*, declares as much by his Letters Patent. My Lords, it is here declared, that the King cannot *de debito*, or *de jure*, take any Aid againſt the Subjects Wills for beſieging of a Caſtle, held againſt the King by a publick Enemy. *Rot. Inquiſion'* 3 *Ed.* I. *Rot.* 4. *Kent' coram auditoribus querelarum poſt bellum* Eveſham *& pacem proclamatam.* The Caſtle of *Tunbridge* being held againſt the King, the Hundred of *Feverſham* was aſſeſſed at fifteen Pounds *per inſultationem* of the Caſtle: The Jury preſents this as a Grievance, which the Juſtices would never have received, nor ſuffered to be entered into the Roll, if this Aſſeſſment might have lawfully been made. My Lords, this Caſtle and Hundred they were both in the ſame County, and being before the Statute of *Wincheſter*, they are not compellable to beſiege the Caſtle; and if they were compellable to go in Perſon and with Arms, yet no Aſſeſſment could be laid for the doing thereof. My Lords, I ſhall only offer to your Lordſhips Conſideration the *Scotiſh* Roll of 20 *Ed.* III. *M.* 6. the Wardens of the Marches of *Scotland* were to appoint *Exploratores & Vigiles*, which were to eſpy out and give notice of the Enemy's Intendments. By the Commiſſions in *Henry* IV. *Henry* V. and *Henry* VI.'s Times, they were *explorandum defenſione Regni, & partium ſumptibus incolarum:* But how? Only *de aſſenſu & voluntate ſua, prout fieri conſuevit.*

My Lords, I am now come to that of Victuals. The Statute 14 *Ed.* III. *cap.* 19. is, That for the Wars the Proviſion for them ſhall be done by Merchants without Commiſſion or other Power from the King, or any other Power, that the People may not be compelled to ſell againſt their Wills. That this was as well for Defenſive as Offenſive War, and that this was not *introductivum novæ legis*, but was ſo at Common Law, is, by your Lordſhip's Favour, clear. *Pat.* 29 *Ed.* I. *M.* 16, 19. *ad reprimendam malitiam Scotorum*, and to repel them, Commiſſions to moſt Counties to provide Victuals; and becauſe they refuſe to do it, the King then offers them Security. *Br. Trin.* 8 *Ed.* II. *Rot.* 99. Victuals bought *juxta forum patriæ, pro munitione Marchiæ Scotiæ*, and there Payment upon Suit adjudged. Sometimes at *Newcaſtle*, ſometimes at *Carliſle*, ſometimes at *Berwick*, as the War required, were Store-Houſes, where the Victuals were laid, and Clerks of the Stores to iſſue them out. That the King not only paid for the Victuals, but for the Houſes where they were laid, appears. *Br. Trin. Ed.* III. about the End of the Roll, *dorſ.* the Burgeſſes of *Newcaſtle* complain in Parliament, that their Houſes had been taken up long time for the keeping of thoſe Victuals; this was tranſmitted into the *Exchequer* by Writ, which ſays, *Volumus hiis pro domibus ſuis prædictis ſic occupatis, ſatisfacere, prout debet & prout juſtum fuerit, & prout temporibus Progenitor' noſtror' fieri conſuevit.*

My Lords, in the next place for the Defence. When thoſe that ſerved with Horſe *ad vadia Regis* loſt their Horſes in the Service, the Owners did not bear the Loſs, but they were always paid for by the King; and therefore when they were firſt entered into the Service, the Marſhal, or elſe the Wardens of the Marches, who had the Command of them, did ſet down in a Roll the Horſe of each Man, and the Mark and Price of each Horſe, to the Intent that the Owner by this Certificate might be aſſured of the full Value to be paid him, in caſe the Horſe was loſt. This appears *Clauſ.* 34 *Ed.* I. *M.* 16. where the *cuſtodes Marchiæ Scotiæ* aſſigned *pro defenſione Marchiæ* were to do it. *Br. irrot.* in the 26 *Ed.* I. *Rot.* 105, 106. the *Scots* having entered the Realm, divers *homicidia, incendia & alia facinora perpetrantes*, there the Horſes *ad vadia* for Defence were to be appraiſed. 2 *Pars Pat.* 10 *Ed.* II. the ſame; and the *Scotiſh* Roll of the 21 *Ed.* III. *M.* 7. the ſame, *prout jus eſt.* That thereupon, ſince, the Subject hath recovered of the King, are many Caſes. I will inſtance but in two or three. In 24 *Ed.* I. *Rot.* 16. *dorſ. Robert Heiham* recovered twenty Marks in the *Exchequer*, *pro equo perdito in conflictu Dover inter homines Regis & inimicos Franciæ*; at which time the *French* had aſſaulted *Dover*, and burnt the Priory and a great part of the Town. *Br. Hil.* 17 *Ed.* II. *pro reſtauratione trium equorum perditor'* at *Carliſle.* 9 *Ed.* II. *Com. P.* 9 *Ed.* II. *Richard Waldgrave* recovered for Horſes loſt at *Carliſle.* *Com. Hil.* 2 *Ed.* III. for Wages *pro reſtauratione equorum perditor'* and burying of the Dead when the *Scots* had entered the Realm at *Stanope-Park*, for one Troop fifty-eight thouſand Pounds allowed, *habita inde deliberatione*, and adjudged.

For Caſtles, the antient Forts and Bulwarks for Defence, the Statute 14 *Ed.* III. *cap.* 13. ſays, that Merchants without any Commiſſion or Power from the King ſhall victual them, ſo that the People ſhall not be compelled to ſell againſt their Will. That this Statute in this Particular is not *introductivum novæ legis*, is cleared by the Caſe *Trin.* 16 *Ed.* I. *Rot.* 93. *Wilts*, in a little Roll, and in a great Roll of the ſame Year, *Rot.* 19. when in *Trin.* by *John Eveſhorne* againſt *John Flavell*, *Quia blada & garbas ſuas cepit*, the Defendant ſays, he was Conſtable of the King's Caſtle of the *Deviſes*, and that he had *in præceptis Domini Regis, quod mur' faceret* to the Caſtle *de morturo ſtauro vel de bladiis*; and of theſe things, and that by Virtue of this Writ, he took an Inqueſt to know where he might have beſt theſe Proviſions, *ad minus nocumentum patriæ*; and the Jury found it, that the Defendant might take it *ad minus nocumentum patriæ* of the Plaintiff; and that he came to the Plaintiff's Houſe, and offered to buy *pro Denariis & ad uſum Regis*; and that becauſe the Plaintiff refuſed to ſell, they departed from his Houſe; the Iſſue joined, and found againſt the Defendant; 100 Marks Damages given the Plaintiff, and adjudged. There were always antiently *viſores operationum*, and they upon Oath certified, that they ſaw the King's Money expended, which was demanded in the *Exchequer.* And for Victuals, as they were bought with the King's Money, ſo when they grew ſtale, or the Danger was paſſed, they were ſold again to the King's Uſe.

My Lords, that even in the Time of War, when the Frontier Towns and Caſtles were beſieged, and the Borders invaded, that even then the King did bear the Charges, appears by the Allowances in the *Exchequer*, *Trin.* 27 *Ed.* I. *Rot.* 47. *pro tuitione Newcaſtle contra Scotos, qui hoſtiliter Regnum in partibus illis invaſerunt.* *M.* 31 *Ed.* I. *Rot.* 2. the *Scots* beſieged *Carliſle*, 26 *Ed.* I. and Allowance now *de exitibus Caſtr'* which was the King's. And in the 27 *Ed.* I. 75. ten thouſand Pounds allowed *pro ingen'* and *Trin.* 32 *Ed.* I. *Rot.* 11, 12. *Viſis comput.* 28 *Ed.* I. *Rot.* 71. *prout juſtum, quia Scoti contra Regem hoſtiliter inſurgunt*, therefore *de theſauro Regis*, *Berwick* is fortified; & *Rot.* 78. *dorſ.* it appears that the Sheriff of *Yorkſhire* had carried ten thouſand Pounds *de theſauro Regis* to thoſe Parts. *Br. M.* 17 *Ed.* II. *propter frequentes egreſſus Scotorum in Regno*, the Caſtle of *Sandall* at the King's Charge is fortified *prout juſtum*, and Allowance given. And *Brevia Hil.* that Year the Caſtle of *Horney* for the ſame Cauſe was fortified, the *Scots* having entered *circa prædict' Caſtrum & apud Lancaſter.* 3 & 4 *Phil. & Mar. Dyer.* 162. *b.* One in Execution for Debt in the *Fleet*, who, as the Book ſaith, was a Man very neceſſary for the War; and it was moved by the King's Attorney, *per mandatum concilii*, If the Priſoner might be licenſed with a Keeper by the Queen to go to *Berwick* for the Defence of it, or no: and it was held by all the Judges of the

King's-*Bench* and *Common Pleas*, that the Licenſe was not good; and 4 & 5 the ſame Caſe cited accordingly to have been the Opinion of all the Judges.

My Lords, for Priſoners taken in defenſive Wars, and likewiſe for Pledges and Hoſtages for ſecuring the Peace, that the Charge and Maintenance, and the carrying them to the ſeveral Places of their Abode, have been always borne by the Kings of this Realm, the Allowances thereof in the *Exchequer* are ſo frequent, that I intend to cite none of them, ſave that for the Priſoners taken in the Conflict at *Dover* before ſpoken of, which is *Comm*' 4 *Ed.* II. *Rot.* 22. *dorſ.* neither do I find it at any time ſtood upon, ſave only 8 *Ed.* II. among the *Br. Trin.* 8 *Ed.* II. *Rot.* 88. *dorſ.* But the Reaſon is, becauſe that after the Death of *Ed.* I. in the Commiſſion of granting the Conſtableſhip of the Caſtle, no mention was made of the Priſoners; and yet even in that Caſe, upon a *Monſtravit Regi*, a Writ of Privy-Seal is awarded for Allowance *prout juſtum.*

My Lords, if in all theſe Particulars of Soldiers, Victuals, Caſtles and Forts, Horſes, Priſoners and Pledges in caſe of a Defenſive War, the main Supports of them, the Kings could not tax their Subjects, but have borne the Charge thereof themſelves; I ſhall then offer it to your Lordſhips to be ſo for the Defence in general.

My Lords, the Allowances in the *Exchequer* in all the Particulars beforementioned are frequent. In the Caſe of Mines, the Profits of Silver Mines, that they upon an Accompt in the *Exchequer* were always anſwered unto the King, was one of the principal Arguments for the King's Right thereunto; and there *fo.* 320. it is held, that in all Things that concern the Revenue of the Crown, becauſe they are there debated, the Record of the *Exchequer* ſhews not only the Courſe of the Court, but what the Law is thro' the Kingdom.

My Lords, that in Caſes of War and Embaſſies the *Chequer* made Allowances, and with what great Conſideration, appears by the Statute 5 *Rich.* II. *cap.* 10. that they were not allowed by the Court, till the Party brought the Great Seal, or the Privy-Seal for it. And if a Writ of Allowance came to the *Exchequer* before the Court had examined the Accompt, yet they never made Allowance until the Court had examined it. *Hill.* 25 *Ed.* I. *Rot.* 22. *Licet breve de allocatione pendit de* 1000l. *allocandis tamen ante allocationem factam oportet inquirend' ſi pecunia illa ad opus Regis devenit & quod ipſi doceant ſuper hoc Curiam Regis.* And *Trin.* 25 *Ed.* I. *Rot.* 47. the Allowances are never in Groſs, but by Particulars.

My Lords, the next Proof that I ſhall humbly offer unto your Lordſhips, is in that of borrowing of Money by the King for the Defence of the Realm; which as they have uſually done it, ſo it is as clear, that not only upon Petitions, their own Pleaſure, and upon Grace, but likewiſe upon Suit they have been adjudged ſo to do in the ordinary Courts of Juſtice. *Comm' Paſch.* 31 *Rot.* 41. one hundred and forty nine Pounds borrowed of *Henry Tompſon*, *pro defenſione totius Regni*, was ſued for, and Repayment ordered. *M.* 10 *Ed.* II. *Rot.* 160. *Grandes pecuniæ ſummæ* borrowed by the King for that Purpoſe, and order for Repayment. *Br.* 3 *Ed.* III. *Comm' Princip. Rot.* 664 *l.* My Lords, in this Particular I ſhall cite but this one Caſe more, *Comm' Paſch.* 29 *Ed.* I. *Rot.* 18. the King *pro urgentiſſimis Regni negotiis & defenſione totius Regni*, had ſeized divers Sums of Money in all the Abbies and Cathedrals, and other religious Houſes in the Realm, & *quo citius commode poterit* promiſed Payment. In the Parliament 29 *Ed.* I. at *Lincoln* the King is petitioned for Repayment of theſe Monies, who promiſeth Repayment, *Ita quod Regis conſcientia ſuper hoc exoneret*', and there, and *Rot.* 19. divers Sums are adjudged to be paid.

My Lords, I ſhall thus humbly offer this unto your Lordſhips, that if the King had conceived, that when himſelf wanted Money for the Defence, that he might have charged his Subjects, he would never have made this Anſwer of Repayment, *ad exonerandum Conſcientiam*, for then in Equity and Conſcience the Parliament ſhould have taken Care for the Satisfaction of theſe Debts, or ſhould at leaſtwiſe have diſtributed part of the Charge upon all his Subjects; neither ſhould the Parties have had full Satisfaction for all their Debts, but ſhould have borne part themſelves. By the Statute 35 *Hen.* VIII. *cap.* 12. the King for the Defence of the Realm had divers great Loans made to him. Now likewiſe there being great Cauſe of new Defence againſt *France* in *Scotland* in Aid of the King, they releaſe theſe Aſſurances given by the King, and likewiſe releaſe to the King all Suits and Petitions concerning thoſe Moneys.

My Lords, I am now come to the other Authorities for proof thereof, which is by Acts of Parliament. My Lords, before I come to the Acts of Parliament themſelves, I ſhall humbly offer unto your Lordſhips the Summons and Preparatives to them.

Firſt, The *Ardua Regni negotia* for which they are called, are principally *defenſionem concernentia*; that theſe are not the Way and Manner of Defence, and their Advice therein, but the Supplies and Aids for this Defence, I have preſented clear Proofs to your Lordſhips before. That theſe Aids cannot be raiſed without their Conſents, is ſtrongly inferred in this, that the Knights of the Shires are to have *plenam & ſufficientem authoritatem pro ſe & comitate Comitatus præd' ad faciend' & conſentiend'* to the Things in *negotiis ante dictis.* If this might be done without conſent of the Commons, this in the Writ would be needleſs. But that this cannot be done without their Conſents, is cleared by the Words following in the Negative, *Ita quod pro defectu poteſtatis hujuſmodi dicta negotia infecta non remaneant quoviſmod.* This, my Lords, is the conſtant form of modern, and all the antient Writs, and ſhews clearly that the Commons without their Conſents in Parliament, are not chargeable to a Defenſive War.

In the Acts of Parliament, I will begin with that of *William* the Conqueror, *Anno quarto* of his Reign; which beſides that it is cited in the Preface of the 8*th* Report, and *Inſtit. fol.* 75. and by *Ingulphus fo.* 519, and Mr. *Selden* in his *Eadmerus*, *Page* 171. it's likewiſe upon Record, and inrolled in the Red Book in the *Exchequer.* The words are theſe, *Volumus & firmiter præcipimus & concedimus quod omnes liberi homines totius Monarchiæ Regni noſtri Angliæ, habeant & teneant terras ſuas & poſſeſſiones ſuas bene & in pace libere ab omni exactione in juſta & ab omni tallagio. Ita quod nihil ab eis exigatur vel capiatur niſi ſervitium ſuum liberum quod de jure nobis facere debent & facere tenent' & conceſſum jure hæreditario in perpetuum per Commune concilium totius Regni noſtri præd'.*

My Lords, the Words by reaſon of the Disjunctive & *ab omni tallagio* are plain, that the King ſhall not exact, nor take any Thing of any Freeman, but what his Tenure binds him unto. As in Words, by reaſon of the generality of them, it extends to Caſes of the Defence of the Realm; that it doth ſo in Intent, I ſhall endeavour thus to preſent it to your Lordſhips.

The Military Services before mentioned for the Defence of the Realm, they are by *Bracton* attributed to the Conqueror's Inſtitution; for in his ſecond Book *Fo.* 36. ſpeaking of them, he ſaith, *Secundum quod in Conqueſtu fuit ad inventum. Plowden*, in the Argument of Sir *Thomas Treſham*'s Caſe, means, the Conqueror had to do it by reaſon of the many Attainders of thoſe that took part with *Harold*, and after his Death with *Edgar Atheling.* That he did it in a great part, appears by *Matth. Paris fo.* 8. that he put all the Clergy that before held in *Franke Almogne ſub ſervitute Militari* to do Service *tempore hoſtilitatis*, and by the County Palatine of *Durham* and *Cheſter* in thoſe Places of Danger. In the Book of Knights Fees in *Henry* IId's Time, it appears by the Certificates, they had ſometimes *de veteri Feoffament'* and ſometimes *de novo.* And by ſome of them it appears, that the Tenures *de novo Feoffament'* were before King *Stephen*'s Time, and therefore 'tis probable that the *Veteri* might be thoſe created by the Conqueror. The Proviſion for Soldiers Pay by Tenures was likewiſe of his Inſtitution, as appears by that before cited out of the Black Book, *lib.* 1. *cap.* 27. that *in primitivo regni ſtatu poſt conqueſtum ad ſtipendia & donat' militum* out of the Caſtles and other Lands *in quibus agricultura non exercebatur pecunia numerata ſuccreſcebat.* The Policy and Proviſion of the Conqueror for the Defence being by Tenures, when in this Act of Parliament he ſays, *quod nihil ab iis exigatur vel capiatur*, *niſi ſervitium ſuum quod de jure nobis facere tenentur*, I humbly conceive ſhews plainly, that the Subject was not otherwiſe to be charged for the Defence, nor further than by their Tenure. This, my Lords, further appears by other Parts of that Act of Parliament, where ſpeaking of any thing of Charge that is to be done according to their Tenures, as that all *bene ſe teneant in equis & armis ad ſervitium ſuum integrum faciend'*. But in the next Place ſpeaking of the Defence it ſaith, that all within the Realm *ſunt fratres conjurati pro viribus & facultatibus* to defend the Kingdom and the Peace, & *ad judicium rectum*, & *juſtitiam faciend'*; the coupling of the Defence with that of the Peace, and doing Juſtice, ſhews the perſonal Care that all by their Oath of Allegiance ought to bear to the common Peace and Good of the Realm.

The next Statute that I ſhall preſent to your Lordſhips, is that of *Running Mead*, 17 *Johannis Regis*; the words are theſe, *Nullum Scutagium vel auxilium pona' in Regno noſtro niſi per Commune Conſilium Regni noſtri niſi ad corpus noſtrum Redimend'*, and to knight his eldeſt Son, and to marry his eldeſt Daughter. As in Words theſe extend to the Defence; becauſe all Supplies for that Purpoſe from the Subject, they are only in *auxilium*, or in *ſubventione expenſor'* of the King, who, as before is proved, is principally bound thereunto: So may the Intent likewiſe be further gathered, *Firſt* from this, that the Word *auxilium* is joined with that of Scutage, which is for the Defence; and likewiſe from this, that particular Satisfaction is made, by other parts of that Statute, to thoſe that had been diſſeiſed by *Richard* II. and King *John*, which were things done only for the Increaſe of their Revenue, without ſhew of the Common Defence. That both before 9 *Hen.* III. and afterwards 20 *Ed.* I. this was a Statute, and ſo accounted, I have before proved. And in the Book 5 *Hen.* III. it is called by the Name of *Magna Charta ſans addition.* So 37 *Hen.* III. in that ſolemn Confirmation obſerved by *Matth. Paris*, p. 115. this of *Running Mead* is confirmed by the Name of *Mag. Char.* and 50 *Hen.* III. *p.* 1220, which I note only to this purpoſe; that of ſpeaking of *Mag' Chart'*, this of *Running Mead* is intended as well as that of 9 *Hen.* III. as part thereof, and bodied both together; yet that neither of them were obſerved either in King *John*'s, or *Hen.* III's time, our Hiſtories are full of it. And by the Pope's Bulls of 12 and 13 *Hen.* III. the Pope abſolving the King from his Oath in their Confirmation, doth it becauſe, as the words of the Bulls are, *Juramentum peccati vinculum eſſe non debet:* neither till after 29 *Edw.* I. as I ſhall hereafter prove, were they at all obſerved in the things concerning the King's Prerogative.

The next that I ſhall cite, are the Statutes of 25 *Edw.* I. and the Statute *de tallagio non concedendo.* That of the 25 *Edw.* I. *cap.* 5 & 6. the Grievance is for Aids, Taſks and Prizes taken thro' the Realm, for the Wars, ſhall not be brought into any Cuſtom for any thing before done, be it by Roll or any other Precedent that may be found; and further grants, that for no Buſineſs from henceforth, he will take any ſuch Aids, Taſks and Prizes but by common Conſent in the Parliament of the Realm, and for the common Profit, ſaving the ancient Aids and Prizes due and accuſtomed. My Lords, tho' by the Copulative it is clear enough, that there muſt be a Conſent and common Profit concurring, and altho' the ſaving of the antient Prizes and Aids accuſtomed might well enough have been ſatisfied in the Aid excepted in *Running Mead*, and the prizing of Wines and Purveyance; yet to out theſe and all other Scruples, the Statute *de tallagio*, &*c.* made afterwards for that purpoſe, is abſolute and general: That no Talliage or Aid ſhall be taken by the King, nor that any of his Officers ſhall take any Corn, Leather, Cattle, or any other Goods without the conſent of the Party.

My Lords, to bring theſe Statutes to the Thing in queſtion, that theſe Things cannot be done tho' for the Defence, the times of the making of them, and the Circumſtances concurring thereunto, I ſhall preſent unto your Lordſhips.

That of the 25*th* of *Edw.* I. by the Date appears, was the 10*th* of *Octob.* 25 *Edw.* I. My Lords, the King, the 12*th* of *Aug.* before being at *Odimer* ready to go over into *Flanders*, the Parliament being then ſummoned by his Letters Patents, *Rot. pat.* 25 *Ed.* I. *M.* 7. taking notice of the Conſtables and Marſhals departure from the Court in Diſpleaſure, and of the Rumors of the People, that the King refuſed to ſeal Articles ſent him for the common Profit, for the Redreſs of divers Grievances done to the People. For the Grievances he ſaith, that without thoſe things he could not have defended the Realm, and yet ſaith, that he is ſorry for it, and prayeth that this may be his Excuſe, as that he hath done thoſe Things, neither to buy Lands nor Tenements, nor Caſtles, but to defend himſelf and the whole Realm; and that if he returned again, he would have all know, that he had an Intent to amend all thoſe things, to the Honour of God, and Content of his People; that if he dies in this Service, his Heirs ſhall make amends. Hereby it appears, that the Grievances that procured this Statute, were for the Defence of the Realm; therefore from hence it follows, that the Aid and Taxes there mentioned were for the Defence. So likewiſe that the Exception of the antient Aids extends not to thoſe of the Defence, that being the Thing wholly complained of. This Declaration of the King was the 12th of *Auguſt*; the *September* after the King being at *Winchelſea*, thoſe Articles are ſent unto him, to which he deferred for the preſent to give his aſſent unto them, becauſe his Council was not there, and ſo ſails over into *Flanders*. This Statute of the 25*th* of *Edw.* I. is paſt, the King beyond the Sea, the *Teſte Edvardo Filio noſtro*; at his return, as appears by *Walſingham*, *page* 42. the King is deſired to confirm theſe Articles, which in *Walſingham*, *page* 40. are the ſame Word for Word as the Statute *De tallagio*, which the King then deferred. 27 *Edw.* I. they deſire it again, which the King doth with a *Salvo jure Coronæ noſtræ in fine adjecto*, *quod cum audiſſent Comites cum diſplacentia ad propria diſceſſerunt*, ſaith the Author, *ſed revocatis ipſis ad Quind' Paſch' omnia ſunt conceſſa.*

That the Statute *De tallagio* was after that of 25 *Edw.* I. is plain in this, by the King's going over into *Flanders* without aſſenting unto any Articles in *Septemb.* and 10 *Octob.* following, as appears by that Statute 25 *Edw.* I. itſelf, it was made; and likewiſe by the Statute *De tallagio* itſelf, the King's releaſing all Rancour to the Earl-Marſhal and Conſtable who had moſt offended him, and firſt preſented theſe Articles to the King. My Lords, I ſhall add this only, as I conceive it will not be proved, that this King either before or after the making of this Statute, or any of his Succeſſors ſince, ever claimed this abſolute Power over their Subjects, as to lay Aids and Talliages upon them for the Supportation of their own private Eſtates, abſtracted from the common Defence or Good of the Kingdom. This King at this time, we ſee by his own Declaration, was far from it. This laſt Statute fully ſatisfied thoſe that deſired it; for as *Walſingham* ſaith, *Ad eorum votum abſolute omnia ſunt conceſſa.* If therefore it extends not to that of Defence, I ſhall humbly offer it by what Conſtruction of it our Anceſtors Judgments and Diſcretions will be freed from a great deal of Cenſure, that were ſo well contented with it.

My Lords, *Mag. Chart.* being confirmed at the ſame time when the Statute 25 *Edw.* I. was made, and both that and the Statute *De tallagio* being only Articles upon *Mag. Chart.* they were all of them, as I conceive, intended in the ſubſequent, and ſo often Confirmation of *Magna Charta.*

My Lords, the next is the Statute of the 14 *Edw.* III. *cap.* 1. that the People ſhall not be compelled to make any Aid, or to ſuſtain any Charge but in Parliament. That this cannot be done for the Defence, will, as I conceive, be inforced from the Words; for a great Subſidy having been granted as well for the War on this ſide the Sea, that is for Defence, as for the *French* Wars, it's declared, that this ſhall not be drawn into Example, and that out of Parliament they ſhall not be compelled to ſuſtain any Charge; and then it is further enacted, that this Subſidy and all the Profits of Wardſhips, Eſcheats, and other Profits of the Realm, ſhall be ſpent for Defence and Safeguard of the Realm, and the Wars in *Scotland* and *France*, and not otherwhere; ſo that this Statute, as I conceive, all put together, bears this Senſe, That the Subſidies granted in Parliament, and the Wardſhips being a Fruit of the Tenures created for the Defence of the Realm, and other Profits ariſing to the King by way of Prerogative, are to be ſpent for the Defence of the Realm, and the King's other Wars; but that no Aid or Charge for any of theſe can be laid upon the Commons without conſent in Parliament. My Lords, that the Practice of the King, I mean *Edw.* III. was contrary to theſe Statutes, and that they were not kept, appears by the Parliament Roll, 15 *Edw.* III. *M.* 9. the next Year after, where the Commons ſhew that their Goods were ſeized, and their Bodies impriſoned without any Suit commenced againſt them.

My Lords, the next which I ſhall cite are the Statutes of 25 *Edw.* III. and 1 *Rich.* III. againſt Loans and Benevolences, which I ſhall humbly offer unto your Lordſhips on this Ground, *Ad ea quæ frequentius acciderint adparantur leges.* As for my part, I have ſeen general Loans and Benevolences, but they were for the Defence; ſo I conceive, if they were otherwiſe, they were but few in reſpect of the others. The common Grievances therefore being by Loans and Benevolences of that Nature, theſe Statutes, I conceive, were made againſt them; for theſe not being within the words of any of the former Statutes, that therefore the Kings might with the more Colour put them in Practice, and on the other ſide being as equally dangerous to the Subjects, becauſe of the Diſpleaſure by denial, they procured the Statutes. That Loans for the Defence were after 25 *Edw.* III. counted unlawful, appears by *Walſingham*, *pag.* 179. that 44 *Edw.* III. the King *Siniſtro Conſilio magnas ſummas pecuniæ* of all Sorts *petiit*, *aſſerens*, *quod in defenſionem Eccleſiæ & Regni illas expenderet*, but that the People would not lend.

My Lords, the next which I ſhall cite is direct in Words, which tho' it be not an Act of Parliament, yet the Weight of the Authority by putting of it will appear. In the Second Part of the Parliament Roll, 2 *Rich.* II. *M.* 3, 4, 5. the King being beſet with the Enemies of *France* and *Spain*, and *Scotland*, who all three by Land and Sea invaded the Realm; the Privy-Council not willing, in a thing ſo much concerning the Realm, to take the whole Charge of it upon themſelves, nor deſiring ſo ſoon to call a Parliament, a Parliament but a little before being diſſolved; they therefore reſolved to aſſemble a great Council of moſt of the Biſhops, Lords and other great Men and Sages of the Realm, who meeting and finding the abſolute Neceſſity of a Preparation for Defence, and that the King wanted Money to do it; what their full and final Reſolution in this Caſe of Extremity for Defence was, I ſhall read the words of the Roll; they ſay, *Pur concluſion final quils ne poient ceſt miſchieſe remedier ſans charger les Comm' del Royalme*, *quel charge ne poient de fait ne grant ſans Parliament:* and therefore the Neceſſity being urgent, the great Men lend Money for the preſent, with advice preſently to call a Parliament, as well to provide for the Repayment of this Loan, as for further Supply. It's true, my Lords, that this King was at this time within Age, and it is likely that many of his Council had been *Edw.* III. his Grandfather's Privy-Council, who well knew his Prerogative, and extended it as far, by reaſon of his great Wars, to the charging of his Subjects, as any before him, or ſince his time. And that not only the Privy-Council, but likewiſe, as the Record ſaith, almoſt all the Prelates and others, Dukes, Earls, Barons, Bannerets, and other Sages of the Realm, which I conceive were the Judges, ſhould be ſo far from putting this in Execution, that they declare in the Negative upon full Deliberation, that the Commons cannot be charged herein but in Parliament, themſelves likewiſe thereby being to undergo a preſent Charge, by lending to ſupply that Neceſſity; the Authority muſt needs be weighty: And upon ſecond Thoughts afterwards, the ſame was declared in full Parliament by the Lord Chancellor, and ſo afterwards entered upon the Roll without any Qualification at all, which adds farther to the Authority thereof.

Ult. Feb. 3. *Car.* A Commiſſion iſſued to divers great Lords; the End, as appears by the words, was for aiding the King's Allies beyond Sea, and for the Defence and Safety of the Kingdom and People. They were, by the Commiſſion, to raiſe Money by Impoſition or otherwiſe, which without extreme Danger to the King, Kingdom, and People, can admit no long delay, wherein Form and Circumſtances are to be diſpenſed with rather than the Subſtance loſt. This, my Lords, was a Commiſſion to tax the Subjects in time of Neceſſity for Defence. The laſt Parliament, this Commiſſion as againſt the Law was condemned by both Houſes, and cancelled in his Majeſty's Preſence.

Philip Comines in his 5th Book, *cap.* 8. obſerving the ſame, above all other commends the Policy of the *Engliſh* Laws and Government; and both he and *Bodinus Reipublic. lib.* 6. *cap.* 11. and *Paſquerus* Advocate-General in the King of *France* his Chamber of Accompts in his ſecond Book, *cap.* 6 and 7. all ſhew this likewiſe to be the ancient Law of *France*; and how the Practice comes now to be otherwiſe there, *Paſquerus* ſhews at large; and that the Kings ſometimes endeavouring to the contrary, found ſo much Difficulty, that they afterwards, eſpecially *Charles* the Fifth, procured by the Conſent of the three Eſtates theſe Aids for Defence to be granted for three or four Years together: And that this Conſent of the People at the firſt, was afterwards that which gave the occaſion to the King to take it without Conſent; and therefore he concludes, that *France* being *Un Royalme de Conſequence*, that they muſt not eaſily promiſe any thing, tho' but once, which they will not be willing to permit for ever.

My Lords, I have now done with the Proofs; in the next place I ſhall endeavour an Anſwer to ſome few Objections that are obvious, both from Reaſon and Authorities.

For thoſe of Authorities, 13 *Hen.* IV. 14, 16. *Gaſcoigne*'s Opinion that the King may charge his People without Parliament, to a thing that is for the common Profit of the People; the thing that he applies it to, is, that the King may grant Pontage and Murage, *&c.*

My Lords, that the King may grant both theſe, and Tolls upon erection of a new Fair or Market, or Paveage, I ſhall not deny. The Anſwer that I ſhall give to them is, *Firſt*, That theſe Grants do charge *venalia* only, that is, Goods carried to thoſe Places for Merchandize; but that any Tax may be laid *ſecundum ſtatum & facultates*, either upon the Hundred or County, I ſhall humbly deny it.

It is true, my Lords, by the Conqueror's Laws it appears, that Cities and walled Towns were for the Defence of the Country, and therefore by thoſe Laws no Fair or Market might be kept but in *Civitate aut Burgo muro walliat'.* Therefore in *Doomſday-Book* in all ſuch Caſes it is found, that there are ſo many *Manſiones Murales*, which by their Tenure, when need was, were bound *ad murum reficiend'.* That no other Land that holds not by that Service is liable, appears by the Parliament Roll. 1 *Ric.* II. *pars* 2. *M.* 76. where all the Cities and Burroughs of *England* petition, that in this time of Danger they not being able with their Merchandize to do it, that others that had Lands within the Towns might be made Contributaries, who before were at no part of the Charge.

The Anſwer is, that all according to their Tenure, as they have antiently done, ſo ſhall they ſtill; and if this might be done, there would have been no need of the Statutes of 2 & 3 *Phil.* & *Mar. cap.* 1. 23 *Eliz. cap.* 4. for giving Power to tax Men *ſecundum ſtatum & facultates*, to repair Caſtles and Towns within twenty Miles of *Scotland.*

For the Tolls and Pontages and Paveages, as there is a great deal of Equity that thoſe which receive Benefit by bringing their Goods to the Market, and over the Bridge, ſhould contribute to the Charges that make and maintain the Market-Places and the Bridges; ſo neither are they compulſory, but voluntary Charges: For as no Man pays but he that receives the Benefit, ſo none is compellable thereunto, but is left to his Liberty. Neither is there any Colour in reſpect of the Town itſelf to whom the Murage or Paveage is granted, why they ſhould not be charged, becauſe the Grant cannot be but at their own Suits; for if it be not at the Suit of *tot Burgenſium*, the Grant is void, and to be revoked.

It may be further objected, that as the Law hath intruſted the Way and Manner of managing of Defence wholly and independently to his Majeſty, ſo likewiſe of Aids and Means, as the *Cauſa ſine qua non*; and therefore his Majeſty ſhould not be dependent upon the Parliament for them.

My Lords, the near Relation between his Majeſty and the Parliament, that they are but one Body, hath been preſented unto your Lordſhips, and that his Majeſty did exerciſe the *ſummum Imperium* there. *Bodin. lib.* 1. *cap. ult.* ſays, *quod ejuſd' eſſet poſtetat' tributa nova imponere cujus eſt legem terræ*; but that the Legiſlative is not in his Majeſty, out of Parliament, will be granted.

The Subjects Intereſt being as nearly concerned in the Defence, as his Majeſty's is; as there is no Cauſe to fear that they ſhould not be willing to proportion the Aid to the Occaſion; ſo neither can the Law preſume otherwiſe, which hath ſo high an Opinion of the Judgment and Integrity of this Court, that as it is in the *Comm'.* 398. it's unlawful for any Man to conceive any diſhonourable Thing of it.

My Lords, my laſt Anſwer thereunto is, that by the Law the King hath as independent a Power to make a foreign War, as to make a defenſive. It will, as I conceive, be granted, that in this Caſe his Majeſty hath not Power to tax the Subject; for then it would follow, that as well as to the conquering of the next adjacent Realm, ſo of all *Europe*, the Subject ſhould be at the Charge, and yet the Land conquered be only his Majeſty's; and yet upon this Ground, in reſpect of the equality of the Powers, it might be done.

Neither, as I humbly conceive, doth this only anſwer the Objection, but returns upon the other ſide; for his Majeſty has Power to make an Offenſive War, which for the moſt Part cauſeth a Defenſive; by this means it ſhould be in his Majeſty's Power to make a Defenſive War, and to tax the Subject for the Maintenance of it.

My Lords, the laſt Objection whereto I ſhall endeavour an Anſwer, ſtands thus: The Parliament is a great Body, and moves ſlowly; and that the Caſe may be ſuch, that the Cauſe may be loſt before the Parliamentary Supplies come.

My Lords, how Means of effecting ſo ſudden and ſo great a Surprize can be ſo ſecretly carried, I ſhall not examine it in Reaſon, but ſhall humbly offer unto it theſe Anſwers:

That the Service whereby the Law hath provided for the Defence both for Land and Sea, they have both the ſame limitation of Time with the Parliamentary Supplies in the Summons of the Tenants by Knight's-Service *ad exercitum*, and of the *Cinque-Ports*; forty Days warning is to be given, as is for the Parliament. And ſo it is probable, for that of *Mould*, 13 *Ed.* I. it was for others that held by Sea-Service. And anciently the Summons *ad exercitum* to the Ports, and for the Parliament, went out together, or much about the ſame time, that the Parliament might aſſeſs the Eſcuage; and in caſe the Tenures and other Revenues were not able to maintain the War, that the Parliament might provide for further Supplies, as appears *Hil.* 28 *Ed.* I. *M.* 15. 31 *Ed.* I. and 44 *Ed.* I. *M.* 15, & 16. *& oportet neminem legibus eſſe ſapientiorem.*

The Tonnage and Poundage, when firſt granted for Life, was, that the Kings might always have Money ready upon ſuch ſudden Occaſions. In the Parliament Roll, 4 *Ric.* 2. *M.* 42. the Commons deſire Payment of *Edward* the Third's Debts, that they might be incouraged to lend the King in Aid of the Realm, if a ſudden Cauſe of Neceſſity ſhould fall out. The Anſwer is, that it ſhall be done *ſelon le petition.* My Lords, by this it appears, that this Objection was not then taken to be of Weight, many of the Loans are in *Cauſa neceſſitatis in Articulo.* The Authorities that further anſwer this Objection are great, and full in the Point.

The firſt is that of the Parliament Roll of 2 *Ric.* II. before cited; the Buſineſs of Defence could not ſtay ſo long as for a Parliamentary Supply, yet agreed, that the Commons without a Parliament could not be charged; and therefore the ſame Men that gave the Judgment preſently lend Money for that Purpoſe.

In the Statute 31 *Hen.* VIII. for Proclamations, the Cauſe of making the Statute is expreſſed in theſe Words: Conſidering that ſudden Cauſes and Occaſions fortune many times, which do require ſpeedy Remedies; and that by abiding for a Parliament, in the mean time might happen great Prejudice might enſue to the Realm; therefore the King's Proclamation is by that Act made equivalent to an Act of Parliament, but with a full exception of their Lands, Goods and Chattels: which as it ſhews that before that, by the Common Law, the King could not, in Caſes of Exigency that could not ſtay for a Parliament, take or ſeize their Goods, ſo they were careful ſtill to preſerve their Rights.

My Lords, after the Statute of 31 *Hen.* VIII. the Maxim of *Juſtinian* was verified in *Hen.* VIII. as of the *Roman* Emperors after the *Lex Regia*, whereby the People transferred their Suffrage to the Emperor, *Quod Principi placet legis vim habet*; ſo all that time was that other as true on the Subjects part here, as there in the Digeſt, *Lege omnia de Regalis: quod meum eſt non eſt univerſitatis, & quod noſtrum eſt ſine facto noſtro ad alienos transferri non poteſt.* The 7 *Prædict.* of *Spain*, *titul'* 1. *particular'* 2. gives ſomething more to the King, for he may take from the Subject, *pro neceſſitate, Reipublicæ dato primum tali cauſa dictæ rei bona lambia ejuſd' vel majoris pretii bonorum virorum arbitrio*; he may in this Caſe take, giving a Pawn to the Subject for the aſſurance of a future full Satisfaction. *Lyme* in his 6*th* Book, *cap.* 35. *Bodin* in his 6*th* Book, *fo.* 655. affirms, that when *Hannibal* had put *Italy* and *Rome* itſelf into ſo great a hazard, and that there was not Money left in the common Treaſury, that yet the Senate without their Conſent could not charge the People, but that *unuſquiſque* of the Senate *mutuo dabat aliquid in uſum publicum.*

My Lords, the laſt Authority for the anſwering of this Objection, and the clearing of the whole Buſineſs, is the Commiſſion of the Loan. 2 *Car. pars* 4. *Pat. Roll*, the Words are theſe: 'The great and mighty Preparations both by Sea and Land did daily threaten the Kingdom; that the Safety and Subſiſtence of the King and People, and the common Cauſe of Chriſtendom, were in apparent Danger of ſuffering irreparably; that the King's Treaſure is exhauſt, and the Coffers empty: That the Buſineſs of Supply cannot endure ſo long delay as the calling of a Parliament, and enquiring into all means juſt in Caſes of ſuch unavoidable Danger; the King is now reſolved to borrow of the Subject, to enable his Majeſty for their Safeties, and promiſeth Repayment.'

My Lords, the borrowing of Money only is the thing required, that is for Defence, the King had no Money left; the Exigency ſuch, that it would not ſtay for a Parliament. This Commiſſion afterwards in the Parliament 3 *Car.* was queſtioned, and upon Debate adjudged by both the Houſes of Parliament to be void in Law; by the Petition of Right preſented ſo to the King, his Majeſty denies it not.

My Lords, from this Objection of ſudden Danger, I come to the next, which is the third Thing before offered unto your Lordſhips, which is an Admittance, that the Danger ſometimes may be ſuch, that the Subjects Goods ſometimes without their Conſent may be taken from them; for Property being both introduced and maintained by human Laws, all Things by the Law of Nature being common, there are therefore ſome times, like the *Philiſtines* being upon *Sampſon*, wherein theſe Cords are too weak to hold us, *Neceſſitas enim* (as *Cicero* ſaith) *magnum humanæ imbecillitatis patrocinium omnem legem frangit*; at ſuch times all Property ceaſeth, and all things are again reſolved into the common Principles of Nature. Theſe Times, as ſometimes they are only *inſtanti*, and concern but ſome few, as in Caſes of killing one other Men's Lands, or with their Goods upon ſudden Aſſaults; ſo ſometimes they are longer in Continuance, and larger in Extent, and concern the whole Kingdom, as it is in Times of War, *quando agitur pro aris & focis flagrante Bello.* And as on the Particulars before mentioned, which are but for a ſhort Time, and that concern ſome few only, the Law hath no Power for that Time, nor maintains any Property, ſo in the other Caſe it loſeth this Power for a longer Time, and over all. A Diſſent upon Diſſeiſin in time of War, takes not away the Entry of the Diſſeiſee. *Littl. Sec.* 412. no Plenary after the ſix Months bars the Patron of his *Quare Impedit* upon a Preſentation in time of War. 43 *Ed.* III. *Quare Impedit* 135. *Na. Br.* 31. And in a Writ of Right, where the Seiſin makes the Title, the taking of Explees muſt be alledged to be done *tempore pacis*, the Law allowing no Eſtate in ſuch Times, but calls it an Occupation in time of War. *Littl. fo.* 12. And as *inter arma leges ſilent*, ſo that of *Bract. lib.* 4. *fo.* 240. that *tempus Guerræ eſt tempus Injuriæ*, is likewiſe true; for after the War is ended, the Law, as not having Cognizance of things then done, gives no Remedy for Wrongs in that time ſuſtained, as the Caſe is adjudged in the Roll of *Kent.* 7 *Ed.* I. *inter placitd de querelis*, one Parleton *de Petro Randal quod ipſe die Mercurii ante feſtum Sti' Thomæ*, 46 *Hen.* III. came to the Town of *Cleve*, and took of the Plaintiff's Goods three Oxen, four Cows, and three Heifers, and yet detains them; the Defendant alledgeth the Pardon of *Henry* III. of *Omnes tranſgreſſiones fact' ratione turbationis tunc in Regno exiſten'*, and that it was *tempus Guerræ* when the Goods were taken; the Plaintiff replies, that the King pardons only Offences done to himſelf, *& non tranſgreſſiones aliis illatas*; the Defendant rejoins, that *tempus illud* was *tempus Guerræ*, *& non tempus pacis*, and upon this the Iſſue was joined; the Jury finds that when the Defendant took the Goods, *fuit tempus belli*, *& non tempus pacis*, and therefore it was adjudged for the Defendant. *Tempus belli*, when Property ceaſeth, is not upon every Inteſtine or Defenſive War. but only at ſuch times when the Courſe of Juſtice is ſtopp'd, and the Courts of Juſtice ſhut up: and this is *tempus belli* in the *Inſtitutes. Sec.* 412. 39 *Ed.* III. *Banc. Regis Rot.* 49. the Attainder of Treaſon of *Thomas* Earl of *Leiceſter* reverſed, Error aſſigned, *Quia tempora pacis maxime cum per totum tempus præd' Cancellar' & al' curiæ Dom' Regis apertæ fuerunt, Et in quibus jus cuicunq; fiebat prout fieri conſuevit, Nec prædictus Dominus Rex in tempore illorum cum illis explicatis equitavit.* That there were great Armies on foot on both Sides in this Buſineſs when the Earl was taken at *Barrowe-Bridge*, our Hiſtories are full; but yet it was not that *tempus Guerræ* intended by the Law, becauſe the Courts of Juſtice were open, and the King with Banners diſplayed was not in Perſon in the Field.

My Lords, in theſe times of War I ſhall admit not only his Majeſty, but likewiſe every Man that hath Power in his Hands, may take the Goods of any within the Realm, pull down their Houſes, or burn their Corn, to cut off Victuals from the Enemy, and do all other things that conduce to the Safety of the Kingdom, without reſpect had to any Man's Property. 12 *Hen.* VIII. 2 *Br. tranſ.* 406. 8 *Ed.* IV. 23. that in ſuch times a Subject may make a Bulwark in other Men's Lands, and that the Laws already eſtabliſhed are ſilent in ſuch times. And although in that foreſeen and lingring War of *Hannibal*'s, whereof I have before ſpoken, the Senate could not charge the People, yet when there was a *Tumultus Gallicus*, that is, when the *Ciſalpani* their Neighbours, on the ſudden, as ſometimes they did, aſſaulted the City; by the ſame Author the Caſe was otherwiſe.

My Lords, beſides this ſudden and tumultuous War, which ſhuts the Courts of Juſtice, and brings his Majeſty in Perſon into the Field, and wherein Property ceaſeth; the Law takes notice likewiſe of other times of War, as when his Majeſty upon juſt Cauſe known unto himſelf by Proclamation proclaimeth War againſt any foreign State, and likewiſe the Law taketh notice of the Effects thereof; that is, that no Subject of ſuch Prince or State is capable to proſecute any Suit in any his Majeſty's Courts; and likewiſe, that then it is lawful for any his Majeſty's Subjects to ſeize and keep to their own uſe, the Goods of the Subjects of any ſuch Prince or State, as in the Books are adjudged. 7 *Ed.* IV. 13. 13 *Hen.* VIII. *Br. Property*, 38, 22 *Ed.* III. 16. My Lords, it appears not by any thing in this Writ, that any War at all was proclaimed againſt any Prince or State, or that if any of his Majeſty's Subjects had taken away the Goods of any Prince's Subjects in Chriſtendom, but that the Party might have recovered them before your Lordſhips in any of his Majeſty's Courts. So that the Caſe in the firſt place is, Whether in time of Peace his Majeſty may, without Conſent in Parliament, alter the Property of the Subjects Goods for the Defence of the Realm. The Time that will ſerve the turn for the bringing in of the Supplies and Means of the Defence, as to your Lordſhips appears judicially by the Writ, that is ſeven Months within four Days. For the Writ went out *Aug.* 4. and commands the Ship to be at *Portſmouth*, the Place of Rendezvous, the firſt of *March* following; and thereby it appears, that the Neceſſity in reſpect of Time was not ſuch, but that a Parliament might in that time have been called for the effecting of the Supply.

Yet in the next place it is averred, that *Salus Regni periclitabatur*, and that was the cauſe of iſſuing forth the Writ; and this by the Demurrer if it ſhould be confeſſed, yet this is but in general; how, or in what manner *periclitabatur non conſtat.* By the Law the Defendant may have a Protection when he is in *Negotiis Regni*; but when he will make uſe of it, it's not allowable in that Generality, but he muſt ſhew in particular, in what Town or Caſtle, or other particular Service he is in, that ſo the Court may judge whether the Cauſe be ſufficient, yea or no; and yet that is his Majeſty's Writ too, as well as that in queſtion. The Books for it are 36 *Hen.* VI. 28. 39 *Hen.* VI. 1.

Yet in the next place, if your Lordſhips ſhall give any heed to this General, as to the Particular of Pirates infeſting the Coaſts, and Preparations further *ad Regnum gravand'* mentioned in the Writ, the Caſe then, as I conceive, is this.

In a time of Peace, his Majeſty's Vigilancy foreſees a Danger likely to enſue; the Supplies for prevention of this Danger will ſerve, if brought in in ſeven Months after within four days; yet whether in this their

Caſe without Conſents in Parliament, his Majeſty may alter the Property of the Subjects Goods ?

Mr. St. John's *ſecond Day's Argument for Mr.* Hampden.

My Lords, having done with the Defence in general, I ſhall now endeavour to prove, that this of the Sea hath no ſuch Peculiarity in it, but that it will fall within that of the Defence in general: wherein, in the firſt place, I will endeavour an Anſwer to ſome Objections both from Authority and Reaſon, that may ſeem to prove a Right: And ſecondly, to ſome Precedents concerning the Uſe and Practice.

Of the firſt Rank, I ſhall begin with *Danegelt.* It may be ſaid, that the *Danes* infeſting the Realm, that *Ethelred*, for the reſiſting of them firſt by his own Authority, laid this upon the Subject, and made it an annual Charge. That after the Conqueſt they ſeldom infeſting the Coaſts, the Conqueror took it not annually as at firſt, but at ſuch times only as it is in the Black Book, *lib.* 1. *cap.* 11. when *ab exteris gentibus bella vel opiniones bellorum fuerunt.* And that after *Henry* the Second's time, the Kingdom being altogether freed from the *Daniſh* Invaſions; altho' *Danegelt* loſt the Name and Uſe, it never after his time being taken by Hides of Land as before; yet the ſucceeding Kings, by the ſame Authority, did lay Taxes upon the Subjects for Defence of the Sea.

My Lords, for Anſwer hereunto, I ſhall in the firſt place obſerve this only by the way, that the beſt and certaineſt Authorities agree not what it was, I mean the Laws of *Edward* the Confeſſor, *cap.* 11. and the Black Book. For the Confeſſor's Laws ſay, it was one Shilling upon every Hide of Land, and the Black Book two Shillings; by which it ſhould ſeem it was little in uſe in *Henry* the Second's time, nor much known. That 11 *Cap.* in the Confeſſor's Laws, where this is mention'd, was no part of the antient Laws themſelves, but ſomething afterwards added, appears by the Words themſelves. *Firſt*, it ſpeaks of the Freedom which the Church, in the firſt Inſtitution of it, had; Freedom, we know, was not loſt till after the Conqueſt; and likewiſe of the granting of it by *William Rufus* in Parliament: and therefore it ſhould ſeem to be inſerted in thoſe Laws afterwards out of the Laws of *Henry* the Second; for this 11 *Cap.* and that of *Danegelt* in *Henry* the Second's Laws, are the ſame, *de verbo in verbum*, as appears in *Hoveden fo.* 344.

But admitting the thing, I ſhall endeavour Anſwers to each Part of the Objection: As *Firſt*, that the *Danegelt* was granted in Parliament. Mr. *Cambden*'s *Brit.* p. 142. obſerves, that the *Danes* firſt infeſted the Coaſts *Ann. Dom.* 800, and, as his Words are, with ſuch Hurliburlies, as the like was never heard of: Havock was made of all, razing of Cities, and burning of Churches; and for their continual Piracy, they had got the Nick-name of *Neccugii*, that is, Pirates. The *Danegelt* firſt began in *Ethelred*'s time, almoſt 200 Years after the *Danes* firſt Invaſion, for he began his Reign *Anno Domini* 978. That Proviſion was made for Sea-Defence in the Interim, and before *Ethelred*'s time, appears by the many Sea-Fights of *Alfred* and other Kings. That this Proviſion was uſually in Parliament, is probable from that of *Ingulphus*, *London print. fol.* 488, where *Anno Dom.* 833, which was 33 Years after the *Danes* firſt Invaſion, a Deed to the Abbot of *Crowland* is dated thus, *Coram Pontificibus Proceribus & Majoribus totius Angliæ in Civitate London, ubi omnes congregati ſumus pro conſilio capiendo contra Danicos Piratas littora Angliæ aſſidue infeſtantes.* If King *Ethelred*, by his own Authority, might have impoſed this, it is like ſome of his Predeceſſors, the Caſe ſo neceſſarily requiring it, in almoſt two hundred Years Space would have done it before this time. That this of *Danegelt* was done in Parliament, the Words carry as much; for the Words of the Law are, *Danegeldi redditio primitus Statut' fuit*, a Word moſt proper for the Parliamentary Authority. But fully by the Laws of that King, I mean *Ethelred*'s Laws, in Mr. *Lambert*'s *Saxon* Laws, *fo.* 58, there *ex ſapient' ſuorum conſilio*, Peace is made with the *Danes*, and a certain Sum of Money granted to the Army, as our Hiſtorians obſerve. The *Danes*, by Compoſition, were to ſend away the whole Fleet, ſaving 45 Ships, which were to remain to defend the Kingdom againſt other Enemies, and the King was to maintain them at his Charge. That the *Danegelt* was paid to the *Danes* for this Defence, many of our Hiſtorians obſerve. My Lords, that at the ſame Parliament this was provided for, appears by the Words of the Law, *Si quis igitur poſthac Navalis aſpirat' in Anglia prædam fecerit, hic nobis auxilium ferat exercitus noſq; ei quamdiu in fide manſerit quæ ad Comitat' ſuppetent' paramus omnia.* That this was a Parliament, as the Words ſhew it, ſo it is held in the Preface to the 9*th* Report, and *Huntington fo.* 205. If this was not the *Danegelt*, yet this is clear, that in that King's time then Proviſion *contra Navales apparatus* was made by Parliament. *Primum ſtatuerunt Angl' infauſto conſilio quod ipſi Danis Cenſum perſolverent*; *Regibus namq; noſtris modo per ſervitia ex conſuetudine quod Danis perſolvebatur ex ineffabili terrore.* That *Danegelt* which after the Conqueſt was paid to the King, we ſee by that Author, *Primum ſtatuerunt Angl'*; *ſtatutum Angl'* muſt needs be by Parliament. If the *Danegelt* in ſuch time of great Danger was not impoſed without Parliament, it muſt ſtrongly make againſt thoſe that ſhall object it.

The *Danes* having quitted the Realm, that the *Danegelt* was releaſed by *Edward* the Confeſſor, as *Ingulphus fo.* 520, and *Hoveden* 253, and all our later Hiſtorians. That of *Ingulphus*, my Lords, alone, is without Exceptions, who lived in thoſe times; he was brought up in *England* in the Confeſſor's Days, and therefore knew what he wrote; he afterwards went over into *Normandy*, and was the Conqueror's Secretary, came over with him to the Conqueſt, and at his own Charge maintained twelve Horſes: he was ſo great at the Court, that, as himſelf writes, *fo.* 514, *quos voluit humiliavit, quos voluit exaltavit*; and *pag.* 518. a Charter of the Conqueror's to the Abbey of *Crowland* was made, *ad petitionem Familiaris mei Ingulphi*; and therefore, in all likelihood, would not report this partially againſt the King.

My Lords, that we are not to put out our Fires upon ringing of the *Cur Feu Bell*, we have no other Law for it but Diſuſe; and the Teſtimony of Hiſtorians, that *Henry* I. releaſed it.

For that of the Black Book, that *William* the Conqueror retained it, *Quando Bella vel opiniones Bellorum fuerint*, as that Book is miſtaken in the thing, ſaying it was 2*s.* every Hide of Land, being in truth but one; ſo it is poſſible he might miſtake in the other too. That it was releaſed *in æternum* is apparent. That many things were done *de facto*, to the infringing of the Liberty of the Subjects both in his time, and the times of *Hen.* I. and *Hen.* II. too, it is clear by Hiſtorians; and if it were not releaſed before, yet that King *Stephen* releaſed it, is, *Huntingdon fo.* 221. *Hoveden fo.* 276. *Hoc deo voluit*, ſay theſe Hiſtorians, *ſed nihil horum tenuit:* and as all our Hiſtorians agree, that after *Hen.* II's time, in whoſe Reign the Black Book was compiled, it was never paid; ſo it may be collected out of the Red Book, for all or moſt of the Aids and Eſcuages in *Hen.* II's time, and King *John*'s time, are there mention'd. In 8 *Hen.* II. 'tis ſaid, *quod Danegeldum aſſeſſum fuit*; but after that, neither in his time, nor in the time of King *John*, or of any other King, is any more mention of it. Sir *Henry Spelman*, in his *Gloſſary*, ſaith, that when it was taken in the Conqueror's time, and ſince, it was *Conſultis magnatibus & Parliamentar' demum authoritat' diminut' ſunt.*

My Lords, in the laſt place, if the ſucceeding Kings, *mutato nomine* only, have in lieu thereof laid other Taxes upon the Subjects, they muſt hold Proportion with that of *Danegelt*; that is, that they have been equally ſet upon all the Inland Towns throughout the Kingdom, as that was, and xii*d.* upon every Hide of Land; and likewiſe in time, and that there was no Intermiſſion, but that in *Rich.* I's time, and King *John*'s, which were active, that then it was put in Execution. *Clauſ.* 15. *Joh' M.* 3. *dorſ. &* 7. and *Mat. Paris Pag.* 312, 313. The Pope had granted the Crown of *England* to the *French* King, who was ready to invade the Realm; great Proviſion of Shipping was made, *ad illiberationes Regis & ad ſtipendia Regis:* ſo far was this King, in this time of Neceſſity, from impoſing any Aid upon the Subjects for the Defence of the Sea, as that he himſelf bore the Charge.

My Lords, the next Authority that I ſhall inſiſt upon, is, that in the Terms of the Law, *fo.* 114. in the Title of *Hidage*, the taxing by Hides was uſed much in old Times, and that chiefly in King *Ethelred*'s Days; who in the Year 1006, when the *Danes* landed at *Sandwich* in *Kent*, taxed all the Realm by Hides, and every 910 Hides of Land ſhould find a Ship.

My Lords, my firſt Anſwer to this is, that this was done when there was a formidable Enemy, and which ſoon after conquer'd the Kingdom, was upon the Shore, as by the Book appears; and therefore 'tis likely that the Courts of Juſtice were ſhut, and that the King was then in Perſon in the Field.

Secondly, This was but *Actus unicus*, and even by the Common Law, that eaſily admits of Cuſtoms, not good; it's *Actus binus* that hath any Colour *introducendi conſuetudinem.*

Thirdly, It appears not by any thing in the Book, but that this might be done by Parliament; many of the antient Acts of Parliament are *ſtatuit Rex:* and whereas the Book ſaith, Taxing by Hidage was much uſed in old Time, that theſe were by Parliament, appears both by the Uſe and Authority expreſs in the Point in Print, *Doomſday-Book* in *Berks*, *Quando geldum debatur*, Matth. Paris 780. many *Corneagia & Hidagia*, recited in Parliament, that had been formerly given to that King in Parliament. *Bract.* in his ſecond Book, *fol.* 37. is expreſs in the Point, that they cannot be taken but by Grant in Parliament; his Words are theſe: *Sunt quædam communes præſtationes quæ ſervitia non dicuntur, nec de conſuetudine veniunt niſi cum neceſſitas intervenerit, ſicut ſunt Hidagia & Corneagia de neceſſitate & conſenſu totius Regni introducta.* Rot. Parl. 8 Hen. III. *M.* 4.

My Lords, the next Authority I ſhall inſiſt on is the Caſe of the Abbot of *Robertſbridge* in *Kent*; which, becauſe *prima facie* it ſeems to be to the Point, I will put it at large. *M.* 25 *Ed.* I. *finient. l. Banc. Rot.* 77. The Abbot brought a Replevin againſt *Adam de Bridland* and others, for taking his Cattel; the Defendants avow in theſe Words, *Dicunt enim occaſione turbationis inter Regem, & Regem Franciæ ſuborta, aſſignatus fuit* Willielmus de Leighbourne *ex parte Regis ad Cuſtodiam Marie faciend' ratione cujus cuſtodiæ faciend' terra & tenementa hominum ejuſd' Comitatus agiſtata fuerunt ad cuſtod' faciend'.* And the Abbot was aſſeſſed, 22 *Ed.* I. at 7*s.* the 23 *Ed.* I. at 13*s.* and 24 *Ed.* I. at 15*s.* *ad præd' cuſtod' faciend'*; and becauſe he refuſed to pay, that the Defendants being Collectors for the Town, diſtrained the Abbot. The Abbot, in Bar of the Avowry, ſays, that for his Lands he was aſſeſſed to find a Horſe and Man in *ſubſidium Cuſtod' præd'*, and that he found his Horſe and Man accordingly, *ad eand' Cuſtodiam faciend'*; and therefore demands Judgment, *ſi una & ead' occaſione cuſtod' præd'*, he ought to find the Horſe, *& nihilominus præd' pecuniam ſolvere.* The Defendants maintain their Avowry, and ſay, that the Abbot had divers other Lands within the Town, that he was aſſeſſed for them, for the Money, and that he was not aſſeſſed for thoſe for the Man and Horſe; thereon Iſſue is joined, and Day given, without any more thereupon that I have ſeen.

My Lords, beſides the Authority of it in point, theſe two things may be further objected from this Caſe: The County was agiſted *ad Cuſtodiam maris*, and likewiſe to find Forces. My Lords, for the laſt, I have before admitted, and by the Statute of *Wincheſter* that may be done, for the Service was to be performed in *Kent*, the ſame County where the Land lay.

My Lords, becauſe this Caſe *prima facie* hath ſome ſhew of Authority in Point, I ſhall endeavour a full and clear Anſwer unto it. By the Caſe it ſelf it appears, that theſe Seſſes were in time of War: the Words are, *occaſione turbationis inter Regem & Regem Franciæ*; neither was the War with *France* only at that time, but likewiſe with *Scotland* and *Wales*, and all the Effects of War accompanied it. The *French* had landed in divers Parts of the Realm, and in particular, 23 *Ed.* I. in this County of *Kent*, and had burnt the Priory, and the greateſt Part of *Dover*; the Havens were ſhut up for a great part of that time; the Goods both of the *French* and *Scotiſh* Nation were ſeized through the whole Kingdom; the Lands of all Priors Aliens were ſeized, and thoſe that were upon the maritime Parts removed, and Natives put into their Houſes, and all Strangers whatſoever, that landed within the Kingdom, to be arreſted. All theſe, if any of them ſhould be denied, will be made good, not only by our Hiſtories, but likewiſe by the publick Records of the Kingdom. So that my firſt Anſwer is, that theſe Seſſes were in the time of an actual defenſive War from the two next and greateſt States unto the Realm.

My ſecond Anſwer is, that it appears not at all, by any thing in this Caſe, that theſe Seſſes were made by any Authority from the King; for the Words are only in the general, that the County was agiſted, and that the Abbot himſelf was agiſted, but ſays not by whom, or whoſe Authority.

That it was not by the King's Authority, appears by *Leighborne*'s Commiſſion appointed *ad cuſtodiam præd' faciend'*, as the Words of the Caſe are; for by his Commiſſion whereby he was to do this, which is *Rot.* 22 *Ed.* I. *M.* 8. he was ſo far from having any Power to tax the County hereunto, that he's commanded for Victuals, Arms, or other things that he ſhall need in this Buſineſs, that he ſhall pay thoſe from whom he ſhall have any ſuch thing; which likewiſe is enter'd in the *Communia*, 23 *Ed.* I *Rot.* 77. My Lords, that there were Parliaments in every one of theſe Years, appears by the Summons, and thoſe in Words not uſual; for the great Fleet of *France* being mention'd, and that the *French* did intend *Linguam Anglicanam omnino delere*, they were now called *ad tractand' ordinand' & faciend' nobiſcum*, and the Lords, *& aliis Incolis Regni qualiter ſit hujuſmodi periculis obviend'*, as it is in the Cloſe Roll, 23 *Ed.* I. *M.* 4. *dorſ.* and 24 *Ed.* I *M.* 7. *dorſ.*

My Lords, that accordingly Order was taken *cum Incolis*; and that the Gentry and other Inhabitants, by way of By-law or Agreement amongſt themſelves, did make Proviſion in this Particular, I ſhall endeavour to prove to your Lordſhips: that it hath been done at other times, and that ſuch By-laws are good, appears, 14 *Ed.* II. *Banc. Regis*, *Rot.* 60. The *Scots* entering *Durham*, a By-law was made by the Inhabitants for the raiſing of Money, and one that refuſed it was adjudged to pay it: beſides *Leighborne*, who was Admiral of all the *Engliſh* Fleet, there were *Cuſtodes maris* in each maritime County; theſe, as appears by *Communia*, 24 *Ed.* I. *Rot* 78. *dorſ.* were choſen by the Commonalty of each County; and that theſe, together with the Sheriff and Inhabitants, did make Orders for thoſe things, appears by the *Communia*, 23 *Ed.* I. *Rot.* 79. where Writs are directed to the Sheriff of *Kent*, and to the Sheriff of other maritime Counties, commanding them that *circa maris cuſtod' viſis præſentibus Milites & potentiores liberos homines de Balliva tua evoces, & cum ipſis provida circumſpectione deliberes*, how he ſhould do it. This, I conceive, is expreſſed in Point, and the Practice grounded upon that in Parliament, *ad ordinand' cum Incolis.*

My Lords, my third Anſwer to this Caſe is, that theſe Seſſes were for Land-Service only, and not for Shipping. And this appears, *Firſt*, by the Caſe it ſelf; for the Abbot, in Bar of the Avowry, ſays, that he was ſeſſed to find a Man and Horſe *in ſubſidium cuſtod' præd'*, which muſt be for Land-Service; and therefore demands Judgment, *ſi una ead' occaſione cuſtod' præd'*, he ought both to find the Horſe and to pay the Seſs. This is not denied by the Defendants; but they ſay that the Abbot had other Lands, and that this Seſs was for thoſe other Lands; ſo that it is admitted that the Seſs for the Horſe, which muſt be for Land-Service, and that for which they avow, were both for the ſame Uſe; all the Difference is, whether the Seſs were upon the ſame Land or no.

My Lords, if the Seſs, for which the Defendants avow, had been for Shipping, they might have admitted all that the Abbot had ſaid, in Bar of their Avowry; that is, notwithſtanding he found Arms for Land-Service, that yet he might, for the ſame Land, have been ſeſſed again to the finding of Shipping. Neither do I doubt, but that the Parties, in the Action now before your Lordſhips, do find Arms, and yet they are ſeſſed for Shipping; and that it will be ſtood upon by the other Side, that the finding of Arms for Land-Service excuſeth not for Shipping.

But it may be ſaid that the very Words are, that the Seſſes were *pro Cuſtod' maris.* My Lords, by divers Records it appears expreſly, that the Cuſtody of the maritime Part of the Land is called *cuſtod' maris. Clauſ.* 23 *Ed.* I. *M.* 4. *dorſ.* A Writ directed *Collectoribus pecuniæ ad cuſtodiam maris*, in this County of *Kent*, commanding them, that in reſpect that the *Cinque Ports* were at the Charge of Shipping, *quod quieti ſint de cuſtod' maris facienda*, which muſt needs lie at Land. *Communia* 24 *Ed.* I. *Rot.* 79. A Writ to *William Bonell*, *& ſociis ſuis ad cuſtodiam Maris in Com' Suff' aſſignatis*, and yet all that they are to do in that Office is for Defence at Land. So *Trin.* 31 *Ed.* I. *M.* 20. *Communia.* This *Cuſtodia Maritima*, how it is to be done appears, *Rot. Parl.* 46 *Ed.* I. *M.* 49. and by the Statute 5 *Hen.* IV. *cap.* 3. it is to be done, as heretofore it hath been done, according to the Statute of *Wincheſter*.

My fourth Anſwer to this Caſe is, that the Plaintiff was a Clergyman, and the Clergy having denied in Parliament to aid the King, as the Laity did this Year, at this time they ſtood in the King's Disfavour; and in *Hil.* Term. 25 *Ed.* I. *Rot.* 17. the King commanded all his Courts of Juſtice, that if any Clergyman was Plaintiff in any Action, *quod nullum ei fiat Remedium.* And therefore *Walſingham*, in his *Annuatis Conſiliis* of this Year of 25 *Ed.* I. ſays, that it was *Clero Angliæ importabilis, quia de protectione Regia eſt excluſus, & per Regem nihilominus depredatum.*

But, my Lords, if I ſhould let all go that hath been ſaid, yet, under your Lordſhips Favours, the Caſe is of no Authority at all: for, admitting that the Seſſes were for Shipping, and that by the King's Authority; yet had the Plaintiff no Reaſon to put himſelf upon the Point of Law when the Matter of Fact would help him: for the Plaintiff ſays, that he had been ſeſſed before for thoſe Lands; the other Party ſays no, but that it was for other Lands; and upon this the Iſſue is joined.

Nay, my Lords, if there be any Authority at all in the Caſe, under favour, it is ſtrong the other Way; for if the Seſſes were for Shipping, the Abbot ſays, that before he had found Arms for the Land-Service, and demands the Judgment of the Court, if therefore he ought to pay this Seſs too. The other Party, if the Law had been clear, might have demurred thereupon; ſo that the Authority ſways this Way, that none for the ſame Land are chargeable for Arms at Land and Shipping too.

My Lords, not only for the clearing of this Caſe, but all other things that concern it, either in the mere Right or Matter of Fact before the 29 *Ed.* I. that before the Parliament at *Lincoln* 29 *Ed.* I. all things concerning the King's Prerogative, and the Subjects Liberties, were altogether upon Incertainties. The Statute of *Running Mead*, *Magna Charta*, *Charta de Foreſta*, had been confirmed at leaſt eight times, from 17 *Joh.* unto 29 *Ed.* I. and yet not only the Practice, but likewiſe the Judges, in the Courts of Juſtice, went clear contrary to the plain both Words and Meaning of them. By the ſecond Chapter of *Magna Charta*, a Baron, *pro Baronia integra*, was to pay but one hundred Marks for his Relief; the Practice and Proceſs of the *Exchequer* till 29 *Ed.* I. was always for this Relief one hundred Pounds. *Michaelis* 28 *Ed.* I. *Rot.* 34. *Communia*, after the Death of *John Gray*, that held *per Baroniam*, the Queſtion was, whether he ſhould pay 100*l.* as the Record ſays, *prout antehac onerari ſolebat*, or 100 Marks, *propter Confirmationem ſecundum Magnam Chartam*; and this the Court would not determine before they had conſulted with the King; and yet the Statute of *Magna Charta* had been confirmed by 25 *Ed.* I. and likewiſe the ſame Year, as appears by the Statute *de Articulis ſuper chartas. Communia. M.* 13. *Ed.* I. *Rot.* 26. *Philip Mermion* died, and 100*l.* paid for his Relief. It was now 29 *Ed.* I. and in queſtion, whether 100*l.* or 100 Marks Admittance, *licet hactenus*, they were always 100*l.* becauſe the King had confirmed *Magna Charta* 29th of his Reign, and by his Writs had commanded his Courts to inroll it, and would have it *de cætero in omnibus ſuis Articulis obſervari.* My Lords, of this kind there be many Caſes. The Charter of King *John*, and of the *Foreſt*, cap. 10. is *Nullus de cætero amittat vitam vel membrum pro venatione noſtra*; and yet againſt the plain Letter and Meaning, *Communia Trin.* 29 *Ed.* I. *Rot.* 44. *Adam Gower* of *Scarborough*, as appears, had in this King's Reign been beheaded *pro venatione* in the Foreſt of *Danby*; and now an Inquiſition went out to find, what Lands and Goods he had; and then upon the Return the Queſtion was, whether his Land was forfeited, and ſhould eſcheat upon ſuch an Attainder, and reſolved that the Land was not forfeited. *Paſch.* 22 *Ed.* I. *Rot.* 48. The King's Shepherd had put the King's Sheep into a Man's Ground, who had diſtrained them; and for this Proceſs went out of the *Exchequer* to puniſh the Man, who there pleads, that he knew not that they were the King's Sheep. And there *Rot.* 51. *dorſ.* Leſſee for Life of a Manor of the King's, with an Advowſon excepted, the Court declared, that he had forfeited the Manor it ſelf. By theſe Caſes it appears, that neither the Practice, nor the Proceedings in the Courts of Juſtice in thoſe Times, in Things between the King and the Subject, are ſo much to be relied upon, as the Words of the Law.

My Lords, it may further be objected, that at Common Law, before the Statute of *Wincheſter*, the King might compel the Subject to find Arms for the Defence of the Kingdom; and therefore, by the ſame Reaſon, he may charge them to find Ships for the Defence of the Sea.

My Lords, not granting the Thing, yet for the preſent admitting it, I ſhall thereunto give theſe Anſwers:

That his Majeſty, by Tonnage and Poundage, and the other Duties at Common Law mentioned, hath a particular Supply for that of Shipping, but hath nothing in particular for the other of Arms; and therefore that may with more Reaſon be laid upon the Subject than the other. And yet for one of the principal Things in that Statute of *Wincheſter*, that is, for Watching and Warding, the King before that Statute had a particular and certain Farm or Sum of Money of each County for the doing of it, which after that Statute the County was diſcharged of, becauſe by that Statute the Counties took the Charge of doing of it upon themſelves, as the Caſes are *Comm. Hil.* 20 *Ed.* I. *Rot.* 10. and *Br. Trin.* 43 *Ed.* I. *Rot.* 22. *dorſ.* 18*l. pro Com' Northumb'* and 16*l. pro Cumberland.*

My ſecond Anſwer is, that each Subject, and that *ſecundum ſtatum & facultates*, is already chargeable for that of Shipping, as hath been before proved; and therefore if he be chargeable both in Money and Kind too, the Charge is double in the one, and but ſingle in the other. Neither could it hold Proportion with theſe Caſes of Watching and Warding, where the Counties were diſcharged of the Money, when they took the Thing in Kind upon themſelves. And therefore this Objection cannot, as I conceive, be made, unleſs his Majeſty firſt quit all the before-mentioned Duties laid upon Merchandize.

My third Anſwer is, that in that of Arms there is only *Mutatio Speciei*, changing of Money into Arms; for they remain the Subjects ſtill in Property, and are in his own Cuſtody; he may ſell them, or employ them at his Pleaſure to his own Uſe: but in this way of Shipping there is *ablatio rei*, in reſpect of the Victuals and Mariners Wages.

My fourth Anſwer is, that that of Arms is not only for the Defence againſt Foreigners, but in Watching and Warding, upon Hue and Cry, and otherwiſe to keep the Peace within the Realm, and for the Execution of Juſtice, by aſſiſting the Sheriff when he ſhall have occaſion to uſe the *Poſſe Comitatus*, and otherwiſe, all which do fail in the other. And as the uſe of Arms is more general, ſo are they for the more immediate Defence of that Element, wherein we have our uſual and certain Livelihood. And yet the ordering of theſe for three hundred Years and upwards, was by Authority of Parliament.

Laſtly, my Lords, in reſpect of the Victuals and Mariners Wages to be found for xxvi Weeks, the Caſe in queſtion, as I conceive, cannot be compared to that of Arms, but rather to that of taxing the Country for finding of Soldiers to go out of their Counties.

My Lords, the next Objection that I ſhall endeavour to give Anſwer unto, is, that it is in his Majeſty's Power, for the Safety of the Realm, to ſhut up the Ports and Havens of the Kingdom, and thereby to make a general Stoppage of all manner of foreign Trade; and therefore as his Majeſty may anticipate Gain, by barring Men from the exerciſing of their Callings, ſo by the ſame Reaſon may he take ſomething away.

My Lords, my firſt Anſwer is, that the Law therein doth truſt the King only with that, which being done, is moſt to his own Loſs, as in reſpect of the Cuſtoms and other Duties this of prohibiting foreign Trade would be.

My ſecond Anſwer is, that this cannot be done but in time of War, and imminent Danger, and that therefore this Objection will not be ſeaſonable till the other be put in Execution.

The laſt Objection is, that in divers old Charters of Liberties and Exemptions, the Patentees are freed *de Danegeldo & Navigio*, hereby is implied Right.

My Anſwer is, from the ſame Charters it may as well be inferred, the Subject is bound to make and repair the King's Parks and Houſes, and to make up new Bridges, and divers other Things; theſe Charters of Exemption freeing them *ab operationibus omnium Regalium Parcorum & Pontium*, and from divers other Things which by Law the Subject is bound unto.

My Lords, for the Precedents that, from Matter of Fact and Charge, may be brought for proof of the Uſe and Matter of Fact, as I do not profeſs to know them all, ſo if I did, yet Time would not permit to give a particular Anſwer to each of them; I ſhall therefore offer theſe general Anſwers to them:

The moſt of them, or all of them, are for charging the Sea-Towns, and Haven Towns which have Ships, and many great Privileges, and are infranchiſed for that Purpoſe, as is declared in the Parliament-Roll of 13 *Ed.* III. *M.* 11. before cited. Theſe that are to find Ships, beſides the main Preſcription for Wrecks and Benefit of Fiſhing, are diſcharged of Arrays and Defence at Land, as appears not only by the Parliament-Roll, but by the *Scotch* Roll 10 *Ed.* III. *M.* 28. *dorſ.* The Town of *Shoreham*, in the County of *Suſſex*, time out of mind had found Ships, and therefore, being by the Commiſſioners of Array taxed to Arms for the Land-Service, a *Superſed'* for that Cauſe awarded. *Iter Suſſex*, 7 *Ed.* I. *Rot.* 63. *dorſ. William de Bruce*, Lord of *Shoreham*, upon his Claim adjudged, that all the Cuſtoms of Merchants at *Shoreham* belonged to him. *Rot. Pat.* 26 *Ed.* I. *M.* 16. the Town of *Yarmouth*, *pro ſervitio Navium impenſo & impendendo*, are diſcharged of all Subſidies granted in Parliament, *pro Corporibus Navium, & attito: & Communia Trin.* 31 *Ed.* II. *Rot.* 30. The Town of *Baldſey*, in the County of *Suſſex*, for the ſame Cauſe diſcharged by Judgment of the Court. *Iter Kant.* 21 *Ed.* I. *Rot.* 44. *dorſ.* Certain Land-holders within the *Cinque-Ports* have Taillage *de quolibet homine applicante*, upon their Lands. *Petitions* 1 *Ed.* III. *Rot.* 9. *Office de Pat'.* In Conſideration of the Charge of providing Ships, the Town of *Southampton* petition, that their Privileges of having Cuſtoms within their Ports be confirmed to them; that they had theſe, appears *Hil.* 13 *Hen.* IV. *Banc. Regis Rot.* 39. where they are indicted for Extortion, for taking more Cuſtom than was due. *Rot. Parl'* 45 *Ed.* III. the Commons pray, that the Franchiſes of the Sea Towns and Havens may be allowed them as heretofore, and that by default thereof the Navy of *England* is much decay'd, to the Diſ-aſſurance of all the Realm, if need ſhould be. That theſe that are not Maritime Towns ought not to be charged, which is the very Caſe of the Defendant, I ſhall cite to your Lordſhips expreſs Precedents. *Clauſe* 13 *Ed.* III. *M.* 14. *par.* 2. the Town of *Bodmin* in *Cornwal* diſcharged of Ships, becauſe in *dicta villa Portus non eſt & longe a Mari & diſtat*, and hath not uſed before-time to find Shipping, and an Inquiſition awarded to inquire of theſe Particulars; whereby it appears, that the Inland Counties had not ſo much as *de facto* been uſually charged with Ships. *Rot. Fra.* 21 *Ed.* III. *M.* 17. thoſe Towns *quæ Naves non habent, & quæ aliis Naves habentibus contributoria non exiſtunt*, that they ſhould be diſcharged; it appears thereby that ſome Towns that are Members of great Sea Towns, are contributory to Shipping, and other Inland Towns are not contributory. 2 *Pars Rot.* 2 *Rich.* II. *M.* 42. in which 51 *Ed.* III. is recited, whereby it is likewiſe recited, that the Burgeſſes of *Beverly* had, by their Petition in Parliament, complained, that their Town is in *loco arido & a mari*, that *ad ſiniſtram procurationem quorund' machinantium ipſos indebite prægravare ad contribuend' hominibus de villa de Kingſton ſuper Hull*, to the making of a Barge *per Mandatum Regis*; now they pray *de omnibus & ſingulis hujuſmodi oneribus inſolitis*, to be diſcharged by their Charter; and it appears they are diſcharged accordingly, and this now exemplified. 2 *Rich.* II.

To thoſe of 48 *Hen.* III. both for Taxes for Soldiers and for Shipping, I ſhall give a particular Anſwer, that it was then *Tempus belli*, when the Courts of Juſtice were ſhut; for the Commiſſion went out after *April*, and in the Red Book *fo.* 241. 6. it was *tempus belli* from 4 *Sep.* 48 *Hen.* III. until the 10th of *Sep.* 49 *Hen.* III. and that the Courts of Juſtice were ſhut up, appears 49 *Hen.* III. *Rot.* 4. *Comm' Scaccario non fuer' Barones reſidentes in Scaccario, ad Paſ.* 48 *Hen.* III. *ad Comm' Paſ.* 49 *Hen.* III. *propter turbationem nuper habitam*, there were no Sheriffs in *aliquibus Comitatibus*, 48 *Hen.* III. and thoſe that were *non poterint ſic facere quæ ad officium vic' pertinebant.*

To the Commiſſions 30 *Ed.* I. *M.* 9. in the Patent Roll, *de puniendo homines* that refuſed, it is *quia ad Rogatum mittere non conceſſerint* ſo many Ships. And if a By-Law were good to bind them, as is before proved, as well as their own Promiſe, it may be ſo; but I have never ſeen any legal Proceedings againſt any of thoſe that refuſed at that time, ſave only againſt the *Cinque Ports* that are ſummon'd by their Service. *P.* 33 *Ed.* I. *Banc. Regis Rot.* 82. againſt *Seaford*, as a Member of the Ports; and the Charge is, that *per ſervitium tenentur invenire unam Navem.*

For thoſe of *Ed.* the Third's time, his Reign, for the moſt part, was a time of War; and that the Offenſive brought a Defenſive upon the Kingdom, is plain. *Walſingham* ſaith, Page 119, 131, that 10 *Ed.* III. the *French* burnt *Southampton*. And *Stowe*, Page 234. ſays, that 12 *Ed.* III. they aſſaulted *Southampton*, and burnt part of *Plymouth*. 13 *Ed.* III. they aſſaulted the *Iſle of Wight*. *Rot. Parl'* 13 *Ed.* III. *pars* 1. *M.* 9. that they had done much Miſchief in the Weſt Coaſts, and conquer'd the Iſle of *Guernſey*. *Rot. Sco.* 10 *Ed.* III. *M.* 5. *dorſ.* and *M.* 2. and all the Ports of *England* were ſhut up.

My Lords, in theſe Years wherein moſt of theſe Writs iſſued, the great Danger appears; and yet that the Charge laid upon the County was by By-Law and Agreement, I ſhall cite to your Lordſhips the *Scotiſh* Roll, 10 *Ed.* III. *M.* 3. The *French* riding at Anchor at the *Iſle of Wight*, the King ſends divers Privy-Counſellors to *Dover*, and commanded all the Officers, Maſters of Ships, Mariners and Inhabitants from the *Thames* Mouth to the *Weſt*, to come thither, *ad tractand'* with thoſe Lords of the Council for the Defence of the Sea by Ships; and in the Record it is cited, that notwithſtanding the King's former Command, *hactenus quicquid non facer' impreſs'*, the Writs for Shipping iſſued before, and were not executed; and therefore now a Commiſſion, if ſo it might be done with Conſent. 20 *Ed.* III. other Writs went out, *Rot. Franc. pars* 2. *M.* 24. 20 *Ed.* III. a Writ to *Yarmouth propter pericula Maris* to ſtop up their Haven, and *Rot. Franc. pars* 1. *M.* 19. that no Fiſhermen go out to Sea.

I ſhall endeavour a particular Anſwer to this. *Clauſ.* 10 *Ed.* III. *M.* 23. the Writ ſays, that *valida defenſionis ſuper Mare ſolvi non ſolebant temporibus Progenitorum* of the King. To this I ſhall give this Anſwer, that theſe Wages were demanded before their time of going to the Service; and the Record is, *hujuſmodi vadia* have not been paid.

My Lords, if this Anſwer be not ſufficient, my Second is by denying the Thing; for beſides that of 15 *Johan.* in that Time of Neceſſity, the Ships were to ſerve *ad liberationes & ad ſtipendia Regis*; and 46 *Hen.* III. *M.* 4: both in *Ed.* I. *Ed.* II. and this King's time before the tenth Year of his Reign, Wages for Defence were frequently paid.

My Lords, becauſe I know not how far this will be ſtood upon, I ſhall ſpare the citing of any of them, and to this purpoſe ſhall cite to your Lordſhips only this Caſe. It is amongſt the Parliament Petitions 1 *Ed.* III. and tranſmitted into the *Exchequer*, *Hil.* 2 *Ed.* II. *dorſ.* The Fiſhermen upon the Coaſts of *Yarmouth*, 20 *Ed.* II. were daily robbed and killed, and for reſcous of them, thoſe of *Yarmouth* were commanded to ſet out ſome Ships to Sea; and *Adam Bridlington*, the King's Clerk, ſent with 300*l.* to ſet out this Fleet, which the Men of *Yarmouth* intended they ſhould have as Wages for the Voyage; but the Clerk would not let them have above 230*l.* and that as Money borrowed of the King, and for this they gave their Bond of Repayment thereof. 1 *Ed.* III. they complain in Parliament, and pray that they may be diſcharged of the 230*l.* and that the Bond may be cancelled; which is adjudged accordingly, and tranſmitted into the *Exchequer* for a Trial, whether the Service was done or not.

My laſt Anſwer to theſe Precedents is, that the Matters of Fact in theſe Years, to the Violation of the Subjects Rights, procured upon freſh Suits, not only the before-mentioned Statute of 14 *Ed.* III. *cap.* 1. againſt any Charge to be laid upon the Subject without Aſſent in Parliament; but afterwards they complain in Parliament, 15 *Ed.* III. *M.* 9. that their Goods were ſeized, and their Bodies taken without any Suit commenced againſt them, contrary to *Magna Charta*, and the Statutes and Ordinances made thereupon with ſo much Diſcretion of their Anceſtors; and in particular in the Parliament-Roll of 22 *Ed.* III. *M.* 4. for the guarding of the Sea, and in 36 *Ed.* III. *M.* 9. and 37 *Ed.* III. *M.* 2. as before in 15 *Ed.* III.

My Lords, I now come to the laſt Thing, which is the Proofs in the Point, which I ſhall humbly offer to your Lordſhips. The firſt Authority that I ſhall offer unto your Lordſhips is the Patent-Roll, 26 *Ed.* I. *M.* 21. whereby I ſhall endeavour to prove to your Lordſhips theſe two Things:

The Confeſſion of that King and his Council, that he was ſo far from having Power to tax the People for the Cuſtody of the Sea, as that he is bound to make Satisfaction for any thing taken from the People for this Purpoſe. The Second, that the Charges laid upon the People for the Cuſtody of the Sea, were the principal Grievances that occaſioned the making of the Statute of 25 *Ed.* I. and the Statute of *de tallagio non concedendo.*

For the Firſt, that the King declares that he had a Deſire to redreſs the Grievances made to the People in his Name, and inſtanceth what they were, *veluti de rebus captis in Eccleſiis, & de aliis rebus captis & aſportatis tam de Clericis quam de Laicis, ſive pro cuſtodia Maris vel alio modo quocunque*; whereby, my Lords, there's an Acknowledgment that it is Grievance, and to be redreſſed, to lay any Tax upon the Subject for the Defence of the Sea.

Commiſſioners are there named throughout all *England* to inquire of theſe Grievances; herein they are to proceed according to certain Inſtructions from the King and the Council, which are theſe three:

Firſt, Whether the Things were taken without Warrant; and if ſo, then the Party that took the Goods is to make Satisfaction, and further to be puniſhed for the Treſpaſs. *Secondly*, If there were no Warrant allowed, then the Officer was to make Satisfaction. *Thirdly*, If all were done according to and in Purſuance of the Warrant, and no more; then what upon Certificate thereof is, the Words are *& enferra tant que il ſe ſienera appais pur reaſon:* The King hereby promiſeth, that whatſoever Things were taken from the People by any Command of his for the Cuſtody of the Sea, that he will make reaſonable Satisfaction to the Party for ſuch Things.

My Lords, for the ſecond Thing, that is, that theſe Grievances occaſioned the making of theſe Statutes, is clear from the Words of the Patent; for they were made *poſt guerram inter Regnum & Regem Franciæ*; which, as appears by the Caſe of the Abbot of *Robertſbridge*, were from the 22d to the 25th of *Edward* the Firſt, and by all our Hiſtorians, and many Records. It appears likewiſe, by thoſe other Words, that the King, before his going into *Flanders*, intended to have remedied thoſe Grievances; he went over in *September*, 25 *Ed.* I. and the Statute 25 *Ed.* I. was made the 10th of *October* after. Hence likewiſe it follows, that the Exception of the King's antient Aids and Prizes, mentioned in the Statute of 25 *Ed.* I. extends not to this of charging the People to the Cuſtody of the Sea, that being one of the principal Grievances that occaſioned the making of it. That the ſame Grievances cauſed the making of the Statute *de tallagio, &c.* I have before offered to your Lordſhips.

My Lords, the next Authority which I ſhall preſent is the *Communia Hil.* 23 *Ed.* I. *Rot.* 77. There the King commanded thirty Gallies to be made by ſeveral great Towns, every Galley was to have ſixſcore Men apiece; theſe were *pro defenſione Regni & ſecuritate maris.* My Lords, the Caſes are many in the *Exchequer*, where the Money for making theſe Gallies was recovered againſt the King. I confeſs, my Lords, that the King had promiſed Payment to thoſe that made them, which I ſhall thus ſubmit to your Lordſhips: That in caſe the King might have commanded the making of them, at the Charge of the Towns, that then the King's Promiſe was but *nudum pactum*, for promiſing of Payment for that which by Law they might have been forced to do, and ſo the Payment reſted only the King's Grace and good Pleaſure. But, my Lords, upon Suits in his own Time, and in the Times of *Ed.* II. and *Ed.* III. the Monies for making theſe Gallies were received by ſeveral Towns, *M.* 29 *Ed.* I. *Rot.* 29. *dorſ.* for *York*, *M.* 31 *Ed.* I. *Rot.* 77. *Ipſwich* and *Dunwich*. *P.* 5 *Ed.* III. *Rot.* 31. for him *prout juſtum fuer'* nothing having been paid before. *Bract. M.* 16 *Ed.* II. *Rot.* 14. both for the Galley made at *Southampton*, and the bringing her to *Winchelſea*, at their own Charge, *Præcept. P.* 1 *Ed.* III. all the Money from *Southampton* not being paid, now order'd that it ſhould be paid.

My Lords, the next Authority that I ſhall preſent to your Lordſhips is the Parliament-Roll, 13 *Ed.* III. *pars* 1. *M.* 9 & 11. The Cauſes of calling the Parliament are declared to be theſe: *Firſt*, the keeping of the

Peace. *Secondly*, the Defence of the Marches. *Thirdly*, the Safeguard of the Sea, that the Enemy might not enter the Realm to deſtroy it. Theſe were the three Points for the Commons to adviſe on, which are put into Writing, and entered upon the Roll. My Lords, by the Articles themſelves propounded on the King's Part, it appears, That the Commons are not chargeable to the guarding of the Sea; and they pray, that this Advice of theirs may not be prejudicial to them to bind them thereunto, and that there are Ships enough in *England* to do it, if the People were willing. *M.* 11. The Commons afterwards in debating of theſe Articles, when they came to this of the Sea, notwithſtanding the Caution before, they are afraid, that if they ſhould debate it, it might imply, that they are chargeable to do it; and therefore they proteſt againſt giving any Advice therein, as a Thing whereof they have no Cognizance: and do further declare, that the *Cinque Ports*, and other great Towns, that have Franchiſes, are bound thereunto, that they ſhould do it. And therefore the Merchants, Maſters of Ships, and Mariners, throughout *England*, are ſummoned to be at the next Parliament for Advice about Shipping.

My Lords, the next Authority is the Parliament-Roll, 22 *Ed.* III. *M.* 21. The Commons petition in theſe Words, *que le guard de la mere ſe face deſeries Res ſoit le guard ſit man ad refait amant vis ſenois ut ſemble que melliur guard ne poit eſtre fait que le Roy ne fait ne qu'il demeritiſſent de la ſur la guer & par de fair de c'eſt ter.* The Commons having formerly granted the King divers Aids and Subſidies upon Wool, Wool-fells, and Leather and otherwiſe, for the guarding of the Seas, they now grew weary of it, and deſire, that the King himſelf from thenceforth ſhould bear the whole Burden, and charge him with his Promiſe to that purpoſe.

My Lords, this Petition, tho' in the Name of the Commons, yet the Lords joined in it; for otherwiſe all Acts of Parliament of thoſe Times being made upon Petition and Anſwer, ſhould be without the Lords Aſſent. Hence it appears, that the whole Kingdom, at this time, was ſo far from thinking that the King could charge them, without their Conſents, to the guarding of the Sea, as that they alledge, the King himſelf ought to bear the whole Charge. Neither doth the King deny his Promiſe, nor wholly deny the thing; for tho' he ſaith, it ſhould be done as it hath been done before, yet it is with a Qualification, becauſe the Sea cannot be better kept than he hath kept it, by reaſon of his being ſo often at Sea in Perſon, in going and returning from *France*, and diverting the Enemy by his Wars in *France*. If the King had given his abſolute Denial, yet here is the Judgment of both Houſes of Parliament expreſs in the Point.

Rot. Franciæ 21 *Ed.* III. *pars* 2 *M.* 9 & 11. The Merchants had granted 2*s.* 8*d.* upon their Goods till *Michaelmas*, for providing 120 great Ships *pro ſecura Conductione Navium & Marchandizarum, & pro defenſione ceterarum maritimarum partium Regni, & aliis periculis his guerrinis temporibus regno imminentibus.* This grant being made, the King alledging that this was not ſufficient for the Service, and to remove the Cauſes of the ſtopping of the Trade by reaſon of the Wars; the King now lengthens out the ſame from *Michaelmas* to *Eaſter* following; and to ſatisfy the People, the King by his Proclamation declares, that the 2*s.* 8*d.* ſhall ceaſe at *Eaſter*, according to the Grant; which, as it ſhould ſeem, not ſatisfying the People, or the King continuing the taking thereof, the Commons in Parliament, 22 *Ed.* III. *M.* 16. pray that it may ceaſe, and that by procurement of no Merchant, *pluis largent ſoit continue.* An Impoſition but for half a Year, and that upon Merchandize, and by conſent of the Merchants for the Defence, yet taken off upon Complaint. The Anſwer is, that it ſhould ceaſe.

My next Authority is the Parliament-Roll 2 *Ric.* II. *pars* 2 *M.* 5. before cited, where the great Council and Sages of the Kingdom reſolve, that the Commons are not chargeable to the Defence of the Realm without Parliament; which extends to this Particular of the Sea; for the preſent Preparation, whereunto the Commons are not chargeable, was for Defence at Sea; and therefore the Money lent was to provide an Army for the Sea, *en defence & ſalvation del dit Royalme & de la Navy & des coſtiers del mere.*

My Lords, the next Authority is the Parliament-Roll 2 *Hen.* IV. *M.* 22. Commiſſions to charge the People to make Ships for the Defence of the Realm without Conſent of Parliament, repealed by the King and the whole Parliament for that very Cauſe.

Item pur ceo quere tarde divers Commiſſions fueront foiſt an divers Cities Burroughs & Villages du Royalme pur faire certaines Barges & Ballingers ſans aſſent du Parliam' & ont mt' pr' nad eſtre faſt devant ces hents' nr' les Commons pray nr' ſnr' le Roy que les Ditz Commiſſions ſoient repeals & que ils ne ſoient forces ne fait a quore loir fuit reſponſ' que le Roy veſt que in les Commiſſions ſoient repeals in tout points mes pur le grand neceſſity que ad des tiels veſſels pur defence du Royalme in caſe que les Quens ſint priment le Roy voſt communer de reſt matter oueſque les Snrs' & puis apres le mre' al' dits Commons pur intiſuner loir Councel & adviſe tiel party. The firſt Commiſſion's repealed, becauſe the Commons were not chargeable without a Parliament. And now the King will put it in a Parliamentary Way, by doing it with the Aſſent of the Lords and Commons.

My Lords, my next Authority is the Parliament-Roll 9 *Hen.* IV. The Cauſe of the calling the Parliament is for the Safeguard of the Sea, and of the *North* Marches; and *M.* 17. great Miſchief ſhewn for Default of keeping the Sea; and *M.* 21. it is there inrolled by the King's Command, that there was Communication had between the King and the Lords for the Defence of the Realm, and for reſiſting of the Enemies, who made Preparations on all ſides; whereunto ſufficient Reſiſtance cannot be provided, unleſs the King have in his Parliament ſome notable Aid granted unto him. My Lords, the King hereby acknowledgeth, that he cannot without the Parliament charge the People for the ſafe keeping of the Sea, that being the principal Part for the Defence there intended, the ſame with the Summons, that without the Conſent of the Commons *negotia præd' infecta remanerent*, and with the Summons in the Cloſe Roll 23 *Ed.* I. before-mentioned, *Quod omnes tangit per omnes debet ſupportari.*

My Lords, the next Authority is the Parliament-Roll 4 *Hen.* IV. *M.* 28. The Lords Spiritual and Temporal, and the Commons, grant the King a Subſidy upon the Staple Commodities, and Tonnage and Poundage, and likewiſe a Tenth and Fifteenth, with this Proteſtation, *Proteſtant que ceſt grant in temps avener ne ſoit point en example de charger les dits Surs' ne Commons du Royalme de nul manner del Subſidy ne* 10th *ne* 15th *a les guerris deſcoregates, ou ſafegard del Mere ſans ſoit per les volents des Seig' & les Commons de Realme & ceo a novel grant faire in pleine Parliament. Rot. Parl'* 6 *Hen.* IV. *M.* 12, and *Rot. Parl'* 1 *Hen.* V. *M.* 17. the ſame Proteſtation as before.

My Lords, that the Charge of the Defence at Sea, and that in a large Proportion, by reaſon of the before-mentioned Duties, is to be borne by his Majeſty, I conceive that it will not be deny'd; that in *Subſidium* and Aid of his Majeſty therein, the Commons are not chargeable without their Conſent in full Parliament. In theſe three Records there are not only theſe Proteſtations of the whole Realm being made by the Lords and Commons, but likewiſe the King's Conſent by accepting the Things granted, and that without any Qualification of the Proteſtations. Thoſe Proteſtations, that they are not chargeable to the guarding of the Sea in a certain Way, as are 10*ths* and 15*ths*, do much more fail in a way uncertain as here.

My Lords, my next Proof is from the Practice of former Kings in their frequent Demands of Aids from Parliaments for the Defence of the Sea, as well before the Statutes of Tonnage and Poundage, as then and ſince; Moneys borrowed by former Kings for Ships and Defence at Sea, and Indentures of Retainer for that purpoſe at the King's Charge; and not only ſo, but upon Suit allowance in the *Exchequer* for Victuals, Mariners Wages, Anchors, Priſoners taken in Fights *pro defenſione*, and alſo other Things neceſſary for Shipping when for Defence of the Realm. Whereupon the ſame Argument may be made in this Particular for the Sea, as was before for the Defence in general.

The Firſt Thing that I ſhall preſs, is that of the *Cinque Ports.* Their Service is certain in reſpect of the Time, but fifteen Days in a Year; and in reſpect of the Charge, but twenty Men and a Maſter; and the Number of Ships certain: beſides that they are diſcharged of Arms for the Land-Service, they have likewiſe divers other Privileges for the doing hereof; they were free from all Aids and Subſidies granted in Parliament, and are by Privy-Seals diſcharged thereof. *Hil.* 2 *Ed.* III. *Comm'* about the end of the Roll; they are freed from all Tolls, Murage and Pontage throughout the Realm, which bringeth a greater Charge upon the reſt of the Subjects.

My Lords, I ſhall thus offer it unto your Lordſhips: If they that have theſe Privileges ſhall ſerve but fifteen Days in a Year, how the others that have no Privilege at all, ſhould do it for twenty-ſix Weeks, as in the Writ?

Secondly, Their Charge is certain in the Number of Men and Ships; how the reſt of the Commons that are ſo far from having any Privileges or Recompence for it, as that they do contribute to this Charge of the *Cinque Ports*, ſhall, as by the way in the Writ, be altogether uncertain in the Matter of Charge, both in the Number of Men and Ships, and of every other Thing.

My Lords, I ſhall preſs this further, that when the Ports exceed their Charge in the Number of Men or Ships, Allowance by the King is to be made unto them, as appears by the Quire of *Dover*, and *Pat. Roll'* of 7 *Hen.* VII. before cited, that after the fifteen Days they were to be at the King's Charge; ſo in the *Pat. Roll'* 19 *Hen.* III. *M.* 14. becauſe they found forty Men in the Ship, the King promiſed payment for all over and above the Number of twenty. *Banc. Regis Trin.* 33 *Ed.* I. *Rot.* 22. allowance to Service in *Scotland*; the *Scots*, as appears by *Walſingham*, *Pag.* 53. and otherwhere, having about that time burnt divers *Engliſh* Towns and Ships, and a School-Houſe, with 200 Scholars in it, *Viſus Comp. P.* 33 *Ed.* I. *pro ingenti Ro. Scotland P.* 34 *Ed.* I. *Rot.* 37. *Comm' la Compoſition.*

My Lords, if the Ports who are bound to the Defence at Sea, when they have performed their Service, be not compellable to any further Charge, I ſhall humbly offer it to your Lordſhips, whether thoſe that be not bound at all, from the ſame Reaſon, are chargeable at all.

My Lords, I have now done, and ſhall not further preſs upon the Patience of your Lordſhips; I know that *Nullum tempus occurrit Regi*; the diſuſe thereof, I ſhall preſs it no otherwiſe than that it is an Interpretation of the Statute made againſt all Aids and Taillages in general; and of the Complaints of the Parliament of 15 *Ed.* I. *M.* 9. 36 *Ed.* III. *M.* 19, and 37 *Ed.* III. *M.* 9. that thoſe Statutes had not been kept; and further, as it is an Interpretation likewiſe of the before-mentioned Declaration, Petitions and Proteſtations againſt this in particular; and as it is an Execution of them, and putting them into Practice: *Praxis Sanctorum*, as the Divines ſay, *eſt interpres præceptorum.*

The Claims which anciently the Subjects have made upon the Crown, that none of the great Officers of the Kingdom could be choſen but in Parliament, nor that the King had Power to ſell any of the antient Crown-Lands; the Diſuſe ſhews, that thoſe Claims of theirs were not legal. *Br.* in his fourth Book *fol.* 209. ſaith, that *longa patientia trahitur ad conſenſum.* The Non-Claims therefore of ſo many Kings and Queens I ſhall preſent unto your Lordſhips, as ſo many *Le voéts* and Declarations of their general Conſents, that without Aſſent in Parliament they could not have laid the like Seſs upon any of their Subjects, as is now laid upon my Client.

The firſt Day's Argument of Sir Edward Littleton, *Kt. His Majeſty's* Sollicitor-General, *in the* Exchequer-Chamber, *before all the Judges, on the Behalf of his Majeſty, in the Great Caſe of* Ship-Money.

May it pleaſe your Lordſhips,

M*AY* the 22d laſt, iſſued a *Sciri facias* out of the *Exchequer* to the Sheriff of the County of *Bucks*, to warn Mr. *Hampden* to ſhew Cauſe why the 20*s.* ſhould not be charged on him towards the finding of a Ship of War, with Men, Munition, and Victuals, expreſſed in a Writ dated 4 *Aug.* 11 *Car.* And the Sums and the Names of the Defaulters were certified into the *Exchequer* by a *Mittimus*, dated 5 *May* 13 *Car.* to be there proceeded upon for the Levying of the 20*s.* according to the Law and Cuſtom of *England*: Mr. *Hampden* appeared, and deſired that all the Writs might be read unto him; they being read, he demurred, and Mr. Attorney joined with him in Demurrer, and adjourned out of the *Exchequer* into this Court, to have the Advice of all the Judges of *England*.

Before I enter into my Argument, becauſe the true ſtating of the Queſtion in this and all other things doth exceedingly conduce to the clearing of the thing in queſtion; I ſhall in the firſt place, obſerve the Writ, dated 4 *Aug.* 11 *Car.* the Ground of this Aſſeſs, which was directed into *Bucks*, and others into all the Counties of *England*, and this was for raiſing Aids for Ships, for the Defence of the Kingdom, with a notable Circumſtance, *quia ſalus Regni periclitabatur*; which being expreſſed in the Record, is confeſſed by the Demurrer, and not only ſo, but teſtified by the King himſelf under the Great Seal in the *Mittimus:* and in all Matters, eſpecially in Matters concerning the publick Safety, the King is *Recordum ſuperlativum & præexcellens*, as in the great Caſe of the Earls of *Glouceſter* and *Hereford*, 20 *Ed.* I. ſo that the Queſtion is only this,

Whether the King, in his Judgment, finding the Safety and Preſervation of the Kingdom and People, neceſſarily and unavoidably to require the Aid commanded by the Writ, may not command ſuch Aid by the Writ, for ſaving and preſerving the Kingdom and People?

Having ſtated the Queſtion, I ſhall now diſcard many Things as impertinent to the Queſtion, not that I that am ſworn Council for the King, do agree in thoſe things againſt the King; but that they are not now in Queſtion.

It is not now in Queſtion, What may be impoſed by the King upon the Subject for Defence, at their Charge, for Conqueſt or Conſervation of foreign Countries or Territories beyond the Seas.

Neither is it in Queſtion, what may be laid by the King upon his Subjects, for vindicating Injuries done by foreign Princes or States.

Neither is it in Queſtion, whether arbitrary Impoſitions or Taxes may be laid at pleaſure upon the Subject for the mere Increaſe of the Revenue of the King's Treaſure.

Neither, whether in ordinary and common Defence, for Preſervation of the Kingdom, tho' neceſſary, it may be thus impoſed.

But the Queſtion is, *Quando Salus Regni periclitabatur*; in truth, the Queſtion is, whether we can be charged *pro Salvatione noſtr' & noſtror'*.

Again, it is not in Queſtion, whether the Subject hath a Property in his Goods, or can loſe them without Conſent in Parliament. I ſhall ſhew that his Property ſhall remain unto him notwithſtanding this Aſſeſs; and the Argument on the contrary ſavours more of Malignity than Reaſon, to ſay that by this the Subject ſhall loſe his Property in his Goods.

It was rightly admitted, that the Law of Property muſt give place to the Law of Nature, for common Defence; the levying of a Debt or Duty publick or private, upon any Subject, is ſo far from deſtroying the Property, that it doth confirm it. He hath as good Property that payeth Debts to the King, as he that doth not.

We are agreed *de Re*, the Kingdom is to be defended; no Man in his five Senſes will deny that *de perſonis*, according to the equitable Rule in the Writ, *quod omnes tangit per omnes debet ſupportari:* we are in this as in the Conqueror's Laws, *ſumus fratres conjurati ad Regnum defendendum. De perſona* whom the Law hath intruſted with the Defence of the Kingdom, *viz.* the King, we are likewiſe agreed. The only Difference is *De modo*, whether the right *Media* be obſerved by the King? And whilſt we are diſputing whether he may do it, I am told he may do it in Parliament; true, he that may do it every where, may do it in Parliament. And I ſhall be ſorry to hear there ſhall be no Salvation for the People but in Parliament.

And whilſt this was the Queſtion, tho' a great deal of Care was had, and tho' it was done with Advantage and Policy, yet the Bulk and Maſs of what was ſaid, ſhall appear to fall quite off as nothing to the purpoſe. There were Multiplicity of Particulars, and a pretty Survey of the King's Revenues, no ways concerning the Caſe, and as much miſtaken in it, as he that reckoned without his Hoſt. He hath done like a diſcreet Gentleman, and went as near the Queſtion as his Client would let him; he hath agreed Caſes more prejudicial than this, as thus: It was admitted, that if there be any actual War, tho' there be but light Skirmiſhes, the King may do it; nay, if there be but a War denounced, tho' there be never a Blow ſtruck, ſurely then can it not be done when *Salus Regni periclitabatur?* This is the true State of the Queſtion.

Before I go further, I am not ignorant, and therefore cannot but be ſenſible with what Diſadvantage I come to argue this Caſe, every Man being a Party intereſted that hears me; but I fear not but that I ſhall ſatisfy all Parties, I have Truth to conduct me, *Et magna eſt veritas & prævalebit*.

The Method whereby I may maintain the Right of my Maſter, and the Crown, is this; I ſhall firſt ground it upon Reaſon; every human Propoſition is of equal Authority, only Reaſon makes the Difference.

I ſhall ground my Reaſons, *Firſt*, upon the Law of Nature: *Secondly*, of State; and *Thirdly*, of publick Safety, Neceſſity, and Conveniency. Neither ſhall it be againſt the Statute Law, Common Law, or any of the Hereditary Rights and Liberties of the Subjects of *England*, but conſonant to, and warranted by all. I ſhall not only prove it *ex rationibus cogentibus*, or as Lawyers ſay, *ex viſceribus cauſæ*, but *de ſimilibus ad ſimilia*. I ſhall confirm it by a Beadroll of Examples and Precedents of former Ages, and compare them with this, and ſee if the Caſe be altered.

Firſt, I ſhall ſhew it from the Foundation of the Kingdom, to that which they call the *Norman* Conqueſt; from the *Norman* Conqueſt to the time of *Magna Charta*, made 9 *Hen.* III. from *Magna Charta* to the Statute *De tallagio non concedendo*, made 25 *Ed.* I. from the Statute *De tallagio non concedendo* to the firſt granting of Tonnage and Poundage; from Tonnage and Poundage to this very Day, and that the Petition of Right doth no ways concern the Diſpute. I ſhall confute all Precedents, Objections, Reaſons, Inconveniencies, Authorities or Records, of which a great Number were cited, that there ſhall not be a Syllable left; and in that, *Firſt*, I will either ſhew that the Record is miſtaken, or impertinent and not to the Queſtion: Or *Secondly*, Thoſe that are pertinent, I will either agree them, or take the Force of them away, that none of them ſhall be able to ſtand in the way of the King in this way of Defence.

The fundamental Reaſon is the exact Rule of the Law in the 10*th* Report cited by that learned Gentleman Mr. *St. John*, *Salus populi ſuprema lex.* All other Laws poſitive are ſubordinate to this Law, and are to be regulated by it. We are not to talk of poſitive Laws, till we have a Kingdom to uſe them. *Glanvile* ſaith, *Regiam Majeſtatem non ſolum Armis oportet eſſe decoratam ſed & legibus*; Arms to defend us, Laws to protect us. *Bracton fo.* 1. In *Regibus duo ſunt neceſſaria, Arma & leges*; and gives the Reaſon: If no Arms, the Kingdom would be left as a Prey to the Enemies. And truly it is a ſtrange Impoſture, that the Law ſhould ſo provide, that the King by his Writ can give us a Remedy for White-Acre and Black-Acre for a Clod of Earth, and not be able to give a Writ to defend the Kingdom when it is in imminent Danger. Nay, poſitive Laws are abrogated by Reaſon, when the Safety of the Kingdom and People are in Danger. As in *Rome*, in the Night a Man might not come over the Walls, but if an Enemy did approach the City, then it was lawful for him to do it.

In the next place, I take that Ground which is taken in all Laws; the Common-wealth is to be preferr'd before all private Eſtates. 13 *Hen.* III. *fo.* 15. the Opinion of *Shelley*. Rather than this ſhall ſuffer, the Law will turn ſome Prejudice to particular Perſons, who are but a part of the Common-wealth. 21 *Hen.* VII. *fo.* 28. 8 *Ed.* IV. *fo.* 23. 29 *Hen.* VIII. *Dyer* 36. If the Enemy doth approach, for the Defence of the Kingdom one Man may make Bulwarks and Forts on another Man's Soil; and ſhall not the King keep the Outwarks at Sea, leſt the Enemy ſhould land at our Doors?

Again, by the King's Command, Suburbs may be razed: In 88, when three great Land-Armies, 20000 Foot and 1000 Horſe, 30000 Foot and 1000 Horſe, and 20000 Foot and 1000 Horſe were raiſed. Now leſt any Army ſhould land in other Places, Directions were given to keep them from landing; but if they could not keep them from landing, then that they ſhould burn down Houſes, and come and deſtroy all whatſoever, that they might not have Food and Proviſion to ſtay there. Where is the Law of Property in this Caſe, which is ſo much talked of? The Publick and Private are ſo nearly connext, that they can hardly be ſeparated; the publick Loſs falls immediately, and by Conſequence upon particular Perſons. Be a Man in what Condition he would be, if a public Loſs comes to the State, tho' it falls on his Wedding-Day he ſhall ſuffer in it. It is impoſſible to ſave private Fortunes if the publick be loſt, *unaquaque amac' Comm' bona totius*, &c. And another ſays very well, no Man repines at that which is done for the good of the Common-wealth. If a Subject then can be enabled without Parliament to make Bulwarks and Forts in another Man's Ground, ſhall not the King that is *Pater Patriæ*, do the like for the Defence of the whole?

My third Reaſon is to confirm, or rather mind your Lordſhips, that the Crown hath many Powers and Prerogatives over the Eſtates of private Perſons. May not the King enter into another Man's Houſe, or at leaſt Out-Houſes, and dig for Salt-Peter, becauſe it is for the Defence? 11 *Report fo.* 81. *Bowles* Caſe, and enter into his Lands and dig Royal Mines?

There is *Proprietas Dominii* belongs to the Subject, but he hath not the Power over all, without the Property *Ratione Protectionis, Juriſdictionis, &c.* Private Intereſt muſt give place to a common Good; the private Prejudice that any Man hath, is very well repaired by the publick Utility that comes to the Kingdom. Fiſhermen may juſtify their going into the Lands of others, to fiſh, becauſe it is *pro bono publico.* 8 *Ed.* IV. 18, 19. 29 *Hen.* VIII. *Dyer* 36. 21 *Hen.* VII. 28. A Man may pull down the Houſe of another Man, when the next Houſe to it is on Fire; *Jam tua res agitur paries cum proximus ardet*, the private muſt ſuffer for the publick Cauſe. 22 *Ed.* IV. *fo.* 2 *b.* 26 *Ed.* I. *fo.* 45. If two Men are fighting, a Man may part them, and put them into ſeveral Houſes, becauſe it is for the good of the Common-wealth. If a Madman be abroad, he may be taken, whipp'd and impriſoned, leſt he do Violence to himſelf and others. 22 *Ed.* IV. *fo.* 45. A Chirurgeon may cut off one Member to ſave the reſt, 22 *Aſſ. Plowden* 56. Neceſſity is the Law of the Time and Action, and Things are lawful by Neceſſity, which otherwiſe are not; *Quicquid neceſſitas cogit, defendit:* and the Law of the Time muſt regulate the Law of the Place in ſuch publick Things. If a Storm ariſe at Sea, to caſt out Goods into the Sea is lawful for the Safety of the other Goods; and they whoſe Goods are not loſt, ſhall be Sharers with the others. If it be for ſafety of Lives, all muſt be caſt out, *Duffeild*'s and *Mowſe*'s Caſe; but if the Party hath taken more in than is fitting, and that be the Cauſe of caſting away the Goods, and not the Tempeſt, there the Party hath his Remedy. 48 *Hen.* III. there was a ſudden Summons to be in Arms both at Sea and Land; they plead, that there was not a juſt time of Summons; the King tells them, that no Man ſhall excuſe himſelf for want of convenient time of Summons; nay, they ſhall not alledge the time of Harveſt, *&c.* it being ſafer to be ſomewhat diminiſh'd in Eſtate, than the Publick to ſuffer: *Neceſſitas eſt Lex temporis*, whatſoever is done for publick Safety is beſt; other Laws are Tributary, and muſt give way to the Law of Neceſſity: What talk we of Formalities, when we are like to loſe the Kingdom, when the keeping of the Laws would end the Common-wealth.

But this needs not, for I ſhall ſhew that his Majeſty hath trod in the Steps of all thoſe Kings who have worn the Diadem, and ſwayed the Scepter of this Kingdom.

In the next place, I ſhall ſhew divers Exemptions *à Cuſtodia Maritima*, not only ancient but late: I will put you one, that is, *King's College* in *Cambridge*, 21 *Hen.* VI. When theſe Grants are made, it extends to the ordinary Defence of the People, and not extraordinary; no more than if the King grants an Exemption to a Man that he ſhall not be of a Jury, yet if there be no other, that ſhall not excuſe him. *Matth. Paris* 838, he ſpeaks of Privileges granted to the Archbiſhop of *Canterbury*, *London*, &c. All are granted in *liberam Eleemoſynam*; they are bound to do nothing but to pray, and yet are not exempted from publick Defence, *Nec adeo libertates & propter publicam utilitatem Regni & per ea reſiſteret hoſtem.* I ſhall give Mr. *St. John*'s Argument an Anſwer by and by; yet by the way, if Tenures *feod' Militar'* did begin as was alledged out of *Britton* in the Conqueror's Time, how was the Kingdom defended before? If Wards and Marriages, and Accidents thereupon did not go to the Foundation of the Kingdom, what was before?

The King is as much Lord of the Sea as Land, *æque Dominus Maris & Telluris.* Selden *Mare Clauſum*, 6 *Ric.* II. *Doctor* and *Student*, lib. 2. fo. 51. 5 *Report* fo. 108. It is obſerved by a great Lawyer, of what Conſequence it is to have Power at Sea. The Naval Dominion of *England* is of great Conſequence and Uſe; for it is called *Dotem Regni.* If therefore the Kingdom of *England* conſiſts of Land and Sea, I hope we ſhall not ſtand at half Defence, to defend the Land and leave the Sea. *Rot. Parl.* 2 *Rich.* II. *M.* 25. It is a great Advantage to have Defence at Sea, elſe we ſhould have hot War at our Threſholds; while the Sea is open, Men may go to plow, and have the Courts of Juſtice open.

The Kings of *England* of themſelves, by their Prerogative Royal, in Times of War, denounced, intended or ſuſpected, for the Preſervation of the Public Safety, may ſeize the Lands of Prior Aliens, 48 *Ed.* III. *fo.* 10. 22 *Ed.* IV. 43, 44. 14 *H.* IV. 36. And can a King of *England* take the Poſſeſſions of Aliens, and cannot he inforce his natural-born Subjects to defend the Land and Sea? God forbid; nay, if we would *parva componere magnis*, we ſhould find in Caſes of leſſer Conſequence, if they have relation to the Defence, he may do it. As the King may lay a Charge upon the Subject for walling a Town, the Reaſon is, becauſe they have Benefit by it in time of Danger; and hath not all the Kingdom Safety by the Navy at Sea? 3 *Ed.* III. *Aſſ.* 445. *Weſtm.* 1. *cap.* 3. 13 *Hen.* IV. *fo.* 14, 15. Sir *John Davies* Reports *fo.* 13. *Littl. fo.* 58. 33 *Ed.* I. 105. *Parl. Book*, *Walſingham*, 14 *Ed.* I. 60. 7 *Ed.* III. *Pat. M.* 2. And the King did not only command it, but took an Account of it, if it was not done, and took it into his own Hands, *Trin.* 27. *Ed.* I. *M.* 14. *ex theſaur'* Murage of *Carliſle* taken into the King's Hands. *Pat.* 14 *Edw.* I. *pars* 1. *M.* 14. and the Surpluſage paid into the *Exchequer*. And this agrees with the Reaſon of all Laws, where they have a Benefit they muſt contribute to the Charge, 10 *Report. fo.* 141. out of 44 *Ed.* III. nay for leſſer things, as for Paveage and Pontage, the King may impoſe that for a publick Good, and the King may diſtrain all the *terr' tenents*, and Land-Owners, to make Contribution *ſecundum ſtatum & Facultates.*

The King may diſpoſe of the Preparation for Defence, he may compel Men to be Knighted, becauſe it was for Defence. *Rot. Clauſ.* 19 *Ed.* II. *M.* 16. *Mat. Paris*, *fo.* 12. 37 *Weſtm.* 465. no Man is exempted from Defence, Judges are not exempted, yet Judges are not to fight; yet when it comes to neceſſity, they are not exempted. *Trin.* 5 *Ed.* IV. *Moyle*, 13 *Hen.* IV. *fo.* 23. Clergymen compelled; nay a Serjeant at Common-Law ſworn at Common-Pleas, is compellable. Sir *John Hulbert* in *Hen.* VII. Time was compelled to be a Knight: 9 or 29 *Hen.* VI. *Rolfe* a ſtout Serjeant pleaded that he was a Serjeant at Common-Law, and not bound to be a Knight, but he is forced to it. But why talk we of theſe? there ought to be a Commonwealth before there are Laws, and Private ought to give way to Publick.

Again, imminent Dangers and Perils to a State do diſpenſe with ordinary Proceedings in Law; *inter Arma ſilent leges.* Nay, if there be but Rumours of Wars, Laws are ſilent; we muſt look then to the Kingdom, upon Rumours and Opinions of Wars. *Paſch.* 15 *Ed.* I. *Banc. Regis Rot.* 70. *dorſ.* the *Scotch* Army they beſieged *Rippon*, the People they promiſe a Sum of Money to them to depart, and give them in Hoſtages, and that Money ſhould be levied among themſelves; when the War was over they would not do it, but were compelled to it. In 14 *Ed.* II. *Banc. Regis Rot.* 60. The *Scots* beſiege *Durham*, but they muſt have ready Money, they would not take Hoſtages to depart; while this Peril was on them, they met together and ſwore, that what ſhould be agreed amongſt themſelves every Man would ſtand to. It was ordered they ſhould go into the Houſes of others, and take what Money they could find for that Purpoſe; they took from one Man 60 *l.* oh, he was not ſatisfied, he had a Property in his Goods, he brought an Action, and at *Durham* it was adjudged for him; but when by a Writ of Error it was brought to *Weſtminſter-Hall* into the *King's-Bench*, Judgment was reverſed. And in the time of Queen *Elizabeth*, greater things were done upon leſſer Occaſions.

The next thing is the Ships taken from time to time, and the Command of Perſons, Watches, Beacons, ſhutting up of the Ports, which are the Gates of the Kingdom. 14 or 10 *Ed.* IV. *Paſch. M.* 12. *dorſ.* 3 *Hen.* V. 18. *dorſ.* A number of other things commanded by the King for Safety; when the Law conſiders what may happen, it is not material what doth happen; nay, if there be but a *vulgaris opinio*, it is enough; much more when the King, by his own Judgment, foreſees it. 6 *Report fo.* 64. *Clark*'s Caſe, there they are compelled to build a Hall at St. *Albans* for the Judges to ſit in, much more in this Caſe. See *Clegate*'s Caſe for Triumphs; and if for State, ſhall not the King command for Safety of the Kingdom? *Hil.* 12 *Jac. Hawks*'s Caſe, for paving of the Way, he may take Corn out of the Sacks of thoſe that come by.

Again, it is a *Droit* Royal to meddle with War and Peace, Subjects have nothing to do with it. *Rot. Parl.* 13 *Ed.* III. *M.* 5. 19 *Ed.* IV. *fo.* 160. or 6. *Brian*, Chief Juſtice, ſaith, That if all the Subjects of *England* do war with the Subjects of another Kingdom, this is no War; but if the King denounce it, it is War. 22 *Ed.* I. *Rot. Vaſ. con. M.* 16. or 10. they muſt have a Power from the King: True, *Henry* VII. brought Military Diſcipline to the Parliament to advance his own Ends. Sometimes Dangers are fit to be communicated to the People, and ſometimes not. The King ſhould beſt know what is done abroad, who hath his cloſe Council of War; he knows what is done abroad, what can the People tell of theſe things? and it is very fit that Preparation be made before-hand. It is not good to find the Kingdom without a Navy, eſpecially when ſuch Combuſtion is abroad. 18 *Eliz. cap.* 23. It is as much to prevent Danger, as to remove it when it is in being. 1 *Ed.* VI. & 1 *Mar.* A deſired Proviſion to be made before-hand, and this hath been the Practice of all Times. *Gervaſius Tilburienſ.* Black Book *Hen.* IId's Time. *Danegelt* before the Conqueſt paid annually; but afterwards, when there was *Bellum* or *Opiniones bellorum*, *Datum eſt nobis intelligere, audito rumore, &c.* are frequent in the Records; nay, if there be but *vulgaris opinio.* Ay, but perhaps Dangers will not come; but if they come unawares, where are we then? In the Caſe between the Earls of *Gloceſter* and *Hereford*, there was a great Tumult between them about the Marches of *Wales*; and this was contrary to the King's Command, and Exception was then taken; that there was no Record to warrant the *Sciri Facias*; the King did affirm it, *Et Dominus Rex in multis caſibus eſt ſupra legem*, &c. *Dominus Rex eſt Recordum ſuperlativum & præexcellens.* It is Treaſon for any Subject to raiſe an Army, unleſs a Town be beſieged. *Henry* the Seventh was a wiſe King, and he had his Spies abroad in times of Peace to ſee how things went, and his Army prepared; and the Preparation of a Navy does much more Good than the ſpilling of Blood. And ſo hath our Navy theſe two Years done a great deal of Good to the Kingdom, and Honour to the King.

Na' que fuit pur Salvatione del Royalme.

Now I come to the Authorities; but firſt we ſhall obſerve what an Authority ſhall be in this Caſe. *Firſt*, I conceive there may be, and are direct and full Examples in Point, for compelling the Subjects at their own Charge to guard the Sea and Land, tho' they are not ruled in particular Courts of Juſtice; nay, under favour, they are ſtronger than any Judgment: there were then no need of Suits in the Courts of Juſtice; if Men would pay, what need Judgments?

Secondly, I conceive, that tho' I find not direct Authority in printed Books, yet Records are as good Teſtimonies, and greater than Reports, that are but Extracts, and ſecond Authorities drawn out of them; and thoſe that concern *Jus Publicum*, come not into ordinary Debate, but remain *inter arcana Imperii*, and thoſe will ſpeak fully.

Thirdly, I ſhall obſerve that our Precedents are not only in open War and Hoſtility, but upon Opinions, Rumours, Relations, and Informations of Wars.

I ſhall ſhew this in all Ages to Queen *Elizabeth*'s time; and if it be not ſo full in the Years of King *Stephen* and *Henry* IV. who were Uſurpers, it's no wonder. If they had had Right to the Crown, as his Majeſty hath, they would not have uſed Compliments, but *Fide & legiantia quibus nobis tenemini.*

Before the Conqueſt, I find that King *Edgar* had his Tenants, who ſwore to co-operate with him, *per terram & per mare.* King *Ethelred* he did command, that he that had 310 Hides of Land ſhould find a Ship, and thoſe that had leſſer, ſhould find other Arms, and at their own Charge, for every Ship eight Oars, *ut tempore Patris*, that was *Canutus*; and it was *Tributum Claſſiale.*

My Lords, for *Danegelt*, if thoſe Kings that were called in by the People, did lay this on the People, much more our natural-born King, which ſhews it to be an undoubted Right; for it is not likely they would put that in practice which was not an undoubted Right. In the Laws of the Confeſſor by Mr. *Lambert*, and the Black Book in the Exchequer, it was ſometimes one, ſometimes 2 *s.* annually, *in uſus Maritim'*; and ſtill the Charge lies on the Subject; this ſhews an inherent Right in the Crown, and it was paid for ſeveral Purpoſes, but ſtill at the Subjects Charge. And to ſay it ſhould not be ſo becauſe of the Word *Statutum* *(De Regibus Angliæ ſtatutum)* cannot be, for in thoſe times *ſtatutum*, as in *Cicero*, was a Conſtitution, there was no Parliament then; and if it now doth alter from that way, truly petty Circumſtances, when the Subſtance is obſerved, alter not the Caſe. There muſt be a Defence, and it was not certain; doth not the Danger *ſuſcipere majus & minus?* and the King may ſay as *Edward* the Firſt ſaid, nay, I have heard him ſay, that he hath bought neither Manors, Lands nor Caſtles with it.

After the Conqueſt, *Danegelt* is ſuppoſed to be releaſed by the Conqueror, becauſe he dreamed he ſaw the Devil dancing upon the *Danegelt*; but the Black Book ſaith it was paid in the Conqueror's time. It was then quitted, till there was *Bellum* or *opiniones Bellorum*; neither was it releaſed by *William Rufus*, or *Henry* the Firſt. King *Stephen* ſwore that he would releaſe it at his Coronation, but *nihil horum tenuit*; nay, it was paid in *Henry* the Second's time, 4 *Hen.* II. Pipe Roll; and tho' the Name be altered, yet other things came in the room of it.

And now I will begin with *Doomſday-Book*, which began in the 14*th* of the Conqueror, and ended the twentieth Year. There were divers Towns and Shires charged, and there we ſee what Aſſiſtance they did give both for Sea and Land. In the Black Book *fo.* 56. he that waited on the King's Revenue, *liber non erit* for publick things. And in King *John*'s time, which was a troubleſome time, 5 *Johannis Pat' M.* 17. and *Johannis Clauſ. M.* 9. they gave a fourth part of their Revenues for Defence; and there was a Command for ſtaying of all Ships, and to repair to a certain place appointed.

And to come to thoſe great things when King *John* was depoſed by the Pope; the King of *France* made Preparation, and the King of *England* made Preparation, and all Ships were imbreviated, becauſe he would not put all upon Land-Forces: and ſo in 88. *Mat. Paris fo.* 312. it is ſaid, the People were *ad liberationes noſtras*; but that Voyage was to *Poictou*; if it were *ad liberationes noſtras*, yet the Command of the Perſons and Ships were the King's; and true, all Mariners were to be paid, and no queſtion immediately at the King's Hand, but it was firſt raiſed and levied of the People.

Whereas for Eſcuage and Knight's-Service, the Summons was *quod interſitis cum equis & armis*, &c. *exinde proficiſcend' nobiſcum*; but this was only to come with their Horſes and Arms, by reaſon of their Tenures. And it further appears, that Earls, Barons, Knights and Freemen, and all that had Arms, were to come *ad defendendum caput ſuum & Regis, & quod nullus remaneat qui arma portare poſſit*; nay, thoſe that had neither Lands nor Arms, yet all muſt come, and if they had nothing to maintain themſelves withal, they were to be *ad ſolidatos noſtros*, which ſhews all the reſt were not at the King's Charge. 5 *Johannis Clauſ. M.* 1. *Quia ad arma jurat vel qui honorem poſſ':* if the King could command for Land, he may for Sea, for both are one Kingdom. In *Henry* the Third's time there are divers Arrays. 14 *Hen.* III. *Clauſ.* 7. *dorſ.* When the King went into *France*, there went a Command to all the Sheriffs of *England* to ſwear thoſe that ſtaid behind, as they were ſworn in King *John*'s time; all this ſhews they were bound to Arms.

In the Statute of the Conqueror, which they ſtyled a Statute, that there ſhould be no Taillage, Taillage muſt not be underſtood of thoſe kind of Aids. That famous Year of 48 *Hen.* III. (and obſerve when) that Year is not only after *Magna Charta*, but after it was confirmed by him, 20 *Henry* III. when he was of full Age. 48 *Edw.* III. *Clauſ. M. dorſ.*

Divers Captains and others not able to maintain themſelves, the King commands they ſhould be paid. *De Comm' Comitatus.* 48 *Ed.* III. *M.* 2. *de pecunia levand' circa tuitionem maris*, the King commands there, that they ſhould come out of their Counties: the Summons is two-fold; *Firſt*, of Eſcuage, which is *ſecundum debitum.* *Secondly*, General for Defence, *Cum neceſſe fuerit.* 48 *Hen.* III. *Clauſ. M.* 3. *pro Militib' Sancti Johannis & M.* 6. *dorſ. quod omnes qui nobis & Coronæ noſtræ jure aſtringant*, &c. all Freemen muſt do this Service. 48 *Hen.* III. *Clauſ. M.* 3. *dorſ. Nullus excludatur ſexus vel ordo.* 48 *Hen.* III. *Clauſ. M.* 7. the Citizens of *London*, and the Men of *Greenwich*, were commanded to keep the *Thames* that none ſhould enter *per ora eorund'*; the Men of *Greenwich* plead, that they were diſtrained upon common Summons for their Service in *Kent*; and the King commanded that they ſhould be freed in *Kent*, and join in Defence of the *Thames.* *Clauſ.* 48 *Hen.* III. *M.* 11. *dorſ.* to excuſe one who pretended he did attend at another Place with all his Strength; this ſhews that he ought to attend the Defence: nay, 48 *Hen.* III. *M.* 4. when they refuſed to come, the King commanded to ſeize their Lands, and take the Profits, and anſwer them into the *Exchequer.* 48 *Hen.* III. *Pat. M.* 5. he commands them to attend, ſetting all things apart. 48 *Hen.* III. *Pat. M.* 10. or 5. like Writ to *Ipſwich*, *Dover* and *per Coſtera Maris*; nay, when ſome went away when their 40 Days were expired, the King tells them, that *propter inopinatos cauſus*, they ſhould ſtay. *Pat.* 48 *Hen.* III. *M.* 4. one hundred Marks by the Abbot of *St. Auſtin's* for Stipends for thoſe at Sea, for Defence of the Sea. *M.* 3. *dorſ.* when they would have gone away, they were commanded upon pain of Forfeiture of all they had to ſtay. *Bract. lib.* 5. *fo.* 336. *Cum fuer' in exercitu cum Domino Rege*, &c. ſpeaking there of Law-Suits, what may be a good Excuſe for Abſence, ſaith, *ex cauſa neceſſitatis Reipublicæ cauſa, aut cum Rege in Armis.* In the Time of *Edward* the Firſt, Statute of *Wincheſter*, finding of Arms began not upon that Statute; but how, and in what manner they ought to be rated, was there appointed. 23 *Edw.* I. *Clauſ. M.* 4. *de contributione faciend'* to *Yarmouth*, a Command to the Collectors of Money *ad Cuſtod' Maris*; and he that was in *Gaſcoigne* was diſcharged of Grace, but not of Right. *Pat.* 23 *Ed.* I. *M.* 4. *Ita quod omnes compellere poſſitis ad cuſtod' Maris cum neceſſe fuerit.* *Pat.* 23 *Ed.* I. *M.* 6. *pro Willielmo de Stoaks fuer' cuſtodes Maritimæ & M.* 5 & 7. *Cuſtodes Maris de Jernemouth*, and divers Men taken both Archers and Slingers. *Pat. M.* 5. *de hominibus eligendis ad arma*, *M.* 7. *omnibus & ſingulis Marinettis*, between *London* and the Mouth of the *Thames.* *M.* 6. *de Navibus capiendis*, *Clauſ.* 23 *Ed.* I. *M.* 5. *Maritt' faciend' in diverſis Civitatibus.* *Pat.* 24 *Ed.* I. *M.* 16. *de partibus Maritimis inveniend' & cuſtodiend'.* *M.* 6. & 17. *de Navibus & Galleis inter villam de Lyn & Barwicke.* *Trin.* 24 *Edw.* I. *Rot.* 62. *Inter B. pro Rege*; there a Writ iſſued to ſuch and ſuch Men to find ten Horſemen; one affirmed, that he had ſome in *Scotland*, and ſome at *Cobham* in *Kent*; the King makes Inquiry whether it were ſo or no, and finding he had not ſo many as he ſaid, commanded that he ſhould he diſtrained, not only for the Contempt to the King, but for the Danger the Kingdom might lie in for want thereof. 24 *Ed.* I. *Rot.* 78. Power to compel Men to make Defence *juxta facultates*; and the County of *Berks*, which is an inland County, upon refuſal a *Capias in manus* was awarded to anſwer it in the *Exchequer*, and the form of Wages to be ſet down. 24 *Ed.* I. Lord Treaſurer's Remembrancer. A Writ from the Barons to aſſeſs all the People without the King, News being of 10000 Men coming. *Clauſ.* 25 *Ed.* I. *M.* 26. *dorſ. William de Ripo.* It was recited, that the People have been at a great Charge; and becauſe Winter came on, the King willing to ſpare them, Watches and Beacons were commanded to be ſet up and kept, and the People to depart, but to return again upon notice. *Rot. Pat.* 25 *Ed.* I. *M.* 5. Cuſtody of the *Marintine* was with ſix Ships; by which it appears that *Cuſtodia Maris*, and *Cuſtodia Marintina*, are Terms convertible. The Abbot of *Robertſbridge*'s Caſe, 25 *Ed.* I. *Rot.* 70. the Abbot brought a Replevin againſt one in —— that lies in the Confines of *Kent* and *Suſſex.* The Officers did own, by reaſon of the War between *France* and *England*, the Abbot was aſſeſſed three ſeveral Years, at ſeveral Sums, nay, the fourth time, and no hurt done; but now if the Writ goes out but two Years together *(ob inauditum)* but what doth he plead, doth he deny the Writ? no, he pleads he was aſſeſſed for other Lands; he found a Horſe *ad cuſtodiam prædictam*, ſo that the Horſe was for the Land Service, and the Money for the Sea. I conclude as *Selden*, *aut ad ipſum Mare, aut ad tam littus quam Mare.*

After the Statute *de tallagio non concedendo*, *Pat.* 27 *Ed.* I. *M.* 3. *de Navibus congregandis.* *Pat.* 31 *Ed.* I. *M.* 20. *Malefacientibus in Marchiis Angliæ*, a Commiſſion went out that all ſhall be in Arms againſt *Scotland.* In ancient Times there was ſuch a Connection between *France* and *Scotland*, that we had always a double War, and therefore could not expect all Forces in one Place. In the Time of *Ed.* II. *Pat.* 2 *Ed.* II. *pars* 9. *M.* 26. *pro Rege de Navigio providendo veſtris ſumptibus faciend'.* I ſee with what Policy Mr. *St. John* went, and what multiplicity of Records he cited, and opened them with as much Skill as ever I knew any Man; but I deſire to go in the Path of naked Truth. I ſhall make it appear to all the World, that the King hath done nothing but what his Predeceſſors have done; and that there is not more Teſtimony to prove *Littleton*'s firſt Caſe, that the Heir at Law ſhall have his Patrimony, than there is to prove this the King's Right. *Pat.* 15 *Ed.* II. *M.* 15. *dorſ.* all between ſixteen and ſixty to be ready. *Parl' Rot.* 5 *Ed.* II. *M.* 4. Ordinance that the King without the Aſſent of the Barons could not make War, but that was repealed and damned. *Rot. Parl'* 15 *Ed.* II. *M.* 31. It's ſaid it was prejudicial to the Royal Power of the King, and a Blemiſh of his Royal Sovereignty. *Rot. Clauſ.* 17 *Ed.* II. *M.* 10. when they were warned to be ready. 19 *Ed.* II. *Rot. Pat. pars* 2. *M.* 6. to all Biſhops in *England* to be ready for the Defence. *Clauſ.* 20 *Ed.* II. *M.* 2, & 7. *de hominibus qui domi remanſerunt*, &c. ſhould contribute to thoſe that went, it was to forty or fifty Counties; *Nos conſiderantes, quod juſtum & conſonum rationi non eſt*, that thoſe ſhould expoſe both Body and Purſe for the Utility of the Kingdom. In the Time of *Edward* the Third, *Rot. Clauſ.* 2 *Ed.* III. *de Navibus inveniend'*, a Command that all Ships of 40 Tuns and upwards, with Men, Munition and Victuals, ſhould be in readineſs at their own Charge. *M.* 2. Mariners are warned to come *per duos menſes*, at their own Charge. 7 *Ed.* III. *Scotch* Roll *M.* 19. *de Portubus contra adventum*, &c. *& datum eſt nobis intelligi*, &c. it appears it was done *tam per mare quam per terram*; and a Direction to all Archbiſhops to be attending, and the *Poſſe Comitatus* to be arrayed, *ſecundum ſtatum & facultates.* *Clauſ.* 9 *Ed.* III. *M.* 13. *dorſ.* all from 16 to 60, to be arrayed *armis competentibus.*

And now I come to that famous Year of 10 *Ed.* III. *Rot. Sco. M.* 21, or 33. Men for Land and Sea. *Rot. Sco.* 10 *Ed.* III. *M.* 21. *dorſ. omnes ex debito defenſionem aſtringuntur.* *Rot. Sco.* 10 *Edw.* III. *M.* 23. *De proclamatione faciend'*, to all Inland and other Counties. *M.* 20. to *Lynne.* *M.* 14. *dorſ.* to all, *prout fieri conſuevit* to all Counties, *nos conſiderantes quod ratione legiantiæ ſuæ aſtringuntur.* *M.* 1. *dorſ.* through all Counties the like obſerved, eſpecially *nequimus reſiſtere Correctiones*, &c. *ſine auxiliis veſtris*, *M.* 2. *de Navibus ſupervidendis*, and in that are the very Words of the Writ. *M.* 25. *de portubus cuſtodiend'* Inland Counties as well as others, *Berks*, *Wilts*, *Liceſt. Northam.* &c. *M.* 16. *Navibus ſupervidendis nos advertentes circumquaque aut hæc tempora.* *Rot. Alman.* 10 *Ed.* III. *pars* 1, *M.* 13. *Rot. Clauſ.* 12 *Ed.* III. *pars* 1. *M.* 13 *dorſ.* *Rot. Alman.* 12 *Ed.* III. *M.* 33. *pars* 2. *verſus boreales duplici eſkippamento*; and to contribute, and thoſe that refuſe, to aſſeſs them *juxta ſtatum.* *Rot. Clauſ.* 12 *Ed.* III. *M.* 14. Archers. *Rot. Alman.* 12 *Ed.* III. *pars* 2. *M.* 6. Order that but one Bell ſhould be rung. *Rot. Alm.* 12 *Ed.* III. *pars* 2. *M.* 3. *ſupervidend' quod omnes' ariat' conſiderantes quod omnes*, &c. *ſe & ſua exponere aſtringuntur pro ſalvatione.* *Alman.* 12 *Ed.* III. *pars* 2. *M.* 10. becauſe *hoſtes noſtri multitudine non modica*, &c. All that have *Redditus*, &c. were to attend. *Alman.* 13 *Ed.* III. *M.* 1. *de ſupervidend' vill' Southamp.* *Clauſ.* 13 *Ed.* III. *M.* 38. *dorſ.* A Writ directed *Cuſtodibus terræ maritimæ.* The Abbot of *Ramſey* lived at *Huntingdon*, yet diſtrained for Sea-Service in *Norfolk.* *Rot. Clauſ.* 13 *Ed.* III. *M.* 14. the County of *Oxon*, an Inland County, and yet commanded *Cuſtod' terræ maritimæ.* *M.* 17 *Ed* III. *Banco Regis Rot.* 15. *a ſuperſedeas* granted one. 17 *Ed.* III. *M.* 24. Wages recovered of a Town for forty Days. *Scot.* 20 *Ed.* III. *M.* 14. *verſus Scotos.* *M.* 21. *Ed.* III. *Rot.* 4. *Banco Regis quam, deteine Soldiers pay, ergo*, complain, *M.* 31. Payment of Wages. *Rot. Parl.* 22 *Ed.* III. *M.* 4. there the Commons were at great Charge for guarding the Sea, and pray Remedy, but not for the Right but for the Exceſs. *Rot. Franc.* 21 *Ed.* III. *M.* 24. *dorſ.* 22 *Ed.* III. *Rot. Pat. pars* 2. *M.* 1. *Rot. Franc.* 22 *Ed.* III. *M.* 5. *dorſ. pro* Johanne Coke. *Rot. Franc.* 26 *Ed.* III. *M.* 5 & 4. *quia eſt vulgaris opinio*; and this recited, *nos conſiderantes*, &c. *quod omnes per juramentum*, &c. and this was for the Sea, and goes to all Inland Counties. And as they talk of Kings in the Field, Kings uſe not to go into the Field in Perſon. *Rot. Franc.* 34 *Ed.* III. *M.* 34. *pro Clero arriando.* *Rot. Clauſ.* 33 *Ed.* III. *M.* 89. *dorſ.* *Rot. Clauſ.* 43 *Ed.* III. *M.* 1. *de Navibus arreſtand'.* *Rot. Clauſ.* 43 *Ed.* III. *M.* 14, or 13. *de hominibus arriandis.* *Rot. Clauſ.* 45 *Ed.* III. *M.* 8. *ut intelleximus.* *Rot. Parl.* 46 *Ed.* III. *M.* 20. the Commons complain of their Charge, and ſay, that the Sea was ſo noble, that all the World called the King, the King of the Sea, *&c.* they pray as of Grace, *&c.* *Rot. Franc.* 47 *Ed.* III. *M.* 20. for guarding of the Sea-ſhore. 50 *Ed.* III. *pars* 1. *M.* 105. 31 *Ed.* III. *pars* 5. *M.* 25. the Charge is not put upon the People without common Conſent. The King is not to do it but for the grand Neceſſity and Defence of the Realm. In *Richard* the Second's Time, *Rot. Clauſ.* 1. *Ric.* II. *pars* 1. *M.* 7. *Scarborough.* *Rot. pat.* 1. *Ric.* II. *pars* 1. *M.* 12. *Rot. pat.* 1. *Ric.* II. *pars* 1. *M.* 42. *dorſ.* Beacons. *Rot. pat.* 1 *Ric.* II. *M.* 13. *dorſ.* *Rot. Franc.* 2 *Ric.* II. *M.* 15. *Rot. Scot.* 4 *Ric.* II. *M.* 9. King of *Caſtile*, *pro compellendo homines pro cuſtod' maritim'.* 7 *Ric.* II. *M.* 9. *Totus Clerus apponere manus adjutrices*, Archbiſhop of *York.* 8 *Ric.* II. *M.* 5. Archers.

The ſecond Day's Argument of Sir Edward Littleton, *Knight, his Majeſty's Sollicitor-General, before all the Judges, in the* Exchequer-Chamber, *on the behalf of his Majeſty.*

May it pleaſe your Lordſhips,

THE laſt Day I left off at the End of *Richard* the Second: I do not love to repeat, yet in regard the Records that are of weightieſt Evidence for the King to Men of Underſtanding, are perhaps not ſo clearly underſtood by every one that hears them, I ſhall ſum up what hath been read. It hath appeared by the Records that have been read, that the Sea and the Land have been guarded by the Commons, when Danger did appear to the King: If the Danger was great, all the Commons, no Age, no Sex, no Order to be ſpared, all Eccleſiaſtical Perſons bound to defend. If the Danger were leſs, thoſe Parts neareſt unto it to defend, no Reaſon to trouble the whole Kingdom, when a few will ſerve the turn: Thoſe that refuſed were compelled by Impriſonment, Seizure of Goods and Lands. The Writs have expreſſed fully and ſignificantly, that no Wages ought to be paid by the King; that when there was apparent Danger, it appeareth by ſome Records, that one Man ſhould not ſerve for another; Care taken by Commiſſion, that all Equality ſhould be uſed in making of Contribution; and when Complaint, as 25 *Ed.* I. was made againſt it, it was remedied; yet it was not *Ratione Contributionis*, but *violentæ extortionis.*

This conſtant Uſage of former Kings is of much more Authority and Weight, than ſcatter'd Judgments here and there, or judicial Proceedings in any Court, and theſe are not wanting. Notwithſtanding, I ſhall now proceed and come to the Time, wherein ſo many great Lords did die, and ſo much noble Blood was ſpilt in Civil War, from *Henry* the Fourth to *Henry* the Seventh; *Henricus Roſas, Regna Jacobus.* There was not then ſuch great Cauſe to look to Preparation for Sea, for the War was then in the Bowels of the Land; and the Sea and the Land make but one Kingdom, and the Reaſons are the ſame for both. And for *Henry* the Fourth, when he was newly come to the Crown, it appears *Rot. Clauſ.* 1 *Hen.* IV. *pars* 1. *M.* 12. *dorſ.* Writs are directed to the Archbiſhops of *Canterbury* and *York*, and other Biſhops; and it recites, that the *French* had prepared a great Navy which was ſeen on the Coaſts, and intended to invade the Kingdom; and that Abbots and Priors ſhould be array'd, *ſine deliberatione*, &c. *& juxta ſtatum & poſſeſſionem*, &c. *& triand' Millenis centenis.* *Rot. viagij* begins 1 *Hen.* IV. to 11 *Hen.* IV. *M.* 20. *de Proclamatione faciend'* to go againſt the Rebels of *Wales*, *de arraiatione faciend'* in the ſame, and Barons aſſigned to the Cuſtody of the Marches called *Battelfield*; leſs Reaſon for this Place of any, for they ſay there were Lords Marches to defend it.

M. 14, 23. *de proclam' faciend'*, to go with the King in Perſon againſt *Henry Percy* a Rebel; and there was an Array of Men by the Sea Coaſts to reſiſt the Enemies, *&c.* and in the ſame Roll, *De hominibus congregandis*, divers other Proclamations, *de hominibus defenſibil'* In the ſame Roll, *De Militibus infra Comit' Lancaſtriæ arriand'*, upon the Inſurrection of the Earl of *Northumberland*, to bring them to *Pomfret*. *M.* 10 & 27. again to go to the Prince *Henry* the Fifth. And in 1 *Hen.* IV. this goes to *Northumberland*, *Derby*, *Lancaſter*, by *Robert* Duke of . . . . . to invade the Kingdom. My Lords, Noblemen, Valets, *&c.* & *omnes homines defenſibiles*, between 16 and 60, that was *juxta ſtatum*, upon warning of two Days, which was in *defenſione Regni noſtri*, to go with the King. *M.* 20. *de hominibus levandis & congregandis*; and of this Nature 4 *Hen.* IV. *M.* 11. *dorſ.* & 10. 5 *Hen.* IV. *pat. M.* 28. *dorſ. pars* 2. Principal Men joined together to array and muſter all over *England*. This hath appeared by the conſtant Common Law of the Kingdom.

Before *Parl'* 5 *Hen.* IV. 24. the Commons pray that the Commiſſions of Array ſhould be conſidered, and the Judges adviſed with, and a Commiſſion made for the future, *ad arriand' & triand' qui de Corpore ſunt habiles*, &c. *juxta ſtatum & facultates*, &c. & *ad aſſidend' & proportionand'*, with Power to diſtrain. 7 *Hen. Fitz. Her. Thorney* Title *Protection*, the Subjects of *England* not to go out of *England* with their King. This was upon the King's going to aid the Duke of *Flanders*, *Report* 7 *fol.* 7. *Calvin*'s Caſe, not to go without Wages when they were to follow the King. In *Henry* the Fifth's time there were great Wars with *France*; but when the King went, he took great Care that *England* ſhould be provided for. *Pat.* 3 *Hen.* V. *M.* 17. *dorſ. pars* 2. *de araiatione faciend'*, Care is taken that all ſhould be arrayed, and being arrayed, ſhould continue ſo arrayed. *Stat.* 1 *Ed.* I. it provides that they ſhall not go out of their Counties but upon the ſudden coming of ſtrange Enemies; and upon Warning, they were not only to array them, but to lead them to the Sea-Coaſts out of their Countries, when and where it ſhould be neceſſary, *cum aliquid periculum eveniat*, notwithſtanding the Statute, which is our Caſe; nay, our Caſe is much ſtronger: And 3 *Hen.* VI. is *verbatim* with the other. 6 *Hen.* V. *Pat. M.* 8. *dorſ. pars* 101. 3 *Hen.* V. 16. *dorſ.* this was upon the Threatening of the King of *Caſtile*, to all the Counties of *England*. 7 *Hen.* V. *Vaga Regis*, divers Privy-Seals to all the Counties of *England*, to inform the King what able Men of *Anceſtry* there were, *ad defenſionem nos in propriis perſonis ſuis ad defenſionem Regni*, and the Return is *pur defence de ſon Roalme*. In the time of *Hen.* VI. *Rot. Pat. M.* 37. *dorſ. pars* 2. *de Araiatione faciend'*. 7 *Hen.* VI. *pars* 1. *M.* 7. *dorſ. Rot. Pat.* there is *quia datum eſt nobis intelligi*, for the Iſle of *Wight*. *Rot. Pat.* 7 *Hen.* VI. *M.* 5. *dorſ. pars* 1. 13 *Hen.* VI. *M.* 3. *dorſ. de Militibus congregandis & ducendis verſus Scotland. Pat.* 13 *Hen.* VI. *pars* 1. *M.* 13. *dorſ. Contra Militiam Inimicorum*, a full Command to array all, and to bring them *ad Coſteram Maris* and other Places, & *juxta gradus ſuos.* 14 *Hen.* VI. *pars* 1. *M.* 20. 21 *Hen.* VI. *M.* 40. *dorſ. Rot. Pat.* 28 *Hen.* VI. *M.* 11. *dorſ. Rot. Pat.* 29 *Hen.* VI. *pars* 1. *M.* 45. *dorſ. Rot. Pat.* 37 *Hen.* VI. *M.* 6. *pars* 1. *dorſ.* all Arrays, A Book-Caſe 28 *Hen.* VI. 11. *b. pl'* 22. Divers of the Clergy had Churches to be freed from the Payment of Tenths for the Defence of the Kingdom, and the Clergy did grant ii*s.* in the Pound without Act of Parliament, and this ſent by *Mittimus* into the *Exchequer*. *P.* 26 *Hen.* VI. *Rot.* 10. & *Trin.* 11. for levying of Money upon *Sciri Facias*. 36 *Hen.* VI. *M.* 2. *dorſ. Regis* 1. *Part.* Array in the Iſle of *Thanet*, and compel them by Diſtreſs, *pro defenſione Regni*. 37 *Hen.* VI. *Pat. M.* 1. & 6 *dorſ.* A Writ to many Counties, becauſe of the great Hurt done to the People by the Sea-Coaſts, and the great Preparation to do more Hurt; thereupon Command to train and array all Parts of *England*, *pro defenſione*. And the 39 *Hen.* VI. *Pat. de poteſtate* to array the Iſle of *Wight*, being invaded *juxta gradus & conditiones*, &c. 39 *Hen.* VI. *M.* 9, & 11. *dorſ.* A Commiſſion to *Edward* Duke of *York*, who claimed the Crown, and it was adjudged him. 31 *Hen.* VI. *Pro araiatione faciend' quæd' perſon' fil' iniquitatis diſſentientes*, &c. therefore is a Command *pro ſecuritate perſonæ noſtræ & populi noſtri ad invocandum omnes defenſibiles* to deſtroy them. *Pat. M.* 9. *dorſ. de villa de Stamford ad cuſtodiend'*. *M.* 1. *dorſ.* a Commiſſion and Command given to *Edward* Duke of *York*, *Ed.* IV. which gave power to raiſe Men and Money at *Briſtol*, *Hereford*, and other Places; which was cancelled, and other Commiſſions given in the Room. In the Time of of *Edward* IV. *Rot. Pat.* 1 *Ed.* IV. *M.* 8. *dorſ.* for reducing *Henry* the Sixth's Power, *Congregare* all the People. 1 *Ed.* IV. *M.* 8. *South-Wales* on the Marches 1 *Ed.* IV. *Scot. Rich.* Duke of *York*, *Cuſtos Weſt-Marchiæ ad omnes homines defenſibiles*, in *Cumberland* and *Weſtmorland* between 16 and 60, *ſint prompti in defenſionem Marchiarum*, &c. againſt *Percy* Earl of *Northumberland*. *Rot. Scot.* 10 *Ed.* IV. there are *Cuſtodes generales verſ. Scot.* for arraying all Men as there ſhould be Cauſe. *Pat.* 3 *Ed.* IV. *M.* 3. *dorſ.* continue *parati ad defenſionem perſonæ noſtræ & Regni.* 8 *Ed.* IV. *fol.* 23. a Book-Caſe, a Subject hath Power to make a Bulwark in another Man's Ground; the King hath as much Power over all the Kingdom, as any particular Man to make Defence, 9 *Ed.* IV. *Pat. M.* 11. Arrays. 10 *Ed.* IV. *Pat. M.* 13. Arrays *in ſalvationem Regni*, when he was like to loſe his Kingdom. A Commiſſion to raiſe Power againſt his great Adverſary and Rebel *Henry* VI. who did lately enjoy the Crown by Uſurpation. 22 *Ed.* IV. *Rot. Pat. pars* 1. *M.* 2. *pro Conductoribus & Waſſatoribus Piſcatorum*, and at the Subjects Charge. *Pat.* 1. *Rich.* III. *pars* 1. *dorſ.* againſt the Duke of *Buckingham quocunqu' Comitat'* and this *juxta ſtatum & facultates*. In *Henry* the Seventh's Time. *Henry* VII. was a wiſe Prince, his Majeſty's Progenitor as well as his Predeceſſor; he ſtaid not till he ſaw the Tops of the Ships, or the Drums beat; he provided for the Safety of the Kingdom betimes; when the War was denounced between *Charles* King of *France* and the King of the *Romans*, tho' he was allied to both, he prepared to defend his Kingdom. *Rot. Pat.* 1 *Hen.* VII. *dorſ.* a Command to the Sheriff to make Proclamation throughout all *England*, That becauſe we are informed of the War between *Charles* King of *France* and the King of the *Romans*, and great Hurt may happen to this Realm, and the Subjects thereof; commanding all Subjects to keep Watch and Ward upon the Sea-Coaſts, and all Beacons to be made ready to be ſet on Fire, as in old Times, and this after Tonnage and Poundage was granted to him for Safety: and I am ſure there are greater Wars about us now, than there were at that Time. *Rot. Pat.* 7 *Hen.* VII. *Intus de poteſtate commiſſa* to the Earl of *Surrey* to go to conquer *France*. 7 *Hen.* VII. *cap.* 1. a Statute in Print. 8 *Hen.* VII. *Rot. Pat. pars* 1. a Command to *Richard Fitz-Hugh* and others, to keep all in Array for Defence againſt *Scotland*, which intend to invade the Realm, *ut informatur*. *Stat.* 1 *Hen.* VII. *cap.* 16. every Subject is bound by his Allegiance, to aſſiſt when need requires, In the time of *Hen.* VIII. *Rot. Pat.* 4 *Hen.* VIII. a Proclamation to the Maritime Counties to be in a readineſs, conſidering the *French* King had in readineſs a great Navy to enter this Kingdom the next Month enſuing, *&c.* and certain Captains deputed to lead them; and they were all to be in a readineſs at an Hour's Warning upon their Allegiance. *Rot. Pat.* 4 *Hen.* VIII. the ſame Commiſſion to *Bouchiers*, *&c.* in Latin, 14th of *Hen.* VIII. which is not in this Roll, but a Book of Proclamations; for before *Edward* the Fourth's time all between ſixteen and ſixty were to be ready at an hour's warning. 15 *Hen.* VIII. the Inhabitants of *Stamford*, *Nottingham* and *Salop*, *&c.* to attend the Earl of *Surrey* upon an hour's warning. 30 *Hen.* VIII. *Pallace treaſur' omnes homines ad arma*, to be ready *ad ſerviend' nobis in Scotland*, as need ſhall be. *Stat.* 35 *Hen.* VIII. *cap.* 13. Remiſſions of Loans, reciting and conſidering, *eſt Duty & honor del People*, to aſſiſt their King in Body, Goods, Lands and Subſtance in his Wars; and there it was only for offenſive Wars. *Rot. Pat.* 36 *Hen.* VIII. *pars* 2. 37 *Hen.* VIII. in Mr. *Moyle*'s Book. 4 & 5 *Phil. & Mar.* Commiſſions of Array to go to all Gentlemen, but now but one Lieutenant of a County; and that Power which the Lieutenant now hath in *England*, was the ſame with the antient Commiſſions of Array in Subſtance, for it is no new thing. Theſe are in force by 5 *Hen.* IV. and Common-Law in Queen *Mary* and Queen *Elizabeth*'s time; and they did not go by the legal Array, but by the Power of the Council-Board. 3 & 4 *Phil. & Mar.* 1557. Council-Board. *Calais* was beſieged on the ſudden, the Enemy making Pretence of going into the Low-Countries, there went preſently a Command to the Lord *Warden* of the *Cinque Ports* 5 *Jan.* to make Proclamation in *Kent*, that all from 16 to 60 ſhould repair to *Dover* to ſave *Calais*, upon pain of Death. 8th of *Feb.* 1557. Letter of Thanks given to Sir *John Edgecombe* for diligently muſtering 1000 Men. 19 *Sept.* 1558. *Northumberland* ſerved without Wages. 1 *Sept.* To continue Watch. 8 *April* 1558. *Whittypoole* for not finding *Demylance*, is called to the Council-Table. Theſe are to ſhew what Proceedings there have been in former times. *Rot. Pat.* 7 *Eliz. pars* 5. A Commiſſion to muſter all Men againſt *Scotland*. 11 *Eliz. Rot. Pat.* tho' not on Record, yet in a Book in the *Crown-Office* in the *Chancery* with Mr. *Willis*: A Commiſſion to array Men, and to provide all things neceſſary, *prout Neceſſitas*, *&c.* and to inform themſelves what Armour they had, and this to be done for our better Service: but with thoſe Commiſſions there went Inſtructions, amongſt which, obſerve this one; 'We require you to conſider how neceſſary this Service committed to you 'is at this time, for the Benefit and Safety of our Realm, wherein we 'think the more Earneſtneſs is the more requiſite, becauſe of our Subjects 'long continuance in Peace, and the notorious being in Arms of our 'Neighbours about our Realm.' If theſe Times be not worſe, I leave it to any indifferent Man's Conſideration. 27 *Eliz.* Watſon *Roll.* A Warrant to the Lord Chancellor to make Lieutenants and Deputy-Lieutenants, which are the old Commiſſioners of Array turned into *Engliſh*. And in 1588, when that great Armada came, all the Realm was in Arms, and at the Subjects Charge. 31 *Eliz. cap.* 14, 15. the Subjects granted a Subſidy, in Conſideration of the Queen's Charge. And the Subjects were then at great Charge, both for Land and Sea, and ſhe took it by the Power of her Council-Table. The City of *London* was deſired to find ten Ships, and of themſelves they deſired to find twenty; this was the Affection of thoſe Times, they did not diſpute but were ready to obey. 28 *April* 1558, a Letter to Sir *Robert Wingfield*, whereas divers Towns in *Suffolk* were charged to ſet out a Ship, and that divers were poor and could not, a Command that the richer ſhould do it. A Letter to the Earl of *Huntington*, that *York* ſhould contribute to a Ship charged on *Hull*. A Letter to other Towns to contribute to *Colcheſter*; they refuſed, yet were compelled to do it for advancement of ſo neceſſary a Service. The Clergy in eighty-eight joined, and the Archbiſhop was Captain. And there were Letters for demoliſhing of Suburbs. *Statute* 3 *Jac. cap.* 6. where the Charge of the People in Queen *Elizabeth*'s Time was remembered, *London* was charged, and Foreigners and Strangers were charged alſo to contribute, for that the Charge was common. In 1588, 3000 *l.* Conduct Money levied for the Earl of *Bath*; they did not ſtay here till the Tops of the Ships were ſeen, but they made Preparations in 87. In 1599, great Troops were aſſembled at *London*, for Defence of the Queen, when the Tumult was about the Earl of *Eſſex*; and in 1598, the Charge being common, the Charge ought to be borne in common: Nay, the Inns of Court were charged with Arms; upon the apprehending the Earl of *Eſſex*, a Letter went to the Benchers of the *Inner-Temple* for that purpoſe, and all the Gentlemen found Arms. Amongſt theſe Letters great Levies of Horſe and Foot at the Country's Charge. And where ſhe would not have their Perſons, ſhe had their Purſes and Power to extend accordingly. 1595, Amongſt the Papers of the Lord *Nottingham*, the People ſet forth a Ship at their Charge; we have the Letter only to ſhew they did it, and how much each Man did contribute. In King *James*'s Time there was not much; the Times were not only peaceable but pacificous, his Motto was *Beati Pacifici.* 10th of *July*, 2 *Car.* A Proclamation iſſued, that all People ſhould make ſpeedy repair to ſeveral Places, and ſhould continue during the Danger. And for a binding Authority, 12 *Car.* the Reſolution of all the Judges under their Hands, and inrolled in every Court at *Weſtminſter*: a Man ſhould have thought that that ſhould have given Satiſfaction, it would have done ſo in former Times. And truly, that the King hath done nothing more, but what the Kings of this Realm have done before, is moſt apparent to all thoſe who will read our Law-Books. How often have the Judges been aſſembled by the King's Command, both in the outward and inward Star-Chamber, and there aſked Queſtions? 2 *Rich.* III. *fo.* 10. 8 *Hen.* VIII. 190. *b.* 101. the King was there, and reaſoned there. Is this a new Thing for Judges to deliver their Opinions? But his Majeſty hath been pleaſed likewiſe to give way, that it might be brought to a publick Debate in a judicial Way; he hopes there are very few that oppoſe it, do it out of any averſeneſs from the publick Service, but to ſatisfy themſelves, and ſo to ſubmit.

To anſwer Mr. *St. John's* Argument; before I come to anſwer in particular to what was objected by this learned Gentleman, who hath taken a great deal of Pains, and made as much uſe of it as was poſſible for a Cauſe of this Nature to bear; I ſhall in the firſt place give a general Anſwer.

I ſay, that the Teſtimony by Records given on the other ſide, whereof many are vouched, which I am glad to hear of; and that Men look into a Buſineſs of this Nature. To make ſuch a Search is for the Honour of the King, that there is, according to Law, the freeſt Acceſs to the Records, that ever was in *England*; and that great * Lord doth know that the King commanded with his own Mouth, that free Acceſs ſhould be to the Records in this Buſineſs; and I appeal to the Officers that keep the Records, whether I did not only deliver that Command from the King unto them, but deſired them myſelf to ſhew to the other Party whatever I had.

* *The Lord of* Holland.

I ſay, theſe Records, take them at the beſt, they are not of ſuch Weight in point of Right, as the other are which are for the King; for if a King ſhall voluntarily, and in eaſe of his Subjects, or ſpecial Grace, do any thing, yet I conceive that is not of ſuch Weight, as when he produces a conſtant uſe of compulſive Power from the Crown, and obey'd by the People: for if any of the Kings have ſpoken in gentle Language, as King *John* when he was depoſed from his Crown; I conceive that will not be ſo much as gentle Words uſed in the Writs.

I ſhall anſwer particularly to all the Records that have been cited: it doth much concern the King, that this Argument be anſwered fully.

The firſt Thing that was ſaid, was, that to ſeize Goods without Suit or Cauſe, is void in Law; but this was not uſed as an Argument, but an Introduction. But in the next place, he comes to a high Objection, that in his Majeſty there is *voluntas interna*, and *externa*; his inward Will which he doth declare in his Chamber, and his legal Will, and withal, that the King cannot judge himſelf, 2 *Rich.* 2. *fo.* 10, 11, which was grounded upon that Book-Caſe.

The King cannot judge in his own Perſon, but hath left it to your Lordſhips, that are ſworn to do equal Juſtice between him and his People; but to ſay, that the King cannot judge himſelf, I queſtion. Can that be wanting in the Fountain, that iſſues in the Stream? that I utterly deny. Is it not ſaid, *Coram Rege* in the *King's-Bench*, and in the *Star-Chamber*, *Coram Conciliis noſtris?* This is a new Doctrine; and ſhall not the King judge? Did not *Ed.* 4. ſit in Perſon in the *King's-Bench*, in a Trial of *Rape?* and that famous Juſtice *Popham* ſat at the King's Feet, and other Judges at the King's Side, and therefore called *Juſticiarii a latere Regis?* Sure he forgot King *James*, who adjudged two Caſes in the *Star-Chamber*, that of *Bellingham*'s and Sir *Tho. Lake*'s Caſe. The Book doth no way warrant his Inference; the Book doth ſay, the King ſhall not judge, but ſaith, that if a Man be convicted before the Judges, the King ſhall not ſet the Fine, becauſe he heareth not the Caſe. This no way concerns our Caſe.

That no Law can be changed but by Act of Parliament, as a Naturalization, and a Legitimation; nay, no Writ of Error but in Parliament, till by the Statute of 27 *Eliz.* and that the Parliament is *Curia Regis*, and cited 34 *Hen.* 8th *Crompton*'s Juriſdiction; the King is at no time in ſuch State-Royal as in Parliament: All that was made out of this, was, that this was a Change of the Law, *viz.* the Writ for Shipping.

We believe it is ſo far from being a Change of the Law, as that it was the Cuſtom of all Ages in former Times. Now he ſays the Parliament is the higheſt Court, and the King is there at higheſt both for Magnificence and Power; but yet out of the Parliament, the King is King of *England*. It doth not follow, becauſe he may do it in Parliament, that therefore he can do it no where elſe; and it is to prove a Compariſon, to ſay, that the King ſhould have the ordering of War as a Generaliſſimo over his Subjects and Vaſſals; all the Generals have their Power from him.

Oh! but the King hath Proviſion for War.

This is but a cunning Inſinuation, to make a Survey of the King's Revenue, and to inſinuate with the People; and he begins with Knight's-Service, Tenures, and theſe in dangerous Places, as *Dover*, *Durham*, *Cheſter*. 35 *Hen. 6. Britt.* that the King ſhould not only have his Wards Lands to breed them up, but to maintain the Wars in the mean time; and that Knight's-Service 37 *Hen.* 6. were inſtituted for ordinary Defence as Horſemen. And becauſe the Kings of *England*, out of their Care to have Men trained up, had Horſemen to follow them, that therefore they ſhall have no Aid when the Kingdom is in Danger, is a ſtrange Inference; ſhall we have no Footmen, no Archers, no Slingers to be uſed in War, no Guard at Sea, becauſe he hath ſome Tenures of Horſemen? This doth not diſcharge the Subject; this is but for forty Days, and was inſtituted to ſuppreſs the ſudden Incurſion from *Scotland*. 19 *Rich.* 2. *Guard.* 165. *pl'* Tenure; they do reſtrain particularly Eſcuage and Knight's-Service to *Scotland* and *Wales*. 22 *Ed.* I. for *Gaſcoigne* afterwards diſcharged, but not for Mr. *St. John*'s Reaſon. *Rot. Clauſ.* 5 *Ed.* 2. *M.* 27. theſe were diſcharged of Eſcuage, becauſe the King was not there in Perſon, and becauſe it was extraordinary. *Rot. Scot.* 5 *Ed.* 1. *M.* 27. that Record doth ſhew the Kings of *England* did conceive that they were ſomewhat leſs than Enemies that refuſed it; for foreign Service I never meant to object it.

Then he ſaith, that Eſcuage is to be aſſeſſed in Parliament, though for the Defence of the Kingdom.

If that were the proper Queſtion, I could ſhew when Eſcuage was not by Parliament, for it was by another Reaſon. It was altered by an Act of Parliament, 17 *Johannis Statute de Running Mead*, *Nullum Scutagium*; for it was not ſo before.

Alſo it concerneth the Subject as well as the King. 9 *Hen.* 3. *cap.* 37. The true Reaſon of aſſeſſing in Parliament is this, other Men were to have Eſcuage as well as the King; now it is true that Rule, No Man ſhall be Judge in his own Caſe, but therefore not the King; that holds no Proportion: and Kings are ſaid to do no Wrong. The true Reaſon why it was aſſeſſed in Parliament, was, becauſe the Lords would take too much. This is from the Buſineſs, I paſs it over.

Then he alledged, that the King is in actual Poſſeſſion of the Wards. That they ſhould go towards the Maintenance of the War, he cannot ſhew any Authority worth the valuing, neither *Bracton* nor *Britton* hath any ſuch Thing; for 35 *Hen.* 6. the Words are *purceo*, *&c.* The Argument will be but thus; becauſe the King out of his eſpecial Care, out of his own Land provided ſome Tenures for that Purpoſe, therefore he ſhall have nothing from the Subject. The King did never give, nor could give other Mens Lands for thoſe Tenures; for it is moſt apparent, the *Normans* came not in by Conqueſt. *William* was no Conqueror; for after he came in, Men did recover the Lands which were their Anceſtors. That was the Wiſdom when *Henry* the Fourth took the Crown by Conqueſt, when he would have altered the Laws; No! take our Laws, and take our Lives. This is an Argument no way conducing to the Purpoſe, becauſe he hath ſome Horſe by Tenure, therefore neither Foot, nor Proviſion for Sea-fight, nor Trained Bands, becauſe Proviſion is made by Tenure. This is contrary to all Reaſon and Experience: What Obligation hath the Soakman and the Plowman's Tenures, what do they pay to defend them? no Conſideration for it; theſe are rather Inſinuations than Arguments.

Then it was ſaid, there were like Tenures for Sea, and he cited two or three; one to hold the King's Head at Sea, and ſome ſuch like, as if two or three Tenures were like to defend the Sea.

It was alſo ſaid of the *Cinque Ports*, that they have many Privileges allowed them for that Purpoſe, 13 *Ed.* 3. *Par' Roll.* 11.

Is the *Cinque Ports* Service a competent Proviſion to defend a Kingdom againſt Hoſtility? I know no Reaſon but the whole Body ſhould defend itſelf. 13 *Ed.* 3. *M.* 9. it appears expreſly, that the Commons made Defence at their own Charge. No Man can be diſcharged of keeping a Thing, that he did not keep; ſo becauſe the Subject is ſaid to be diſcharged, is an Argument that he was charged. That of the *Cinque Ports* is not for the Defence of the Kingdom, but for Intercourſe of Merchants, not *Quando Salus Regni periclitabatur.*

Then they object, that Tenures in ancient Demeſn were talliable without Conſent, and their Service for the King's Proviſions in their Houſe.

No Reaſon that ſhould excuſe them from the General Service; for tho' it be true, that the King's Houſe employs ſuch Tenants, yet the Kingdom muſt be ſupported by them and the reſt of the Subjects together.

Then he did object, there was another Way of Supply of extraordinary Means, as Mines in other Mens Lands; and here he remembered *M.* 3 *Rich.* 2. *Prerogative Comm'*, difference taken between annual and caſual Revenues for Defence.

Then he objected, *Rot. Parl'* 6 *Rich.* 2. 11, 42. that the King would live of his own Revenues, and that the Mines, *&c.* ſhould be for the Defence of the Kingdom.

Onſlowe, who argued the Caſe, ſaid that the King was the moſt excellent Perſon both at Sea and Land; therefore the Royal Fiſh at Sea, and the Gold and Silver Mines at Land, were given to him, becauſe he was able to give a Stamp on Money. And ſo 2 *Rich.* 2. they of *London* prayed that the King would not put them to Charge, but live on his own, and ſo your Authority vaniſheth into Smoak.

The King muſt live, forſooth, of his ordinary Revenues. *M.* 3. *Rich.* 2. which expreſſeth, that the King at that time would do ſo; that the King, by Advice for Salvation of the Kingdom, would uſe theſe things given unto him; that indeed was a reaſonable thing for that time, but muſt it be now turned for a Neceſſity?

6 *Rich.* 2. *M.* 42. *pars* 42. that good Government be about the King; then they petition that he would live upon the Revenues of the Crown, and that all Wardſhips, Releaſes, Marriages, *&c.* ſhould be for the Defence.

The King is very willing to do and ordain in this Caſe, as by the Lords of the Realm may be thought beſt for his Honour and Profit; this is not a granting of the thing, but a referring it to his Lords, at beſt it is but a temporary Deſire!

But oh! he hath the old Cuſtoms, and Petty-Cuſtoms, Tonnage and Poundage; of the Legality of taking of it he will not ſpeak. If the King doth impoſe it on the Merchants, he needeth not to take it of his other Subjects. Duties to the King in this Year, came to 300,000 *l.* and that Tonnage and Poundage was granted for ordinary and extraordinary Defence. 3 *Rich.* 2. 5 *Rich.* 2. 1 *Mar.* granted on Condition, that by the Statute of *Wincheſter*, they were bound to have Arms, and no ſuch Statute for the Sea.

I ſhall anſwer all this; but for Tonnage and Poundage, I ſhall refer it for a particular Place. They ſay, the Courts of Juſtice are maintained by the King, the King hath a Profit thereby, but the Maintenance of them cometh out of the Subjects Purſe; and the Firſt-Fruits were for the Defence of the Faith, that no Hereſy ſhould creep into the Church. Therefore, becauſe the King is Lord of the *Engliſh* Sea, he muſt defend it at his own Charge, and not command the Body nor Purſe of his Subjects towards it. A pretty Argument! He ſaith, the King hath the old Cuſtoms, which are the ancient Inheritance of the Crown, and ſo for petty Cuſtoms, and that theſe muſt go for the Defence of the Sea. See a Judgment in the *Exchequer*, in *Edward* the Firſt's Time; ſearch into the Fine Roll 3 *Ed.* 1. and ſee for what Cauſes theſe old Cuſtoms were. It was never ſaid till he ſpake it, the old Cuſtoms or leſſer were for this Purpoſe. And for this ſaying that the Statute of *Wincheſter*, 13 *Ed.* 1. doth enjoin keeping of Arms, and thereupon all Defence comes, that Statute was repealed by *Philip* and *Mary*, and ſet a foot by King *James*, and again by him repealed. I ſhall ſhew before the 13 *Ed.* 1. many Records for Land-Service long before: for that Statute doth only ſet a Form of Arms, and is not the Beginning of Arms. So for the Objection of the King's Revenues, be it more or leſs.

Now I ſhall come to Tonnage and Poundage, the darling Argument; which I affirm was never given nor taken, of itſelf ſimply, on extraordinary Defence; I have ſeen all the Grants of it: it may be when there have been Wars abroad, and then the Subjects in Parliament have given Tonnage and Poundage with Tenths and Fifteenths, they have been all ſaid to have been for the Defence. Tonnage and Poundage hath been given and taken merely for an Intercourſe of Merchants; and in that Senſe the King ſaid, we do and muſt purſue thoſe Ends for which it was granted to the Crown. I ſhall make that appear by Reaſon, and out of the Grants themſelves and other Authorities.

If Tonnage and Poundage were merely for the Defence of the Sea, how was the Kingdom to be defended before in the Time of the *Saxons?* At the firſt it was 6*d.* a Year, then to 2*s.* and 3*s.* for Tonnage and Poundage; then 3*s.* upon a Ton of Wine, and 8*d.* a Pack on Merchandize, that was all for Tonnage and Poundage, the reſt was for old Cuſtoms. If this was for Extraordinary, how was the Kingdom defended when this was given for half a Year? Truth, it was for Defence of the Kingdom, that is, with relation to the Intercourſe of Merchandize; the Recital 1 *Jac.* ſaith, it hath been taken time out of mind. Hath Tonnage and Poundage been given time out of mind? Then it was before *Richard* the Firſt's Time: *H.* VI. he had it for Life, the Statute doth expreſs it as plain as may be; Time out of mind is beyond the Memory of any Man living. The very Interpretation of the Statute explains it to be for the Safety of the Sea, and Intercourſe of Merchants. In all Ages before the granting of Tonnage and Poundage, the Kings, upon a general Defence, have had other Aids than this by their own Power. Ordinary Charge for an ordinary Defence.

I could have given a legal Anſwer, that it was not given unto the King; no Act of Parliament for it.

Yea, but it is taken *de facto.* Shew your Inſtruments then by which it was taken; that had been a general Anſwer.

But I ſhall carry the King's Honour along with his Power and Practice: *Rot. Franc.* 2 *Rich.* 2. 7 *Hen.* 4. *M.* 23. *Rot.* 11. Tonnage and Poundage granted to Merchants to guard the Sea for Intercourſe of Merchandize; which ſheweth plainly it was for that Purpoſe. To put it without all manner of Queſtion, 6 *Ric.* 2. *M.* 8. *Franc. Roll. pars* 2. Merchants and Mariners had *Cuſtodia maris*, and the King granted them 6*d.* a Pound: Doth any Man think that he would truſt the Safety of his Kingdom with Merchants and Mariners? It was merely for the Guard of the Sea for Merchandize; expreſs Exception in the very Grant, that they ſhould not be bound by this to help againſt Invaſion of Enemies, unleſs a Royal Power come, *regali poteſtate excepta*; therefore this was no extraordinary Service. 7 *Hen.* 4. *Rot. Parl.* is in the ſame manner. And in the *Cloſe Roll*, that the *Cuſtodes maris* ſhould put there a lawful Power for the Safeguard of the Sea againſt the Enemies of the King, except a Royal Power; then Notice to the King, ſo it muſt be underſtood merely for Intercourſe of Merchants. I can ſhew you a Book-Caſe for this, 19 *Hen.* 6. 12. *Quer.* Caſe *Title* Cuſtom. *Bract.* 26. he ſaith, That Aids and Subſidies are granted to the King, to the Intent that the King, by his Admiral, ſhould guard the Sea, to the end that Merchandize may paſs and repaſs; not a Word of the Defence of the Kingdom. And in *Anno* 11. the King was at great Charge with his Navy; caſt up the Accounts of the Sea-Duties, and then it will appear there is not left to him a Penny for the Defence of the Sea. Impoſitions and Prizage of Wine was to furniſh his Houſe, and not for Defence of the Sea. Not only upon this, but there was an ancient Writer that wrote the *Doctor* and *Student*, whoſe Name was *St. Jermine*, who wrote in *Henry* the Eighth's Time; he tells you, *lib.* 2. *cap.* 15. *fo.* 153. The King, out of the old Cuſtoms of the Realm, as Lord of the Narrow Seas, is bound twice in the Year to ſcour the Seas, but not againſt all outward Enemies, but only to put away Pirates and Petty-Robbers. Hiſtory of Tonnage and Poundage. 25 *Ed.* 3. *Parl. Roll. M.* 11, the Commons did pray, that 6*d.* of the 2*s.* a Sack of Wool, and of a Ton of Wine granted, that the Merchants might have ſafe Conduct over the Sea, if it would pleaſe the King; the Merchants for that would make their own Conduct. All the Rolls go in that manner. 3 *Rich.* 2. 2 *Hen.* 4. and they cannot ſhew that Tonnage and Poundage was ever granted for extraordinary Defence, unleſs for ſome great Defence.

Next he alledged that Sea-Duties were born by every Man in the Kingdom, and that *ſecundum ſtatum.* 22 *Ed.* 3. *M.* 4. *Parl. Roll.* which ſays it was in Charge of the People, *& nemy des Merchants.*

All Men muſt bear proportionably their Share in the Charge of Defence; what Conſequence is this? becauſe the firſt or ſecond Year out of the Subjects Purſe for their Commodities, therefore their Lands ſhall be diſcharged in Caſes of extraordinary Defence.

Oh! ſay they, but this *may be* done by Parliament.

By a *May-be* a Man may anſwer any Argument; but a *May-be* will never anſwer a Bill. 23 *Ed.* 1. *Rot.* 3. *dorſ.* the Writs were in *October*, the Parliament at St. *Martin*'s in Winter. In that to the Archbiſhop of *Canterbury*, the King doth but a little compliment with the Clergy, and telleth them he knoweth what Dangers were abroad; the Buſineſs of Shipping was done before the Parliament, ſo the Parliament might conſider of it afterwards. That it was done afore, appears; this Parliament was not held at the Day, but the King doth prorogue it till after St. *Andrew*'s Day, becauſe he was buſy in preparing his Shipping; ſo they came about Shipping when it was gone to Sea before, for the Writ of Summons was the 1ſt of *October*, the Day of Meeting after St. *Martin*'s; that to the Archbiſhop was the 31ſt of *September*; the Ship-Writs *Aug.* 28. and *Sept.* 31. then the reſt, the 3d and 6th of *October*; but all long before the Meeting of the Parliament, and ſo all grounded upon [*it may be.*] And to ſay that the King, becauſe he did a thing voluntarily, therefore he muſt be neceſſitated to it, I know not what Argument it is. *Henry* VII. indeed did bring things to Parliament for the Advancement of his own Ends; did Queen *Elizabeth* ſend any of her Commands out of Parliament? and yet the Subjects gave her Subſidies.

24 *Ed.* 1. Summons there for the Clergy to come if the Truce did not hold with *France.*

I think it not fit at all times, when it ſtandeth upon Intelligence, to communicate it to the whole People. 26 *Aug.* Summons to Parliament, divers Writs in *February* and *April* before, no Money granted in theſe Parliaments; therefore to tell us it might be by Parliament, is a poor Argument.

Walſingham ſaith, Allegiance bindeth the King to Protection, as well as it doth the Subject to Tribute.

The Subject hath a double Protection from Injury and Wrong, in Times of Peace by his Laws, and in Times of War by his Power: Muſt this be done by the King's ſingle Perſon? No, it muſt be done by the Bodies of his Subjects at their Charges. Indeed it is fit that particular Soldiers ſhould be paid.

Oh! but they tell us, that *Forteſcue*, Chief Juſtice of the *King's-Bench*, to ſhew the Law of *England* to be better than the Law of *France*, ſaith, that nothing could be taken from the Subjects but by Parliament.

That is in the ordinary Way; doth he ſay, that no Man ſhall contribute to defend himſelf in imminent Danger? *Ne verbum quidem.* 27 *Ed.* 1. *M.* 7. *Pat.* there the King ſaith he did not buy Lands, Manors, or Caſtles with it, but did it to defend the whole Realm; no more doth our King, but only to defend himſelf and the Kingdom.

In 33 *Ed.* 1. *Rot.* 10. It is objected that a Clerk ſued for his Salary, and had it allowed him: And the King ſupports his Courts by the Fines.

But they came from the Subject. And may not the King give a Salary when he pleaſeth?

14 *Ed.* 3. *cap.* 1. and this were preſt to prove, that Aids, tho' granted in Parliament for Defence, ſhould not be brought into Example.

Theſe were not to be ſpent for the Safeguard of *England*, but *Scotland* and *France*; and ſo it comes not to our Caſe.

48 *Hen.* 3. When the Tenants came with greater Charge than their Service required, *non trahatur in exemplum.*

True, if Tenants by Knights-Service at that time did no greater Service than they were bound in time of Danger, it is but Reaſon that it ſhould not be drawn to be yearly, to make their Tenures higher.

Plowden fo. 315. *Wiſeman*'s Caſe. A Covenant to ſtand ſeized to the Uſe of the Queen, in Conſideration ſhe is Head of the Commonwealth, held no good Conſideration to raiſe an Uſe, becauſe there wanteth *quid pro quo*; and the King, *ex officio*, is bound to do that.

Under my Lord *Coke*'s Favour, it was not in the Caſe. The Caſe was upon divers good Conſiderations, and he put this in by way of Admittance. I can ſhew when this was declared to be no Law.

Next, they alledge, the King is in Poſſeſſion of the Service of the *Cinque Ports*, and of Tonnage and Poundage, and this appears not to be expended; and of other Duties for the Defence of the Sea, and *Lex non facit ſaltum.*

Tempus belli, I reſerve for another Place, for that is one of the three Things conſiderable in this Argument. That learned Gentleman, Mr. *St. John*, did confeſs that (as Neceſſity requires) when the Safety of the Kingdom is in danger, the Subject is bound. If it were material to make it appear whether any thing were ſpent or not, it ſhould have been pleaded at the *Exchequer*, if he would have taken any Advantage upon it.

But admitting they had been all expended, yet the Property of the Subjects Goods, ſaith he, cannot be altered out of Parliament. He did agree the Kingdom muſt be defended, and did yield, that for the Manner of it, it did not belong to the People. 6 *Ric.* II. 2 *Ed.* I. Men and Money belong to the Wars; the Commons did acknowledge it belonged to the King for ordering in all times; the Caution of former Ages was to demand it in Parliament.

We ſhall ſhew in all Ages, the King did it without Parliament. This is a pretty thing, that the King is to direct the War, and yet ſhall have neither Men nor Money without aſking his Subjects Leave. And for that of Property being taken away, in the opening of my Argument I cleared it, I ſhall not trouble you with Repetition of it.

Oh! but they tell us, the King hath borrowed Money to ſpend in the Wars, and promiſed to repay it, and that without a *Salvo* of his Right; this is an Argument they think worth Conſideration. 48 *Hen.* 3. 16 *Pat.*

I know no Law that barreth the King from borrowing of Money, as he hath Occaſion. Is it not of Neceſſity that the King muſt borrow, notwithſtanding both Ordinary and Extraordinary? Muſt the King carry Millions about him? His Occaſions may be ſuch as he muſt borrow, and alſo fit it is that it ſhould be paid again. Doth any Man think, that if the King doth borrow 10000 *l.* of any particular Man, he muſt not be repaid again? 48 *H.* 3. *M.* 15 or 16. Power is given to the Earl of *Leiceſter* to reſort to the City to borrow Money. Great Reaſon, becauſe it is the Chamber of the King.

But the King's Money not coming in, he deſireth to borrow ſo much of the City, and it ſhall be paid when the other Money cometh in; the End was for the Defence of the Kingdom.

But that therefore the King cannot command Aid from his Subjects, becauſe he borrows of his Subjects, is no good Argument.

Then he ſaith, the Law delights in Certainties, as in the Aids *pur file marier*, and to make his eldeſt Son a Knight; theſe are certain, 25 *Ed.* 3.

All Defence is uncertain, till we know the Offence; certainly he muſt be a wiſe Man that can do it. How ſhall a Man know how to defend, and not know what the Defence will require? whether ten or twenty Thouſand? and muſt it not be proportionable to the Offence? Is not this *ſuſcipere majus & minus?* where is the Argument, that becauſe Aids, which were uncertain at Common Law, are made certain by Act of Parliament, therefore muſt this be certain, for which there is no Act of Parliament?

Oh! but the Taillage in ancient Demeſn and Burgage, they are certain; and Mr. *Hampden* he was aſſeſſed at xx *s.* it might have been as well xx *l.* this is uncertain, it doth reſt only in the King's Mercy.

The Writ taketh care they ſhall not aſſeſs unequally: If Mr. *Hampden* be too high aſſeſſed, Mr. *Hampden* might call the Sheriff in queſtion; but the Sheriff of *Bucks* is rather to be fined for ſetting him at ſo low a Rate as xx *s.* We know what Houſe Mr. *Hampden* is of, and his Eſtate too; for any thing I know it might have been 20 *l.* well enough.

But to the legal Part, ſome muſt be truſted with it, and who ſhould be but the Sheriff? and the Parties not without Remedy if over-rated.

Then they come to Authority by Juriſdiction, and that they that have Privileges are not Talliable, *niſi pur grand Cauſe*, and that Eſcuage muſt be ſet by Parliament, which is by Act of Parliament; 17 *Johannis*, that it was call'd *Magna Charta*; and ſo it was in *Matth. Paris*, and confirmed by *Hen.* 3.

He ſpeaketh of it as a Thing of Story, and theſe were for foreign Wars, as ſo not to our Caſe.

Oh! but it was admitted every Man was to keep Arms. 13 *Ed.* 3. 11 *H.* 7. *cap.* 18, and whilſt they are in their own Counties, to be drawn out of their own Charge; but not to be drawn out of their own Counties without Wages.

Henry the Seventh, afraid of his own Title, makes a Law, that no Man ſhould be queſtioned for being with the King in Arms: this was to take away the Occaſion of the People's talking, whether they went upon juſt Ground.

That many Armies have been paid by the King. 2 *Ed.* 6. *cap.* 2. 28 *Hen.* 8. the Rebels in the *North* the King promiſeth Satisfaction. 11 *Hen.* 7. *cap.* 1. the Duty of the Subject is recited in it.

What Argument is this? we ſhew in all Ages where the King commanded his People to attend him or his Lieutenant, and you tell us that he paid other Armies. 19 *Hen.* 7. doth extend to Wars without the Kingdom, as well as within. 11 *Hen.* 7. this laſt did expire with his Death, this doth appear plainly, this was by eſpecial Gift by the King. 4 *Eliz. Dyer* 211. Expreſly it did not extend to the Service of any other King but him.

25 *Ed.* 3. *cap.* 8. None conſtrained to find Men at Arms, but thoſe that held by ſuch Service.

This muſt be underſtood with relation to the Tenure, they were not to come upon common Summons for Eſcuage; but when the whole Kingdom was in Danger, that they ſhould not come, was no Excuſe.

Oh! 26 *Ed.* 1. *Reygnod de Gray* durſt not levy Men without Pay*. The Marginal Note clears this, and ſo no part of our Queſtion; and it appears by *Walſingham, fo.* 74, 75. that the King was actually then in *Scotland*, where he fell from his Horſe, and loſt two of his Ribs.

In the next place they ſay, *Trin.* 31 *Ed.* 1. there is a Refuſal to go without Pay. The Wardens of the Marches of *Cumberland* and *Weſtmerland* writ to the Barons, that whereas the *Scots* lay near the Marches with a great Army, that the People would not march out of their Counties without Pay.

This is eaſily anſwered; there were the *Eaſt* Marches, and the *Weſt* Marches of *Scotland*, ſeveral Counties belonging to each: What Reaſon had they to go out of their own Marches, unleſs they had Money for the keeping of them in their Abſence? *Rot. Pat.* 10, or 11 *Ed.* 2. *pars* 2. *M.* 26. for War of *Scotland.* 9 *Ed.* 2. the ſame diſcharged in the County of *Norfolk.* 13 *Ed.* 3. *M.* 38. the Abbot of *Ramſey*, becauſe he remained in his own County diſcharged; it was no abſolute Diſcharge, but *dum ſic intendit.* 21 *Ed.* 3. *Rot. Franc.* Some are diſcharged from the Cuſtody of the Sea, becauſe they were *prompti* at home; ſome for finding Hobellers and Archers, and this was by reaſon of a Grant in Parliament; ſome were diſcharged, becauſe of their Stay at home to guard the Coaſts. This proveth the Right of the perſonal Service, and of the Contribution.

Another Objection is that of 21 *Ed.* 3. *Rot. Franc.* that they ſhould not be kept continually in Array, but ſuffer them to ſtay in their own Counties; but they were to go as ſoon as there was any notice of an Enemy.

This was for the Wars of *France*, and not for the Defence of the Kingdom.

Oh! but 20 *Ed.* 3. *M.* 6. *Rot. Scot.* there were *Exploratores & vigiles*, which were *Incolarum*; but how *de aſſenſu & voluntate?* But this was nothing, for it was with Aſſent in the *Northern* Parts, and had been done in former Times againſt *Scotland.* Then the 100 Roll of *Feverſham*, which I conceive rather maketh for us, than againſt us; for the Caſtle of *Tunbridge* is to levy 15 *l.* for the King, *pro ſalvatione* of the Caſtle, and to levy it by Diſtreſs. 14 *Ed.* 4. *cap.* 19. the King could not compel the Subject to ſell Victuals for Wars, nor to provide for the Caſtle in the Town, 29 *Ed.* 1.

That was for *Scotland* for Payment of Victuals, and who can command a Purveyance but the King? and that of the Caſtle, it was the Victualling of his own Caſtle, and Subjects were bound to victual their Caſtles. 8 *Ed.* 2. *Rot.* 99. the Marches provided for Victuals, and particular Men paid for Victuals, but they do not ſhew from whence that Money came.

The next is Horſes for the King's Service marked, that if they were loſt they might be ſatisfied for. 24 *Ed.* 1. *Robert* —— loſt a Horſe worth xx Marks, and received Satisfaction in the *Exchequer*, ſomewhat alſo for Wages, *M.* 26 *Ed.* 1. *Rot.* 105, 106.

That is only a *Concordat* how Men ſhould be paid, what the Horſemen ſhould have, and what the Footmen; for *Yorkſhire*, *Northumberland*, and *Cumberland*, were to have no Wages from the King, but to go againſt *Scotland:* yea, that is another thing, *Si contra Scotos*; and that Diſtinction, upon ſtating of the Caſe, will go throughout 14 *Ed.* 3. 34. for Caſtles. 24 *Ed.* 2. 72, 78. *dorſ. John de Sandell. Berwick* was taken from the *Scots*, and for furniſhing of *Berwick* Caſtle, the People are compelled to truſt him.

Oh! but the Priſoners taken in the War, and Hoſtages, were at the King's Charge. 8 *Ed.* 3. Allowances in the *Exchequer* for it. 5 *Ric.* 2. *cap.* 11. examined in the *Exchequer.*

The King, if he hath a Priſoner taken in the War, he is to have his Ranſom; ſhall not the King pay for his Charge? 4 *Ed.* 2. *Rot.* 12. *Roger de Salvage*, a *Scotiſh* Priſoner, the King bore his Charges; ſo becauſe the King payeth the Charges of a Priſoner for which he hath Benefit by his Ranſom, therefore he is to defend the Kingdom.

Dyer 162. A Man in Execution cannot be forced to go to War.

Our Writ doth not deſire to ſend Men in Execution to go to War, for there are enough beſides them.

Then they object the borrowing of Money, and the King paid again for it, *pro negotiis urgentiſſimis.*

The King may have occaſion to borrow Money, and reaſon he ſhould pay it; nothing to the Queſtion.

But the Caſe is, whether all the People, for their Wives, and for their Families Safety, and for the Safety of the whole Kingdom, may not be compelled to contribute to it? The Abbot of *Glouceſter* gave Money to maintain a Damſel, the King took this Money for the preſent, and paid it back again. This was *ad exonerand' conſcientiam:* that for things taken away without Warrant, the Miniſter ſhould anſwer for it, not pay and repay, but ſhall hold themſelves ſatisfied with Reaſon.

But they object, that 26 *Ed.* 1. a Commiſſion went out to inquire, *de Rebus captis, ſive pro cuſtodia Maris, &c.* and the King ſaith, that *il ſera taunt que ſe tenderont a payſe pur Reaſon.*

True, *ſe tenderont a payſe, &c.* which is not to be underſtood, that the King will pay or repay; but that they ſhould hold themſelves ſatisfied *pur Reaſon*, that is, he would give them Reaſon why they ſhould be ſatisfied.

The Third Day's Argument of Sir Edward Littleton, *Knt. his Majeſty's Sollicitor-General, in the* Exchequer *Chamber, before all the Judges, in the Behalf of his Majeſty.*

May it pleaſe your Lordſhip,

I Shall go on where I left; only inform you of one Record, 1 *Hen.* 4. The Writ that went for the Array of the Biſhop of *Canterbury*, which doth recite, that whereas there was Danger upon the Sea, he and all his Clergy ſhould *Manus apponere adjutrices.* I ſpeak of this, becauſe was at ſo low a Time as *Hen.* 4. and it was *pro ſalut' Populi.*

Coia' Pl' 14 *Jac.* Between *Weaver* and *Ward*, Command came from the King and Council, that the Train-Bands in *London* ſhould be muſter'd for the training and making of them ready to defend the Kingdom. One in the training hurt his Companion, and he thereupon brought his Action againſt him: And this was pleaded in Bar, that he was muſter'd by ſpecial Command; and this was adjudged a good Juſtification, becauſe it was for the Preſervation of the Land. 28 *Hen.* 8. which recited that the King did pay them in *Lincolnſhire*; but for the other, he ſaith, that he ſhall remember their Pains.

I ſhall now go on. It was objected, that by the Statute of *William* 1. the People ſhould enjoy their Lands freely, *ſine omni injuſta exactione ſive tallagio.*

This was for Money to be received for a general thing; but that it was not for this thing appeareth in one Chapter, that Knights-Service Tenures ſhould do what belonged to it. The reſt *ſunt Fratres Conjurati ad Monarchiam Angliæ defendend'.* 14 *Ed.* 3. Chap. 1. 25 *Ed.* 3. 1 *Ed.* 1. *Walſingham* 184. All theſe are ſet aſide by the Statute, and concern not our Queſtion. Ours is rateable and proportionable, according to old Practice. And it is one thing to compel a particular Man, and another thing to ſet an equal Rate upon the whole Kingdom.

Ult. Febr. 3 *Car.* A Commiſſion of Loans for the Defence of the Kingdom.

They mean the Commiſſion, which was a Conſideration to levy Monies, by reaſon of the Neceſſity of the Times.

It appeareth in the Journal Book to be for Impoſitions, or otherwiſe to raiſe Monies not concerning this Queſtion. It appears by that, that the King gave a gracious Anſwer unto it; and that it was done for the preſent time only, a Warrant for Advice only. It was done to raiſe Money in general; but no Determination of Right, and ſaid, at your Deſires it ſhall be cancelled.

Then there was a Commiſſion for Loans, 5 *Feb.* 2 *Car.* and this they ſay was for the Defence of the Kingdom.

It appears it was for the Defence of the *Palatinate* and *Denmark*, and for that a Biſhop was ſentenced for his miſtaking; Mr. *Pym* brought up the Articles againſt him.

I ſhall now come to an Objection, worthy the making by Mr. *St. John*; and becauſe it is a thing not truly underſtood, but taken at random, I ſhall crave your Lordſhip's Patience: and that is the Statute *de tallagio non concedendo*, 25 *Ed.* 1. made after the King went into *Flanders*, and agreed upon here by the Prince as Viceroy, and afterwards ſent into *Flanders* to be ſealed by the King, as it is put in ſome Books. The Words are general: No Talliage to be taken without the Conſent of the Lords in Parliaments.

For this I deſire the Liberty to inform you of the Story of the Times, to make a better Anſwer. This is not all, in ſome Statute-Books it is not mentioned; in others, no King's Reign mentioned. And in *Ed.* I. no Year of it, and now they would apply it to the 25 *Ed.* 1. and this they would ground upon the compelling of Aid, 23 and 24 *Ed.* 1. And the Commiſſion in 24 *Ed.* 1. did iſſue upon that, and conſequently that this Aid was the Aid complained of, and then redreſſed.

Walſingham, a Monk of *St. Albans*, they rely upon for this, that wrote ſome ſeven-ſcore Years after the thing was done. Sir *Edward Coke* ſaith, Chronicle Law is not much to be regarded. True he ſaith, Chronicle Hiſtories may ſhew us the Times, but if it tell us what the Law is, we are not to believe them. No Hiſtorian, that I ever knew yet, ever read the Records, and therefore no true Hiſtory; for the moſt part they are taken up in *Paul*'s, or the Street.

To take ſomething in Conſideration, by way of ſtating the Caſe, upon the Statute *Confirma. Char.* and the other *de Tallagio non concedendo*, that is, that no Aid ſhall be levied but by Conſent in Parliament.

The firſt Statute is, that no ſuch Aid ſhall be levied, the Nature of it, and the Acts themſelves rightly compared, there remains no Scruple againſt the Caſe.

Three things for the true underſtanding thereof muſt be conſider'd. *Firſt*, what kind of Aids had been in uſe before 25 *Ed.* 1. and for what they are taken.

Secondly, how and what Remedy was given by that Statute.

And *Thirdly*, how far that Statute *de Tallagio non concedendo* is in Force and Authority in this Caſe.

For the Firſt, it appeareth in the common Story, that in 21 *Ed.* 1. the King of *France* had ſeized all the Dutchy of *Gaſcoigne*, upon Pretence that he did not appear at his Parliament at *Paris* upon a Summons. Thereupon the firſt took a Courſe for the regaining of his Dutchy, and the War continued with various Succeſs, till 25 *Ed.* 1. And he had alſo War with *Scotland* and *Wales.* For tho' *Wales* was taken 12 *Ed.* 1. yet there was one *Madox* who pretended himſelf to be of the Blood of the Prince, till 23 *Ed.* 1. and till that Year they were not quieted. And he having all theſe Wars againſt *Flanders*, *Gaſcoigne*, *Scotland* and *Wales*, ſome at one time, ſome at another, and moſt altogether, divers Aids and Supplies were taken upon theſe Occaſions of ſeveral Natures; ſome were by voluntary Grants of the People, ſome were by Impoſitions and Levies by the Names of Talliages or Taxes to be paid to the King, ſome by Aſſeſſment of Lands, as the Abbot of *Robertſbridge*, 25 *Ed.* 1. All this appeareth by the Commiſſion to enquire of Extortion.

And beſides all theſe, ſome by Prizes of Goods and Money taken from the Poſſeſſors without any Payment, Rates, or Taxes. Nay, there was then ranſacking of the Monaſteries, and taking of the Monies found there; Mr. *St. John*'s Caſe for Money taken out of their Treaſury: and beſides all theſe, there were ſome by way of Ranſom, as Mr. *St. John* rightly obſerv'd, and ſhewed his Learning and Induſtry, that the Clergy upon their Denial were put out of the King's Protection: And they did ranſom themſelves by giving a fifth Part of their Goods. *Pat.* 25. *Ed.* 1. *M.* 11. *pars* 2. The People being thus grieved with ſuch Aid and Prizes ſo extraordinarily taken for the Maintenance of Foreign War, obtained that it might be enacted, that ſuch Aid in a relative Term may not be granted nor taken without their Conſent, by the Statute of 25 *Ed.* 1. and *Confirma' Char.* Obſerve this one thing, the Markets of *England* three Years before had granted the King *Subſidium pro guerra*, upon every Sack of Wool five Marks; three Marks upon Woolfells; upon every Pack of Skins five Marks: And this was granted of their own Free-Will, and this was to continue for two or three Years. 22 *Ed.* 1. *M.* 2. *Sine Roll.* where it is there relicted. Next Year, before *Confirma' Charta*, all the Laity, except Cities, Boroughs, and ancient Demeſn, had granted to the King in *Subſidium pro guerra*, the 11th Part of their Goods, 24 *Ed.* 1. *M.* 2. *pat. Pars.* 2. And the Summer before *Confirma' Chart'* an 8th granted by all the Laity, except the Cities and Boroughs; and they granted a Fifth, and this was ſtill for the War, 25 *Ed.* 1. *M.* 11. *Pat.* The Application is this: Thoſe many Aids of theſe ſeveral kinds having been granted for the War, divers Men of that Time did doubt and fear, that however they meant it but for a certain Time, yet being not ſo clearly expreſſed, it might bind them for the future; and that they ſo doubted, appeareth by *Confirma' Char'*. And foraſmuch as divers of our Realm are in fear, that the Aid and Taxes which they have given us before time towards our War and other Buſineſs, of their own Gifts and Good-Wills, might turn to a Bondage to them and their Heirs; and likewiſe for the Prizes taken, we do grant for us and our Heirs, that we ſhall draw no ſuch Aid, Taxes, nor Prizes, into a Cuſtom, for any thing done heretofore, be it by Rule or any other Precedent that may be found.

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* *Baronibus elegendis pro hominibus Scot.*

Then, my Lords, for no occaſion ſuch manner of Aids, Taxes, or Prizes ſhall be taken, but by common Conſent; but it endeth not ſo, ſaving the ancient Aids and Prizes due and accuſtomed. This being the State of the Caſe, be pleaſed to obſerve the Complaint of the People; this kind of Aid, it is plain, was never meant there, when *ſalus Populi periclitabatur*, and may be levied notwithſtanding the Statute: For the Act is only againſt ſuch kind of Aids as had been voluntarily granted by the People, ſome by Merchants, and ſome by others, that they ſhould not be taken againſt their Wills hereafter, but by Conſent in Parliament. *Such* is a Relative, it is not general no Aids, but no *ſuch* Aids.

Secondly, It refers to thoſe that were voluntarily granted to the King for *Scotland* and *Wales*, and his other Wars.

And another Reaſon why theſe Aids that had been for the Cuſtody of the Sea, could not be ſaid to have come of their Good-wills: For obſerve the Abbot of *Robertſbridge*'s Caſe, it appears plainly it was done againſt their Wills, for the Cuſtody of the Sea, by virtue of the King's Writ.

Auguſt before *Confirm' Char'* thoſe that had given an 8th Part, they did obtain expreſly Letters Patents, that ſuch their free Gifts hereafter might not be *in ſervitutem*, 25 *Ed.* 1. that is the very thing doubted in *Confirm' Char'*. Now thoſe that had granted an 8th, had no Reaſon to do it, for they had a Charter to free them, but the other had not: And therefore the Statute might well ſay, ſome did fear. So upon the whole Matter, there are no other Aids but theſe voluntarily granted at that time, none in the Body of the Act but thoſe granted with a Good-Will, for thoſe Foreign Wars; and the Forty Shillings received by the King upon every Sack of Wool, with three Marks granted 22 *Ed.* 1. was by the Merchants only for the War in *Gaſcoigne*; and thereupon it was enacted, that the King ſhould not take ſuch things but by Conſent.

There is alſo in the Statute *Confirma' Char'* an Exception, that all ancient Aids due and accuſtomed were excepted; and therefore what kind was meant in the body of the Act, the Exception makes clear, ancient Aids excepted; this was an ancient Aid; and therefore never meant there to introduce a new Law, that no Aid ſhould be taken, but no ſuch Aid. No Impoſition ſhould be taken; but the Practice of all Ages ſhews this hath been levied ever ſince, from time to time, which is an Interpretation of the Words of the Law. This I do open, to make way to the Statute *de Tallagio non concedendo.* Thrice in the Statute is this Word (ſuch) but that they ſhould make uſe of that Statute *de Tallagio non concedendo*, of itſelf, without relation to that; whereas it will appear it is a mere Extract out of this, and no Statute itſelf: For Debate of that; this *de Tallagio* is the ſame with that *Confirm' Char'*, it is a plain Extract of it, or ſome other thing at ſome other time. Sometime in ſome printed Book, *nullum Tallagium*, no Aids ſhall be taken by the King; ſometimes without Notes of Time when made, and at the beſt it is no more, but it is ſaid it was made in the Time of *Ed.* I.

If we ſhall compare *Confirma' Char'*. and the Articles that were in this, we ſhall find it to be nothing but an Extract out of that Statute, and that it was no Act of Parliament. And to make it appear it was an Extract taken out of it, obſerve the general Heads *de Tallagio non concedendo.*

Firſt, the Charter againſt Prizes. Secondly, Another againſt Wool. Thirdly, A general Confirmation of the Laws and Liberties. Fourthly, A Pardon to divers Lords there.

Theſe are the things in which they would make it a Statute of itſelf, all expreſſed in *Confirm' Char.* they do not differ in Subſtance. A ſixth Head is the very Year of the 25 *Ed.* 1. for the Pardon of thoſe Lords was made 5 *Nov.* 25 *Ed.* 1. this ſame was ſealed by the King Word by Word, proved by the Statute-Roll, the very ſame Roll that hath *Confirm' Char.* the next *Fol.* The Monk did miſtake this Statute. No Man will believe a Monk, that wrote ſevenſcore Years after, againſt a Record.

I ſhall ſhew what was ſent over into *Flanders*, and that was *Confirm' Char.* and did bear Date the 10th of *October*, the King being then in *Flanders*, and was there ſealed by the King himſelf. That it may appear, there is no manner of queſtion of it, here is the very Copy of the Statute-Roll; and the whole *Confirm' Char'*. is recited *verbatim*, in Witneſs, 10 *October* 25. of our Reign: Whereas *Walſingham* ſaith, that this very Charter, Word for Word, was ſealed in *Flanders*, under the Great Seal of *England*, 5 *Nov.* 25. of our Reign, and ſent back into *England*. For this Statute-Roll againſt that time, doth expreſly ſay, that this was the Charter that was ſent over into *Flanders*, and hath the ſame Teſte, Word for Word; and this was ſent back into *England* to confirm it further. The next thing that followeth upon the ſame Date and Roll, is the Pardon of the Earls; this was dated 5 *Nov.* after this *Confirm' Char.* was ſealed.

They have not yet ſhewed that this Statute *De Tallagio non concedendo* was ever entered upon the Roll; nay, it could not be entered: Who would think that an Extract of an Act of Parliament ſhould be enter'd upon the Roll? If they can quit Mr. *Walſingham*, they are wiſe Men; they muſt carry the Practice of all Times. Where did any Man ſee that this Act of Parliament was ever ſhewed to diſcharge Men of the Defence of the Kingdom ſince 25 *Ed.* I? Did no body know this Myſtery to plead, not to defend the Sea and their Land? Did no Man hear of this till now? Shall this, againſt all the Practice of the Times ever ſince, take away ſuch a Flower of the Crown, as to compel People to grant Aid for the Defence of themſelves? A harſh Conſtruction!

If this ſhould be true, it would deſtroy even Acts of Parliament: To what Purpoſe is that Statute made of the 25 *Ed.* 3. if that were totally taken away before? And if no Aid, thoſe Aids *Pur Fille Marrier*, *&c.* are taken away alſo.

Nay, if this be an Act of Parliament, when was it made, before the 25 *Ed.* 1. or ſince? It appears not when: It is *individuum Vagum*, I know not what, but in Truth an Extract. Nay, if this be an Act of Parliament under theſe Words, no Taillage is equivocal as well as Aid; that is proper Taillage that is laid upon Villages. 25 *Ed.* 3. 100 *Avowry.* *Entries* 406. *b.* 8. *Ed.* 2. *Execution* 15 *Ed.* 3. 106 *Avowry.* A Rent may be releaſed by the Name of Taillage: No Mention of this in all Ages.

Then it was objected, that 25 *Ed.* 1. *M.* 7. *pars* 2. expreſſed in the King's Proclamation 12 *Aug.* before ever he was going into *Flanders*, that he was ſorry for the Aid demanded of his People.

Let him remember for what Reaſon he did demand thoſe Aids which he was ſorry for; they were Aids granted not for the Defence of the Kingdom alone, but for the Defence of the Kingdom mixed with foreign Defence, by reaſon of Wars with *Gaſcoigne*, *Wales*, *Scotland*, and elſewhere; for that it was for foreign Wars. Upon this followed the Commiſſion, 26 *Ed.* 1. *Pat.* that went to all the Kingdom, which makes for us.

There are three Parts in that Commiſſion: *Firſt*, To obſerve if the Officer did any thing without Warrant, they ſhould return it. *Secondly*, If done wrong, the King would anſwer it. And, *Thirdly*, They ſhould be ſatisfied with Reaſon if the King did warrant it. The Anſwer thereunto given was upon another Conſtruction made of the Words of the Record in the Parliament 2 *Ric.* 2. The Cauſe was this: the Chancellor declaring the Cauſe of Calling the Parliament, he doth ſhew, that the King, in the End of the laſt Parliament, had aſſigned ſome Lords to be of his continual Council for the Year following; the Number was ſeven that were aſſigned, and they were ſworn to give good Counſel for the Aid of the Kingdom. Theſe Counſellors treating of the Peril of Enemies from all Parts, and the Matter requiring Diſpatch, they durſt not undertake the ordering of ſo perilous a Thing, therefore ordered a Grand Council to be aſſembled. The Grand Council was aſſembled, to whom was ſhewn the great Peril and Miſchief of the Kingdom apart, by War, by Land and Sea; and that nothing was remaining in the Treaſury for the Maintenance of War: For a final Concluſion, that they might remedy this Miſchief, they ſay, that it cannot be done without Parliament; this was the *Engliſh* of it, and in the mean time an Army might be landed: And for the preſent Supply of the Charge of ſuch an Army, they lent the King great Sums, which by great Security and other Things, he did engage himſelf to pay: Upon this the Lords did adviſe how it might be done with the leaſt Charge to them all, and how the King's Right of his Crown, and other Inheritance beyond the Seas might be ſafe, and the King, Kingdom, and themſelves defended, to the Confuſion of all their Enemies: To this Purpoſe the Treaſurer was directed to be ready to ſhew what was expended the next Parliament, to be beſtowed for the Marches of *Scotland*, *Wales* and *Ireland*; and ſaid in that great Council, they could not remedy that Miſchief without charging of the Commons, which cannot be done, ſay they, without Parliament.

It is plain, by the Story of that Time, and the Words of the Chancellor, that it was for the Maintenance of the War in *France*, *Scotland* and *Ireland.* And tho' the Defence of the Kingdom be mentioned with theſe Wars, yet the main Supply was for theſe foreign Wars.

In the next Place, a little before in the Parliament, the like Aid for the like Occaſion was deſired by the King, 2 *Ric.* 2. *M.* 24, 25. *Parl. Roll.* What did the Commons ſay now? They ought not to bear ſuch foreign Charges. The King gave them a fair Anſwer, admoniſhed them, for *Gaſcoigne* concerned the Kingdom of *England*, for that is as a Bulwark to the Kingdom of *England: Burbacon* is an old *Fort de Hors*; for the Aid demanded in that Parliament was with this Relation as conſonant; both together concerned the Defence of the Kingdom, that they might be Bulwarks for the Kingdom of *England.*

In the next Place, who ſpake theſe Words? The Lords, ſaid they, could not remedy the Miſchief without a Parliament. The Lords aſſigned by the Parliament, they muſt not do it; it is dependent upon the other Part, the Lords could not do it that Way.

But ſhall we come home, and ſpeak plain *Engliſh?* We know this was 2 *Rich.* 2. a young Prince. It doth appear expreſly, that theſe things were brought into the Parliament for Advice, which were fit for Royal Authority, for Expence for Wars, and for Counſel, and for governing of his Realm. It appears further, by the very Chancellor's Speech, that the Council had been heretofore ordained for the guarding of the Kingdom, 2 *Rich.* 2. *Rot. Parl.* This Parliament taking notice of the King's tender Age, they took much Power unto themſelves. There was to be a Council for the governing of the Kingdom in general; but the Counſellors ſhould be choſen to govern the State for two Years, and theſe Counſellors not to be removed from the King without the Parliament: and more than that, his Treaſurer was to be governed by the Parliament, and his Counſellors choſen in Parliament.

At the End of the Petition of Right, neither Lords nor Commons, jointly nor ſeverally, can make a new Law without his Conſent; and that your Lordſhips, and none but you, are the Interpreters of the Law, wiſe King *James* did declare.

The next Thing conſiderable is, *Tempus Belli* to defend it. It is when the Condition of the Time is ſuch, that the Current of Juſtice and Law is by ſuch Violence ſtopp'd, as Judges do not ſit, nor Sheriffs dare execute their Office, nor any Court is open, eſpecially the *Chancery*, which is *Officina Juſtitiæ*.

It was ſaid there was a Time when the King might command this Levy, to which they did agree: They did agree the King might command this Levy when he hath proclaimed a War, tho' no Stroke ſtrucken, no Danger, nor Armies, nor Opinion of any Force coming; this doth put it into the King's Power by their own Conſent. And by all Reaſon, 19 *Ed.* IV. 6. *Brian*'s Opinion. How many Wars have been proclaimed in this latter Age? No War denounced in 88, tho' conſulted of in *Spain*; and they did not think fit to denounce a War, ſaith Sir *Walter Raleigh*; thoſe Days are paſt. Now they begin by the Sword, not by the Trumpet or Herald.

In the next Place, they ſay, if the King be in the Field with his Banners diſplay'd; this they ſay was *Tempus Belli*. Cannot the Courſe of Juſtice ſit then, but there muſt be a Peace? 39 *Ed.* III. *Rot.* 10. Did not the Court of Juſtice ſit then? Our ordinary printed Books ſhew what Cauſes of Law then were. And in *Henry* the Sixth's Time, in all our Civil Wars, and in *Henry* the Seventh's Time, they ſat then. But the true Time, to make it *Tempus Belli*, is to make a War againſt the King.

In the *North*, towards *Scotland*, when the Enemy approaches, is it neceſſary that it muſt be a Time of Peace, becauſe the Court of Juſtice ſits at *Weſtminſter-Hall?* There may be then a ſtrong War in the *North* and *Weſt*, as ever was in *England*, when the Court of Juſtice ſits here. That *Tempus Belli* may be in ſome Places of the Kingdom, and in ſome Places not, appeareth 33 *Ed.* III. and who ſhall diſcern if there be any Danger?

They agreed in general, the King may do it, and that the Power of Diſcerning is in his Majeſty: I ſhall leave it in the King, till Mr. *St. John* finds a third Perſon to do it.

13 *Hen.* IV. for the Murage, they ſay that this doth only charge thoſe things that are *venalia*, for Men are not compelled to go to Market.

How ſhall they then live? True, it is not compulſory to go thither, but it is compulſory to pay the Money.

1 *Ric.* II. *M.* 176. *pars* 2. A Petition from the City of *London*, to have all Owners of Lands to be rated with them in the Danger of Wars, not having Lands in Tenure to do it.

This doth make for us; that not only Merchants, but every Man in the lieu of Tenure to do it. The Lord *St. Albans* ſaith of *Hen.* the Seventh, that Kings may fall from their abſolute Power when they ſee Cauſe, but not be compelled to do it.

They ſay Supplies are called thoſe things, *ſine qua non* the Kingdom may not be defended: And becauſe there is a Way by Parliament, therefore no other Way.

They ſay it will not be affirmed, that the King hath the ſame Power for an Offenſive, as Defenſive War: I affirm, nor defend nothing; the Parliament is a great Body, and the Kingdom may be loſt in the Interim.

Then they alledge there is forty Days for Eſoinage, and the like for Parliament. Many times Things are impoſſible, and inconvenient to be done by Parliament.

Firſt, impoſſible; the Neceſſity may be ſuch that it will not brook the Delay of a Parliament. 48 *Hen.* III. Summons to the *Cinque Ports.* They come Day and Night to the King when any Danger is.

It hath been ſaid, that there are ſeven Months between the Teſt of the Writ and the Ships being at *Portſmouth*; in that Time a Parliament might have been ſummoned.

The great one, and the true Anſwer is, that this reſteth ſtill in the King's Judgment. If the King hath Intelligence that foreign States will ſet out the next Spring a Fleet, and for Conveniency of his People, ſendeth ſeven Months before-hand to raiſe this Aid; hath the People any Cauſe to complain of this? Mr. *Hampden* hath not paid the Money yet, being two Years after.

If they ſhould have gone by Parliament, ſee what Rubs in this Caſe might be. Forty Days are ſpent before the Parliament ſits: Then when they meet in Parliament, there is a Ceremony in chooſing of a Speaker, Solemnities in theſe take up Time: Then the Lords take Things into Conſideration, then they muſt have Conferences and Diſputes with both Houſes; before they agree, the Kingdom may be loſt: In the mean time, ſuppoſe this comes in ſome reaſonable time, to make Aſſeſſments firſt in the Cities, then in the Burroughs, then particular Aſſemblies, then Diviſions; and after all this, there muſt be Collectors appointed to levy the Money; what a great deal of Time is ſpent in all this, every Man may ſee.

Our County, ſay they, is an Inland County, and they cannot find a Ship ſuddenly; and therefore the greater the King's Mercy and Favour to lend them his Ships inſtead thereof. When all this is done, and Ships provided, reaſonable Time muſt be allowed to ſail from the *North* to *Portſmouth*; but this doth ſolely reſt in the Judgment of the King.

31 *Hen.* VIII. *cap.* 8. An Act of Parliament not to take away any of their Inheritance or Lands.

Here is no Lands or Goods taken away; only let them contribute to the Defence of themſelves, and all is done. Mr. *Hampden* hath had none of his Goods touched.

They ſay, for Shipping it was done in King *John*'s Time at the Subjects Charge; but they do not meddle with Land-Service at that time. 15 *Johan.* 13. *dorſ. Rot. Clauſ.* King *John* had Buſineſs beyond the Sea. That this was rather for beyond Sea, than the Kingdom, appeareth thus. The Writ ſaith, to have ſuch Ships as would carry eight or ſix Horſes, and that muſt needs be for ſome foreign Service, and not for Land-Service at Home. And it appeareth, *Rot. Clauſ. M.* 1. *dorſ.* the King was well landed at *Rochel.*

For the Terms of the Law, which concerns Hidage and other Things, *Bract.* 37. and ſome Services introduced by common Conſent, I will not trouble you with it.

To come to the Caſe of the Abbot of *Robertſbridge*, that Arms was laid on by the Statute of *Wincheſter.* That will not ſerve, Arms was long before that Time. They ſay the Aſſeſs was in time of War; the *French* had burnt *Dover*, 23 *Ed.* I. and that the Aſſeſſment was not made by the King's Authority: but it appears it was by the King's Authority, by Virtue of his Writ. 25 *Ed.* I. *Lo. Treaſ. Rememb. Leybourne* was Admiral of all the Kingdom; and was *Cuſtos Maris & Maritim'* for ſome Parts: but that it was for Land-Service, and not for Sea-Service.

Cuſtos Maris & Maritim' are Terms convertible; he that doth one, defends the other.

They have left no Stone unturn'd to take away the Force of this Caſe. They tell us now, the Clergy was put out of the King's Protection this Year, and ſo it appears in the *Exchequer*; but they have not ſhewed any ſuch Writ delivered into the *Common-Pleas*, only *Spencer's* Word of Mouth, that they ſhould have no Privilege there. Suppoſe it were ſo in other Courts: 25 *Ed.* I. it appears plainly, that the Clergy came all to be in the King's Protection, and gave Ranſoms; and this Cauſe was not till *Michaelmas* after. And whereas it is ſaid, this Abbot's Caſe did only concern the Land-Service, it proveth both the one and the other; Money for the Sea-Service, Horſe and Man for the Land-Service.

Oh! they ſay, 29 *Ed.* I. *Mag. Char.* was not obſerved; and inſtanc'd *John de Gray*, and *Philip*'s Caſe.

Whatſoever was the Practice of that Time, is not material. And for that of the Charter of the Foreſt, they ſay, tho' it be there ſaid, *Nullus amittat vitam vel membrum pro venatione noſtra*, yet one was beheaded.

But what is all this to the ſafe Cuſtody of the Sea? Nay, they have not ſhewed your Lordſhips, that there was any thing in that great Charter for the Cuſtody of the Sea. 51 *Hen.* III. *fol.* 84. *Britt.* 117. *Flet. & Fitz Her.* Lord *Coke* on *Littleton.* Perhaps queſtion might be about this in the *Exchequer* at this time; the Caſe of *Shoreham* diſcharg'd of Land-Service, becauſe they found Shipping.

They that were neareſt Danger, moſt fit for that Defence; as the King, in the tenth Year of his Reign, ſent only to Maritime Towns.

2 *Ric.* II. *M.* 42. They ſay *Beverly* was diſcharg'd, becauſe it was an Inland Town, therefore no Inland Town ought to pay. A Writ directed to *William Ruſſel*, Admiral, commandeth only the Sea-Coaſts.

13 *Ed.* III. *M.* 35. *Rot. Clauſ. Part* 1. afterwards diſcharg'd, becauſe of other Service. And for that of *Beverly*, a Complaint that they were to contribute to ſuch a Town to find a Ship; they ſay they have Privileges, but the ſpecial Reaſon why it was freed, was for Reverence the King did bear to *St. John de Beverly.*

Mr. *St. John* knows it; 120 Ships granted to the two Admirals, *North* and *Weſt*, for Service beyond the Sea. 31 *Ed.* I. *de inveniendo* Horſes, becauſe of great Buſineſs in his Wars abroad, he bound them to make Galleys for foreign Service. True, the King at this time was in *Scotland*, and kept his *Chriſtmas* there. Then come to 31 *Ed.* I. as tho' he ſhould do it by Service of the *Cinque-Ports: Newcaſtle upon Tyne* at their own Charges; but when into *Scotland* at the King's Pay, then they came to this. 10 *Ed.* III. *M.* 6. *Rot. Clauſ.* ſent for Ships into *North-Wales* and *South-Wales*; the Writ did ſay, that Wages uſed not to be paid for ſuch Service; and did expreſs in his Writ, Satisfaction ſhould be given unto them, not of Right, but *de Gratia*; and reciteth that Clauſe, that the People were bound unto it. 2 *Ed.* III. 16 *dorſ.* That there ſhould be three hundred Pounds to relieve the Fiſhermen, the King ſhould not have it of the People of that Town. They ſay all theſe Records being Matter of Fact, did occaſion the making of many Statutes of Redreſs. 14 *Ed.* III. *cap.* 1. great Aid for *Scotland*, *France*, and *Gaſcoigne*; 15 *Ed.* III. *M.* 9. contrary to *Mag. Char.* 22 *Ed.* III. *M.* 4. 36 *Ed.* III. *M.* 9. no Goods to be taken without Conſent: Theſe are Things comprehended within the Petition of Right. 37 *Ed.* III. *M.* 2. ſpeaketh only of the great Aids. 23 *Ed.* III. Galleys made: they ſay the King paid for them: that is, upon the King's own Promiſe; but they ſay that is *nudum pactum.* Then they ſay, is the King's Word nothing? 13 *Ed.* III. *M.* 9. called a Parliament, propounded as on the King's Part; they are not liable to the Defence of the Sea. If the Commons have nothing to do with the Guard of the Sea, why is it propounded unto them.

20 *Ed.* III. *M.*——That the Guard of the Sea henceforward be made at the Charge of the King, as hath been promiſed, and there the People diſcharged. They do not affirm in their own Caſe there was any Right. 21 *Ed.* I. *Rot. Franc. M.* 9. 2*s.* on Merchants Wools, and 6*d.* Poundage for a certain Time, and to ceaſe *tam quam*, &c. 22 *Ed.* III. 2*s.* upon a Sack of Wool may ceaſe.

All theſe Things were granted for foreign Wars; and if the Cauſe ſhould ceaſe, then the Thing ſhould ceaſe. 2 *Hen.* IV. Commiſſion for Building of Galleys, the King would confer with the Lords about it: Then 19 *Hen.* IV. 17. 21. touching the Guard of the Sea, not bound unto it.

4 *Hen.* IV. 28 *M.* Tonnage and Poundage not to be taken without common Conſent. A Proteſtation of the Commons doth not bind the King; and concluded with *nullum tempus occurrit Regi.*

The Firſt Day's Argument of Mr. Holborne, *on the Behalf of Mr.* Hampden, *before the Judges in the* Exchequer-Chamber, *in the great Caſe of Ship-Money.*

May it pleaſe your Lordſhips,

IN Obedience to your Lordſhips Commands, I am ready, tho' not as I deſire, nor as the Cauſe deſerveth, to argue it; it being impoſſible for one in ſo ſhort a Time to be fitted to make a Reply to the Life of the Cauſe of an Argument, ſo long, ſo learned, and ſo full of Records, wherein neither Labour nor Learning was wanting. I may ſay of him, as one ſaid once, *Etiam hæc defenſa fuiſſet.*

I ſhall now rather ſhew your Lordſhips what I ſhould do, than what I ſhall for the preſent. I ſhall proceed well, hoping the Subject will excuſe, and your Lordſhips greater Care ſupply my Defects, which have been without any Default.

My Lords, the Caſe upon the Records ſtands thus: In *May* laſt there iſſued out of the *Exchequer* a Writ of *Scir' Fac'* to the Sheriff of *Bucks*, to warn my Client to ſhew Cauſe, why he ſhould not pay xx*s.* aſſeſſed upon him by the late Sheriff of that County, for the finding of a Ship of War mention'd in the Writ, 4 *Aug.* 11 *Car.* ſent into that Inland Country, and the xx*s.* certified into the *Chancery* to be unpaid, and ſent over into the

Exchequer by *Mittimus*, to be levied there. Mr. *Hampden* hath appeared, and demanded Oyer of the Writ 4 *Aug.* of the *Mittimus*, &c. and upon the Reading of them all, hath demurred in Law generally; and the King's Counſel have joined in Demurrer: and I humbly conceive Judgment ought to be given for my Client.

My Lords, I ſhall proceed to the ſtating of the Queſtions, which are three: the firſt, which is a chief one, is this; whether, upon the whole Record, the Caſe do appear for the King; that 4 *Aug.* 11 *Car.* being the Day of the Date of the Writ, the King could charge the County of *Bucks* to find a Ship at their Coſts and Charges? By way of Admittance, if he could, yet whether the King can give Power to the Sheriff to aſſeſs the County as in this Caſe? By a further Admittance, admit that the King have Power to charge and aſſeſs, whether he can levy the Money unpaid by this Courſe of *Certiorari* and *Mittimus*, as he might do if it were his own proper Debt? Of theſe three Queſtions, whereof the two laſt remain untouched, and not argued by us, I chiefly intend to inſiſt.

For the firſt Queſtion, tho' argued fully, yet I doubt, as yet, whether it ſtandeth rightly ſtated; not but that I conceive Mr. Sollicitor had good Colour to ſtate it, as he made it, partly by the Record, yet ſomewhat out of our Admittance; yet by Admittance only, and ſo expreſſed.

Again, another Reaſon which I conceive, there was a Neceſſity on the King's Part, ſo to make it as Mr. Sollicitor ſtated it, or elſe to wave the Debate.

The firſt Queſtion is, whether or no, upon the whole Record, the Caſe ſo appeareth for the King, that 4 *Aug.* 11 *Car.* being the Date of the Writ, the King could by his Writ charge the County of *Bucks* for the finding of a Ship of War?

This, on his Majeſty's Part, hath been ſtated in theſe Records, whether the King finding in his Judgment the Safety and Preſervation of the Kingdom and People, neceſſarily and unavoidably to require this Aid commanded by this Writ, might not command ſuch an Aid by the Writ, for ſaving and preſerving of the Kingdom and People; wherein, I confeſs there is not one Word but hath its Weight.

As to this Queſtion, thus made, I ſhall take three Exceptions, which are things taken in to be granted, which I ſhall not argue if I can avoid them.

That at leaſt, in the King's Judgment, the Safety and Preſervation of the Kingdom was indanger'd 4 *Aug.* that is, that the Kingdom was in danger to be loſt. If it be ſo that the Kingdom was in ſuch Danger, and that the Danger was ſo inſtant and unavoidable, that it neceſſarily required this Aid by this Writ; that is, it required a preſent Charge of Shipping preſently, 4 *Aug.* 11 *Car.* to be forthwith commanded, and that Occaſion could not expect a Parliamentary Conſideration and Supply; theſe be Things wherein we differ. And, laſtly, for the Truth of it, the Certificate was ſufficient in a legal Way.

My Lords, to find out whether the Record doth warrant theſe three Things of great Importance. Firſt, I ſhall ſeek for them in the Writ 4 *Aug.* and next in the *Mittimus*; there is no Colour elſewhere to look for them.

To open the Writ rightly will clear theſe Differences, as I humbly conceive, without any great Argument. And firſt, for the Writ dated 4 *Aug.* 11 *Car.* I ſhall read the Words, wherein the Danger of the Kingdom is expreſſed, and then explain what Words give that Senſe that is taken out of them.

Quia datum eſt nobis intellig' quod prædones quidam Pirati & Maris Graſſatores tam Nominis Chriſtiani hoſtes Mahumetani quam alij congregati, naves & bona & mercimonia, non ſolum ſubditorum noſt' verum etiam ſubditor' Amicor' noſt' in Mari quod per Gentem Anglicanam ab olim defendi conſuevit nefarie diripientes, & ſpoliantes: ac ad libitum ſuum deportavere hominesq; in eiſd' in captivitatem miſerrimam mancipantes. Cumq; ipſos conſpicimus Navig' indies præparantes ad Mercatores noſt' ulterius moleſtand' & ad Regn' gravand' niſi citius remedium apponatur, eorumq; conatui virilius obvietur. Et conſideratis etiam periculis quæ undique his guerrin' temporibus imminent, ita quod nobis & ſubditis noſtris defenſionem Maris & Reg' omni feſtinatione quam poterimus accelerare convenit, nos volentes defenſione Reg' tuitione Maris ſecuritate ſubditor' noſt' ſalva Conductione Navium, &c. Here are the Cauſes and Occaſions; all that comes after is not material to the ſtating of the Queſtion.

My Lords, in the opening of this Writ, it is true, there was mention of loſs by Merchants of ſome particular Members of the Kingdom. And this loſs by *prædones Pirati quam Mahumetani & al'*; and tho' *alii*, yet Pirate ſtill and no more; then it ſaith *ipſi*, ſtill thoſe Pirates daily prepared Ships, but not armed with Men. What to do? To moleſt the Merchants, and, *ad gravandum Reg'* as Pirates ſtill hitherto. I conceive there is not a Word of Danger from any Empire, but from Pirates; not a Word of Danger to the Kingdom, but to Merchants: however, all this is *quod intelleximus*. The Record goes on thus, *Conſideratis etiam periculis*, &c. *imminen'*. This Part, as I conceive, is not ſo poſitive, the Dangers are but *Conſideratis*, nor the Danger to the Body of the Kingdom. No Word of that; or if to the Kingdom, yet nothing in point of Safety, only but in point of Moleſtation: none of all theſe appears. And beſides, the Clauſe is too general, not expreſſing any particular Danger, from whom or how. However, be the Danger to the one or to the other, be it to the Kingdom or to the Merchants, be it for Trouble or for Safety, hitherto I may ſay there is no mention of any ſuch inſtant Danger, as neceſſarily did require this inſtant Command in the Writ, not ſo much as in the King's Judgment. For ought that appears, a Parliament, even in the King's Judgment, might have been called, and Conſideration taken for a Defence. Here be all the Premiſes upon which the Concluſion muſt ariſe; and hitherto nothing material to make a Danger to the Safety of the Kingdom, and ſo inſtant, that a Supply *nunc aut nunquam* muſt come in.

Altho' the Premiſes, I conceive, are only conſiderable, yet the Concluſion will be but this, *convenit accelerare*; but it is fitting to haſten: but no ſuch Neceſſity, tho' it be *convenit accelerare pro defenſione Reg'*. If that were material, it cannot be conſtrued, but with relation to the Premiſes on which it is built. And whether in fear of Trouble, or Danger, or Loſs, *non conſtat*: and tho' it be *cum omni feſtinatione*, yet it is *qua poterimus*; and that is *poſſimus quod jure poterimus*; that is, with all the Haſte that by Law you can make: which way this is, your Lordſhips have heard.

Now, my Lords, it appears on the Record, that there was no ſuch inſtant Neceſſity, but that a Parliament might have been time enough; for that it was obſerved between the Teſt of the Writ and the Rendezvous, there were two hundred and odd Days, whereas a Parliament requireth but forty; in the Remainder of theſe two hundred Days, the Parliament might have conſidered of the Means of Defence. But I leave it to your Lordſhips to judge, notwithſtanding thoſe Expences of Time cunningly reckoned up to your Lordſhips by Mr. Sollicitor; and tho' it be true, that Things are oftentimes long in Deliberation, yet Nature tells us they can be ſooner. If there be a Neceſſity, we know that will force.

I have but opened this Writ 4 *Aug.* I am now come to the *Mittimus*: The only Doubt which I conceive in the *Mittimus* is, that where the Caſe ſtands but thus, in this Writ is recited the Tenor of the Writ 4 *Aug.* and then the Writ goes on, and ſaith, *Quia ſalus Reg' periclitabatur*, and that is all the Clauſe in the Record that gives Colour to the Caſe ſo to be made. And to the whole Record we have demurred.

Here it hath been ſaid, we have confeſſed all by the Demurrer; and if that hold not, the King, who is the Judge of the Danger, hath ſaid ſo, he hath certified ſo under the Great Seal: and on theſe depends the Weight of both theſe Proceſſes.

To this I have many Anſwers, but I ſhall ſelect a few from many others, on which I ſhall rely. My firſt Anſwer is this; here the Words are, that *Salus Reg' periclitabatur*. Theſe Words in ſhew ſeem to be poſitive, but in ſubſtance but relative; and are rather but a Comment on the Writ, or an Abſtract in point of thoſe Dangers mentioned in the Writ, for the Clauſe was brought in on the Return of the Writ; and if we have the Writ itſelf, the Comment thereupon, or further Explanation thereof, is not material.

My ſecond Anſwer is; I doubt, I ſay no more, if the King put particular Reaſons into the Writ 4 *Aug.* whether the Law (I ſpeak of legal Courſe) doth permit any after Writ to put in further Clauſes of the ſame Nature with the former, to the ſame End.

If the Caſe be thus, then our Demurrer will be no Confeſſion of any ſuch Danger.

In the next place, admit the Words in the Writ had been poſitive, and materially expreſſed; yet, according to our Rules of Law, it cannot make uſe of that Senſe they are now applied unto: For the beſt, the Word *Salus* being only proper to a phyſical and natural Body, is applied here to a Body Politick. It is but a Metaphor which the Law will not indure in Writs, for it would bring in great Miſchiefs. In Writs and in Pleadings, Metaphors are dangerous: We know not how to take Iſſue upon it, and therefore is not regularly allowed; but I leave it to your Lordſhips Judgments.

There are no Words of the Danger of the loſs of the Kingdom, that is, ſuch inſtant Danger: for apply the Words to a natural Body, as *Salus J. S.* is in Danger, it doth not preſently imply, that he is in ſuch inſtant Danger of Death. A Doctor will ſay a Patient hath not his Health, yet no Danger of Death, it is the common Speech; the ſame Senſe it muſt have in a Body Politick. If the Words were good, and did imply a Danger, yet not ſuch a Danger as may hazard the loſs of the Kingdom; for the Words are only *Salus Reg' periclitabatur*, and the thing may be never in Action, which twenty Years hence may loſe the Kingdom. A Man may ſay, that the Safety of the Kingdom is in Danger. At the beſt, the Words will not make the Caſe as it is put.

Mr. Sollicitor, out of his great Care, ſearching into every Hole where he thought we might peep out, doubting our Demurrer would not be a Confeſſion ſufficient, he take in another Help, which is this, that if this be ſo declared by the King's Opinion, and under the Great Seal, that this alone had been ſufficient. For this there hath been urged, the legal Weight of the King's Affirmation, and of a Certificate under the Great Seal; and both be concluded in this Caſe.

My Lords, before I anſwer to this Matter, I profeſs, for my Client and myſelf, that we make no doubt of the King's Word, and believe there was Danger, tho' not ſo apparent to us; but only loth to allow it as ſufficient in a legal Proceeding, leſt what his Majeſty, in his own Worth deſerves, by after Princes might turn to a Diſadvantage.

That which we urge is, how far in form of Law this may be allowed, we ſhall argue, and that briefly, for the Caſe needeth no help.

For this Point I take it for Leave, under your Lordſhips Favour, that in legal Proceedings, and regularly, his Majeſty's Opinion, and Certificate in Things of Fact, is not binding.

Yea, but they ſay, it is Matters of State and Government.

For that, to aſk the Queſtion, whether or no raiſing Forces thus is left to his Majeſty, that ſtands and falls on the main Cauſe.

My Lords, I do agree, in divers Caſes the King's Affirmative ſhall be concluſive in Matters of Fact, that is, when it is not ſo triable elſewhere; as in a Writ *de Rege inconſulto*, to ſtay Proceedings, when the King certifies Matter of Fact, the Writ muſt be obeyed, but then, withal, the Matter is triable elſewhere. But theſe Caſes will not match ours. As for that great Caſe 20 *Ed.* I. concerning the Lords Marchers, that the King was *Recordum ſuperlativum*, to ſay no more, it is but an Allegation of the King's Counſel.

My Lords, the Reaſons whereon I ſhall moſt rely, to avoid the Senſe of the Writ, *Salus Reg' periclitabatur*, is thus, That tho' it doth now appear by the *Mittimus*, that 4 *Aug.* the Kingdom was in Danger of being loſt, yet it is not ſufficient in Law, nor can our Demurrer hurt us; becauſe it muſt have ſo appeared in the Writ, 4 *Aug.* itſelf; for the Writ and Declaration in Law muſt ever contain preciſely ſo much of Matter as is neceſſarily true to warrant the Demand.

In this to ſee the Miſchief, if a Danger now declared makes the Caſe, how ſhall the Subject know by the Writ, 4 *Aug.* whether to obey or no? The Law binds not a Man to divine: And if this ſubſequent Declaration ſhall mend the Caſe, then the Subject ſhall be a wrong Doer, *ex parte facti*, which is againſt the Reaſon of our Books. I ſhall remember the Caſes put by Mr. *St. John* to another Purpoſe. A Commiſſion ſent forth without Cauſe expreſſed, that Commiſſion is not good; and it is not denied by Mr. Sollicitor, that a Cauſe muſt be ſet to make it good in Law. And if your Lordſhips be pleaſed to look on the Precedents, as I know you will, which the King's Side ſhall bring unto you, your Lordſhips will find the Danger turned from the firſt Writ to the laſt. Nay, in the Writ of this Year I am told it is ſo, out of their Opinion, fearing the Writ 4 *Aug.*

was not ſo good as they would have it. They put it into the *Mittimus*, which they knew could not do good; but they did it only to cavil.

But laſtly, admit the King had ſaid the Kingdom was in ſuch inſtant danger of Loſs, and that there was an inſtant neceſſity of the Command this way, and that this could not have expected Conſideration in Parliament; yet if the contrary appears in the Record, then neither was the Demurrer a Confeſſion, nor the Certificate concluſive.

I could ſtand on many other Things, as that the Danger ſhould be more particular, for ſo are all the old Precedents. To ſay, *Salus Regni* is in Danger, is too general; as in a Protection, they muſt alledge, in what place the Party protected is imploy'd.

Secondly, In the *Mittimus* it ſhould not be that *Salus Reg' periclitabatur*, but how *Salus Reg' periclitabatur*, I believe it is meant ſo; but we muſt now look to Rules of Law. True it might have been in Danger before, but not *tunc*; as in the Caſe of Indictment upon the Statute of 8 *Hen.* VI. for an Entry upon *Whiteaker*, *exiſtens tenement.* J. S. the Laws will not take notice of the Time, without ſaying, *tunc exiſtens*, at the time of the Entry.

My Lords, in the Concluſion upon this Diſcourſe, it appears, I have ſo pared the Caſe, that in the Writ dated 4 *Aug.* there appears no Danger of the Kingdom being then loſt; and that in the *Mittimus* there are no expreſs Words of Danger to the Kingdom inſtant or unavoidable. If it were ſo, it cometh not time enough; for it ſhould have been in the Writ dated 4 *Aug.* And if there had been ſuch expreſſing of ſuch inſtant Danger in the Writ 4 *Aug.* and in the *Mittimus*, yet not material, if otherwiſe on Record. And laſtly, this Certificate doth not conclude us.

Thus then to ſhew what the Caſe is, and what it is not, I have put out of the Conſideration of the Caſe, all Conſiderations of ſuch Danger to the Safety of the Kingdom, as are unavoidable.

I have left nothing in the Caſe but Conſideration of protecting Merchants againſt Pirates, but for ordinary Defence of the Sea. If the Caſe doth fall thus, I humbly conceive, that in this place, I might, without further Argument, with ſome Confidence, venture my Client's Caſe upon your Lordſhips Judgments, notwithſtanding any thing objected on the King's Part.

Then, by your Lordſhips Command I ſhall proceed: having laid aſide the *Mittimus* and *Salus Regni periclitabatur*, and taking the Caſe only on the Writ 4 *Aug.* which, as I take it, is nothing of Danger to the Kingdom, but for protecting Merchants, and for common Defence. The Caſe ſtands thus.

That tho' there be no actual Invaſion, no known or declared Enemy; yet the King out of his Judgment, 4 *Aug.* 11 *Car.* apprehendeth and foreſeeth Danger to the Kingdom in point to be loſt; and that the Danger is ſo inſtant and unavoidable, that it requireth this Aid. Whether the King out of Parliament by his Royal Power can command this Supply?

I have endeavoured not to miſtake Mr. Sollicitor; it were an Injury to requite him ſo ill. In my Argument I ſhall deſire leave to hold his Courſe, becauſe the two main Queſtions are both of one Nature, tho' different in Degree.

Our Queſtion is, in caſe of common Good againſt Pirates. Upon the whole, my End is to ſhew, that by the fundamental Policy of *England*, the King cannot out of Parliament charge the Subject, no not for common Good, unleſs in ſpecial Caſes, and of a different Nature, or upon different Reaſon; nor for a neceſſary Defence, tho' in the King's Judgment the Danger be inſtant and unavoidable.

My Lords, in the debate of theſe two Queſtions, I have learned of Mr. Sollicitor not to ſay all that I could, but ſo much as is neceſſary, and as he hath chalked out the Way.

I ſhall inquire of this Power by Arguments upon Practice conſtant and allowed in time of good Government, when the Liberty of the Subject was not trampled upon; and ſhew it by Acts of Parliament, Reaſon, and Authorities in both.

My Lords, I am now come cloſe to the Arguments on the main: Before I begin, give me leave to profeſs that I am in a Dilemma. The Queſtion will be, what the King can do in theſe Caſes, by his Royal Power? it much concerns him. And I have learned out of a Speech of his late Majeſty, what it is to debate ſuch Queſtions. Not to argue it were to diſobey the Aſſignment of the Court, and to deſert my Client and his Cauſe. For my part, as your Lordſhips ſee I have laboured to decline the main Queſtion, I ſhould be glad it might ſo ſleep.

I ſhall not offer it, if happily the Caſe falls off in the penning of the Writ, and not of the King's Power. I doubt whether the way of Argument ſhall do the Crown a diſſervice.

Out of my Duty to his Majeſty, and Service to your Lordſhips, I humbly offer, whether your Lordſhips may not think it fitting to determine the Queſtion upon the framing of the Caſe, before it be further argued; and here I ſhall reſt, or upon your Command am ready to go on.

Here the Lord Chief-Juſtice Finch *ſaid, we do not uſe to judge of Caſes by Fractions.*

My Lords, ſince it is your Command I ſhall obey, and go on, notwithſtanding the *bicorne Argumentum*, which on each ſide threatneth.

I hope his Majeſty will excuſe us, for arguing of that which cannot elſe be determined. And as he hath given way to an Argument, I hope his Goodneſs will excuſe us, while we do our Duty for our Client. And if I err in my Materials, or in the way of my Arguing, it is from the defect of my Wiſdom, I cannot be wiſer than God hath made me, and not out of any diſaffection to the Service.

My Lords, I hope neither his Majeſty nor your Lordſhips will think it a Point of a higher Nature: yet thus far I aſſure your Lordſhips, that if any Matter or Conſideration of State come in my way, I ſhall tread as lightly as I can; yet I muſt crave Liberty to pick out ſome to refer to your Lordſhips Conſideration, and ſhall forbear thoſe things that are unfit.

Here the Lord Chief-Juſtice Finch *ſaid, Keep you within the bounds of Duty, as befits one of your Profeſſion at the Bar at* Weſtminſter, *and you ſhall have no Interruption.*

My Lords, I ſhall be very wary and tender. I ſhall now open the Diviſion and Parts of my Argument.

My Negative Part is this, That the King cannot out of Parliament charge the Subject, not only for the Guard of the Sea againſt Pirates; but alſo not for the ordinary Defence of the Kingdom, tho' the King judge the Kingdom unavoidably in Danger to be loſt. And in this I muſt take in the Defence; as well the Defence at Land as Sea.

My poſitive part is this, The King regularly is to be at the Charge for guarding the Sea againſt Pirates; and for the Defence of Land and Sea againſt Enemies, ſo far as he is able: And that the King hath Proviſion for both, eſpecially for the Sea-Service.

In the Proſecution of theſe two general Parts, I ſhall not only propoſe my own Conſiderations, but join them with Mr. *St. John's*, as I can further infer them, or juſtify them againſt Mr. Sollicitor's Denial or Evaſion.

And this Courſe will neceſſarily bring in many of his Arguments, which I would be glad to ſpare, if the Cauſe would bear it, becauſe your Lordſhips ſhould not think that I do nothing but repeat. In this way I ſhall humbly endeavour to clear each Part, by giving a Reply before I deſcend to other Particulars. And where I conceive a new Objection, which will not fall within any former Anſwer, I will raiſe it, and endeavour to lay it. Into theſe general Queſtions will fall many others of great Conſequence.

Firſt, Such as not being the main, I will not draw upon particular Debates. Where there is any thing concerning State or Reverence, I hope to admit ſuch, and ſave my Client's Cauſe.

Having thus unfolded my form of Argument, I deſcend to my Negative, That the King in none of theſe Caſes without Parliament, can charge the Subject.

I will prove it from Reaſon, which is the Maſter of all Authorities, as Mr. Sollicitor ſaid. And from Reaſon drawn from the Fundamental Policy of the frame of this *Engliſh* Government, in the neceſſary Attendance of the Publick Advice in Parliament upon the Royal Power.

And Secondly, from the abſolute Property the Subject hath in his Lands and Goods. From theſe two things I ſhall draw my Reaſons.

For the Political Advice in Parliament, I ſhall humbly decline all School-Diſputes. The Spider may make Poiſon out of that which the Bee makes Honey. I ſhall omit the Conſideration of ſome Points.

I ſhall take my Riſe from the Judgment of King *James* 1619. in his Speech in Parliament; wherein his Majeſty agrees, that the King *in concerto*, can do no more than the Fundamental Laws of the Kingdom alloweth: and I aſſure myſelf his Majeſty deſireth not more.

Before I enter into the Argument further, Whether the Law hath intruſted the King out of Parliament in either of the Caſes put: I here profeſs for my Client and myſelf, that while we ſpeak of Political Advice, and how far a Governor ſubject to Error and Will may uſe a Regal Power, we do always with thankfulneſs to God acknowledge our preſent Happineſs, to be bleſſed with ſo juſt a Prince; and we fetch it from our Hearts. And were his Majeſty ſo immortal as he deſerves, and ſure that his Succeſſors may be Heirs to his Virtues as well as to his Crowns, we ſhould wiſh the Royal Power might be free from Political Advice, and Unlimited.

Here the Lord Chief-Juſtice Finch *ſaid, This belongs not to the Bar to talk of future Government; it is not agreeable to Duty, to have you bandy what is the Hopes of ſucceeding Princes, when the King hath Children of his own that are like to ſucceed him in his Crowns and Virtues.*

My Lords, for that whereof I ſpake; I ſpeak as looking far off many Ages, five hundred Years hence.

My Lords, becauſe I might run into further Error, if I ſhould not take your Advice, I ſhall ſlip over much; and the Sum of all is,

Firſt, An Argument from the Policy of *England*, in the neceſſary Attendance in the particular Advice in Parliament.

Secondly, It will be from the abſolute Property that the Subject hath in his Goods, taking that for granted, againſt the Book of *Cowel* written in the Time of King *James*, who under the Word Parliament, ſpeaking of the King's Power out of Parliament, ſaith, the Power in Parliament is but a pious Policy. But this was complained of, and by Proclamation the Book was denied. Your Lordſhips alſo know of another Book that was ſentenc'd upon the ſame Occaſion.

The uſe that I make of it, is this. If the Frame of *Engliſh* Government ſtands in the Royal Power, and the Subject hath Property in his Goods; then the adequate Reaſon of both from theſe is, that therefore the King can without Parliament charge the Subject in his Eſtate, tho' in pretence for common Good, no more than a Prince five hundred Years hence, if ſubject to Error or Will, may if he will, upon any Occaſion or no Occaſion, at what rate he will, charge the Subject to the height.

As to the Advice Political, if the King can do this alone, what is become of the Policy for which the Political Advice was made attendant to the Regal Power? *Ne Reſpublica*, &c.

Secondly, If the Subject hath a Property in his Goods, how is it in the Power of any one alone to charge that? This Reaſon I muſt not leave, for on this the Caſe ſtands or falls; tho' there be many Books and Caſes, yet all are from Reaſon, but eſpecially when theſe ſtand together.

The Reaſon ſeems ſo ſtrong, that it ever holds in ordinary Power. It holds *pro bono publico & pro Defenſione*, he cannot make a Charge in ordinary things; and Mr. Sollicitor did not deny the force of this Objection. The Anſwer ſtands thus.

Admit it be agreed, that by the Policy of the Kingdom the King cannot charge the Subject, yet the King may, without Advice in Parliament, in Caſes extraordinary; where, in his Judgment, the Safety of the Kingdom is in inſtant Danger, and that the Buſineſs will not admit of the calling of a Parliament. He fortified this part of his Diſtinction with ſtrong Reaſon; for in ſuch Caſes Property muſt yield, for *Salus Populi ſuprema lex*; *& neceſſitas, lex temporis*; *& quod cogit defendit*, all are true; and to this ſome home Caſes were put: As for building of Bulwarks upon another Man's Land, and burning of Corn in 88. And then foreſeeing the Incounter of a Reply, he ſaith the Subject muſt not ſay, that altho' the Power be in the King, he will inlarge his Power, for the King can do no wrong.

This *Prima Facie* hath a fair ſhew, and may go far; yet I hope to give it a full Reply. By this Diſtinction the whole Frame of political Advice, is, under favour, deſtroyed. I ſhall ſhew the contrary by Reaſon and Experience.

For the Diſtinction between Danger, ordinary and extraordinary, where the King doth think a Danger and a Parliament cannot be called: That Diſtinction, I ſay, muſt needs deſtroy the Policy in the whole; for as I conceive, the End of that Policy was but this; for elſe, what could it be? As it will ever be in the Will and Deſire of a good Prince to do all Good for the Subject, to whom this Advice by Parliament can do no Hurt; ſo what Caſe ſoever ſhould happen many Ages after, for that Poſterity will look upon it, it ſhould never be in the Power of any Governor to become ſubject to Will or Error, if he would ſo do to hurt the Kingdom. That Policy was not made ſo much for a good King, but looking what might happen many Ages after.

If you allow ſuch a Prince Power extraordinary, and make him Judge of the Occaſion; then in Subſtance, tho' Proviſion be made, yet after his Declaration we muſt make further Proviſion.

Yet may ſome ſay, here is a *Poſſe* and *Eſſe*; becauſe he may, ſo he will.

True, it is unmannerly to ſay ſo of any ordinary Man; but under favour, it is allowable to ſay he may, if he will: Then if we leave him that Liberty, in ſuch Caſes he hath no Reſtraint, but his Will.

But it is ſaid, the Law will not preſume any ſuch thing.

The Law doth not preſume a Will, but the Law looks on Things that may be, as well as on Things that will be. True, the Law-Books ſay, the King can do no Wrong; which proves, that it is poſſible for a Governor in his Inclination to incline to Wrong, and therefore the Law hath taken a Care that he ſhould do none; for he cannot make a Diſſeiſin nor Diſcontinuance. There may be an Inclination to Entry; but the Law, becauſe he ſhould do no Wrong, hath made this Act void: which is not a Diſability in the King, but a Prerogative, to make him come the nearer to the Divinity in the Attribute.

I ſhall offer the Judgments of ſeveral Ages in *England*; they ever thought it a dangerous thing, when they thought any Reſtraint fitting, to allow any Exception whatſoever, tho' Cauſe for it, leſt the Party, that was meant to be reſtrained, ſhould be Judge, and then go out when he would. *Thomas* of *Beckett*, he would not ſwear to the Laws of King *Hen.* the Second, unleſs he might put in this Expreſſion, *Salvo honore Dei.* The King never meant to violate any of theſe; but if that had been allowed, the Clergy had been Judges of that, therefore they would not be ſatisfied: at this Day we have an Experience of the opinion of Kings themſelves in this Caſe.

I ſhall proceed to the Practice of our Kings. In all Acts of Parliament, where they had ever a Deſire to declare the King limited or reſtrained, if they did admit of any Exception, they would have it in Words ſo punctual, that they would not admit of any Matter of Evaſion, for fear hereby his Proceeding might be at large. In the grand Charter of King *John*, *Nullum Scutagium imponatur*, there was a Clauſe of Exception; true, there was a Reaſon to except how all (not as *Ed.* I. would have done) ſaving the Aid due and accuſtomed; but the *faire Fitz Chevalier*, *&c.* and ſo was *Mag. Char.* tho' not in the Roll, ſo careful they were to have no Words that give any ſuch Light.

I come to the Statute of 25 *Ed.* I. againſt Aid, ſaving the antient Aid due and accuſtomed: no doubt but in theſe Words there was no more ſaved than Law muſt allow the King, and the Parliament did ſo mean; yet when that ſame Act came out, the Subject was not ſatisfied, and therefore the Statute *De Tallagio non concedendo* was made to take away the Exception in that Act. The Statute 28 *Ed.* I. after the Confirmation of two Charters, and divers Additions, there comes at laſt a *Salvo Jure Coronæ.* Your Lordſhips will find in Hiſtory how all this was ſatisfied. And 29 *Ed.* I. at a Parliament held at *Lincoln*, the King made a Confirmation without a *Salvo*, and yet none will deny the Right of the Crown; the Lords did intend to preſerve that. Thus your Lordſhips ſee the Opinion of this Kingdom, from Time to Time, how careful they ever were in all their Acts, to leave any Way whereby that which they did intend for their Good might be avoided. Now whether in this Caſe there might not be an Avoidance, I humbly leave it to your Lordſhips Judgments.

But before I go further, it may be demanded, how came in thoſe Savings into thoſe Acts, if the Parliament did not like them, and if they were put in here was a Truſt?

I ſhall give a double Anſwer in the Caſe; tho' a *Salvo*, yet it will differ from our Caſe: the King was not Judge there, but your Lordſhips are Judges between the King and his People: but in this Caſe the King is to be Judge of the Neceſſity.

But to give you the true Anſwer, the Exception never came in originally from both Houſes, but from the Lords themſelves; this may ſeem ſtrange. It was the difference of thoſe Times and ours in making Acts of Parliament; thoſe were not Times of granting all, or denying all, but to anſwer ſome as to ſome part, and ſometimes an Exception. And this being read, the Act drawn up upon the whole by the King's Council; and this Miſchief was found out 5 *Hen.* IV. and from that time all Petitions were wholly granted or denied. So your Lordſhips ſee how theſe Savings came in, not by the Subjects, but by the penning of the Acts by the King's Council. The laſt Example is in late Times in the late Parliament, in the Petition of Right now printed, which was long in Debate in Parliament againſt Loans and Billeting of Soldiers. After the Petition had paſſed the Lower Houſe, that thoſe things were againſt the Law, there was a Propoſition in the Upper Houſe concerning the Addition of a Clauſe of Saving. Upon the Journals it appears, that there were ſeveral Conferences between both Houſes, where the Reaſons are mentioned, and do appear. And in the ſeveral Conferences the Commons did not yield, but the Petition paſſed abſolutely; and the Reaſon was, becauſe to put in that Saving was to undo the Petition.

To conclude this, to ſhew the Experience of ſuch an Exception, *ſine aſſenſu*, what it hath wrought in former Ages, as that of *Normandy*, tho' foreign; yet to ſhew what ſuch a thing did work there. It had the ſame Privileges we claim, and much of their Law came in here with *William* the Conqueror. *Lewis* the XIth. taxed them high; they made Complaint, he, on the Complaint acknowledgeth it, and would tax them no more but on great Occaſions: What followed, thoſe Hiſtories plainly declare.

Having, as I hope, taken off the Bulk of that Diſtinction, I ſhall further ſhew how it doth not ſtand with the Practice of the Common Law. It is a fundamental Rule in our Law, rather a Miſchief than an Inconveniency: For when nothing can be ſo abſolute in Government, but that there may be one Caſe or other wherein there is no Proviſion made, all the Care Men take is to chuſe the leaſt. Now his Rule is rather a Miſchief than an Inconvenience. Now Miſchief is that which perhaps may fall out never; or if it doth fall out, yet ſeldom; for if it were a thing that might commonly fall out, it were an Inconvenience. On this fundamental Rule, the Law concerning Lands and Liberties is thus grounded. True, there might be a Miſchief for want of this Power in a Caſe extraordinary; but the Miſchief perhaps never, or ſeldom falleth out. But to allow the other, would be an Inconvenience daily. I deſire your Lordſhips to caſt your Eye upon a learned Writer, *Comines*, Fol. 107, 131, 180, 181, where in the whole, putting them all together, ſpeaking of the Danger that might come to a State for want of Power to raiſe Supplies for Reſiſtance, giveth a Commendation of the Government of *England*: True, he doth go ſo far, ſaith he, it is hard in a defenſive War, that any Preparation which muſt be great and long about, can be ſo acted, but that Princes may take a timely Notice, to call together, and adviſe by Parliament. In the *Low-Countries*, where they have Wars, tho' they have an Exciſe for ordinary, yet they do it not for extraordinary, without Conſent in Parliament.

My Lords, I go on: admit an Enemy ready to land, no poſſibility for a Parliament; ſee how the Caſe will now ſtand. I ſhall leave it to your Lordſhips Conſideration, whether there be an abſolute Neceſſity, *infra & extra*, to command, and then to ſhew there is a Command, and by what Law; and by that Law that is more ſtrong than the poſitive Law of the Kingdom; and doth work more in Point of Fear. I do put this by way of Admittance.

In that Caſe there goeth out a Writ, a *Mandamus Rogantes*; but it is in *Articulis neceſſitatis & quatenus a Mandamus Rogantes*, not *ſub pœna forisfact'*, of all you can, but for your own Preſervation, and Safety of the Kingdom. Theſe Writs have gone forth in ſuch Times, when there hath been a near Danger, and that hath ſerv'd the Turn; for that Inſtinct of Nature, that did make ſome Part of the Kingdom deſire Government for Preſervation, the ſame Inſtinct of Nature, doth infer to Contribution for Defence: Nay, that is a ſtronger Law than ours; for that Law which ariſeth from one's own Breaſt, as it doth command, ſo it doth compel: There need no Law without, when there is a Judge within. Now in Times of Neceſſity, there is a Law that doth compel; nay, there is a ſtronger Penalty than our Laws can imagine; for our Laws can make but a Penalty of all that you have; but how? To the King. But when there is a Danger from an Enemy there is not only a Danger of loſing all that one hath, but of loſing Lives and Lands, and all that we have; and all into the Hands of the Enemy.

Put the Caſe an Enemy was landed, to ſhew what the Powers are by our Laws in that Caſe for Defence; when there is particular Appearance of inſtant and apparent Danger, in that Caſe, particular Property muſt yield much to Neceſſity. Theſe Caſes our Books warrant, as building of Bulwarks on another Man's Ground, and burning Corn. In 88. there was an actual Danger, and then it was juſt to take Corn or Graſs, or any thing to raiſe Supplies. But where do any of our Books ſay, that upon Fear of Danger, tho' in the King's Caſe, a Man can, without leave, make a Bulwark in another Man's Land? I do not read. As your Lordſhips may obſerve in this Caſe, of apparent Danger, the Power of the King; obſerve withal the Power of the Subject, and out of what Principle this doth grow; whether out of a Form of Law, or out of Neceſſity. In theſe Caſes of Inſtant Danger, and actual Invaſion, it is not only in the Power of the King, but a Subject may do as mnch in divers Caſes. For if there be an actual War, the Subject may, without any Direction, do any Act upon any Man's Land, and invade any Property towards Defence: It is the Law of Neceſſity that doth it. Nay, in that Caſe, the Subject may prejudice the King himſelf in point of Property. If an Enemy be landed, and a Subject take away the Horſes of the King, he may juſtify it in any Action; as in caſe of a Caſtle or City, if they can juſtify there was a Neceſſity, they may pull down the Walls or blow up the City. In this Caſe there is no manner of Miſchief if Subjects Goods be taken by the King, or any Man; and in that inſtant Neceſſity be imploy'd to the publick Good. *Levis timor* will not ſerve; for then a Man cannot enter for fear of Force, but for ſuch a Fear as ariſeth from an actual and apparent Danger; then there can be no Loſs to the Subject in that Caſe. *Secondly*, On the other ſide I ſhall ſhew, what Goods were taken for publick Uſe, were taken by way of Loan, and Satisfaction was made for them.

The Second Day's Argument of Mr. Holborne, *on the Behalf of Mr.* Hampden, *before the Judges in the* Exchequer-Chamber.

May it pleaſe your Lordſhips,

TO remember the Queſtion whereupon I left off my Argument the other Day, whether the King of *England* can charge the Subjects for finding of Ships at their own Coſts, only upon the King's Judgment of an inſtant Danger.

Firſt, Whether for Defence of Merchants againſt Pirates. *Secondly*, For ordinary Defence of the Sea: And, *Thirdly*, For Defence extraordinary againſt an Enemy, only out of the King's Apprehenſion of an inſtant Danger, which cannot, in his Judgment, expect a Supply elſewhere.

Not to repeat, yet in a word or two, I ſhall open my Proceeding on this Queſtion; and the rather, for that I find ſome Miſapprehenſion, as if I had granted more than I meant, which is fit to clear.

The Sum of all was but this, That the King could not charge the Subject in any of theſe Caſes. The Reaſons I urged were but ſhortly thus: That the Subjects of *England* having an abſolute Property in their Goods and Eſtates, and the Policy of Parliamentary Advice being to prevent Charge only, then on no Occaſion one might err by weakneſs, by Evaſion or Will: That therefore the King could not charge in any of theſe Caſes, without Parliament; for that ſo he might charge, if he would, as on Occaſion, ſo on no Occaſion, as to 7*l.* ſo to 17*l.* That if this held in ordinary Charges, you may not exert extraordinary Occaſions, tho' inſtant in the King's Opinion; for ſo a King intending to do nothing by his Policy without Parliamentary Aſſiſtance, he may, if he would ſo declare, charge at Pleaſure, on no neceſſary Occaſion, or beyond all Proportion. This Diſtinction I endeavour'd to take off, ſhewing it did deſtroy the End of the Policy.

That there was no Neceſſity of ſuch a Diſtinction here, I ſhewed. There was one thing which I forgot, for deſtroying of the Diſtinction from Neceſſity, and leaving the King Judge of the Neceſſity; that in Judgment ſo to do it, is all one as to leave it to him arbitrarily, if he will, which is that only which was intended to be prevented; if he will, was part of the Charge, if not the principal, in the Lower Houſe of Parliament, againſt the Divine for his Sermon. I have ſeen the Charge, for holding the King had a Power in caſe of Neceſſity, and leaving the King Judge, and ſo at Liberty and Pleaſure, if he will. This I do but touch here; for I muſt make uſe of it in the main; and under favour, ſhall make the Caſe ſomewhat like.

For the other two Matters, that when Danger is apparent, there was no need of poſitive Laws, I urged it thus; not admitting any thing, wherein I deſire not to be miſtaken. Admit no Writ of poſitive Command, yet the Subject will be then under a ſtronger Law, which as it doth command, ſo it doth compel, that is, the Law of Neceſſity, which is the ſtrongeſt of all Laws; with which the Judgment carrieth an Execution, and that this Law commandeth under a greater Penalty: for tho' not under pain of Forfeiture to the King, which as to the Cauſe of Forfeiture, is but *ad terrorem*; yet under the true Pain of Forfeiture of all to the Enemy, from whom we muſt look for no Mercy.

Laſtly, That of an actual Invaſion, and Neceſſity withal, that not by any poſitive Law of the Kingdom, but of the general Law of Neceſſity, which is above all Laws, for the publick Good private Good doth yield on all Parts. Of theſe too laſt I have but touched here, to ſhew what I mean; I ſhall ſpeak further of them both towards my Concluſion, in my Anſwers to Mr. Sollicitor's Objections.

I ſhall now proceed to make good out of our Books of Law, that the Law doth not leave it in the Power of the King (in reſpect of ſuch a King as poſſibly may be) to lay any Charge upon the Subject, but only in ſuch Caſes where the Law hath made ſuch Proviſion, that if he would he cannot miſcarry.

In this place, becauſe it is taken for a Maxim, that the King can do no Wrong; and therefore the Law doth repoſe this Truſt in him, of charging without any Danger at all: I ſhall ſhew, that the ſame Law doth take notice how, and in what Caſes the King can, as much as in him lieth, do amiſs; and where the Law is ſparing to leave the King any Power to lay a Charge on the Subject, even in ſmall things, when the *Quantum* reſts in his Judgment. It is true, the Law doth allow the King to command Payment of Monies in ſome Caſes; yet where the *Quantum* or Occaſion is ſubject to a Trial; the Ground of all this is, that the Law ſees the King may incline to miſtake, tho' as a King he can do no Wrong.

This may ſeem a Nicety, but under favour it is clear. This reſteth in the Diſtinction of a double Capacity of a King, as a natural Man; and to ſay in this reſpect he cannot err, is ſtrange! Human Nature is not capable of that Prerogative at the beſt; and they are ſubject to natural Infirmities of the Body, and muſt die: even ſo of the Underſtanding and Will. And ſo you ſee the Law muſt take Notice of poſſible Miſtake in Government; and this Poſſibility in another is no Injury to a good Prince, but ſets off his Merits with a greater Luſtre. This is not only true for ſmaller things, but even in the greateſt. How many Acts of Parliament have we in Print (of which your Lordſhips are Judges) declaring the King's Miſtakes in the Acts themſelves by way of Complaint, and providing Remedy for the future, yea, in their own Times? To inſtance in one long ſince, caſt your Eyes upon the beginning of the Acts of Parliament of *Edward* the Third's Time, where we find a Statute for the Government of the Realm.

As the Law ſaith, he may incline to miſtake in his natural, ſo it hath taken care, that in his politick Capacity he ſhall not. And therefore, leſt poſſible Errors of the Natural Body ſhould reflect on the Body Politick, the Law hath provided antient Means to prevent it, which was a Writ of *ad quod damnum*. *Na. Br.* ſaith, that if any Damage be to the King's Subjects, the Patent is in Law naught: As if the King grants a Fair, and there is an *ad quod damnum* brought, to inquire what Fairs were kept by it; if found a Damage, the Patent is void: The Books are full of ſuch Caſes. It is true, that in ſome Caſes, the Books do allow the King to lay a Charge upon the Subject, yet not in every Caſe for publick Good; but only in ſome few, which indeed have been antient, and indeed of the very Eſſence of neceſſary Traffick and Intercouſe, between one Part and another of the Kingdom; as Murage, to keep the Commodities ſold the ſafer: Toll, for a Fair or Market towards the maintaining of it: Pontage and Paveage, for the bettering of Paſſages. And in all theſe Caſes the King may grant a Sum of Money to be paid; yet as it is in this common Good, ſomebody muſt have the Power to grant, and that can be none but the King. So if the King ſhould grant on no Occaſion, or howſoever, which is enough for me, a Sum too great, greater than the Benefit the Subject ſhall receive, it is void in Law. If the Subject hath not a *quid pro quo*, then no Charge; 5 Report: and in this Caſe there is a Judge of the Juſtneſs of the Proportion, beſides the King: And this is when a Patent cometh to be queſtioned, if the Toll be laid too high, then the ſame Patent is nought. Thus then you ſee how far it is that the Law doth agree, that the King ſhall lay Charges upon the Subject, only out of common and ordinary Neceſſity, there muſt be ſomebody to have Power. But then there is a further Remedy of a Miſtake.

Here, before I leave this, I will make a double Uſe thereof. Firſt to ſhew, that if the Law doth not permit the King any abſolute Power in this Trifle, ſhall the King do it in ſo great a Matter, where you ſhall have no Judge but himſelf of the Occaſion and Proportion?

I next obſerve, where the Law permits the King to charge in any Caſe arbitrarily, it is but where this Power doth ariſe by original Contract, and precedent Conſideration and Agreement for Land; and then not *quatenus* as a Subject, but *quatenus* as a Tenant, only as *Ratione Tenuræ*, in reſpect of the particular Signory and Dependance, not in reſpect of the general Signory of the Kingdom.

My Lords, it is true, at the Common Law the King had a Power and Liberty to charge, till he was reſtrained by Statute, which was Aids *pur Faire Fitz Chevalier*, *pur file Marrier*, *pur Ranſome*, and taxing of antient Burroughs: And theſe Aids too, were in reſpect of particular Signory, *quatenus Tenentes*.

The next thing that I obſerve is, that the Policy of the Kingdom ſo little delights in theſe Incertainties, tho' it ariſeth out of Contract and Conſideration, that in Caſe of theſe Aids, the Law would not allow that Inconvenience of leaving them to an arbitrary Charge, but in ſome Caſe ſettled a Proportion. It's true, in Caſe of Ranſom, becauſe no Man can tell the Certainty of that, it is left at large.

This I further obſerve, by the Common Law, where the Charge is in reſpect of the Tenency; yet if the Charge comes often, as the King pleaſeth, there the Law did not leave it to the King's Judgment; as in Eſcuage, which is a Profit ariſing to the King in reſpect of the Signory. Tho' the Law allowed the ſaid Aids, *pur Faire Fitz Chevalier*, and *pur File Marrier*, becauſe they could happen but once; but Eſcuage that might happen often, the Law would not allow that to be uncertain; it muſt be aſſeſſed in Parliament, as in the Charter of King *John*, which was always held to be no more than the Common Law.

My Lords, upon the whole, I deſire your Lordſhips to conſider how unwilling the Law is to leave the King a Liberty to charge, even in the King's Caſe, at Common Law; and how reſtrained by Act of Parliament, where the Common Law before did give Liberty.

Next obſerve that the Law, in none of the ſaid Caſes, nor I believe in any other, doth permit a Power to lay an immediate Charge upon the Subject, but only in laying a Charge to be paid in reſpect of the Benefit which he hath received, which is fit to pay, and none are compelled to receive it or pay it; for if he will not have the Benefit, he may refuſe to pay it even in Caſes between King and Subject. In the Caſe of Toll, Pontage and Paveage, it is not laid ſo on the Subject, that he ſhall pay it whether he will or no; but as there is a Benefit by the Pontage, *&c.* which cannot be maintained without Charge, 'tis therefore juſt that thoſe that have the Benefit ſhould bear the Charge.

Laſtly, I ſhall offer, that even in Caſes where the King doth lay a Charge *quatenus Rex*, it is not ſo left unto him, either for the Occaſion or Proportion, as that if he will lay never ſo much, he may; for if it be unreaſonable, the Law doth make it void, as in caſe of Toll, if unreaſonable.

My Inference is this: If the Law be thus careful in ſmall things, as Penny Matters, whether or no the Law will make no Proviſion in the Main, but leave the Subject to the abſolute Liberty of the King, to charge the Subject when he will ſay the Kingdom is in Danger, and where there is no Judge at all? I will conclude with Book-Caſes, in the Point, that the Law doth not leave a Power in the King to charge, tho' it be in the King's Judgment? *pro bono publico*; as in the Caſe of granting an Office. The King cannot at this Day regularly create an Office in itſelf with a Fee, but in Law it is void; tho' the Office in itſelf hath a Shew, nay, it may be *pro bono publico*. *P.* 11. *Hen.* IV. 15, 16. and in 14. a Grant of an Office of Meaſurage with a Fee void; and that very thing, 13 *Hen.* IV. was complained of in Parliament, that it was againſt the Law, becauſe it was in Charge of the People; to which the King anſwers, Let the Laws and Statutes be performed. In the Roll, amongſt the Adjudicates, the Reaſon is expreſſed, *quia ſonat in præjudicium Populi.* 16 *Ric.* II. the King grants to one a Rate upon every Barge that paſſed the Bridge, in Conſideration that the Patentee had taken upon him the ſcouring of the River, in that Caſe the Patent was repealed. So in the Caſe of Rights to be kept for the Benefit of Seafaring-Men, this was in Charge of the People. This Patent was complained of, and your Lordſhips know the Order upon it. I omit many Caſes, and conclude with that of *Forteſcue de Legibus Angliæ*, *cap.* 25. ſpeaking of and commending the Policy of the Government of *England*, he prefers it before that of *France*; and ſhews the good Fruits and Efforts of it; and lays down this for one, That the King cannot charge without Conſent in Parliament. And he was a Man allowed for extraordinary Judgment, who ſheweth Inſtructions for a Prince for future Government, being truſted more with the Government of the Prince than any other. I conclude theſe Caſes with this Obſervation.

This denying of Power of laying Charge on the Subject, is not only in the Caſe where the King would raiſe Benefit to himſelf, which a Man may call *tallagium vel auxilium*; but in Caſes of Charge which lies on the Subject, tho' not for the King's own Benefit, tho' alſo it be in Caſes *pro bono publico*, as in the Caſes put before.

I ſhall now come from the Books, by which I have ſhewed what is the Common Law, that by theſe Grounds the King cannot charge the Subject. I ſhall now offer the Conſideration of ſome things, which are Acts of Parliament, or have the Force of Acts of Parliament.

I ſhall begin with that of *William* I. for a Conqueror I ſhall not call him, for that Name came in about *Ed.* III. his Time; for there being an *Edward* before, becauſe they could not tell how to give him a Diſtinction from the Confeſſor, they called him *Edward* III. after the Conqueſt, by Direction of Sir *Roger Owen*, the great Antiquary. That which I ſhall urge is, that which he granted *Anno* 1. of his Reign, That all Freemen ſhould hold their Lands *ab omni injuſta Exactione ſeu Tallagio*, nothing to be demanded but that which was by Tenure, as in *Eadmerus* by *Selden*. Now whether or no this be an Act of Parliament, I ſhall not diſpute; yet in thoſe Times when a thing was granted between the King and the Subject, tho' it had not all the Formalities that now it hath, yet it was binding: however, this is called the Conqueror's Laws, and I take it for a Law.

Then it reſteth to examine the Words, whether the Words will ſerve the Purpoſe, to clear the Subject in point of Seſs. It is ſaid, they ſhould be free *ab omni injuſta Exactione ſeu Tallagio, ita quod*, &c. By this all Charges, but ſuch as were by Tenure, are called Exactions. The Rule is, *ubi lex non diſtinguit nec nos debemus*. This is a Grant, if not of Right, yet of Grace, and muſt be taken largely, *favores amplificandi*. The Subject could not have demanded of him, eſpecially that of forty Shillings, if it had not been the Law of the Land before.

I ſhall humbly leave it, whether this be not the Law by which *Edward* the Confeſſor laid down the *Danegelt*; for the *Danegelt* was not only againſt Pirates and Sea-Robbers, (they were indeed Pirates and ſtrong at Sea) but alſo againſt all other Enemies. Theſe called the King of *Man*, *Archipirata*, that is, a powerful King at Sea; and that theſe Pirates were only ſtrange Enemies; and it was to raiſe Men, not *obviare eruptioni*, but *irruptioni*, not ſo much to keep them within their own Kingdom, as to keep them from falling on the Land. And by the Hiſtory of thoſe Times when this was raiſed, it was by reaſon of the *Danes* landing in *Northumberland* and *Eſſex*; and ſo upon that Irruption of the *Danes*, *Danegelt* was raiſed. It is called by *Camden*, in his *Brit' irruptione hoſtium*; and *Lambert*, in his *Saxon* Laws: but let it be *irruptione*, or *eruptione*, or be it *Danegelt*, to keep them from coming out, or landing here, both of them were for the Publick Service. When this had been ſo much complained of in *Edward* the Confeſſor's Time, it is clear he damned it. And *Ingulphus* is an Author without Exception, and *Tilburienſis* not to be compared to him. *Ingulphus* was a great Courtier and Favourite of *William* the Conqueror's; and to think that he had not a better Knowledge of what the Confeſſor did than *Tilburienſis*, who wrote many Score Years after, is much. And it is ſtrange that *Ingulphus*, who was ſo much bound to the Confeſſor, ſhould carry a Law down to *Edward*, ſo much to the Prejudice of the Confeſſor, if he had not been ſure of it. *Tilburienſis* was urged, as if he ſpake, that it had been paid to the Conqueror; he wrote in *Henry* II.'s Time. And, my Lords, obſerve that he was an Officer in the *Exchequer*, and for the Rules of the *Exchequer* he teacheth them well; but for Hiſtory againſt *Ingulphus* I leave him.

If this were laid down by *Edward* the Confeſſor, then I conceive, this Law of *William* I. was but the Law of *Edward* the Confeſſor; and there was no Ground for him to require a Law to lay any Charge but what was before. *Tilburienſis* makes this good, for he himſelf ſaith, that the Conqueror laid it down, and took it up again. If it were laid down, I would know by what Law or particular Direction it was laid down, if not by this; for nothing in all the Laws of the Confeſſor can cauſe to lay it down but this: and thus far he ſtandeth with *Ingulphus*.

I ſhall further ſhew theſe Aids and Taillages were meant here. It is a clear Ground, that, *exceptio format Regulam in non exceptis*, an Exception often doth enlarge the Meaning of the Word beyond the ordinary Senſe. As if I do grant to *J. S.* all my Trees, here my Apple-Trees paſs not; but if I grant all my Trees except my Pear-Trees, there my Apple-Trees do paſs, becauſe this ſheweth that meant all my Fruit-Trees. In the Word Trees I apply it, that here is a Diſcharge of all Taxes, except by Tenure. Now I ſhall ſhew that Tenures were for Defence and Service of the Kingdom in the proper Place, when I ſhall ſhew what Proviſion and Means the Law hath allowed the King for Defence.

My laſt Obſervation is this. This was not a Charter between the King and his Tenants, but betwixt the King and Kingdom; and ſo ſomething muſt be laid down that was due to the King.

There are two kinds of Aids, one from Tenants, the other from the Commons; one was by Command from the King without any more, the other by Act of Parliament.

But here Mr. Sollicitor hath taken that grounded Argument, of which I have found a contrary Senſe, that is, *Sumus fratres conjurati ad Reg' defendend'*, wherefore theſe Aids not poſſibly meant here; but this is contradictory. By Inference to overthrow a thing expreſs is againſt the Law. The Words are expreſs, that there ſhall be no Taillage; then by an Inference to ſay, that the Defence of the Kingdom is not meant, is hard. True, all by their Allegiance are bound to defend the Kingdom, all are to fight for it. Acts of Parliament tells us, where and how we do it, and when; but that we muſt give Aid, is another thing.

It is one thing to ſupply with the Body, another thing to give or pay Money; and if there be any Invaſion, *pro poſſe ſuo*, every Man is bound to Defence; but whether for every Defence of the Kingdom we muſt give an Aid, is another thing. Acts of Parliament will be the beſt Expoſitors of things ſo long ſince; for as Cuſtom and Uſe will make a common Law, ſo likewiſe it will declare an antient Act of Parliament.

Now I ſhall come to that of King *John*, *quod nullum Scutagium vel Auxilium pona ur*. The Credit of this Statute I ſhall firſt clear. It is not only in *Matth. Paris verbatim*, who wrote in *Hen.* III.'s Time; but the Original was ſhewed under Seal the laſt Parliament by Mr. *Selden*, and theſe very Words were read, *Nullum Scutagium*, &c. And, my Lords, tho' this be no where on the Roll, yet that no ways leſſens the Authority of it. It is no part of the Eſſence of a Statute to be found on Record; if all ſhould be burn'd by Miſchance, what would become of the Laws? Tho' the Rolls are all burnt, yet the Judges know what are Acts, and what not, tho' they have nothing to make it good by, but their own Manuſcripts or printed Books, or Traditions. A Man cannot plead againſt an Act of Parliament, *nul' tiel Record*; and that is the Judgment in the Caſe, in 8th Report, *Prince's Caſe*. The Duchy of *Cornwal* ſtands ſupported by an Act of Parliament, not upon Record. That which I ſhall ſhew to make this an Act of Parliament, appears out of the Words: there are two things, *Scutagium* and *Auxilium*; and *Scutagium* riſeth from the Tenants, and *Auxilium* from the Subject. To ſhew that *Auxilium* is laid down by this, it appears, that he could not aſſeſs Scutage without Parliament. I hope to ſhew that Scutage was for the Defence of the Kingdom, and is ſuch a Proviſion, that no King hath a better, and ſuch an one as will raiſe in *England* above 40000 Men.

Ay, but ſaith Mr. Sollicitor, not aſſeſſed but by Parliament, that is, not meant to bind the King, but the Subject; the King can do no wrong.

Doth any Man think that the Commons did come to the King to bind themſelves, and leave the King at Liberty?

I come now to argue from the Exceptions, *Exceptio format Regulam in non exceptis*. This Exception ſhews the Latitude of the Words to be a Diſcharge of all Aids, that there had not been Care had of the particular Aid, *quatenus a Tenentibus*; they were afraid, even thoſe were ſwallowed up. True, I do not conceive that was a thing of neceſſity; but as the King may have it in if he would, ſo the Subject had no reaſon to deny it him, for it was but juſt, and was never meant to be taken from him. Nay, the Lords themſelves had reaſon to take care themſelves, that this was not diſcharged; for in all theſe Caſes the King hath no more than a common Perſon, for he hath his Aid *pur file marrier*, and *pur faire ranſom*, and that appeareth, 21 *Ed.* I. A Releaſe from a Lord unto his Tenant: ſo that there was Reaſon that the King and Lords ſhould have Care of this; yet they were afraid thoſe Words would be ſo ſtrong againſt publick Aids, that they would take away private Aids.

Laſt Reaſon that this *Auxilium* muſt be ſaid publick; look in all the King's Deſires, when they did deſire Aids, ſtill their Introduction is for the Defence of the Kingdom; which is a Cauſe of calling the Parliament; which appeareth by Speeches there on Record. Nothing can be intended of theſe private Aids for himſelf. I have done with the Charter of King *John*.

I next come unto *Mag. Char.* 9. *Hen.* III. For *Magna Charta*, I humbly conceive that this Charter, at the firſt, when it was granted, was no more than *verbatim* the Charter of King *John*, and originally had in it this very Clauſe of *Nullum Scutagium*: my Reaſon for it is this.

Firſt, upon all Hiſtories, that after King *John* had granted a Charter, the Pope would have diſcharged him of it, as far as in him lay, but that ſtill the Lords and Commons made Claim. He died, *Hen.* III. cometh in. A Difference ariſeth between the King and the *French*. Then it was propoſed, that this Charter ſhould be confirmed; Hiſtories ſay, that at his Coronation he gave his Oath to confirm the Charter of King *John*. Then in the 9th Year of his Reign, the Lords demanded it; he was unwilling, becauſe it was gotten *per dureſſe*: But the King ſaid, we are ſworn to do it, and therefore muſt confirm it. And in *Matt. Paris* it is ſaid expreſly, that the Lords did call for the Charter of King *John*, and there it was read and confirmed *verbatim*. And *Matt. Paris* lived in the King's Court, and was *adeo familiaris*, that it is ſaid, he eat with him at his Table; and at that time he wrote this Book, and ſure he durſt not have written it, had it not been true; but we find it not now upon Record: how this might poſſibly ſlip, I ſhall tell you.

Firſt, We have no original Inrollment of *Mag' Char'*, no *Mag' Char'* but that of King *John*'s. If it be true, which Hiſtories ſay, that *Hen.* III. did revoke his Charter, it is poſſible theſe Rolls might periſh in that time: the Authority of the King at *Oxford* did inforce them to bring in their Records; doubtleſs they would not leave the Inrollments.

The next Step to look for it is 28 *Ed.* I. confirmed there, and is exemplified; the Original may be loſt in ſo long a time: what became of all Parliament Rolls, till 4 *Ed.* III? All periſhed by Fire or ſome other Miſchance; things were afterwards put together, and upon the Roll. This was not the original Inrollment of 8 *Hen.* I. and written in the Roll where Acts of later time are written, and with the ſame Hand. If it were once in King *John*'s Time, it muſt be left out ſomewhere.

Obſerve this one thing more, that is, as this of *Scutagium* and *Auxilium* doth concern the Subjects in their Lands, there is a Clauſe alſo that concerneth the Subjects in their Perſons, *Nullus liber homo impriſonetur*, that might be taken for ordinary Impriſonment; then there cometh a Proviſion for the King that he ſhould not do it, which is *non ſuper eum Mittimus*, ſuch Words as that a Man knoweth not what to make of them: but in the Charter of King *John*, it is *nec eum in Carcerem Mittimus*. In this great Thing we ſee the Miſtake, and how the other happened, I cannot tell.

I now come to *Ed.* I.'s Time, wherein I hope to make good thoſe Acts of Parliament that we have vouched; and here lieth a main Endeavour. The Firſt was of 25 *Ed.* I. which is not denied to be an Act, nor cannot. The other is *de Tallagio non concedendo*, which is ſo full, that it cannot be evaded, and therefore is denied to be an Act. Firſt, for the Act of 25 *Ed.* I. which is againſt Aids and Taillages not to be taken without Conſent of the Kingdom, I humbly conceive, that by theſe Words Aids and Taillages uſed in former Acts, that theſe were meant of things for a publick Defence of the Kingdom, complained of, and not denied. I ſhall bring home the Roll of the 25 *Ed.* I. that the King doth not promiſe to pay them *pur Reaſon*, to have Words for their Money; but that they muſt have a reaſonable Satisfaction: I will ſhew that was the Senſe given upon the Record.

Firſt, for the Practice of the Times, that there were Ship-Writs went out, theſe Writs went forth in a more terrible Term than any I ever ſaw, *ſub pœne forisfacturæ vitæ & membror'*. 24 *Ed.* I. was the Writ. I am ſure that ſuch a Writ, by the Common Law, would not have been mentioned, that if they did it not, the King ſhould hang them. This Writ was the Grievance upon the Subject, and this Act refers to that. True, there were other Grievances, 4*to.* and 5*to.* but this was one; and that theſe Aids, which were then for the Defence of the Kingdom, were included within the reſt, appears. The King, in reading the Articles, ſpeaketh, that what was done was for Defence; tho' true he had Wars in *Poictou*, and in other Places beyond the Seas, yet as true that it was a War to be kept from hence by Defence. That part was for Defence cannot be denied; and yet no Diſtinction to be made between a Foreign War and Defence, and both equally a Grievance to the Commons.

After this Act of 25 *Ed.* I. there cometh out a Commiſſion, and this was in Purſuance of the Promiſe that the King did make at his going into *Flanders*, and that was to inquire of thoſe Grievances in the Articles, and among the reſt; there was *de lanis & coriis* taken away *pro defenſione Maris*; and to that the King ſaith there, *pay pour Reaſon*. There hath an Anſwer been given unto this, and much ſtood upon, that the King ſhould ſay upon this Commiſſion to inquire of Grievance *pro Cuſtod' Maris*, if it were ſo *il ferra taunt ils teneront appayer pur Reaſon*. That this ſhould be no more, than that the King would give a Reaſon why he did it, I queſtion. As if he ſhould ſend forth Commiſſions, and afterwards diſpute it, or if he did do it, whether lawful or not, that is not the way of ſending out Commiſſions.

Veu le Parol del Record.

Suppoſe that the King ſhould ſay he would give them a Reaſon for it, this Commiſſion did go forth to enquire of thoſe Grievances. And if the King had not ſaid he would have given any Satisfaction, yet it is enough that it is inquired of as a Grievance. It is a wrong upon the Subject, Princes may lay Taxes, yet the Subject doth not call for Satisfaction. A Princely Word that it ſhould be done.

But when the King doth ſay *pais pur Reaſon*, to think, that that is no more than that he would give ſome Reaſon for it, is a very ſtrange inference. In a Bargain they uſe to ſay, you ſhall hold yourſelf content with Reaſon, you ſhall not have your own Demand, but he is ſatisfied one way or other; ſo here.

To begin with a Record. 21 *Ed.* I. Parliament Book. A Petition of the Commons, and they did deſire Reſtoration of all their Monies. 25 *Ed.* I. there were Two *de lanis & victualibus* within that Commiſſion; ſo the Monies and the Things taken were inquired upon by that Commiſſion, 26 *Ed.* I. were for Defence, and here *Ordinatum eſt per Concilium quod Rex ſatisfaciet eis quam citius poterit.* Upon this Petition they deſired Satisfaction. For Goods taken upon the aforeſaid Commiſſion, 26 ordered by Parliament, that the King ſhould ſatisfy them ſo ſoon as he can, ſo that they ſhould hold themſelves content, *Ita quod ſe contentos haberent.* So that you ſee, not Satisfaction by Reaſon, to juſtify them, but the King ſhould ſatisfy them one way or other. It is that they ſhould have ſomething for it, and not that they ſhould have Reaſon ſhewn them why they ſhould have nothing.

But I reſt not here, there is one Parliament-Roll remaining before 4 *Ed.* III. and that was 8 *Ed.* II. *Pro Priore & Fratribus Sti Johannis Jeruſalem.* It is there ſet forth, that *Ed.* I. did command his Treaſurer and Barons of his Exchequer, to make Satisfaction for Wages taken in *Scrutinio* to the Clergy and Laity, *veluti pro lanis & coriis*; and that Satisfaction ſhould be part by Money and part by releaſing of Debts; ſo as thus the King had no meaning, 26 *Ed.* I. to pay back Money preſently, but would give them Satisfaction one way or other, by Payment of Debts, or releaſing of Debts, as was explained by that of *Ed.* II. Another Record *P.* 27. *Ed.* II. *Rot.* 36. Satisfaction was there given for an Eighth and a Fifth.

Thoſe things which were taken before 25 *Ed.* I. complained of, and that confeſſed by Mr. *Sollicitor*; ſo as I conceive, tho' it had been enough that there had been an Inquiry of theſe things as upon a Complaint, tho' there had been no more Anſwer. If any Anſwer make it better, it is no Anſwer to ſay, that they ſhould have Satisfaction by Words, but either in Money or releaſing Debts; if none at all, Confeſſion had been enough.

I ſhall now come to talk of Mr. *Sollicitor*'s Exceptions to the 25 *Ed.* I. where he endeavour'd to ſhew that this Money for Shipping could not be intended within the Body of the Act; and if it was, yet it was excepted in the Saving of the Act.

The Objection ſtands thus. No Aids were charged but ſuch as were granted, and we do not ſhew that theſe were granted; and there is a Word beyond that, (Prizes) and how far that extends, I leave to your Lordſhips Judgments.

But if in the Body of the Act, yet excepted in the Saving all antient Aids due and accuſtomed; for the ſaving ſuch an Aid due and accuſtomed ſurely was meant there.

In this Anſwer lieth this Queſtion, whether theſe were the antient Aids due, or not, by the Common Law? this will ſtand or fall on the Body of the Argument. I ſhall tell you what theſe Aids were, and they cannot be theſe; there were other Aids mentioned in the Charter of King *John*, as *pur faire Fitz Chevalier*, &c.

That which takes off all, is, If theſe Aids were part of the Grievance, tho' for the Defence, they cannot be meant in the Saving, for that deſtroys the purpoſe of the Act. And for that Saving, it never came in by the Commons, nor the Lords; but the Form being ſo, to grant in part, and as the King would grant it ſo they muſt take it: Hiſtories do ſay they did not like it, and ſo they deſired an abſolute Act.

It was ſaid, that Aids and Defences were meant of Foreign ones. If the King and Council were ſo wary as to put in ſuch a Saving as before was not in the Act, it ſhews what Care they had to have that they could not have. If by the Laws they might have them for Foreign Defence and not at Home; they that put in the Saving would have put in a Diſtinction. I ſhall leave the Conſideration of this Act to your Lordſhips, how far it ſhall extend to Aids for the Defence of the Kingdom in that Caſe.

I ſhall go on, and conclude with the Statute *de Tallagio non concedendo.* That Act of the 25 *Ed.* I. was indeed ſo well penned, that it gave Mr. *Sollicitor* a very probable Colour to make thoſe plauſible Anſwers. The Lords did deſire a better Act, not with theſe Words, no ſuch Aids; for ſuch is a relative Word, and thoſe are dangerous Words.

Next, if no more be meant by the Saving than *pur faire Fitz Chevalier*, &c. and yet to have left theſe in the general, and not in the particular, had left a way open to queſtion what they had been. And in *Walſingham* it appears the Lords were not contented with it, tho' it was ſigned and had paſſed the Great Seal. It is true, that at this time a Pardon did paſs to thoſe Lords; the Words are ſo ſtrong, that this was denied to be an Act: and much ſaid, and very colourable too, to that purpoſe.

It is true, that this Act is no where on Record, that we find; but for that an Anſwer hath been given before.

It is ſaid, that is no Act, but only penned as a Charter; that Exception was once made by the King's Council on another Occaſion.

Acts of Parliament were then penned ſo; *Mag. Charta*, and *Charta de Foreſta* are but in form of Charters.

Yea, but we cannot tell when it was.

How many Acts of Parliament are there which we know not when they were? Hiſtorians beſt tell that. It is hard to find it when the Records are loſt. But this will appear to be in the time of *Ed.* I. There is the Pardon to thoſe Earls in 25 *Ed.* I. We know that the Rolls of thoſe Times miſcarried and were loſt, and ſure it muſt be after the Statute of 25 *Ed.* I.

But then there is an Exception from the diverſity of the penning; ſometimes *nullum Tallagium ponetur*, ſometimes *ponatur*.

We know, upon the entering of the Rolls, there have been divers Miſtakes in the entering of *ponatur*; if it be with a Daſh, it may eaſily be miſtaken, and ſo only *vitium ſcriptoris*, and nothing elſe.

Then let us inquire what it was if it be no Act. It is ſaid it is no Act, but an Extract out of 25 *Ed.* I. and that he urged ſeveral ways upon ſeveral Occaſions.

By the penning of it, it doth appear, that he that wrote it was a Scholar, and not miſtaken, to make a thing abſolute that was relative; for *nullum* to make it *tale*, and to make that without a Saving that had a Saving, is a ſtrange kind of Saving.

Yea, this cannot be an Act; for at that time there was a Pardon granted to ſeveral great Lords.

If that be true, which Hiſtory ſaith, when this Act was publiſhed, the Lords were not ſatisfied with it; and theſe were the Lords to whom the Pardon was granted that were not ſatisfied. And to make their Pardon the ſtronger, they did weave it into the very Body of the Act: and for *Walſingham*, he is of great Credit among the Hiſtorians.

They ſay further, that this is no Act, for this takes away thoſe three Aids, *pur faire Fitz Chevalier*, *file marrier*, and *pur Corpus redimend'*.

This is not ſo, Acts of Parliament ſpeak of it, and Practice ſpeaks of it, and therefore no Law; and Practice of Ship-Writs ever ſince, and for Defence of the Kingdom.

For the Aids, that is a good Act; yet thoſe were not intended nor included within that Act, and therefore that Practice is not contrary, becauſe it is not within the Words of the Act, nor in the Meaning of the Act.

For the Aids therein queſtioned, the Queſtion was between the King and the Commons, and not between the King and Tenants; then that being the Queſtion, there muſt be a Conſideration according to the Occaſion and the Doubt made. But to take thus *Nullum Auxilium ponamus*, theſe are not Aids put on the Tenants, but Fruits of a Signory, as the Duty riſeth not from the King's Command, but from the Laws, and ſo not within theſe Words *Nullum Auxilium ponamus.* And ſo all the Practice ever ſince will well ſtand with this Act.

And to ſay Shipping is not meant, becauſe of the Practice ſince, is nothing. Let me eſtabliſh once the Laws, and no matter for the Practice. If the Laws be once ſettled, we muſt reduce Precedents to Laws, and not Laws to Precedents.

And for the Practice yet, ſtill the Subject makes a continual Claim againſt them.

My Lords, to prove this is an Act, *Walſingham* entered it in his Time, who did not write very long after it. Tho' it hath been ſaid that he was a Monk, and what he wrote he took up in the Street and Market-Place; yet I will not think ſo of *Walſingham*, who was ever held an Hiſtorian of very great Credit. And no Hiſtorian whatſoever durſt ſet down any thing for an Act of Parliament, if he had not a ſure Warrant for it. It had been little leſs than Forgery.

In the next place, it hath been ſaid, Hiſtories are no good Authorities in Law.

True, they ſhall not tell me what the Law is, yet they are good to tell us of *Res geſtæ*, whether or no there hath been ſuch things done. He tells us, not that this was for Shipping, or not for Shipping, but tells us there was ſuch a thing. I have ſearched after this Act, and I have found in an antient Manuſcript in *Hen.* IV. Time where it is, and it goes there under the Name of *Statutum de Tallagio non concedendo*; and I find it mentioned no where, but ſtill find it mentioned as a Statute. I have an Abridgment of *Hen.* VIII.'s Time, and there it is put in as a Statute. I will not urge poſitively, but probably, and that an Act in *Hen.* IV.'s Time, 13 *Hen.* IV. A Complaint of laying Taxes on the Subject; the Anſwer is, Let the Laws and Statutes be obſerved: this is that poſitive Act that doth reach it more than any other.

But the main Anſwer that I rely upon, is, that if they deny the Truth of an Hiſtorian for *Res geſtæ* as this. If from time to time it hath been conceived an Act, what more ſtrong? What makes our Common Law, but general Opinions and Allowances? And ſhould we doubt of many things, whereof we find the Acts of Parliament themſelves, I am afraid we ſhould ſhake many things done by the Common Law. That which I rely upon is, the Judgment of the late Parliament, to which your Lordſhips will give all Reverence. This, my Lords, did not paſs *ſub ſilentio*, but was made a Queſtion, and ſomething propoſed on the King's Part, whether an Act or not? in the Concluſion it came into the Petition of Right. The very Statute mention'd in that Petition was this, *de Tallagio non concedendo*, made in *Ed.* I.'s Time. How far this Queſtion paſſed at the Committee, it is better known to your Lordſhips, and is the thing whereon it is built. If this had not been an Act, it had been dangerous to have put it into the Upper Houſe; but it being there read, your Lordſhips know what was done upon it.

The Petition being thus debated in both Houſes, I ſhall leave it to your Lordſhips Conſideration, how far you will make this Queſtion to go in this Caſe. And his Majeſty did not deny the ſame, but both King and Council agreed it is a Law.

Mr. Holborne'*s Third Day's Argument in the* Exchequer-Chamber, *before all the Judges, on the Behalf of Mr.* Hampden.

My Lords,

AS the other Day, ſo now again with your Lordſhips Favour, I ſhall be bold to ſum up my laſt Day's Argument in a very few Words; and by the way clear my Meaning, wherein I was any whit obſcure, as alſo add where I was defective, yet briefly in both.

My Lords, the general Queſtion the other Day, being concerning the King's Power to lay a Charge of Money upon the Subject; and my general Ground againſt it being but this, that tho' the Laws did intruſt the King in many great Powers in Government, and with the whole Government, according to the Laws; that yet by doing of Acts, which charge or prejudice the Subject in his Eſtate, the Law did ſee that it was poſſible that Kings, as Men, might err, and therefore did make Proviſion, that their Acts, if againſt Law, ſhould be void, as in Caſe of a Diſſeiſin or Diſcontinuance, or where they were to paſs Grants, that there ſhould go before an *Ad quod damnum*; and alſo, that if they were paſſed, and were to the Prejudice of another, that regularly in that Caſe, the Law did make them naught, and that they were to be repealed.

And I ſhewed how this did hold, eſpecially in laying Charges upon the Subject. I ſhewed that the Law was not willing to leave the King Power to charge in any Caſe, notwithſtanding where the Occaſion might be common, and did require, for the Maintenance of Traffick and Commerce between them, ſo to hold them ſtill as within one Body. The Law muſt leave in ſome Body a Power to charge, which would be left in none but the King as ſupreme Governor. The Caſes for this were the Monies to be paid for Murage, Pontage, Paveage, Ferriage, and the like. That in thoſe Caſes, tho' the King was truſted with a Power to lay a Charge; yet the Law did not leave the Charge arbitrarily in the King's Breaſt, ſo, but that if it were unreaſonable, the Grant was naught, and the Proportion was to receive Trial by another, upon whoſe Judgment it muſt ſtand or fall, which were either the Judges or a Jury; like to that Caſe which I might have put, but did not, of a Fine uncertain upon a Copyhold. I alſo ſhewed, that in ſome Caſes the Law did allow to demand arbitrarily upon ſome Subjects, Sums of Money, yet that was not upon the Subjects, *quatenus* Subjects; but upon ſome Subjects, *quatenus Tenentes*, which did riſe upon the *Jus rentulare*, as to marry his Daughter, to make his Son a Knight, or for Ranſom, or upon thoſe who were little better than Villains, the King's Burgeſſes, whom the Law did not ſo much regard; yet the Policy of the Kingdom, in thoſe Caſes, did afterwards reſtrain the King to a Certainty, by Act of Parliament.

Afterwards I went to the Caſes which were in Point, that the King could not lay a Charge upon the Subject, tho' for a publick Good; and inſtanced in the Caſe of the Grant of the Office of Meaſurage, with a Fee, adjudged void, *quia ſonat in Oppreſſione Populi.* 22 *Ed.* III. *Pat.* 31. The King granted to one *Pawley*, an Office of Alneage of Worſted; and becauſe in Charge and Burden of the People, and a new Grant, adjudged void, and was repealed.

I begin with that of 4 *Will.* I. which I now find more clearly to be an Act of Parliament, out of an antient Manuſcript of the Church of *Litchfield*, mentioned to this Purpoſe in *Eadmerus.* Here I endeavour'd to anſwer to Mr. Sollicitor, when he ſaid, that there was another Law of the Conqueror's, which explained this; and ſhewed, that the Charges for the Publick Defence were not meant, becauſe it is ſaid in another Place of the ſame Law, *quod omnes ſunt fratres conjurati ad Regnum defendendum.* To this my Anſwer is, that they are ſo for their Bodies, *Fratres conjurati*, to ſerve, but not to be charged. Yet I muſt confeſs it is *pro viribus & facultatibus* to defend the Realm; where *pro facultatibus* may ſeem to imply, that they were bound to be ſubject to Charges, *ſecundum facultates.* Under favour, *pro viribus & facultatibus*, are but Words of like nature; *viribus*, that is *facultates*, natural Powers, not Subſtance; for it is not only that they ſhould be *Fratres conjurati ad Regnum defendend.* but alſo *ad pacem dignitatem Coronæ*, &c. *& ad judicium Reg' & juſtitiam faciend.*

I went next to the Charter of King *John*, which I obſerve to be but Common Law; it's inrolled, remaineth under Seal, and is recited *verbatim* in *Matth. Paris.*

I went next to the Acts of Parliament, 25 *Ed.* I. againſt Aids and Taillages; there I laboured to ſhew, that the Act was made againſt Aids and Taillages, tho' for the publick Defence; and that was out of the Articles, whereupon the Statute was made, and upon the King's Anſwer to the Articles: Next out of the Commons, which was after the Statute, to enquire of the Grievance mentioned in the Articles, to the end there might be Satisfaction, which was promiſed upon the Articles; where, in the Commons, the whole Inquiry was *de gravaminibus.*

It is enough for me that this Commiſſion was grounded upon the former Articles, and that here this very thing, *pro defenſione Reg'* was *inter gravamina.* It had been ſtrange, when the King had confeſſed upon the Articles, that he would not legally juſtify them, and upon the Commiſſion, in Purſuance of the Articles, had called them *Gravamina*, and ſo to be inquired of, that now when they were found he would juſtify them in any Point, and ſay, *a pais pur reaſon*, give them a Reaſon for what he did, as Mr. Sollicitor ſaith.

Next I did conclude with the Statute *de Tallagio non concedendo*; and there my Labour was to prove this to be a Statute: and I am ſorry I ſpent upon it ſo much Time, if that had not been denied by Mr. Sollicitor to be a Statute. But now I underſtand, by the King's Side, that this was no Statute, but made and ſealed at the ſame Time with that of the 25th, and meant to be no more than that of the 25th.

This ſeemeth ſtrange: For why ſhould they be both at one time? Next, how came they ſo much to differ, if made at the ſame time? Why are there ſome things in the Statute, *De Tallagio non concedendo*, which are not in the Statute of the 25th?

But the Teſte will clear all. Firſt for the Teſte of that of the 25th, it was *Teſte Ed' Principe*, and ſealed by no more than the King: To this the Archbiſhops and Lords put their Hands and Seals. But, however, I am glad to hear it now confeſſed to be a Statute; for then we have no more to do, but to ſee whether the Charge of the Defence were within the Meaning of theſe Words, wherein ſure the Words are general enough; and what Reaſons have been given, why by the Expoſitions of theſe, Charges of Defence ſhould be excepted, you have heard; and what my Anſwers have been unto them, I leave to your Lordſhips Judgments.

I come now to *Ed.* the Third's Time, 17 *Ed.* III. *Parl. Roll.* Whereas Commiſſions have been awarded to the People and Shires, to prepare Men at Arms for *Scotland* and *Gaſcoigne*, or elſewhere, at the Charges of the Shires, contrary to Law; the King hath not, before this time, given Wages, whereby the People have been at great Charge, and much impoveriſhed. The King wills, that it be done ſo no more.

Ay, but it was ſaid, this was to *Scotland* and to *Gaſcoigne*; and that this was foreign War; and that was denied, tho' not admitted.

I anſwer, that in thoſe times, *Scotland* held in Fee of the Signory of *England*; and in thoſe Times the King of *England* was *Dominus directus Scotiæ:* And ſo *Ed.* I. when he determined that Quarrel between *Bruce* and *Baliol*, and gave Judgment by Writ, ſettled *Baliol* King of *Scotland*, and did juſtify it; and it is remaining in the Rolls of *Scotland*, in Mr. *Squire*'s Office. When there was a Treaty of Peace between *Baliol* and *Ed.* the Firſt, he refuſed to aknowledge the Signory of *England*; and there the Parliament reſolves he ſhould rather have a War than loſe this. So ſee *Selden* upon *Forteſcue.* War in *Scotland*, not foreign War, but like to that in *Wales*; and ſo was it ever ſince held, ſince the Conqueſt, to be within the Signory of *England.* By the Statute of 12 *Ed.* I. and by the Statute of *Hen.* VIII. it appeareth to be within the Fee of *England.* War againſt one another, cannot be called a foreign War; as in the War to *Scotland*, *Wales*, and elſewhere, which is not meant of foreign Parts; for then it would have been expreſſed where, as well as *Gaſcoigne.* And by the Hiſtories of thoſe Times, we ſhall find there were Armies carried to no other Place. Nay, to ſhew this elſewhere is meant in *England*, ſee the 1 *Ed.* III. Parliament-Roll before this Parliament. The *Scots* invaded *England*, as appears by a Writ of *Ed.* III. where is mention of an Invaſion, and thereupon requires Aid. If there be Wars in *Gaſcoigne*, and if occaſions to *Scotland*, and in *England* too where the *Scots* are, and this a defenſive War. Further for the Wars of *Scotland*, if that ſhould be called a foreign War; if the King ſhould go thither and make a War, yet by the Rules of the King's Council, if a War in foreign Parts is but to prevent a War at home, this War is not foreign, but for Defence.

Another Act made on this Occaſion, that the King wills, 1 *Ed.* III. *cap.* 5. that no Men henceforth ſhall be charged to arm themſelves, otherwiſe than formerly in the Kingdom of *England*; and not to be compelled to go out of their Counties, unleſs upon the ſudden coming of an Enemy, and in caſe of Neceſſity, and then to be done as in Times paſt: This Statute coming in the ſame Year when the Complaint was made for carrying Men out of their Counties at their own Charges.

Here I obſerve that the Subject ſhall not go out of his County, not only at ſudden coming of Enemies, but likewiſe on Neceſſity, and both together. And when it is ſaid, it ſhall be done as formerly, it as an Allowance that they had formerly been paid. So then, if this be a ſtronger Caſe, admit here an actual coming of Enemies, nay ſudden; nay, here is a Neceſſity, and the Subject is to go out of his Country, *pro poſſe ſuo*, yet he had his Allowance.

Perhaps it may be aſked, why ſhould not the Subject pay? Is not the Kingdom in Danger? are they not to defend it, *poſſe ſuo?*

They are ſo in their Counties; and if they go out, the Law hath provided a Supply. Parliament-Roll, 13 *Ed.* III. there was a Time when there were known Enemies, actual Wars in *France*; they intended to divert the War by bringing it home to our own Doors: The Enemies threatned much, nay, did much Hurt; yet did not *Ed.* III. command theſe Supplies this Way, but called a Parliament, and there Conſideration was had in Parliament for Supply, and that the Kingdom has Ships enough, if they were willing; and this was in way of Defence.

From all this I conceive that it is ſtrongly inferred that he could not force them: And when the Lords and Commons did meet, to take Conſideration for the Wars againſt *France* and *Scotland*, the Commons laid the whole Charge on the Cinque Ports, they diſclaim'd to have any thing to do with it. And for the Land-Service, they ſaid, let thoſe of every County reſide there, but no Charge on the Subject in purſuance of this. *Clauſ.* 13 *Ed.* III. *M.* 11, & 14. *Dorſ.* The Town of *Bodmin* doth ſhew the Execution of this Judgment; it being agreed, that the Sea-Towns, and bordering Shores, ſhould look unto it.

I ſhall agree that ſome Inland Towns are bound by Uſe and Tenure, but no otherwiſe, 4 *Ed.* 3 *cap.* 1. that the People are not compelled to make any Aid out of Parliament; and that the Aid granted ſhall not be drawn into Example; and that the Aid granted is for the Defence of the Sea.

But it hath been ſaid, that they are Aids granted for foreign Wars, for the Wars in *France.*

True, they were in part granted, ſome for the Wars in *France*, and part alſo for Defence on this Side. And where there is no Diſtinction, why not for the one as well as the other? It muſt, under favour, be conceived for either, or both. And between this Time of 14 *Ed.* III. and 25 *Ed.* III. your Lordſhips have heard from Mr. *St. John*, ſome Complaints in Parliament, for charging the Counties with Hobbellers, and going out of their Counties, which are not really compleat, only for Proportion, in regard of their Succeſs, but alſo for the Thing itſelf.

2 *Ed.* III. *M.* 21. The Commons pray to be diſcharged of the Guard of the Sea; and that the King would keep it at his own Charge. This ſhews the Judgment of both Houſes, and the Weight of it is very great; For when there is any difficult Point concerning the Liberty of the Subject, it is referred by the Judges to the Parliament, to be there decided; of that Reverence is the Parliament.

But it hath been ſaid, this is rather a Matter of Prayer than Right.

Under favour, the Matter ſhews that they claim in point of Right: And it is to be ſuppoſed, that they would not make ſuch an unreaſonable Requeſt, as to lay that wholly on the King, if they of Right ought to do it. And if Words were put in a fair Language, it was but a fit and humble Language for ſo great a Prince as *Ed.* the Third was. But *Ed.* the Third gave no Relief: yet that doth ſhew the Judgment of the two Houſes; and as there was no granting, ſo there was no expreſs denial. A handſome Prayer, and a handſome Anſwer. 14 *Ed.* III. Parliament-Roll, there it appears there was a Charge of 2*s.* on all Woolfells, and this for Defence of the Sea; and in the 15th taken away in the Parliament.

I ſhall conclude this with the 25 of *Ed.* III. No Hobbellers were to go out of their Counties, unleſs by common Conſent. This Statute is general for Defence; there is no Exception; if an Enemy do invade, the Parliament believes the Kingdom is provided for.

Yea, ſaith Mr. Sollicitor, the Subject is not charged to go out of the County, that is, upon Summons, *ad Exercitum*; for Summons is twofold. *Firſt*, a Summons *ad Exercitum*, and then a general Summons. By the Summons *ad Exercitum*, only thoſe were to go that did hold by Tenure; and they ſay it is *encounter droit*, to be charged out of their Counties.

It is true, about this time there are ſome Records of 16 and 18 *Ed.* III. in the *Exchequer*, where Charges are laid on the Subject for Hobbellers, and ſuch things: But you ſhall find in the *Exchequer*, that the Money came thence, which

was

before the Statute; theſe things were the Grievances complained of. So the Practice there will not expound the Statute, for the contrary Practice did beget the Statute. But the laſt of theſe, in 24 *Ed.* III. who was an active Prince, and maintained Wars, and ſo had great Occaſions for Moneys, and ſo charged the People higher than they would endure; for which he did afterwards repent, and deſired to be prayed for; and therefore there were divers Impoſitions on Merchants; all which I paſs over, only this out of the Roll, 50 *Ed.* III. *M.* 24. It is the Lord *Latimer*'s Caſe, a Privy-Counſellor and Chamberlain to the King; there was a Complaint in Parliament againſt him for divers things, whereof one was for laying an Impoſition upon Merchandize. In his Juſtification he pleads the Command of the King; and for that Particular he was ſentenced, impriſoned, fined and ranſomed; ſo careful were they to revive that Law. And that Sentence of his, 2 *Ric.* II. made the great Lords ſo unwilling to talk of the Defence without Parliament.

And ſo I come to that of 2 *Ric.* II. upon which I muſt inſiſt, for that it is of great Weight. It doth appear, as well by the Conſultation itſelf, as by Hiſtory, that the Realm was in great Danger from ſeveral Parts; as from *France*, *Scotland*, *&c.* and that the Danger was ſo inſtant, that it could not ſtay for a Parliamentary Supply: Therefore the Council of the King were to conſider of it: they know not what to adviſe; they meet together, they had no Time to call a Parliament; but the Lords, both Temporal and Spiritual, and Sages of the Realm, conſidered what to do, when the Safety of the Kingdom laid ſo at the Stake. The Reſolution of theſe Lords and Sages, who were, as I conceive, the Judges, *propter excellentiam*, conclude that there was no way but by Parliament; and all this was for Defence, and againſt an inſtant Danger, which could not expect Summons of Parliament. And the Lords themſelves rather lend Money out of their own Purſes, than adventure that which *Latimer* did; which indeed was the Ground which made them wary.

To this there were many Anſwers, yet all will fall off. 'Tis true, that it is no Act of Parliament; yet ſuch a Reſolution, that had it been 300 Years before, would have done much. The Weight of this is thus: If this had been a Parliament, there is little doubt what this Reſolution would have done: For the Matter we have the Reſolution of the Upper Houſe; and how the Commons would have reſolved in a Point of Liberty, we may eaſily conceive. Here we have the Judges Opinions in point of the Legal Power of the King, what the King would do, as well as what he ſhould do: And in things of this Nature, the Judges are the King's Council. And as in the great Council, (the Parliament) they ſit there for Counſel in things that belong to Matters of Law, ſo at this time in this Aſſembly, which was inſtead of a Parliament, theſe were not left out, being beſt able to declare the Rule; and this was about two Years after *Edward* the Third's Death: he could not then have any other than the Council of his Grandfather; and of theſe their Reſolution was, that the King could not charge the Subject out of Parliament: And though it was no Act of Parliament, yet it had the Honour to be ſo accounted, elſe it had never been entered upon the Parliament-Roll.

But it is ſaid, by way of Objection, that *Richard* the Second was then an Infant.

True, he was ſo, but he had a brave Man for his Protector, *John* of *Gaunt*; and he had doubtleſs a ſelect Council, and they were as fearful as might be, that nothing ſhould be done that might wrong the King in his Prerogative.

It is true, they had a Power of doing things by Parliament, yet that was no Act to reſtrain the King, but an Act of Neceſſity: the King was an Infant, and therefore it was requiſite, that during his Minority nothing ſhould be done but in Parliament, eſpecially that concerned the Kingdom; which was not a uſurping of the Regal Power, but a provident Care of the Kingdom and him: and they do proteſt in that Roll againſt Incroachments upon the Royal Power; and to ſay that is good, which is to an ill intent, is a ſtrange Conſtruction.

They ſay that this Conſultation was for foreign Wars; for that *Breſt* and *Calais* were in danger, and to be provided for: and for foreign Wars, it is agreed the Kingdom could not be charged.

To this I anſwer, Admit a Mixture of Wars, yet every one looks home firſt; we have a Care of our ſelves firſt: but they would have made no ſuch difference, if the Debate had been for both. However, the Lords conclude the King cannot charge without Parliament.

But I cannot leave this Objection, but ſhall give a particular Anſwer. Tho' *Breſt* and *Calais* might be in danger, yet that was no part of this Conſultation; for it is ſaid in that Conſultation, that in a former Parliament, ſufficient Proviſion was made for them. True, they were in danger, but provided for in Parliament before; and that which clears all, under favour there is not a Word in that Conſultation, but is merely for the Defence, and no Relation to a foreign War.

I end this King's Reign with the 8 and 9 *Ric.* II. *Rot.* 10. where is a Conſultation with *John* of *Gaunt* for foreign Wars, and others mixed together: it appears the Subject is not chargeable out of Parliament.

And ſo I come to *Henry* the Fourth's Time. 2 *Hen.* IV. hath been urged, and an Anſwer given to ſeveral Commiſſions for *Calais*, and for the Defence: there was then a Complaint, and a Deſire that thoſe Commiſſions might be recalled. 'Tis true, we find not this granted expreſly; but as no Grant, ſo no Denial; and as we take it, it was granted. This Time of *Henry* the Fourth did yield many Inſtances that the King cannot charge, tho' for the publick Defence. I ſhall remember a Record which the other Day I vouched. *Par. Rol.* 13 *Hen.* IV. *M.* 43. It was upon an Action of the Caſe which we find in the Books, 11 *Hen.* IV. which was pleaded in 13 *Hen.* IV. There was an Office of Meaſurage erected and granted, and a Fee granted in it; this was complained of in Parliament: *Firſt*, an Action was begun at Law 11, and in 13 *Hen.* IV. a Complaint in Parliament; and they complain that this was againſt the Statute, that no Taxes nor Taillages ſhould be laid upon the Subject; and the Anſwer is, Let the Statute be obſerved. This Uſe I make of it; this doth not only ſhew the Confeſſion of the thing, that this ought not to be laid, but that this Statute, *De Tallagio non concedendo*, was to be a Statute: and this Statute was not for Aids that come to the King in particular, but againſt any Charge laid by the King upon the Subject, tho' it be *pro bono publico*; and upon the Record, the Judgment was delivered ſo, becauſe *ſonat in præjudicium Populi*.

I ſhall remember the Grants of Tonnage and Poundage to *Hen.* IV. and the Grants uſually to him were temporary and upon occaſion, and not for Life, until afterwards; and in his Time they were for the Defence of the Sea and Kingdom: and it was granted upon Condition, that it ſhould be confeſſed it was granted of Loan, and not of Right. 9 *Hen.* IV. *M.* 16. and 11 *Hen.* IV. *M.* 45. and 13 *Hen.* IV. *M.* 10. which is the fulleſt; they make a Proteſtation it ſhall not be drawn into Example; yet all that time were imminent Dangers.

But it was ſaid, We cannot ſhew that purely, and ſimply, and ſolely, it was ever granted, but with a Mixture of other things, as that of Tenths and Fifteenths.

But the Parliament was ſo wary, that they did ſever them, and lay the Tenths and Fifteenths by themſelves, and Tonnage and Poundage by itſelf; for tho' they are the ſame Acts, yet upon the Matter they are ſeveral.

I am now come to *Henry* the Fifth's Time; and for him there is not much, but like *Henry* IV. *Parliament Roll*, 1 *Hen.* V. *M.* 17. a Grant of Tonnage and Poundage for the Defence of the Realm, and Safe-guard of the Sea, with a Proteſtation that they ſhould not be charged for the time to come. I think after this time we find no more Proteſtations or Grants upon Condition.

But that which I argue from theſe Grants made in this manner, is, Sure it was the Opinion of the Parliament, that they were not bound; and the King by his Acceptance doth acknowledge ſo much: No Landlord accepts that from the Tenant as a Gift, which he may command as a Duty; and to take it on Terms ſo advantageous for the Subject, and not only give an Acquittance for it, but put it on Record as in point of Right.

But here is an Affirmation of the Commons; and tho' they cannot make a Law, yet that which they do, and the King accepts, ſhall be of a ſtrong Proof.

Again: it is true, you ſhall not charge the Subject with Tonnage and Poundage without Parliament; but ſhall not the Subject be charged another way?

To what end would that Proteſtation have ſerved, that the King ſhould do it another way? And it is all one, if the Commons bear the charge of Defence, whether they bear it by Tonnage and Poundage, or otherwiſe; for that which falls on the particular, falls on the other. To charge them thus, were as if the King ſhould ſay, Tho' I cannot charge you this way by Tonnage and Poundage, yet I will charge you another way.

In the time of *Henry* the Sixth there's little.

I come next to the Time of *Edw.* IV. wherein, tho' there is not much upon Statute, yet there is a Speech of his that ſhews much of this. 7 *Ed.* IV. *Parl. Roll.* 1. there was a Speech made and cited. The King firſt proteſts, which was not immediately upon his coming to the Crown, that he will live of his own, and not charge the Commons but in Caſes extraordinary, and thoſe Burdens too ſhould be *ſecundum morem Majorum*; and that he hopes they will be as tender of, and kind to him as to his Predeceſſors, ſaying that he would lay no Charge upon them, but in extraordinary things.

This ſhews, that what was granted by the Commons, tho' upon extraordinary Occaſion, was not out of Duty, but out of Tenderneſs; and this was a good while after his Victory, and could not upon the Matter be called a Brokage. And this falls not under the Anſwer of Mr. Sollicitor, that Money was borrowed of the poor Men, and reaſon that they ſhould be paid again.

But thoſe Loans were by way of Commiſſion, and not to ſome poor Men, but they did concern the general. And tho' *Rich.* III. had reaſon to bring in good Laws, becauſe of the Defect of his Title, yet my Lord of *St. Albans* called it a kind of Brokage to get the People's Good Will; yet, however, this muſt be a Declaration of both Houſes of Parliament; and it was not ſo much offered by *Rich.* III. but becauſe *Edw.* IV. had made many Borrowings.

I come now to *Henry* the Seventh's Time. That which hath been preſſed, is the 19 *Hen.* VII. *c.* 11. Proviſion that the King's Servants that were to attend upon him in the Wars out of the Counties, ſhould be paid; then if they were to have it, then *à fortiori*, they that were not to attend. This ſhews that the King is to be at the Charge, and not the Subject.

The Anſwer is, This extends to foreign Wars, and then no Reaſon but that they ſhould be paid; and ſo will not ſerve our Turn.

If there be ſuch a Difference between Foreign and Home Wars, why do not the Acts of Parliament make a Difference? The Words are general, and extend to Wars out of the Realm and in the Realm; and where the Laws do not diſtinguiſh, neither, I hope, will your Lordſhips.

Now I come to *Hen.* VIII. who was as unwilling to beg, as powerful to command. 13 *Hen.* VIII. *cap.* 20. the King deſires for ſome Neceſſity of Government, and againſt an inſtant Occaſion, to have Power to make a Proclamation for Government, and to do it under Penalties: A Law ſeaſonable for that time, tho' it continued in *Ed.* VI.'s Time. As he would have Liberty, which he could not have without Parliament, to lay theſe kind of Penalties on Men; ſo the Parliament was as careful to give him no Liberty to lay any Charge upon their Eſtates, Lands, or Goods. So as, tho' for the natural Government they leave him a Power to lay Penalties upon others; yet to lay any thing upon their Goods, that which is *meum & tuum*, he had no Liberty; which is a Declaration of the Opinion of the Parliament, that by the Common Law he could not do it.

But in the Preamble of the Act it is ſaid, that there is ſome intimation of the Power of the King, if he will; and upon that Preamble indeed *Cowel* would have built the Royal Power of the King. But *Cowel* was miſtaken, and had his Reward.

It is true, there is ſomething in the Act that ſpeaketh of the Regal Power in Neceſſity, but not abſolute; and that too came in by the penning of it on the King's Side. And 21 *Hen* VIII. your Lordſhips know his Power, and how he was not to be reſiſted in ſmall things. If he could pull down thoſe Abbeys, what could he not do? Therefore it was not for them to queſtion with the King upon the penning of his Preamble, but a Dutifulneſs in them to conform themſelves. And when there was Proviſion enough made againſt that in the Act afterwards, it had been a Weakneſs of the Houſe ſo to do.

Yea, the Act was that the King could not charge the Lands nor Goods; but there is no ſuch thing in our Caſe.

It is true, there is no immediate Charge laid upon the Lands or Goods; but in Subſtance and Conſequence there is a Charge. It is all one to me in Subſtance, where my Life and Benefit is the ſame in either Way. And if I am taxed *ſecundum ſtatum & facultates*, I muſt pay the Money out of my Eſtate; and in the penning of an Act *non litigatur de verbis ſed de intentione*. And if I am charged and pay not, my Goods are taken away and ſold; ſo it is all one to me, as if it had been laid upon my Goods.

For the times of *Ed.* VI. Queen *Mary* and Queen *Elizabeth*, and his late Majeſty King *James*, I ſhall put my Obſervation of all theſe into one. I find not much upon the Parliament Rolls for theſe four; few Statutes were made, yet in every one of theſe is offered one Act of Parliament, which is a ſtronger Proof than any of thoſe which have been urged, and ſuch Proof as doth only come home to the Defence of the Kingdom, in caſe of extraordinary Defence, in caſe of Neceſſity, and in caſe of Invaſion. All this ariſeth out of the Conſideration of the penning of the Statute of Tonnage and Poundage, in the beginning of every of their Reigns. The Act that I mention, is 1 *Jac.* where it is ſaid to this Effect, that there may be Times of Neceſſity where Treaſure is not to be wanting; and it is unfit the Treaſury ſhould be unprovided at any time upon neceſſary Occaſions; and therefore they grant unto the King Tonnage and Poundage. But how? Not for *quid pro quo*, not merely for Defence, but towards the Defence of the Kingdom. Then by the Judgment of the Parliament this being not granted formerly, but towards this Defence, and towards his great Charges; therefore, by that, the Charge by the Laws ought to lie upon the King.

Now, my Lords, if the King were not bound to the Defence of the Kingdom, whether or no would he accept it on theſe Terms; and whether it ſeems not more than probable, that in caſe of Neceſſity the Charge may not be laid on the Subject. 1 *Ed.* VI. *Cap.* 13. *Mariæ Cap.* 18. 1 *Eliz. Cap.* 19. 1 *Jac. Cap.* 33. are the ſeveral grants of Tonnage and Poundage.

I conclude this Part with the Times of his Majeſty that now is, which in the point of Defence have been ſtronger and greater than before, both in point of Laws, and in matter of Example. I take my beginning in this upon that Parliament 3 *Car.* upon the Petition of Right, and his Majeſty's Anſwer and Judgments to that are ſomething home.

The Commiſſion of Loans and Benevolence, the Neceſſity of the Time did require an inſtant Supply; and it appears by the Commiſſion, that there was a Neceſſity which could not ſtay for a Supply another way, and your Lordſhips know what was done in this. This Commiſſion was not to borrow of a few, but it was general, with an equal and proportionable Weight; and this, as it appears, was for the Defence of the Kingdom.

It hath been ſaid, that mention is made of ſupply for the *Palatinate*, and to ſend Aids to *Denmark*.

True, it is ſo; but that of the *Palatinate*, and that of *Denmark*, do upon the matter concern us; for that War being upon our Reſolutions, there was a kind of Ingagement laid upon us.

In that Commiſſion, there appears more than a poſſible Danger to the Kingdom; there was a Neceſſity, yet this was laid down, it held not; and in purſuance thereof there was an Order, whereof we have a Copy; it is in the Exchequer moved by the King's Attorney for ſtaying the Proceedings for money ſpent about Loans, which was by his Majeſty's gracious Command, wherein his Majeſty did prevent the Commons deſire.

The Petition goes on, that there were Soldiers billeted in ſeveral Parts, and there was a Charge; and this was after a late foreign War, an Enemy then known and declared; there was a Neceſſity for inſtant Defence, and to ſtand upon our Guard; the Enemy might in a ſhort time have been upon our Coaſts: yet your Lordſhips know what was ſaid to that.

And as the Petition looks back to thoſe things that are taken off their Hands, ſo it looks forward, and provides, that no ſuch things ſhould be taken hereafter by the Power of the King alone, altho' upon matter of Neceſſity. And all this was a Petition not of Favour merely, but in point of Right, according to our Laws and Statutes, which are the Statute 25 *Ed.* I. the Statute *de Tallagio non concedendo*, and *Magna Charta* the ground of all. And to all theſe his Majeſty promiſeth ſuch things ſhould be done no more. And they not content with this, his Majeſty gives this Anſwer, *Soit droit fait.*

I cannot leave this great Strength thus, but bring it home to this very Caſe. The Subſtance of this Petition being for charging of the Subject out of Parliament by the Royal Power, when this Petition had paſſed the Lower Houſe, it came to the Lords; and upon ſome Motion, there was a Propoſition of a Saving to be put in the End of the Petition, Saving the Sovereign's Power, which his Majeſty is intruſted with for the Defence of the Kingdom. All this your Lordſhips know, that after ſeveral Conferences, in the Concluſion the Petition paſſed without any Saving.

My Lords, upon what Reaſon this Saving was left out, your Lordſhips may ſee by the Record, which your Lordſhips and the reſt of the Houſe beſt know, and whether upon this Reaſon or not.

That the Laws the Petition went on, whether the Saving would ſtand with thoſe Laws.

My Lords, it appears that the firſt Anſwer was, that the Laws ſhould be put in Execution; yet in the Cloſe there is put in a Saving of the Prerogative: but this Anſwer did not ſatisfy; and therefore there was a general Anſwer, *Soit droit fait.* But now what was granted by the laſt Anſwer more than by the former, only that the Law was left more abſolute?

As to that Commiſſion of Advice for conſideration of Means to raiſe Supplies, and it was for Defence, and a neceſſary Defence, and that did not bear delays, that Commiſſion was laid down by his Majeſty; yet in that there was no more than this Conſideration, how Supplies might inſtantly be raiſed, which could not indure delays by Impoſitions or otherwiſe, that is ſtill lawful ways. If there had been any to lay a Charge on the Subject by way of Loan, then that Commiſſion had not been excepted againſt; yet his Majeſty was pleaſed to lay down this upon the deſire of the Houſe.

I conclude with that which I conceive to be the Judgment of both Houſes in point. It is the Judgment of both Houſes againſt the Sermon touched upon by Mr. *St. John*, which I ſhall preſs as far as it will be applicable to our Caſe.

The Sermon was to ſhew the Power of the King in caſe of Neceſſity to lay a Charge on the Subject without a Parliament. When this came into the Lower Houſe, this was the main and principal Charge, I ſay not the ſole Charge. When it came into the Upper Houſe, there it was preſſed againſt that Divine by the King's Counſel; and it appears by the Journals of the Upper Houſe, that the Crime was, that he ſhould ſhew the King's Power to charge the Subject without Parliament. It appears by the ſaid Journals, that the Doctor's excuſe was, that he meant nothing but to ſhew what Kings might do in extreme Neceſſity of Danger. And your Lordſhips may read in his Sermon, that he ſpeaks of Neceſſity, not attending the ſlow Motion of Parliamentary Advice; ſo that it is pinched on extreme Neceſſity: but neither one Excuſe nor the other did ſerve his turn. The Offence is acknowledged, Submiſſion made in both Houſes, and the Sermon called in by Proclamation.

Ay, but, ſaith Mr. Sollicitor, this Sentence was for other Matters.

I ſay not, but that the Sentence was for this thing alone: there were other things, but they were only by the bye; only occaſioned by this. Now how far this Caſe comes to our Caſe, I leave to your Lordſhips Judgements.

Mr. Holborne's *Fourth Day's Argument in the* Exchequer-Chamber, *on the behalf of Mr.* Hampden, *before all the Judges.*

May it pleaſe your Lordſhips,

I Have thus far gone on in my Proof from Reaſon, Books, Caſes and Authorities, all being of higheſt Nature, that is, by the Laws of *England*; that the King cannot charge his Subjects without their Conſent in Parliament, tho' it be *pro bono publico*, or for Caſe of Neceſſity. It now remaineth that I offer, what either the Practice hath ever been in the beſt Times, and the contrary Practice decried from time to time.

In this I ſhall do a Work of Supererogation. It is not material what the Practice is, if the Laws be once ſettled. A Law once made, over-ruleth all Practice afterwards. And as a Law is Law before Practice, ſo it is Law againſt Practice: yet becauſe Practice may be an Expoſitor of Law, eſpecially where the Words may ſeem general, I ſhall ſhew from Age to Age, that the Subjects without their Conſent could not be charged.

From the Practice of the Kings themſelves, even in all Ages, that on extraordinary Occaſions they have reſorted unto Parliaments; and when they could not do good by that, they have made many Borrowings, as appears by the Parliament-Rolls. What other Courſes they have taken, your Lordſhips have heard upon the former Argument. And when the King received theſe Supplies, it came voluntarily, and with Proteſtation, that thoſe things ſhould not be drawn into Example.

I ſhall go now to the Practice of the Subjects Part. Firſt, I ſhall go as high as the *Saxons* Time. That of *Danegelt* did begin by a common Conſent: and in the very Laws in Mr. *Lambert*, it is ſaid *Statutum eſt.* Tho' it always did not ſignify a Statute, yet when it was written by one that knew the Laws, and writ of the Laws, it muſt be ſo taken. *Tilburienſis* ſaith, as it was the Act of the King, ſo it was the Petition of the Commons; *Statutum eſt a Regibus*, ſtill the King. It is ſtrange in that time of *Ethelred*, when *Danegelt* was ſo great and common as it was, the Subject being eaſily drawn unto it, that the King ſhould not aſk it, when he might have it for aſking. But this *Danegelt* being raiſed by *Ethelred* upon emergent Occaſions, as it was not like to be always, ſo the Proviſion was not for all Times. After him came in ſome of the *Daniſh* Kings, and they continued the *Danegelt.* And what became of thoſe that were the Collectors of the *Danegelt* between *Ethelred* and the Confeſſor, doth appear in *Huntingdon*, and how the People did decry it in general; then it was laid down *ut graviſſimum*, as appears in *Ingulphus.*

Edward the Confeſſor he laid it down. At the Conqueſt, ſtill they go on with the *Danegelt.* It was part of the Terms made by the People with ſeveral Kings, that it ſhould be laid down; and King *Stephen* did promiſe to lay it down; tho' notwithſtanding they did now and then take it up. In *Hen.* II.'s Time yet ſtill more Complaints, and that was left out of the Charter of King *John.*

The Uſe of all this is, That tho' there were a Practice under pretence for Defence of the Kingdom, yet the People did decry it; it was not ſuch a Practice as could bring in a Law.

When *Danegelt* was thus laid down for the time of King *John*, *Hen.* III. and *Ed.* I. in which times Practice for Shipping will not be material, for in all thoſe times the very Shipping itſelf was decried, *Parl'* 25 *Ed.* I. there the very Charges of the Subjects for Shipping were the Complaint, the Complaint is the thing I am upon. After the 25 *Ed.* I. and the Statute *de Tallagio non concedendo*, the courſe of theſe Proceedings did alter; for before in 24 he ſent forth Writs under a great Penalty, and 29 *Ed.* I. *M.* 10. he contracts for his Ships, and they go at his Charges. *P.* 76. *Ed.* I. *Rot.* 35. *Reginald de Grey*, when the *Scots* entered the Kingdom, he was commanded to bring Seamen out of their Counties, and he durſt not without Money; and thereupon he had Money out of the Exchequer.

But the Anſwer was, This was for *Scotland.*

For that no doubt this War was at Home, for in the 26 the *Scots* had entered the Kingdom. *Br. Trin.* 32 *Ed.* I. *Rot.* 11.

I come now to *Ed.* II's Time; there is not much againſt us, but for us. This I ſhall obſerve, that the firſt Writ that went out was 9 *Ed.* II. It is true, a *Mandamus* went out for Shipping, and againſt an Enemy, and for Defence of the Kingdom: but how? Not a *Mandamus firmiter injungentes*, nor *ſub pœna foriſfacturæ*; but a *Mandamus rogantes*, and the means of compelling *quatenus honorem noſtrum & Salvationem veſtram diligitis.* So you ſee how the Courſe of the Law altered in that time.

I come to *Ed.* III. for I will but touch upon every Time, and offer but one Thing to ſhew the Practice in it. As I find a Statute in the beginning of his Reign, concerning Proviſion made for Wars, ſo I find an Execution. *Rot. Sco.* 1 *Ed.* III. *M.* 8. there went out two Writs, and they were concerning raiſing of Shipping, and in reſpect of the *Scots* entering that Year. This is that I put it for, to ſhew that upon that Occaſion 1 *Ed.* III. Soldiers were paid, altho' for the Wars in *Scotland.* It doth recite that the *Scots* had entered the Land that Year, and did make further Preparation; and if they could not have their Peace on their own Terms, they would proceed. *Conſideratis etiam periculis,* for it was in *articulo neceſſitatis*; he giveth a Command that there ſhould be Ships, but it is a *Mandamus rogantes,* nothing at all by Compulſion or Forfeiture in the Writ, *Sicut honorem noſtrum.* It appears by the Writ, that he ſaid, he ſent Money at that time for the Victuals for the Soldiers; and this very Writ was *pro Salvatione Regni,* and that we could not be ſafe without Shipping; and this was in a pure and innocent Time.

I will not ſay, that in all the Actions of *Ed.* III. he never broke this Rule: your Lordſhips know what Wars he had, and what Neceſſities, and what thoſe Neceſſities brought him to; but he was ſo far from juſtifying of himſelf, as it appears by *Daniel's* Hiſtory, that he ſent to the Archbiſhop of *Canterbury,* to pray for him, and deſired the People not to think ill of him for laying thoſe Charges upon them in Caſe of Neceſſity. 12 *Ed.* III. *Rot' Alm'.* Your Lordſhips ſhall ſee upon that Acknowledgment, how he began to alter his Courſe. Parliament Roll, 13 *Ed.* III. tho' he laid Charges before now, he calls a Parliament, and deſires Supplies for Shipping that way; and that Acknowledgment 12, will anſwer home that famous Year of 10 *Ed.* III.

Next, my Lords, to ſhew the decrying of the People in this time of Shipping itſelf in the Rolls of 21 and 51 *Ed.* I. there the People ſaid they were not to bear the Charge; ſo it was no Practice, for the Commons did decry it. That for Hobbellers, they were at the Charge of the County before 25; but that they were complained of in Parliament, wherein the Statute of 25 *Ed.* III. was made. But all that I aim at in this is, whatever the contrary Practice was, to out-ballance it by the contrary Opinion, and Claim of the Kingdom; and the Practice I hope ſhall not be able to make it Law.

I come now to the Time of *Richard* II. For his Time I ſhall remember but one, *Tr.* 7. *Rich.* II. *M.* 15. *de contribuendo ad Cuſtodiam Maris,* there is a Recital of *Danegelt*; and that the Subſidies that the King had were not ſufficient, and therefore commanded an Aid, but to do it *gratuiter.*

I do obſerve, that all Ship-Writs do end in the Time of *Ed.* III. one or two perhaps may be after, and therefore I do end with the Practice of thoſe Times; but from thoſe Times downwards to *Hen.* VIII. this was offered, and not denied: That there are ſeveral Records, how the Kings of *England,* both at Sea and Land, did bear the Charge of Defence; and all the Anſwer was, that it doth not appear how the King doth raiſe the Monies.

For the Time of *Hen.* IV. 2 *Hen.* IV. Parliament-Roll. A Complaint of the Commons, of a Commiſſion for building of Galleys for Defence: And their Complaint was, that it was done without Conſent of Parliament, which ought not to be done; and this Commiſſion is repealed. This ſhews the decrying of the Subject, and that the Practice hath been, that the Defence was at the Charge of the King.

I have thus finiſhed the Negative Part of the Argument, that the Subject is not compelled to find Shipping for Defence at their own Charge.

Next for the poſitive Part, that the Charge both in Caſes ordinary and extraordinary lies on the King, and that by the Common-Law; and that the King hath Proviſion and Conſideration for it.

My Lords, for Proviſions regularly, whatſoever Eſtate is in the King in the Politick Capacity, is in him as *Rex,* and not in him in his natural Capacity; and what is in him ſo, is for the Benefit of the Kingdom: and that hath ever been the Ground of the Acts of Reſumption, and ſome of Reſumption made by *Hen.* VII. where Lands were aliened by him, he made a Reſumption; and thoſe many Privileges that the King hath in him, are as *Rex* in his Politick Capacity. All which Caſes are put together in *Calvin's* Caſe in the 4th Report. And not only in *England,* but in all Chriſtendom, all Eſtates in Princes are held for the Benefit of the Kingdom, as well as for themſelves; and that is not denied by King *James* in his Anſwer to *Perron*; he would have it abſolutely to be to that purpoſe. All that is to the Advantage and Honour of the King, is for the Benefit of the Kingdom.

My Lords, from the Conſideration of the Intereſt of the Kingdom in the Eſtate of the Prince, the Parliaments have ſo often offered their Service to the King: And the Parliament in former Times did require a Hand in the naming of a Treaſurer; they called it *antiquus Mos.* And it was 5 *Ed.* III. in a Parliament, but repealed 15 *Ed.* III. And for ancient Lands of the Crown, they were not deviſable out for that Reaſon; and that none ſhould buy the Land of the Crown, for it was not alienable in that Time.

My Lords, in the Form of our Government, the King in the Suppoſition of the Laws had all theſe. By the Books cited by Mr. *St. John,* all were in the Crown, and being ſo, they were for the Service of the Kingdom; and that is the Reaſon that all Land is held immediately or mediately of the King. As a Lord of a Manor, when he hath a Circuit of Ground, he letts one Part to one Man to plow in Knights-Service, and Part he keeps for himſelf. So the King when all was in him, he diſpoſed of ſome for the Service of the Kingdom. Hence ariſeth the Tenures originally. As they kept in their Hands Palaces and Demeſn, ſo for publick Service they made diſtribution of certain Lands for Publick Defence; ſome by Knights-Service, ſome by Scutage, ſome by Cornage, and ſome for Caſtle-guard and Grand Serjeanty, all for the Service of the Kingdom; and Tenures *per Baronagium,* which was an eminent Service, as appears by the Books of the Knights Fee; Petty Serjeanty for meaner Offices, and Grand Serjeanty for greater Offices.

Divers Lands were given to find Ships, as in *Doomſday-Book,* beſides the Cinque-Ports, which were to find a certain Number; and ſo ſome Inland Towns did find Ships, but how? As by Tenure, not generally as Subjects. And tho' Mr. *St. John* did urge one or two Precedents by way of Example, yet he ſaid not there were no more.

Mr. Sollicitor did give an Anſwer, that all thoſe came out of the Eſtate, what was that Charge to the Publick?

It is true, if the King had that for himſelf originally, he ſaid well; but if it was in him originally *pro Regno* as well as for himſelf, then it is otherwiſe.

But it hath been ſaid, What are a few Men, or one Ship?

But it appears in *Doomſday-Book,* the King hath a great Navy. There were ſixty thouſand Knights Fees in the Conqueror's Time; and tho' divers Serjeanties are turned into Rents, yet the Revenue is the ſame. I ſhew it for this, that there was a Proviſion made in the Inſtitution of our Frame of Government, but for the guarding of the Sea more particularly.

The King for the guarding of the Seas hath all the natural Profits thereof; as all great Fiſhes, Whales, Sturgeons, *&c.* and all other Profits of the Sea, if the King would take them; and ſo Letters of Marque: and tho' ſome of them are got into the Subjects Hands, yet originally they did belong to the King. So the old Cuſtoms by the Common Law, *Antiqua conſuetudo:* and ſo holdeth Sir *John Davies* in the Cuſtoms of *Ireland.* So Prizes and Impoſitions are for the Defence of the Sea. So Tonnage and Poundage, which was originally granted for ordinary, but oftentimes upon emergent Occaſions, it appears it was granted *pro Salvatione Regni,* and not granted amongſt other things, but by itſelf. But in latter Times, when it was ſettled upon the Prince for Life, then it was for extraordinary Defence, and to have Money in readineſs for an inſtant Occaſion: for it is ſaid, in the very Grant to King *James,* that the King muſt not be without Money; and therefore, towards his Charges upon an inſtant he muſt have it. And tho' it was granted on particular Occaſions, yet that is enough that it was granted on great Occaſions; and this was granted out of their Love to him. The Words of the Act 1 *Jac.* ſpeak of a ſudden Invaſion; now whether this is by Sea or Land, it is general.

My Lords, I ſhall now upon the whole obſerve what I have made good, either upon thoſe general Statutes, that the King ſhall lay no Charge, or rather by the Books, that the King cannot charge for little things; or upon the Practice of Times, wherein every Time the King hath been at the Charge, and when it hath been on the Subject they have decried it. How you, my Lords, believe it in point of Right, I leave it to your Judgements.

My Lords, I ſhall go on to the Anſwer of Mr. Sollicitor; I have made a Reply to all his Anſwers to our poſitive Part. It remains I ſhould offer an Anſwer to his poſitive Part.

Firſt, I ſhall give a general Anſwer to his whole Argument; for if the Caſe be, as we conceive it is, that the Point of *Salus Regni* is not now in queſtion, the Argument will fall off.

How far *Salus Regni* is in the Caſe, notwithſtanding, I ſhall argue over, and examine the nature of his Proofs.

I am ſure he had none from Parliament, either Act or Declaration of both Houſes; what there is, is againſt him. The Anſwer of the King, with the Judgment of both Houſes, is a main thing in point of Right. I did not receive any legal material Record, but that of the Abbot of *Robertſbridge,* nor any Book-Caſes in Point, where it it is ſaid the King ſhall charge, but the Books 13 *Ed.* IV. I ſhall anſwer theſe firſt, Practice next, and Reaſons laſt.

To begin with the Caſe of the Abbot of *Robertſbridge,* which was opened by both Sides. It was 25 *Ed.* I. the Abbot had Land agiſted *ad Cuſtodiam Maris*; and in an Action brought, the Abbot pleads that he had found a Horſe for the ſame Land. Here is an Argument, that the Abbot doth admit that the King might agiſt *ad Cuſtod' Maris:* now if that Admittance in this Caſe ſhould be of any Authority to alter your Judgments, I ſhall leave it. The Abbot's Counſel did no more than a diſcreet Counſel would have done. If an Action be brought for Words, and it appears the Action will not lie, what then? If the Abbot had a Plea that he was agiſted to find a Horſe, what Reaſon had he to put himſelf on matter of Law with the King? So the Authority can be nothing againſt us; and at the beſt the Caſe did reſt there, and went no further.

For the Book-Caſe, 13 *Ed.* IV. where it is ſaid, that the King can lay a Charge, that Book is with reference to Toll; and ſuch things are nothing to our main Caſe; and that Book will prove ſtrongeſt againſt the King. The main Caſe was concerning a new Office of Meaſurage erected with a Fee: this was *pro bono publico,* yet an Action brought; it began in 11 *Ed.* IV. Then cometh the Parliament in 13. and this was complained of to be againſt the Statutes, that provide that no Taxes ſhould be laid. The Anſwer is, Let the Statute be obſerved.

To the Caſe of Toll, which for common Neceſſity to maintain Traffick, and becauſe there muſt be a Power in ſome Body, and without a Fee not poſſible to maintain the Charge, it is allowed it may be done by the King: but in our Caſe here is no common Neceſſity, here is a thing that may ſeldom or never happen. The ground of granting Toll is this, becauſe it is *pro bono publico*; yet if not for common Neceſſity, the King could not do it.

Next, the Toll is not ſo much a Charge, it is *quid pro quo:* in the 5th Report it is ſaid there, that it is no Charge; for the Benefit in the thing itſelf will quit the Charge.

Again, Toll is but *inter minimum,* this of Weight; and tho' an Argument will hold *a minori ad majus* in the Negative, becauſe a Man cannot do a leſs, therefore not a greater; but not in Affirmatives, becauſe he can lay thoſe, therefore greater, *non ſequitur.*

Next, for Toll; no Man is forced to pay Toll, becauſe no Man is compelled to come to the Market; if he will come voluntary and receive the Benefit, then there is Reaſon he ſhould pay it; but this is not our Caſe.

Laſtly, The Law doth allow in this Neceſſity, in caſe of Toll, to the King a Power to grant, yet the Law doth not leave the King abſolute Judge of the *quantum:* For if the Toll be not proportionable to the Benefit, the Patent is to be avoided, as in caſe of a Fine uncertain. Now, my Lords, in our Caſe here is no Judge of the Proportion but the King; ſo the Argument is thus:

If the Law admit not the King to charge but in common Neceſſity, then not in Caſes that may happen but ſeldom or never; if not in ſmall things, then not in greater.

I come now to Practice: And for Practice, where there is no Opinion, either for Records or Books to warrant it, it is ſomething weak, eſpecially when there is no urgent Occaſion.

For the Practice, I ſhall give this general Anſwer: If I can ſatisfy your Lordſhips by Authorities of Parliament, how the Law ſtandeth; the contrary Practice, either before or after, is not material; and for that, I muſt leave it to your Lordſhips.

Your Lordſhips have heard us read the Words of the Acts of Parliament, and explain our Meaning thereon, and we have brought them home to our Caſe: It will be hard to make an Exception if the Act be general.

For, my Lords, the Practice, it conſiſts of two Parts. *Firſt*, Arrays of Men. *Secondly*, Of Shipping, and for Shipping; *de Navibus congregandis*, or *muniendis* and *inveniendis*.

For Practice of Arrays, I ſhall lay them by, and give them a general Anſwer: for there were very few if any that went from the Beginning of *Rich.* II. but only to ſee if they be armed, *& prompti*, and that is made by the Statute of *Wincheſter*. It is one thing to ſee that they be armed and in readineſs; and another thing, at whoſe Charge they ſhall go: that appears not out of thoſe Arrays. There is no doubt but the Subject, on the Statute of *Wincheſter*, ought to be ready with Arms, and in his County to make Defence; and upon Occaſion he ought to go out of his County, but at whoſe Charge, that is the Queſtion. And if thoſe Writs of Array were the ſame with the Commiſſions now to the Lieutenant, yet I know not how; this is my Argument in the Caſe: and ſo your Lordſhips ee that a great Number of the Arrays falls off this way.

But if Arrays had been, and at the Subjects Charge, yet againſt the Statute; I leave it to your Lordſhips to judge, how far Practice ſhall be an Argument.

But for Shipping, for Writs *de Navibus congregandis*, thoſe are nothing; for the Matter is, whether they ſhall be paid before they go, and many of the Ship-Writs are of that Nature. No doubt but the King may command *ad congregandas Naves*, to uſe them upon occaſion; but the Matter is, at whoſe Charge they ſhall be. And for all the Writs that are to find Ships, I hope thoſe Writs are not concluding.

My Lords, for thoſe Writs that are *ſumptibus propriis*; a Writ, and no more, without Execution, is not a Practice ſufficient to make a Law, no more than a common Evidence, when to prove Right by Uſage. Now whether or no they have ſhewed a general Execution, by obeying and doing it at their own Charge, or Money levied upon them, I leave it to your Lordſhips; I ſee no Proof. It may be, ſuch Writs might be; but that there was an Execution of them at their own Charge, or Money levied on them, we ſee no ſuch thing. And if Writs were to find Shipping in theſe Times, it is like the Monies were returned by the Counties, and ſo the Receipt might ſhew it, eſpecially if Inland Counties, where nothing could be had from them but Money.

But, my Lords, to examine on thoſe Grounds, whereby a Practice muſt make a Law: If this charge be within the Words of the Law, no Practice can take this out of the way of Exception. The Practice muſt either ſhew that was the Common Law, and ſo *Generalis Conſuetudo*, or muſt declare the Meaning of a Statute by conſtant Conſent; which muſt be of thoſe that could conſent, and thoſe which did not expreſs a Diſaſſent.

We are now upon Inquiry as on Practice, tho' the King cannot generally lay a Charge, yet whether he can do it in this Caſe, to make an Exception of Law; it muſt be done by Uſe and Practice; as to make a Law, Practice doth not make Common Law, but as it is a Proof of common Conſent: for all Laws are made two ways.

Firſt, By expreſs Conſent of Parliament: Or, *Secondly*, By Uſe, from Time to Time, whereby it doth appear this was excepted, and the Uſe becometh a Common Law: So as ſtill, if an Uſe doth make a Law, ſuch Uſe it muſt be as doth prove a tacit Conſent.

Next, as the Uſe muſt bind the Kingdom, ſo it muſt be general over all the Kingdom; it is not enough to be at ſome times and ſeldom, but it muſt be *ſemper eadem*. And, *Laſtly*, It muſt be reaſonable.

I ſhall examine on theſe Rules, for theſe are undoubted Rules to examine a Law by, the Writs of *Hen.* III. *Ed.* I. and *Ed.* III. In all theſe Times the Practice, as to this, will not make a Law; here will be no Proof of a Conſent.

Firſt, For *Hen.* III. to 28 *Ed.* I. here the Subject, as before the Complaints, which begot the Charter of King *John*, was upon the Charges impoſed on the Subjects; ſo afterwards, until the 25 *Ed.* I. the Law of the Liberty of the Subject was not ſettled: For tho' King *John* did grant his Charter, yet the Pope did diſpenſe with him, and he broke it, and ſo it reſted till 9 *Hen.* III. So all this time the Subjects of *England* were under Power; and what in that Time he might do by Dureſs, was not by Conſent.

Then, 9 *Hen.* III. he made a Charter, yet from time to time he broke it, tho' he deſired to be excommunicated if he did it; and ſo it reſted until 25 *Ed.* I. and then with much ado was gotten a *Confirmatio Chartarum*: yet this ſatisfied not at all. Till 28 *Ed.* I. *Mag. Chart.* not obſerved. I could ſhew divers Caſes point-blank againſt theſe.

The Statute 28 *Ed.* I. ſaith expreſly, that this Charter was not obſerved; and it was once a Puniſhment for thoſe that were the Breakers thereof. Now when Acts of Parliament declare that the Law of the Liberty of *England* was not obſerved, I ſhall not need to ſhew any Record how it was broken: So that all the Practice in *Hen.* III's Time, though much, yet that will not ſerve the Turn; for that Government was more of Force than Law.

But for that of *Hen.* III's Time, I ſhall give a further Anſwer; the very Courts of Juſtice were ſhut up, then it was *in flagrante Bello*.

And for *Ed.* I's Time, all the main ones conſiderable were immediately before the making of that Statute; if rightly apprehended, they did particularly occaſion that Statute; ſo the Subject did deny it, and it is a Diſ-aſſent.

After 28 *Ed.* I. little conſiderable; and *Ed.* I. when he made 28 *Ed.* I. when the Charters were confirmed, yet he had his *Salve Jure Coronæ*, which did not pleaſe the Subject; And afterwards, notwithſtanding he made ſome Grants in Parliament, yet ſometimes he did revoke. Your Lordſhips know what a great Renuciation he made; but as ſome of our Hiſtorians obſerve, when he had Occaſions for Moneys he did grant, but otherwiſe did not; ſo that in all his Time the Subjects did not conſent, but as much as they could, did diſ-aſſent: and in the 25th, you ſee how the Practice did alter for commanding of Ships.

Next for *Ed.* II. for his Time, we ſee how he went. In the Beginning of his Reign he ſends but a *Mandamus Rogantes*. In the End of his Reign, whether his Government was more of Law than Power, I leave to your Lordſhips; that little Practice that way, if it doth come home, is not ſufficient to make a Law, who was under Will.

Next for *Ed.* III. for him in his beſt Times, you ſee how he went, he laid not the Charge on the Subject at the firſt; afterwards there is no Age wherein there were ſo many Complaints as in his time, from the firſt to the laſt: and not only in this of Shipping, which, as often as it was, there was ſtill Complaint, but in Impoſitions on Merchants, whereupon Lord *Latimer* was impriſoned: ſo that in point of Charge, the Subject did inforce him upon it in time of Neceſſity. So that in thoſe Times the Practice will not be any Argument againſt us.

That of 10 *Ed.* III. he confeſſed that he had laid too heavy Charges on the Subject, and did aſk Forgiveneſs; ſo here was no Conſent, but a ſeveral Diſſent by their ſeveral Complaints. And if I take off theſe three Kings Reigns, I take off all the force of Practice concerning Shipping; for from that time afterwards you will find very little, for what cometh afterwards is but for Matters of Arrays.

The next Thing is, that every Practice that muſt bring in a Law, muſt be conſtant and continual, ſo long together as may bring it into a Cuſtom.

Now out of what your Lordſhips have heard, if you conceive in the Times of thoſe three Kings, that they had one way and the Subject another, then there is no conſtant Practice to lay it on the Subjects: And for Arrays, I conceive them to be no part of the Caſe.

And for the next; if Practice make a Law, it muſt be general through the whole Kingdom; for that is our Caſe, we are in an inland County; and obſerve how few Writs we have that went over the whole Kingdom: Nay, have you any that proveth it indeed? That they went to ſome Inland Counties it is true, but that they went to all throughout the Kingdom, you ſhew not.

Now if you will have a Practice to bring in a Law, you muſt not bring your Practice by pieces; at one time in one part, and at another time in another part: for that in one part of the Inland Counties alone will not be juſtifiable, for that was to lay a Charge on the one, for the Maintenance of the whole; and that is againſt Reaſon, and the Reaſon of this Writ. So to charge the whole Kingdom, you muſt ſhew they went over the whole Kingdom, and were obeyed by the whole Kingdom; for Obedience in ſome Parts, will not bind all, ſo once or twice will not do it; for the Writs that have been produced, many of them went to the Sea Towns only.

Next, my Lords, admit that the Practice had been conſtant from King *John*'s Time down to *Hen.* III's. ſo to this Day; under favour, as the Caſe ſtandeth, your Lordſhips could not find ſuch a Practice as could now introduce a Law. The Cuſtom, which muſt be of a Manor, you muſt not ſhew the Beginning of it, that within Time of Memory the Thing was not ſo. True, if the Time had been long, and I cannot ſhew when it hath not been, that is Time out of mind.

To examine this upon the Rule; it hath been ſaid, that from the Time of *Hen.* II. *Danegelt* was taken: True, it was taken, *de facto*, but not *de jure*. The Subject was not at that Time charged both with *Danegelt* and Shipping too. Then our Courſe of charging the Subject to find Shipping, moſt begin ſince that Time.

But peradventure it will be ſaid, as Sir *Henry Spelman* in his *Gloſſary*, that when *Danegelt* went down, this other came in. And peradventure it will be ſaid, this is enough to ſhew this begun, tho' but in Memory; then it is but to ſee upon what Warrant of Law this begun.

If *Danegelt* had not been legal, then this to come in inſtead of that which was not legal is not ſufficient. Now for *Danegelt* it was not legal, and ſo *fallit Fundamentum*: if it had been legal, yet not ſo purſued in the Courſe as is legal, ſo that there is no Ground for it on Right or Wrong.

That *Danegelt*, when it went, it went over all the Kingdom, and in a proportionable way to all; yet theſe Writs for Shipping were commonly to the Sea-Towns, and but ſome times to ſome Inland Towns. If *Danegelt* were on the Land, and certain, this is on the Perſon, and uncertain; this reſpects both Lands and Goods, the other not. There is no ſuch Aſſurance of equal charging in this, or in the other, if *Danegelt* had been legal; yet whether this coming in lieu of *Danegelt*, being of a far different Nature, be legal, I leave it to your Lordſhips Judgments.

Next to examine it upon another Reaſon, upon the Reaſon of the Practice. If the Practice went over the whole Kingdom from time to time, there was the more Equality; but if the Practice went over the Kingdom, but by degrees, ſometimes to one part, ſometimes to another, tho' over all the Kingdom at Times, yet this is not ſufficient to make a Law. For that Act which is unreaſonable in itſelf, and not agreeable to Juſtice, will never make a Law: for a Law will never ariſe out of an Act illegal. Now, my Lords, when a Charge is laid upon Parts of the Kingdom, which the Whole ſhould bear, it is unreaſonable. I will not deny, but in Manors, where you are to have a Cuſtom, ſometimes on one Piece, and ſometimes on another; this may be good, though it goes not over the whole Manor; becauſe in this Act there is nothing againſt Juſtice, for here one Man doth not bear the Charge for the whole; but 'tis otherwiſe in our Caſe.

My Lords, I ſhall go further; as for the Inland Towns, ſo for the Sea-Towns, we do not find a general Practice of all Sea-Towns together, ſometimes to one, ſometimes to another; if any to all, yet not to all oftentimes.

My Lords, admitting Arrays would be material in this Caſe, as I conceive they will not; yet under favour they will be no Precedent for the defending of the Sea, the Caſe doth differ.

For though the King be Lord both of Sea and Land, and hath in them both the ſole Dominion; yet in the Sea he hath the whole Property, and in a manner all the conſiderable Profit and Privilege; the Subject hath but the Paſſage of the Sea, and the *Minima* to take Fiſh, not conſiderable in point of Benefit: But for the Land, that is our own, and the Land of the Kingdom is the Houſe of the Kingdom. As for the Charge of the

Land to find Shipping, there will be a great deal of difference between Sea-Towns and Inland Towns: As thoſe that live in Sea-Towns are in more Danger from the Sea, ſo they have more Profit and Privileges; and that is the Reaſon that in the Parliament 13 *Ed.* III. the Sea-Towns ſhould do it in regard to their Profit and Privileges.

And for the Command to find Ships, the poſitive Law is to make thoſe to find Ships which are chargeable, as your Sea-Towns, and for Inland Towns to find Arms; becauſe both are not fitted alike, there is no Reaſon that they ſhould be charged alike. Upon this Reaſon is the Caſe of *Beverly* put before 2 *Ric.* II. where the Complaint is, that they are charged for Shipping, being a dry Town; they ſay they were charged *indebitè.* 10 *Ed.* III. *Shoreham*, they plead they never found Arms but Shipping, and a good Diſcharge. And in *Mat. Paris*, upon Wars with *France*, the Sea-Towns complain, and deſire Help; ſo that the Burden lies on them, if on any. My Lords, I have gone over in a general Way, as well as I can, and endeavour'd to anſwer the Practice; to have gone over all in particular would have required longer Time than your Lordſhips can ſpare.

The Reaſons now only reſt to be examined; for if no full Authority, nor ſufficient Practice, Reaſon alone will not argue againſt a fundamental Rule: for we are not now to examine on Reaſon what is fit, and what not, but to ſee what is the Truth.

The firſt is, that *Salus Populi ſuprema Lex:* the Queſtion is not, what we are to do by Neceſſity, but what is the poſitive Law of the Land? The Queſtion muſt now be as before; What Power is in the King, and did our Forefathers in that Time of Peace and Government leave in the Crown, not in Caſe of Neceſſity and public Danger; when, with them, *Salus Populi* was *Suprema Lex*, and upon that they did ground the Rule of Government? In this Caſe, whether or no, in their Conſideration, they did conceive for the publick Good, to leave the power in the King or not, to lay a Charge on the People; there the Rule came in, *Salus Reipublicæ Suprema Lex:* And that which they looked on moſt, was the Benefit of the Multitude. So that now, my Lords, it is not to diſpute, whether it be better or worſe, but that it was.

And to ſhew there was no ſuch great Neceſſity as can countervail the Poſſibility of Prejudice the other way: If there do come ſuch a Danger, then the Subject is at that time under a Law of Preſervation of Life; and all which makes the Subject as willing to obey, as to ſubmit to Government in the Creation. This Law is of an higher Force than any poſitive Law can be.

But admit that this ceaſe in this Caſe, and all poſitive Laws of Property yield to the Law of Neceſſity; yet I admit nothing, tho' I might admit much, and not prejudice the Caſe.

Tho' no poſitive Law doth charge, yet in caſe of imminent Danger, if I ſhould ſay my private Property is become public, it is no Miſchief, for ſo it is in ſome caſes: for in this Time of imminent Danger, the King and Subjects are under a Law of abſolute Neceſſity, and publick Safety. In all human Reaſon, when the Danger is in *Proxima Potentia*, we may prevent it; thus if another Man's Houſe be on Fire, mine may be pulled down to ſtop it: ſo that we may ſee by what Grounds we do go in caſe of abſolute Neceſſity. If the King doth command any thing concerning the Property of Goods, in reſpect of Danger, the Execution may not be by any poſitive Law merely, which in ſuch Caſes do ceaſe in *furore Belli*; for thoſe are acted by Formalities, and *inter Arma ſilent Leges.* And in theſe Caſes, as the King may command my Property, ſo may the Subject command the Property of another: The Books are ſo, 8 *Ed.* IV. For hindering the Landing of an Enemy, Bulwarks may be built on my Land without Conſent. So the Power is not only in the King in theſe Caſes of Neceſſity, but in the Subject: and the Books ſay not that the Power is only in the King, but I can do it, and the Law of Neceſſity is the Warrant.

Then, my Lords, it reſteth conſiderable in this Caſe, what ſhall be ſaid to be a Time of Neceſſity. I ſpeak ſtill by way of Admittance, for I grant nothing.

It muſt be in a Danger now acting, or *in Proxima Potentia*; as Fire, tho' not burning, yet ready to burn: that is, there muſt be a War, *furor Belli. Note*, That when the King makes Proclamation of War, or the King is in the Field: and that indeed was not Mr. *St. John*'s Meaning, it was taken further than he meant it.

It muſt be in ſuch a Danger, when this Power is of Neceſſity to be uſed, as in caſe of Fire; there muſt not only be Fear of Fire, for one Houſe muſt be firſt actually on Fire, before the Houſe can be pulled down, but withal ſuch a Danger, that if this be not pulled down, the other will be loſt: And as in caſe of an Enemy, a Subject, out of Fear of an Enemy, cannot build a Bulwark on another Man's Land, but when he is a-coming. So that none of theſe Caſes will match ours.

The Property yieldeth not in Fear of Danger; but ſuch a Danger, as Help muſt come in *nunc aut nunquam.* This Time is not when the King will think there is occaſion to exert this Power, as in the Caſe in 88. Tho' the Queen and State did command the burning of thoſe Goods and Proviſions, if an Enemy landed; which was a lawful Command, and juſtifiable to be done, ſo they did land; but could not command them to burn their corn before an Enemy did come.

Your Lordſhips know the King may command in caſe of Danger the Deſtruction of all Suburbs, rather than an Enemy ſhould come in them. But if there be a Fear only of Wars, if the King ſhould command it, how far that is juſtifiable, I leave it to your Lordſhips Judgments. All this Difference appears out of the Caſe of the *Graveſend* Barge, *Duffeild*'s Caſe, 12 *Jac.* If there be a Storm, or a Leak in a Ship, that the Danger be actual, it is juſtifiable for the Maſter to throw out the Goods; but if he ſees a Cloud ariſe, and out of Fear of a Storm he threw out the Goods, I doubt on a Jury which way this will go with the Bargeman; but if a Storm do come, or a Leak ſpring in, in that Caſe the Bargeman may do it. So you ſee upon what Law my Property yieldeth.

That Poſition generally taken, as it is ſaid, may be of a great deal of Conſequence; for it doth not reſt there, ſolely upon yielding of the Laws of Property: for all poſitive Laws do ceaſe in that Danger; then the poſitive Laws of my Liberty and Perſon alſo do ceaſe.

Now, whether or no you conceive all Laws of Liberty and Perſon ceaſe in this time of Danger, when the Danger was but conceived and not actual, that I leave to your Lordſhips Judgments. And if that Rule be general, then why not the other?

So we may ſee the difference from our Caſe; for in that Caſe there is no manner of loſs to the Subject, for he ſhall have Allowance for his Loſs, or make Suit to the Parliament, and they can recompenſe him; for what is taken for the public Good is but borrowed. As in Caſe of Shipping, if my Goods be caſt out to ſave the Ship, every one of the Ship is to bear a Share; ſo in our Caſe, either the King muſt do it, or the Parliament: ſo there is no Prejudice.

So upon the whole, my Anſwer is, Admit the Rule of *Salus populi ſuprema Lex*; yet the Law of Practice doth not yield, till there be an actual Enemy, or *flagrans Bellum.* It is not enough that there be but an Apprehenſion.

There were divers other Reaſons urged, (but thoſe two of *Salus populi ſuprema Lex*, and of private Property muſt yield to public Safety) were the two *Rationes cogentes*; the other were but *a pari & a ſimili*; and all thoſe I ſhall paſs over which were only for Convenience, as the granting of Toll, or a Corporation to make Ordinance for the Good of the Corporation: all theſe will not come home in the manner. My Lords, in all theſe Caſes *a minore ad majus non valet, negativum valet.*

But there are only two Reaſons urged, which require an Anſwer: The Truſt that the Laws put in the King in greater Matters, *viz.* the ſhutting of the Ports; and the *Droit* Royal of Wars and Peace.

For the ſhutting of the Ports, there is more difference in Point of Prejudice of the King than the Subject. The King cannot ſhut the Ports but to his own Prejudice. Again, the ſhutting of the Ports without cauſe of Neceſſity, the King hath the Loſs as well as we; for by that he loſeth his Cuſtoms, and by ſhutting them he can gain nothing at all. And beſides, there is no Law at all that hinders him from that. But there is a Law ſaith, that he ſhall not tax the Subject without Conſent in Parliament.

The next is the *Droit* Royal of Wars and Peace. It is one thing to ſay, the King can make War and Peace; another thing to ſay, he can charge. In War and Peace the King is equally charged with the Subject, nay more; and for thoſe things there are no great Reaſons, but that in the firſt Form of Government they might be well ſuffered. For that Cauſe touching the King's Power over Coinage, there was a Neceſſity to counterpoiſe the like thing in another State; in that Caſe the King loſeth, and we loſe. The King may diſpenſe with Penal Statutes, and make them as none. Doth any Laws ſay he ſhall not do it? The Reaſon differeth in that Caſe; there is a common Neceſſity that there ſhould be a Power in ſomebody, for Acts of Parliament are but *Leges temporis.* It is one thing for the King to have Power in point of Favour, and another thing in point of Charge; ſo in caſe of Pardon there is no hurt if he doth pardon; God forbid that he ſhould not have Power to ſhew Mercy.

My Lords, there are in the Caſe two Points more which I ſhall move. Whether or no, admit the King could command the Subjects to find Ships, he can give Power to the Sheriffs to make the Aſſeſſment as in the Writ? The Ground is upon this, that in all Caſes of politick Charges the Law takes an eſpecial Care to make an Equality. In Parliaments of old, they were always careful to make Proviſion that way, as upon Fifteenths and Subſidies. And in *Danegelt* they went ſuch a way, as there could be no Inequality; they went by taxing of Hides. Now if the Law doth make this a legal Way of charging, it allows the like Way for Aſſeſſment that is allowed in other Caſes, ſuch a Way as wherein there can be no Inconveniency. Now how a Sheriff hath that Knowledge to lay it on Mens Eſtates and Lands, I cannot tell.

My Lords, not to leave a Power in the King to lay an arbitrary Charge, but in the Sheriff to lay more or leſs on any Man; tho' the Law may truſt the King, yet it is a Queſtion, whether it will truſt the Sheriff.

Nay, I aſk if the Sheriff be an Officer of Law in this Caſe; yet the King may command any Man as well. Aſſeſſments are uſually made by others, and not ſo much by the Sheriff. So I do conceive that this is a Thing that doth properly belong not to the Sheriff, he is not an Officer ſworn, and it reſteth not only in the Sheriff, but the Under-Sheriff. So that if the Law doth truſt the King, yet whether or no this be the way to charge it, I leave it to your Lordſhips Judgments. If a Hundred be charged, they have Ways to lay it on themſelves proportionably.

The next Thing is this: Admit a Levy may be well-made, whether the Money thus paid may be brought into the *Exchequer*, by a *Sci. Fa.* I do think that this is the firſt Writ that ever was of this kind, I do not find it regularly.

My Lords, I think it is hard to find where there is a Writ that commands and preſcribes the manner of Levy. It not only gives you Power to levy, but ſets the way of Levying, by Impoſition, by Diſtreſs, by Selling; for my part, I know no Caſe can match it.

The Firſt Day's Argument of Sir John Banks, *Knight, his Majeſty's Attorney-General, on behalf of his Majeſty, before all the Judges in the* Exchequer-Chamber, *in the great Caſe of Ship-Money.*

May it pleaſe your Lordſhips,

THERE was a *Sci. Fa.* brought againſt Mr. *Hampden*, and divers others, to ſhew Cauſe why thoſe Sums of Money aſſeſſed upon them by the Sheriff of *Bucks* ſhould not be paid and anſwered; it beareth Teſte the 22d *May*, 13 *Car.* and a *Sciri Feci* returned.

Mr. *Hampden* demandeth *Oyer* of the Original Writ 4 *Aug.* 11 *Car.* and of the *Certiorari*, and the *Mittimus*, and of their ſeveral Returns. The Writ 4 *Aug.* which went out to provide a Ship of 450 Tons, with Victuals, Men, Ammunition, &c. that Writ giveth Power to the Sheriff to make an Aſſeſſment upon the County, and giveth Power of Diſtreſs and Impriſonment in caſe of Non-payment. He demandeth *Oyer* of the *Certiorari*, which conſiſts of two Parts; the one to certify the Sums aſſeſſed, the other to certify the Names of the Defaulters. And the Names of thoſe that made Defaults were returned, and Mr. *Hampden* amongſt others. He doth demand *Oyer* of the *Mittimus*, which doth recite the Tenor of the firſt Writ.

Upon *Oyer* of all theſe, both of the Writ 4 *Aug.* of the *Certiorari*, *Mittimus* and *Sci. Fa.* and their ſeveral Returns, Mr. *Hampden* hath demurred in Law.

The Caſe that riſeth upon the Record is thus. The King is Lord of the Sea (for that is part of the Record) the Seas are infeſted by Pirates and *Turks*, which commit Depredations, and take Goods and Merchandizes, both of the King's Subjects and others that traffick here, and carry them away into Captivity. There is preparation of Shipping and imminent Danger, for ſo the Writ reciteth: A Danger that the King's Dominion of the Sea ſhould be loſt, or at leaſt diminiſhed. There was a further Danger, that *Salus Reg. periclitabatur*, whether in this caſe the King *pro defenſione Reg' tuitione Maris, ſecuritate ſubditor' & ſalva conductione Navium*, may command his Subjects *per totam Angliam*, by Writ under the Great Seal, to provide Ships at their own Charge and Coſt; and this do, when the King in his own Judgment conceiveth ſuch a Danger, as doth neceſſarily require that Aid? That under favour is the Queſtion upon the Record.

There is in this Record, whereof your Lordſhips are Judges, four Writs. Firſt, That of 4 *Aug.* 11 *Car.* which goeth out of the *Chancery*, for ſetting forth this Ship of 450 Tons. Secondly, the *Certiorari* 9 *Martij* 12 *Car.* Thirdly, the *Mittimus* 5 *Maij* 13 *Car.* And Fourthly, that of the 22 *Maij* 13 *Car.* which is the *Sci. Fa.*

The Second and the Fourth Writ, which is the *Certiorari* and *Sci. Fa.* they are returnable, the Firſt and the Third Writ, which is the Writ 4 *Aug.* and the *Mittimus*, they have no Returns; but they give Command, and require Execution ſhall be done, *prout de jure, & ſecundum conſuetudinem Reg' Angliæ fieri conſuevit.*

The Firſt Writ, which is the Ground of this Buſineſs, it ſtandeth upon two Parts: A Preamble, and the Body of the Writ. The Preamble that containeth; Firſt, a Direction; and Secondly, the Cauſes and Motives of the iſſuing of this Writ. The Body containeth ſix Parts. Firſt, the Direction that is to the Sheriff of the County of *Bucks*, *nec non* unto the Bailiffs and Burgeſſes of the Borough of *Buckingham*, and Mayor and Burgeſſes of *Chipping-Wiccomb* alias *Wiccomb*, and *probis hominibus* of all the County. Secondly, the motives and Reaſons inducing this Writ, which are nine in Number. 1. *Quia Piratæ & Maris Graſſatores*, &c. That theſe commit Spoils and Depredations by Sea, and take the Goods of the King's Subjects. 2. Becauſe they carry the King's Subjects into miſerable Captivity. 3. Becauſe of the Preparation of Shipping that is made *undique* to infeſt the Coaſts. 4. *Quia pericula imminent*, &c. 5. *Quia pro defenſione Reg. tuitione Maris*, &c. 6. *Quia pro debellatione quorund' hoſtium ſatagent*, &c. 7. *Quia Progenitores noſtri Reges Angliæ dig' Maris temporibus*, &c. 8. *Quia onus defenſionis*, &c. 9. The moſt prevalent, *Quia hoc per legem & conſuetudinem Angliæ*, &c. The Body of the Writ contains alſo ſeveral Mandates to the Sheriffs and Head Officers, *quod fide & legiancia*, &c. *& ſicut nos et honorem noſtrum diligitis.* The Mandates are ſix. 1. To provide a Ship of 450 Tons well manned and furniſhed with Proviſion, and that was to be in readineſs by the firſt of *March*, to continue for the Space of ſix and twenty Weeks, *ad proficiſcendum cum Navibus noſtris*, &c. *pro tuitione Maris*, &c. 2. That the Sheriffs and Head Officers meet within thirty Days, and ſet down what ſhall be taxed upon the Incorporate Towns. 3. A Command to the Head Officers of thoſe Incorporate Towns, that within their Baliwick they make an Aſſeſſment upon particular Perſons, and compel them to pay the ſame. 4. A Power to the Sheriffs to aſſeſs all the reſt within the County, *juxta ſtatum & facultates.* 5. A Command for the levying of theſe Sums by Diſtreſs, *& quos rebelles inveneris* to impriſon their Perſons. 6. That no Part of this Sum collected ſhall be converted to any private Uſe; but if any Money ſhall be remaining, it ſhould be paid *inter ſolvendos.*

My Lords, the Reaſons expreſſed in this Writ might juſtly ſatisfy any Man's Judgment without further Argument; but I ſhall clearly manifeſt there is no Clauſe or Practice by this Writ, but is verified by many Records, and is *ſecundum Legem & Conſuetudinem Angliæ.*

The Queſtion that is made, is of a high tranſcendent Nature; it concerneth the King, both in his ordinary and abſolute Power. Whether the King in thoſe Caſes, where he in his Royal Judgment ſhall conceive a Neceſſity for the Defence of the Realm, may command Ships in this kind; whether by his Royal Power he may do it, or muſt require the Aid *per Commune Concilium* in the Parliament. And I conceive his Majeſty may do it, not only by his Kingly Prerogative, but *Jure Majeſtatis.*

This Power is not only *inter Prerogativa Regis, ſed inter Jura ſummæ Majeſtatis.* I find by many Records, that theſe Writs have iſſued out in all Succeſſion of Times; in the Times of the *Saxons* before the Conqueſt: But I never find that this Power was judicially queſtioned in any Court at *Weſtminſter* before now. I find Queſtions made touching Aſſeſſments, whether they have been equal; touching the Levying, whether within the Warrant of the Office; touching the Diſcharging of ſome, by reaſon of a Grant of Exemption: but to queſtion the main Power, whether the King by his Royal Power might command this for the Defence of himſelf and the Kingdom, was never diſputed before now. But his gracious Majeſty, who hath declared himſelf, that he will rule his People according to his Laws, for the Satisfaction of the People, and to clear his Juſtice and Judgment, does ſuffer theſe Writs to go forth, to which Mr. *Hampden* hath demurred, and to be queſtioned in this legal Way to be determined by your Lordſhips, to which I hope you will give a clear End.

My Poſition ſhall be thus, That the King, as he is King of *England*, *pro defenſione Reg' tuitione Maris*, &c. when his Majeſty in his Royal Judgment conceiveth it a Time of ſuch Danger, as doth neceſſarily require the Aid commanded in this Writ, that he may command and compel his Subjects *per totam Angliam* to ſet forth Ships with Men and Ammunition and double Equipage; and this may be done, as well by the King's Writ under the Great Seal, as by Conſent in Parliament.

For the Proof of this Poſition, I ſhall reduce what I have to ſay to theſe Heads. Firſt, That this Power is *inter Jura ſummæ Majeſtatis* innate in the Perſon of an abſolute King, and in the Perſons of the Kings of *England.* That this Power is ſo inherent in the King's Perſon, it is not any ways derived from the People, but reſerved unto the King when poſitive Laws firſt began. And that in this Caſe the King is ſole Judge of the Danger, and how this danger is to be prevented and avoided: this is my firſt Ground.

The ſecond is this, that the Regal Power is not confined to the Politick Advice, that the King muſt be *in Cathedra* ſitting in Parliament; but that it hath been always done, either *per ipſum Regem, aut per Regem & Concilium, aut per Dominos ſuos, aut per Regem*, when he ſhall pleaſe to call a Conſultation of Merchants and Portſmen experienced in the Service.

My Lords, I ſhall preſent unto your Lordſhips, that this Power is ſo inherent in the King, that during the Time of Parliament, and in thoſe Years when Parliaments were ſitting, theſe Writs iſſued out by a Regal Power, without any Aid or Power from Parliament; and that Advice was not thought neceſſary in former Times.

3. I ſhall alſo ſhew unto your Lordſhips, that this Power is implied out of the Sovereign's Titles given unto him by the Common Law of *England.*

4. And alſo I ſhall inſiſt upon Precedents; and herein I ſhall deſire your Lordſhips to take notice that theſe Writs have not iſſue out at the firſt any ſudden Advice; but that there was a great Search made: Firſt, by my Predeceſſor Mr. *Noy*, a Man of great Learning and profound Judgment; other Searches made by the King's Counſel and ſome others; and a great Number of Records were conſidered of maturely before theſe Writs iſſued: ſo nothing was done upon the ſudden; and we that are of the King's Counſel did think it fit that moſt of theſe Records ſhould be cited in the firſt Argument by Mr. Sollicitor, to the end that the Counſel at the Bar might give an Anſwer to them in their Reply: many more have been added by Mr. Sollicitor, and many more I ſhall cite which have not been remember'd.

My Lords, in the vouching of theſe Records, I ſhall obſerve eight Things. (1.) That the Records we inſiſt upon, are not grounded upon any private Cuſtom, or upon any Charter, or upon any Covenants, but upon the Laws of the Land; and there is not in any of theſe Records any Recital that theſe Writs went out upon any of theſe grounds.

(2.) That in all Ages before the Conqueſt, and in the Time of *William* I. that theſe Writs have iſſued *per ipſum Regem, per Regem & Concilium*, and did not iſſue upon any Advice of Parliament.

(3.) That theſe Records and Writs were ſent out, not in caſe of *Hannibal ad Portas*, or an Enemy diſcovered, or ſudden Invaſion; but upon caſe of Rumours, and in that a Danger might happen; ſo not in approaching of an Enemy, but in caſe of Preparation to provide againſt an Enemy.

(4.) That the King did command Shipping to be ſet forth in thoſe Years wherein there were Parliaments, and ſitting Parliaments, by his Royal Power, without Advice of Parliament.

(5.) That when great Subſidies and Aids have been given unto the King by Parliament *pro defenſione Reg'*, in the ſame Year that Writ went forth for the Defence of the Kingdom.

(6.) That theſe Aids have not been required only from the Maritime Parts, the Ports, nor from the Inland Counties only, but *per totam Angliam.*

(7.) That many times when theſe Writs iſſued, there have been no ſuch Cauſes declared, as hath been in this Writ. I ſhall obſerve, that in many of theſe Writs no Cauſe at all is ſet forth in them, but only that they ſhould repair to the Place of Rendezvous, and there receive further Directions.

(8.) I ſhall verify every Clauſe of this Writ by many Precedents. A *Mandamus*, and not a *Mandamus Rogantes*, Shipping at the Charge of the County, and Aſſeſſments made by the Sheriffs, as Commoners, and a Penalty greater, not only Diſtreſs and Impriſonment, but Extent of Lands, ſeizing of Goods, till the King was paid. Theſe are the Things I ſhall obſerve out of the Precedents, when I ſhall come unto them.

My Lords, in the *fifth* Place, when I have laid theſe Foundations, I ſhall then diſpel thoſe Miſts that have been raiſed, remove thoſe Forces that have been muſter'd, and anſwer the Objections of thoſe Gentlemen, that will not be ſatisfied by the King's Writ under the Great Seal: And in the *ſixth* give a particular Anſwer to the Acts of Parliament that they have cited, to the Records that they have inſiſted upon, and to the Reaſons and Authorities they have alledged.

In the *ſeventh* Place, I ſhall anſwer their Exceptions that have been taken unto the ſeveral Writs, Records, and Proceedings thereupon, that have been produced by us.

And in the *eighth* Place, I ſhall collect ſome Concluſions and Reaſons out of the Premiſes, and cite unto your Lordſhips ſome Judicial Records, that may ſatisfy your Lordſhips in point of Judgment. Theſe are my Materials, I ſhall proceed to the Building.

My Lords, my firſt Ground was, that this Power is innate in the Perſon of an Abſolute King. All Magiſtracy it is of Nature, and Obedience, and Subjection. It is of Nature. And before any municipal Law was, People were govern'd by the Law of Nature, and Practice did rule according to natural Equity: This appeareth in the Reports of Sir *Ed. Coke*, written by him, when he was Chief Juſtice, 7 *Rep. Fol.* 13. I will not take occaſion to diſcourſe either of the Law of Nature, which doth teach us to love our Country, and to defend it, to expoſe the Hand to Danger, rather than the Head ſhould ſuffer; nor of the Law of God, which commandeth Obedience and Subjection to the Ordinance of our Superiors; nor of the Law of Nations, which doth agree, that there muſt be Protection from the King, and Obedience from the People; and without Defence there can be no Protection; and without Aid of the People there can be no Defence: Nor of the Imperial Law, which ſaith, that in Caſes *pro communi utilitate*, the King may *ſtatuere* alone.

My Lords, upon this Subject I will confine my ſelf to the Law of the Land, and inſiſt upon ſuch Records, and ſuch Precedents, and ſuch Reaſons, and ſuch Authorities, as I find both by Records of former Times, and in our Books.

Firſt, In the Original Government of this Nation, I do not find that it was a Monarchy; I find the contrary, that there was a great Number of petty Regiments. And when *Julius Cæſar* invaded this Realm, he writeth there were Four Kings in *Kent*; and *Strabo* ſaith the like, *Lib.* 4. ſo thoſe

Times will not be material. During the Domination of the *Romans*, which continued five hundred Years, the *Romans* had their Prefects here in *England*. No man will doubt but that they might command what they pleaſed, *Notitia utriuſq; Imperij*, *Fol.* 161. that in their Times there were ſpecial Officers, called *Comites*, *&c.* Officers appointed by Sea, and other Officers by Land. Thoſe that ſucceeded the *Romans* were the *Saxons*; and in their Times, both by antient Grants, and by Edicts of the Princes of thoſe Times, it appears, that this Naval Power was commanded by them for the Defence of the Realm.

Firſt, To begin with King *Ina*, *A. D.* 725, King of the *Weſt-Saxons*. This King in that Year made a Grant to the Abbot of *Glaſtonbury*, *Quod*, *&c. ſint quieti ab omnibus Regiis exactionibus & operibus quod indici ſolent*, except *Expedit' Arcium*, *& Pontium conſtructionem ſicut in antiquo*, *&c.* which ſhews that theſe Expeditions were accuſtomed to be done. *Wuldredus*, who was King of *Kent* in the Year 742, granted unto his Churches *quod ſint liberi ab omnibus ſecularibus ſervitiis*, except *expedit' Pontium*, *&c.* ſo in that Grant theſe Expeditions were excepted. *Ethelredus*, King of the *Mercians*, *Anno* 749. granted *Monaſteriis de*, *&c.* except *ut ſupra*. So as in thoſe Times theſe Services were common, and were done by a *Dicto Regis*. That the Churches ſhould be free from all Services, except theſe three, Expeditions of building Caſtles, Bridges and Forts; *a quibus nulli unquam laxari poſſunt*. *Egbert*, *An.* 840. commanded a great Navy to be provided; and that for the Defence of the Realm, and Safeguard of Ships. *Ethelwald*, that was King of the *Weſt-Saxons*, *Anno* 854. granted to the Church, that it ſhould be free from all Service Temporal, except *Regalibus Tributis*. In the Time of King *Alfred*, who was the firſt Monarch, and King of all *England*; one who was a Privy-Counſellor in his Time, and wrote the Story of that Time, he, in the ninth Page of his Book, ſaith, *Quod Rex* Alfredus *miſſit Galleas longas Naves & Cymbas ædificari*; and agreeing with this, is the Hiſtory of *Aſſer Menevenſis*, *Florentius Wigornenſis* 316, and *Huntingdon* 351. wherein your Lordſhips may ſee by the Record, it was done *ex precepto Regis per totum Regnum*. This King made a Law, which is not remember'd by *Lambert* in his *Saxon* Laws, to this effect, That no Man, by Summons, by the Horn or Word of Mouth, ſhould ſit ſtill in Matter of Theft, Bloodſhed, or going to War, whenſoever his Expedition ſhould require; and there he doth mention it to be upon pain of Forfeiture of Life.

King *Edgar*, who ſtiled himſelf *Angliæ Baſilicus*, he in the Year 959 provided a great Navy of 3600 Ships, as ſaith *Wigornenſis*, and *Matth.* of *Weſtminſter*; and he gave a Command, that every Year, at *Eaſter*, a Navy of three or four Thouſand ſhould be ſet out, and divided into three Parts, *Eaſt*, *Weſt* and *North*: The Ships in thoſe Times were not ſo great as now they be. The ſame *Edgar*, in the Year 973, granted to the Abby of *Thorney* all manner of Immunities, and that it ſhould be free from all Services, except thoſe three of building Bridges, Caſtles and Forts. And the ſame King, in his Charter to the Church of *Worceſter*, granteth them to be free *ab omnibus exactionibus*, except *conſtructionem Pontium*, *Arcium*, *&c.*

My Lords, by all theſe ſeveral Grants, and what hath been done by thoſe Kings, it doth appear that theſe three fundamental Services were ever reſerved unto the Crown, ſaving the Grants to two or three Abbeys, which had ſome particular Exemption. In the Year 1008, which was remember'd by Mr. Sollicitor, there was then a great Navy provided by King *Ethelred*. The Words are thus: *Rex* Etheldredus *per totam Angliam ex* 310 Hides, *Navem unam*, *&c. preparare fecerat*, *&c.* that was for every 310 Hides of Land to build one Ship; and every eight Hides of Land to find a Man and a Corſlet, and to meet at *Sandwich* for Defence againſt the *Danes*. This appeareth in *Huntingdon* 360. *Matth.* of *Weſtminſter* 387. *Hoveden* 426. and *Malmsbury* 100.

In this Record theſe Things are obſervable, *Rex parare facit*, *& Rex eos miſit*; then *per totam Angl.* all *England* was to be charged. By the *Gloſſary* of that Learned and Judicious Antiquary, Sir *Henry Spelman*, it appears that *Virgata terræ continet* 24 *Acras*, *quatuor virgatæ continent unam hidam*, *& quinq; hidas Feod. Militar.* Upon caſting up of this, it doth appear, that there be in *England* 363600 Hides of Land; and every 310 Hides being to ſet out one Ship, the whole Number amounteth to divers Thouſands, 11072; and every eight Hides, to ſet forth a Soldier, amounts to 45450 Men: but it is not the Number, but the Matter that is done by the King's Command, *per totam Angliam*.

In the thirtieth Year of King *Ethelred*, he made an Edict, which Mr. Sollicitor cauſed to be read in Court, ſaying he had it out of an old Book in *Cambridge*, *Quod inſtaurant tiel nomber del Naves per ſingulos annos*. I read it to this Purpoſe, to ſhew that in the thirtieth Year of his Reign, there was a Naval Expedition to be always ready at *Eaſter*, and ſheweth the Penalty of ſuch as did depart without Licence.

King *Canutus*, *Lambert Fol.* 117, 118. *ex ſapientum Concilio*, *&c.* ordained a Command amongſt his Temporal Laws, *Cap.* 10. *quod præſidia fiant*, *&c.* commands Ships to be provided; and *Fol.* 118. a Penalty upon all thoſe that refuſed to pay 120*s.* which was a great Sum in thoſe Days.

That which I obſerve out of theſe two were theſe: *Firſt*, That they were made by the King, by the Advice of his Lords; that there were to be yearly Preparations for Shipping; and thoſe that departed out of the Service without Licenſe, were to incur the Forfeiture of all their Eſtates. If theſe Edicts were Acts of Parliament, they ſtand unrepealed; and if no Acts, then they ſtand by Command from the King's Power.

My Lords, I have ſhewed you the Practice, as it was before the Time of *William* the Firſt: He did not abrogate the former Laws, but was ſworn to perform them. Nay, it was ſaid that he did confirm *Antiquas Leges & Conſuetudines Angliæ*. So then, if theſe were the Laws, and this the Power that the antient Kings of *England* had before his Time, he did ratify and confirm it, but not diminiſh it.

This power of commanding of Shipping, for the Defence of the Realm, it is a principal Part of the Power Royal. This Kingdom, it is a Monarchy, it conſiſts of Head and Members, the King is the Head of this politick Body; it conſiſts of Clergy and Laity: The Head, it is furniſhed with entire Power and Juriſdiction, not only to adminiſter Juſtice in Caſes criminal and temporal unto his People, but likewiſe for Defence of both; and he may command the Power both of the one and the other. This Power I find to be mentioned in the Regiſter of Original Writs, written before the Conqueſt, 127 *b.* It reciteth, that *Nos conſiderantes quod ratione Regiæ dignitatis maxime ad providendum Salvationi Reg' noſtri circumquaq; aſtringimur*. It appears by *Stamford*, in his Prerogat. *Cap.* 1. that as the King is the moſt excellent and worthieſt Part of the Commonwealth, ſo is he alſo the Preſerver, Nouriſher, and Defender of his People. I find it in *Forteſcue*, that they have cited; that a Commonwealth without this Head is but a Trunk, as the natural Body is a *Cadaver*. I find it in *Fitz. Her. Na. Br. Fo.* 73, or 173. that the King of Right ought to ſave and defend the Realm, as well againſt the Sea as againſt the Enemies, that it be not ſurrounded nor waſted.

How is this Defence againſt the Sea and Enemies of the Kingdom? Is the King bound to defend the Kingdom by Sea Walls at his own Charges?

No; the Power of Defence is a Superintendent Power in his Majeſty, to authorize Sheriffs and Commiſſioners to ſee it done, but by his Power; yet at the Charge of the People. Regiſter 127 *b.* it appeareth there, where the King commandeth the People by his Writs; the one directed to the Sheriff, and the other to Commiſſioners, and in both willeth and commandeth, *quod diſtringat A. B. & al'*, to diſtrain the Lands of all thoſe that may receive Damage to repair the Sea-Walls, as well as the *Ter' Tenn'*. This Writ was before any Statute concerning that, for the Regiſter was before the Conqueſt; and the firſt Statute that concerneth Commiſſions of Sewers, was made 6 *Hen.* VI. So it is by the Power the King had at Common Law, and not upon any Statute: And this was to the Sheriff, as well as to Commiſſioners; and that it was done at the Charge of the Country, and not at the King's Charge, *Pat.* 33. *Ed.* I. *M.* 4. *Dorſ.* agreeth with the Regiſter: The King doth there recite, *Quod ratione Dignitatis Regis*, *&c. & per Juramentum ſumus aſtricti ad providendum Salvationi Reg'*; and there he giveth Power to Commiſſioners to diſtrain the People to make Defence againſt the Sea, at their own Charges. *Pat.* 2 *Ed.* II. *pars* 2 *M.* 5. *Dorſ.* in the Caſe of *Wiſeman*. Rep. 2. *Fol.* 15. the King, *ex officio*, ought to govern his Subjects in Peace and Tranquillity. 7 Rep. *Fol.* 9. Protection of the King is general over all the Kingdom; there is Reaſon why it ſhould be thus: For the King of *England*, he hath an entire Empire, he is an abſolute Monarch; nothing can be given unto an abſolute Prince, but is inherent in his Perſon, as may appear by Books, Records, and Acts of Parliament: *Bract. Lib.* 2. *Fol.* 55. *b. Sciendum*, *&c. Dominus Rex ſuper omnes qui ad Coronam pertinent*. This appears likewiſe in the Statute 24 *Hen.* VIII. There it is declared that this Realm of *England* is an Empire, and hath been ſo accepted in the World. *Stat.* 25. *Hen.* VIII. *Cap.* 21. 1 *Eliz. Cap.* 1. 1 *Jac. Cap.* 1. the Crown of *England* is affirmed to be an Imperial Crown; and Acts of Parliament are Proofs of the higheſt Nature. 16 *Ric.* II. *Cap.* 5. that the King holdeth his Empire immediately of the God of Heaven: And at his Coronation, his Crown is elevated as a Signification thereof. This is likewiſe acknowledged in the *Iriſh* Reports, *Fol.* 60. *Rex Angliæ eſt abſolutus Monarcha in Regno ſuo*. *Forteſcue* ſaith, the King of *England*, as well as any other King or Emperor, hath all the Liberties within this Kingdom *in Imperio ſuo*. The Law of *England* makes the King of *England*, not as his Subjects are, a Natural Body, but a Body Politick, freeth him from all Imperfection and Infirmity; he is immortal, and never dies; the King ever liveth, *Com.* 177. 11. *Rep. Fol.* 7. 21 *Ed.* IV. and other Records.

My Lords, as he is an abſolute Monarch, ſo all theſe, *Jura ſummæ Majeſtatis*, are given unto his Perſon by the Common Law.

Firſt, He hath ſupreme Dominion, both by Sea and Land, as is proved by the *Mirror*, the greateſt Part whereof was writ before the Conqueſt. Some things are added to it by *H. Horne* in the Reign of *Ed.* IV. He holdeth, that all Lands, and all Juriſdiction, and all Dominion is derived from the Crown: That whatſoever was not granted from the Crown, remaineth in the Perſon of the King. This *Supremum Dominium* is ſo inherent in the King's Perſon, that if the King grants away his Lands, *abſq; aliquo reddendo*, yet the Tenure muſt ſtill remain to the King; 8 *Hen.* VII. 12. 30 *Hen.* VIII. 45 *Dyer*. This Dominion is not only upon the Land, but it is upon the Sea. And ſo the King he hath not only a Dominion at Sea, but he is *Dominus Maris Anglicani*; he is both Owner of the Sea, and of the Soil under the Sea. And ſo it was reſolved lately, by my Lord Chief Baron, and the reſt of the Barons in the *Exchequer*, in the Caſe of *Sutton Marſh*, *Mich.* 13 *Car.* That the Soil of the Land, ſo far as the Sea floweth, is the King's, and the King is ſeized thereof, *Jure Coronæ*. *Mirror* 8. *Bract. Fol.* 8. *Temps Edw.* I. *Avowry*, 46 *Ed.* III. *Com.* 3. *b.* That not only the Dominion of the Sea, but the very Soil belongeth unto the King.

In the next place he hath, beſides his *Supremum Dominium*, a Sovereign Juriſdiction, and that extends both by Sea and Land.

Firſt, For Creation of all his great Officers and Judges; Creation of the Admiralty, time out of mind. 20 *Hen.* VII. *Fol.* 8. 12 *Hen.* VII. *Fol.* 17. Power to make Juſtices could not be granted; and all theſe Powers reſumed in the Statute, as inherent in the Crown. 12 *Hen.* VII. *Fol.* 17. there it is ſaid by *Fineux*, that at the Beginning all Adminiſtration of Juſtice was in one Hand, that is, in the Crown. And ſurely this Juriſdiction did not begin in the Time of *Ric.* I. when thoſe Laws were renewed by him at his Return from the Holy Land; but there were Admirals in *England*, and the Admiral Law by Sea long before. 27 *Ed.* I. a famous Record in the *Tower*, that the Commiſſioners for the Emperor, *Spain* and *France*, did appear before the King's Commiſſioners, and did acknowledge the Sovereignty of the King of *England* upon the Sea did belong unto him time out of mind. And for further Proof of this, it likewiſe appeareth in that learned Book of Mr. *Selden*'s called *Mare Clauſum*.

My Lords, the next inherent Power of the Crown are Pardons of Offences and condemned Perſons, and Reſtitutions, which none can do but the King himſelf, 1 *Hen.* IV. *fol.* 5. 20. *Hen.* VII. 8.

The next is *Jus nummi percutiendi*, a ſetting of a Royal Stamp upon his Coin, the advancing of the Value of his Coin, and the debaſing of it.

21 *Ed.* III. 6. That the King only can put a Value upon it. 5 *Rep. fol.* 114. That the King, by his abſolute Prerogative, may make any foreign Coin lawful Money of *England*, by his Proclamation, *Davies* Reports, *fol.* 20.

The next, *Jus ſummæ Majeſtatis*, is that of concluding War and Peace, which is abſolutely inherent in the King's Perſon, which he may do without calling his great Council, 19 *Ed.* III. 6. and 7 Report 25. That all the Subjects of *England* cannot make a War, *Bellum indicere* belongs not to the Subject. And to make *Aliens*, *Denizens*, is a high Prerogative.

My Lords, this Truſt that the King hath for making of War and Peace, and for the Defence of the Realm, both by Sea and Land, it is a great Truſt, inherent in the Perſon of the King; no Man ought to miſtruſt where the Law doth truſt.

There is an Objection made, That if it ſhould reſt in the Power of the King, he might do it when there was no ground for it, and without Cauſe; and cauſe Forces to be muſtered, and Ships provided where there is no imminent Danger, in ſuch a manner, as that it might be grievous unto the People.

Theſe are Objections clearly againſt Preſumption of Law; for where the Law truſteth, we ought not to diſtruſt. The King, as appeareth by all our Books, is the Fountain of Juſtice and Piety, and will do Juſtice unto all his Subjects, 1 *Com.* 240. All Juſtice is derived from the King, 13 *Ed.* IV. 8. The King can do no Wrong, *Bract. Lib.* 3. *Cap.* 9. 8. *Hen.* VI. 20. It's Royal Power, *De aver Correction de luy m.*' He is the ſole Judge, and we ought not to queſtion him, *Bracton Rex non habet ſuperiorem niſi Deus*, 11 *Rep. fol.* 72. The King is the Fountain of Juſtice and common Right: And the King being God's Lieutenant, cannot do wrong, 17 *Ed.* III. 49. The King could not be made an Inſtrument of Covin and Fraud, but the Patent was void, *Littleton*'s Comment. 99. the 5th Report, *fol.* 14. That Religion, Juſtice and Verity, are the ſure Supporters of Crowns and Diadems, 24 *Ed.* III. 42. *Stamford*'s Pleas of the Crown, *fol.* 72. At the Common Law, the Law doth not diſtruſt where the King doth commit one, but that is upon juſt Cauſe, and ſo we are not to doubt it. And therefore at the Common Law, *Weſt.* 1. *Cap.* 15. a Man committed by the King was not repleviable: Nay, if he was committed by his Council that was his repreſentative Body, he was not repleviable. Shall we then, when the Law hath committed this Power unto the King, who is the fountain of Juſtice and Equity, who is miſtruſted by the Law of the Realm, and the Commonwealth intruſts him; ſhall we think that ſucceeding Kings will do that which is not fit to be done? I ſay, if the Law truſt him, we ought to truſt him. At the Common Law, if the King commit a Man *per Bouche*, he is not repleviable.

But for a further Reaſon, thoſe that are his Delegates or Judges, are not to be miſtruſted. That which a Judge doth, as in his Office, ſhall not be aſſign'd for Error. If it be ſo in the Delegate Power, much more in the Primitive and Fountain. 5 *Mar. Dyer* 163. the Court of *King*'s-*Bench* did receive a Record of *Niſi Prius*, the *Poſtea* returned by the Clerk, and the Death of the Juſtice of Aſſize aſſigned for Error, and could not be received; and ſo, 1 *Mar. Dyer* 89. a Writ of Error to reverſe a Fine, *prout in Dyer*. That is the Reaſon of the Book, 7 *Hen.* VII. *fol.* 40. 10 *Hen.* VII. 28. *Fitz. Her. Na. Br.* 126. ſaith, he cannot aſſign for Error, nor ſhall be admitted to alledge any thing contrary to the Office of a Judge; as to ſay, the Judge did not give right Judgement, or the Clerk did not make right Entries, *M.* 7. *Ed.* I. *B. Rs.* and that is the Reaſon why a Man of *Non compos mentis* in a Fine, and ſuffering of a Recovery, it ſhall not be aſſigned for Error againſt the Acts of a Judge, 8 Rep. Dr. *Bonner*'s Caſe. Records by a Judge, nor Juſtice of Peace, not traverſable. Good my Lords, then, if by the Laws of this Kingdom one ſhall not be admitted to receive an Averment againſt any Acts done by your Lordſhips the Judges, or againſt Acts done by inferior Judges; ſurely in this, where the King is abſolute Judge, it ſhall not be allowed to ſay, there was no Cauſe of Danger, or that is done by the King which ought not to be done. *Bract. Lib.* 1. *cap.* 24. *eſt in Corona Regis facere Juſtitiam*; The King is ſo abſolutely truſted with this Defence, that a Subject cannot make a Fort or Caſtle upon his own Freehold without the King's Licenſe; that appears in the old *Mag' Char' fo.* 162. Inquiry made of thoſe that do build Forts and Caſtles without the King's Licenſe, *Rot' Parl'* 45 *Ed.* III. *M.* 34. 6 *Hen.* IV. 19. and a Book of *Long.* 5 *Ed.* IV. *fol.* 129. that a Subject cannot make a Fort or Caſtle without the King's Licenſe; not in his own Ground.

My Lords, the King hath ſo diſcharged this Truſt, that tho' there were no Account unto the Subject, yet theſe Ships that have been commanded were *ad proficiſcend' cum Navibus noſtris*. The King hath been at greater Charge with theſe Ships going out, than any King of *England* ever was, as will appear by thoſe vaſt Sums of Money the King hath ſpent in theſe Years, beſides what hath been contributed to it by the Subjects.

My Lords, I have done with my firſt Poſition, That it is an inherent Right in the Perſon of the King of *England*; and that the King is the ſole Judge, both of the Danger, and when and how it is to be avoided.

It hath been objected, That the King of *England* may do it, but how? It muſt be according to the Inſtitution of the Laws of the Realm; there muſt be a concurrent Power, a Politick Advice in Parliament, and ſo it may be done. But the King, either by his ordinary Power or abſolute, without the Aſſiſtance of the great Council, he cannot do it, as hath been objected.

And therefore in the ſecond Place, I ſhall come to the ſecond Thing I did propoſe, that was, That the King, as he is King of *England*, that he alone, for this common Defence of the Realm, without the Aid of Parliament, may *Statuere, &c.* That the King, by the Advice of his Council, when he pleaſes, may do it; that he may ordain ſeveral Ways by the Inſtitution of the Common Laws, by his Ordinance, by his Proclamation, by his Patents, by his Writs, and in legal Matters by his Judges. That this may be done by him,

Firſt, It is agreeable to Reaſon; for Kings were before Parliaments, and then ſurely they might have done it. As Juſtice doth flow from the Crown originally, as it was in *Moſes*, ſo it is in the King of *England*, only in the King's Perſon. But afterwards the King did depute his Deputies, and gave others Power; this is no Conceit of mine. 12 *Hen.* VII. *fol.* 17. *b. per Fineaux*, there was a Time when there were no municipal Laws, when poſitive Laws were not eſtabliſhed, when Kings did rule their People according to natural Equity; and then ſurely the King might ordain. No Man will queſtion it; ſince there have been poſitive Laws and municipal Laws, the Kings of *England* they have ordained, as by thoſe ſeveral Records cited appears. It appears by the Practice ſince the Time of *William* I. that the Kings of *England* in all thoſe Writs that they have ordained, have preſcribed the Time for iſſuing of theſe Writs, the Numbers of the Ships, the Times of meeting, the manner of Munition, and to ſtay for the Defence *quamdiu nobis placeret*. I have made a Collection of what have gone out by the King himſelf, what *per Regem & Concilium*, and what by Advice of his Council, and with the Advice of Merchants and Portſmen; but they are ſo infinite, and ſo many of them, that I will not trouble your Lordſhips with the Repetition of them.

Theſe Ordinances for the Defence, they are ſuitable and agreeable to the Ordinance that the King maketh in other Caſes, where the King alone doth ordain, as by his Proclamation. *Clauſ.* 24 *Ed.* III. *Pars* 2. *M.* 2. *dorſ.* The King by his Proclamation commanded all Earls, Barons, Knights, Eſquires, and other Men at Arms, that none of them ſhould depart into foreign Parts. *Fitz. Na. Br. fo.* 85. he agreeth it; and ſaith the Book, He that tranſgreſſeth this Proclamation ſhall be fined for his Diſobedience. And this Command may be under the Great Seal, Signature, or Privy-Seal; for ſaith the Book, The Subject is to take notice of any of the King's Seals; ſo in all Ages he hath commanded no Victuals ſhall be tranſported. *Clauſ.* 24 *Ed.* III. *M.* 7. *dorſ.* 5. *Dec.* 4 *Hen.* VIII. 11 *Hen.* VII. 23. The King granted a Proclamation for a Juſting; and if one of the two that be fighting be killed, it is no Felony. 5 *Report* 114. The King by his Abſolute Power may make any kind of Money current by his Proclamation. In the next Place, the King may ordain by his Patent alone. 40 *Ed.* III. *fol.* 17, 18. The King did grant a Privilege to the Scholars of *Oxford*, that they ſhould have the Choice of the Inns in *Oxford*, which was before there were any fair Colleges in *Oxford*: ſaith the Townſman, This is my Freehold, the King cannot do it; ſay the Judges, This is by the King's Patent, and is in favour of Learning, and therefore a good Ordinance. So the Juſtice in Eyre may take up the principal Inn in a Town. Is there any thing more uſual than for the King to give Power to a Corporation to make Ordinance for a common Good? 49 *Ed.* III. 162. Shall it be ſo in the Creature, and not in him that makes the Creature? A Caſe or two upon every one of them. The King may ordain by his Writ, and that appears 9 *Ed.* III. 16. a Writ of *Ceſſavit* againſt the Tenants of *Northumberland*. The Tenants had been mightily oppreſſed by the *Scots*; they petitioned the King, and ſaid, they were not able to pay their Landlords their Rents, by reaſon of thoſe Incurſions upon them of the *Scots*, and deſired ſtay of Suit; and there it appeareth, that the King did ordain by his Writ, that thoſe Suits upon thoſe Reaſons ſhould not proceed againſt the Tenants for non-payment of their Rents. Out of the ſame Reaſon are the Writs of Protection.

Then the King and his Council may ordain; for that I find, *M.* 4. *Hen.* III. *Fitz. Her. N. Br. Dower* 179. a Writ of Dower there brought by a *French* Woman. The Tenant of the Writ pleaded, that there was an Ordinance of the King and Council, *Quod nullus de poteſtate Regis Franciæ reſpondeatur in Anglia antequam Angl' reſpond' de jure ſuo in Francia*; that is, We *Engliſhmen* ſhould not be compelled to anſwer any *Frenchman* or Woman in a legal Way, till the *Engliſh* were anſwered in *France* to their Suits there. 39 *Ed.* III. 7 *per Thorp.* The King and his Lords may make an Ordinance, which ſhall be as binding as a Statute. *Rot. Franc.* 72 *Ed.* III. *M.* 6. The King by the Advice of his Council did ordain *quod omnes Magnat. & al' qui habent terras & tenementa continue morat'*, &c. Upon this Ordinance I can ſhew above 40 Writs that have gone out to the Nobility, Clergy, Archbiſhops and Biſhops, and to all the King's Subjects too that had Houſes in the Maritime Parts. *Rot. Franc.* 22 *Ed.* III. *M.* 16. and 50 *Ed.* III. *M.* 47. *dorſ.* 24 *Ed.* III. *M.* 6. that of 24 is to the Inlands within 16 Miles of the Sea Coaſts. 40 *Ed.* III. *M.* 37. the like Writs awarded to moſt Maritime Counties, upon pain of Seizure of their Lands and Goods. So likewiſe for Proviſion for the Army; the King and his Council have ordained, both for Markets to be kept within ſuch a Diſtance of the Army, and Wine to be ſold there, and no where elſe. *Rot. Sco.* 10. 12 *Ed.* II. *M.* 13. *dorſ.* So they have ſet down the Number of the Men of Arms that every Town ſhould be charged with, *Clauſ.* 13 *Ed.* III. *pars* 1. *M.* 14. *dorſ.* with a Command that they ſhould diſtrain the Commonalty of that County for the Wages of thoſe Men at Arms.

My Lords, if the King may at any time of Danger, by his Proclamation, by his Patent, by his Writ, by the Advice of his Council; ſurely in Caſe of Neceſſity it is much more lawful; for *neceſſitas eſt lex temporis*, where a Defence by Sea and Land is required. 5 *Ed.* IV. 6. 14. *Hen.* VII. 29. Jurors by Law are to hold together till they give up their Verdict, yet otherwiſe, if the Houſe be like to fall upon their Heads. 38 *Hen.* VII. 11. upon a *Præcipe*, the Tenant may be excuſed, if he could not paſs the Waters.

My Lords, I find that in legal Matters the King and his Judges make certain Explanations upon the Statute of *Gloceſter*, as appears by *Mag' Char.*' And what was done then by the Judges Advice, hath the Force of a Law at this Day. So as you ſee by the Laws of *England*, as well in other Caſes, as in Caſes of Defence, the Law hath given the King of *England* this Power to ordain for the Good and Safety thereof.

I find that in all Ages, and in all Times, the Incidents to a Defence, as well as this principal Part, hath been given to the King himſelf, as he is King of *England*.

Firſt, For the Murage of Towns: That the King hath commanded the Murage of Towns to be done at the People's Charge; the Precedents are ſo many, I will mention none of them; and ſhall he not command for the Defence of the wooden Walls of the Kingdom? *Rot' Alm'* 12 *Ed.* III. *pars* 2. *M.* 10. The King commands by Writ a Place to be fortified towards the War; and every Man having Rent there to contribute, or to be compelled thereto by Diſtreſs; that was commanded to be done by Writ, *Pat.* 12 *Ed.* III.

pars 3. *M.* 5. it appeareth it was done. The King impoſed a certain Rate upon all Goods and Merchandize that came unto *Kingſton* upon *Hull*, and commanded this ſhould be employed to the walling of the Town; this was *de voluntate Regis*; this appeareth *Rot. Pat.* 19 *Ed.* III. *pars* 1. *M.* 12. there was the ſame Command for other Towns, as *Dover*, &c. The ſaid Roll, *M.* 22. *Pat.* 12. *Ed.* III. *pars* 3. *M.* 14 *dorſ.* a Writ for he repairing of the Walls of *Wincheſter* at the Subjects Charge. *Rot. ib. M.* 15. the King by ſpecial Grant gave Power to the Mayor and Burgeſſes to aſſeſs the Inhabitants towards the making of the Wall, and the Defence of the Town. *Clauſ.* 1 *Ric.* II. *M.* 12. *Oxford* was commanded by the King to be fortified at the Inhabitants Charge. *Clauſ.* 12 *Ed.* III. *pars* 3. *M.* 32. the King commanded particular Subjects to fortify their Caſtles at their own Charges in Time of Danger. *Pat.* 18. *Ed.* III. *M.* 9. the King taketh the Caſtles of the Subjects into his own Hands in Time of Danger, *ad evitandum damna & pericula quæ nobis evenire poſſint. Clauſ.* 13 *Ed.* III. *pars* 1. *M.* 36. *dorſ.* the King by Advice of his Council did ordain, that the Town of *Southampton*, *pro ſalvatione ejuſd'* ſhould build a Wall.

My Lords, if the King may command the Walling of a Town at the Charge of the Inhabitants, he may likewiſe command the Defence of the Kingdom by Sea; ſo for other Incidents of Defence, as for erecting Beacons upon the Sea-Coaſts. *Rot. Vaſ.* 11. 12 *Ed.* III. *M.* 29. *de Communibus in ſingulis*; *Clauſ.* 1 *Ric.* II. *M.* 4. *dorſ. de Ordinatione per Regem & Concilium pro vigiliis faciend'*. So likewiſe the King in all Ages hath commanded the imbarring of Ships for the Defence of the Realm, and for all publick Service; this appeareth *Clauſ.* 14 *Hen.* III. *M.* 17. *dorſ.* all Ships arreſted that could carry 16 Horſes. *Rot. Sco.* 10 *Ed.* III. *M.* 2. *dorſ. Omnes Naves pro defenſione*, &c. *Rot. Alm.* 12 *Ed.* III. *M.* 23. *pars* 1. & 12. for the imbarring of Ships for the Defence of the Realm.

So likewiſe the King commandeth and appointeth who ſhall be Officers, who ſhall be Admiral of the Fleet, who ſhall be *Cuſtodes Maris*, as appears *Pat. Ed.* II. *M.* 7. *dorſ.* and in the ſame Roll, *M.* 10. *Pat.* 15 *Johannis M.* 10. *Pat.* 48 *Hen.* III. *M.* 5. *Clauſ.* 23 *Ed.* III. *M.* 5. *dorſ.* and an infinite Number more.

Then that the Country paid the Charges of thoſe who had *Cuſtod' Maritim'*. that appears, *Rot. Fra.* 21 *Ed.* III. *M.* 31. *dorſ. Clauſ.* 13 *Ed.* III. *pars* 1. *M.* 14. *dorſ.* The King when there was Cauſe he moderated the Expence. *Clauſ.* 25 *Ed.* III. *M.* 16. The King did order how much, and how long the County ſhould pay for Wages; and commanded the Stay of thoſe that could have been gone before their Time: and this appeareth *Pat.* 48 *Hen.* III. *M.* 4. *Clauſ.* 48 *Hen.* III. *M.* 2, 3. *dorſ.*

Then it appeareth by many Records, that this Guard of the Sea-Coaſts was to be according as the King ſhould order and direct, ſometimes *per Regem*, and ſometimes *per Nos & Concilium*: and this appeareth *Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ. Clauſ.* 13 *Ed.* III. *pars* 2. *M.* 14. *dorſ. Pat.* 29 *Ed.* I. *M.* 1.

Sometimes the King out of his Royal Power hath been pleaſed to give Diſcharges to particular Men, to be diſcharged from this *Cuſtod' Maritim.* This appeareth *Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ. Portſmouth* diſcharged, becauſe their Ships were in the King's Service, *Clauſ.* 8 *Ric.* II. *M.* A Diſcharge for the Abbot of St. *Albans*, *Pat.* 12 *Ed.* III. *pars* 2. *M.* 8. *Pat.* 12 *Ed.* III. *pars* 1. *M.* 14. diſcharges *de Cuſtod' Marit.*

Then the Power of puniſhing thoſe that ſhould neglect thoſe Commands hath been always in the King, and to be puniſhed by his Commiſſioners, or by his Writs, and that in a high manner.

That there have been Commands by Diſtreſs, by Impriſonment, by Seizure of Lands, Goods, and Forfeiture of all that they had, this appeareth, *Pat.* 48 *Hen.* III. *dorſ. Clauſ.* 48 *Hen.* III. *M.* 3. and a great Number in the Times of *Ed.* II. and *Ed.* III.

The King hath ſo far meddled in this Buſineſs, that tho' it hath been the Money of the Country, yet the King hath appointed the Pay-Maſter, *Clauſ.* 48 *Hen.* III. *M.* 20. *Clauſ.* 16 *Ed.* II. *M.* 13.

So all Arrays for muſtering of Men between 16 and 60, have been in all Ages, and by the King's Command, to be in and continue in readineſs ſo long as the King ſhall pleaſe, *Rot. Alm.* 12 *Ed.* III. *pars* 2. *M.* 6. *dorſ.*

So, my Lords, it doth appear by theſe Precedents that have been cited, by theſe Records, and by theſe Book-Caſes, that the Kings of *England* have in all Ages given Command, and made Ordinances by themſelves, by their Council, by their Judges, and by their Peers; and theſe Ordinances have been obey'd.

My Lords, I promiſe upon this Head to make it good, that in theſe Times, and in theſe Years, wherein there were Parliaments, that tho' the Parliaments did determine Matters concerning the Land Forces, and the going of the King's Army into *Scotland*, and yet ſitting the Parliament, the King hath commanded the ſetting forth of Ships by his Writ; this was ever left to the Royal Power. For the Proof of this, there was the 24 *Ed.* I. a Parliament, as appears in the printed Books of that Year; and in that Year the King commanded Ships by his Writs at the Charge of the Subjects. *Pat.* 24 *Ed.* I. *M.* 17. Command to take up a hundred Ships; and in *Pat.* 24 *Ed.* I. *ex parte Regis Rem.* Exchequer-Roll 22. Command *pro Cuſtod' Marit'. Hil.* 9 *Ed.* II. a Parliament holden at *Lincoln*, and yet in the ſame Year Writs went out to provide Shipping, as appears by *Rot. Pat.* 9 *Ed.* II. *pars* 2. *M.* 26. I find there was a Parliament held 12 *Ed.* II. This appeareth in the Book of Statutes, *Rot. Scot.* 11. and 12. *Ed.* II. *M.* 8. the King recites certain Inroads made upon the Men in *Northumberland*, & *quod de communi concilio*, held at *York*, *ordinavimus*, &c. and aſſigns the Earl of *Pembroke*, and Biſhop of *Norwich*, *ad requirend' Norff' & Suff' juxta diſcretiones veſtras ſubſidium facere per Naves*, &c. *per tempus trium vel quatuor menſium.* At this Time there was a Proviſion by Parliament for the King's Service by Land, and for his Armies to meet him at *Newcaſtle*; and for two Reaſons why *Navale Subſidium* ſhould be neceſſary. Firſt, to hinder the bringing of any Victuals into *Scotland.* Secondly, For the free Intercourſe of Trade. So as you ſee, in this Year wherein a Parliament was holden, this *Navale Subſidium* was commanded by the King's Writ without an Act of Parliament; tho' this Writ was for *Norfolk* and *Suffolk*, yet the like was for *Dorſet*, *Somerſet*, &c. It appeareth likewiſe 10 and 11 *Ed.* II. which were thoſe great Years of ſending out of Writs, that then Parliaments were holden. And ſo it doth appear by the printed Book of Statutes; yet in that Year of 10 *Ed.* III. *Clauſ.* 10 *Ed.* III. *M.* 37 *dorſ* a Writ directed to the Mayor and Bailiff of *Briſtol*, with a Command, that all Ships of 40 Tons & *ultra*, ſhould be ſeized. 10 *Ed.* III. *M.* 21. *dorſ.* Command that the Ships ſhould be ſet forth for the preventing of Danger, and that no Foreigners Ships come in to aid the *Scots. M.* 21. *dorſ.* the ſame Roll, Command to the City of *London* to ſet out Ships at their own Charge. *Sco.* 10 *Ed.* III. *M.* 21. *dorſ.* Writs to the Sheriff of *Bucks* to ſend Horſemen and Footmen to the County of *Southampton*: ſo there were Men drawn out of their County, and the Refuſers there were called Rebels. *Rot. ib.* Writs *de Navibus pro defenſione Regni.*

My Lords, there was ſomething more obſervable in this Year of 10 *Ed.* III. for ſome of the Writs that went out bear Teſte 3 *Octobris* 10 *Ed.* III. and mention a Parliament, but did not go out by any Ordinance of Parliament; ſo that the awarding of theſe Writs 10 *Ed.* III. were ſitting the Parliament, and by the Royal Power: which is a ſtrong Argument, there needeth not Aid of Parliament for the King to command his Forces. 11 *Ed.* III. there was likewiſe a Parliament, as appeareth in the printed Books of Statutes, yet Writs dated 10 *Januarii* 11 *Ed.* III. *per ipſum Regem*, Ships are commanded *pro guerra ſuper Mare. Rot. vaſ.* 20 *Ed.* III. *M.* 6. *dorſ.* Proclamation to ſeveral Counties, that all Ships be in readineſs. In the 12th Year of *Ed.* III. there was a Parliament at *Northampton*, *Clauſ.* 12 *Ed.* III. *pars* 2. *M.* 1. the ſame Roll *pars* 2. *M.* 32. and yet the ſame Year the King commanded Shipping at the Charge of the Counties, as appeareth *Rot. Parl.* 12 *Ed.* III. *pars* 1. *M.* 12 *Clauſ.* 12 *Ed.* III. *pars* 3. *M.* 29. And in the 13th Year of *Ed.* III. there was likewiſe a Parliament holden, as appeareth 12th *Ed.* III. *M.* 9, 10. but printed Statutes make no mention of a Parliament then.

My Lords, in this Record theſe Things are obſervable, cited, and made uſe of by the Defendant's Counſel; a ſtrong Record as any can be againſt them! In that Parliament the King he did pray the Advice of the Commons in Parliament touching his War with *France*, and the guarding of the Sea-Coaſts; the Commons they make Anſwer, *Prient les Commons que ils ne Counſel doner al choſes de quel ne paſs Conuzance*, &c. They ſay further, And they grant that the Maritime Towns ought to make the Guard upon the Sea without Wages, and the Inland Towns upon the Land.

Two Things are obſervable in this Record. *Firſt*, When the King doth deſcend ſo low as to pray the Advice of his Commons in Parliament, and Aſſiſtance for the guarding of the Sea; the Commons diſclaimed it, and ſaid, they have no Connuzance, *&c.* and yet the Defendant's Counſel did preſs, that now the King ſhould aſk the Advice of the Commons in Parliament; a Thing diſclaimed by the Commons in Parliament 13 *Ed.* III. to have any Cognizance of. *Secondly*, That by this Record, the Maritime Parts ought to guard the Sea at their own Charges: This, tho' it was granted in their Petition, it was not granted by the King; for it appeareth in the ſame Year, *Rot. Alm.* 13 *Ed.* III. *M.* 13 *dorſ.* that the King that Year hearing of ſome Preparations in *France*, commanded Ships for three Months. *Clauſ.* 13 *Ed.* III. *pars* 1. *M.* 14. that in ſeveral Counties Men were diſtrained for not Payment of Wages for the Archers and others that guarded the Sea-Coaſts. It appeareth by theſe Records, that both the Guard of the Sea, and the Sea-Coaſts, was done *juxta Ordinationem noſtram*, Order made by us and our Council. *Rot. Alm.* 13 *Ed.* III. *M.* 15. *dorſ.* the King appointed the Archbiſhop of *York*, *Hugh de Percy & al'* for that purpoſe, *&c.*

So, my Lords, I have done with the ſecond Ground, that is, that the King is the ſole Judge of this without his Parliament: That the Commons in Parliament have diſclaimed to have any Cognizance of it: That in the ſame Year, when Parliaments were holden, the ſame Year theſe Writs have iſſued without Advice of Parliament.

The third Thing I did propoſe was thoſe ſupreme Titles, which the Common Law of *England* giveth unto the King, which may enforce this. *Bract. lib.* 2. *cap.* 24. ſaith, that the King he is *Vicarius Dei*; his Power, as was agreed, is *Jure Divino.* God is the God of Hoſts, and the King is a Model of God himſelf. 40 *Ed.* III. *fol.* 18. the King is the chief Guardian of the Commonwealth. The Sheriff hath *Poſſe Comitatus* under the King, the King's Vicegerent in the County: And he hath this Power, not only for the Execution of legal Proceſs, but for the Defence of the Realm. 12 *Hen.* VII. *fol.* 7. this delegate Power of the Sheriff is as well for Defence, as for the Execution of Proceſs. Shall the Sheriff do it, and not the King? 10 *Hen.* III. *fol.* 1. *B. Hen.* VII. *fol.* 1. the King is the Conſervator of the Law. 20 *Hen.* VII. *fol.* 4. *Rex eſt Capitalis Juſticiarius totius Angliæ*; he is not only to maintain Juſtice in the Courts of Juſtice, but to protect and defend his People. *Stamford*'s *Prerogat. cap.* 1. The King is the moſt worthy Part of the Body of the Commonwealth, the Preſerver, Nouriſher, and Defender of it: And by this they enjoy their Laws, Goods and Lands, 11 *Rep. fol.* 70. *b. Magdalen-College*'s Caſe, *Rex eſt Medicus Regni & Sponſus Reipublicæ.* It is the part of a good Phyſician, as well to prevent Diſeaſes, as to cure them; and the Office of a good King, as well to prevent Danger, as to remedy it. *Com. fol.* 130. He is the Soul that animates the Body of the Commonwealth; and we ought to move as he moves. 11 *Rep. fol.* 72. The King is the Fountain of Common Right, therefore we have no Reaſon to ſtain the Fountain.

I am now come to my fourth Proof, which is by Precedents, wherein I ſhall be ſomewhat long.

The Second Day's Argument of Sir John Banks, *Knight, his Majeſty's Attorney-General, before all the Judges in the* Exchequer-Chamber, *on the behalf of his Majeſty.*

May it pleaſe your Lordſhips,

TO remember I ſhewed by Charters, Aids, and a great Number of Precedents, that this Royal Power was in the King of *England* before the Conqueſt: And that tho' ſome were exempted from the ſetting forth of Ships by Grant unto ſome particular Men, or ſome particular Churches; yet theſe three fundamental Services of Expedition, repairing of Caſtles, and making of Bridges, were always exempted.

Then I ſhewed, by a great Number of Precedents, that not only the principal, but all other Neceſſaries that concern the Defence of the Realm, both by Sea and Land, hath been always commanded by the King's Writ: for the fortifying of Towns and Caſtles, and the Murage of Towns, the Appointment of Admirals of the Fleet, and thoſe that ſhould be Guardians by Sea and Land; the Imbarring of Ships, and Arrays of Men, the erection of Beacons, and diſcharging of ſome upon juſt Cauſe, and by puniſhing of thoſe that were refractory: And all this was done by the King's Command, *per ipſum Regem*, or *per Regem & Concilium*, without any Aid of Parliament.

Likewiſe, I have made it appear to your Lordſhips, that the King is the ſole Judge of this Defence: That the King is not to be miſtruſted in the Execution of his Office, as King; nor your Lordſhips as Judges, are not to be miſtruſted. I have then ſhewn out of Precedents, that in thoſe Years, wherein there have been Parliaments, and ſometimes ſitting the Parliaments, Writs have iſſued *per ipſum Regem*, and *per Regem & Concilium*.

I ſhall proceed to make good other Particulars, which I have opened unto your Lordſhips. *Firſt*, That theſe Precedents that have been ſhewed, and which I ſhall ſhew unto your Lordſhips, have not been grounded upon any particular Covenant or Charter of Cuſtom, but upon the Law of the Land, and upon ſuch Reaſons as are irreverſible, and bind all the King's Subjects, as well Clergy as Laity. For this I ſhall remember *Clauſ.* 48 *Hen.* III. *M.* 3. The Writs do recite, *quod tum Milites & liberi Tenentes quam omnes alij*, &c. *ad defenſionem Regni teneantur.* Clauſ. 9. Ed. III. M. 11. *pro defenſione Regni omnes teneantur.* Scot. 10 Ed. III. M. 12. *quia conſonans Rationi, quod omnes tangit per omnes ſupportari debet:* And the ſame Roll, *M.* 20. *dorſ. ex legiantia ad defenſionem contra hoſtiles ingreſſus inimicor' manus exponere adjutrices*, &c. Rot. Alm. 12 Ed. III. M. 1. dorſ. *omnes & ſinguli tenentur*, &c. *Se & ſua exponere*; the ſame Roll, *M.* 12. *dorſ. omnes & ſinguli ad defenſionem Regni aſtricti.* And I think every Man will acknowledge himſelf to be bound out of his Allegiance. *Rot. Alm.* 13 *Ed.* III. *M.* 13. *dorſ. ex legiantia ad defenſionem Regni & veſtri & veſtrorum.* Same Roll, *M.* 17. And there be Writs unto all the Biſhops of *England*, *quod invenerint homines ad arma pro defenſione. Francke Almoigne Tenure* was no Plea againſt this Service. *Rot. Franc.* 46 *Ed.* III. *M.* 34. There was a Writ directed to the Biſhop of *Canterbury*, for the arming and arraying all Eccleſiaſtical Perſons within his Province: The like to the Biſhop of *York* in the ſame Roll. So it extends to all the King's Subjects, as well to the Clergy as the Laity.

Nay, Ports that were obliged to do particular Service, yet in caſe of extraordinary Defence, that there the Writs went out, not only to perform the ordinary Services, but Services *ultra debitum.* The Cinque Ports, by their Charter of *Ed.* I. were to ſet forth 52 Ships at their own Charge for fifteen Days; yet we find by ſeveral Writs, and in ſeveral Kings Reigns, that the Cinque Ports have been required to do further Services. Arreſts have been of their Ships, *Ultra ſervitium debitum. Scot. Roll.* 10 *Ed.* III. *M.* 2, 3. *dorſ.* and 28. *dorſ.* there is a Command, that all their Ships of 40 Tons ſhould be arreſted for the King's Service. And ſo likewiſe, *M.* 22. that all the Ships of the Cinque Ports, *tam majores quam minores*, ſhould be arreſted. *Rot. Alm.* 13 *Ed.* III. *M.* 13. *Omnes Naves quæ tranſire poterint*, arreſted and brought to the Cinque Ports.

So then, to tell of particular Rolls, that theſe and theſe Towns were obliged to do theſe Services; this, under favour, is no Argument. For altho' they be obliged to do the Service, yet upon other Occaſion, the King took all their Ships, *ultra ſervitium debitum. Clauſ.* 16. *Ed.* II. *M.* 13. *dorſ.* The King writeth to divers Earls, Barons and others in this Manner, *Quod ſint tam citius quatenus poterint parati*, beyond your Service, with Horſe and Arms, and come to our Town of *Newcaſtle upon Tine:* So as this Writ was directed to all the Lords Spiritual and Temporal, and all the King's Subjects; not only with their due Service, but beyond their Service, to be at *Newcaſtle*. So your Lordſhips ſee the Motives, and Grounds, and Reaſons of theſe Writs are univerſal; they concern not a particular Part and Subject, but all the King's Subjects; and they are *Legiantia ſua debita.* So that is the firſt Thing I would obſerve to your Lordſhips, that theſe Writs and Precedents are grounded upon the Law of the Land, and not upon particular Cuſtom.

The ſecond Thing is this: That all theſe Writs have iſſued by the King's Mandate, either by the King only, or by the King and his Council, without Advice in Parliament; of which I have made a Collection: And it is better for me to attend your Lordſhips withal, than to cite them; becauſe they are above five hundred, wherein I have diſtinguiſhed what have been *per Regem*, and which *per Regem & Concilium*, and where the Advice of particular Merchants and Portſmen were required, *Scot.* 11 *Ed.* III. *M.* 2. *dorſ.* 19 *Ed.* III. *pars* 1. *M.* 26. *dorſ.* And in theſe, the Advice of particular Men were called to aſſiſt the King and his Council.

Now, my Lords, if before Time of *William* I. and ſince, and for ſo many hundred Years together, this hath been done; ſhall not theſe Precedents make a Rule?

That Precedents that are not againſt the Law, nor contrary to the Rules and Reaſons of the Law, make a Law, this appeareth by 4 *Ed.* IV. *fol.* 43. The Lord-Chancellor ſent forth a Writ of Error. The Judges took Exceptions both to the Matter, and the Manner, ſaith the Book, becauſe it hath been always ſo; the Precedents make a Law. 33 *Hen.* VI. *fol.* 20. an abſurd Return made by a Sheriff; yet becauſe Precedents to warrant it, a good Return. 2 *Ric.* II. *fol.* 7. where a Duty was to be paid to a Corporation of Mayor and Commonalty, the Duty to be paid to the Body, and an Acquittance to be had from them; but becauſe it had been uſed the Mayor alone to give the Acquittance, a good Acquittance. 2 *Rep. Haines*'s Caſe; the King ſhall not part with his Intereſt without the Great Seal; but yet a Leaſe for Years, under the Seal of the *Exchequer*, is good by Cuſtom. 4 *Rep' fol.* 9. that the Precedents of the Court are good againſt the expreſs Words of a Statute. Having ſo many Precedents, I will not trouble you any longer, tho' I have reſerved a ſpecial Place for anſwering of Objections; yet ſuch Objections, as fall materially in the way, I ſhall give an Anſwer to, tho' I reſerve the Anſwer to the main Objection to the fifth Place.

It hath been ſaid, by Mr. *Holborn*, that here hath been a Diſcontinuance of Time; and that ſince the Time of 50 *Ed.* III. none of theſe Writs have iſſued.

Shall Diſcontinuance of Time take away the King's Right? If there have been no Uſe within the Time of the Memory of Man; yet if there have been an inherent Right in the Crown of *England*, ſhall the Crown loſe it by Diſcontinuance of Time, contrary to the Rule of the Law? 10 *Hen.* IV. *fol.* 6. Where the King is the Founder of a Biſhoprick or Abbey, and is by common Right to have a *Corody*, tho' not uſed, and the King hath not demanded it in time of Memory, yet the King ſhall not loſe it. *Fitz. Her. Na. br. fol.* 5. A Writ of Right brought by the King, where you muſt alledge *expleis & Seiſin*, will not bind the King to alledge a *Seiſin* in him and his Progenitors: for if once the King had a *Seiſin*, Protracts of Time ſhall not diſcontinue it. 12 *Hen.* VII. *fol.* 20. The Statute of *Mortmaine* confineth the Lord to enter within a Year and a Day; but it ſhall not bind the King, for he may do it any time. 35 *Hen.* VI. *fol.* 26. If a Villain doth alien his Lands, it barreth not the King. Plenarty after ſix Months, no Plea againſt the King. 6 *Rep.* no Diſcontinuance of Time, if the King hath a Right. 7 *Ed.* IV. 30. If an Alien and another Man purchaſe Lands together, and the Alien dies, the King ſhall not be prevented by Survivorſhip: and in perſonal Goods, you ſhall raiſe no Preſcription againſt the King. 35 *Hen.* VI. *fol.* 27. There is no Man can pretend a Title to the King's Goods, for Waifs, Eſtrays, or Wrecks; for no Preſcription can invade the King's Profit.

But then they ſay the Precedents are not in all Times; for we have not ſhewn, nor cannot ſhew that in all Times theſe Writs have iſſued.

A ſtrange Objection, in all Times! My Lords, it is a caſual Service. In all Times, God be thanked, not that Occaſion or Neceſſity of this Defence. Will you have us ſhew you Precedents for a caſual Service done at all Times? 4 *Rep. fol.* 10. If a Man hold to do Service to his Lord, to go with him into the War of the King, this is out of the Statute of Limitation; for it may happen not once in two or three hundred Years: therefore the Law doth not require we ſhould have a *Seiſin*, for this very Reaſon, becauſe it is caſual. 33 *Hen. Br. Fealty* 15. That for Homage and Fealty, caſual Service, they are out of the Statute of Limitations: ſo as now, by the ſame Reaſon that they would tie us to Precedents where there was no Occaſion, by the ſame Reaſon the Tenants are to do Homage, or go into the Wars when there was no Occaſion.

But beſides, he is much miſtaken; theſe Precedents do not end with *Ed.* III. 7 *Ric.* II. *M.* 18. 13 *Hen.* VI. *M.* 10. 14 *Hen.* VI. *pars* 1. *M.* 14. a great Number of Ships commanded then in the King's Service.

But it hath been ſaid, that the People have always petitioned againſt it, and there hath been a decrying by the People; and they have petitioned in Parliament againſt it. And theſe things, that muſt be made good by Cuſtom, muſt gather Strength by a Conſent. And further, that when Petitions have been preferred, the King hath not denied the Petition expreſly.

My Lords, I ſhall ſhew, when I come to give a particular Anſwer to thoſe Records and Petitions that they have mentioned, That notwithſtanding theſe Petitions, this Service hath been always continued: and for the Anſwer that he ſpeaketh of, that they have not been denied; theſe are the very Words of the Anſwer, *Le Roy ſe aviſera.* We know whether this be an expreſs Denial or no. So tho' the King took time to adviſe of the Petition of his Commons, this is no Argument, but that it is a mannerly kind of Denial. Beſides, in theſe very Years of 10, 11 & 12 *Ed.* III. the Writs went out for the Shipping Buſineſs, by the Royal Power.

Then it hath been ſaid, that we can make no Precedents of theſe; for tho' Writs have gone out, yet it doth not appear that theſe Writs have been put in practice, or that any Execution of them have been done.

But the Service hath been done, as doth appear by the Monuments of thoſe Times. Then it doth appear by other Records, that the Wages of Mariners have been paid by the Country. Theſe very Years, *Rot. Clauſ.* 20 *Ed.* III. *M.* 6, 7. it doth appear, that ſome particular Men had particular Diſcharges, either becauſe they were in the King's Service, or in *Gaſcoigne*, or lived on the Sea-Coaſts; that they pleaded their Diſcharges, and had them allowed for that Reaſon, 23 *Ed.* III. *M.* 14.

So as, my Lords, upon this ſecond Ground, that theſe Writs have gone forth thus conſtantly in ſeveral Ages; that there being ſuch a Number of Precedents, the Diſcontinuance hath ever been when there was no Occaſion. That the Precedents of the Courts of Juſtice make a Law, and Diſcontinuance cannot take away the King's Title. This is the ſecond Thing I do inſiſt upon, that theſe Precedents make a Law.

The Third thing I ſhall obſerve upon theſe Precedents is, That theſe Writs have gone forth, not only in Caſes of an actual War, or in Caſes of an Invaſion, when the Enemy's Fleet hath been upon the Sea; but by way of Preparation before-hand, when the Enemy meant to come; and in contingent Caſes, when the King might conceive any Danger might inſue: But in theſe Caſes Writs have iſſued out, will appear, *Rot. Clauſ* 48 *Hen.* III. *M.* 2. The Writs are here in Court. *Cum neceſſe ſit ad defenſionem Regni eſſe promptum*, &c. *Clauſ.* 23 *Ed.* I. *M.* 5. there were ſeveral Writs directed to divers Earls, Biſhops and others, *de cuſtod. marit.* The Words are thus, *Quia volumus quod partes marit' in Com'* Eſſex, *&c. contra Inimicos diligenter cuſtodiend. forſan ſi in partes illas venire contingent.* 24 *Ed.* I. Remembrancer in the *Exchequer*; upon Information given, that there were 1000 Men in *Flanders* made Preparation to come unto *Yarmouth* to burn the Town, Writs ſent forth by the Treaſurer and Barons, *ex officio*, to be in readineſs in caſe there was an Invaſion. *Pat.* 9 *Ed.* II. *pars* 2. *M.* 26. Writs directed to all the Port-Towns between *Southampton* and *Thames*, to ſet forth Ships at their own Charge, for the better Defence of the Kingdom; and againſt thoſe that commit Depredations upon the Sea, as well to Men of this Kingdom, as to others coming to this Kingdom. *Rot. Scot.* 11 & 12 *Ed.* II. *M.* 8. The King, by ſeveral Writs, directed to ſeveral Commiſſioners in ſeveral Counties, recited the Proviſion made for his Army at Land at the laſt Parliament, and ſaith, *Nos conſiderantes ad expeditionem præd. tam ad impedend. Scotos, quam pro cuſtodiend. Maris*, &c. and ſo commandeth for that purpoſe, that Ships ſhould be ſent out of ſeveral Counties for theſe two Cauſes; the one to hinder Victuals from going into *Scotland*, the other for free Intercourſe of Trade. It appeareth, 10 *Ed.* III. that the Ships of *France* were not upon our Sea-Coaſts, but were in *Britain* in *France*; and yet the King, upon Relation that they had an Intention to invade the Realm, did ſend forth for the providing of Ships in moſt Parts of the Realm; this was only upon Information. *Rot. Scot.* 10 *Ed.* III. *M.* 30. *Ut audivimus*; *M.* 23. *Ut intelleximus*; *M.* 16.

M. 16, 22. *Quod audit. M.* 18. *dorſ.* 12. *dorſ.* 5. *dorſ. in partibus tranſmarinis.* So by theſe Records, this Preparation of Shipping was only upon Information. *Franc.* 26 *Ed.* III. *M.* 5. *Quia vulgaris opinio Regnum noſtrum Angliæ invadere*, therefore commandeth Shipping by Sea, and Forces by Land. *Rot. Franc.* 10 *Ric.* II. *M.* 23, 24. *Quia certi rumores quod Franc. infra breve tempus cum magnis Armat' hoc Regnum invadere*, &c. commands the Cuſtody of the Sea and Sea-Coaſts. So as it doth appear, by theſe Records, that upon an Information, or Conjecture of the King, he may ſend forth theſe Writs, and command his Subjects to be in readineſs, in caſe that Danger might happen; better ſo, than to receive a Blow, and then to make Preparation for Defence; we ſhould buy that Wit with Repentance. *Prudentiſſima ratio, quia timor Belli, &c. præparavit.* And ſurely when the King ſees thoſe Preparations abroad, thoſe great Armies in adjacent Countries, *qui nocere poſſunt*, great Reaſon we ſhould be in Preparation.

This is not only conſonant to Precedents, Wiſdom of Times, Policy of State, *Venienti occurrere morbo*, but to the Reaſon of our Common Law. If a Man be in fear, that another Man lieth in Wait for him to do him a Miſchief, ſhall he ſtay till he receive a Wound? 17 *Ed.* IV. 4. In this caſe he may have a Writ to bind him to the Peace, 13 *Hen.* VII. *fol.* 17. If a Man have a Warranty for his Land, ſhall he ſtay till he be impleaded? No, a *Warrantia Charta* lieth till he be impleaded. If Lord and Tenant in antient Demeſn, and the Lord ſhall require more Service of the Tenant than he ought to perform; ſhall the Tenant ſtay till there be a Diſtreſs taken? No, he ſhall have his *Monſtraverunt*, *Fitz-Her. Na. Br.* 40 *Ed.* III. *fol.* 45, 46. and this only upon Verbal Demand of Service.

Shall then the Common Law of *England* ſecure the Subject not to ſtay till a preſent Danger, but he ſhall have his *Warrantia Charta*, and *Monſtraverunt* before Diſtreſs taken; and ſhall not the Common Law provide for the King, that he, in his Expectation of Danger, may make his Preparation againſt it? So ſurely theſe Precedents are according to Reaſon of Law.

The next Thing that I did obſerve out of theſe Precedents was, that in theſe very Years, wherein there have been Aids granted to the Crown *pro defenſione Regni*, in thoſe very Years theſe Writs have iſſued out by the Royal Power. *Clauſ.* 48 *Hen.* III. *M.* 2, 3. *dorſ.* There was then a Tenth given by the Clergy *pro defenſione Regni*; and yet in that Year he did command the Defence of the Realm, both by Sea and Land; and that appeareth, *Pat.* 48 *Hen.* III. *M.* 6. *dorſ.* and *Clauſ.* 48 *Hen.* III. *M.* 30. In the 22 *Ed.* I. the King had given him in Parliament, *pro ſubſidio Guerræ*, a Tenth of all moveable Goods, which was to be collected in the 23d Year, as appears, *Pat.* 22 *Ed.* I. *M.* 2. My Lords, this very Year, when this was paid, he commanded a great Number of Shipping for the Defence of the Coaſts, and that appeareth, *Pat.* 23 *Ed.* I. *M.* 6. Writs were directed to divers Counties, as *Suſſex*, *Southampton*, *Dorſet*, &c. commanding them to be aiding and aſſiſting to *William Thornton*, in the taking of all the Ships in thoſe Counties, *Pat.* 23 *Ed.* I. *M.* 7. *a Com' Radolpho de Salwico ad providend. de Navibus, ita quod prompti ſint quandocunq; mandamus.* So to be in readineſs with all Ships in thoſe Parts, that were of 40 Tons. *M.* 8. Some Roll-Writs directed to moſt of the Sheriffs of *England* to be aſſiſting to *John de Barwicke*, to the chuſing and ſending forth of Archers, *ad proficiſcendum cum Fleta noſtra.* So as they were not only brought out of their own Counties, but all the Counties of *England*, *ad proficiſcendum.* My Lords, this 23d Year, when this great Aid of Tenths, and Part of all the Moveables were granted, *Pat.* 23 *Ed.* I. *M.* 7. the King writeth to all the Archbiſhops, Earls, and others, reciting, that he hath committed the Cuſtody of the Sea to *William de Stoaks*, *Ita quod idem Willielmus vos omnes*, naming the Archbiſhops, Biſhops, Earls, &c. *prout neceſſe fuerit.* So as you ſee the greateſt Subject is not exempted from theſe Commands, but ſhould be *auxiliantes, reſpondentes & intendentes. Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ.* The King commanded the Biſhops of *London* and *Norwich*, for the Safeguard of the Sea-Coaſts. *Pat.* 23 *Ed.* I. *M.* 1. A Command to all Archbiſhops, Biſhops, Abbots, Earls, Barons, Knights, and others, commanding them to be aiding to *Adam de G. Ita quod idem Adam compellere poſſet quoties neceſſe*, &c. So *Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ.* the like Commands. So as, my Lords, in thoſe Times, which was 23 *Ed.* I. when there was an Aid granted by Parliament, it doth appear, thoſe great Defences, both by Sea and Land, were commanded.

My Lords, 10 *Ed.* III. in a Parliament holden at *Nottingham*, there was a Fifteenth granted to the King for three Years, and ſo it was recited in the Record. And it appeareth likewiſe, *Pat.* 12 *Ed.* III. *M.* 2. *Pars* 3. *Clauſ.* 12 *Ed.* III. *M.* 28. *Pars* 3. it appeareth, that a Tenth and Fifteenth were granted to the King in Parliament; and this was *tam pro defenſione quam arduis Negotiis.* 12 *Ed.* III. The Prelates, and Lords and Commons at a Parliament holden at *Weſtminſter*, gave the King ten thouſand Sacks of Wool, ſaid to be given *pro defenſione Regni*, as appears *Rot. Alm.* 12 *Ed.* III. *pars* 1. *M.* 1. In the ſame Year there was granted likewiſe *pro defenſione Regni medietatem lanarum*, the Moiety of all their Wool, *M.* 31, 32. In the ſame Year the Clergy, they gave the King in Parliament, *medietatem lanarum uſq; vigint. mill. ſaccar.* as appeareth, *Rot. Clauſ.* 12 *Ed.* III. *Pars* 3. *M.* 13. *Rot. Clauſ.* 12 *Ed.* III. *Pars* 2. *M* 1. *dorſ.* And in this Year the King collected a Tenth and Fifteenth, that was granted to him by the Laity in Parliament for two Years; as appeareth, *Clauſ.* 12 *Ed.* III. *M.* 30. And beſides all this, the Clergy gave the King a Tenth, *Clauſ.* 12 *Ed.* III. *Pars* 3. *M.* 30. Theſe I cite the more particularly, becauſe no Memory of them in the printed Statutes.

Were all theſe Aids granted, 10, 11, 12 *Ed.* III. *pro defenſione Regni*; and ſhall the King in thoſe very Years ſend forth Writs for the Defence of the Sea and Kingdom? And may not the King do it now, when he ſeeth ſuch great Cauſe?

Now, my Lords, in this 12th Year, when all theſe great Aids were granted, *Rot. Alm.* 12 *Ed.* III. *Pars* 1 *M.* 12. *Walter de M.* was appointed Admiral of the Fleet towards the North, and appointed Commiſſioners *ad aſſidendum villas bonis & Catallis ad contribuendum*, &c. and commandeth all Sheriffs and Officers to be aiding and aſſiſting. So in this Record it doth appear, that in theſe 10, 11 and 12 Years, Ships and Forces were commanded. *Clauſ.* 12 *Ed.* III. *Pars* 1. *M.* 17. *dorſ.* Command by the King, that the Men of *Surrey* and *Suſſex* ſhould have their Goods ſeized, and Perſons impriſon'd, if they refuſed to contribute towards the Charge of Shipping. *Rot. Alm.* 12 *Ed.* III. *Pars* 1. *M.* 2. A Commiſſion to *William de B.* and others, *ad aſſidendum omnes homines juxta ſtatum*, and to ſeize their Goods and Chattels, if they refuſed to contribute for the Wages of Mariners for the Ships.

So as your Lordſhips ſee by theſe Records, tho' there be Aids, Tenths, Subſidies and Fifteenths, granted by the Clergy and Laity; yet in that very Year, if an extraordinary Occaſion comes, tho' Ships not upon the Sea, the King hath commanded the Defence of the Sea and Land at the Charge of the Counties. I have done with the fourth Particular.

The fifth Particular is this. This Aid, and theſe Contributions, they have not been required only from the Maritime Towns, but from the Inland Counties, *per totam Angliam.* And this is materially to be inſiſted upon, becauſe we are now in an Inland County, in the County of *Bucks.*

My Lords, That this was done before the Conqueſt, your Lordſhips have heard. For *Alfred*, the firſt Monarch, *Anno* 827. *juſſit Cimbas, &c. per totam Angliam. Aſſer. Menevenſis fol.* 9. *Wigor. Floren.* 316. *Huntington* 351. That King *Ethelred* did the like, *Anno* 1008. *per totam Angliam*, every 310 Hides of Land to find one Ship. *Floren. fol.* 9. *Matth.* of *Weſtminſter* 387. *Huntington fol.* 360. The Decree or Council which was held at *H.* about the 30th Year of King *Ethelred*, was, that Ships ſhould be prepared againſt *Eaſter.* And thoſe Laws which are remember'd in *Lambert*, were before the Conqueſt, *cap.* 10. *fol.* 106. *Quod præſidii, &c.* So it was general and univerſal throughout the Realm, concurring with thoſe antient Precedents and Council, ſince the Time of *William* the Firſt. *Clauſ.* 48 *Hen.* III. *M.* 2. For where a Record is to be applied unto ſeveral Purpoſes, I muſt mention that Record again. It appeareth by that Record, that *Bedfordſhire*, which is an Inland County, was charged with the Guard of the Sea-Coaſt, and paid for Wages: Same Roll, *M.* 3. *intus M.* 2. *dorſ. Rutland*, *Oxfordſhire*, *Dorſetſhire*, Inland Counties charged for the ſame Service. *Pat.* 48 *Hen.* III. *M.* 7. *Cambridgeſhire* and *Huntingtonſhire* charged for the like Service, and that they ſhould do *prout per Concilium noſtrum ordinatum fuerit.* 24. *Ed.* I. King's Remembrancer in the *Exchequer*, *Rot.* 77, 78, 79. Title *de aſſociando pro cuſtod. Maris*; and Writs went out for Ships in divers Counties; and amongſt others to *Bucks. Pat.* 26 *Ed.* I. *M.* 21. When there was a Complaint that the Subjects did ſuffer upon undue Service, the Commiſſions that are directed for Enquiry thereof, are directed to all the Counties of *England*, as well Inland as Maritime. *Pat.* 23 *Ed.* I. *M.* 5. That Men, to furniſh a Fleet, were drawn and commanded from the moſt Parts of the Kingdom. *Rot. Scot.* 10 *Ed.* III. *M.* 14. Inland Counties charged with Shipping for the Defence of the Kingdom, as *Cambridgeſhire*, *Huntingtonſhire*, *Nottinghamſhire*, and *Derbyſhire. Clauſ.* 13 *Ed.* III. *Pars* 3. *M.* 14. *dorſ.* and there *Oxfordſhire* is charged with *Cuſtod' maritim. Rot. Scot.* 12 *Ed.* III. *M.* 12. *dorſ. Bedfordſhire*, *Bucks*, your County, and *Derbyſhire* charged there with the ſame Defence. *Clauſ.* 1 *Ric.* II. *M.* 18. There *Cambridge* and *Huntington* were to provide a Barge at their own Charge; and yet Seafaring Men there were none. Writs were then alſo directed to *Nottingham* and *Derby*; tho' they had no Seamen, yet they had Money and Means to provide them. *Rot. Franc.* 7 *Ric.* II. *M.* 18. The King ſends his Writs into moſt Counties of *England*, as well Inland as Maritime, reciting that the King of *France* was gone with an Army into *Flanders*, and that *Calais* was in danger; and commandeth all Knights, Eſquires, and Archers, and every of them, according to his Eſtate and Faculty, to be ſufficiently arrayed and armed, and come to the Port of *Sandwich*, *ad proficiſcend'.* My Lords, in this Record there was mention'd *Bucks*, *Bedford*, *Huntington*, *Cambridge*, *Nottingham*, *Derby*, *Leiceſter*, *Rutland*, *Northampton*, and *Berks*, all theſe Inland Counties. The Words of the Writ are, *Quod omnes tenentur pro defenſione Regni, &c. Clauſ.* 9 *Ed.* III. *M.* 12. *per omnes ſupportari. Rot. Alm.* 12 *Ed.* III. *M.* 12. *vel* 20. *quod, &c.* All and every of our Kingdom, out of their Allegiance, to be ready to defend the Realm. 13 *Ed.* III. *dorſ.* a great Number of Ships.

By all which it doth appear, *Firſt*, That the Service was commanded from thoſe Inland Counties. *Secondly*, That the ſame Reaſons which are given to bind the Inland Counties, are given to bind the Maritime Counties, *Pat.* 23 *Ed.* I. *M.* 6. for the taking of Ships in *Suſſex*, *Devon*, *Middleſex*, and other Counties. If ſo be the Maritime Counties be in danger, ſurely the Inland Counties cannot be in ſafety. We are in an Inland County; and the Entry of an Enemy upon any Part of it, concerns the Safety of us all. And by the Rule of the Law, every one that is to receive a Benefit, is to give a Contribution. As the Caſe of 16 *Hen.* VII. *fol.* 13. all Feoffees, whoſe Lands were liable to a Statute, the one ſhall have Contribution againſt another. If four or five Cognizors in a Cognizance, all ſhall have Contribution one againſt another. 40 *Ed.* III. Parceners, upon whom a Warranty deſcendeth, they ſhall be equally charged. If a Man bind himſelf and his Heirs in an Obligation, having Lands partly by his Father, and partly by his Mother, and they deſcend to ſeveral Heirs, both ſhall be equally charged, as it is 3 *Rep. fol.* 13. *Herbert*'s Caſe.

So I go upon theſe Reaſons, that it is conſonant to Reaſon of Law, beſides theſe Precedents, that where a Danger is to all, and all receive a Benefit, all are to be equally charged.

My Lords, to illuſtrate it by further Reaſons, that tho' the Inland Counties and Maritime Counties be charged, I find that the Ports, by the Charter of *Ed.* I. were to find 52 Ships. I find that when the Neceſſity of the Service did require it, then all their Ships were ſeized in the King's Service. I find likewiſe, that when there hath been a Diſability in the Ports to perform the Service, as now they are, for then the main Part of the Trade was in the Port Towns, but now it is gone from thence, and gone to *London*; and few Ports have the Trade, but *London*, *Newcaſtle*, *Briſtol*, and *Hull*; and ſhall it not now be required of the Inland Counties, ſince there is a Diſability in the Ports? *Rot. Franc.* 21 *Ed.* I. *M.* 23 I find there, that *Plymouth*, and ſome of the Port-Towns, did bear more than *London*; for *Plymouth* found 4 Ships, *Dartmouth* 6, *Briſtol* 4, *Newcaſtle* 3, *Norwich* and *Yarmouth* 4, *London* 2, *Hartle-Poole* 2, *Sandwich* 2, *Dover* 2, *Rye* 2, *Shoreham* and *Arundel* 2, and other Places found but one. It appeareth, *Rot. Alm.* 13 *Ed.* III. *M.* 3. *dorſ.* that *Yarmouth* furniſhed, at their own Coſts, 4 Ships, *Kingſton* 2, *Boſton* 2, *Lynn* 2, *Harwich* 2, and *Ipſwich* 2.

My Lords, are theſe Ports able to furniſh the King with ſo many Ships in theſe Days to do their Service? The Wealth of one Portſman in thoſe Days, was worth the Wealth of a whole Town now.

Admit the Maritime Towns were bound to it; yet if there be a failing of their Ability, that they cannot do it, ſhall it not elſewhere be required? That it is agreeable to the Rule of the Law, before any Commiſſions of Sewers, where particular Men are bound to defend the Sea-Banks, yet before any Statute, in caſe the Man was not able, the Service was required from the County; for by it they might have either Gain or Loſs. This appeareth by the Rules of the Common Law, before any Statute; *Regiſter fol.* 123. *Quod diſtringat omnes, &c.* when one Man was to maintain the Banks againſt the Sea; if not able to do it, the reſt that had Benefit by it, were to be diſtrained to do it, 5 *Rep. fol.* 99: 10 *Rep. fol.* 140, 141. the Caſe of the Iſle of *Ely* agreeable, that all that have *Salvationem & Damnificationem* ſhall contribute.

To this Purpoſe are thoſe two Records mention'd by Mr. *Sollicitor*, *Rot. Parl'* 7 *Hen.* IV. *M.* 18. that where there was a Subſidy granted to the King for the Defence of the Realm, it was aſſigned to Merchants, yet with a Salvo, unleſs Royal Power came. *Rot. Franc.* 6 *Ric.* II. *M.* 8. certain Merchants had the Cuſtody of the Sea, except *Regalem poteſtatem.*

So the Concluſion is, if an extraordinary Defence, there may be no Cauſe to go into the Inland Counties; but if a Royal Power, or extraordinary Danger, tho' not imminent, the King may require an extraordinary Contribution, *per totam Angliam*, from all his Subjects.

But this hath been objected againſt, and ſome Records vouched; that is, ſay they, we will ſhew you many Precedents, wherein *Navale Subſidium* hath been required from Inland Counties, and they have been diſcharged thereof, as *Pat.* 2. *Ric.* II. *Pars* 2. *M.* 42. *dorſ.* the Town of *Beverly* petitioned, becauſe they were to contribute, being an Inland Town, towards the finding of a Ship with the Town of *Hull*, and were diſcharged thereof.

This is Truth, but not the whole Truth: for the Town of *Beverly* was diſcharged by reaſon of a Charter of Exemption granted unto them *in honorem S. Johannis de Beverly*, the King's Confeſſor; upon that Charter they were diſcharged.

They have objected likewiſe the Town of *Bodmin*, an Inland Town in *Cornwal*, was diſcharged *a Cuſtod' Maris:* For this, *Clauſ.* 13 *Ed.* III. *Pars* 2. *M.* 14. was vouched for it, that the Town was diſcharged of this Contribution.

For anſwer to that, it will appear, that one *Truſſel* was then Admiral of the Fleet, and was by his Commiſſion to be furniſhed from the Ports at their own Charge for three Months. My Lords, this appears, *Rot. Clauſ.* 13 *Ed.* III. *Pars* 1. *M.* 35. and ſo that Town, an Inland Town, was to be diſcharged. My Lords, likewiſe there were other Diſcharges; upon this Reaſon *Norwich* was diſcharged from finding of Men for manning of Ships, becauſe the Admiral's Commiſſion did not warrant it, *Rot. Scot.* 10 *Ed.* III. *M.* 15. for it only extended to the Ports; but yet *Norwich* was charged to find Ships, *Clauſ.* 13 *Ed.* III. *Pars* 2. *M.* 14. So *Colcheſter* was diſcharged for finding of a Ship, but it was becauſe they were not within the Words of the Writ, as appeareth, *Rot. Clauſ.* 13 *Ed.* III. *Pars* 1. *M.* So to tell your Lordſhips a Story of a great Number of Land Tenures diſcharged *de Cuſtod' Maris*, and not to give your Lordſhips the Reaſon, it is nothing to the Purpoſe.

So, my Lords, having verified theſe five Points by the Precedents, and juſtified them by theſe Reaſons, and anſwered theſe Objections, I ſhall now come to the ſixth Matter upon this Record; and that is, tho' no Cauſe be declared in the Writ, no Danger manifeſt, nor againſt what Enemies; that yet the King by his Writs hath commanded Shipping for Defence of Sea and Land; and in the King's Wiſdom the Danger hath been reſerved in his Breaſt, and not communicated to his People by his Writs.

Firſt, I find that antient Precedents have been ſo, that it hath been reſerved to the King himſelf, and thoſe that he did depute to take care thereof; this appeareth, *Rot. Clauſ.* 14 *Johan. M.* 2. the King directed his Writs to *Herbert*, with a *Mandamus* to make ready all Ships for our Service, when we ſhall command; not a Word of the Cauſe declared, or an Enemy proclaimed. The ſame Roll, *M.* 6. the King by Writ, directed to ſeveral Parts, cauſeth all Ships that could carry ſix Horſes or more to be ſent unto *Portſmouth*; and the like Writs were directed to other Ports. *Rot. Pat.* 15. *Johan. M.* 4. the King appoints a Guardian upon the Sea-Coaſts, and commandeth all Men that they ſhould be *intendentes*; and other Writs in the ſame Roll, directed into many Counties with a *Mandamus*, *Clauſ.* 17. *Johan. M.* 7. *dorſ.* Writs for taking of Ships, and bringing them into the *Thames* Mouth, without ſhewing any Cauſe: All this was done in the Time of King *John*. In the Time of *Hen.* III. *Rot. Pat.* 13 *Hen.* III. *M.* 5. a Writ commanding the Sheriff of *Kent* and *Suſſex* to arreſt all Ships in thoſe Counties to be at *Portſmouth*, to be ready to go into that Service we ſhall command. And it appeareth in the ſame Roll, that theſe Ships were able to carry but ſix Horſes. So *Rot. Clauſ.* 14 *Ed.* I. *M.* 13. To our Bailiff of *Portſmouth*, and Keeper of our Navy, to make ready one good Ship, and to be ready to go in our Service, whither and when we ſhall command it. *Rot. Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ.* The King declares that he will have the Sea-Coaſts in *Eſſex* guarded againſt the Enemy; and there commandeth them to be obedient to ſuch an one, who had the Cuſtody. *Rot. Pat.* 23 *Ed.* I. *M.* 2. The King writeth to all the Archbiſhops, Biſhops, Sheriffs, Knights, and others, to be aſſiſting unto *William de S.* who had the Cuſtody of the Sea. So as by all theſe, it appeareth the King did give no Account to his Subjects, either of the Service, or the Time when. *Rot. Scot.* 10 *Ed.* I. *M.* 13. The King commanded all Ships to be arreſted, and Men and Mariners to be ſent to the Admiral of the Fleet, *ad proficiſcend.* The ſame Roll, *M.* 5. *dorſ.* a Matter fit for the Council, and not for the People to know. Same Roll, *M.* 20. that they ſhould do *prout nobis, &c.* the King oweth no Account to his Subjects of theſe things. 24 *Ed.* I. *M.* 19. The King having commanded *E. S.* to take up 100 Ships fit for his Service, commandeth the Sheriff of *Northumberland* and others to be aſſiſting. Same Roll, *M.* 17. A Command to the ſame Effect, that all Ships ſhould be taken between *Lynn* and *Berwick*. It was ſo likewiſe in the Time of *Ed.* II. *Pat.* 9 *Ed.* II. *Pars* 2. *M.* 26. Ships taken up at the Charges of the Inhabitants, to defend the Sea againſt Malefactors and Pirates. *Rot. Clauſ.* 12 *Ed.* II. *M.* 11. *dorſ.* Writs directed to the Mayor and Bailiff of *Sandwich*, to make ready all Ships within their Port of 40 Tons, *Ita, &c.* that they be ready within three Days Warning to go, as we ſhall more fully declare; but the Service that was to be done, not mention'd. So it appear'd by other Writs to other Towns in the ſame Roll, 17 *Ed.* II. *M.* 11. *Pat.* 14 *Hen.* VI. *M.* 14. *Rex quia quibuſd' arduis cauſis, &c.* doth aſſign *John Hoxham* to take up all Barges of 10 Men and upwards.

So in all theſe Times of King *John*, *Hen.* III. *Ed.* I. *Ed.* II. *Ed.* III. and *Hen.* VI. Writs have gone out generally; that the Service hath been concealed; and for Inſtruction, they were referred to the Council.

It ſtandeth with Reaſon, for Reſolutions of War are not to be communicated; his Majeſty hath a ſeparate Council of War from the Body of his Privy-Council.

Now, my Lords, for the Objection that hath been made againſt the firſt Writ of 4 *Aug.* 11 *Car.* that is, That the King hath not declared ſufficient Cauſe for the iſſuing of this Writ: The King hath not communicated to *J. S.* and *J. N.* what the Employment muſt be; he muſt ſatisfy the Counſel at the Bar, which he ought not to communicate to his Privy-Council, but is reſerved for his Council of War.

This is a Writ to command Obedience from his Subjects, and upon ſuch Reaſons as may ſatisfy any reaſonable Man; and if fewer Reaſons, it had been the better agreeable to all former Writs.

For the next Matter out of the Precedents, which is, that during the Times of the Sitting of Parliaments, theſe Writs have iſſued out by Command from the King, I have made it good upon my former Head.

The laſt Thing I obſerve upon the Precedents was this, That there was no Clauſe, no Particular in the Writ of 4 *Aug.* 11 *Car.* but was warranted by many Precedents: And that in this thing the King doth but *jubere per legem.*

Firſt, For the Direction: It is, as in this Writ, ſometimes upon one, or *probis hominibus* of ſuch a County, ſometimes the Direction is to Commiſſioners; ſometimes one way, and ſometimes another: and of this of the Precedents themſelves, when your Lordſhips come to ſee them, I ſhall ſpeak. They would have the King deſcend ſo low, as to give them a Reaſon why he doth it: ſome Reaſons are expreſſed in the Writ; as *quia periculum imminens, quia pro defenſione Regni, tuitione Maris, ſecuritate ſubditorum, ſalva conductione Navium, &c.* My Lords, all theſe are expreſſed in the Record, 9 *Ed.* III. *M.* 12. *Scot.* 10 *Ed.* III. *M.* 20. *Rot. Alm'* 12 *Ed.* III. *M.* 1. *Rot. Alm'* 13 *Ed.* III. *M.* 13. I find in theſe Writs the ſame Matter, Power of Aſſeſſment, ſometimes Levies by Diſtreſs and Impriſonment; nay, Seizure of Lands and Tenements, Goods and Chattles, that are expreſſed in former Writs: and that it was at the Charges of the Counties, both Inland and Maritime, this appeareth, *Rot. Scot.* 8 *Ed.* II. *M.* 9. *De Navigio providend. Pat.* 9 *Ed.* II. *M.* 26. *Pars* 2. *De Navigio providendo pro Cuſtod' Maris.* Many more of theſe, *Scot.* 10 *Ed.* III. That the Wages of the Men that went in the Ships, and guarded the Coaſts, were at the Charge of the County; this appeareth 10 *Ed.* III. *M.* 2. *dorſ.* 60. Men appointed and ſent to *Portſmouth*, and they refuſe to go without Wages; but a Command came from the King, and commanded the Counties to pay them Wages. 10 *Ed.* III. *M.* 21. *dorſ.* And his Predeceſſors not to bear any Charge whatſoever, tho' *pro defenſione. Rot. Alm'* 12 *Ed.* III. *Pars* 1. *M.* 2. Thoſe of *Lynn*, who refuſed to contribute towards the Charge they were aſſeſſed by the Commiſſioners, *juxta quantitatem*, were compelled to contribute; ſo *Rot. Clauſ.* 12 *Ed.* III. *M.* 8. the like *pro Cuſtod' Maritim.* I might be infinite in theſe Particulars, but I will not trouble your Lordſhips.

Here they have made ſome Objections; tho' to anſwer the main Objection, I am not yet come. They ſay, this Power of aſſeſſing the People for Sums uncertain, ought to be no more than Eſcuage uncertain, and muſt be aſſeſſed in Parliament: And this Aſſeſſment for Defence, ought not to be by Commiſſion, or the King's Writ. *Firſt*, for the Authority, which is *Littleton*, he ſaith, *fol.* 20. *Que communiter dit que Eſcuage ſerea aſſeſſe pur Parliam'.*

I do not find by the Regiſter, where theſe Writs are; neither do I find them grounded upon any Act of Parliament. Some that are grounded upon Acts of Parliament, do recite them. But what if it be by Act of Parliament? A Service that is to be done by the Tenant to his Lord; what if this be ſo, that it muſt be aſſeſſed in Parliament? Your Lordſhips know that the Tenants muſt do according to the original Duties of them. And if this be, that the Lord ſhall not aſſeſs them but in Parliament, is that an Argument from a Tenant to a Lord in this Caſe?

This is a Service commanded not by Tenure, but by a King from his Subjects; this is ſuitable to the Reaſon of Law in other Caſes: For thoſe ancient Aids, which the Law doth require for the making of his eldeſt Son a Knight, or *pur file marrier*; are not thoſe certain at the Common Law? Muſt there be an Act of Parliament to aſſeſs thoſe Aids? The Books are otherwiſe.

But the King at the Common Law might require an Aid uncertain, and might aſſeſs it as he pleaſed. *Glanvile lib.* 9. *cap.* 8. *Brit. fol.* 57. *cap.* 27. *Bract. lib.* 4. *cap.* 16. So as at the Common Law they were uncertain. 11 *Rep. fol.* 68. *D.* It is ſaid there, the Statute of *Weſtmiſter* 1 *cap.* 15. which puts reaſonable Aid in certain, doth not bind the King; *a fortiori* we muſt not bind him to a Certainty for the Defence of the Realm. No Man can tell what the Preparation muſt be, or the Charge thereof. If they can ſhew an Act of Parliament that limits the King for the Defence of the Realm, they ſay ſomething.

But they ſay the Sheriff is no proper Officer, not ſworn to execute this Writ.

This is as wide as the other: for, my Lords, the Sheriff is ſworn to execute all Writs that ſhall be delivered to him for the King's Service. And ſurely this Writ, if it come to him, he muſt at his Peril execute it.

Firſt, The Direction of thoſe Writs have been many times as well to the Sheriffs as the Commiſſioners. *Rot. Scot. Ed.* III. *M.* 13. *Clauſ.* 15 *Ed.* III. *M.* 17. The King commandeth the Sheriff of many Counties to furniſh Men with Arms, Victuals, and other neceſſary Proviſions, both for Sea and Land. 23 *Ed.* III. *M.* 5. *dorſ.* 24 *Ed.* I. *Rot.* 7, 9. *Ex' Remem' Regis* 11. The Lands of the Sheriffs and other Officers were extended, becauſe of their Negligence in doing of their Duties concerning thoſe Writs, 25 *Ed.* I. *Ex' Remem' Regis.* A Commiſſion went out to enquire of the Execution of the Officers in the Duty of their Places.

Beſides theſe Writs at the Common Law, this is ſeconded by the Authority of the Common Law, *Regiſter* 122, or 127. The Writs that go out to the Sheriff (for they go out to the Sheriff as to Commiſſioners) it is left to the Diſcretion of the Sheriff or Commiſſioners, as occaſion ſhall require, *Regiſter* 191. *Bre. de partitione*, before any Statute was made concerning the ſame, that Writ went out generally to the Sheriff; ſo that in all Times and Ages it hath ever been in theſe Caſes, where no Certainty, left to the Diſcretion of the Sheriff and Commiſſioners.

My Lords, for the Manner of the levying *per Diſtrictiones*, and by Impriſonment of thoſe that do refuſe: Is this new? It hath been ſo in all the Precedents that have been vouched, both by Diſtreſs and Impriſonment. For the Diſtreſs: If the King makes a Corporation, and gives them Power to ordain for the Common Good of the Corporation; and if they make an Order for the Payment of Money, and that thoſe that do not pay the ſame, ſhall be diſtrained; is not this adjudged a good ordinance? 5 *Rep. fol.* 64. *Clark*'s Caſe, *Trin.* 7 *Hen.* VII. *Rot.* 3. There is a Benevolence granted to *Ed.* IV. for his Voyage into *France*; one *T. R.* did deny Payment, and he was diſtrained for his Proportion.

They except to the Penalty of the Writ.

The Penalties of former Writs have gone higher. *Inter Commun'* in the *Exchequer*, there was a *Mandamus* to aſſeſs thoſe that were employed in the Proviſion for Shipping; and the *Mandamus* was, *ſicut nos & honorem noſtrum & ſalvationem Regni diligitis*. In that Roll that is ſo often remembred, *Rot. Scot.* 10 *Ed.* III. *M.* 11. *dorſ. quod, &c.* their Lands, Goods, and Chattels to remain ſeized in our Hands. And *M.* 2. under Pain of Forfeiture of Life: 11 *Ed.* III. *M.* 2. to caſt thoſe in Priſon that did refuſe. *Rot. Clauſ.* 12 *Ed.* III. *M.* 18. *dorſ.* Writs directed to *Henry Huſſey*, and others, to puniſh thoſe that refuſed to contribute; and to impriſon them, and to ſeize their Lands and Goods into the King's Hands. *Clauſ.* 13 *Ed.* III. *pars* 1. *M.* 36. *dorſ.* to ſeize into their Hands the Lands and Tenements of the Refuſers. *Rot. Franc.* 21 *Ed.* III. *pars* 1. *M.* 11. the King commands Ships, under pain to loſe Life, and all their Eſtate. *Rot. Franc.* 10 *Rich.* II. *M.* 23. to impriſon thoſe that are contrary, under forfeiture of all they had. So as your Lordſhips ſee Mr. *Holborne* was very far miſtaken.

My Lords, in the next place, they have laid hold on the Diſtance of Time: They ſay there were ſeven Months between the *Teſte* of the Writ, and the Time of the Rendezvous; that the King in that time might have called a Parliament, and there might have been an Aid granted, and the Service performed in a Parliamentary Way.

But they may remember the 40 Days between the *Teſte* and the Return of the Writ for ſummoning a Parliament; then the time ſpent in preſenting of a Speaker; the Solemnity uſed before they begin their Grand Committee; their Reading of a Bill thrice; the Debate about Paſſing of it in both Houſes before it be granted; and after all this be done, and the Parliament ended, a Time for the levying of the Money muſt be had; and when it is levied, Time for the Return of it; and when it is returned, Time for the expending of the Money: and the Preparation will go ſlowly on till the Money be returned. 48 *Hen.* III. *M.* 4. *dorſ.* There was a Command for guarding of the Sea-Coaſts. *Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ.* The Port of *Yarmouth* commanded to find Ships for a certain Time. *Rot Scot.* 11, 12, 13 *Ed.* II. They are put down in that Roll, *M.* 8. that there was a Command for a *Navale Subſidium* for three or four Months.

So as, my Lords, for the Time of Preparation and for the Time of the Continuance, it hath ever been referred to the Wiſdom of the King. My Lords, for the *Spaniſh* Invaſion, that hath been ſo late in our Memory, I find by the Books that are kept in the Council-Chamber, that the Preparations were in *Octob.* 87, againſt the coming of the *Spaniſh* Fleet in 88, which did not ſet forth till *June*: I find no Parliament called that Year. And by Letters and Orders from the Council-board, thoſe Ships, and Defence that was made, was *ad ſumptum* of the Subject.

So, my Lords, by this that hath been ſaid, it doth appear to your Lordſhips, that there is not any Clauſe in this Writ, either for the Direction, Motives, Mandates, or Penalties, but are warranted by former Precedents in a higher Degree.

My Lords, theſe are the Precedents that I have collected, and reduced to theſe ſeveral Heads. I ſhall now remember to your Lordſhips divers others. And in the firſt Place obſerve, that *William* I. came not to abrogate any former Law, but was ſworn to obſerve *Antiquas leges Anglicanas*, that appeareth in *Lambert*, *fol.* 125. *prout.* So every Man by this Law, that was but a Confirmation of former Laws, muſt provide *pro viribus & facultatibus*.

I find by the Grant that *William* I. made to his Abbey of *Battel* of his own Foundation, a Charter to be free from *Danegelt & omnibus auxiliis.* If they had not been freed, they had been ſubject. I find *Pat.* 7 *Johan. M.* 3. the King authorized *Walter Scot* and others, *quod omnes Naves, &c.* which they ſhould find, to arreſt, and command all to aſſiſt, as they love us and our Peace in our Realm. 14 *Johan. M.* 6. as your Lordſhips have heard, all the Ships were arreſted, that could carry ſix Horſes, and to be at *Portſmouth*. *M.* 2. all the Ships in the Port were to go in his Service, without expreſſing for what, and unlade. *Clauſ.* 12 *Johan. M.* 7. *dorſ.* commanded all Ships to be brought into the *Thames* Mouth. So here was not a laying down, but a Continuance of it. So in *Hen.* III.'s Time, *Clauſ.* 14 *Hen* III. *M.* 12. *dorſ.* all Ships taken that could carry ſixteen Horſes. *Clauſ* 15 *Hen.* III. *M* 17. *dorſ.* Command for the furniſhing of Arms, Men with Victuals, and other Proviſions for forty Days. And here was the like Command to Sheriffs in ſeveral Counties. *Clauſ.* 26 *Hen.* III. the King commandeth the Men of *Yarmouth* to have their Ships ready with Men and Arms; the ſame Roll, to find ten Ships to go to *Picardy*. *Pat.* 48 *Hen.* III. *M.* 3. *dorſ.* Writs to the ſeveral Port-Towns, that no Ships ſhould go Beyond Sea, but all to ſtay at home. *M.* 5. *dorſ.* Thoſe that returned from guarding the Sea-Coaſts without Leave, were puniſhed, by ſeizure of Goods and Chattels. *M.* 4. ſame Roll, *dorſ.* Proviſion to be made till further Orders be had. So it was not confined to Time, but Occaſion, as need ſhould require. And there be divers others in the Time of *Hen.* III. upon other Occaſions, which I have remembred. In the Time of *Ed.* I. 21 *Ed.* I. *M.* 23. It appeareth there, that all the Port-Towns were appointed by the King and his Council, how many Ships every one of them ſhould ſet forth. *Rot. Vaſ.* 22 *Ed* I. *M.* 11. *dorſ.* The King of *England* in that Writ ſtileth himſelf *Dominus Regni Scotiæ, &c.* and ſends his Writ to the King of *Scotland*, to let him know, the King of *France* had taken part of *Gaſcoigne*, an Inheritance of the Crown of *England*, that he ſhould, *in fide & homagio*, be at *London* with Horſe and Arms; *&c.* This Writ is very obſervable, the King of *England* is *Superior Dominus Scotiæ*. A part of *Gaſcoigne* was then loſt. The King of *Scotland* was required by this Writ, as well as requeſted, to give him Aid for the Recovery of thoſe Grounds taken from him in *Gaſcoigne*. My Lords, this Power is not confined only to *England*, but it reacheth, as GREAT LORD, into *Scotland*. Alſo into *Ireland*, *Vaſc.* 22 *Ed.* I. *M.* 5. *dorſ.* The King by his Writ commandeth divers Earls, and others, in *England* and *Ireland*, to do the like, to ſend Men to *London* with Horſe and Arms. The ſame Roll, *M.* 13 *dorſ.* All that claim to be of the Liberty of the Port ſo commanded. *Pat.* 23 *Ed.* I. *M* 1, 5, 7. All Ships of 40 Tons were to be furniſhed and provided for the King's Service. *Clauſ.* 23 *Ed.* I. *M.* 5. Every Man is compelled to contribute. The ſame Roll, *M.* 4. thoſe that did not inhabit in maritime Towns, yet if they had Lands there, they muſt contribute, reſident or not reſident; within or without the Liberty, all muſt contribute.

My Lords, in that Writ, which is *Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ.* I will obſerve theſe things: 1. A Command to all Biſhops, Abbots, Lords Spiritual and Temporal, *Quod ſint intendentes & reſpondentes ad cuſtodiam Maris*. 2. In contingent Cauſes; *Cauſa, &c.* 3. The Writ ſaith, *quod omnes ad arma, &c. ſecundum ſtatum, &c. ad tranſfretandum cum nobis*; and Poſſeſſion of Goods and Lands to be taken for the Cuſtody of the Sea, as in former times they were accuſtomed: ſo it is to be done in this manner as in Times paſt. 4. The Writ was directed to ſeveral Sheriffs, *per corpora, bona, & terras*, to diſtrain.

Next, 24 *Ed.* I. *M.* 15. The King commanded the Archbiſhops, Biſhops, Barons, and all the Commonalty, to defend the maritime Parts. *Clauſ.* 24 *Ed.* I. *M.* 19. *pro cuſtodia Marit.* There was another of *Symon de Spencer*, which I remembred before. 24 *Ed.* I. *Rot.* 76. Another of the like. *Ext' Remem. Regis*; *Clauſ.* 25 *Ed.* I. *M.* 26. *dorſ.* The King moderateth the Expences of the Country when the Danger ceaſeth. *Clauſ.* 25 *Ed.* I. *M.* 12. The King commandeth the Sheriffs of ſeveral Counties, and others, to bring all the Ships to be ready for our Service, when we command. *M.* 26. The like Command. *De cuſtodia Marit. Pat.* 31 *Ed.* I. *M.* 20. Power given to *Thomas de B.* to raiſe Forces in *Cumberland* to reſiſt the *Scots*; and thoſe that did refuſe, to ſeize their Goods. In the Time of *Ed.* II. *Clauſ.* 2 *Ed.* II. *M* 21. the King commandeth divers Towns to ſet out Ships againſt the *Scots*; and after, by ſpecial Writs, ſome of thoſe were diſcharged. *Rot. Pat.* 9 *Ed.* II. *Pars* 2. *M.* 6. *Pat.* 16 *Ed.* II *M.* 11. A Writ directed to Sir *Thomas Weſton* and others, to array all between 16 and 60, or to take their Lands and Goods, if they did refuſe. *Pars* 1. *M.* 7. of the ſame Roll, *Clauſ.* 20 *Ed.* II. *M.* — the King doth there declare that thoſe that ſtay at home ought to contribute to ſet forth Ships, and for the Wages of the Men employed. *Clauſ.* 20 *Ed.* II. *M.* 6. Writs directed to the Scholars at *Oxford*, they were not exempted, but commanded to keep *Southgate* ſafely. *Rot. Vaſc.* 18 *Ed.* II. *M.* 18. The King writeth to the Archbiſhop and others, commanding them to have Horſes and Men in a readineſs, as often as need ſhall require. For Time of *Ed.* III. *Clauſ.* 2 *Ed.* III. *M.* 13. and *M.* 22. *dorſ.* to *Southampton*, and to ſeveral other Towns for their Shipping, above 40 Tons. *Pat.* 3 *Ed.* III. *Pars* 2. *M.* 6. The King commandeth the Sheriff of *Cornwal* to diſtrain Knights and others, that abide not upon their Lands in maritime Parts, and to impriſon. Thoſe Years of 10, 11, 12 and 13 of *Ed.* III. having been remembred, 21 *Ed.* III. The King, concerning the Defence of the Sea and Sea-Coaſts, gave ſpecial Rules to be obſerved, both for the Number of the Ships and the Men, and the Quality of their Perſons, and for the Proportion of their Wages; as appeareth, *Pat.* 21 *Ed.* III. *Pars* 1. *M.* 26, 27. where there was ſpecial Order taken for the guarding of the Sea and Sea-Coaſts at the Charge of the Inhabitants. *Rot. Franc.* 21 *Ed.* III. *Pars* 1. *M.* 11. Command to the Sheriff of *London* to arreſt all Ships in *London* to be ſent to *Calais*, to reſiſt the Enemies againſt us then about to come. *Rot. Franc.* 25 *Ed.* III. *M.* 9. The King reciteth, that *France* made a Preparation to invade the Realm, and gave a Power to ſome to raiſe Forces; and commandeth the Sheriffs to raiſe the *Poſſe Comitatus*, to aſſiſt the Commiſſioners. *Pat.* 26 *Ed.* III. *Pars* 1. *M.* 7. The King, by his Writs to ſeveral Counties, commanded all Men between 16 and 60 to be in readineſs to reſiſt the *Scots*. *Rot. Franc.* 25 *Ed.* I. *M.* 31. commanding all Officers and Miniſters to aſſiſt *Andrew de Gulpho*, in the raiſing of Forces for Shipping. So as in that Roll likewiſe, your Lordſhips ſee that the Inland Counties were commanded for Shipping. *Rot. Franc.* 28 *Ed.* III. *M* 6. The King appointed *Ro. Co.* and *Ro. A.* to arreſt all Ships of 20 Tons and upwards, between ſuch a diſtance, and to bring them to *Southampton*. *Rot. Scot.* 29 *Ed.* III. *M.* 13. Several Writs were directed to the Biſhops of *Durham* and *Carliſle*, and others, for the arraying of Men. *Rot. Franc.* 40 *Ed.* III. *M.* 37. The King ſent forth divers Writs, commanding *quod, &c.* with all their Forces, they ſhould aſſiſt to the ſafe keeping of the Sea-Coaſts, to reſiſt the Malice of the Enemies. *Rot. Franc.* 50 *Ed.* III. *M.* 47. *dorſ.* Command to make Proclamation, that all that have Land upon the Sea-Coaſts ſhould repair thither with their Families. So in all Ages, and at all Times, Writs have iſſued both for the Defence of the Sea and Land by the King's Command. In the time of *Rich.* II. *Rot. Parl.* 6 *Rich.* II. *M.* 42. that was objected as a Record againſt the King, but maketh clear for him: *Que dit que le Roy perſons aſſembles, en Parliament, eſt deſire de vivere del reveneus del Corone car Eſcheats Marriages & Forfietures ſont pur le Defence noſtra Royalms.* The King anſwers, *Le Roy volet de fairs in ceo Caſe come per de adviſe des Seigniors, &c.*

Your Lordſhips ſee they deſire of the King, that he would live of his Revenues, that the Profits of Eſcheats, Wards, *&c.* might be kept for the Defence of the Realm. The King giveth them this Anſwer, That he will do in this Caſe by the Advice of his Lords, as ſhall be moſt for his Honour and Profit: So no Reaſon to make any Enforcement out of this Record, that the Profits of Eſcheats, Wards, *&c.* ſhould go for the Defence, becauſe the King maketh no abſolute Denial unto it, ſaying, that he will do as he ſhall be adviſed by his Lords. *Rot. Franc.* 7 *Rich.* II. *M.* 18. That the Lords beyond the Seas be arrayed and armed according to their State and Faculties. *Pat.* 8 *Rich.* II. *Pars* 2. *M.* 15. A Command, that all between 16 and 60 be in a readineſs. *Rot. Franc.* 10 *Rich.* II. *M.* 23. Arrays thro' all *England*. And ſo in the Time of *Hen.* IV. *Rot. Parl.* 5 *Hen.* IV. *M.* 24. for the arraying of all Men thro'out *England*, and thoſe that were impotent, and could not go, to contribute unto it. 3 *Hen.* V. *M.* 36. *dorſ. Pat.* 13 *Hen.* VI. *M.* 10. General Commiſſions for the arreſting of Ships, without declaring the Cauſe. *Pat.* 14 *Hen.* VI. aſſign'd *Joh. de N.* to arreſt all Ships in the Port of *Southampton*, to do Service as the King ſhall command, there was no Cauſe declared. *Pat.* 28 *Hen.* VI. *M.* 2, 13. Commiſſions to array, and thoſe arrayed to keep in Array, with diligent Watches into ſeveral Counties. 1 *Hen.* VII. *pars* 1. The King writeth to Sir *Fitz Hugh*, to array Archers and Horſemen.

So that it appeareth by thoſe Precedents in all Ages, that thoſe Defences which have been made by Sea and Land, are not confined to Port Towns, and Maritime Places, but *per totam Angliam.*

In the next Place, I ſhall give a particular Anſwer to ſome Objections that have been made, as have not fallen in my way; and to the Acts of Parliament, Reaſons, Records and Book-caſes, urged by the other Side.

The Third Day's Argument of Sir John Banks, *his Majeſty's Attorney-General, before all the Judges in the* Exchequer-Chamber, *on behalf of his Majeſty.*

May it pleaſe your Lordſhips,

THE Matter that I did propoſe to inſiſt upon this Day, was the anſwering of the Objections. I ſhall uſe no Preamble, no Repetition to introduce what I have to ſay: But in the anſwering the Objections, I ſhall firſt give anſwer to the ſeveral Acts of Parliament inſiſted upon, then to the ſeveral Records and Reaſons that have been urged on the other ſide. And in the laſt place, I ſhall anſwer the Exceptions that have been taken to the Writ, 4 *Aug.* 11 *Car. Mittimus*, and Form of Proceedings.

The firſt Act they have inſiſted upon, is that of *William* the Firſt, call it what you will, an Act or a Charter. The words of it are verbatim in *Mat. Paris*, *Volumus & concedimus*, *quod omnes liberi homines ſint quieti ab omni tallagio*, *&c.*

It doth no way trench upon the Royal Power: for as in the beginning of my Argument, I open'd to your Lordſhips, that this Power was inherent in the Kings of *England* before the Conqueſt; here is only a Conceſſion that they ſhall be free *ab omni injuſta exactione.* Now this is no unjuſt Exaction, for it is of common Right. And then the other Part of that Law doth explain it; for it doth ſay, *Quod ſumus fratres conjurati*, *&c.* ſo for the Defence of the Realm. By the ſame Law they would urge to take away the Power, by the ſame Law it is reſerved.

The next thing they inſiſted upon, was the Charter 17 *Johan.* or on *Magna Charta* as they call it; which indeed is mentioned in *Mat. Paris*, and may be under the Great Seal. The Words of that are, *Nullum ſcutagium vel auxilium niſi per commune Concilium*, *niſi ad primum filium militem faciend' & maritand' fil'*, *&c.*

This Charter, as it was acknowledged by themſelves, was granted at *Running Mead*, where the Banners were diſplay'd, when there was War or Rebellion between the Barons, Commonalty, and the King. It was not aſſented unto, the King ſitting in Parliament: For Parliaments are not called with Arms, and in the Field. It was, in truth, an inforced Act from a diſtreſſed King. Shall this bind the Crown? I ſhall remember the Act of Parliament made 15 *Ed.* III. and there only were things that were in Parliament enacted derogatory to the Crown, as this is; That no Peer ſhould be queſtioned but in Parliament; That no great Officer be removed but in Parliament; That no Clergyman ſhall come before Temporal Judges. Theſe were Things that were much derogatory to the Prerogative of the King. 15 *Ed.* III. That King the ſame Year, when he was better adviſed, did make a Charter which is in print, for the recalling of this prejudicial Act of Parliament ſtill in force. It appeareth by the Parliament-Rolls and printed Books, where the King declareth it was drawn from him with an unwilling Mind, and was prejudicial to the Prerogative of his Crown; and therefore by that Charter it was repealed.

But, my Lords, if that Charter 17 *Johan.* ſhould be in force, why hath there been no Confirmation of it in ſo many Parliaments ſince? The Statute of *Magna Charta*, 9 *Hen.* III. hath been confirmed one and thirty times; why no Confirmation of the Charter 17 *Johannis?* And why have we not heard of it ſince that Time? The Reaſon for it is, that it trencheth too much upon the Prerogative of the King and Crown.

But take the Words as they are, what be they? *Nullum ſcutagium vel auxilium niſi per commune concilium Reg. noſtri.* If theſe were an Act, doth it extend to take any thing away that belongs of common Right unto the Crown? And that hath been the Expoſition of my Lords the Judges of Acts of Parliament; That Aids due of common Right, are not taken away by general Words, *Commune*, *&c.* And therefore theſe Aids due of common Right, as this is, are no way taken away.

Beſides, for the Statute of *Magna Charta*, it is made 3 *Hen.* III. *cap.* 29. *Nullus liber homo capietur*, *aut impriſonetur niſi per legem*, *&c.* The general Words of this Act of Parliament do no ways impeach the Royal Power, for this Royal Power is *Lex terræ.*

Beſides, in theſe Precedents, 14 *Hen.* III. 15 *Hen.* III. 26 *Hen.* III. 48 *Hen.* III. and all the ſucceeding Kings remembred in all of them, that theſe Writs went out to provide Shipping at the Charge of the Inhabitants; ſo, ſurely, if they had been taken away by *Magna Charta*, the Writs after *Magna Charta* would not have uſed it.

But then there hath been objected, the Statute *de Tallagio non concedendo.* If it be 25 *Ed.* I. as it is printed, or 34 *Ed.* I. or as the Petition of Right doth recite it *temp' Ed. primi*, be it when they will, under favour, there is nothing in that Act doth take away this Power: The Words are thus, *Nullum tallagium vel auxilium ſine voluntate Epiſcopor' Baron' Burgenſ'*, *&c.* Mr. Sollicitor, in his Argument, upon probable Grounds, did make queſtion whether this was an Act of Parliament yea or no: 1. In reſpect it was not inrolled amongſt other Acts of that Time. 2. Becauſe by the penning of it, it may ſeem rather to be an Abſtract. 3. Becauſe when the other Acts of thoſe Times were ſent over to *Ed.* I. to be ſealed and confirmed, no ſuch Act was ſent over.

My Lords, I will not lay hold on this, but will admit with them that it is recited in the Petition of Right to be an Act of Parliament: So I will admit, yet to wave nothing that hath been ſaid, but by way of Admittance, I give this Anſwer.

Firſt, That it taketh away no Aids that are due by the Laws of the Realm; yet the Words are general: *Nullum tallagium vel auxilium niſi aſſenſu Parliamenti*, *&c.* Here is not in this Act of Parliament ſo much as any Exemption of an Aid to Knight the King's Son, or to marry his Daughter; yet in this the Law is obſerved, that theſe Aids are not taken away; and ſo it is declared, 25 *Ed.* I. *cap.* 11. which doth reduce theſe Aids unto certainty. So as your general Words of *nullum auxilium* will not do it, if this be an Aid due by the Laws of the Land.

Then I ſay this is not properly an Aid, but a Contribution of King and People for the Defence of the Realm; it is *ad proficiſcendum cum Navibus noſtris:* then I ſay this Power is *inter jura ſummæ Majeſtatis*, one of the higheſt Prerogatives of the King, and ſhall never be taken away from the King. 17 *Hen.* VII. Statute *Quia emptores terrar'* doth not extend to the King to take away his Tenure. If you will have ſuch a high Prerogative taken away, you muſt ſhew it in the Acts of Parliament. Nay, my Lords, I ſay that in the Times of *Ed.* I. this Royal Power is expreſly reſerved by Act of Parliament to the Crown; and therefore in after-times never intended to be taken away.

Firſt, I ſhall inforce it out of the Statute of 25 *Ed.* I. *cap.* 5, 6. that doth recite, that Aids and Taxes that have been given unto us towards our Wars, and other Buſineſs of our own Grant and good Will, howſoever they were made, might turn to a Bondage, *&c.* We have granted that we ſhall not draw theſe Taxes into a Cuſtom, *&c.* and do grant that for no Buſineſs henceforth, we ſhall take ſuch manner of Aids, but by a common Conſent of the Realm, *&c.* ſaving the ancient Aids due and accuſtomed.

Vide les parols del Statute.

This Aid is not taken to be an Aid, for this was never given to the King of *England*, but taken by Royal Power: the Statute of 25 *Ed.* I. ſpeaketh of ſuch Aids as have been given, and excepteth ſuch Aids as have been due and accuſtomed. And by the Precedents ſhewn, it appeareth theſe have been due and accuſtomed. It hath been deſired in *fide legiantiæ*, and with a *Mandamus.* 2 *Ed.* I. *cap.* 1. this Statute doth confirm the Great Charter, and the Charter of the Foreſts; but in the End of it in the Parliament-Roll, that notwithſtanding all theſe things before-mention'd, both the King and the Council, and all they preſent at the making of this Ordinance, will intend the Prerogative of his Crown to be ſaved unto him.

A further Anſwer to the Statute *de Tallagio non concedendo*; the Practice that hath been ſince the time of *Ed.* I. in the time of *Ed.* II. *Ed.* III. *Rich.* II. and the Practice ſince, doth ſhew plainly, that it was never intended by the Statute to take away this Royal Power.

But then there was a Thing materially objected, if the Records would have warranted what had been ſaid, and that was, *Rot. Parl.* 29 *Ed.* I. and then it was ſaid, That tho' there be a Saving, 25 *Ed.* I. and 28 *Ed.* I. yet here is no Saving in this Act; ſo then if not for the Act 29 *Ed.* I. all was loſt.

My Lords, to this I ſay, *Nul tiel Record.* And therefore I ſhall deſire, that this which they call an Act, 29 *Ed.* I. I may attend your Lordſhips with. By this Record it doth appear, that it is only a Record of the Perambulation of the Foreſt, and no repealing of any former Law; neither is any thing enacted by that Law derogatory to the Crown.

The next Statute objected, is 1 *Ed.* III. *cap.* 5. The Words are theſe: That 'no Man ſhall be charged to arm himſelf otherwiſe than in the 'time of the King's Progenitors; and that none be compelled to go out 'of his Shire, but where Neceſſity requires, and the ſudden coming of 'ſtrange Enemies within the Realm.'

So this Statute is relative to what hath been formerly done: What hath been found done formerly, appeareth by the Records of King *John*'s and *Ed.* the Firſt's Time, that the Subjects were to ſet forth Shipping at their own Charge: then thoſe Writs went out in King *John*'s and *Ed.* the Firſt's Time, as hath been ſhewed. And then this Statute alloweth in two Caſes, one where Neceſſity requireth, the other upon coming of ſtrange Enemies; and this Writ requireth no other, but where there is Neceſſity, in the King's Judgment.

The next Statute is 1 *Ed.* III. *cap.* 7. which was objected, where Men at Arms were conveyed into *Scotland* and *Gaſcoigne* without Wages; the King ſaith, it ſhall be done ſo no more.

The Statute mentioneth *Scotland* and *Gaſcoigne*, foreign Wars, and ſo foreign to this Buſineſs; for tho' *Scotland* was ſubject to the Dominion of *England*, yet it was a divided Kingdom. 8 *Rich.* II. Continual Claim. *Com.* 376. That a Fine ſhall be paid by a Stranger, becauſe he was in *Scotland* at the time of the Fine levied. *Bract.* 436. An Abjuration into *Scotland* is good. 6 *Rich.* II. *Protection.* 46. That *Scotland* is out of the Realm; therefore this Statute that ſpeaketh of *Gaſcoigne* and *Scotland*, ſpeaketh of foreign War, not of Defence.

The next Statute is 18 *Ed.* III. *cap.* 7. Men of Arms, Hobellers and Archers, ſhall be at the King's Charges; the Statute ſpeaketh likewiſe of going out of *England.*

But he that is upon the Defence at Sea of the Kingdom, it is no going out of *England*; for that ſee 6 *Rich.* II. *Protection.* 40. The ſending of Men and Ships for the Defence of the Coaſts, is no going out of *England.*

The next Statute is 25 *Ed.* III. *cap.* 8. No Man ſhall be compelled to find Men of Arms, Hobellers or Archers, otherwiſe than thoſe that hold of ſuch Service, without Conſent.

My Lords, this Statute of 25 *Ed.* III. doth not take away any former Laws. Theſe three former Statutes of 1 *Ed.* III. 18 *Ed.* III. and 25 *Ed.* III. are recited in the Statute 4 *Hen.* IV. and 'tis enacted, they ſhall be firmly holden and kept in all Points; ſo if theſe Statutes muſt be kept firmly in all Points, then the Statute of 25 *Ed.* III. doth not repeal any of theſe. Now that of 1 *Ed.* III. *cap.* 15. reſerveth a Power to the Crown where Neceſſity requireth, and where ſudden Enemies come. 26 *Ed.* III. Thoſe Ships were ſent forth, and commanded for the defence of the Realm, at the charge of the Subjects, *Rot. Franc.* 26 *Ed.* III. *M.* 4, 5. *Rot. Franc.* 28 *Ed.* III. *M.* 6. So as clearly there is no Part of this Power impeached by this Statute of 25 *Ed.* III.

Then they have objected, *Rot. Parl.* 2 *Rich.* II. *M.* 3. That upon a Council of a great many Earls, Barons, and Sages of the Realm, aſſembled by the King's Privy-Council, it was there declared what Danger the Kingdom was then in, and that Money was wanting; they declared they could not remedy theſe Miſchiefs without charging the Commons, which could not be done but by a Parliament.

This is no Act of Parliament; it is but a Parley, or Diſcourſe, or Communication between the Lords and Commons; it was 2 *Rich.* II. in the Non-age of a young Prince, who did not aſſent; for there was no Royal Aſſent unto it, ſo no Proof in this Caſe.

The next Record they objected was, *Rot. Parl.* 9 *Rich.* II. *M.* 10. there was a Tenth and a half, and a Fifteenth and a half granted to the King, upon Condition contained in the Schedule; which is, that the King ſhould aſſent that the great Officers of the Kingdom ſhould be named by Parliament; and Servants appointed for diſpence of the Money.

If the King doth accept of the Subſidies and Aid upon Condition, doth this take away his Royal Power? There is no more done in this than was in the Parliament 21 *Jac.* for there the Officers and Treaſurer were appointed by the Houſes of Parliament.

But then further it doth appear, that this was granted, *pro viagio Johannis Regis de Caſtile*, &c. ſo that it was not granted for the Cuſtody of the Sea, but for that Voyage.

The next Record they inſiſted upon was, *Rot. Parl.* 8 *Hen.* IV. *M.* 2. A Tenth and a half, and a Fifteenth and a half, granted with a Proteſtation, that this ſhould not be brought into Example.

This is nothing, no more than the other. A Parliament grants a Subſidy, with Condition it ſhould be thus and thus employ'd; and the Proteſtation can no ways prejudice the Crown in this.

And 7 *Ed.* IV. *Rot. Parl. M.* 7. hath been objected; there the King's Speech is enter'd upon the Roll, that he will not charge his Subjects but upon great and weighty Occaſions.

My Lords, this is nothing but a gracious Speech of the King to his Subjects, that he would charge them but in ſuch Caſes as ſhould concern the Defence of the Realm.

The Statute next objected was, 1 *Rich.* III. *cap.* 20. that the Subjects from henceforth ſhall in no way be charged by any ſuch Exaction or Impoſition.

This is no Benevolence, but a legal Due.

Next they object, the Statutes of Tonnage and Poundage granted to the Crown for the Defence of the Realm.

Firſt, In anſwer to this, I ſay, that there is no Act for Tonnage and Poundage that is now in force, neither are any Duties taken to the Crown upon any Act of Parliament. Thoſe Acts for Tonnage and Poundage that have been granted, make for the Crown. And therefore, if your Lordſhips look the Statute 1 *Eliz.* and 1 *Jac.* it was given towards the King's Charges, for the Defence of the Realm and Safeguard of the Sea: It was given towards his Charges, it was not intended of extraordinary Defence. So, my Lords, theſe Acts, when they were in force, did give this but towards the Charges. It is ſo now; for this which is done, and thoſe Contributions levied, are but towards his Charges: and that will appear upon account, that his Majeſty for theſe three or four Years hath expended more upon the Sea than any of his Progenitors.

Beſides an Acknowledgment in theſe Acts, that this Defence could not be done without the intolerable Expence of his Majeſty; theſe Aids are of Neceſſity, and are not to be lacking at any time.

My Lords, in the next place, they inſiſted upon the Petition of Right, 3 *Car.*

It was never intended, that any Power of the King, by his Prerogative, ſhould be taken away or leſſened by it. I dare be bold to affirm, for I was of that Parliament, and was preſent at the Debate, that there was never a Word ſpoken in that Debate of taking away any Power of the King for the Shipping-Buſineſs.

Beſides, it is declared, aſſented unto, and denied by none, that there was no Intention, by the Petition of Right, to take away the Prerogative of the King. The King thereby did grant no new Thing, but did only confirm the antient and old Liberties of the Subject.

My Lords, theſe were the Acts of Parliament that have been objected and inſiſted upon by the other Side.

In the next place, for an Anſwer to ſcandalous Objections. It hath been ſaid by Mr. *Holborne*, of theſe Statutes of 25 *Ed.* I. and 28 *Ed.* I. that at the Times of making theſe Laws they were poſitive, no ſuch *Salvo* was in them of the King's Prerogative: That the Acts before *Hen.* IV. were penned by the King's Council, and thoſe Clauſes of a *Salvo* crept in by the King's Council.

Theſe were bold and preſumptuous Aſſertions of the Acts of Parliament made in that Time of *Ed.* I. that there ſhould be any Clauſes added by the King's Council, that ſhould not be added to the Record. I have here the Parliament Record, that theſe Exceptions are recorded as fully as any Part of the reſt of the Record, and thoſe Laws confirmed ſince: therefore to make any ſuch Aſſertions againſt Records, ought not to be done; he may object the ſame againſt *Magna Charta*, which is for the Liberty of the Subject.

In the next place, they have objected out of the Parliament Books, 33 *Ed.* I. that upon a Petition made to the King, to have Reſtitution of Money taken, that the King did ordain the Treaſurer ſhould give Satisfaction.

I ſhall deſire it may be read, and you ſhall ſee, thoſe Moneys for which Direction was given for Satisfaction, were for Goods taken for the King's Uſe. *Rot. Parl.* 33 *Ed.* I. *fol.* 105. *dorſ. per ſcrutin' pro Guerra, &c. Reſponſ. per Regem, Rex ordinavit per Concilium quod ſatisfactio fact' tam cito quam poterit.* So this Record was for Moneys taken for the King's Uſe, therefore Reaſon Satisfaction ſhould be given, *Perambulat' Foreſt' Rot.* 20 *Ed.* I. *de Libertatibus Angl.* 18 *Febr. Lincoln.* So here is no taking away of any former Act of Parliament; it referreth to what ſhall be futurely amended and revoked.

The next they objected was, *Rot. Parl.* 8 *Ed.* II. *M.* 8. The Fryars of St. *John*'s at *Jeruſalem* did petition to have Satisfaction of 2354 *l.* taken by the King out of their Treaſury.

Now, becauſe this Record was vouched two Days together, I deſire it may be read; and upon the reading it will appear, to be upon another Purpoſe, *Sur' le Roy*, &c. there was Cauſe and Reaſon why the King ſhould make Satisfaction.

The next Record was, *Pat.* 26 *Ed.* I. *M.* 21. and that was highly magnified by them: That there were ſeveral Commiſſions went out to enquire of *Gravaminibus*, of Wools, and of other Particulars, *de Cuſtod' maris*; and in this it was affirmed, that (as all the King's Counſel took their Notes) theſe Clauſes were omitted out of the Writ that concerns the Forfeiture of Lands, Goods and Chattels, or Seizures.

This Commiſſion maketh nothing to this Purpoſe, for like Commiſſions daily come, where there are Taxes laid upon Men heavier than ought to be. Then a Commiſſion to enquire of Grievances in this kind, wherein an Anſwer of any thing unjuſtly taken ſhall be reſtored, but not a Word to impeach this Royal Power. And, my Lords, for the Penalties in the Writ, 31 *Ed.* I. *M.* 20. Power to ſeize the Lands and Goods of the Refuſers, 20 *Ed.* II. *M.* 10. under Forfeiture of all their Goods, 10 *Ed.* III. *M.* 5. *dorſ. Clauſ.* 12 *Ed.* III. *M.* 18. *dorſ.* that the Penalties and Commands were as high in this Commiſſion as before.

The next Objection was, that the Kings of *England* have always conſulted with their Parliament concerning the Defence of the Realm, and that the Aids and Subſidies for Defence have been granted by Parliament.

This is no Argument to impeach this Royal Power; for if in time of War the King will conſent to it, ſhall this take away his Royal Power? In the Times of *Edw.* III. and *Rich.* II. did that take away the King's Royal Power, that he may not ordain Standards of the Money himſelf? He may by his Royal Power erect Courts of Juſtice: Shall that take away this from his Power, becauſe the Court of Wards was erected by Court of Parliament?

Next they objected *Rot. Alm.* 12 *Ed.* III. *pars* 3. *M.* 22. That *Edw.* III. was ſo penitent for what he had done, that he ſent to the Archbiſhop of *Canterbury* to pray for him; and that the People would forgive him for laying thoſe Taxes upon them, which his War compelled him unto, and he would never do the like again.

You ſhall ſee, it was only to pray for him for his Voyage into foreign Parts, (and he cauſed the Record to be read, beginning thus; *De excuſando Regem verſus populum*, and ending, *de gravaminibus*) dated at *Berwick upon Tweed.* Your Lordſhips ſee nothing by this Record, but the Deſire of a Prayer; firſt, to pray for the King for his Voyage beyond Seas; the other, concerning the Charges and Impoſitions. Surely this Contribution commanded in the Shipping-Buſineſs, was none of theſe Charges, Taillages, or Impoſitions. This his Deſire to the Archbiſhop was not only in the 12th Year of his Reign, but the like in *Anno* 25, 26, and 50; ſo ſurely thoſe Prayers of the Archbiſhop were for other Cauſes, and not for this, which was for the Defence of the Realm.

Next they do object *Rot. Franc.* 7. *Rich.* II. *M.* 13. That the King aſſigned Tonnage and Poundage to *Henry* Earl of *Northumberland* for guard of the Seas.

My Lords, it doth appear by the very Record itſelf, that this was only for an ordinary Defence, and not for an extraordinary Defence.

Then they inſiſted upon the Parliament-Roll 13 *Hen.* IV. *M.* 43. the Office of meaſuring of Linen-Cloth, a Half-penny upon the Buyer, and as much upon the Seller, and other Fees upon Long-Cloth; the Parliament, 13 *Hen.* IV. declares it to be a void Office, and that accordingly Judgment was given, 13 *Hen.* IV. Out of this he would conclude, that therefore there ſhould be no new Office, and that an Office granted with a Fee is void in Law.

For anſwer to this: *Firſt*, The Reaſon why that was a void Grant, was this; it appeareth, 4 *Ed.* I. that the Office of Meaſurage of all Woollen and Linen-Cloths, was one entire Office. If the King will grant that to another Man which did intrench upon the former Office, a void Patent; therefore a ſtrange Concluſion, that becauſe this Office was void, therefore no new Office to be granted. 22 *Hen.* VI. *fol.* 9. The Office of ſurveying the packing of all Cloth, a good Office. 27 *Hen.* VIII. *fol.* 28. The King granted to one to be his Surveyor, a good Office. *Fitz-Her.* ſaith, becauſe it had no Fee, therefore it was a void Office. And now at the Bar it is ſaid, becauſe it hath a Fee, it was a bad Office. If this Reaſon may hold, all antient Offices may fall. 34 *Hen* VI. Office to be Marſhal of the *King*'s-*Bench*; 12 *Hen.* VII. 15. To be Warden of the *Fleet.* Nay, it taketh down all Offices that have been erected for the publick Good, and upon juſt Occaſion, as the Office of *Subpœnas* in *Chancery*, *Star-Chamber*, &c. All thoſe within time of Memory muſt be ſhaken by this.

In the next place they object, that theſe Contributions, they are in Subſtance Impoſitions; and that the King ſhould not impoſe upon the Subject by his Charter, or by his Writ; but it muſt be done by common Conſent in Parliament.

Your Lordſhips have obſerved in all my Diſcourſe, that I have not inſiſted any way upon any Power of Impoſition, neither is it the Queſtion in the Buſineſs: For no Man's Property is invaded, no Seizure of any Man's Goods, unleſs they incur it for Contempt; and by a wilful Contempt, the Subject may loſe his Property. Therefore, *Dyer*, *fol.* 16. and 13 *Eliz. fol.* 296. if the King will command his Subject to come into the Realm, and he will not, he ſhall forfeit for his Contempt all his Goods; or if he be attached to appear in the Courts of Juſtice, and not appear, he ſhall forfeit his Goods, 34 *Hen.* VI. 49. 9 *Hen.* VII. 6. If a Man will wilfully contemn the King's Command by his Writ, he may be diſtrained; this he incurreth not by an Invaſion of his Property, but in reſpect of his Contempt.

Then they alledged *Rot. Parl.* 50 *Ed.* III. *M.* 24. the Lord *Latimer*, he was ſentenced for perſuading the King to lay Impoſitions on the People.

My Lords, I have looked upon the Record, and there the Caſe of the Sentence is declared, that he himſelf laid the Impoſitions, and did take upon him Royal Power; and therefore he was juſtly ſentenced.

And for the Sentence of Dr. *Manwaring*, 'tis nothing to this Purpoſe. This Writ denieth not the Property to be in the Subject, but ſaith, the Subject hath the Property; and therefore commandeth the Sheriff to diſtrain him if he will not pay.

And for the Commiſſion 2 *Car.* for the borrowing of Money for the *Palatinate*, this was for the Recovery of the *Palatinate*, and not for the Defence of the Realm; and beſides, it was called in by ſpecial Order.

In the next place, they objected and ſhewed divers Records, that the King hath paid the Wages of divers Mariners and Soldiers. And I do agree it. Is that an Argument that he may not command the Mariners to be ſent at the Charges of the County to furniſh the King's Ships? This is againſt the Records that I have remember'd.

So likewiſe they have cited 21 *Ed.* III. *Rot.* 77. *Ex parte Remem' Regis.* The King commanded the Conſtable of his Caſtle of *B.* to build Ships, and the King to pay for them. So he doth at this Day; he hath built the *Sovereign of the Seas*, and paid for it.

They have objected Dr. *Cowell*'s Book, which was called in. I wiſh they had read the Proclamation: There are three Cauſes expreſſed. Firſt, Becauſe he had writ Things derogatory to the Crown. Secondly, For ——. And, Thirdly, ſpeaking irreverently of the Common Law. Juſt like to the Men who do not ſpare to wade into all the deep Myſteries of Princes, who are Gods upon Earth.

For their Objection, that the King hath a Revenue belonging to his Crown, for the defraying of all ordinary and extraordinary Charges, and for the Guard of the Sea, as Tenures by Knight Service, Eſcuage, Wards, Marriages, antient Demeſn, *&c.* Tonnage and Poundage, Service of the Ports, and Profits of the Sea.

My Lords, it is not for us that are Lawyers to look into the Secrets of the King's Revenue; he hath high Officers, as Treaſurer, and Under-Treaſurer, that look to the Secrets of his Eſtate, and they know well whether his ordinary or extraordinary Revenues do anſwer more than his annual Expence. The Story of *Actæon* might deter Men from looking into the Secrets of Princes.

For his Tenures, that Knight-Service Tenure was originally inſtituted for the Service of *Scotland* and *Wales*, 19 *Rich.* II. *Fitz-Her. Guard.* 165. and Old Tenure, *fo.* 10. The Duties of Tonnage and Poundage are not given now to the King by Acts of Parliament; and when they were given, it was for the great Charges of this Defence. And beſides, thoſe Acts of Tonnage and Poundage only concern the ordinary Defence: the ſending forth of the 75 Ships out of the Cinque Ports, it was but for fifteen Days, at their own Charges. And for the Profits of the Sea by Sturgeons, Whales, *&c.* is it a proper Defence for a Kingdom? And for the Service of the Ports, you may remember by the Records ſhewed, they were ſeveral times commanded *ultra ſervitium debitum.*

But then they have granted one Caſe, and, I think, but one; that the King may ordain a Toll in a Fair or Market, or grant Pontage, or the like, becauſe there is an *ad quod Damnum*, and thereupon ſhall be an Inquiry *ſi Patria gravetur.*

The King may grant a Fair, without an *ad quod Damnum*, if in his Judgment, *&c.*

Rot. Scot. 1 *Ed.* III. *M.* 8. A Writ directed to the Treaſurer to pay for the Shipping at *Yarmouth.* My Lords, it doth particularly appear in the Record, that *J. S.* was Admiral, and going into *Scotland*; ſo the Defence was for a foreign War.

It hath been mightily inſiſted upon, that here needeth no Command to furniſh Ships, by the King's Writ; every Man, by the Inſtinct of Nature, will do it, where there is a Neceſſity; no need of a Royal Power to command it.

Surely this Argument is made by the People, or to pleaſe the People. What will the Conſequence of it be, but the introducing of a Democratical Government, when every Man ſhall be his own Defender? The God of Hoſts choſe Captains and Leaders to go before his People, and command them. But to give the People this Liberty, that every Man ſhall do as he pleaſes, and make a Defence by an Inſtinct of Nature, is a ſtrange Poſition.

But it hath been ſaid in theſe Caſes, it is better to ſuſtain a Miſchief than an Inconvenience: By this Inconvenience every Man's Property is taken away from him, as often as the King pleaſeth, and in what Proportion he pleaſeth.

This, tho' a Maxim in Law, yet it goeth but to Particulars: But the Loſs of a Kingdom is both Loſs of Liberty and Eſtate; this is not to be reckoned among the Miſchiefs, for this Miſchief deſtroyeth both Head and Members. Therefore I do marvel to hear the Rule of Mr. *Holborne*, Suffer a Miſchief rather than an Inconvenience.

The next Objection was the Parliament-Roll 2 *Hen.* IV. *M.* 22. *Pur faire des Barges*; this was the Petition of the Commons, that the Commiſſions granted to Burroughs, Cities and Towns, for building of Barges, ſhould be repealed. The King's Anſwer for the preſent is, They ſhould be repealed; but for the future, for Caſe of Neceſſity, he would adviſe with the Lords.

It doth not appear that theſe were granted for the building of any Ships for the Defence of the Realm. Theſe are the Objections that have been made out of the Acts of Parliament, out of the Records, and Reaſons they have inſiſted upon.

Now I come to their Exceptions and Objections againſt the Writs and Proceedings in this Matter. Firſt, they ſay, there was no ſufficient Danger repreſented by the Writ 4 *Aug.* 11 *Car.* They ſay a Supply by the *Mittimus* comes too late; and that the Words of the *Mittimus* are not a good Affirmative, *quia Salus Regni periclitabatur.* And it doth not appear there was any Danger, 4 *Aug.* 11 *Car.*

For this I have given it an Anſwer, That it was not neceſſary to repreſent the Danger in the Writ. The King hath ſecret Intelligence, he hath his Spies abroad, his Ambaſſadors beyond Seas; he knows the Danger, we know not; nay, he knows that which is not fit to be diſcovered, and thoſe Dangers by Preparation perhaps diverted another way: It's not fit by a publick Writ to reveal the Danger. But, my Lords, for the Satisfaction of his People, he hath expreſſed ſufficient Cauſe enough in the Writ; *Quia Salus Regni periclitabatur.* They ſay there was no Danger repreſented at this time when the Writ went out. That is miſtaken, for the Writ of *Mittimus* doth recite the Writ 4 *Aug.* and that ſaith, *quod quidem Prædones, Piratæ, &c.* which ſhews that Danger was the Cauſe of the iſſuing of theſe Writs.

Then they except at this Word, *Salus*; it is a phyſical Word, and ſignifieth Health, and you muſt have no Metaphors in Writs.

Surely the Grammarians tell us, that *Salus* is taken *pro Incolumitate*, as well for Safety as for Health. Metaphors are uſual in Writs; I dare be bold to ſpeak, there are more Metaphors in the Regiſter than in any Book: *Regiſter* 61. *Turba, &c.*

Then they have left no Stone unroll'd in this Caſe: Now they ſay the King's Teſtimony, by his Writ, is inſufficient for that. Under favour, the *Teſte meipſo* is without Exception; we are bound to give Credit to it. 1 *Eliz. fol.* 105. *Ne exeat Regno*; the King affirms *J. S.* will go beyond the Sea, ſaith the Book this Averment of the King in his Writ is not traverſeable, you ſhall not aver againſt it. The Caſe remembred by Mr. Sollicitor, was miſtaken by Mr. *Holborne* in the Anſwer, *Hil.* 20 *Ed.* I. *Coram Rege, Rot.* 14. He ſaith, theſe Words vouched in the Record were but the Saying of the King's Counſel, and not the Opinion of the Court. Clear otherwiſe, for it was the Saying of the Judges; and then agreed, *Quod Dominus Rex eſt ſuperlativum Record' & præexcellens.* Will your Lordſhips give Credit to the Marſhal of the King's Hoſt, to the Certificate of the Captain of a Company, if the Men be in the King's Service, as 11 *Hen.* VII. *fo.* 5. to the Certificate of a Biſhop, as in caſe of Baſtardy; to the Certificate of a Mayor and Alderman, by the Recorder, as 5 *Ed.* IV. 30. and will you not admit of the Certificate of the King by his *Mittimus?*

The next Exception was taken to the *Scir' Fac'*, that this *Scir' Fac'* ought not to go forth for this Debt; and gave two Reaſons for it. Firſt, The Writ of 4 *Aug.* doth direct a Form of levying, which is by Diſtreſs, or impriſoning thoſe that are Rebels. Secondly, It is no Debt to the King; and therefore ought not to be levied by *Scir' Fac'.*

My Lords, for this, this Duty is a Duty to the Commonwealth; it is *pro defenſione Regni, Theſaurus publicus reſpicit Regem*; whoſoever ſhall detain any publick Duty, he may be queſtioned by the King, as the Head of the Body Politick; for that it appeareth, 27 *Aſſ. Pl.* 17. it was declared that *J. S.* and *J. D.* had levied 100 Marks on the County for the Array of certain Archers; which Money did not come for the Profit of the King. Out of which I obſerve two things.

Firſt, This Money that was for Archers: The Money was levied on the Body of the County. Secondly, Recover'd by an Indictment at the King's Suit, 27 *Aſſ. Pl.* 17. 11 *Hen.* IV. *fo.* 2. The Fees of the Knights of the Shire that ſerve in Parliament, they are reckoned among publick Duties; therefore the Goods of a Stranger may be taken within the Town to pay thoſe Fees, if the Money be not paid; the Diſtreſs may be ſold, for it is for a publick Duty, 11 *Hen.* IV. 2. So are the Books: *Regiſt.* 19. the King may command the Sheriffs to levy theſe Fees, as well within his Liberty, as *extra. Hil.* 23 *Ed.* III. *Rot.* 57. *coram Rege. Juratores Hundredi de S.* they make a Preſentment that *J. S.* and *J. D.* Chief Conſtables of *E.* paid Wages to Archers which went not beyond Sea. So as by this Record it appeareth, theſe publick Duties are recoverable at the Suit of the King, *quia ad opus Domini Regis. Pat.* 14 *Ed.* I. *M.* 1. 14. the King commandeth an Account to be taken of the Murage, and how the Sums levied have been employed. *P.* 15 *Ed.* I. *coram Rege* 70. *dorſ. Rippon* was beſieged, they gave Hoſtages; Promiſe made by the Town that theſe Hoſtages ſhould be redeem'd, they were not: Complaint is made to the King, and it came to the *King*'s-*Bench*; and theſe Moneys being 700 *l.* that was promiſed by the Town for the bringing back thoſe Hoſtages, was ordered to be paid, becauſe it was for the publick Service. So for other Things that are *pro communi utilitate, inter Communia. Hil.* 5. *Lib.* 4. *Rot.* 4. *Aurum Reginæ*, due unto the Queen, may be levied by Proceſs out of the *Exchequer* in the King's Name, nothing more uſual.

This *Scir' Fac'* is grounded upon the whole Matter, the Writ 4 *Aug.* the *Certiorari*, and *Mittimus*; and commandeth that the Defendants ſhall ſhew Cauſe why they ſhould not pay the Moneys aſſeſſed upon them for the Publick Service.

My Lords, I have done with the Objections. I ſhall come to the judicial Records, 24 *Ed.* I. *Ad cuſtodiam Maris. Berks*, an Inland County, refuſed to contribute the Names of thoſe that made Default, were certified into the *Exchequer*; it appeareth by the Records, that Proceſs went out of the *Exchequer* in the ſtricteſt manner, *A capias in manus*, of their Lands, Tenements, Goods and Chattels; and that their Bodies, with Horſe and Armour, be ſent to *Portſmouth*; for beſides the doing of their Service, the Seizure of their Lands and Goods, 24 the ſame Year, *Exc. Remem. Theſaur.* On the other ſide, *J. de S.* gives Information to the Chancellor of the *Exchequer*, and Barons, in abſence of the Lord Treaſurer, of the Preparation of Men in *Flanders* (this being remember'd before to another Purpoſe). It appeareth that after Conſultation had, they did reſolve to ſend forth two Writs, one was to the Town, the other to the *T. H. Cuſtos Maris*, to call all for Defence of the Maritime, *&c. Exc. Remem' Regis*, 24 *Ed.* I. *Rot.* 80. *Henry Huſſey* was ſeized of the Manor of *W.* in *Berks*, he was aſſeſſed to find a Horſe *pro Cuſtod' Marit.* He complained in the *Exchequer*, that he had not the whole Manor, and yet he was aſſeſſed to find a whole Horſe; he did not come and ſay, I ought not to be taxed, but ſubmitted to the Power, and deſired a Manorly Contribution. 28 *Ed.* I. *Rot.* 72. the Abbot of *Robertſbridge*'s Caſe, remember'd on both Sides, divers times: under favour, the joining of the Iſſue in the Record is a very full Proof in the Cauſe; he brought a Replevin againſt *J. S.* for taking his Goods in an Inland Town in *Kent*; he pleadeth the Conteſtation between our King and the King of *France*, and *Leighorne* aſſigned Keeper of the Sea, that the Plaintiff was aſſeſſed unto 7 *s.* 7 *d.* *Anno* 22. to 13 *s.* *Anno* 23. to 15 *s.* and the Defendant being Collector did diſtrain; the Plaintiff did not ſay in bar of this, that he ought not to be taxed, but that he was aſſeſſed *ad inveniend'*, &c. for ſuch Lands: the Defendant ſaith, the Plaintiff holds other Lands in the County, and for that Land he was aſſeſſed. Now this doth admit the Power of Taxing. *Hil.* 16 *Ed.* III. *Rot.* 23. *coram Rege:* The Jury of *Suffolk* did preſent that *J. Ruſſel*, and others, 8 *Ed.* III. were Hobbellers, elected in the Hundred of *T.* and ſtaid at home. They plead, Not Guilty. The Jury finds that *J. Ruſſel* did perform the Service, but *J. S.* did not perform it, therefore committed to Priſon, and paid a Fine unto the King. By this Record it appeareth, the Money paid to the Archers and Hobbellers was at the County's Charge. Methinks that the Diſclaimer that is by the Commons, 13 *Ed.* III. *Rot. Par.* 9. & 11. is in nature of a Judgment in this Caſe; for there they did diſclaim they had no Cognizance, and there likewiſe upon their own Conceſſion, that the Maritime Parts ought to defend at their own Charges, as the Inland Parts, the Inland Counties. This Conceſſion, 13 *Ed.* III. is a ſtrong Argument, *Parl.* 21 *Ed.* III. *Rot.* 20. when the Commons did petition for a Guard for the Sea: The Anſwer is, *Soit guard fait*, and that was at the Charge of the Counties, as your Lordſhips know. 20 *Ed.* III. divers Ordinances made, which Ordinances made had the Force of a Law: The King and his Council did ordain, *Quod omnes illi, &c.* which have ſuch a Quantity of Land ſhould be aſſeſſed to find one Archer; one Hobbeller *decem l.* two Hobbellers *vigint. libr. unum hominem ad arma* 25 *l.* This appeareth *Rot. Franc.* 20 *Ed.* III. *pars* 1. *M.* 17. in the Counties of *Bedford* and *Bucks.* In the ſame Year, another Ordinance, that thoſe that did reſide with their Families, *cum toto poſſe*, within ſix Miles of Maritime Parts, were excuſed from finding of Men without.

My Lords, upon the Occaſion of this Service, there were divers Refuſals made, Certificate by *Mittimus* of their Names into the *Exchequer*; as in this Caſe, *J. T.* and *W. G.* were certified for Defaulters amongſt others: upon this, the Court of *Exchequer* award Proceſs againſt thoſe Men and others, which was a *Capias in manus*, Seizure of their Lands and Goods; they came in, and pleaded, they reſided *infra ſex leucas*, with their Families and all their Powers: Iſſue joined; upon this, the Jury impannelled, and it appeared, thoſe that were found within ſix Miles, Judgment *quod ſine die*; but for others, they were impriſoned and fined; for ſo much Land as they had without the ſix Miles, for that they were charged. If I ſhould number to your Lordſhips all the Judgments in this kind, I might ſpeak here till to Morrow morning. *P.* 22 *Ed.* III. *inter Communia*, in the *Exchequer*; *P.* 25 *Ed.* III. *M.* 27. *P.* 27. and 28 *Ed.* III. and there is a Number more in other Years, as 29 and 30 *Hen.* IV. And, my Lords, according to thoſe Judgments, *Trin*, 31 *Ed.* III. *Rot.* 3. the Writ went forth for diſcharging of ſuch as have reſided upon their Lands within ſix Miles. 21 *Ed.* I. *Pipe-Roll*; ſome diſcharged becauſe they were in the King's Service.

So as, my Lords, out of theſe Records thus much may be collected. Firſt, They affirm the King's Power in aſſeſſing and levying. And Secondly, that they are grounded upon thoſe Ordinances made by the King and his Council. Thirdly, The Proceſs went out of the *Exchequer*, and in the King's Name. *M.* 22. *Ed.* III. *Parl. coram Baro.* Iſſue joined, whether *J. S.* had Lands to the Value of 40 *l.* to find Hobbellers; if he had, then he was to do it.

My Lords, I have now done with the Judicial Precedents; I have cited ſome few, amongſt many others. It is now time, after ſo long Premiſſes, to draw to a Concluſion: wherein your Lordſhips have heard: Firſt, That the King of *England*, he is an abſolute Monarch; and that by the Common Law of *England*, all thoſe *Jura ſummæ Majeſtatis* are inherent in his Perſon. This *Supremum Dominium* for all the Land that any Subject holdeth, it is derived from the Crown; and, as *Plowden* putteth it, 12 and 13. that there is a tacit Condition in Law annexed to his Grant, that his Officers may do Juſtice to execute Proceſs ſurely upon his Grant. This tacit Condition may be ſubject to a Common Defence. Supreme Juriſdiction, both by Sea and Land, was never yet impeached, and from him lieth no Appeal. And originally, by the Inſtitution of the Laws of this Realm, what was once in his Hand, and was never granted from him, is ſtill in him; he hath abſolute Power of concluding War and Peace: All theſe are in him as he is an abſolute Monarch, and holdeth his Kingdom under none but God himſelf. It hath appeared alſo, that a principal Part of this Kingly Office conſiſts in the Defence of the Realm; that as his Juriſdiction is by Sea and Land, ſo is his Defence. And this hath been made appear to your Lordſhips, both by Precedents before *William* the Firſt, and ſince: *pro communi utilitate*, and, in Caſe of Neceſſity, the Kings of *England* may ordain, by their Proclamation, Writs or Patents, by the Advice of their Council, or Judges, in legal Matters. That the King is the ſole Judge of this Danger, both for the Prevention of it, and for the avoiding of it. Therefore for us to diſtruſt that he will command too great a Power or Aid, it is a Preſumption againſt the Preſumption of Law.

It hath appeared likewiſe that all the Incidents of Defence are likewiſe inherent in his Majeſty. We cannot build a Fort or Caſtle on our own Ground, without Licenſe from him. Your Lordſhips have heard the Precedents, particular and general; Precedents which have univerſal Reaſons, *quod omnes ex debito aſtricti ſunt*; Writs awarded by the King's Royal Power, in Times of Parliament, when Parliaments were ſitting, and in thoſe Years when great Aids and Subſidies were granted to the King, many times no Cauſe declared, nor the Occaſion diſcover'd.

There is no Act of Parliament made to take away this Power: And the judicial Precedents which your Lordſhips have heard, have affirmed this Power.

My Lords, if there were no Law to compel to this Duty, yet Nature and the inviolate Law of Preſervation ought to move us. Theſe Vapours that are exhaled from us, will again deſcend upon us in our Safety, and in the Honour of our Nation. Therefore let us obey the King's Command by his Writ, and not diſpute it. He is the firſt Mover amongſt theſe Orbs of ours; and he is the Circle of this Circumference; and he is the Center of us all, wherein we all, as the Lines, ſhould meet; he is the Soul of this Body, whoſe proper Act is to command.

But I ſhall need to uſe no Perſuaſions to your Lordſhips to do Juſtice in this Cauſe: And therefore I ſhall humbly deſire Judgment for the King.

The Argument of Sir Francis Weſton, *Knt. one of the Barons of his Majeſty's Court of* Exchequer, *in the great Cauſe of Ship-Money.*

IN *Eaſter-Term* laſt, there was a Writ of *Scir' Fac'* went out of the *Exchequer*, directed to the Sheriff of *Bucks*, reciting, That whereas divers ſeveral Sums of Money, ſpecified in a Schedule annexed to the Writ, by virtue of the Writ 4 *Aug.* 11 *Car.* were aſſeſſed upon the ſeveral Perſons in the Schedule named, towards the providing of a Ship of War mentioned in the Writ, which Sums being ſo aſſeſſed, and not paid, by Writ of *Certiorari* 9 *Martii* 12 *Car.* under the Great Seal of *England*, the Names of thoſe ſeveral Perſons and Sums aſſeſſed are certified into the *Chancery*, and by Writ of *Mittimus* dated 5 *Maii* 13 *Car.* ſent into the *Exchequer*, and there to be proceeded upon according to the Courſe of the Law. The Sheriff of *Bucks* is commanded to warn the Parties named to appear, and to ſhew Cauſe why they ſhould not be charged with thoſe ſeveral Sums aſſeſſed upon them.

Hereupon Mr. *Hampden* appeareth, and demandeth *Oyer* of the Writ 4 *Aug.* of the *Certiorari* and *Mittimus*, and their ſeveral Returns; they being all read unto him, he ſaith that theſe ſeveral Writs, and the Returns thereof, and the Schedules thereunto annexed, do not contain any ſufficient Matter to charge him to pay the 20 *s.* and thereupon demurred. Mr. Attorney-General ſaith, that they do contain ſufficient Matter to charge him. And thereupon the Demurrer is joined.

The Demurrer being joined, the Record was read in the *Exchequer*; and the Cauſe appearing to be of great Weight, it was adjourned unto this Place in the *Exchequer-Chamber*, to have the Advice of all the Judges of *England*.

Upon this Record, I am to deliver my Opinion; and I take it there is ſufficient Matter to charge Mr. *Hampden* with this 20 *s.* And ſo I give Judgment for the King.

Here have been twelve Days ſpent in the arguing of this Caſe at the Bar: I will confine my ſelf to two Hours and leſs, tho' not tied unto any Time. The Way to be ſhort, is ſhortly to find out the Points.

But I muſt firſt obſerve, in what State this Cauſe cometh in Judgment before us. There is a Rule in Law, that if a Man ſhall demur generally to the Writ, he doth confeſs all other Matters in Fact that are alledged. The Reaſons of it are apparent: Becauſe Matters of Fact are to be tried by Jury, and Matters of Law by the Judges. So in this Caſe all the Danger alledged by the Writ, is confeſſed; and the Matter in Law is that which we that are Judges are to deliver our Opinions upon.

It hath been objected, by Mr. *Holborne*, That we are tied to the Writ 4 *Aug.* for that Writ is the Ground of all, and upon that doth all the reſt depend. It is true, that if he had relied upon the Writ, it had been ſo. But his Demurrer is this: That the Writ, and the reſt of the Proceedings with the Schedules, do not contain Matter ſufficient: So that now they have not put to us the Writ 4 *Aug.* alone, but all the reſt, to give Judgment upon. For the Writ of *Mittimus*, it is confeſſed, That in that there is an Expreſſion, that *Salus Regni periclitabatur*, which is not in the Writ 4 *Aug.*

To this he hath taken Exception, that *Salus Regni periclitabatur*, the Danger is at the preſent Time of the *Mittimus*, and doth not ſay, *periclitatur*, 4 *Aug.* 11 *Car.* and therefore this Expreſſion now in the *Mittimus* cannot make good the Defect thereof in the Writ of 4 *Aug.*

To this I anſwer, That the demurring to all, hath confeſſed all, and yet the Matter in the Writ is ſufficient to expreſs the Danger.

Then he objected, That *Salus* ſignifies Health, and not Safety; and that the Phyſicians term it ſo.

But *Salus* ſignifies Safety as well as Health. So it is engliſhed in *Cooper*'s Dictionary, and ſo it is taken by Poets and Hiſtorians for Safety.

The next Objection was to the Writ 4 *Aug.* That if there were a Danger, it muſt be plainly expreſſed in the Writ, &c. The Words are, *Datum eſt nobis intelligi*, &c. How cometh the King to underſtand it? The Danger muſt be fully expreſſed.

For this I hold it more fit for a Stateſman than myſelf to give an Anſwer to, that the King ſhould diſcover his Intelligence; whether it is fit to make known to all the World the Danger the Kingdom is in. But yet I find that in the ſaid Writ 4 *Aug.* there is expreſſed both Danger by Pirates on the Sea, and that the Dominion of the Sea is like to be loſt: And that theſe are Dangers to the whole Kingdom. For the *Certiorari*, I find it is directed to the Shire, and the Writ of *Mittimus* to the Court of *Exchequer*; and therefore he could not take Exception to theſe Writs: whatſoever I ſhall take Advantage of it muſt be contained in the Writ 4 *Aug.*

In this Writ, three Things, as Dangers, are expreſſed. 1. The Danger by Pirates. 2. The Danger of loſing the Dominion of the Narrow Seas. And, 3. The great Peril in this Time of War.

For the Pirates, I ſhall not meddle with them; they are but petty Robbers, and ſtill running away: The Ports muſt defend themſelves againſt theſe; the Inland Counties are in no Danger of them.

I will not inſiſt upon the Dominion of the Narrow Seas, tho' that is conſiderable; for in the Defence of that conſiſts much the Preſervation of the Kingdom. But I ſhall inſiſt on the Danger of the Kingdom expreſſed in the Writ 4 *Aug.* thus, *Conſideratis etiam periculis undiquaque*, &c. There is Danger, there is Peril round about us; and it is by reaſon that there are now Times of War, we ſee Danger on every Side.

There are two Things trouble this Point. 1. The Subject ſuſpects that this is only a Pretence, and that the Kingdom is not really in Danger.

2. That there being great Sums of Money raiſed upon this Occaſion, this, in the end, will be drawn to be annual and perpetual: But if they were ſatisfied that the Kingdom were really in Danger, likely they would be content to pay the Money till the Danger be over.

For my part, I anſwer to theſe Objections, That it is an unworthy Suppoſition. I muſt be ſatisfied, and I am, that the Kingdom was in Danger for two things: One Reaſon is, Becauſe it is ſo expreſſed in the Writ 4 *Aug.* It cannot be denied, but that the Kingdom may be in Danger. It hath been conquered, and ſo it may be again, therefore it is neceſſary it ſhould be foreſeen and prevented; and ſomebody muſt do it, and who better than the King, that hath the Care and Charge of the Kingdom? He ſaith the Kingdom is in Danger, and hath ſo declared it by his Writ; why I ſhould not believe it, when the King hath declared it ſo by his Writ, I know not.

My other Reaſon that the Kingdom is in Danger is, That it is ſo *de facto*. It cannot be unknown to any Man, that theſe three or four Years laſt paſt, great Navies have been at Sea, and great Forces on Land. If we ſhould have but an ordinary Defence at Sea by Shipping, no Man can tell or ſuppoſe, but that thoſe Navies, being ſo great, may land where they will, and in as many Places as they will; what ſpoil would they make before ſuch time as any Reſiſtance could be made againſt them?

They objected here, That theſe Navies at Sea, they are engaged in War one with another; we are ſafe enough, we need not fear them.

I anſwer, They are, I think, engaged in good earneſt; but who knoweth how ſoon theſe Wars may end? They may end by the Mediation of Friends, or the Death of ſome one Perſon. And when there is a great Navy at Sea, and Forces at Land, how eaſy is it to remember an old Quarrel, or to pick a new one?

Theſe Things do perſuade me that the Kingdom is in Danger, and a very great and juſt Cauſe to make Preparation for Defence. And if every Man would be ſo perſuaded, they would not deny the Payment of the Money. An Example of this Nature hath happened in former times: In *Henry* the Seventh's Time, it appeareth, by a Record on the King's Part, *Pat.* 1 *Hen.* VII. *pars* 3. *duo*; there were Wars between the King of the *Romans* and the King of *France*; they were both Friends to *Hen.* VII. they owed him no Ill-will; yet by reaſon of theſe great Wars, great Forces at Sea, and great Forces at Land, the King would not truſt them, but ſent forth his Proclamation, to command that Watch and Ward be kept over the Sea-Coaſts; and Command was to all his Subjects, that upon ſhort Warning they ſhould be ready for Defence of the Kingdom. So this may well be an Example for the Courſe that is now taken, for Defence of the Kingdom.

I ſhall now come to thoſe Reaſons, and to the Records that have been objected on either Side. I ſhall begin with the King's Side, becauſe that layeth a Charge on the Defendant.

It hath been objected, That ſome of them are not warranted by the Record. Firſt, ſay they, there is a Ship commanded to be provided, and Money muſt be levied: But in the End, when this great Sum of Money is collected, it muſt be diſburſed, no Man knows how. No ſuch thing in the Record.

To this I anſwer, The Record ſaith, A Ship muſt be provided, and the Sheriff is to rate the County, *ſecundum facultates*, towards the ſame; not a Word of any Money to be paid unto the King. It is a Ship that the Sheriff is to build, and to aſſeſs Money towards it.

They have ſaid beſides, Here is in the Writ a Command for the Impriſonment of the Party, and that his Liberty, dearer to him than his Life, and his Goods, wherein he hath an abſolute Property, ſhall be taken away. Theſe things, they ſay, are not warranted by the Writ, nor by any thing in the Record.

I anſwer, It is not warranted by the Proceedings in this Caſe; for the *Scir' Fac'* is not to ſhew Cauſe why the Party's Goods ſhould not be ſold, or he impriſoned, but why he ſhould not be charged with the Money aſſeſſed upon him.

They ſay, That the general Defence of the Sea lieth upon the King; becauſe he hath wherewithal to do it.

I would willingly diſburden myſelf as much as I can of the Objections: A general Anſwer I ſhall give to theſe Particulars.

They ſay, The King hath perſonal Service, the Service of Tenants, by Knights Service, Eſcuage, Caſtle-Guard, Grand Serjeanty, Petty Serjeanty.

Is the King bound by theſe to the Defence of the Kingdom? He that doth look on their Originals, will not ſay ſo; For theſe are Tenures reſerved upon the ſeveral Grants made by the King; and no more Reaſon is there that the King, by this, ſhould be tied to defend the Kingdom, than there is for the Lords, that are Subjects, and have the like Tenure, that they ſhould be bound to the Defence of the Sea.

They ſay, He hath beſides theſe, Wards, Marriages, Reliefs, Fines, Iſſues, Amerciaments, primer Seiſin, Fines of Alienation, Reſpites of Homage, all Fruits of the Tenures; which all muſt go towards the Defence of the Kingdom.

I anſwer, Theſe Profits are caſual; beſides, if he be not bound in reſpect of the Tenures, as aforeſaid, he cannot be bound by the Fruits of them.

It hath been objected, That the King hath the Profit of the Sea, as Royal Fiſhes, Whales, *&c.* Wrecks at Sea, Treaſure Trove, Royal Mines, *&c.*

I anſwer, Theſe he hath by his Prerogative, and not for the Defence; neither are they fit for a Subject to have.

You ſay, He hath particular Service from the Cinque Ports and other Places, as from *Malden*, *Colcheſter*, and other Places; and beſides, he hath all manner of Cuſtoms, and in Regard of theſe he is bound to provide for the Defence of the Sea.

It is true, the King muſt, for an ordinary Defence, uſe the Means the Law hath allowed him; but that is not now the Queſtion: It is for an extraordinary Defence. The Queſtion now ariſeth, if it were aſked any Man, Whether they do think in their Conſcience that the King is able of himſelf, out of theſe, to prepare a Royal Navy, without help from the Subject? None are ſo ſenſeleſs as to think it.

There be ſome other things, to which I ſhall give a general Anſwer.

It appeareth by many Records, that the King hath paid Wages to Soldiers, and ſometimes hath hired Ships; and unleſs there had been a Conſideration, the King would not have done it.

To this I anſwer, It was for ordinary Defence, and he is bound to do it; and if he engaged himſelf by Promiſe to repay unto them their Charges, I can ſay no more but this, That every honeſt Man that makes a Promiſe will perform it, and ſo is the King bound to perform his Promiſe: for that which Honeſty binds others to the Performance of, Honour binds the King.

I ſhall come to thoſe things to which a more particular Anſwer is to be given. The Charge lieth general upon the whole Kingdom, which I ſhall divide into three Parts. 1. The Ports. 2. The Maritime Counties. And, 3. The Inland Counties: And to theſe three I will apply the Records.

1. For the Ports; they are of two Kinds, the Cinque Ports, and the Ports at large. What Services are due from the Cinque Ports, is expreſſed in *Libr' Rubrico*, in the *Exchequer*, that they were to find 52 Ships, and 24 Men in every Ship, for fifteen Days; which cometh to 1188 Men.

The Ports at large are tied to no certain Service; it will appear by moſt of theſe Records which I ſhall apply, that the Cinque Ports have been charged with more than their Due, and the Ports at large equally with the Cinque Ports. *Pat.* 25 *Joh. M.* 6. the King ſent his Writ to the Cinque Ports, and thereby commandeth, *quod omnes Naves paratæ, &c. & homines*; he doth not here tie them to a Number, but all muſt go. *Clauſ.* 17 *Joh. M.* 7. Here the King ſent his Writ *Baronibus ſuis de Rye*, a Member of the Cinque Ports, *Quod venire faciatis omnes Naves apud Quinque Portus*; this was general, as the others; all the Ships, not tied to the Number of 52. *Clauſ.* 14 *Hen.* III. *M.* 13. A Writ went out to *Portſmouth*, being a Port at large, to provide a Galley, *& eam munire faciant cum hominibus, & quod prompti & parati ſint ad proficiſcend' cum neceſſe fuerit.* So here is a particular Charge upon *Portſmouth*, not bound unto it, to provide a Galley with all manner of Munition. *Clauſ.* 25 *Ed.* I. *M.* 5. *dorſ.* A Writ went unto *Guernſey*, a Port at large, to make a Ship ready as often as Need ſhould require, *de contributione faciend' pro Navibus quoties opus fuerit.* *Pat.* 9 *Ed.* II. *pars* II. *M.* 26. A Writ goeth forth, and that was directed, *Ballivis & probis hominibus comit' Southampton*, to make *Proviſionem Navigii ſumptibus propriis*; no Promiſe from the King to pay this again. *Clauſ.* 20 *Ed.* II. *M.* 7. A Writ goeth to the Sheriff of *London*, and that reciteth a Charge formerly laid upon the City, and upon *Kent*, for finding of 12 Ships; *London* to find 9 Ships, and *Kent* 3, and forty Men in every Ship, *ad ſumptus illarum.* *Clauſ.* 20 *Ed.* II. *M.* 8. A Writ directed to the Bailiff of *Yarmouth*, which is none of the Cinque Ports, and they were charged with two Ships at their own Coſts. And the ſame Command, in the ſame Roll, for all Ships of 50 Tons to be ready. *Rot. Scot.* 10 *Ed.* III. *M.* 12. That Writ reciteth the general Obligation that they are bound in to defend the Kingdom, almoſt in the ſame Words mentioned in this Writ; it reciteth, that every Man ſhould be aſſeſſed *juxta ſtatum & facultates*, ſo there was a Contribution; then cometh in the Clauſe *ultra illam pecuniæ ſummam debit' pro ſervitiis.* It is true, indeed, the King did pay towards this, but it is expreſſed to be of his mere Grace and Favour. 10 *Ed.* III. *M.* 2. *dorſ.* A Writ to *Winchelſea*, a Member of the Cinque Ports, and that was, *Quod omnes Naves ſint paratæ*, both of the Ports *& aliarum villarum*; and the Reaſon is expreſſed, Becauſe without their Help the King was not able to defend the Kingdom; and appointeth them, by that Writ, that the Ships ſhould be ready victualled for thirteen Weeks; whereas the ordinary Time was but for fifteen Days. *Vaſ.* 12 *Ed.* III. *M.* 8. There a Writ goeth forth to the Sheriff of *Kent*, and to the Barons of the Cinque Ports, whereby they were all commanded to look to the Cuſtody of the Sea-Coaſts; here are the Maritime Towns and Port Towns joined together. 25 *Ed.* III. *M.* 22 *dorſ.* A Writ to *Southampton*, *ad congregandum Naves.* In the ſame Roll, *M.* 8. more Writs to other Towns. *Pat.* 12 *Ed.* III. *pars* 4. *M.* 3. There was a Command that all that dwell within the Iſle of *Thanet*, from 16 to 60, ſhould be ready to defend the Sea-Coaſts, and this was *juxta ſtatum & facultates.* *Rot. Alm.* 13 *Ed.* III. *M.* 12. *Yarmouth* charged with 4 Ships, and in each Ship 24 Men: whereas uſually it was but 21 Men in a Ship, now I think they are come to ſixſcore Men in a Ship. There are an infinite Number of Rolls to this Purpoſe, to charge the Port Towns.

I come now to my ſecond Diviſion, which is Maritime Towns. *Pat.* 48 *Hen.* III. *M.* 4. *dorſ.* A Writ went to the Sheriffs of *Norfolk*, reciting, That Ships and Soldiers had ſtaid there long, and that they were intending to depart, becauſe their forty Days were paſt: Command was, that they ſhould ſtay, *donec aliud inde mandatum fuerit.* *Clauſ.* 23 *Ed.* I. *M.* 5. *dorſ.* There were Writs directed to the Sheriffs of *Southampton*, *Dorſet* and *Wilts*, theſe three are all Maritime Counties: A Command, that they ſhould raiſe three thouſand Men to defend the Coaſts. *Pat.* 24 *Ed.* I. *M.* 17. A Writ directed to the Sheriffs of *Lincoln*, *York*, and *Northumberland*, to aſſiſt certain Commiſſioners to take up an hundred Ships, with a competent Number of Men, theſe are to Maritime Counties: The like Writs go to the Sheriffs of *Suſſex* and *Southampton*, and theſe for the Preparation of Ships, and to take them whereſoever they are to be found. *Rot. Pat.* 25 *Ed.* I. *M.* 6. Writs went to *Southampton*, *Devon*, *Cornwal*, *Dorſet*, and many other Places that were Maritime Towns, for arreſting of Ships, and raiſing of Men. But the Rolls I might moſt inſiſt upon, are only theſe; I'll but name them: *Pat.* 24 *Ed.* I. *M.* 16. *Ex parte Remem. Regis, & Rot.* 78. *Clauſ.* 25 *Ed.* I. *M.* 26. *Clauſ.* 13 *Ed.* III. *M.* 14. *pars* 1. *dorſ. Scot.* 10 *Ed.* III. *M.* 22. By all which it appears, not only the Ports, but the Maritime Counties have contributed towards the Charge of the Defence of the Kingdom. And the other Side do hardly deny it, but that the Maritime Towns may be charged.

I will open it plain, that it is for their Eaſe to bring in the Inland Counties. This Cauſe is not of ſo great Conſequence, as is conceived; for if the Port-Towns and Maritime Towns may be charged, then it bringeth but in the Inland Counties. In *England* and *Wales* there are fifty-two Counties, thirty-three of theſe are Maritime Counties; ſo the Inland Counties are but nineteen at the moſt, and they contribute but to a fourth Part of the Charge for the Defence of the Kingdom. And ſo much to my ſecond Diviſion of Maritime Towns.

3. To the third Diviſion, which is of Inland Counties, that they have been charged; I ſhall make that appear, that the greater Part of them have been charged formerly for this manner of Defence.

They objected, that the County of *Bucks* is an Inland County, and that Mr. *Hampden* dwells there; and therefore no Reaſon he ſhould contribute to the Defence; no Inland County ever did it, ſay they.

There may be two Reaſons, why, in former Times, the Writs for the moſt part went to the Ports and Maritime Counties. 1. Becauſe they have the Benefit of the Seas by Exportation and Importation of their Goods. And, 2. Becauſe they are continually in danger of Pirates and Robbers; and far nearer for a ſudden Defence, than the Inland Counties are. But this cannot be held for a ſufficient Reaſon, that they only that are near the Danger ſhould be put to defend the whole Kingdom. I am ſure the Inland Counties receive great Gains and Profits by the Commodities from the Port-Towns: and they are the more in Safety, the ſtronger the Sea-Coaſts are kept: and therefore no Reaſon but that they ſhould contribute towards the charge of the Defence of the Sea. For all the Writs, ſave one Commiſſion, have gone to be for the general Defence of the Kingdom; then no Reaſon but Inland Counties ſhould be charged. If they ſay they never did it, it is a ſtrange Preſcription, that becauſe they never did it, they never will do it. A Man cannot excuſe himſelf, that becauſe he never paid Tithe to ſuch a Vicar, or ſuch a Parſon, that therefore he will never pay it.

I ſhall go to the Records that charge the Inland Counties. *Clauſ.* 48 *Hen.* III. *M.* 2. A Writ directed to the Mayor and Bailiff of *Bedford*, an Inland County; it doth recite, that divers of that Town were called to go with the King towards the Sea-Coaſts, *contra hoſtilem invaſionem, & nunc neceſſe eſt, & cauſas fortuit' ut levari fac' & expenſas*; and appoint at what Rate they ſhould levy it, the Horſemen were to have eight Pence *per* Day, and the Footmen four Pence. *Clauſ.* 48 *Hen* III. *M.* 7. A Writ directed to the Sheriff of *Huntington*, whereby the Men of that County were commanded to go to *London*, and from thence to the Sea-Coaſts, for the Defence of the Kingdom. *Rot. Scot. Ex. Remem. Regis* 24 *Ed.* I. *M.* 78. *dorſ.* A Writ is directed to the Sheriffs of *Berks*, and this is to diſtrain Men to make good the Cuſtody of the Sea-Coaſts. *Rot.* 26 *Ed.* I. *M.* 5. The like Writs were directed to the Sheriffs of *Hertford*, *Eſſex*, *Nottingham*, *Derby*, *Huntington*, *Cambridge*, &c. and almoſt to all the Inland Counties, *pro cuſtodia Maritima*, all to come to *London*, and to go from thence to the Sea-Coaſts, for the Defence thereof. *Clauſ.* 13 *Ed.* III. *pars.* 1. *M.* 14. *dorſ.* A Writ goeth out to *Oxford*, *ad diſtringendum*, for Wages, *pro Cuſtodia Maritima*; one Man was diſtrained, and he pleaded he had been charged in *Wilts*, and ought not to be charged in another County, and for this there went a *Superſedeas*. *Rot. Viagii* 1 *Hen.* IV. *M.* 10. A Writ was directed to the Sheriffs of *Nottingham* and *Derby*, two Inland Counties, and this was to proclaim *quod omnes homines*, *inter* 16 & 60, *parati ſint*, &c. to go with the King, within the Kingdom, where he pleaſed. *Clauſ.* 1 *Ric.* II. *M.* 18. Writs were directed to the Mayor and Bailiffs of *Huntington* and *Cambridge*. This Roll is cited by the Counſel for the Defendant; and in part it maketh for the Defendant, and in part againſt him. The Effect of it is this: The Writ is directed to the Bailiff of *Huntington*, and this recites a former Writ to provide Barges, called *Ballingers*, with forty and fifty Oars a-piece, like to a Galley, at the Charge of the moſt rich Men, and this was *ad cuſtod. Maris*. And the like Writs went to the Towns of *Nottingham*, *Gloceſter*, and *Warwick*, and divers other Places; theſe Veſſels were not deviſed then, I find them uſed before in K. *Edward* the Third's Time. In the Parliament Rolls, 2 *Ed.* IV. *M.* 22. the Commons did complain, that a Commiſſion was gone forth for the making of theſe Barges. True, upon a Petition of the Commons, the King ſaith, he will adviſe with his Lords: there is no more done; but upon this they ceaſe. I have now done with the Precedents on the King's Side.

I ſhall now come to that which hath been ſaid on the Defendant's Side for their Diſcharge. And, *Firſt*, For the Acts and Petitions in Parliament, which are weighty and conſiderable.

Firſt, For the Statute *de Tallagio non concedendo*, which was in the time of *Edw.* I. it hath been doubted, whether this be a Statute or no. I ſee no colour of doubt, but that this is a Statute; it is printed amongſt the Statutes, and ever accounted for a Statute: and in the Petition of Right, it is recited for a Statute. And to ſay it is no Statute, becauſe the Parliament-Roll is wanting; if it ſhould be diſallowed, it would draw a great Inconvenience with it: for private Men might embezzle the Records, and then if the Records were wanting, the Acts of Parliament ſhould be void.

It is an Act of Parliament, no queſtion; but the Queſtion is, whether the Proviſion made by this Writ, be within the meaning of this Statute.

And I conceive it is not; for there are two Words in this Statute obſervable, *Taillage and Aid.* By *no Aid* here, will you take away the Aid *pur fils marrier*, or *pur faire Fitz Chevalier?* By no Taillage, will you have it ſo, the King ſhall demand no Sum of Money? Then if you will give it this large Conſtruction, you will take away all Fines and Amerciaments that are due to the King, all lawful Impoſitions; and ſurely this was not the Intent and Meaning of this Statute: but it was only to take away all Taxes and Taillages that were unlawful. If they were lawful, this Statute meddled not with them.

Now that no Taillage is to be taken, it appears in the Parliament-Rolls, 13 *Hen.* IV. *M.* 42. where an Office was granted by the King, with a Fee, for the meaſuring of Linnen-Cloth, that the Subject ſhould pay him a certain Sum of Money for every Piece meaſured; whereupon at the Parliament, the Commons complain, that this was an unjuſt Impoſition, and they deſire that they might not be charged with this kind of Taillage, which, as was apparent, was unjuſt, and ſo they had preſent Relief againſt it.

The next Act of Parliament is 14 *Edw.* III. the ſecond Parliament of that Year, three Parliaments being held that Year. The Commons grant the King a certain Sum of Money, for the great Buſineſs he had as well on this ſide the Sea, as beyond; but after a Ceſſation of the Troubles, then the King is to be at the charge of the future Defence; thereupon the King granteth this ſhall not be had in *exemplum*, and that they ſhall not afterwards be taxed without Parliament: and this is the ſtrongeſt thing that I have heard objected.

It requireth a good Anſwer; the Words are plain, no Charge no Queſtion; but this is a Charge. I looked into the Petition of Right, and it is not there mentioned, nor amongſt thoſe Acts of Parliament that are in the Margin; but the Reaſon why it was omitted, I know not.

I obſerve in this Act of Parliament a ſubſequent Clauſe, that will go far to the anſwering of this Objection; for neither in the Acts of Parliament, nor in the Petition of Right, is there any mention made of the Defence of the Kingdom; if the King had been bound to defend the Kingdom, could the Parliament have accepted this as a Kindneſs at his hands? 14 *Edw.* III. This Act was made, yet the Aids continued; none of theſe Writs found till 24 *Ed.* III. *Rot. Franc.* 24 *Ed.* III. *M.* 9. & 26. there went out Commiſſions to array Men, to the Counties of *Suffolk*, *Dorſet* and *Somerſet*, for the Defence of the Maritime Parts; within eleven Years after the making of the Statute, *Rot. Franc.* 26 *Ed.* III. *M.* 5. the like Writs to the Earl of *Huntington*, *Conſiderantes quod omnes incolæ tenuntur de jure ad defendend' in periculo*; and that they ſhall array the Men in this County, and to bring them *ad cuſtodiend' mare*; and by this it is recommended for the erecting of Beacons, which is the firſt Direction of that nature: So here is a new Charge, and within eleven Years after the making of the Statute. The ſame Year likewiſe there went Writs to the Sheriffs of *Nottingham*, *Derby*, *Salop*, *Berks*, *Middleſex*, *Bucks*, *Northampton*, &c. So tho' theſe Writs go almoſt into every County, and divers other Writs of the like nature, as *Rot. Franc.* 28 *Edw.* III. *M.* 34. yet as I ſaid, in no Act of Parliament extant, nor in any Writ that ever went forth that I can find, there is any thing appears to charge the King with the Defence of the Kingdom, and in all of them, no Diſtinction made between the Port-Towns, Maritime-Towns, Counties, and Inland-Counties; but that all of them are generally chargeable. And for the reſt of the Acts of Parliament, they are all mentioned in the Petition of Right, and therefore I paſs them over. There is in thoſe Acts, Proviſion againſt Loans and Grievances; but this Clauſe, for the Defence of the Kingdom, I find it mentioned in no Act of Parliament but this of 14 *Ed.* III. before mentioned.

I will now come to the Petitions in Parliament. *Rot. Parl.* 13 *Ed.* III. *M.* 9, 11. It was there declared to the Commons, that the *French* had invironed the Iſland of *Guernſey*, and all this was for Default of a Navy upon the Sea; and therefore it was needful to conſider how this might be regained. It was anſwered by the Commons, That concerning the Right and Guard of the Sea, they deſire to give no Advice, ſaying, they have no cognizance of Things concerning the Sea; but if there be Occaſion, the Cinque-Ports are to be charged: and ſaid further, that in the Marches of *Scotland*, they were to defend the Kingdom againſt the *Scots*: But that this kind of Defence ſhould lie upon them, was never heard of.

I will give you an Anſwer to your Acts of Parliament, and Petitions of Parliament, by putting of a Caſe. I will admit you have an Act of Parliament as ſtrong as you can make it, that the whole Charge of the Defence of the Kingdom ſhould lie upon the King, and not upon the Subject, in caſe of any ſudden Invaſion. Admit there was a greater Power at Sea, than the King was able to make Defence againſt; then, I pray, whether ſhould this not give way to the preſent Neceſſity, or the Kingdom ſhould be loſt? Is it not better to endure a Miſchief, than an Inconvenience?

If you ſay, the Acts of Parliament ſhould give way to Neceſſity, then you have anſwered all you have objected.

This is not the only Caſe of Neceſſity. I ſhall put you another Caſe, when Acts of Parliament muſt give way to Neceſſity: That if a Man be attainted of Treaſon, he is diſenabled to inherit by Act of Parliament; but if the Kingdom ſhould deſcend to ſuch a Man, then the Act of Parliament ſhould give way to it. And ſhall not the Acts of Parliament give way to Neceſſity for Defence of the Kingdom? What tho' there have been Petitions in Parliament to have it decreed, that this kind of Charge ſhould not be laid upon the Subject? Admit it had been ſo decreed in Parliament, yet by the Law of Equity they ought to be charged; and in all Reaſon they ought to be charged towards the Defence of the Kingdom; and that for three Reſpects.

1. For the Reaſon given in the Writ, *Quod omnes tangit per omnes debet ſupportari:* which is but Equity.

2. The King is truſted with the Defence of the Kingdom, and therefore 'tis fit he ſhould have Means wherewith to do it.

But you ſay he may call a Parliament, and they will give him Means wherewith to do it.

'Tis true, this Thing in queſtion, if it had been done by Parliament, it had been done by the happieſt Means; but becauſe he might have it by Parliament, muſt he therefore have it no other ways? The Queſtion now is, Whether what is done, may be done without a Parliament or no? What is done, is done by the Great Seal, which is the next Authority to a Parliament. What if an Enemy had come before the Parliament had met, or before they had granted any Aid, ſhould the Safety of the Kingdom depend upon ſuch Contingencies? God forbid. Will you have Forces on both Sides, and reſtrain the King to his Power by Parliament, which may be ſo dilatory, that the Kingdom may be loſt in the mean time?

3. Many Inconveniences might happen both to the King and Subject, if this ſhould be ſuffered: If the King ſhould be reſtrained of his Royal Power, it would turn to his Contempt, both at home and abroad: And all this while the Matter is not ſo great, it is but parting with a little Money *ſecundum ſtatum & facultates*.

It is true, as Mr. *Holborne* hath ſaid, That in former Times they have been careful not to leave too much Power to the King; but you would leave ſo little as would bring him in Contempt both at home and abroad. The worſt that comes to the Subject, is but to yield their Help to the King, in ſuch Times of Danger, with a ſmall part of their Eſtate; and then it would make foreign Nations that know of it afraid of us, which now by this Occaſion have Encouragement to attempt that which otherwiſe they would not.

It hath been objected, That if the King may raiſe Moneys in this manner, many Inconveniences would follow, and it would be a Means to keep back Parliaments.

To this Objection I anſwer, It is no Means to keep back a Parliament; for there are many other Cauſes of calling a Parliament, beſides for the Defence of the Kingdom: as, For making good Laws, redreſſing of Grievances, &c. The King may be engaged in a Foreign War, and the Subject muſt help him. But to call a Parliament always is not neceſſary; for when the Kingdom was in the greateſt Danger that ever it was, as in 88, and the Rebellion in the *North*, yet no Parliament was called in either of theſe Dangers.

Next they object, That if this Courſe be admitted, the King may pretend a Danger when there is none; or a great Danger, when it is but ſmall: and ſo may raiſe a great Sum of Money, and the Subject ſhall have but little Benefit thereby.

I ſhall give three Anſwers to this Objection.

1. If this Power be in the King, and that Power be juſt and equal, then it is not to be taken from him, becauſe he may miſemploy his Power. If he miſuſe his Power, the Fault is his.

2. This Objection cannot be made, unleſs you ſuppoſe Injuſtice in the King: Make what Laws you will, if the King be unruly, he will break thro' them.

3. If it ſo falls out, that the Writ going out upon this Pretence, and that great Sums of Money are levied, and the Moneys employed to another Uſe, it were a great Inconvenience; but in this Caſe there is no ſuch Fear, for the Writ is expreſsly to make a Ship; and if they would have taken any Advantage upon that, the Counſel ought to have pleaded it, and the Judgment ought to appear there upon Record. There appears no Money in this Caſe to be coming to his Majeſty's Hands; but it is ſaid in the Writ, *volumus autem, &c.* we will that no part of the Money be converted to another Uſe than to the building of a Ship.

Then they object, That by the ſame Reaſon the King commandeth his Subjects to provide one Ship now, he may command two Ships the next Year.

To this I anſwer, If the Danger be greater, the Defence muſt be greater, and then the Supply muſt be greater; and no Man can ſuppoſe that the King will impoſe that on his Subjects when there is no need.

I ſhall now come to the two laſt Exceptions. *Firſt*, That the Power cannot be given to the Sheriff by the Writ 4 *Aug.* to tax every Man *ſecundum ſtatum & Facultates*; that this is too great a Power to be committed to the Sheriff.

To that I anſwer, That I conceive the Sheriff to be the fitteſt Man, and moſt indifferent for that Purpoſe; for if there were Commiſſioners, or many Men appointed for doing thereof, they might perchance be partial to their Friends: And the Sheriff having all the Freeholders Names, and the Bailiffs for his Miniſters, that know the Eſtates of moſt Men; therefore out of all doubt he is the fitteſt Perſon.

For the Exception to the *Scir' Fac'* it hath been objected, That the King cannot by that Courſe levy Moneys, becauſe the King having no Intereſt in the Money, he cannot levy it by *Scir' Fac'*; neither doth it appear in the Writ, to whom this Money is to be paid.

I confeſs this Point, tho' not ſpoken to by the Defendant, is of moſt Difficulty.

Tho' no Perſon certain is named, to whom this Money is to be paid, and the Sheriff is only to levy it according to the Writ, and the King providing a Ship, I ſuppoſe that *Scir' Fac'* may iſſue for it; for if a common Perſon claim any thing, or be wronged, or debarred from his Right, he hath, by the Law, a Writ for his Remedy: and ſhall not the King have the like Remedy for this Ship, being for the Defence of the Realm in general, for which he is intruſted, to prevent a Wrong to be done to this Common-wealth?

But in this Caſe, the *Scir' Fac'* is not for Mr. *Hampden* to ſhew Cauſe, why he doth not pay the Money to the Sheriff; but, why he doth not pay the Money he was aſſeſſed towards the making of the Ship; which, for aught I know, when it hath done the Service, is the Subjects' again, at whoſe Coſt it was provided, for they might either have hired a Ship or bought a Ship. In *Fitz-Her. Na. Br.* it is held, the King may, for the Good of his People, ſend forth Writs for removing Common Grievances, and for repairing of Bridges, and the like: And why may not the King ſend forth Writs for ſo neceſſary a Service as to defend the Kingdom? *Clauſ.* 1 *Rich.* II. *M.* 7. A Writ went out to the Mayor and Bailiff of *Oxford* to repair the Walls and Ditches about the Town; and why not as well to repair the wooden Walls of the whole Kingdom, as the Walls and Ditches of a Town? The King hath Charge and Power over all, to ſee all done.

But it hath been ſaid, When this Money is gathered, we know not what becomes of it.

I anſwer them with the common Roll in *Scacc'* 24 & 25 *Ed.* III. where a Commiſſion went forth to levy Money for Maritime Defence, but what was done thereupon is not expreſſed. But at that Time there was a Cauſe adjudged in the Exchequer, it is a *Norfolk* Cauſe, where divers being commanded to go to the Wars againſt the *Scots*, and had thereupon Armour and Wages allowed them; afterwards comes a Counter-command to ſome of them not to go, and two Men that had Wages went not. Whereupon a Writ went out againſt them, and the Jury found the one Guilty, and he was ordered to pay back the Money; but the other going to the Wars, afterwards, by a ſecond Direction, was quit: And the firſt gave Security for the Repayment of his Wages, being 30*s.* and alſo for the Armour.

It hath, *Laſtly*, been objected, That this Taxation ought to be *ſecundum legem & conſuetudinem Angliæ*; and that ought not to be by Writ, but by Parliament.

To this I anſwer, That from King *John*'s to *Henry* the Fourth's Time, there hath been an Uſage and Cuſtom to ſend forth Writs of this Nature, and ſince that Time till now not the like Command.

About *Henry* the Fourth's Time, began your Tonnage and Poundage; ſo long as he had that, the Defence was at his own Charge. There is no Act for taking this Charge by Writ away; it is become a general Cuſtom, and the general Cuſtom makes the Law of *England*; and we are to examine and try new Cauſes by the old Law, and now compare this with what hath been done in former Times.

I ſhall make an end: For my own part, I am perſuaded in my Conſcience that there is imminent Danger: I am ſatisfied in it, both by the King's Writ, and that which is apparent to every one; and there is a Neceſſity this Danger ſhould be prevented. I do conceive this Writ to be grounded upon this Danger of Neceſſity; and that the Danger appears ſufficiently in the Writ.

Therefore I conceive that the Proceedings are legal, and that there is good and ſufficient Cauſe to charge Mr. *Hampden*, and that he ought to pay the 20*s.* aſſeſſed upon him.

The Argument of Sir Edward Crawley, *Knt. one of the Juſtices of Common-Pleas, in the* Exchequer-Chamber, *in the great Cauſe of Ship-Money.*

THE Record hath been opened, therefore I ſhall ſpare that Labour. I conceive the Caſe in Queſtion to be this:

Whether the King, by his Right of Sovereignty, may charge the Subject, in Caſe of Neceſſity, to contribute with him to the neceſſary Defence of the Kingdom, without the Subject's Conſent in Parliament?

Mr. *St. John*, whom I take to be the Mouth of the Defendant's Counſel, confeſſeth, That this Queſtion is not ſo much *de re*, of Neceſſity, but *de modo*, if done without Parliament.

This is one of the greateſt Caſes that ever came in Judgment before the Judges of the Law. The King's Right and Sovereignty, in a high Point, is concerned, and the Honour and Safety of the Kingdom, on the one Side; and the Liberty of the Subject, in the Property of his Goods, on the other Side.

This is the firſt Cauſe that ever came to Judgment of this kind, that I know of. Kings have not ſuffered their Rights of Sovereignty to be debated at the Bar, as now it is; for theſe are *Arcana Regni*, not fit for publick Debate. The Uſe of Law was to have Cauſes debated; as ſaith one, No Man knows what Metal the Bell is of, untill he hears it ring. This Bell hath been rung very roundly and laboriouſly on both Sides.

The Subjects have objected, That they may bring Actions againſt Officers of the King for Aſſeſſments by virtue of this Writ. But for that I find no Precedents, ſave only one, which is 25 *Ed.* I. the Abbot of *Robertſbridge*'s Caſe; and he was taxed double for this Matter of Defence of Sea and Land, in two ſeveral Places: and therefore he brought his Action to be diſcharged in one Place. But in Caſes of this Nature, they petitioned in Parliament to the King for Redreſs, as appears by many Precedents.

In *Bracton*, who wrote after *Hen.* III.'s Time, and inclined to thoſe Times when the Liberty of the Subject was ſtrongly maintained, he ſaith, *Totum Regnum petatur*, &c. They uſed to petition the King; but now you have Actions brought againſt the King's Officers in the *King*'s-*Bench*, *Common-Pleas*, and here in this Court; and it pleaſeth the King to bring this *Scir' Fac'* to the End that the Right of this Cauſe may be tried by the Judges of the Law.

In 11 *Rep.* and *Coke*'s *Comment. on Littleton*, *fol.* 10. it's ſaid, That the Laws and Cuſtoms of the Parliament are obſcure: *Lex eſt conſuetudo Parliamenti, quærenda eſt ab omnibus, ignota a multis, & cognita a paucis.* As *Tully* ſaid of one that would define *Anima*, and ſaid it was *Muſica Harmonia*, that was, a Muſician, *Homo non multum receſſit ab arte ſua:* I, for my own part, will keep myſelf to my own Art of the Books of the Law and Statutes. And if I uſe the Help of others, I hope you will pardon me for that.

I will briefly propound my Order and Method, thro'out the Caſe. 1. I will remove ſome few impertinent Diſcourſes, which are not in the Record, as being out of the Ring of this Bell.

2. I ſhall propound, that the ſole Care of Defence, at Sea and Land, *Jure Regio*, appertains to the King, and none other; and that he is the ſole Judge of this.

3. That the ſole Charge of Defence, in ordinary Caſes, regularly and legally appertaineth to the King.

4. That the extraordinary Charges of Defence ought to be ſupplied by the Parliament, and upon this Rule, *Quod omnes tangit ab omnibus debet ſupportari.*

5. If the Defence be of Neceſſity, and the Danger great, and ſo great as the King's Revenue is not ſufficient to ſupply the Occaſion, then the Rule comes to be in Uſe, *Qui ſentit commodum ſentire debet & onus*; and if it be general, *Quod omnes tangit, ab omnibus debet ſupportari.*

6. That in the Defence, where all ought to join, the Sea and Land ought to aſſiſt and contribute the one to the other.

7. I ſay, there are ſome particular Caſes, in which this Charge of Defence cannot be impoſed by Parliament.

8. That the King ſolely is intruſted, by the Law, to impoſe this Charge upon the Subject.

And, 9. Theſe being my Generals, I ſhall come to my Minor, and conclude that this Charge is juſtly impoſed by the King, without Parliament.

As to the firſt Impertinency, you ſpeak of Tonnage and Poundage: Is there any ſuch Grant on Record? Shall we take notice of a Thing that is not *in rerum Natura?* I ſay, I wiſh it had been granted, for *Qui adimit medium demit finem:* He that taketh away the ordinary Means of Preſervation, is the Author of Ruin and Deſtruction. You ſee it is taken, but you cannot tell by what Right. If this were material, you wronged your Client, you pleaded it not: and if it is not material, you wronged us, and your Auditors, and yourſelves, to talk of it.

You ſay, This Ship-Money hath been charged for theſe three Years together; Is this Diſcourſe within the Record? If not, you ſpeak without Book.

You ſay, The King hath impoſed great Sums of Money upon Merchandizes: But what is this to the Buſineſs now in queſtion?

Then you talk of a Property the Subject loſeth thereby; but this rather to abuſe the People, without either Colour or Shadow. It was *ad faciendum*, or rather *inficiendum Populum.* If you at the Bar had not ſpoke it *Argumenti Gratia*, it could not but have proceeded out of the Depth of Malice, or Ignorance, or both. If one be found guilty of Murder, and the Judge knoweth the contrary, what ſhall be done? He ought to acquaint the King therewith; for it is the King's Right of Sovereignty to Pardon, but the Judge hath no ſuch Power. I ſay, the whole Care appertaineth to the King only, and he is the ſole Judge both of the Defence at Sea and Land. *Fitz. Na. Br. fol.* 113. *Le Roy de droit ſaver & defender ſon Realme al bien vers la Mere come vers les enemis.* Regiſt. fol. 127. *Rex, &c. pro eo quod nos Dignitatis noſtræ Regni ad providend' ſalvationem Regni noſtri circumquaq; ſumus aſtricti.* Forteſque cap. 37. *Omnes poteſtat' Regis deferre*, &c. *in defenſione & tuitione Regni.* I think no Man can well oppoſe this.

But we will come to the *Third.* The ſole Charge of the Defence regularly and legally appertains to the King. *Bract. fol.* 1. *In Rege, qui recte regit, hæc duo ſunt neceſſaria, Arma & Leges*, &c. with which Words accords *Juſtinian*, in his *Proœmium*, from whence that is taken in *Plowden*, *fol.* 315. in the Caſe of Mines. One Reaſon why he ſaith Royal Mines belong to the King, is, becauſe he is the Head, and the People his Members. And he is to preſerve the Subject two ways: by Arms, to defend them againſt all Hoſtility; and by Law, to preſerve them from Injuries. 3 *Rep. fol.* 11. The Body, Lands, and Goods of the King's Debtor were liable to Execution; *qui Theſaurus Regis eſt Pacis vinculum & Bellorum nervi*, *Rep.* 11. The King's Treaſure is the Ligament of Peace, the Preſerver of the Honour and Safety of the Realm, and the Sinews of War; and is of high Eſtimation in Law, in reſpect of the Neceſſity thereof; that the imbezzling of Treaſure Trove, tho' not in the King's Cheſt, is Treaſon. And Treaſure, and other valuable Things, are ſo incident to the Crown, that they cannot go from the Crown. He hath on the Land, Wardſhips, Eſcheats, Amerciaments, *&c.* for the Maintenance of his Honour and Dignities Royal. For the Sea he hath Whales, *&c.* Theſe do little towards an Army to defend the Sea. The Reaſon why the King hath the Cuſtoms, is for the Protection of Merchants upon the Sea, againſt Pirates and Enemies of the Realm. So I ſhall conclude this Point, That the ordinary Defence, both for Care and Charge, of Sea and Land, doth appertain to the King.

The next is this, which is my *Fourth* Head; That the extraordinary Charge of Defence regularly ought to be ſupplied by Parliament, and cannot be done without it. Albeit Subſidies be of Gift and Grant, yet this is of Right and Reaſon; the King is *Pater Patriæ.* If the Son give to the

Father when he wants, it is his Duty. 19 *Hen.* VI. the Rector of *Cheddington*'s Caſe, whether the King may grant a Diſcharge of a Fifteenth? If the King may grant a Diſcharge to one, ſo he may do to all. It is againſt Law the King ſhould not have Subſidies of his People, in caſe of Neceſſity and Danger; the ſame Law that willeth the King ſhould defend the People, tells us we ſhould grant to the King Aids for the Defence. This is to be done in Parliament regularly; and that this extraordinary Charge cannot be impoſed but in Parliament, theſe are their Objections.

I come now to the Statute *de Tallagio non concedendo*, which without queſtion is a Statute, being in our printed Books; and in the Petition of Right, 3 *Car.* it is recited as a Statute, and eſtabliſhed: the Words of that are, *Nullum Tallagium ſine aſſenſu Parliamenti.* And 14 *Ed.* III. *cap.* 1. there the King expreſſes himſelf, he will not impoſe any Charge or Aid on the Subjects, but in Parliament. *Forteſcue* reciteth this to be the Law, No Charge without Parliament. And *Bodinus*, *lib.* 1. *fol.* 97. ſaith, "That the Statutes of *England* are as a Buckler to defend the Subject "againſt the King, for laying any Charge upon them but by Parlia-"ment." And in his ſixth Book he magnifieth this Kingdom for the due obſerving this Law. Other Kings, in this Point, have no more Power than the King of *England*, for that it is not in the Power of any Prince in the World, and his Pleaſure, to raiſe Taxes on the People, no more than to take another Man's Goods from him. And yet, nevertheleſs, if the Neceſſity and Danger of the Commonwealth be ſuch, as it cannot ſtay for the calling of a Parliament, the King in his Wiſdom and Foreſight may lay a Charge without their Conſent; and this is by the Law of *Jus Gentium*, the Rule of Law and Reaſon holdeth *quod omnes tangit ab omnibus debet ſupportari.*

And ſo I come to my *Fifth* Head, If the Defence be of Neceſſity, and the King's Treaſure doth not ſuffice to defray the Charge, then, inſtead of the Rule *quod omnes tangit*, &c. this Rule ſucceeds, *qui ſentit commodum, ſentire debet & onus.* If the Treaſure of the King will not defray the Charge, I do not conceive he is bound to ſell or pawn his Crown, or his Lands, tho' ſome Princes have been ſo courteous to do it, and paid it again.

You ſay at the Bar, He muſt ſpend all, and more if he had it. I will put this Caſe in the 10th *Rep.* One is bound at the Common Law by Preſcription to repair a Wall againſt the Sea, yet in caſe of Neceſſity, in Avoidance of publick Miſchief, the Preſcription ceaſeth; yet in this Caſe, if Reparation muſt be done, then cometh this Rule, *quando Impotentia excuſat, tunc qui ſentit commodum ſentire debet & onus.* And if he be not able to do it, the Charge being ſo extraordinary, ſhall he not have Contribution? The Law compelleth not Impoſſibilities. So the King is bound to defend the Kingdom by Land and by Sea: but if the Defence be ſo great, and the Danger tends to the Subverſion of the Kingdom, and the King not able to make Defence, the King and his Subjects ought to contribute to this Charge, in due Proportion. *Ubi eſt eadem ratio, ibi eſt eadem lex.* If the Law ſhall make this Proviſion for a ſmall Level of Ground, *à fortiori* for the Commonwealth, in the Time of extraordinary Danger and Neceſſity.

Sixthly, In this joint Charge of Defence, the Land ought to aſſiſt the Sea: nay, it is not poſſible that any Iſland ſhould be defended without Wooden Walls of the Navy at Sea. *Canutus* the *Dane* enter'd the *Thames* Mouth with an Army, and afterwards went and landed in *Dorſetſhire*; and again ſhipped his Men, and enter'd the *Severn:* then he went into *Worceſterſhire*, then he failed back again to other Parts of the Kingdom: ſo he that is Maſter of the Sea, may make great Spoil upon the Land at Pleaſure. The *Netherlanders* having a great Navy, the *Spaniards* fortified ſtrongly; as ſoon as the Wind ſerved they ſet ſail, and were Fourſcore Miles off before the *Spaniards* could march with their Forces to make Reſiſtance; the *Netherlanders* preſently got a ſtrong Place, and afterwards ſailed to another Place, and took that alſo. Theſe are no new Examples, for Iſlands to be Maſters of the Sea. Our Grand Army in 88, at *Tilbury*, what Good had they done, if the *Spaniards* had been Maſters at Sea? It is not poſſible for an Iſland to be ſafe, without a Navy at Sea, as appeareth in Sir *Walter Raleigh's Hiſtory of the World*; and if the Sea muſt defend the Land, why ſhould not the Land be contributory for the Defence of the Sea and Land? There are ſeveral Precedents where Writs have gone to Inland Counties, to charge them to go to the Cuſtody of the Sea. *Clauſ.* 48 *Hen.* III. 24 *Ed.* I. 26 *Ed.* III. *&c.* Writs have gone into *Berks*, *Oxon*, *&c.* Inland Counties, to command them to contribute towards the Defence of the Sea.

To the *Seventh*, That in caſe of inſtant Danger, the Impoſition cannot be by Parliament, I will here conſider the Nature of the Danger, as Mr. Sollicitor readily purſues it; if it concerns the Eſſence, Subverſion, Deſtruction and Ruin of the Kingdom, or the Diſhonour of the Kingdom, *Quando Hannibal ad Portas*, for the Senators then to ſit down in their Robes, is rather a Charge to the Commonwealth, than aught elſe. It is no Time then to call a Parliament, no well-adviſed Man will think it fit; here are *Pericula viſa*, the Danger is certain, none will ſay it is fit to call a Parliament.

This Kingdom of *England* hath been four Times conquer'd, and therefore we have Reaſon to foreſee the Danger; firſt, by the *Romans*, then by the *Saxons*, then by the *Danes*, and laſt by the *Normans.*

The Moraliſts do make three Parts of Providence. 1. *Memoria præteritorum.* 2. *Perſpicientia præſentium.* And, 3. *Providentia futurorum.* It much concerns the King, the Head of the Commonwealth, to be circumſpect in the Prevention of publick Danger; Conjectures and Probabilities are to be regarded. Now put the Caſe upon a probable and violent Preſumption; a potent Enemy is prepared and ready to come. Is it not fit there ſhould be a Defence prepared inſtantly? Beſides, there may be juſt Reaſon of State, why an Enemy is not fit to be revealed in Parliament; for if great Preparations be, and very probably againſt us, then to diſcover them to be an Enemy, is to give them occaſion to become a Challenger. No Man can know the certain Event of Things. One may be a Friend, in ſhew, to the Kingdom, or a Neuter, not yet openly diſcover'd; yet we may be miſtaken in our Opinion of them. I leave this to your Conſideration, whether it be fit, or no, to diſcover our thoughts, in Parliament, of an Enemy?

The *Eighth* Thing is, That in theſe Caſes, of Neceſſity and Danger, the King *Jure Gentium* may charge the Subject, without his Conſent in Parliament, by his Regal Prerogative; for in the King there are two Kinds of Prerogatives, *Regale & Legale*, which concern his Perſon, Lands and Goods.

Now for the Prerogatives Royal of a Monarch, they may be reſembled to a Sphere; the *Primus Motor* is the King. It is obſerved, that every Planet but one hath a little Orb by itſelf, that moveth in its petty Compaſs: So the Center is the Commonwealth, the King is the firſt Mover. I will repeat ſome of theſe Prerogatives, for they are by all Laws, and by our Laws.

The firſt Regal Prerogative is this, that containeth all the reſt, That the King may give Laws to his Subjects: and this doth not detract from him, when he doth it in Parliament. 2. To make Peace and War, 19 *Ed.* IV. 6. 3. To create ſupreme Magiſtrates. 4. That the laſt Appeal be to the King. 5. To pardon Offences. 6. To coin Money. 7. To have Allegiance, Fealty, and Homage. And, 8. To impoſe Taxes, without common Conſent in Parliament. Theſe are the principal, and there are many more of them, and allowed by Law. *Comines*, *fol.* 179. ſaith, "That "if the Cloud be ſeen but afar off, the King, without the Conſent of the "Subjects, cannot tax them; but if the Cloud be over-head, the King "may call certain wiſe Perſons to him, and tax his Subjects."

You ſay, That if the King doth move a War Offenſive, there's Time enough to call a Parliament; if Defenſive, the Cloud is ſeen long before.

But, oh, good Sir! is this always true? Is not the Cloud ſometimes even over the Head, before deſcried? If you read *Comines*, he will tell you, That in Times of Peace we ought to fortify. "But in theſe Caſes, where "the Danger is imminent, ſaith *Bodinus*, *lib.* 1. *cap.* 47. the King ought "not to expect a Parliament, but is to raiſe Moneys ſuddenly, and ſuch "Impoſitions laid upon the Subjects are juſt and neceſſary." This is the Opinion of thoſe Writers, who wrote not according to the Law of any one Kingdom, but according to the Law of Reaſon. I could vouch theſe two Authors, concerning the Right of Sovereignty which they gave to Kings, to impoſe Charges on the Subjects, without Conſent of Parliament, in Time of Neceſſity.

But what if the King will levy Money, upon Pretence of Defence, in time of Danger, and diſpoſe of it otherwiſe, and the Danger not ſo apparent?

I ſay, ſo pious and juſt a King will never pretend a Danger, if it were not *Re vera.* And if any Man will think the King will charge himſelf and his Subjects to no Purpoſe, far be it from my Thoughts to think ſo. This Money, thus taxed, is employed accordingly, for the Defence of the Kingdom, together with the King's own Money; which he would not do upon Pretence.

Again, The King is *Pater Patriæ*, therefore, by the Law of Nature he is intruſted with the Defence of the Kingdom: and this Power to tax his People, is but a Conſequence of that.

To ſay, in Time of extraordinary Danger and Neceſſity, *Boni viri ſunt ſibi leges*, I ſay, for every Man to be his own Judge, is for every Man to do what he liſteth. Mr. *Holborne* tells you, That if it reſts in the King's Power thus to tax the Subjects, whereas Mr. *Hampden* is now taxed 20*s.* he may the next Year be taxed at 20*l.* for, ſaith he, "If the King may tax "when he will, then he may what he will." It's an ill Conſequence you make of it; you magnify Parliaments, great Reaſon we have for it; let us do ſo of Kings: let none think diſhonourably of Kings; no queſtion they will regard the Laws of God; and to make ſuch Objections, is not handſomely handled.

Now we come to Precedents, and Acts of Parliament. For Precedents, my Brother *Weſton* hath taken Pains to repeat them, therefore I ſhall not.

Two Precedents the Defendant's Counſel have much relied on, *Rot. Parl.* 2 *Rich.* II. *pars* 1. I have here the Record; and in truth, it were a great Eaſe to the Judges, and to the Cauſe, to avouch them truly. This of *Richard* II. was in his Minority; and no Order being taken for the Defence of the Kingdom againſt the next Summer, nothing was found in the King's *Exchequer:* a Council was called, and for Concluſion, they ſay, They cannot remedy this Miſchief without a Parliament: whereupon a Parliament was called; and in the mean time the King having Moneys lent him, he gave Security to repay it.

Conſider this, the King was at this Time but an Infant; it was in a very troubleſome Time, many of thoſe that were Parliament-Men made Default to attend, excuſing themſelves, that they had other Buſineſs. This then that was done was but a Reſolution in troubleſome Times; this is no ſuch binding Buſineſs, that it ſhould be made ſo much of.

And *Rot. Parl.* 2 *Hen.* VI. *M.* 22. a Commiſſion went forth for the providing of Barges; and the Commons petitioned to avoid this Charge, and pray'd that the Commiſſion might be repealed. And the King upon this calls in the Commiſſion. Shall this be a Diſclaimer of the King's Right? He ſaith, he will ſpeak with his Lords. This is only a ſatisfactory Anſwer. Beſides, the King was but an Uſurper. Now to ſay this Anſwer of the King's is a Reſolution in the Caſe, is a great Miſtake.

He that will go through this Load of Precedents that have been vouched on both Sides, he had need to have more Time than Mr. *Holborne*, who ſpent four Days.

You have alledged Precedents both before the Conqueſt and ſince: that of the *Danegelt*, tho' it was a heavy Yoke, yet it was neceſſary to be borne: whether it was granted by Parliament or no, *non conſtat.* I ſay, it is a good Precedent, and I hold it good without Parliament.

Some diſtreſſed Kings, as King *John*, *Henry* II. and *Richard* II. they did indeed do that by borrowing, which they might have took of Right.

Now, to give an Anſwer to the Statutes of 25 *Ed.* I. and 14 *Ed.* III. and the Petition of Right of 3 *Car.* Admit, I ſay, there were an expreſs Act, That the King, were the Realm in never ſo much Danger, ſhould not have Aid from his Subjects, but in Parliament, it is a void Act; will any Man ſay ſuch an Act ſhall bind? This Power is as inſeparable from the Crown, as the pronouncing of War and Peace is: ſuch an Act is manifeſtly unreaſonable, and not to be ſuffered; ſaith *Doctor and Student*, To follow the Words of the Law, were, in ſome Caſes, Injuſtice, and againſt the Good of the Commonwealth; wherefore, in ſome Caſes, it is neceſſary to leave the Words of the Law, and to follow that which Reaſon and Juſtice requireth: and to that Intent Equity is ordained, which is no other but an Exception of the Law of God, or Law of Reaſon, from the general Rules of the Law of Man: Which Exception is tacitly underſtood, in every general Law. This Impoſition without Parliament appertains to the King originally, and to the Succeſſor *ipſo facto*, if he be a Sovereign in Right of his Sovereignty from the Crown. You cannot have a King without theſe Royal Rights, no, not by Act of Parliament.

Again, Theſe Acts bind not, for that a favourable Conſtruction, in Caſe of the King, is to be had in all Caſes, *Doctor and Student*, *fol.* 27. 'Tis not poſſible to make any general Rule in Law, but it ſhall fail in ſome particular Caſe: If a Law were made in a City, That no Man, under pain of Death, ſhould open the Gates of the City before Sun-riſing, yet if the Citizens, before that Hour, flying before their Enemies, came to the Gates of the City, and one, for ſaving the Citizens, open the Gates before the Hour appointed, yet he offendeth not the Law, for that Caſe of Neceſſity is excepted from the ſaid general Law by Equity. So for the Statute in *Edward* the Third's Time, not to give any Relief to a ſturdy Beggar, upon Pain of Impriſonment; yet if one relieves him with Clothes in the Extremity of cold Winter, to ſave his Life, he ſhall be excuſed by the ſame Statute. By ſuch an Exception of the Law of Reaſon and Equity, as aforeſaid, is this Power reſerved to the King.

Impoſſibilities are to be excepted out of all Laws: *Nemo tenetur ad impoſſibilia.* Poverty and Impoſſibilities, as one anſwered, were more mighty Goddeſſes than either Force or Love.

But now you will ſay, Where is this Danger? How doth this Neceſſity appear? If you would find it, you need not to enquire for it either by Sea or Land; but in this very Record, the Writ ſheweth, and the moſt favourable Conſtruction is to be had for the King; as in *Plowden*'s *Comment.* 336. the Caſe of Mines of Gold and Copper.

Now all this while I have been in the General, and in a manner in Propoſitions; I come now to Application. Before I deſcend to it, I ſhall ſhew upon what Part of the Record I ſhall ground my ſelf. Tho' in the *Mittimus* it be *Salus Regni periclitabatur*, which is ſaid to be metaphorical, for that it aſketh no great Anſwer; it is good enough, as in the Writ of *Oyer* and *Terminer*, *omnes qui habent damnum vel ſalvationem*, are bound to contribute. Will you bind the King to the Language of *J. S.*? May he not expreſs himſelf in what legal Manner he pleaſeth?

You ſay, That this Phraſe of *Salus Regni* is too general: If it be alledged, and you demur upon it, you confeſs this for the moſt Advantage for the King; as in the Caſe of Mines. It is not alledged in the *Scir' Fac'*; this might have been made a good Queſtion.

But without all theſe, I conceive the Writ 4 *Aug.* containeth the Cauſes for this great Preparation, and expreſſeth them in particular. What if it were no more but this, Leſt we ſhould loſe the Dominion of the Seas? What is it to be called *Dominus Maris*, and not to maintain it, but to ſuffer this Princely Honour to periſh, and others to become Maſters of it? What Havock and Confuſion would follow? And this is the true Intention of the iſſuing forth of this Writ.

Next, *Conſideratis etiam periculis*, &c. that is, The Danger is ſo evident, and ſo great, in theſe warlike Times, that of Neceſſity Defence muſt be made, both by Sea and Land.

Next is great Oppreſſion uſed at this Time, *Datum eſt nobis intelligi quod Prædones*, &c. that the Pirates do take and ſpoil our Merchants, carry our Men into Captivity: What will you ſay to this? Let them take our Men, and let us have a Parliament, and we will bring them home again: The Land was never without Thieves, nor the Seas without Robbers.

Next, *paratum periculum & preparans*, &c. Now theſe Ships go for the Defence of the Sea againſt this Danger, & *veſtrum & veſtrorum.* The Writ ſaith the whole Kingdom is in Danger, both by Sea and Land; and you have confeſſed this by your Demurrer.

But you complain before you are hurt, becauſe you have ſeven Months Liberty, a Parliament might be called in that Time: Now in this Time of imminent Danger, it is no Time to call a Parliament.

You ſay it hath continued for three Years. Put the Caſe the Danger continueth for three Years, and then ceaſeth, and then the King ceaſeth to lay a Charge, and the Danger begins again the next Year; what! Shall not the King require Aid as the Danger increaſeth?

And now to conclude, without Repetition: It doth appear by this Record, that the whole Kingdom is in Danger, both by Sea and Land, of Ruin and Deſtruction, Diſhonour and Oppreſſion; and that the Danger is preſent, imminent and inſtant, and greater than the King can, without the Aid of his Subjects, well reſiſt: Whether muſt the King reſort to Parliaments? No. We ſee the Danger is inſtant, and admits of no Delay. Shall we go home, and ſit together in careleſs Security? Not ſo. But let us reſort to our pious and juſt King, whoſe Prerogative and Right of Sovereignty is to defend the Realm, and to maintain his Subjects Liberties. And ſo I give Judgment for the King.

The Argument of Sir Robert Berkley *Knt. One of the Juſtices of the Court of* King's-Bench, Feb. 10. 13 Car. 1637. *in the* Exchequer-Chamber.

The Caſe.

IN *Aug.* 11. of the King's Reign, there iſſued out of the Court of *Chancery* his Majeſty's Writ, directed to the Sheriff of the County of *Bucks*, and the head Officers of Villages and Burroughs in that County, & *probis hominibus*, that is, to all the King's good Subjects, *in omnibus Villis, Burgis, & aliis locis in Com' Bucks.*

I may call this Writ, a ſpecial Writ, or a Commiſſion upon the Caſe. It is not a *ſic volo*; it beginneth with divers weighty Reaſons or Cauſes, *pro ratione* of the iſſuing of it; as,

1. His Majeſty had Intelligence that certain Pirates, & *maris graſſatores*, as well *Mahometans* as others, were *congregati* upon the Sea, *quod ab olim per gentem Anglicanam defendi conſuevit*; and did daily rob and ſpoil the Ships and the Goods of the Subjects of the King, and of his Confederates, and did captivate the Perſons of thoſe whom they took.

2. His Majeſty did *conſpicere*, that thoſe Men did *navigia indies præparare, ad mercatores ulterius moleſtandos, & ad Regnum gravand' niſi citius remedium ponatur.*

3. His Majeſty did conſider the Perils, *quæ undique illis guerrinis temporibus imminebant, ita quod regi & ſubditis ſuis defenſioni maris & regni, omni feſtinatione, quâ poterit, conveniebat accelerare.*

4. His Majeſty's Royal Reſolution was, *Defenſioni regni, tuitioni maris, ſecuritati ſubditorum, & ſalvæ conductioni navium & merchandizarum providere.*

Maxime pro eo quod the King and his Progenitors *Domini maris predict' ſemper hactenus extiterunt, & plurimum tæderet Regem, ſi honor iſte regius ſuis temporibus diſpereat, aut in aliquo minuatur.*

5. Laſtly, his Majeſty called to mind a *Regula juris & rationis*; *Onus iſtud defenſionis quod omnes tangit, per omnes debet ſupportari, prout per legem & conſuetudinem Regni Angliæ fieri conſuevit.*

Upon theſe ſolid Reaſons, as upon a firm Foundation, the *Mandamus* of the Writ is grounded, and followeth in the next place.

The *Mandamus* is,

1. That all they to whom the Writ is directed, ſhould among them, *providere unam navem de guerra*, of ſuch a Burden, and with ſo many Men, and other Particulars, as are mentioned at large in the Writ.

2. That this Ship, ſo furniſh'd, be ready at *Portſmouth* by the firſt of *March* then following, and from that Time, for 26 Weeks, to go with his Majeſty's and other Subjects Ships, and to attend the Direction of thoſe to whom his Majeſty ſhould then commit the Cuſtody of the Seas, for Tuition of the Sea, and Defence of the Realm.

3. That all this be performed, *ad cuſtagia* of themſelves *tam in victualibus quam hominum ſalariis, & aliis ad guerram neceſſariis.*

After the *Mandamus*, an *Aſſignavimus*, or Commiſſion to the Sheriff and the head Officers cometh, and then Directions to them.

The Commiſſion to the Sheriff is *inter alia*,

That he ſhall make an Aſſeſſment *ſecundum facultates cujuſque*, for Contribution to the Expence of the Proviſions aforeſaid, ſhall appoint Collectors, ſhall levy the Money to be aſſeſſed (if it be denied) *per diſtrictiones alioſve modos debitos*, and ſhall *carceri mancipare* thoſe who ſhall be *contrarii & rebelles.*

The Directions to the Sheriff begin with a Clauſe of *Nolumus.*

The King forbids that the Sheriff ſhall levy more than is neceſſary for the Expences: That any Money levied ſhall be appropriate to any other Uſe, *quovis quæſito colore*: And then, laſtly, in caſe that more be collected than ſhall be uſeful, the King commands that Reſtitution be made of it.

After this Bill, 9 *Martii* 12 of the King (which is above a Year after the Ship ſhould have been ready at *Portſmouth*) a Writ of *Certiorari* iſſued out of the *Chancery*, directed to the ſeveral Sheriffs *pro tempore* of *Buckinghamſhire.*

That *Certiorari* recites the Writ of *Auguſt* 11.

And for that the King was informed, that ſome had not paid the Sums aſſeſſed upon them, but refuſed to do the ſame; the King commands the ſaid Sheriffs reſpectively to certify into the *Chancery* the Names of ſuch Refuſers, and the Sums aſſeſſed upon them.

The Sheriffs accordingly make Returns in a Schedule annexed to the *Certiorari.* In one of the Schedules there is, *inter alia*, *Stoke Mandevile*, Mr. *John Hampden* 1 *l.*

After this, by Writ of *Mittimus* out of the *Chancery*, teſted in *May* laſt, the Tenure of the Writ of *Aug.* 11. with theſe Words, *quod quidem brev' pro eo quod regn' noſtr' Angliæ & popul' noſt' ejuſdem periclitabatur emanari curavimus inter alia brevia ad hujuſmodi proviſionem, & aſſeſſament' faciend' per ſingulas comitatus Angliæ*, &c. And alſo this Record of the Writ of *Certiorari*, with the Return of it, and Schedule annex'd, are ſent into the Court of *Exchequer.*

By that *Mittimus* the King commands the Lord Treaſurer and Barons, *quod inſpectis* thoſe Records, they ſhould *facere ulterius inde pro levatione, collectione & receptione* of the Sums unpaid, *prout de jure, & ſecundum legem & conſuetudinem regni Angliæ fuerit faciend' & non aliter.*

By which *(prout)* but eſpecially by the *(non aliter)* the King's Honour and Care of Juſtice are ſingularly eminent; for the levying the Money anew is not commanded, nay, it is forbidden, unleſs *Jus, Lex, & Conuetudo Angliæ* do warrant it.

After this, and in the ſame Month of *May* laſt, the Barons awarded a Writ of *Scir' Fac'* into *Buckinghamſhire*, againſt thoſe whoſe Names are in the Schedule aforeſaid, thereby commanding the Sheriff to warn them to appear in the *Exchequer* by a Day, to ſhew Cauſe, if they can, why they ſhould not be charged with the Payment of the Sums of Money aſſeſſed upon them and unpaid.

The *Scir' Fac'* is always a judicial Writ; and certainly the Barons have proceeded very judicially and gravely, in awarding of it. In weighty Caſes, eſpecially, if they be not of common Impreſſion, proceeding *lento pede* is truly judicial.

Upon that *Scir' Fac'* Mr. *Hampden* is returned garniſh'd.

He appearing, and having heard the ſeveral Writs and Records beforementioned, without taking the common or any other Proteſtation, hath demurred generally.

The Words of his Demurrer are,

That *materia contenta* in the ſame Records, *minus ſufficiens in lege exiſtit ad ipſum onerandum.*

He doth not ſay, that *materia* is *minus vera*; but, acknowledging the Matter contained in the Writ to be true, he putteth the Cauſe *de bono & malo*, upon Sufficiency or Inſufficiency, in Point of the Law, for charging him.

Mr. *Attorney* for the King hath joined in Demurrer.

Upon this Demurrer, one main or grand Queſtion, and ſome other inferior Queſtions have been ſtarted.

Becauſe I have Time little enough for the grand Queſtion, I will not trouble you with arguing, or ſo much as ſingling out the other inferior Queſtions. My Brother *Weſton* hath ſpoken to ſome of them, I concur with him.

The grand Queſtion is ſhortly this.

Whether, as this Caſe is, or in this ſpecial Caſe, (as it is upon the Pleading) the Charges impoſed by the King upon his Subjects, for Proviſion of Shipping, without common Conſent in Parliament, be good in Law, yea or no?

This is a Queſtion of extraordinary Weight, of infinite Conſequence, the greateſt that ever came before Judges of ordinary Courts of Juſtice.

Qui ad pauca reſpicit, facile pronunciat; but he that will determine in this Queſtion, muſt *reſpicere ad multa, eaque magna & ardua.*

Upon the Debate of this Queſtion at the Bar; elaborate, learned and ſtrong Arguments have been made on either ſide.

And truly, for my Part, I have laid the Queſtion to my Heart.

All the Arguments which have been made in it, I have been preſent at, and ſpecially heeded.

All the Records which have been brought to the Judges, on either ſide, I have read over as ſeriouſly as I could.

I have likewiſe conſidered of the Reaſons and Authorities in Law, pertinent to this Caſe.

And upon my Pains, Deliberation and Study, I have concluded with myſelf, and in mine own Underſtanding am ſatisfied, and think I ſhall ſatisfy others, that as this Caſe ſtandeth, upon the Records in the Pleading, or in this ſpecial Caſe; the Charge impoſed is good in Law, and conſequently that Judgment ought to be given againſt Mr. *Hampden*, *Quod oneretur.*

For my clear Delivery and Expreſſion of my ſelf, I divide all that I ſhall ſay into theſe four Heads.

I. *I will ſtate the Caſe, and will ſettle the proper Queſtion of it, as the Pleadings are.*

(The true ſtating and ſettling of a Caſe conduceth much to the right Anſwer of it.)

II. *I will conſider the Policy and fundamental Rules of the Common Law, appliable unto that which upon ſtating the Caſe ſhall appear to be the proper Queſtion.*

III. *I will conſider the Acts of Parliament, the Anſwer to Petitions in Parliament, and the ſeveral* Magna Charta's *of the Liberties of* England, *which concern the King's Proceeding in this Caſe.*

IV. *I will anſwer the material Objections, which have been made on the other ſide.*

Upon my Firſt General Head.

I Hope that none doth imagine, that it either is, or can be drawn by Conſequence, to be any Part of the Queſtion in this Caſe, Whether the King may at all times, and upon all Occaſions, impoſe Charges upon his Subjects in general, without common Conſent in Parliament? If that were made the Queſtion, it is queſtionleſs, That he may not.

The People of the Kingdom are Subjects, not Slaves, Freemen, not Villains, to be taxed *de alto & baſſo.*

Tho' the King of *England* hath a Monarchical Power, and hath *jura ſummæ majeſtatis*, and hath an abſolute Truſt ſettled in his Crown and Perſon, for Government of his Subjects; yet his Government is to be *ſecundum leges regni.*

It is one of the Queſtions in the *Juramentum Regis*, at his Coronation, (ſee the old *Magna Charta*, *fol.* 164.) *Concedis juſta leges & conſuetudines regni eſſe tuendus?* And the King is to anſwer, *Concedo.*

By thoſe Laws the Subjects are not Tenants at the King's Will, of what they have.

They have in their Lands *Peodum ſimplex*, which by *Littleton*'s Deſcription is, *hæreditas legitima, vel pura.*

They have in their Goods a Property, a peculiar Intereſt, a *meum & tuum.*

They have a Birthright in the Laws of the Kingdom.

No new Laws can be put upon them; none of their Laws can be altered or abrogated without common Conſent in Parliament.

Thus much I ſpeak to avoid Miſapprehenſions and Miſreports upon that which I ſhall ſay in this Caſe; not as if there were Cauſe of ſaying ſo much upon any thing challenged on the King's ſide.

We have in Print his Majeſty's own moſt gracious Declaration, that it is his Maxim, That the People's Liberties ſtrengthen the King's Prerogative, and that the King's Prerogative is to defend the People's Liberties.

Secondly, Tho' Mr. *Hampden*'s Counſel have ſpent all their Powder in citing a Multitude of Records, beginning with one in King *John*'s Time, and ſo downwards, to prove,

That the King's Miniſters have paid, that the Barons have been by Writs commanded ſometimes to pay, ſometimes to make Allowances, } Out of the King's Moneys or Dues,

In Caſes of { Foreign, Auxiliary, Voluntary } Wars:

In Caſes of Particular or ordinary Defence of the Realm, as upon Rebellion of Subjects, or Inroads by Enemies, into Parts, Marches, or Maritime; ſuch Enemies I mean, as are not greatly formidable, as are apt to run away when they hear of any Force coming againſt them:

In Caſes of ſetting forth Ships, for ſcouring the Seas from petty Pirates, ſo that Merchants may have ſafe Paſſage:

In Caſes where Victuals, or other Proviſions, were taken from particular Perſons, by way of Purveyance, for Soldiers, or for the King's Army:

In Caſes of borrowing of Money by the King's Officers, for War, or ordinary or extraordinary Defence:

In Caſes of taking Money or Goods againſt the Owners Conſent, by Warrant, for the King's Uſe, for War, or other Manner of Defence:

In Caſes where particular Men's Ships, Horſes, or Armour, were loſt in the Wars:

In Caſes where private Men's Houſes were uſed in the King's Service:

Laſtly, in Caſes of general and extraordinary Defence, where the King had ſufficient Aids for that Purpoſe granted to him in Parliament:

Altho' I confeſs it be true, that the King in all theſe cited Caſes, muſt pay of his own, without impoſing upon the Subject; yet I ſay that thoſe Caſes come not cloſe to our Caſe: For every of thoſe Caſes hath a manifeſt, particular, and juſt Reaſon; but none of theſe Reaſons are appliable to the Caſe now in queſtion, as is eaſy to demonſtrate, if a Man would enter into every of theſe Particulars; which I forbear, for ſaving of time.

And theſe Records being taken away, the Multitude of the Vouchers on Mr. *Hampden*'s ſide will be greatly abated.

Thirdly, The Caſe of the ancient Tribute called *Danegelt*, of which Mr. *Hampden*'s Counſel hath ſpoken, tho' it come nearer than any of the former mentioned Caſes, yet it much differs from the Charge impoſed in our Caſe.

It hath been ſaid on Mr. *Hampden*'s ſide,

1. That *Danegelt* was not impoſed, but by common Aſſent of Parliament.

2. That after it was ſo impoſed, it was releaſed by *Edward* the Confeſſor.

3. That it hath been now ſo long uncollected, that it is ſcarce known what it was.

To the *Firſt* I anſwer, That the Proof urged that it was created by Parliament, is at the beſt but a Conjecture. It hath been ſaid, that the Words of *Leges Edw. Confeſſoris*, *c* 12. are in one Place, *Statutum eſt Danegeldum annuatim reddi*, &c. and in another Place, *Danegeldi redditio primitus inſtituta eſt*, &c. And *Statutum* is a proper Word for an Act of Parliament, a Statute.

But in my Underſtanding it is apparent, that it had not Creation by common Aſſent in Parliament, but only by Regal Authority; or at the moſt by the King, with his great Lords Aſſents, which in thoſe, and after Times, was frequent. My Reaſons are,

1*ſt.* In *Tilburienſis*, or the black Book of the Exchequer, *l.* 1. *c.* 28. the Words are expreſs, *A regibus Anglicis ſtatutum eſt*, &c. no mention of any others who joined in that *Statutum.*

2*dly.* It appears by the ſaid *Leges Edw. Confeſſ. c.* 12. that at the beginning of *Danegelt*, *omnis Eccleſia libera erat*; the Reaſon given, *quia magis confidebant Eccleſiæ orationibus, quam armorum defenſionibus:* and yet in the Addition to the ſaid *Leges*, it appears, that *William Rufus* impoſed that Tribute upon the Church alſo, and that without common Aſſent. For the Words are, *Danegeldum conceſſum eſt ei a Baronibus, non lege ſtatutum neque firmatum*; and certainly thoſe Barons by whom it was *conceſſum*, were not all the Baronage, for it is plain, that the Biſhops and mitred Abbots did no conſent.

3*dly*, In that Clauſe where *ſtatutum eſt* is uſed, in *Leges Edw. Confeſſ.* the *Danegelt* is ſaid to be 12*d. ex unaquaque hida*; and afterwards it doth appear that it was made 4*s.* by *William Rufus*, *ex unaquaque hida, Eccleſia non excepta*; which Increaſe was moſt unjuſt, if no more but 12*d.* was limited by common Aſſent at firſt.

To the *Second*, I anſwer, with Sir *Henry Spelman*'s Diſtinction, There were two kinds of *Danegelt*; one, *ad pacandos Danos*; another, *ad arcendos Danos*, and other Pirates. It may be, that the Confeſſor releaſed that *ad pacandos*, for the *Danes* troubled not this Kingdom in his Time, they had enough to do then at home, and ſo there was no Cauſe of Collection of any Taxes *ad pacandos Danos:* And tho' it was *de facto* exacted by the *Daniſh* Kings before *Edward* the Confeſſor, *viz. Canute*, *Harold Harefoot*, and *Hardicanute*, it was unjuſtly taken by them, the Cauſe of Grant of it ceaſing in their Time of Sovereignty here; and that might be the Cauſe of the Confeſſor's Dream, That he ſaw the Devil dancing upon the Money collected in his Time for *Danegelt*; which Suppoſition of a Viſion occaſioned him to releaſe it, as it is written. But certainly the *Danegelt ad arcendos*, &c. was not releaſed by *Edward* the Confeſſor: for it appears in *Tilburienſis*, before cited, that *Danegeldum ſub indigenis regibus ſolvebatur uſque ad tempus Willielmi primi*; if *ſub indigenis Regibus*, then under the Confeſſor.

Again, it appears in *Leges H.* I. *c.* 16. that *Danegelt* was in that King's Time a Duty to the King: For the Words are, *Danegeldum ſi ad terminum non reddatur recta emendetur*; *ergo*, not releaſed by his Predeceſſor *Edward* the Confeſſor.

I further find in *Ranulphus Ceſtrenſis*, that *Stephanus Rex, Regnum iniens, Danegeldum*, i. e. 2*s. ad hidam, quos anteceſſores ſui ſingulis annis accipiebant, in æternum condonavit:* which *(condonavit)* ſhews that he, as a King *de facto*, had a Right to it, *ergo*, not formerly releaſed. But for the Validity of ſuch a Releaſe by K. *Stephen*, a manifeſt Uſurper, tending to the Diminution of the Crown, eſpecially if it were of a tribute granted to the Crown by Act of Parliament, ſee 9 *E.* IV. *f.* 2.

To the *Third* I anſwer, That it is true, it is obſcure what the *Danegelt* was; you have heard by what has been cited, mention of 1*s.* 2*s.* and 4*s.* to be the Sum of it; and truly, I think, it was more or leſs, according to the occaſion of Money for Defence: the Tribute *ad pacandos Danos*, I believe at firſt was but 12*d.* out of every Hide, yet afterwards increas'd by the three ſucceſſive Kings, *Danes* themſelves, for I find it was at firſt but about 10000*l. per Ann.* it after was raiſed to 30000*l.* then to 40000*l.* and, laſtly, to near 50000*l.* which huge Sum was in theſe times a Burden inſupportable to the People. But however, the Uncertainty of the Sum (eſpecially if you underſtand that which was collected *ad arcendos Danos*) is a clear Proof, that it was not created by Act of Parliament, for then the Sum thereby certain could not be mounted.

All Hiſtorians do agree, that the original Time of *Danegelt* was in K. *Ethelred*'s Reign. I obſerve, that K. *Ethelred* ſhewed himſelf weak and improvident, in that he looked not to raiſe Means for Defence of his Realm againſt the *Danes* in time; but when the *Danes* were Maſters, then he began to provide againſt them. And for that cauſe divers of our Hiſtorians write, that he was called by a Nick-name, *Ethelred the Unready.* But, on the other Side, we the Subjects of *England*, who enjoy ourſelves and what we have in Peace, thro' his Majeſty's Royal Care and Providence, have Cauſe to yield to our Sovereign K. *Charles*, the honourable Name of *Charles the Ready*, or, *Charles the Provident.*

But, to return, The Differences between the antient *Danegelt* and the Charge in our Caſe are apparent and many; for the *Danegelt* was,

1. Annual: ours is due only in caſe of Neceſſity.

2. It was collected out of Hides of Land, and thence called *Hidage:* Ours is collected out of perſonal as well as real Eſtates.

3. It was a Tribute of Money: Ours a Proviſion of Shipping and Armour in kind.

4. It was againſt Pirates: Ours is for common Defence of Sea and Land.

5. It was not general: Clergy and Clergymen were originally exempt: Ours is general, upon all without Exception.

Lege the Words of the Authorities under written, from whence many Obſervations and good Concluſions may be drawn touching *Danegelt.*

Leges Edw. Confeſſ. c. 12. *Danegeldi redditio, propter Piratas primitus inſtituta eſt, patriam enim infeſtantes veſtationi ejus pro poſſe ſuo inſiſtebant*; *ad quorum inſolentiam reprimendam ſtatutum eſt Danegeldum annuatim reddi ſc.* 12 *denarios ex unaquaque hida totius patriæ, ad conducendum eos qui piratarum irruptioni reſiſtendo obviarunt. De hoc quoque Danegeldo libera erat omnis Eccleſia, quia magis confidebant Eccleſiæ orationibus, quam armorum defenſionibus.*

Hanc Libertatem tenuit Anglorum Eccleſia, uſque ad tempus Willielmi junioris.

Danegeldum conceſſum eſt ei Baronibus, non lege ſtatutum, neque firmatum; ſed habuit neceſſitatis cauſa ex unaquaque hida 4 ſolidos, Eccleſia non excepta.

The Black Book of the *Exchequer*, written in King *Henry* IId's Time, in that Part which is *Tilburienſis*'s Work, or the *Magiſter ad Diſcipulus*, it is *lib. c.* 28. not. *c.* 11. as it is miſprinted in learned Sir *Henry Spelman*'s Gloſſary.

Ad Danos arcendos, a Regibus Anglicis ſtatutum eſt, ut de ſingulis hidis jure quodam perpetuo duo ſolidi argentei ſolverentur in uſus virorum fortium, qui perluſtrantes maritima impetum hoſtium reprimerent.

Qui igitur principaliter pro Danis inſtitutus eſt hic redditus, Danegeldum aicitur, hic ſub indigenis regibus ſolvebatur uſque ad tempora Regis Willielmi primi. Ipſo namq; regnante, tam Dan' quam cæter' terræ mariſq; prædon' hoſtiles cohibetur incurſus. Cum ergo diu ſolviſſet terra, ſub ejuſdem Regis imperio, noluit hoc ut annuatim ſolveretur, quod fuerat urgente neceſſitate bellicæ tempeſtatis exactum, nec tamen omnino propter inopinatos caſus dimitti.

Raro igitur temporibus ejus vel ſucceſſorum ipſius ſolutum eſt, hoc eſt cum ab exteris gentibus bella vel opiniones bellorum inſurgebant.

Verum quocunq; tempore ſolvatur ab ipſo, liberi ſunt qui aſſident ad Scaccarium, ut dicitur, & vicecomites, &c.

Leges H. I. c. 16. *Danegeldum*, i. e. 12*d. ex unaquaq; hida per annum, ſi ad terminum non reddatur, wita emendetur.*

Fourthly, I affirm, with ſome Clearneſs, under favour, That the Charge now demanded is not within the ancient Acceptation or Signification of the Words, Aids, Miſes, Prizes, Taxes, or Talliages, which it is to be agreed cannot be exacted by the King, without Conſent in Parliament. Neither is it within the Compaſs of the Word Subſidy, which may not be levied, but upon Grant of it in Parliament.

Aids, if you take the Word in a general Senſe, they were of two kinds: 1. Such as were Aids and Services too, as *pur faire fitz Chevalier, pur file marier.* That kind of Aid, common Perſons, who had Seigniories, had right unto, as well as the King. No colour of comprehending this kind of Aids, within the Word (Aids) pertinent to this Queſtion.

To the 2*d* kind of Aids, were Sums of Money from the Subject to the King, by way of Help, *ad agendo Regis*; as for making of Caſtles, building of Bridges, Helps for voluntary or auxiliary Wars, or for the King to do his Pleaſure with, and the like.

See Parl. Roll 11 *Hen.* IV. *n.* 45. 20000 Marks granted to the King, by the Name of an Aid, *ent a fair ſon pleaſure.* And *Rot. Parl.* 25 *Ed.* III. *n.* 12. where the Application of the Word Aid to ſuch a Purpoſe, is diſtinguiſh'd from other Payment to the King.

Miſes were Preſentations in Kind of a Benevolence, upon a King's firſt coming to his Crown; ſuch are yielded at this Day in *Wales*, to a Prince of *Wales*.

Priſes are taking of part of the Subjects Goods from them to the King's Uſe, without Pay; hence Priſage of Wines at this Day.

Taxes & Tallages, in Quinzim. B. 9. 34 *H.* VIII. *Nota par expoſition de ceux del Eſchecq; que tax et Tallage n'eſt auter, mes diſmes, quinzim, ou auter Subſidie, grant' per Parliament. Et le Quinzim eſt des Layes, Et le Diſme eſt de Clergie et eſt d'eſtre levy de leur terr', Et le diſme et le Quinzim de Lais eſt del biens, ſc. decimam partem bonorum in Civitatibus et Burgis, et* 15 *partem bonorum des laies in priam que fuit levy in aucuns temps ſur lour biens, viz. del aids ſur lour terres que fuit vald troublous, mes ors ceſt levy, ſecundum ratum terrarum ſuarum per verges de terr' et auter quantites, iſſuit que ore, tout ſcience lour certenty in chun vill et pais par tout le realme mes il eſt encore levy in aſcuns lieux ſur lors biens, mes inpluſiors lieux, ſur lors ters.*

Subſidies quid chun conuſt, ſc. certaine ſome ſur le pound del rat' de terr' ou biens, come app' in les Acts de Parliament de grant del ſubſidie.

Fifthly, It cannot be ſaid, that the preſent Caſe is to be ſtated ſo, as unleſs the Charge commanded be obeyed, an aſſured infallible Ruin and Subverſion of this Kingdom will happen, and that inſtantly. In ſuch a Caſe, *Quid non* is lawful; and happy he who by doing any Exploit, can ſave the Ship from ſinking, the Body from falling.

Sixthly, It is to be obſerv'd, That the principal Command in the Shipping-Writ, is not to levy Money, it is to provide a Ship; which Ship being to be provided at the Charge of a Multitude, in Regard the thing cannot be done any manner of way, but by the Means of that which is *menſura rerum*, namely, Money, therefore the Inſtructions in the Shipping-Writ are not only apt, but neceſſary; that an Aſſeſſment be made, whereby proportionable Sums of Money may be collected, for the Proviſion of the Thing commanded: And thereupon it may be ſaid, that the Sum aſſeſſed upon every one, and in our Caſe upon Mr. *Hampden*, is not a Debt *vi termini*, but is rather a Duty to be performed, as a Means conducing to the principal End: The Refuſal of Performance of which Duty, is a Refuſal to obey the principal thing commanded, *Qui negat Medium, deſtruit finem.*

And the principal thing commanded, being of a Kind concerning the Commonwealth; the King, who is the Head, the Sovereign of the Commonwealth, and who hath as incident to his Regal Office, Power of Coercion, is by Law to exerciſe ſuch his Power of Coercion, to inforce ſuch as refuſe to join with others in Performance of that which is commanded for the Commonwealth.

And this being the true State and Way of the Proceedings, in the preſent Caſe; it is apparent, that tho' the *Scir' Fac'* againſt Mr. *Hampden* be in the King's Name, yet it is not to have Execution as for the King's Money, or as for a Debt due to the King from Mr. *Hampden*: But as is manifeſt, if the whole Contexture of the Writ of *Scir' Fac'* be obſerved, it is nothing elſe, but to bring on a Declaratory Payment. That Mr. *Hampden* ought *onerari* to the Payment of the 20*s.* aſſeſſed upon him. So that, with his 20*s.* together with the other Money of *Buckingſhamſhire*-Men, aſſeſſed alſo upon every of them particularly, the Ship commanded from the County of *Buckingham* may be provided.

Seventhly, and laſtly, Having declared of what Nature our Caſe is not, come now to tell you what the State of it is.

The true State of our Queſtion muſt be made out of the whole Record, or Pleading of the Caſe, the Matter of Fact wherein the Defendant hath confeſſed, (as I noted in the Beginning).

In the Writ of *Aug.* 11. *Car.* and in the Writ of *Mittimus*, there are Cauſes expreſſed, of the iſſuing of the Writ of *Aug.* 11. or the Shipping-Writ; thoſe Cauſes are ſeveral, but not to be ſevered, all of them are to be laid together into the Balance.

1. *Piratæ congregati*, upon the *Engliſh* Seas.

2. *Piratæ navigium indies preparantes, ad mercatores ulterius moleſtandos, & ad regnum gravandum.*

3. *Pericula* are *Undique regno Angliæ, in his guerrinis temporibus.*

Thoſe *pericula* do *imminere regno, niſi citius remedium ponatur*; where the Word *citius* is a comparative Word, relative to ſlow Ways of Remedy, amongſt which Parliaments is one.

5. *Regi & ſubditis convenit, omni qua poterint feſtinatione accelerare, ad regni defenſionem, maris tuitionem, & ſecuritatem ſubditorum.*

Out of all thoſe Poſitions it appears,

That there is in the Caſe real and manifeſt Peril; not *panicus terror*, Fear without Cauſe; *Tempora* are *de facto guerrina*, there is *de facto navium congregatio.*

Again, we muſt obſerve, That in this Caſe,

1. The Command is, *ad proficiſcendum cum navibus regis*: So the King himſelf is to join with the Subject in the common Defence: Here is not a *Quod tibi fieri non vis*: Here is rather a *Contributio*, than a *Tributio.*

2. The Ships and Arms to be provided are to continue the Subjects own in Property: The King doth not aſſume the Property of them to himſelf; he only commands them to be made and uſed for the common Defence. This appears by the Words *(ad proficiſcendum cum navibus noſtris.)* So the Writ ſets a Diſtinction between *naves noſtræ*, (that is, the King's) and the Ships to be provided. See the like of this *M.* 28 & 29 *Ed.* I. *Communia*, with the King's Remembrancer, for Gallies commanded upon the like occaſion; and *P.* 5 *E.* II. and *P.* 13. *E.* II. with the King's Remembrancer, *inter brevia directa Baronibus.*

3. The Subjects are commanded, in this Caſe, to be at the Expences, *tam in victualibus, quam hominum ſalariis ad guerram neceſſariis.* This I ſhall prove clearly anon, to be conſonant to Law, and warranted by many Precedents, in the like Caſes.

4. All the Counties of the Kingdom, that is, all the Kingdom in general, is charged, not any ſpared; the Clergy, the King himſelf, are to join in the Proviſions.

5. The final End and Scope of all this Preparation is *Defenſio Regni, tuitio maris, retentio dominii maris, ſecuritas ſubditorum, ſalus Reipublicæ.*

But Mr. *Holborne* hath objected, That *Salus Reipublicæ periclitabatur* is not to be taken as part of this Caſe, becauſe it is not in the Writ of *Aug.* 11 *Car.* but is inſerted into the *Mittimus*, above two Years after; and he ſaith, That Mr. *Hampden* could not know 11 *Car.* that at that time *ſalus Reipublicæ periclitabatur*; and therefore he is not to be blamed for refuſing to pay his Aſſeſſment, which was before the *Mittimus*, and grounded only upon the Writ of *Aug.* 11 *Car.*

He further obſerved, That in the ſubſequent Shipping-Writ, that Clauſe is expreſly now put out. To this I anſwer.

1. It is true, that *Salus Regni* is not in expreſs Terms, or in thoſe identical Words in the Writ of *Aug.* 11. but it is expreſs'd in that Writ in Words equipollent.

2. If it were not contained in that Writ in Words equipollent, yet it enforces the Words in that Writ in Matter purſuant, or not new, or different from it; and ſo is out of the Rules of Departure, wherein if it were, it were a good Exception in ſtrictneſs of Pleading.

3. That Clauſe in the *Mittimus* by way of Declaration or Signification to the Barons, what the Reaſon was, that moved the King to iſſue the firſt Writ; and the Barons are to take notice of it, as well as of the Clauſe in the *Mittimus*, whereby the King ſignifieth to them, that he had ſent the like Writs as that of *Aug.* 11. to all the Counties of *England*: And this is a Declaration of that Meaning which the King had in the Beginning.

By *Dowman's Caſe*, *Co.* 9. after Aſſeſſment executed, or a Fine levied, a Declaration may be made, to what Uſe that Fine or Aſſeſſment was.

In a word, the State of our Caſe is thus:

Dominium maris, & ſalus reipublicæ periclitabatur, convenit Regi & ſubditis, omni qua poterint feſtinatione accelerare ad defenſionem regni, tutitionem maris, & ſecuritatem ſubditorum.

Now whether to ſet the Commonwealth free and in ſafety from this Peril of Ruin and Deſtruction, the King may not, of his own Royal Authority, and without common Aſſent in Parliament, impoſe a Charge upon his Subjects in general, to provide ſuch Shipping, as is neceſſary, in his Royal Judgment, to join with his Majeſty's own Ships, and to attend them for ſuch time as his Majeſty in his Royal Wiſdom ſhall think fit, and alſo to enjoin them to be themſelves at the Expences, *tam in victualibus quam hominum ſalariis, & aliis ad guerram neceſſariis?*

I would be loth to irritate any, differing in Opinion from me, with provoking or odious Terms; but I cannot more fully expreſs myſelf, (and ſo I deſire it may be taken as an Expreſſion, and not as a Compariſon) than in ſaying, That it is a dangerous Tenet, a kind of judaizing Opinion, to hold, That the Weal public muſt be expoſed to Peril of utter Ruin and Subverſion, rather than ſuch a Charge as this, which may ſecure the Commonwealth, may be impoſed by the King upon the Subject, without common Conſent in Parliament. So that the Security of the Commonwealth, for the very Subſiſtence of it, muſt ſtay and expect until a Parliament provide for it; in which Interim of Time, it is poſſible, nay, apparently probable, yea, in a Manner to be preſumed, that all may be, yea, will be brought to a final Period of Deſtruction and Deſolation.

All know, that the Jews were ſo ſtrict, that they would not uſe Means for Defence of themſelves and their Country, upon their Sabbath. Their Enemies took the Advantage, and ruined their State.

The Second *General Head.*

I NOW come to my *Second* General Head, wherein I propoſed to conſider of the fundamental Policy, and Maxims, and Rules of Law, for the Government of this Realm, and of the Reaſons of Law pertinent to our Caſe, which are very many. I will briefly and ſeverally point at thoſe which make Impreſſion in me.

1. It is plain, that as originally, even before the *Romans* Time, the Frame of this Kingdom was a Monarchical State, ſo for divers Hundreds of Years paſt, upon the *Romans* Deſertion of it, and after the Heptarchy ended, it was, and continued, and ſtill continueth Monarchical. And our gracious Sovereign is a Monarch, and the Rights of free Monarchy appertain unto him; and yet ſtill with this, that he muſt *Leges ad conſuetudines*

regni ſervare, & præcipue leges & conſuetudines & libertates a glorioſo Rege Edwardo, (that is, *Edward the Confeſſor*) *clero populoque conceſſas*; as appears in the old *Magn. Chart. fol.* 164. *tit. Juramentum Regis quando coronatur.*

2. Where Mr. *Holborne* ſuppoſed a fundamental Policy in the Creation of the Frame of this Kingdom, that in caſe the Monarch of *England* ſhould be inclined to exact from his Subjects at his pleaſure, he ſhould be reſtrained, for that he could have nothing from them, but upon a common Conſent in Parliament.

He is utterly miſtaken herein.

I agree the Parliament to be a moſt ancient and ſupreme Court, where the King and Peers, as Judges, are in Perſon, and the whole Body of the Commons repreſentatively. There Peers and Commons may, in a fitting Way, *parler lour ment*, and ſhew the Eſtate of every Part of the Kingdom; and, amongſt other things, make known their Grievances (if there be any) to their Sovereign, and humbly petition him for Redreſs.

But the former fancied Policy I utterly deny.

The Law knows no ſuch King-yokeing Policy.

The Law is of itſelf an old and truſty Servant of the King's; it is his Inſtrument or Means which he uſeth to govern his People by.

I never read nor heard, that *Lex* was *Rex*; but it is common and moſt true, that *Rex* is *Lex*, for he is *lex loquens*, a living, a ſpeaking, an acting Law: and becauſe the King is *lex loquens*, therefore it is ſaid, that *Rex cenſetur habere omnia jura in ſcrinio pectoris ſui.*

There are two Maxims of the Law of *England*, which plainly diſprove Mr. *Holborne*'s ſuppoſed Policy.

The firſt is, *That the King is a Perſon truſted with the State of the Commonwealth.*

The ſecond of theſe Maxims is, *That the King cannot do Wrong.* Upon theſe two Maxims, the *Jura ſummæ majeſtatis* are grounded, with which none but the King himſelf (not his High Court of Parliament without leave) hath to meddle, as, namely, War and Peace, Value of Coin, Parliament at Pleaſure, Power to diſpenſe with Penal Laws, and divers others; amongſt which I range theſe alſo, of Regal Power to command Proviſion (in caſe of Neceſſity) of Means from the Subjects, to be adjoined to the King's own Means for the Defence of the Commonwealth, for the Preſervation of the *Salus Reip.* Otherwiſe I do not underſtand how the King's Majeſty may be ſaid to have the majeſtical Right, and Power of a free Monarch.

It is agreed, that the King is, by his Regal Office, bound to defend his People againſt foreign Enemies; our Books are ſo, *F. Na. fol.* 118. *Eſt a intendre que le roy doit de droit*; *ſaver et defendre ſon realme com' vers le meere, com' vers enemies.*

Juramentum Regis, cited before, *ſervabis Eccleſiæ Dei, Clero, & populo, pacem ex integro ſecundum vires tuas*; if *(ex integro)* then againſt all Diſturbers of the general Peace amongſt them, moſt chiefly, in my Judgment, againſt dangerous Foreigners.

Bracton and *Glanvill*, in the Front of their Books, publiſhed, That the King muſt have Arms as well as Laws; Arms and Strength againſt foreign Enemies, Laws for doing Juſtice at home. Certainly if he muſt have theſe two Neceſſaries, he muſt be enabled with Means for them, and that of himſelf, not dependent *ex aliorum arbitrio*; for it is *Regula juris, Lex eſt, quando quis aliquid alicui concedit, concedit, & id ſine quo res ipſa eſſe non poteſt.*

3. Tho' I have gone already very high, I ſhall go yet to a higher Contemplation of the fundamental Policy of our Laws: which is this,

That the King of mere Right ought to have, and the People of mere Duty are bound to yield unto the King, Supply for the Defence of the Kingdom.

And when the Parliament itſelf doth grant Supply in that Caſe, it is not merely a Benevolence of the People, but therein they do an Act of Juſtice and Duty to the King.

I know the moſt ſolemn Form of Parliament, and of the humble Expreſſion of the Commons, of their hearty Affection, and good Will to their King, in tendering to him their Bill of Subſidies or Fifteenths.

Rot. Parl. 9 *Hen.* IV. *n.* 7. There is a notable Record of the very Right of the Commons, in the Form of Grant by Parliament of Supply to the King: Archbiſhop *Arundel*, then Lord Chancellor, in his Speech to the Houſes, took for his Theme *(Regem honorificate)* it being then a time of inſtant Neceſſity.

The Commons, in their Grievances, complained of the Default of Safeguard of the Sea, towards which they had granted a Subſidy before; *Et pour tant (Note this for the Reaſon, it was not ſpoken ſimply, as Mr.* St. John *urges)* but *pur tant que ills ne ſont obliges a cel guerre ſuſteyner, mes ſont diſcharg de re exant*; and they petitioned, That accordingly it would pleaſe the King to diſcharge the Commons, but the King did not diſcharge them, *Quod nota.*

After this (the Record goeth) that there was a Conference between the King and Lords, of the State of the Realm, and of the Defence of it. And in that Conference, the King aſking the Lords Advice, they anſwered, That a Tenth and half a Tenth was neceſſary from the Boroughs, and a Fifteenth and half from the reſt of the People. This Conference and Advice being reported to the Houſe of Commons, the Record is, *Ils fuer grandement diſtorbe en diſt' ceo deſtre en grand derogation de lour liberties.* The Diſturbance was ſo great, that the King himſelf took pains to pacify them.

Upon this Record it appears, and I confeſs, that the Commons offering up of the Bill of Fifteenths, and ſo of Subſidies, to the King in Parliament, is a moſt material Form, and ſerves to make good and happy Expreſſions of Love and Unity between the Head and Members, the King and his Subjects. But ſtill I ſay, that it is the King's Right to have Supply; that Supply is a Duty, not merely a Benevolence from the People, in caſe of neceſſary Defence of the Kingdom.

And this is not my ſingle Opinion.

19 *H.* VI. 64 *B. Hedy Ch. Baron*, *Le roye eſt inherite*, that is, hath Right of Inheritance to have Fifteenths in his Court of Parliament: for the ſame Law which wills that the King defend his People, wills alſo, that the People grant to him of their Goods, in Aid of their Defence.

Beſides, I prove mine Opinion (if any Man deny it) unanſwerably, out of the very Writ of Summons of Parliament: in it, *Ardua & urgentia negotia, Regem ſtatum, & defenſionem regni Angliæ & eccleſiæ concernentia*, are mentioned to be the Cauſe of Parliament.

Now I pray you obſerve.

In the Writ of Summons to the Peers of the Kingdom, the Words are, *Super dictis negotiis tractaturi verumq; Concil' impenſuri*; but in the Writ for choice of Knights and Burgeſſes to ſerve for the Commons, the Words are, *Ita quod milites pro ſe & Communitate Comitatus prædicti, ac dicti Cives & Burgenſes pro ſe & Communitate Civitatum & Burgorum plenam poteſtatem habeant* (what to do?) *ad faciendum & conſentiendum his quæ tunc ibidem de Communi Concilio regni noſtri contigerint ordinari ſuper negotiis antedictis.*

So the Words are, *facere & conſentire*, to Matters agreed on concerning the Defence of the Kingdom; there are no other Matters mentioned in the Writ for Summons of their repreſentative Body: no ſuch Words as are in the Peers Writs are in theirs; yet I cannot ſay, and ſo I deſire to be conceived, but that according to the Record of 9 *Hen.* IV. the Commons may alſo humbly offer their Advice to the King; they may ſhew their Grievances, and the State of the Commons: but it is plain, that the principal Duty belonging to the Commons is, *facere & conſentire*, otherwiſe there would have been in their Writ, as well as in the Peers, *ſuper dictis negotiis tractaturi, verumque Conſilium impenſuri.*

Upon this I put the Caſe, and argue thus: the Kingdom wants preſent Proviſion, neceſſary for preſent Defence, to be in readineſs; this Proviſion (the Caſe ſo falling out) muſt be ſo ſpeedily made, as that it would be dangerous, in regard of what may happen, to ſtay for an Aſſent in Parliament. Well, in this Caſe there is a Duty from the Subject, and a Neceſſity that the Thing muſt be done, but the neceſſary Form for the Subjects Aſſent in Parliament cannot be purſued; I demand what muſt be done, or what may be done in this Caſe, without Breach of Law?

Is the Duty loſt for want of Time to obſerve the Form?

For my part, I underſtand not any Reaſon that the Duty, in ſuch Caſe, ſhould be loſt; but I ſhould agree, that were not this a Duty, *vi termini*, which is to come from the Subject, in ſuch a Caſe, but only a mere Benevolence, then that ſuch Benevolence could not by Law be exacted without the eſſential Part of it, *viz.* the Subjects Aſſent in Parliament.

4. I confeſs, that by the fundamental Law of *England*, the Parliament is *Commune Concilium Regis & Regni*, that it is the greateſt, the moſt honourable and ſupreme Court in the Kingdom; that no Man ought to think any diſhonourable thing of it: yet give me leave to ſay, That it is but a *Concilium*; to ſay ſo is no Diſhonour to it: The King may call it, prorogue it, diſſolve it, at his Pleaſure; and whatſoever the King doth therein, is always to be taken for juſt and neceſſary.

We muſt conſider, that it is a great Body, moves ſlowly; ſudden Diſpatches cannot be expected in it.

Beſides, tho' the Parliament cannot err, Parliament-Men may *de facto:* every particular Member of the Houſe hath his free Voice; ſome of them may chance to make Scruples, where there is no Cauſe; it is poſſible that ſome of them may have ſiniſter Ends; theſe things breed Delays, ſo they may Diſturbances. (I would to God, the late woful Experience of this Kingdom had not verified theſe Speculations.)

Yea, there have been, in former Times, Cenſures of Parliaments themſelves: the good Parliament, *Temp. Ed.* III. *Parliamentum indoctorum, Temp. Hen.* IV. and in the ſame King's Time, if we believe my Lord *Coke*, 11. *f.* 113. *Brangwit, id eſt*, the White-Crow Act. Theſe Matters are conſiderable in ſuch Caſes as ours is.

Wherein apparently *Mora trahit periculum*, and to follow the Rule, *Feſtina lente*, is moſt dangerous.

5. The Point of *retentio Dominii maris* (which is in the Caſe) is not of an ordinary Conſideration; for, beſides the antient Inheritance and Right which the Crown of *England* hath in it, it is obvious to every Judgment, that in the Continuance or not Continuance of it to the Crown, not only the *bene eſſe*, but even the *eſſe* itſelf of the Commonwealth doth conſiſt; and therefore it behoveth the Subjects *accelerare* to the Tuition of it: Slowneſs is an Argument of Stupidity, or want of that Senſibleneſs of the Diminution of that Right which every Subject ought of Right, and hath a concerning Reaſon, to propoſe to himſelf.

Notable are the Words in the *Scotch* Rolls, 10 *Ed.* III. *numb.* 3. In a Writ by the King to a great Part of all the Kingdom; *Conſiderato, quod progenitores noſtri Reges Angliæ dominii maris & tranſmarini paſſagii, totis præteritis temporibus extiterunt, & plurimum nos tæderet, ſi honor noſter regius noſtris temporibus in aliquo læderetur. Quodque omnes homines de regno pro defenſione ejuſdem, contra hoſtium invaſiones, tenentur exponere ſe & ſua.*

The Writ wherein theſe Words are, was a Command or Charge laid upon the Subject, without any Warrant of Parliament for it.

It was a Writ directed to all Earls, Barons, Knights, and others, *ab ore aquæ Thameſis verſus partes occidentales*, which included divers Inland Counties.

It iſſued upon Occaſion of *David de Bruſe*'s having a great Navy afloat, and therewith having enter'd *Jerſey* and *Guernſey.*

The Writ is a Command to thoſe to whom it is directed, *Tantis & tam gravibus periculis imminentibus debite ponderatis*, to treat with the Archbiſhop of *Canterbury*, and other Great Men aſſigned by the King, *ſuper defenſione regni & populi.*

The Writ concludes thus, *Scire vos volumus, quod ſi rebelles aut difficiles fueritis in præmiſſis, in tanto & tam grandi neceſſitatis articulo*, the King will repute thoſe *Rebelles, aut difficiles, tanquam ſuos & regni inimicos.*

6. Not to ſpeak of Neceſſity in general, which is of itſelf a Relaxation of Laws, and ſerves for a Diſpenſation, even by the Equity of the Law itſelf: in our Caſe there is a Neceſſity in point of Government.

I ſhall put you a Caſe, where an expreſs Clauſe in an Act of Parliament hath been doomed void, becauſe it was againſt a Matter of Neceſſity in point of Government.

2 *H.* VI. 6. *The Earl of* Northumberland'*s Caſe. Nota*, 28 *Ed.* III. & 42 *Ed.* III. Penal Acts were made, That none ſhould exerciſe the Office of Sheriff above a Year, altho' that he have a *non obſtante*; that Clauſe of *(altho')* is void, and a *non obſtante* may be of that *non obſtante:* no Reaſon can be for this, but becauſe it takes a neceſſary part of Government out of the King's Hands.

7. *Salus Reipublicæ*, by all Laws, is *ſuprema lex, & ſummè neceſſaria.* It is, where it interpoſeth, *Lex legis.* It takes away particular Intereſts, before itſelf give place for that Cauſe

8 *Ed.* IV. 36 *Hen.* VIII. *Dyer.* A Bulwark for Defence may be built upon another Man's Ground, *invito domino.*

No Dower or Thirding to a Woman of a Caſtle of Defence; it may indanger *Salus Reipublicæ*, by dividing ſuch a Piece.

An Alien Merchant takes a Leaſe for Years, of a Houſe for his Trade: this is a good Leaſe, ſo long as he tradeth, and there is no Enmity between his King and ours; but when he ceaſeth trading, or if War happen, the King ſhall have the Intereſt of the Leaſe. The Reaſon, It is poſſible, that *Salus Reipublicæ* may be concerned, if the Alien's Intereſt in it ſhould continue.

8. If there were not *Salus Reipublicæ* in our Caſe, yet there is in it at leaſt *Bonum publicum* intended.

I will put a Caſe, where Subjects are bound without their Aſſent, for the *Bonum publicum* ſake. 44 *Ed.* III. 19. Chamberlain of *London*'s Caſe, *Coke* 5. *f.* 63. Inhabitants of a Town, without any Cuſtom, may make Ordinances or By-Laws of any thing, *pro bono publico*; and in ſuch Caſe, thoſe who are abſent, and ſo unconſenting, are bound, the *Bonum publicum* is the Cauſe.

9. Prevention of further general Miſchief, which may enſue, trencheth, even by Conſtruction of Law itſelf, upon other Men's Rights. For that Cauſe, pulling down a Houſe which is on fire, to ſave other Men's Houſes, is lawful. *Highley*'s Caſe, *Co.* 10. 139. One is bound by Preſcription, to make or repair Walls, Damms, or ſuch like againſt Waters: This Man is not able to do it; a ſmall Breach happens, which either muſt ſpeedily be made up, or a general Miſchief will happen. In this Caſe by Expoſition of the Statute of Sewers, and by an Equity out of the Letter of the Laws, grounded upon *Salus pop.* all thoſe who are within the Level are to be taxed, and to contribute for preſent; the Ability of him, whoſe the Right of the Burden is, *non expectata.*

10. I find a Writ in the Regiſter *de reparatione facienda*, which is cited in *Bowles*'s Caſe, *Coke* 11. *f.* 82. *b.* whereby, if two Joint-tenants be of a Houſe, the one ſhall have a Writ of *de reparatione facienda* againſt the other; and the Words of the Writ are, *Ad reparationem & ſuſtentationem ejuſdem domus tenetur*; where the Word *(tenetur)* is obſervable. Every Man hath an Intereſt in the Commonwealth, but the King's Intereſt is incomparably beyond other Men's; therefore the King may, by a like Reaſon of Law, call upon his Subjects to join in Contribution with him, towards the Reparation and Suſtentation of the Fabrick of the Commonwealth.

11. In the great and common Vouchee's Caſe, 13 *H.* IV. 14. in the Debate of this Cauſe of the new-erected Office of the meaſuring of Cloths in *London*, which was brought to Parliament; it is a memorable Saying of *Gaſcoigne* the Chief Juſtice, "The King may charge the People of his "Realm without ſpecial Aſſent of the Commons, to a Thing which "may be Profit to the common People."

This Saying is cited and allowed in the Caſe of Monopolies, *Coke* 11 *f.* 86. *b.* and ſo it is very commonly, upon Arguments concerning ſuch Queſtions.

12. I obſerve, that tho' the Precedents of Writs and Execution of them, for aſſeſſing the Subject by the King's Command, without Warrant of Parliament, are very many in ſeveral Kings Reigns; yet there is not any Precedent of any civil Action brought for any thing done in former Ages, upon ſuch Commands of the King as is in our Caſe, but only that one of the Abbot of *Robertſbridge*'s Caſe, which hath been often cited; and in the pleading thereof it is acknowledged, that the agiſting of Men's Lands and Tenements to contribute *ad cuſtodiam maris* by the King's Commands, without Tax by Conſent in Parliament, was good in Law.

And I note, that that Caſe happened and was in Agitation, and gave fair Cauſe of Demurrer, in an opportune Time in demurring, if the Law had been otherwiſe; for it happened at that very time, when the Statute *de Tallagio non concedendo* was made, or in hammering.

If only one Action brought heretofore, *una hirundo*, it were not to be regarded, tho' it had been againſt the King's Power; but when that one is aſſertive of the regal Power, it is to be reſpected more than as a ſingle, I mean, as a *ſingularis probatio* of it.

Laſtly, I obſerve, that upon Grievances, or Complaints in Parliament, which have been almoſt infinite, and upon all Occaſions in former Times, no one Record hath been, or I think can be cited, that in caſe when Charges have been impoſed without common Aſſent, for the neceſſary Defence of the Kingdom in an inſtant Article of Neceſſity, any King hath ever anſwered, or aſſented, That ſuch Charge hath been againſt the Laws or Liberties of the Subject.

Neither the Reclamation of the Subject alone on his ſide, nor the ſingle commanding Reſcripts of the Sovereign alone on his ſide, are of Authority to preſerve the Law; but if there be a Concurrence of King and Subject, that is it whereby a Judge may ground his Reſolution.

As for that one of 2 *R.* II. which cometh neareſt in that Kind, but hath not the King's Acknowledgment; I note, that it was upon a Deliberation, before the Charge impoſed: And truly I think that if the Charge in that Caſe had been firſt impoſed and collected, upon Complaint againſt it afterwards, it would never have been adjudged for unjuſt.

Many things are queſtioned, and ſometimes denied to be lawful, before they are done, which *facta valent*, which being done, are good and valid in Law. If a Queſtion be made of that which of itſelf is lawful, the very making the Queſtion makes it queſtionable, and may draw on an Opinion that it is not lawful.

Rot. Parl. 4 *H.* IV. *num.* 28. & *Rot. Parl.* 6. *H.* IV. *num.* 9. you ſhall find, that the Commons having conſidered of the Wars of *Scotland*, the Rebellion of *Wales*, the Safeguard of the Sea, & *eſpecialment* the Defence of the Realm, they granted a Subſidy, but with Proteſtation that it ſhould not be an Example to charge the Commons hereafter with any manner of Subſidies for the Wars of *Scotland* or *Wales*, or the Safeguard of the Sea, or the Marines of *Calais* or *Ireland*, without Conſent in Parliament. I obſerve, that there is not a Word in this Proteſtation, that the Subjects ſhould not be charged without Conſent in Parliament for the Defence of the Realm, tho' there were a little before an expreſs mention of it, and that with an *eſpecialment.* On the other ſide, there is a Cloud of Precedents of . . . . . . imbarking of private Mens Ships, in caſe of Neceſſity of Defence of the Realm, and Safeguard of the Seas, Command of making Galleys and Ballingers *ſumptibus propriis.*

Arraying and Apparelling of Soldiers, and victualling and conducting them in this Caſe of neceſſary Defence, *propriis ſumptibus*, of ſeveral Towns and Counties, as well Inland as Maritime; the expreſs Words of the King's Commands in ſuch Caſes, by his Writs directed to the reſpective Sheriffs and Head Officers, are, That they ſhould *levari facere expenſas de comitatibus*, ſometimes *comitatuum*, ſometimes *villarum*, as the Caſe was: wherein note the Words, *levare facere*; and in what manner the Sheriffs Levies are, *viz.* Aſſeſſment by himſelf, and Collection by himſelf and Miniſters, I think few are ignorant.

Amongſt which kinds of Writs, ſome of 48 *H.* III. are remarkable for theſe Words in them, *Cumque adhuc neceſſe ſit propter caſus fortuitos ad ſecuritatem & defenſionem regni, defenſionem habere promptam, contra Alienigenarum adventum, &c. Inter alia ſic Rot. Clauſ.* 48 *H.* III. *mem.* 2. A Writ to the Town of *Bedford.* So ſtill the Preſſure is according to the Occaſion, inſtant Proviſion raiſed, whereby a Promptitude may be not ſtaying a Proviſion by Parliament, which Cunctation might be oppoſite to Promptitude.

Alſo the *French* Roll, 21 *E.* III. *Pars* 2. *mem.* 9. *Co.* 11. ſhews, that whereas a Subſidy out of the Wools had been granted to endure for a certain time only, yet the King, *neceſſitate compulſus, de conſilio Prælatorum, Magnatum, & aliorum de Concilio ſuo*, (not *per Commune Concilium*) did ordain *quod ſubſidium prædictum levetur uſque* a further Time.

Cloſe Roll, 1 *R.* 2. *M.* 18. many Writs were directed to the Bailiffs of the ſeveral Towns of *Cambridge*, *Huntingdon*, *Nottingham*, *Derby*, *Lincoln*, *Gloceſter*, *Worceſter*, *St. Edmonds-bury*, and *Thetford*, reciting a former Command of the King to theſe ſeveral Towns, to provide ſeveral Ballingers, *ad cuſtas validiorum et magis divitum hominum* of thoſe Towns. Now by thoſe Writs the King declared to them, that *videbatur* to the King and his Council, that they who had 10*l.* and upwards in Goods, ſhould contribute, and not others; and commands thoſe Bailiffs to compel Men of that Ability to contribute, *per diſtrictionem ſi neceſſe foret, & aliis viis & modis, quibus melius viderint expedire.*

I ſpare Iterations; I conclude my *Second* General Head with my Subſcription again proved by my Judgment, by what I have ſaid before:

That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, the King may, by Writ under the Great Seal, command all the Subjects of the Kingdom at their Charges to provide and furniſh Ships for the Defence and Safeguard of the Kingdom, and may by Law compel the doing thereof.

And that in ſuch Caſe the King is the ſole Judge of the Danger, and when and how the ſame is to be prevented.

And how many more have ſubſcribed to this Tenet it is not unknown; the Records of the General Courts of Juſtice of the Kingdom, manifeſt to ſuch as will look into them.

The Third *General Head.*

I Have done with my *Second* General Head, and come now to my *Third*; which is, To conſider the Acts of Parliament, Anſwers to Petitions in Parliament, *Magna Charta* Laws, which concern the King's Proceedings in this Caſe.

1. St. *Edward*'s Laws have *Danegelt* mentioned in them; ſee *cap.* 12. but not another Syllable pertinent to this Caſe, ſaving that the Church and People are free, have Liberties and Cuſtoms belonging to them of Right, which is not by any denied.

2. I find that there was a *Magna Charta Libertatum Regni* made by K. *Henry* the Firſt, the *Beau-Clerke*, in which is this Clauſe, That *Milites poſſiderent terras dominicarum ſuarum quietas ab omnibus Geldis* (*Guelt* ſignifieth a Sum of Money.) And yet amongſt the Laws of his Time, as appeareth by *Leges Hen.* I. *c.* 16. this is one which I cited before, *Danegeldum*, i. e. 12*d. de unaquaque hida per annum, ſi ad terminum non reddatur wita emendetur* (which ſignifieth an Amerciament.)

3. The *Magna Charta* of K. *John*, made at *Running-mead*, hath been cited by Mr. *Hampden*'s Counſel, and urged to be an Act of Parliament; the Words inferred out of it are, *Nullum ſcutagium vel auxilium capiatur in regno noſtro, niſi ad corpus noſtrum redimendum, & primogenitum filium militem faciendum, & ad primogenitam filiam noſtram ſemel maritandam*; *& ad hoc non fiat niſi rationabile auxilium, &c.*

The Words pitched upon are *(Nullum auxilium)* a general Negative; I have touched before the Signification of the Words *(Aid, auxilium)* I will anſwer the Words farther anon, together with other Statutes, which have as general and further negative Words.

Obſerve, But there is no queſtion but *Running-Mead Mag. Ch.* was no Statute, nor ever was taken for one, ſaving in thoſe Parts wherein it and *Mag. Ch.* of 9 *Hen.* III. do concur: to give but one Reaſon, tell me when, after K. *John*'s Time, were 25 Barons appointed, according to that which is contained in *Running-Mead Magna Charta.* If there were any great matter in *Nullum auxilium*, it is obſervable that thoſe Words are not in *Magna Charta* of 9 *H.* III. and that is the *Magna Charta* which hath the frequent Confirmations.

In Confirmatio Chartarum 25 *Ed* I. there is mention of that *Magna Charta* of K. *Henry* III. by Name, and none of that K. *John*'s *Magna Charta.*

Certainly there were ſome *Iniqua* in the *Magna Charta* of King *John*; the Barons did in that King's Time *iniquum petere ut æquum ferrent*, otherwiſe that *Magna Charta* would have been alſo confirmed, as well as his Succeſſor *Henry* the Third's.

And I pray you note, That after the *Nullum auxilium* there follows on, *Niſi ad corpus noſtrum redimendum:* If for that, then certainly much more for the redeeming of the whole Body of the Commonwealth, which is our Caſe.

4. The *Magna Charta* of 9 *H.* III. which is the often-confirmed *Magna Charta*, tho' it allow all the Liberties of the Subjects then claimed, hath no ſpecial Words pertinent to our Queſtion, which is a Matter obſervable; for Charges for the Defence of the Kingdom commanded by the King out of Parliament, were frequent both at and before that time.

In it there are only general Words of *Habeant libertates ſuas*; out of which Words *(ſuas)* I do obſerve, Firſt, A Right of the Subject in his Liberties, they are *(ſuæ)*. Secondly, Thoſe Liberties which the Subjects muſt *habere*, muſt be *(ſuæ)*, that is, ſuch Liberties as are fit for a Subject, as are compatible with the Relation between a King and a Subject. The Words are not *omnes libertates*, all manner of Liberties, but (*ſuas*,) that is, Liberties proper for them, or ſuch Liberties as they are, in good conſtruction, capable of.

And indeed *Quicquid recipitur*, *ad modum recipientis recipitur.*

14 *H.* VII. *f.* 11. The Abbot of St. *Bartholomew*'s had a Charter from King *Henry* II. that he ſhould be as free in his Lands, as the King was in his Crown; yet theſe general Words paſs for no more than a Subject is capable of; he muſt notwithſtanding thoſe ſwelling Words, pay Fines for Alienation without Licence, admit the King's Valect to a Corody, and ſuch like.

But in that *Magna Charta* of 9 *Hen.* III. *cap.* 20. there is this Clauſe, (*Et ſi nos adduxerimus vel miſerimus eum in exercitum*, *&c.*) which proves the King's Right, even by that Statute, to diſpoſe of the Bodies of his Subjects for his Army.

Alſo *Cap.* 30. there is a Clauſe, that *omnes Mercatores* ſhall have ſafe Conduct, and Liberty *ad emendum vel vendendum*, *ſine omnibus malis tolnetis*, *per antiquas & rectas conſuetudines*, *præterquam tempore belli*; which ſhews, that in *Tempore guerræ mala tolneta* might be ſet up, they were not then *mala tolneta*. *Dominus opus habet*, made them *tolerabilia & toleranda*; in our Caſe, we have *tempora guerrina.*

5. *Confirmatio Chartarum*, which was 25 *Ed.* I. is the next Statute whereof there is any Colour for Mr. *Hampden*; the Words thereof are,

Que pur nul beſoigne tielx maners de aydes, *miſes*, *ne priſes*, *ne prenderomer forſque de com' aſſent de tout le realme*, *ſaves les anc' aydes & priſes dues & accuſtomes.* But this Statute hath not been ſtood upon, becauſe of the *Saves les anc' aydes*, *&c.* That which is ſaved or excepted is clearly out of the Body of the Law.

6. But then comes the Statute *de Tallagio non concedendo*; which of what Time it was, *non conſtat.* It was between 25 & 34 *Ed.* I. I do agree that to be a Statute or an Act of Parliament: The Recital in the Petition of Right, 3 *Car.* binds up my Judgment to affirm otherwiſe.

The Words of that Statute are general, without any Saving or Exception, *Nullum Tallagium vel auxilium*, *per nos vel hæredes noſtros in regno noſtro ponatur ſeu levetur ſine voluntate & aſſenſu Archiepiſcoporum*, *Epiſcoporum*, *Comitum*, *Baronum*, *Militum*, *Burgenſium & aliorum liberorum communiæ de regno noſtro.*

Theſe Words indeed are general; but for a true and juſt Expoſition of them, the Occaſion of the hard preſſing to have that general Statute is to be conſidered.

K. *Ed.* I. had Right to Dukedoms and Earldoms in *France*, and great Wars he had with the *French* King about them.

Great Troubles alſo he had out of *Wales* and *Scotland.*

He was in *Flanders* about auxiliary Wars againſt the *French* King, both at the making of *Confirmatio Chartarum*, and of *Tallagio non concedendo.*

He had a little before, in the 22d of his Reign, cauſed Scrutinies to be made throughout the Kingdom, to raiſe Moneys for Supply of his great and preſſing Occaſions for theſe Wars, which in truth did not immediately concern the Defence of his Kingdom; for if he would have let thoſe Wars alone, he might have had Quiet enough for his Kingdom of *England.*

Upon the ſaid Scrutiny ſearch was made, where and in whoſe Treaſuries or Hands Moneys were, whereby the King might be furniſhed; and indeed, the King's Miniſters took the Moneys they found upon the Scrutiny as borrowed for the King, tho' it were againſt the Owners Wills to lend them: And amongſt others, for the moſt part, they lighted upon the Treaſurers of Religious Houſes, many of which had Coffers well ſtored. The Religious Men being thereupon oppreſſed themſelves, incenſed the Great Men againſt the King; and by that means, and the Palpableneſs of the Injury, the great Lords, eſpecially the then Conſtable and Marſhal of *England*, *Bohun* and *Bigott*, ſtood out againſt the King with a great deal of Stiffneſs; and at laſt the King being in a Streight, and to pacify one Extremity with yielding to another, paſſed the Act *De Tallagio non concedendo*, without the exception or the ſaving of the antient Aids which was in *Confirmatio Chartarum.*

But it is plain, that theſe general Words were never meant, either on the King's, or on the Great Lords and other Subjects ſides, to be abſolutely general for all Caſes: for notwithſtanding thoſe Words, the Aids *pur faire fitz Chevalier & pur file marier*, continued, and ſo did the King's Power to array and ſend Soldiers, *ſumptibus villarum & comitatuum*, into remote Parts of the Kingdom, out of their proper Counties, for the Defence of the Realm, as appeareth in the continual Practice in that King's and his Succeſſors Times; as, if I had time, I could make good by a long Succeſſion of Precedents, appearing upon Records.

See a notable Apology or Remonſtrance publickly made by King *Edw.* I. *M.* 25. enrolled, concerning his Proceedings at that time in this Buſineſs, whereby that is made good, which I have before alledged.

But beſides this Anſwer, I ſhall give a further Anſwer to this and the other Statutes, when I ſhall have peruſed all of them.

7. The next Statute urged is 14 *Ed.* III. in the ſecond Parliament of that Year; in which Statute there is a Recital of a Grant in the ſame Parliament, of the ninth Part of the Goods of the Commons for two Years: the King willing to provide for the Indemnity of the Commons, willeth and granteth to the ſame Prelates, *&c.* (wherein note the word, the *ſame*) that the ſaid Grant which is ſo chargeable, ſhall not be another time had in Example, nor that *they* (which muſt be conſtrued the ſame Prelates, *&c.*) be from henceforth charged, nor grieved, to make up any Aid, or to ſuſtain any Charge, if it be not by common Aſſent, and that in Parliament: And that all the Profits riſing of the ſaid Aid, and of all Wards, Marriages, Cuſtoms and other Profits riſing out of the Realm of *England*, ſhall be ſpent upon the Maintenance of the Realm, and of the Wars in *Scotland*, and *France*, and in no Place elſewhere, during the ſaid Wars.

Note, that the general Clauſe which is urged to be in this Statute, cometh in the middle part of the Statute, and is coupled with other Matter, which was but temporary; and therefore in my Judgment that general Clauſe was meant to be but temporary, *viz.* during the Continuance of the Wars which were then on foot; and was never meant to be a perpetual Diſcharge for ever of all manner of Charges and Aids, as appeareth for that, notwithſtanding that Clauſe, K. *Ed.* III. did ſhortly afterwards, and during all his Reign, as frequently charge the Subjects for Defence of the Kingdom, as ever he had done before: He had alſo his Aids *pur faire fitz Chevalier & pur file marier*, after that; which if the Words were to be expounded generally and perpetually, neither he nor his Succeſſors could have had.

And it is worth the Obſervation, that this Statute is never mentioned in the Petition of Right, as *Tallagio non concedendo*, and 25 *Ed.* III. by Names are; and yet if this had been a perpetual Statute, there was as great Reaſon to have mentioned it as any other Statute.

8. The next Statute urged is the Petition of Right, 3d of the King's Reign.

This Petition reciteth the Statute *de Tallagio non concedendo*, and the Statute of 25 *Ed.* III. againſt Loans and other things: Then cometh the Petition itſelf, which is an humble Prayer to his Majeſty, by his Subjects, That no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or ſuch like Charge, without common Conſent by Act of Parliament: And his Majeſty's gracious Anſwer in Parliament is, *Soit droit fait comme eſt deſire.*

After this, his Majeſty, that knows his own Heart and ſincere Meaning beſt, in his ſecond Speeches to both Houſes, amongſt other things, ſaith, and that moſt juſtly and truly, "That it muſt needs be conceived that he "had granted no new, but only confirmed the antient Liberties."

I obſerve, there is no expreſs Clauſe in any of thoſe Statutes which I have before cited, that no Charge ſhall be impoſed without common Conſent, no not for neceſſary Defence of the Kingdom: And if ſuch a Clauſe had been offered to have been expreſt, beſides that I doubt of what Validity it had been, I certainly believe, that neither King *Ed.* I. nor King *Ed.* III. nor our Sovereign, would ever have yielded to ſo diſhonourable and unjuſt an Expreſſion.

But all theſe ſeveral Statutes being general, and having no particular Expreſſions, I conceive that according to all Rules of Law for Expoſition of Statutes, thoſe three Statutes, *de Tallagio non concedendo*, 25 *Ed.* III. and the Petition of Right, muſt have a reaſonable intendment, and that by a common and juſt Equity, for Expoſition of thoſe three Statutes, Aids and Charges, for ſo neceſſary a Purpoſe as the Defence of the Kingdom; and *Salus Reipublicæ* will be clean out of the Law, as fully as if they had been preciſely excepted: and if other Expoſition be made according to the Letter only, it might truly be ſaid of ſuch a literal Expoſition, That *Litera occidit*, that Laws made for the Good of the Commonwealth, will prove the Bane and Ruin of it.

I will give you a Taſte of ſome Expoſitions of Statutes, with Reſtrictions of the Generality of the Words of them, tho' they be general Negatives. The Caſes I could put are very many, but I will cite only a few, and thoſe ſuch as are appliable to the Reaſon of our Caſe.

Dyer 361. The Statute of *Gloceſter* ſaith, That Tenants for Lives or Years, *nullum facient vaſtum*; yet a Waſte, whereby the Land leaſed *melioratur*, is no Waſte within that Statute.

The Statute of *Weſtminſter* the ſecond ſaith, That Tenant in Tail ſhall not *per factum*, *vel feoffamentum*, do any Act to the Prejudice of his Iſſue: Yet 43 *Ed.* III. *Octavian Lambert*'s Caſe is, Tenant in Tail of Lands whereto a Stranger hath Title of Entry; to gain a Releaſe of this Title, and for Defence of his Eſtate, by his Deed granteth a Rent Charge out of the Lands intailed; this Grant bindeth his Iſſue, ſo that he ſhall hold the Land charged, notwithſtanding the general Words of the Statute.

There was a Statute made 14 *Ed.* III. That for every Sack of Wool carried out of the Realm, the Merchant ſhall find Surety to bring into the Kingdom Bullion, that is, Silver to the Value of 2 *Marks*, and to take for it 2 *Marks* in Coin. 36 *Ed.* III. an Act was made, That whereas the Commons had granted a great Subſidy out of their Wools to the King for three Years; the King granted, that after thoſe three Years, nothing ſhall be taken of the Commons, but the ancient Cuſtom of 1 *Mark* for a Sack of Wool. And 45 *Ed.* III. another Act was made, That no Impoſition or Charge ſhall be put upon Wools, others than the Subſidy and Cuſtom granted to the King, *ſans Parliament.*

Upon long Debate adjudged, That notwithſtanding theſe two latter general Statutes, yet the finding of Sureties for bringing in of Bullion, enjoined by 14 *Ed.* III. was not taken away by either of thoſe two latter Statutes. And in that Caſe, beſides the former Rule of Equity put by me for Expoſition of general Statutes, another Reaſon is given, appliable alſo to our Caſe, namely, That every Statute ſhall be taken the moſt beneficially for the King.

Paſch. 13 *Jac.* In the Star-Chamber, whereas the Statute of 1 *Rich.* III. *c.* 2. ſaith, That the Subjects ſhall not be charged, by any Charge, Executions or Impoſitions, called a Benevolence, nor by ſuch like Charge; yet one Mr. *Oliver St. John*, a *Wiltſhire* Gentleman, being brought to the Bar, *protenus* for writing a Letter to the Mayor of *Marlborough*, againſt a Courſe then holden, for trying what Money rich and able Men would give unto King *James*, of their voluntary free Will; it was reſolved by the whole Court of Star-Chamber, with the then Chief-Juſtice's Advice, that a Commiſſion to treat what Men would give voluntarily to the King, was not within the Statute of 1 *R.* III. tho' the Words were general; and Mr. *St. John* was grievouſly cenſured for his inveighing by his Letter againſt the awarding of the Commiſſion.

I conclude this Matter with an Anſwer by Mr. Sollicitor, aptly given to Mr. *St. John*, who urged this Clauſe out of the Laws of King *W.* I. *c.* 55. *Volumus ut omnes liberi homines regni noſtri habeant terras ſuas*, *bene & in pace*, *liberi ab omni exactione injuſta & ab omni tallagio*, *ita quod nihil ab eis capiatur vel exigatur niſi ſervitium ſuum liberum*, *quod de jure nobis facere debent*, *& prout ſtatutum eſt & a nobis eis datum & conceſſum jure hæreditario per communi concilium totius regni.*

You ſee here are general Words referring to a general Act of Parliament; yet afterwards, *c.* 59. are theſe Words, *Statuimus ut omnes liberi homines totius regni ſint fratres conjurati ad monarchiam noſtram & ad regnum noſtrum*, *pro viribus ſuis & facultatibus*, *contra inimicos pro poſſe ſuo defendendum & viriliter ſervandum.* This latter Clauſe ſhews the Intention of the Act of Parliament formerly ſet down, that notwithſtanding the general Words of the Act, it extendeth not to Caſes of common Defence of the Kingdom, or where *Salus Monarchiæ Regis* or *Reipublicæ periclitatur.*

I have now done with the general negative Statutes, ſtrongly urged; and I think I have exempted the Queſtion of our Caſe from the Purview or Intention of thoſe Statutes.

But beſides thoſe Statutes, Mr. *Hampden*'s Counſel hath urged ſome Statutes that no Soldiers, or Men at Arms, ſhould be enforced to go out of their proper Counties, without Wages from the King.

I will not let thoſe, becauſe urged, tho' pertinent in the Generality only of the People's Liberties, paſs unexamined.

The Statute of *Wincheſter* 13 *Edw.* I. *c.* 6. was cited for that Purpoſe. The Words are, 'Every Man ſhall have in his Houſe Harneſs to keep the 'Peace, after the antient Aſſize.' And ſheweth what the antient Aſſize was. And then there is a Clauſe for freſh Suits after Felons, from Country to Country; and indeed, in caſe of freſh Suit after a Felon, none is bound to go out of his County. But as to the point of going without Wages out of the Counties for Defence of the Kingdom, not a word in my Book in that Statute.

Then cometh 1 *Ed.* III. *c.* 5. the ſecond Parliament; the Words are, 'The King wills that no Man be charged to arm himſelf, otherwiſe than he 'was wont, in the Time of former Kings of *England*; and that no Man be 'compelled to go out of his County, but where Neceſſity requireth, and 'ſudden coming of ſtrong Enemies into the Realm; and then it ſhall be 'done as hath been uſed in Times paſt, for the Defence of the Realm.'

Nota. That before this Statute, the uſe was for Men to go in ſuch Caſes, *propriis ſumptibus*, as appeareth by many Precedents.

In the ſame Year, 1 *Ed.* III. *c.* 7. the Commons complained of Commiſſions to prepare Men at Arms, and to convey them to the King into *Scotland*, *Gaſcoine*, or elſewhere, at the Charge of the Shires; and that the King hath not before this time given any Wages to the Preparers and Conveyers, nor Soldiers, whereby the Commons have been at great Charge. To this the King's Anſwer is, The King wills that ſhall be ſo done no more.

Nota. But note by the very Complaint, that neither the Complaint nor Anſwer are appliable to Caſe of Neceſſity, for Safeguard of the Kingdom.

Then 18 *Ed.* III. *c.* 7. That Men of Arms choſen to go in the King's Service out of *England*, ſhall be at the King's Wages, from that Day that they depart out of the Counties where they were choſen, till they return.

This Statute extendeth not to Caſe of neceſſary Defence. Beſides, the Proviſion is againſt going out of *England*, which is not in our Caſe.

Then 25 *Ed.* III. 8. No Man ſhall be conſtrained to find Men of Arms, other than thoſe that hold by ſuch Services if it be not by common Aſſent and Grant in Parliament.

This extendeth not to Defence of the Kingdom. Beſides, it is a Proviſion for particular Men, ſpecially required. Likewiſe it is only againſt finding the Bodies of Men of Arms. But preſſing of Soldiers or Men of Arms, to ſerve in all manner of Wars, hath been always ſo frequent, both in old, late and modern Times, that it were a needleſs Labour to prove that which every Man knoweth.

All theſe Statutes of 1, 18, and 25 *Ed.* III. are confirmed by Parliament, 4 *H.* IV. *c.* 13. and yet *Rot. Parl.* 5 *H.* IV. *numb.* 24. (which is obſervable for the Time, being preſently after 4 *Hen.* IV.) it appeareth, that there had been Commiſſions directed to Gentlemen of the Country, for arraying, arming, and conducting of Soldiers to the Coaſts of the Sea, and elſewhere, in divers Counties; and that there were many Forfeitures and Clauſes compriſed in thoſe Commiſſions: The Obſervation of which was perilous to the Commiſſioners.

The Commiſſions were brought into the Commons Houſe, and by them entertained as Grievances. The Commons upon Deliberation, did obliterate certain Clauſes in thoſe Commiſſions, and prayed the King, that from thenceforth no Commiſſions of Arrayage ſhould iſſue, otherwiſe than was contained in an amended Copy, which they humbly offered ready drawn.

And that Copy was agreed to by the King in Parliament, after Conference with the Judges, and Advice with the Lords thereupon; and the Tenor of the ſaid Copy was enrolled.

And in the Precedent thereof, appearing in the Parliament-Roll, and being as for the County of *Bucks*, fifteen Gentlemen of the Country are made Commiſſioners; amongſt them I find the Name of *Hampden*, I believe an Anceſtor of Mr. *Hampden*, the Party in our great Cauſe.

But to return: In that Commiſſion there is a Recital of Invaſion and Burnings, which had been by Enemies: And that to reſiſt them if they ſhould again invade, *ac pro ſalvatione & defenſione regni & ligeorum*, the King aſſigneth Commiſſioners *ad araiandum & triandum omnes homines ad arma, & ad armari faciendum omnes illos qui de corpore ſunt potentes, qui de ſuo proprio non habent, unde ſeipſos armare poſſint, viz. quilibet eorum juxta ſtatum & facultates ſuas, & ad diſtringendum omnes illos qui in terris & bonis ſunt potentes, & pro debilitate corporis impotentes, ad inveniendum armatos pro illis qui non ſunt habiles*, (where, by the way, I note, that in caſe of common Defence, the People, not the King, are to be at the Coſts.) And the Commiſſion directs further, That the Commiſſioners ſhall train and divide the Soldiers, and ſhall *conducere eos tam ad coſteram maris, quam alia loca, ubi & quoties neceſſe fuerit*, (here is ſending out of the County of *Bucks*, I am ſure) and ſhall muſter them; and that the armed Men ſhall be armed with their own proper Arms, and not with the Arms of others, upon Pain of Forfeiture of them, (note the Clauſe of Forfeiture) *& ad areſtandum & capiendum omnes qui fuerint rebelles ſeu contrarii, & priſonæ committendum, ibidem moraturi quouſq; pro eorum punitione aliter duxerimus ordinandum* (here is Power of Impriſonment). That Commiſſion commands likewiſe the Commiſſioners to array themſelves, *& inſuper* to make Beacons, whereby *gentes patriæ de adventu inimicorum poterint congruis temporibus præmuniri*; and a further Clauſe, that the Commiſſioners ſhall *ducere* the Soldiers *cum periculum advenerit, ad coſteram maris & alia loca, in defenſionem regni & patriæ; ita quod pro defectu armationis & ductionis damna patriæ non adveniat ullo modo.*

The Commiſſion I have taken, and now repeat at large, becauſe offered by the Commons themſelves in Parliament, inſtantly after the Confirmation of *Edw.* the Third's Laws, 1, 18, and 25 of his Reign beforementioned, and all by the Judges Advice.

All Powers of Command imply the Duty of Obedience. I ſay no more, but as Arms and Travelling by Land are neceſſary for the Defence of Land, ſo Ships and Sailing, Ordnance and Tackling, and the Neceſſaries mentioned in the Shipping-Writ, are moſt requiſite for Defence at Sea.

And thus I have paſſed all the Acts of Parliament cited or pertinent to our Caſe; I confeſs they are *leges ligantes*, and I think that in my Anſwers to them, I have not broken the Bonds of them, with the which I acknowledge both my Conſcience as a Judge, and my Eſtate as a Subject, obliged.

The Fourth *General Head.*

I Come now, in the *Laſt* place, to my *Fourth* General Head, which is, To anſwer the Objections made by the Counſel on Mr. *Hampden*'s Side.

The Objections were of three ſorts; ſome grounded upon Reaſons of Law; ſome upon Authorities and Inferences upon Records; ſome upon Miſchiefs and Inconveniencies pretended.

Object. 1. 2 *R.* III. *f.* 10 & 11, was objected; where, upon the Diſtinctions of *poteſtas in Curia, & poteſtas in Camera*, concerning the aſſeſſing of Fines, it is ſaid, that *Juſticiarii Regis per eorum diſcretionem aſſideb' finem, & non dominus Rex per ſe in Camera ſua, nec aliter coram ſe, niſi per Juſticiarios ſuos; & hæc eſt voluntas Regis*, viz. *per Juſticiarios ſuos & Legem ſuam unum eſt dicere.* And it was ſaid, that in the preſent Caſe, the King hath not proceeded *per Juſticiarios*, but *per ſe* or in *Camera*.

Anſw. I anſwer, That in our Caſe there is not any thing done *in Camera*, the Shipping-Writ iſſueth out of the Court of *Chancery*; beſides, we are not now in the Caſe of aſſeſſing a Fine.

It is true, that if a Preſentment, Indictment, or Information, be depending in the King's Court, and ſo far proceeded in, as that Judgment of a Fine is to be given, this is not to be aſſeſſed by the King *in Camera*, but by the King's Juſtices *in Curia.*

Howſoever, if we go to Diſtinctions, there is *potentia abſoluta*, and *poteſtas ordinaria:* I hope none will deny, but that the King hath *poteſtatem abſolutam*, in many Caſes.

Stat. Weſtm. 1. It appears a Man may be committed *per ſpeciale præceptum domini Regis*, and is not in that Caſe Bailable.

20 *Hen.* VII. The King is *Capitalis Juſticiarius Angliæ.*

I put you the Caſe of *Hil.* 2 *E.* III. *p.* 6. One having Money of the King's wherewith to pay Soldiers, miſuſed it, and committed many Outrages in *Lancaſhire*; a Writ iſſued to the Sheriff of *Lancaſter* to attach him; being by virtue thereof attached, and brought to the *King*'s-*Bench*, he was there diſcharged: the Reaſon given by *Scroope* the Chief-Juſtice was, Becauſe the Attachment being grounded upon a Suggeſtion, was againſt the Law: no ſuch Writ ought to have iſſued, unleſs there had been ſome Indictment, Preſentment, or Information depending. But I doubt not, if the King had by his abſolute Power made a ſpecial Precept in his Chamber for Commitment of this Man, he could not have been diſcharged.

The Truth is, The Objection upon the Diſtinction of *Curia & Camera*, is not rightly applied to this Caſe: it might as well have been urged againſt a Commiſſion of Sewers iſſued at common Law, out of the Chancery. The Matter is, what the Law is concerning the King's Power, for Proviſion towards neceſſary Defence.

Object. 2. It hath been ſaid, that divers Payments and Promiſes of Payments have been made by the King in all Ages, upon Occaſions of his Wars and Proviſions for the Defence of the Realm and Sea: and many Records have been vouched to that Purpoſe.

Anſw. I anſwer, *Firſt*, It is true; but more Payments have been made by the Subjects alſo in the ſame Caſes; as will appear, if we go to vie by Records: Multitudes have, to that purpoſe, been cited on the King's Side.

Secondly, In ſome Caſes, as of Borrowing, Purveyance, or the like, Payment by the King was of Right; but in the Caſes merely for neceſſary Defence, his Payment, or Promiſe of Payment, was of Courteſy and Grace, and is not binding in Precedent, no more than in the Caſe of Mines Royal. It appears by many Precedents, cited in the Caſe of Mines common, That many Subjects, Owners of Land, wherein were Mines of Silver, ſhared with the King; ſome had a twentieth, ſome a greater, ſome a leſſer Part. and this was objected againſt the King's ſole Intereſt, which notwithſtanding was adjudged; and the Anſwer made to thoſe Records was, That it was of the King's Courteſy and Grace, not of Right: one may do with his own what he pleaſeth.

But I will put you at large one of the Records which hath been cited, and let it be conſidered for whom it maketh.

23 *Ed.* I. *Rot.* 77. *Ex parte rememorator' Regis.* There Writs iſſued to divers Mayors and Bailiffs to make Gallies, ordained by the King, and *Concilium ſuum:* It doth not ſay, *commune concilium*, to be made *pro defenſione regni & ſecuritate maris*; and in the Record there is a Clauſe, *Cuſtum quod ad hoc poſueritis, cum illud ſciverimus, vobis in exitibus ballivæ veſtræ allocari faciemus.* But note, that here is a Command they ſhall firſt lay out the Money: and note, that there is this further Clauſe in the ſame Writs, *Volumus autem quod bordas & meremium, quæ ad hoc competunt, ubicunque ea inveniri contigerint, & cujuſcunque fuerint in villa prædicta vel extra pro galeis illis faciendis capiatis.* I pray you note that Clauſe, for the expreſs Words of *Magna Charta* are, *Nos non capiemus boſcum alicujus ad caſtra, vel ad alia agenda noſtra, ſine voluntate ejus cujus boſcus fuerit:* and yet it is commanded, that they ſhould take *boſcum alienum* in this Caſe, and I think warrantably; for the Words in *Magna Charta* are, *ad agenda noſtra*, but the making the Galleys commanded, was not *agendum regis* within, but *agendum regni*, without the Meaning of *Magna Charta.*

Obj. 3. Diſuſage, or no Precedent for many Years of this Courſe now attempted, hath been objected.

Anſw. I anſwer, as it is ſaid 11 *H.* IV. 7, & 38. upon that Objection againſt the Force of the Statute of 14 *Ed.* III. about the King's Preſentations to lapſed Churches, that an Act of Parliament diſuſed may be put in uſe, and ſo that Law diſuſed may be put in uſe, eſpecially in the King's Caſe, for *Nullum tempus*, &c.

Alſo, the Thing hath been done, tho' not this particular Way, Supplies have been made otherways; ſometimes by Collection of Moneys, and Means without Warrant of Parliament; ſometimes by liberal Proviſions and Grants in Parliament, in late Kings Reigns by Benevolences, before *Richard* III's Time, in the Manner commanded, and after treated.

Object. 4. The ſeveral Means and Incomes, which the Crown hath, have been diſtributed; as that it hath Tenures and Eſcuage for Wars, Cuſtoms and Tenures for Defence at Sea, Fines in the Hanaper for the Charge of his Juſtice: and thereupon it hath been ſaid, there is no Cauſe, if theſe Incomes were well imployed, to raiſe Moneys thro' new Ways.

Anſw. *Utinam* thoſe great Means and Incomes could ſerve the turn.

My Brother *Weſton* made a Computation what the Five Ports Service cometh to, and thereby it falleth ſhort to be to any Purpoſe.

As for Eſcuage, it is Attendance out of the Realm but for forty Days, and that in caſe of mean Tenures, if the Tenants proper Lords attend the King, for therein every one is to defend his own Seignor for that Time. Alas! What is that for a Kingdom? Beſides, are we ſure the Occaſion of Defence will preſs but for forty Days? Again, what if the mean Lords themſelves go not in Perſon?

But ſince I have Occaſion of Speech of Eſcuage, I muſt put you in mind of two ſorts of Eſcuage, by the Law.

The firſt is that before touched, and is commonly called *forinſecum ſervitium:* And it is only for *Wales*, *Scotland*, and other the King's foreign Territories.

The ſecond is of another kind, and is appliable to this Caſe, in regard of charging the Subjects, without their Parliament-conſent. It hath not been called for theſe many Ages; but in the black Book of *Tilburienſis*, *l.* 1. *c.* 26. you ſhall find concerning it in theſe Words: *Fit interdum, ut in imminente vel inſurgente in regnum hoſtium machinatione, decernat Rex de ſingulis feodis militum ſummam aliquam ſolvi, marcham ſcilicet vel libram unam, unde militibus ſtipendia, vel donativa ſuccedant: mavult enim princeps ſtipendiarios quam domeſticos, bellicis apponere caſibus. Hæc itaque ſumma, quæ nomine ſcutorum ſolvitur ſcutagium nuncupatur; ab hac autem quieti ſunt ad ſcaccarium reſidentes.*

Object. 5. This is a general Charge; it appears by the *Mittimus*, that every County in the Realm hath the like Writs, amongſt which many, as this of *Bucks*, are merely Inland Counties, they have no Places to make Ships in, no Means to convey their Ships (if they could make any) to the Sea: they have no Mariners, nor Tacklings, *&c.* and ſo an Impoſſibility, or, at leaſt, an improper Charge is put upon them; the Cinque-Ports, the Maritime Towns and Counties are furniſh'd, and are apteſt to be put to this Service.

Anſw. I anſwer ſeveral ways.

The Inland Counties may provide all thoſe Things which they have not of their own, with their Money; *Pecuniæ omnia obediunt*, *nummus* is *menſura rerum.*

Alſo there is great Reaſon they ſhould join, by the Rule of *Qui ſentit commodum, &c.* I am ſure if Defence be not made, they may *ſentire incommodum.* So by the Rule, *Quod omnes tangit, &c.*

11 H. VII. *Sir* Will. Herbert's *Caſe.*

The Reaſon in Law of charging Heirs in Gavel-kind, and of Contribution to Charges upon Land, equally liable, cometh to this Caſe.

Alſo the whole Realm is but one Body; the Diviſion of it into Counties, was by King *Alfred.* The King may make a County *de novo*, by taking out of another; may make two Counties of one, or one of two, if he pleaſe.

Then take the whole as one Body, the ſeveral Members center in it; if one Member ſuffer, every Member of the ſame Body ſuffereth with it.

But methinks there is more Reaſon to excuſe, than to charge the Ports and Maritime Parts; in this Caſe they ſtand between the Enemy and the Inland Parts, they are the next Door to Danger; and it is fit they ſhould not be let Blood, but ſhould keep it all, to ſerve themſelves and the Inlands, and not have means taken from them, whereby they may be diſabled.

Beſides, I refer myſelf to the ſeveral Precedents, ſingle and at large, cited by my Brother *Weſton*; by which it appears, that the Inland Places have heretofore been charged with Proviſions of Gallies, Ballingers, *&c.* for the Seas.

By the Commiſſion of Sewers, it appears, that this Courſe agrees with Proceedings in like Caſe, by the Common Law.

F. Nat. Regiſter. All who are within the Level of an Inundation, rich or poor, without reſpect of Perſons, are to be proportionably aſſeſs'd, upon that Commiſſion.

P. 15 *Ed.* II. *Rot.* 70. *in bk. w.* The Caſe of *Rippon* in *Yorkſhire*, is notable upon this Reaſon; by it, it appears, that the Law was, that all that had Salvation by the Plaintiffs being Hoſtages to the *Scots*, were by Law compellable to bear their ratable Shares, to raiſe Moneys for the Plaintiffs Ranſom.

23 *Ed.* I. *cl. Rot.* 1. *memb.* 4. *dorſ.* In a Writ to the Archbiſhop of *Canterbury*, the Words and Matter are notable alſo to this Point: *Sicut lex juſtiſſima, provida circumſpectione ſacrorum principum ſtabilita, hortatur, & ſtatuit ut quod omnes tangit ab omnibus approbetur; ſic & innuit evidenter, ut in communibus periculis per remedia proviſa communiter obvietur.* As to the Objection out of the Records, *(per remedia proviſa communiter)* that ſhould be by Parliament; I think the contrary is apparent out of the Writ: for the Writ requires the Archbiſhop, with the Clergy of his Dioceſe (not Province) by their Proctors, inaſmuch as the King of *France*, *Claſſe maxima & bellatorum copioſâ multitudine congregatis, proponens linguam Anglicanam omnino de terra Anglicana delere*, to come, by a ſhort Day enſuing, to *Weſtminſter*, *tunc ibidem ad tractanda, ordinanda & facienda nobiſcum, & cum cæteris prælatis & aliis incolis regni qualiter ſit periculis hujuſmodi obviandum.* Note, here is no mention of *Proceres*; and beſides, Clergymen have no Capacity of Knights or Burgeſſes Places in Parliament, therefore this was not a Treaty appointed or intended in Parliament; which is further enforced upon the Words *(ad tractand'*, &c. *nobiſcum & cæteris prælatis & aliis incolis regni).* If a Treaty in Parliament ſhould have been, it had been readier to have expreſſed in Parliament, or in *Communi Concilio*, and not to have uſed the other improper Expreſſion.

Beſides, I do not find that any Parliament was holden at that Time, nor at any Time between 21 *E.* I. and 24 *Ed.* I. whatſoever was ſaid by Mr. *St. John* to the contrary.

But if this Treaty had been, or were intended to have been in Parliament, it is not concluding; for it could not be but in Parliament, as hath been urged.

Object. 6. This Way draweth to many ill Conſequences; for it ſtirs Murmuring and Grudging of the People, by reaſon of the Burdens upon them.

Anſw. The Conſequence would be worſe, if the Kingdom ſhould be loſt, (which I cannot mention without a *quod abſit)* and *de malis minimum.*

Beſides, popular Grudgings are many, if not moſt times cauſeleſs; they are not to hinder doing of Right.

Object. 7. This is to become an annual Charge upon the People; there is Cauſe of thinking ſo, becauſe ſince 11 *Car.* we have had every Year new Shipping-Writs.

Anſw. If the Neceſſity continues, the Charge muſt continue. The ſame Reaſon ſerves for the Continuance as was for the Beginning of it. Yet I deny that of itſelf it may be annual.

Ceſſante Cauſa, ceſſare debet effectus; but *continuante cauſa, continuandus effectus.*

This muſt be left to his Majeſty's Juſtice, which God forbid that any ſhould think he will abuſe.

Object. 8. It hath been agreed, that if there were *flagrans bellum*, if we had *(quod abſit)* a *Hannibal ad portas*, then this Courſe without Proviſion in Parliament, were not againſt the Law. But it hath been ſaid, that we have neither *flagrans bellum*, nor a *Hannibal*, in our Caſe.

Anſw. Let us conſider what the Reaſon is, why it is not againſt the Law in caſe of *flagrans bellum*, or *Hannibal ad portas.* It can be no other but to avoid a further Miſchief. The ſame Reaſon holdeth in our Caſe, wherein there is apparently an *initium malorum*; and in ſuch Times as we now live in, or *rebus ſic ſtantibus*, no Man of Underſtanding, but muſt acknowledge that Security is dangerous.

Object. 9. Tonnage and Poundage, which was uſed in former Kings' Times to be granted by Parliament, for a Proviſion of a Stock, for thoſe Purpoſes for which the Shipping-Writ now iſſueth, is taken *de facto* by the King's Majeſty, tho' it be not yet granted him.

Anſw. Read the Words of the Statute 1 *Jac. & ult.* at large. In them obſerve, 1*ſt.* a Confeſſion by the Commons, That Tonnage and Poundage hath been paid to the Kings of *England* Time out of Mind: I ſay, it is ſo confeſs'd; I do not ſay, that in Truth it was ſo.

2*dly.* Obſerve the Word *(Towards).*

3*dly.* A Confeſſion that the Tonnage and Poundage are not ſufficient for thoſe Purpoſes, for which it was commonly granted. The Occaſions are now for vaſter Expences than were requiſite at that Time; and what Tonnage and Poundage will not now ſuffice to perform, muſt be raiſed ſome other Way.

Alſo it is to be known, for an Anſwer to the Objection againſt the taking of it, as if it were not taken *de jure*, that Tonnage and Poundage hath been always taken, with a *continuando* upon the Change of a King, before ſuch time as a Grant came of it by Parliament; upon the Demiſe of the King, the payment or taking it never ceaſed, or was diſcontinued, until it came to be due by Grant of Parliament.

Object. 10. It appears that a Parliament might have been holden; there are about ſix Months between the *Teſte* of the Shipping-Writ, and the 1ſt of *March* enſuing.

Anſw. This receiveth an Anſwer in itſelf; for if the King had been pleaſed to have called a Parliament, to have had Proviſions granted, and by or before the 1ſt of *March* 11 *Car.* Proviſion had been granted, yet the thing commanded by the Shipping-Writ in *Auguſt*, to be ready in *March*, could have but begun in *March* to have been then prepared, and ſo a whole Year apparently loſt; in which time, God knows what might have become of this State.

Object. 11. But what if the King ſurmiſe only, that there is ſuch Danger as muſt be prevented, when in truth there is no ſuch matter?

Anſw. Hath not the King a Conſcience?

The Law believeth his Affirmation, and for that Cauſe they are not traverſable, as appeared by my Lord *Dyer* upon the *Ne exeas regno.*

Rex eſt recordum ſuperexcellens. Teſte meipſo, is his Language; it is againſt the Duty of a Subject to conteſt with him.

Again, it is a Rule of Law, *Cuillibet in arte ſua credendum eſt*; it is the King's proper Art, to have Intelligence of foreign Intentions, to foreſee publick Dangers, to conclude and put in Execution what is neceſſary for the Preſervation of his Eſtate and People.

Tu regere imperio populos, Rex ſumme, memento:
Hæ tibi erunt artes, &c.

Alſo Mr. *Hampden*, by his Demurrer in this Caſe, hath confeſs'd all the Matters in Fact, which moved the King to iſſue this Writ, and are mentioned in the Writ.

Object. 12. 26 *E.* I. *Pat. Roll. Mem.* 21. hath been urged: there it appeareth that the King, deſirous to amend *gravamina populo nomine ſuo facta*, ſent Commiſſioners to hear and determine what Takings had been from the Subjects made in the King's Name, but without his Warrant; and to puniſh it preſently, and to do right to the Parties: but as for that which ſhould be found to have been taken by the King's Warrant; *Le Roi voil que ſoit certifie, et il eut ferra tant que ils ſe tiendr' apaies per reaſon.*

Anſw. Note the Diſtinction in this Caſe between the Repayment and Satisfaction by the Parties for that which was taken without Warrant, and the Repayment, if it were taken by Warrant of the King. For in caſe that which was taken by colour of the King's Warrant was againſt the Law, it was as tortious to the Subject, as that which was taken without the King's Warrant; and in all Juſtice, the Subject ought to have been reſtored to his Right, with as much Expedition in one Caſe as the other.

Alſo, as hath been already anſwered, the Words are not *(they ſhall be paid)* but *le Roi ferra tant que ils ſe tiendre apaies per reaſon*; that is, as I conceive it, The King will give them a reaſonable Anſwer.

Object. 13. Upon the Words *Requirimus & Rogamus*; in Writs to the Bailiffs of diverſe Towns, when they were ſent unto to array and ſend Men at the Expences of the Towns, it hath been urged, *Ergo* the Thing required is a Matter of good-will, and not of Right; in which Caſe it would rather have been a *Mandamus*, or a *Præcipimus*, than a *Rogamus.*

Anſw. Note the *Requirimus* precedes.

Alſo the Word *Rogamus* ſignifies as properly a Commandment, as a Prayer. *Linwood.*

Alſo the Words are, *effectuoſe requirimus & rogamus.*

Alſo, *Cum princeps orat, precibus præcepta colorat.*

But ſince thoſe Writs are urged, let them be read; and it will appear, that in the Matter of them, pertinent to this Queſtion, they make directly for the King. *Vid.* for that Purpoſe, *Rot. Sco.* 12 *E.* II. *M.* 7. *dorſo*, but chiefly *Rot. Sco.* of the ſame Year, *M.* 13. *dorſ.* In the Writ to *London* there, the King reciting that the *Scots fines regni Angliæ cum ingenti armatorum multitudine ingreſſi*, had taken the Caſtles of the King, and of his Subjects, and did ſtill hold them; and had beſieged more Caſtles; and that the King, by the Counſel of the Prelates, Earls, Barons, and the Peers of the Realm, had ordained (not a Word of the Commons) to be at *York* ſuch a Day, with an Army; and they had promiſed to be there with him *ſumptibus ſuis cum toto poſſe ſuo: nos conſiderantes quod pro tanta neceſſitate, fideles & ſubditos noſtros, ut in præmiſſis manus apponant adjutrices decet requirere & rogare, ac de vobis ſpecialiter confidentes, vos effectuoſe requirimus & rogamus quatenus ad præmiſſa conſiderationem debitam habentes*, they ſhould inſtantly array 500 Footmen, and ſend them to the King, *ſumptibus ſuis.*

Nota, All this done without Warrant of Parliament; and more Court-like Words, certainly, were of Purpoſe uſed in ſuch a Time as that was, of inſtant Neceſſity, *ad faciendum populum*, than either needed, or might have been uſed, if it had been ſo thought convenient.

Object. 14. Out of *Paſ.* 26 *Ed.* I. *Rot.* 35. *Commun' ex parte Rememoratoris Regis. Reginal Gray* being commanded by the King to levy and conduct to the King 1000 Men out of *Bromfield* and *Yale*; he, by his Letter to the King, anſwered, That he durſt not chuſe 1000 Men there, without Warrant; and that he would not *mewer* (that is, move) in thoſe Parts without Pay.

Anſw. His writing that he durſt not, is not to the Right, but in his Judgment it was not ſafe, or might be dangerous.

Alſo, he durſt not without Warrant, it may be, he thought the King's Letter, without his Great or Privy-Seals, no ſufficient Warrant.

Alſo, it appears in the Record, that the King had ſent him Word before, that the Treaſurer ſhould ordain Payment; but it ſeems Pay came not; and then it is likely Soldiers would not ſtir without Money: They commonly cry *Guelt*, and if they have it not, are apt to diſband.

Object. 15. Repayments commanded by the King (*ut conſcientia Regis exoneretur*) *Ergo*, the King could not take of Right in theſe Caſes.

Anſw. The Record is 29 *E.* I. *Commun' ex parte Rememorator' Regis*; there is a Command for Repayment, *Quia pro urgentiſſimis negotiis & pro utilitate & defenſione totius Regni*; the King had received of the Abbeſs and Convent of *Canonlieghe* 612*l.* and had promiſed Repayment; note thoſe Words: And alſo, for that the Abbeſs had petitioned the King in Parliament for Repayment. So here was a Promiſe originally for Repayment alſo in this Caſe; a very great Sum of Money it was which was taken from one ſingle Corporation, more than was proportionable for them; and therefore juſt and conſcionable, that Repayment ſhould be: this great Sum was taken upon a Scrutiny, 22 *Ed.* I. in Places where it was thought that Money might be had. And upon that the foreſaid Sum was borrowed (unwillingly, God knows, as to the Lender) of this Abbeſs, and of divers other Religious.

The like Scrutiny was made, *temp. E.* II. and the like Courſe for Repayment, as appears *Rot. Parl.* 8 *E.* II.

And indeed, it had been before thoſe Times, and ſo continued, a uſual thing, for our Kings to look into the Treaſure of the Religious, when they had Occaſion of Money; and ſometimes to take their Silver Plate, and rich Offerings, for Supply of inſtant Wants. And the Religious would not fail to preſs upon the King's Conſcience, until they had Reſtitution.

Object. 16. 12 *E.* III. *Ro. Aman. M.* 22. *dorſ.* A Letter to the Archbiſhop to move all the People to pray and give Alms for the King.

Anſw. I ſay no more, but will read what the Record is, itſelf *loquitur.*

Pater, &c. *Cum populis regni, variis oneribus, tallagiis & impoſitionibus hactenus gravetur, quod dolentes referimus, ſed* (note this *but*) *inevitabili neceſſitate compulſi, de eiſdem oneribus ipſum relevare non valemus* (ſo no Wrong confeſs'd; Neceſſity excuſed it, and Continuance of a Wrong cannot be juſtified). The King deſires the Archbiſhop to move the People, *ut tantam neceſſitatem humiliter, benigne, patienter & charitative ſuſtineant:* note thoſe Adverbs, eſpecially *humiliter.* And they would have a good Opinion of the King, and would pray and give Indulgences, to the end he might proſper in his Wars for Recovery of his Right in *France.* (Note, *To the end*, &c.) *Oneribus prædictis* (*quæ non ex malitia vel præſumptione voluntaria, ipſos gravant*) *non obſtantibus.*

Object. 17. Out of the *Parl. Roll* 13 *E.* III. *M.* 9. &. 11. The Remembrances of the Parliament.

One of the Points to be conſidered and propoſed by the King, was for Courſe to be taken for a Navy at Sea, and for Recovery of *Jerſey*, which the *French* then had conquered.

Anſw. In this Propoſition the Words of the King are, *Et per tant ſerr' les Comons diſcharges del guard del mere*; by which Words it is evident, the King conceived, that the Commons were by Law charged with the Guard of the Sea.

It is true, the Commons anſwer, They pray *in drt. del guard del mere*, that they be not charged to give Counſel, it being a thing whereof they have no Cognizance; but they give their Advice, that they think the Barons of the Ports ſhould do it, and therein they confeſs, that the guarding of the Land belongs to the Commons, *ſans gages demaunder ou prender.* They could not deny but that the Sea muſt be guarded. They put not the Charge of that Guard upon the King, but would place it upon the Ports. Of what Strength or Power the Ports were in thoſe Times, I know not; but in our preſent Age, it is apparent, they are not by many Degrees, near able to defend the Seas, which muſt notwithſtanding be defended, and that Defence can fall upon none but the whole Realm.

Object. 18. Upon the *Parl.* 15 *Poſ.* 2 *R.* II. *pars* 1. where the Speech of *Scroope*, then Chancellor, is ſet down; he therein declared the Cauſe of the Summons of that Parliament, whereby it appeareth, that a little before there had been a Parliament at *Glocester*, and no Proviſion for common Defence was there agreed on; that after the Departure of that Parliament the King had aſſigned ſome Prelates and Lords to be of his continual Council, for the Year following; the ſaid Council treating and having before their Eyes, the great Miſchiefs and Perils with which the Realm was on all Parts invironed, and the Summer approaching, and no Ordinance made in Parliament for Salvation of the Realm, and Reſiſtance of the Enemies. And the ſaid Council durſt not take upon themſelves alone the Ordinance of ſo perilous and high an Act; but it was adviſed by them, after *Chriſtmas* to aſſemble a great Council of all the great Lords of the Realm, Prelates and others; and upon a ſecond Warning there came well near all the Prelates, as well Abbots as others, the Earls, Barons, Bannerets, and other Sages of the Realm; and then there the great Perils and Miſchiefs to the Realm being diſcloſed, by reaſon of the great apparent Wars by Land and Sea, whereof no Ordinance was provided; and moreover, it being declared before them, by the Officers of the King, and Treaſurers of the War, as to the State of the King, and of the Realm, that nothing remained in the Treaſury for the War; it was ſaid, in the ſame Council, *Pur concluſion final, que ils ne poient cet miſchiefe remedier, ſans charger le Common del realme, que charge ne puit eſtre fait ne grant ſans Parliament; & per tant per aſſent de eux le Parliament ore eſte ſomon' & in le meane temps que ſuffic' army ſer' ordeine al mere in defence, & ſalvation del realme et del navie, et del Coaſts del mere a quel coſtages touts les Seignors apprompterant voluntarement al roy, divers grand ſommes del money. Et iſſint font bon gents de London, et d'auters vills, as quod le roy per aſſent fuit in dit grand Counſell, aurit envoy pur ce cauſe. Et ad done a eux ſon royall grt. pur repayment.* It hath been ſaid, that the preſent Queſtion is fully anſwered.

Sages *here are ſad Men, not Judges, as was objected.*

Anſw. I confeſs that this Record hath a great Shew of Proof, that tho' there be an apparent and inſtant Time of Danger to the very *Salus Reipublicæ*, yet no Charge upon the Commons may be made, or granted, without Parliament. And indeed, this is the ſtrongeſt Proof upon any Record, that hath been urged on Mr. *Hampden*'s Side. But I think it will receive an Anſwer with indifferent Affections, if theſe Things be obſerved.

1. That this Conſultation and drawing in Queſtion of the uſing of Means, was before any Charge actually impoſed: Which now I inſiſt not upon, becauſe I have formerly touch'd upon it.

2. The King was then in Minority, the Law was not then clear and ſettled concerning an Infant King's Power. You ſee it was debated, and not reſolved, until the Time of K. *Ed.* VI. *Vide* the Caſe of the Duchy of *Lancaſter. Plow. Com.*

3. The Example of *Latimer* was then freſh; and the Lords, it may be, were over-wary, upon his Precedent, tho' it could not parallel with theirs, if they had undertaken, upon ſo urgent Occaſions, to have charged the Commons, without their Conſent in Parliament.

4. Note the Words of the Record, That the Lords, appointed Counſellors, could not adviſe or find any Means; and it is certain, that no Counſellors, none but the King himſelf, could command ſo high a Matter. The King then was not there; he was at that Time ſcarce out of his Nurſe's Care.

5. The People at that Time were wavering, and full of Diſcontents; they had withdrawn themſelves from Parliament. *Alice Peers* had a little before plaid her Pranks, and the young King was not fortunate in his then governing Servants.

Laſtly, The Thing neceſſary, *viz.* Security of the Kingdom, was done by another Way, *viz.* by lending of Money, as in the Record: But put the Caſe it had not been done one way or other, then of Neceſſity the People muſt have been charged, tho' without, yea, tho' againſt their Conſent; for the Kingdom muſt not be loſt, an *ultimum refugium* muſt be found out, rather than ſo fatal and final a Miſchief and Miſery muſt be endured.

Object. 19. *Rot. Parl.* 2 *H.* IV. *n.* 22. Concerning Barges and Ballingers, commanded to be made without Aſſent of Parliament. The Commons Petition ſaith, That this had not been done *avant ceux heurs*, and pray'd that the Commiſſions might be repealed. The King's Anſwer was, That the Commiſſions ſhould be repealed.

Anſw. It is plain that thoſe Commiſſions, before that Time, ceaſed of themſelves; for they were made in *Richard* the Second's Time, and died with him. All Commiſſions from the King are but Authorities which end with that King from whom they iſſue.

Alſo note, that the ſaid K. *Henry* the Fourth's Anſwer in Parliament goeth further, *viz.* But for the great Neceſſity which the King hath of ſuch Veſſels for Defence of the Realm, in caſe the Wars ſhould hold, the King would commune with the Lords of this Matter, and after ſhew to the Commons for their Advice. Which Words are notable to this Queſtion. It cannot be denied, but this Anſwer to the Commons ſaid Petition in Parliament is, in effect, a *Roy ſoi aviſera.*

I note that *Rot. Parl.* 1. *R.* II. *M.* 52. there is a Gratification by the King, in confirming of Franchiſes to thoſe Cities and Towns, *que ſont ore* (that is, now in this Time of Parliament) charged with the making of Ballingers in Defence of the Realm. Here in this Parliament juſt Occaſions were given to the Commons to have complained of this Charge, with the making of Ballingers, charged upon them before the Parliament, if it had been a Wrong: but they complained not of it, for aught appears; and the King's Gratification is no Proof that it was as by way of Recompence for a Wrong; but it is plainly an Argument of the King's Grace to them, by way of Encouragement of them in their Services for the Commonwealth. The like appears, *M.* 3. 2. *Cheqr. K. Rem. inter brevia directa Baronibus.*

Alſo it is to be known, that in all King's Times, ſome Matters have been preferred in Parliament, from the Commons to the King, as Grievances, which in themſelves have not been Wrongs, or againſt the Law: We find in our Books, there may be *damnum abſque injuria.*

Object. 20. *Parl.* 7 *Ed.* IV. *n.* 7. In the beginning of the Parliament, the King himſelf ſpake to the Commons, and, amongſt other things, promiſed the Commons, He would live of his own.

Anſw. The King's Speech ſtayeth not there, but goeth further, the Words are theſe: 'I purpoſe to live of mine own, and not to charge my Subjects but in great and urgent Cauſes, concerning more the Weal of themſelves, and the Defence of them and the Realm, than mine own Pleaſures; as heretofore by the Commons of this Land hath been done, and borne, to my Progenitors, in time of need.' Which Words are remarkable: not a Syllable in them of doing this only by common Aſſent in Parliament, but relatively, as heretofore, &c. which how it hath been *de facto*, you have heard; namely, ſometimes in Parliament, and ſometimes out of Parliament.

The laſt material Objection to be anſwered by my Memory, is the Authority of *Forteſcue* in his *de laudibus legum Angliæ*, where he ſaith, *Cap.* 13. ‘That the King of *England* is *Rex politice regens*; and *regulariter*, to do what he pleaſe.’ This needs no Anſwer, it is agreed. But he farther ſaith, *Cap.* 9. That the King may not *populi ſubſtantias proprias ſubtrahere, reclamantibus eis vel invitis*; that he may not *Tallagia & cætera onera eis imponere ipſis inconſultis*; That he may not *ſubjectum populum renitentem onerare impoſitionibus peregrinis*.

I anſwer, That 'tis moſt true *regulariter, & regula non facit jus, & nulla regula quin fallit*.

Caſes of Neceſſity, Caſes of *Bonum publicum*, Caſes of *Salus Reipublicæ*, are not to be compriſed within ordinary Rules. I have ſpoken ſo much hereof already, that now I will ſay no more, but conclude, That in Caſes of Neceſſity, *pro ſalute Reip.* every Subject muſt (even by Rules of Law) beſtir himſelf; muſt contribute his beſt Abilities; muſt ſet to both his helping Hands.

Rich Men muſt expoſe their Treaſures.

Able Men of Body muſt put on Arms.

Great Counſellors muſt give their beſt Advice.

Women muſt not be idle.

Old Men and Clergymen (if they have no other Powers) muſt attend their Prayers.

And Judges muſt preſs and enforce the Laws upon the Subjects to compel them to contribute.

And ſo I have done at this time: And what I have ſaid, I have ſpoken to the Beſt of my Underſtanding, and in Diſcharge of my Conſcience in a Caſe of *Salus Reipublicæ*.

And it being high time now for me to give over, I conclude upon all my Reaſons and Authorities cited, That as this Caſe is upon the Pleading of it, the Charge of 20*s.* impoſed on Mr. *Hampden*, towards the Proviſion of a Ship, commanded by the Writ of 4 *Aug.* 11. *Car. Regis*, is conſonant to Law, and conſequently, That Judgment ought to be given againſt him, *Quod oneretur*.

The Opinion of Sir George Vernon *Knt. one of the Juſtices of his Majeſty's Court of Common-Pleas at* Weſtminſter, *deliver'd in the Exchequer Chamber, in the great Caſe of Ship-Money.*

THIS is a Cauſe of great Conſequence, and is one of the greateſt that ever came in queſtion in this Kingdom, and the Records are infinite that have been cited on both ſides; but by reaſon of want of Health, and Diſability of Body, I have not been able to peruſe the Records as I intended, and to have prepared myſelf, in which I am to argue; and therefore I would deſire Time until this Day Sevennight, to peruſe the Records and compare my Notes, wherein, as you may ſee, I have taken great pains, [*Producing his Notes to the Court*] that I may be the better prepar'd to deliver my Opinion in this weighty Matter: And then, God willing, I will not fail.

But it was anſwered by the Court, That in regard certain Days have been peremptorily appointed at firſt for their Arguments, it could not be altered now, nor could they give him any further time.

Whereupon he ſaid, ‘Seeing I may not have any further Time, I muſt therefore deliver my Opinion in brief, according as I have conceived it in my Conſcience to be, which is as followeth, *viz.*

‘That the King, *pro bono publico*, may charge his Subjects, for the Safety and Defence of the Kingdom, notwithſtanding any Act of Parliament; and that it is warrantable by *Gaſcoigne*, 13 *Ed.* IV. 14. and moreover, that a Statute derogatory from the Prerogative doth not bind the King; and the King may diſpenſe with any Law in Caſes of Neceſſity, 2 *Hen.* VII. 11.’ *And ſo concluded for the King.*

A few Notes of the Argument of Sir Tho. Trevor *Knt. one of the Barons of his Majeſty's Court of Exchequer, in the great Caſe of Ship-Money.*

AFTER he had opened the Record he ſaid, The Queſtion upon it was, Whether Mr. *Hampden* ſhould be charged with the 20*s.* impoſed upon him, as this Caſe is?

This Caſe, by reaſon of the Weightineſs of it, is adjourned from the Exchequer hither to be argued, and the Advice of all the Judges is required herein; many Days have been ſpent in the arguing of this Caſe, as it well deſerves; ſix Days by the Defendant, and ſix days on the King's ſide.

It is ſome Labour, in a Caſe of this Extent, to contract myſelf, according to my Conſcience and beſt Knowledge: I ſhall ſeriouſly ponder the Weight of this Caſe, and digeſt it, as by the Law is warrantable, and ſo grounding my Judgment accordingly. And the Judgment which I ſhall give, in fine, is, That Mr. *Hampden* ought to be charged with this 20*s.* and is to give Satisfaction for the ſame. My Lord *Coke* ſaith of a ſhort Caſe in his 11 *Report*, That tho' it be as ſhort a Caſe as ever was argued, yet the weightieſt in any Court for Conſequence: So it may be affirmed of this Queſtion, for the Sum is but 20*s.* but the Weight thereof is of far greater Extent: it concerneth the whole Kingdom.

Mr. *Hampden* hath demurred, and thereby hath granted all Matters of Fact to be true. The Defendant's Counſel have taken much Pains for their Client; and, without Flattery, ſo have the King's Counſel.

I acknowledge, the laying of a Charge upon the People by Parliament is a ſafe way, if Time and Occaſion will permit. *Anno* 1588, when the *Invincible Armada*, ſo termed, came into *England*, the Provident Care for the Prevention thereof was out of Parliament. Alas! It is not Parliaments can keep us ſafe. Was not that deteſtable Gunpowder-Treaſon, 3 *Jac.* deviſed to have been executed in the Parliament-time? The Wiſdom of the Parliament did not diſcover this utter Ruin and Deſtruction, that had like to have happened to the King and Kingdom, and to the Overthrow of Religion; but it was the great Mercy of God that did it.

This Kingdom hath been always Monarchical: A Democratical Government was never in this Kingdom. In the time of the *Britons*, 500 Years before the Birth of our Saviour, when *Brute* came from *Troy* into *Britain* (as one writes) it had a politick and regal Government: This is confirmed by the Letter from the Pope to King *Lucius*. And our King hath as much Power and Prerogative belonging to him, as any Prince in Chriſtendom hath. It is the King's Prerogative to appoint the Beginning and Ending of Parliaments. So great a Body can move but ſlowly. A great part of the ſeven Months would be ſpent, or the Parliament ended; and then we were but to begin to rig and trim our Ships, to provide Powder, Shot, Cables, *&c.* many of theſe, perhaps, to be had in foreign Parts; Maſters and Gunners, *&c.* to be got: Ready Money muſt be had for the providing of all theſe; this will require convenient time before this can be done. What Hazard may the Kingdom run all this while? What Policy is there to make State-Affairs known to the People? They may thank themſelves, they would not make a Ship for the Service, and then they might have had it for their own Uſe afterwards. When the Kingdom is in Danger, the King may command a Supply for Prevention thereof; and who can tell better than the King how to prevent the Danger? *Neceſſitas non habet Legem.* The King then muſt not forbear. The common Law doth regard the common Good above particular; as in Pontage, Murage and Paveage.

The Proviſion of Shipping hath prevented us from Danger hitherto, and I hope it will ſtill. It hath increaſed the Honour of the Kingdom. It's known not only to ourſelves, but to other Princes, that our Ships are of far greater Burthen, Strength, and better furniſhed, than ever was before. All which redoundeth to the King and Kingdom's Honour. The Ship, called *The Sovereign of the Sea*, may be termed, *The Sovereign of all Ships.*

To conclude: The Sum aſſeſſed for this Buſineſs, I wiſh it may be paid by all chearfully, for it is for a general Good, for the ſafety of the whole Kingdom: The Subjects are not prejudiced by it, either in their Dignities, or Properties in their Goods: The King's Prerogatives protect the Peoples Liberties, and the Subjects Liberty the King's Prerogative: 'Tis proper for Kings to command, and Subjects to obey. We that are the Judges of the Kingdom have paid it, and therefore it is fit our Opinions concur with our Actions in this Caſe. And ſo my Advice is, That Judgment ought to be given that Mr. *Hampden* ought to be charged with the 20*s.* aſſeſſed on him.

The Argument of Sir George Crooke *Kt. One of the Juſtices of his Majeſty's Court of King's-Bench at* Weſtminſter, *in the Exchequer-Chamber, in the great Caſe of Ship-Money.*

THIS Caſe of Mr. *Hampden*'s ſtands upon Record, and what Judgment may be upon this Record is the Queſtion. I find no Party in this Caſe but Mr. *Hampden*. A *Scir' Fac'* is brought againſt him, to ſhew Cauſe why he ſhould not be charged with the 20*s.* aſſeſſed upon him, towards the finding of a Ship.

The Occaſion of that was the Writ of 4 *Aug.* which is the Foundation of all; and that is directed to the Sheriff of *Bucks*, as to other Sheriffs, to prepare a Ship of ſuch a Burthen, for the Reaſons mentioned in the Writ, *Quia Prædones, &c.* becauſe the Kingdom is infeſted with Pirates, *&c.* *Quod datum eſt nobis intelligi, &c.* for that they do ſeek to draw Men into Captivity; and alſo leſt we ſhould loſe the Dominion of the Sea; and for theſe Reaſons theſe Writs are ſent forth. For the Time that they were to continue abroad, it is twenty-ſix Weeks, ſo long the Payment of the Men to be at their Charge: *& quos Rebelles, &c.* and if any do rebel, that they ſhould be impriſoned. And ſo the Record ſetteth forth further, that upon this Writ a *Certiorari* went forth, and Mr. *Hampden* was certified not to have paid it.

Now upon all, Mr. *Hampden* hath demanded *Oyer* of all the Writs, and hath demurred.

I muſt confeſs, this Cauſe is a very great Cauſe, and the greateſt Cauſe that ever came in queſtion before any Judges. And for my own part, I am ſorry it ſhould come in queſtion in this Place; more requiſite it was to have it debated in a publick Aſſembly of the whole State: for on the one ſide, it concerns the King in his Prerogative and Power Royal; and on the other ſide, the Subject, in his Lands, Goods, and Liberty, in all that he hath, beſides his Life.

For my own part, I am ſorry that I am enforced to diſſent from my Brothers that have argued before me; a fitter Courſe it were for me to have argued with them privately, who have argued ſo learnedly and well. I have ſtudied all that I could to have concurred with them; but ſpeaking, according to my own Heart, (for we are to give Judgment upon our Oaths) in Reſpect of my Reaſon and Conſcience, I cannot concur with them; it makes me at a ſtand with myſelf, becauſe of the Arguments of ſo many learned Men before me, and to ſuſpect my Judgment, whether it be erroneous or no. Yet I muſt ſet down my own Reaſons, and upon them leave them to my Lords that come after me to judge on.

Judgment is of the Lord; the Hearts of Men, and alſo their Judgments, are in the Hands of God; and when Judgment is once paſt, we have done. For my own part, I know in this Caſe we cannot do ſo well as we ſhould, but to ſatisfy our ſelves in our Conſciences and our Underſtandings; and in this Caſe we are to give Counſel to the King according to our Oaths, whether this Charge be legal or not. If legal, the Subject ought not to complain: If not legal, then not in the King's Power thus to charge the Subject.

The King's Counſel have maintain'd this Writ to be good; and the Judges that have argued, in their Judgments have maintained it. Then the King is adviſed by his Judges, Whether this be legal or no? If legal, it is well; if not, then the Burden lies upon us. For the King doth nothing but what he is adviſed.

The Caſe hath been excellently, learnedly, and well argued on both ſides; for that which was preſſed by Counſel on either ſide, did not much move, for they argue as Counſel; and we are to give Judgment upon our Oaths, on what they have ſaid.

But the Judges Opinions already deliver'd do much trouble me. When I have been of Counſel, I have argued one way, and have thought myſelf very clear; when I have come as a Judge, and argued, I have thought clear otherwiſe of the Caſe. I deſire to give Judgment in this Caſe according to God's Direction, and my own Conſcience, and that is the beſt. And ſo I do not doubt but all my Brothers have gone according to their Conſcience, which makes me ſuſpect myſelf. But every Man ſtandeth or falleth to his own Maſter. I deſire God to guide me to a true Judgment; and tho', for the Reaſons aforeſaid, I doubt myſelf, yet I am not of the ſame Opinion with my Brothers; but according to my Conſcience, I think that Judgment ought to be given for the Defendant; for which my Argument ſhall ſtand upon theſe Points.

1. I hold that this Writ is not allowable by the Common Law, but is a Writ abſolutely againſt the Common Law.

2. Admit it was good at Common Law, yet it is againſt divers Statutes.

3. I hold, that no Neceſſity, nor no Pretence of Danger, can give this Cauſe for the Writ: For if the Writ be againſt the Common Law, no Pretence of Danger can Warrant it.

4. There is no Warranty by Prerogative of the Crown, nor Power Royal, for this Writ.

5. That this Writ is the firſt Writ that ever was deviſed in this Kind, and firſt put in Practice, either in Inland Counties or Maritime Parts.

6. That there is not any one Precedent, nor any one Record judicial, or Judgment in Point of Law, for the Writ; if not, then I hold it not fit to be maintained.

I come now to the Writ itſelf. 1. I hold the Motives of this Writ to be inſufficient to warrant the ſame.

2. The Commands of the Writ are merely againſt the Law; becauſe the Commands of the Writ are, to charge the Subject to find a Ship with Men, Munition, *&c.* againſt the Words of the Common and Statute-Law.

3. If they were, yet the Aſſeſſments of the Writ are not warrantable by the Law, and ſo no Aſſeſſment: And if no good Writ, then the *Scir' Fac'* will not lie.

4. I come to the *Certiorari:* And, whether it be well-grounded, or no, is the Queſtion. And I hold, it doth not well iſſue, as this Caſe is.

1. For the Point of Law. We that are Judges are bound, according to the Law, not according to our own Imaginations, both to judge according to the Law, and the Law of this Land, either of the Common Law or of the Statute-Law: and I ſee no Book, nor know of any Authority that doth maintain this Writ; but contrariwiſe, there are Books and Authorities in Law, that ſay, This Writ ought not to be maintained. It is a Rule in *Littleton*, that *That which was never done before, cannot now be done.*

I ſay, there cannot be produced an Example of the like Writ, I mean the Writ 4 *Aug.* 11 *Car.* that ever went unto the whole Kingdom, to make Ships, *&c.* nor unto all the Maritime Counties, at one time; but it is the firſt Precedent, either for Inland Counties, or Maritime Parts; and if no Precedent before, then not by the Law to be maintained.

2. It is againſt the Common Law of the Land, which gives a Man a Freedom and Property in his Goods and Eſtate, that it cannot be taken from him, but by his Conſent in Specie, as in Parliament, or by his particular Aſſent: for the Law puts a difference between a Freeman and Bondman. A Bondman's Goods may be taken without his Conſent; but not ſo of a Freeman.

Then thus ſtands the Caſe, and the Queſtion ariſeth, Whether this Writ to command the Subjects in any Inland County, to prepare a Ship, and provide Men, Munition, *&c.* went out by their Conſent? And whether allowable or no, if without their Conſent, for this is a Charge upon the Subject. And I ſay, no common Charge upon the Subject ought to be but by a common Conſent, or in a Parliamentary Courſe. Mr. *Lambert* ſaith, that in the Conqueror's Time the King could charge the Subject with no unjuſt Taxation, nor Taillage, *ſed per commune concilium.* And that was a Law not given by the Conqueror, but allowed by him, as to be the Law of the Kingdom.

In the *Charta* in King *John*'s Time, it is plain, the Liberty of the Subject is there confirmed, *Nullum ſcutagium, nullum auxilium niſi per commune concilium.* It appeareth plainly by the Books, that this cannot be done but by Conſent in Parliament. *Forteſcue* Chief Juſtice ſetteth down what the Law of *England* is in that kind, as Inſtructions for the young Prince. Saith he, 'The King governeth his People by Power, not only Royal 'but alſo Politick.' If this Power over them were Royal only, then he might change the Laws of his Realm, and charge his Subjects with Taillage, and other Burdens, without their Conſent. Thus the King can change no Laws, nor yet charge them with ſtrange Impoſitions againſt their Wills. He ſetteth down, as the Head is the chief of the Body, ſo the King is the Head of his People: He cannot take any thing from them, without their ordinary Conſent; the common Conſent it is in Parliament. *Cap.* 3. an expreſs Clauſe there, *hoc individuo.* Shew me any Book of Law againſt this, That the King ſhall take no Man's Goods, but he ſhall pay for it, tho' it be for his own Proviſion; or lay any Burden upon his Subjects, but he muſt do it by their Conſent in Parliament. If this be the Privilege of the Subject, then it is expreſs, the Subjects ought not to have this Charge impoſed upon them, but by their common Conſent. Tho' it be ſaid, A Statute is the Act of the King, the Lords and the Commons only give their Conſents; I ſay, it is the Act and Grant of the Commons, as well as of the Lords; for what Conſent is given there, is given by every Man of the Kingdom, by the Power of the Voice which they gave in chuſing the Knights of the Shires and Burgeſſes. There is a Book Caſe, 13 *Hen.* IV. *fol.* 14. expreſsly, That no Man ſhall be charged without his Conſent in Parliament. *Gaſcoigne*, Chief Juſtice, gave it as a Rule. *Coke*'s Reports, *Clark*'s Caſe, No Man to be charged in St. *Albans*, but with their Conſent.

In the Chamberlain of *London*'s Caſe, to put a ſmall Sum upon a Merchandize, *&c.* when it is for the Good and Benefit of the People, is a thing to be allowed thro' a common Ordinance to be Good, ſo they have no Loſs by it; as in Caſe of Murage, Pontage, Paveage, and Tolls of Markets: Taxes upon the People for theſe are allowed, becauſe they are Matters for Uſe of the People, and are not as a Matter of Charge impoſed upon the People.

Fitz. Herb. Na. Br. The King hath the Government of the whole Kingdom, both in time of War and Peace. None will deny but that he may command, That no Man can doubt of; and therefore in that kind, in Point of Inundation, the King, by his Writ, commandeth, That that ſhall be ſtopped, and be done by thoſe that have Benefit or Loſs by the Inundation; and thoſe only are to be charged, as come unto *Kent:* If an Inundation be in *Kent* Marſhes, ſhall the County of *Middleſex* be charged therewith? No; but thoſe that have Profit by it, or have Loſs by it. *Vid.* the 10*th* Report.

Then here ſtandeth the Caſe; If that be ſo, the Queſtion is not now, Whether a common Charge may be levied upon the Subject, without Conſent: No queſtion but a common Charge may, if occaſion, and every Man ought to obey it.

But the Queſtion is, Whether, upon the Allegations in this Writ, there ſhall be a Charge to impoſe Money upon them in the mean time, without their Aſſent? I ſay not, but by a Parliamentary Courſe: in that kind the common Law doth not allow it. A notable Caſe in 14 *E.* II. *Banc. R. Rot.* 60. *Heb* and *Lever*'s Caſe in *Durham.* An Action of Treſpaſs was brought againſt *Lever* for taking away the Cheſt of *Heb*'s, with Goods and Money in it, he pleaded not Guilty; the Jury gave a Special Verdict, That the Defendant took the Money; but it was upon this Occaſion: The *Scots* had invaded *Durham*, and burnt divers Houſes about *Durham*; upon which the Inhabitants of *Durham* aſſembled together to conſult about their Defence; and took an Oath to obey the Ordinance to be made by Conſent amongſt them; whereof the Plaintiff was one that ſwore, and gave his Conſent. Whereupon they made an Order to give the *Scots* a Sum of Money to depart, but they would not be gone without ready Money; whereupon they made a ſecond Ordinance, That every Man's Houſe ſhould be ſearched, and where they found Money, to take it: Thereupon the Defendant took the Money out of the Plaintiff's Houſe. The Judges aſked the Jury, If this laſt Order was done with the Plaintiff's Conſent. They ſaid it was done by Reaſon of the Occaſion. Thereupon Judgment was given for the Plaintiff: That becauſe it was not with his Conſent, that therefore they ought not to be charged. It came into the *King*'s *Bench*, and they ſeeing of this Special Verdict, the Judges of the *King*'s *Bench* reverſed the Judgment; for why? What was done, was done by his own Conſent and proper Act, becauſe of his Conſent upon his Oath; and therefore (ſaid the Judges) he had means to help himſelf againſt the Commonality of *Durham*, and they to pay him again to his proportionable Part. This proveth, That no Man ought to part with his Goods, but with his Conſent.

That of *Rich.* II. which is not a Statute, yet doth ſhew, that the Law was at that time, as it is the ſame at this Day. Advice was taken in a great Aſſembly how to charge the Commons: And it was anſwered, That they could not be charged, but by common Conſent in Parliament. And it was the Declaration of *Scroope* in the Parliament-Houſe, That without Conſent in Parliament, the Commons ought not to be charged; becauſe the Commons have a Conſent in Parting with their Goods. It is ſaid in *Doctor and Student*, That the Subject hath ſuch a Property in his Goods, that no Man ſhall meddle with them, but by his Conſent; which is the Reaſon they recover Damages when they meddle with their Goods, not by their Conſent.

Another Reaſon why the common Law looketh into it is, becauſe of the Inconveniencies that might inſue, if this ſhould be allowed. To charge one Ship, by the ſame Reaſon there might be ten Ships charged. We have a pious King, and tho' he will now do it, yet the Law looketh into this Inconvenience. That of *Danegelt* began in the Year 991. The firſt Compoſition was 10000*l.* The ſecond 16000*l.* The next 24000*l.* The next 36000*l.* And in 10 or 11 Years, by five ſeveral Riſings, it came to 48000*l.* And ſo, for aught that I do know, this may come to forty hundred thouſand Pounds. Therefore the Law looketh to make certain the Charges. The firſt double Subſidy that ever was, was 31 *Eliz.* and the Chancellor of the Exchequer ſaid, It did make his Heart to quake to move for a double Subſidy, one Subſidy being granted ſo lately. The Reaſon of it was, becauſe the *Spaniſh* Invaſion was foreſeen.

After the *Spaniſh* Invaſion was paſt, then came the Second Grant of a double Subſidy; and he ſaid, he hoped not to live to ſee a Subſidy granted again, 33 and 39 *Eliz.* it came to three Subſidies, and four Subſidies, but if there had been ten Subſidies, what was done, was done by Parliament; and the Law alloweth it becauſe of the greater Inconvenience. Then it is in the Judgment of the Parliament for the appointing of thoſe Subſidies, as the Occaſion requires.

The Statutes of Tonnage and Poundage, as appears by all the Statutes made in *Rich.* II. and continued till *Hen.* IV. V. VI. VII. and ſo downwards to King *James*'s Time, are to the end the King might have Money in his Coffers for the Defence of the Realm, and for the Safe-guard of the Sea, that he might not, upon a ſudden Occaſion, be unprovided; becauſe it is Reaſon and fitting that Kings ſhould ever have Money ready againſt any Occaſion. But now it is not granted, yet it is taken, the ſame Profit is made ſtill: And I do not doubt but the King doth imploy it for the Defence of the Kingdom, and Safeguard of the Sea. The Difference between a Charge and Defence is much; for the firſt there is no Law to compel the Subject unto it, but by Parliament: For the Second, which is the Defence, every Man's Perſon is bound in Defence, *exponere ſe & vitam ipſam*, upon Peril thereof; but he is not bound to any Charge without his Conſent. So in this kind I hold, as the Law ſtandeth, that no Charge ought to be impoſed, but by their common Conſent; for you will make it all one to take away the Property of the Goods, which you do *quodam modo*, tho' not *in ſpecie.* Power is given to diſtrain the Goods, and to ſell them; and every Man is liable to the Diſcretion of the Sheriff.

But admit this Charge might be impoſed by the common Law, yet I do conceive it is prohibited by the Statute; for I hold, as now my Brothers the Judges have held, that the Statute *de Tallagio non concedendo*, is a Statute, notwithſtanding what hath been argued at the Bar to the contrary. It is apparent in our printed Books; and in one of our Books, the expreſs Time is mentioned when it ſhould be made, *viz.* 25 *Ed.* I. then it is ſaid to begin. Taillage is an antient Aid, and ſo is *pur file marier*, and *pur faire fitz chevalier*; but no Taillage without a common Conſent in Parliament; ſo I agree with my Brothers, that it is a Statute.

Next this Statute of 25 *Ed.* I. which is ſaid to be no Statute, the Kingdom of *England* hath ever held it for a Buckler for them, That no Charge (without common Conſent) ſhould be laid upon them. And the Reaſon wherefore this Statute was made, was in reſpect of the great Taxes impoſed on the Subject without Conſent, in time of War.

The next Statute is 14 *Ed.* III. *cap.* 1. A great Subſidy was then granted. What was then done? The King doth grant for him and his Heirs not to put them to any Charge hereafter, unleſs it be by common conſent in Parliament.

Oh! but this is but for that King himſelf alone!

I anſwer, it is perpetual. If the King doth grant for him and his Heirs, it doth go to all his Poſterity, and is a good Act of

Parliament; ſo that is the ſecond Act of Parliament in the Negative, That no Charge ſhall be laid on the Subject, but by common conſent in Parliament.

That which is ſtood upon by my Brothers, is 21 *Ed.* III. That Statute was made to grant a Subſidy upon every Sack of Wool; and alſo Taxes upon Merchants Goods Tranſported, 6*d.* in the Pound. This Statute thus made, the King afterwards, becauſe few of the Sacks of Wool were carried over before *Michaelmas*, ſent forth a Proclamation, that 6*d.* in the Pound ſhould continue till *Eaſter*, and no longer: but half a Year after this was complained of to the King, and the King (by Proclamation out of Parliament) did take away the 6*d.* in the Pound. 22 *Ed.* III. in the *February* then next following, an expreſs Act of Parliament (this Subſidy ſo granted) to continue till *Michaelmas*, and by Proclamation to continue till *Eaſter*. They confirm all till *Eaſter*, and no further continuance of it to be.

By this appeareth, that for ſo ſmall a thing as 6*d.* in the Pound for ſuch a Time as from *Michaelmas* to *Eaſter*, that it was a Charge not to be borne but by Conſent in Parliament.

4 *Hen.* IV. *M.* 28. A Subſidy granted, That this ſhould not be drawn into Example to charge the People, but by common Conſent, and that in Parliament.

13 *Hen.* IV. *M.* 10. There it is ſaid, Where a Subſidy is granted, it ſhall not be granted henceforward for Defence of the Kingdom, or Safeguard of the Sea, but in Parliament.

Then came a Parliament. What did they complain of? The Patent of the Office of Alnerage, tho' it was but a ſmall Charge, yet they ſet down that this was contrary to the Law, That no Taxes, nor no Aid ſhould be impoſed on the People, without Conſent in Parliament: The Commons were then very zealous in ſmall Matters.

2 *Hen.* IV. *M.* 22. *Hoc individuo.* At that Time a Commiſſion went forth to divers Towns in the Kingdom, to provide, &c. When there came a Parliament, 2 *Hen.* IV. they complain of thoſe Commiſſions that inforced them to do that which by the Law they ought not to do; and pray'd thoſe Commiſſions might be repealed: The Anſwer is abſolute, *Let it be done. Soit fait.*

The next is 1 *Ric.* III. True, the King was an Uſurper. Benevolences were granted; but that was no Charge, as ours is, and therein the Commons claimed their Liberties.

Laſtly, The concluding Law is that of 3 *Car.* the Petition of Right, That no Perſon ſhall be taxed without Conſent of Parliament: And when the King was informed of the former Statutes how they were; thereupon this Statute 3 *Car.* was made, which reciteth the Statute *de Tallagio*, and divers other Statutes; and it was referred to my Lords the Judges (moſt whereof are here) whether this Law doth give more than formerly from the King. And we were all of Opinion, that this Law did give no more than what was formerly, and was only but a reviving of the Ancient Privileges of the Subject; it added no more, but only revived what was formerly granted.

I do conclude, that no Charge can be impoſed upon the Commons, without their Conſent in Parliament. We that are Judges, muſt go according to the Intention and Meaning of thoſe Laws. The Meaning of the Laws in this kind was, that no manner of Charge, Aid, or Tax ſhould be laid upon the Subject, but by Conſent in Parliament. The Judges are to expound them according to their Intention.

But they ſay, the Practice hath been otherwiſe.

We ſay not now what *de facto*, but what *de jure* was done; and we, as Judges, muſt not allow *de facto*, *ſed quid de jure factum fuerit.*

To anſwer the great Objection, It is for the Defence of the Kingdom: Here is ſuch a Neceſſity and Danger, as will not admit the Delay of a Parliament.

I hold, for my part, that no Neceſſity nor Danger can allow a Charge, which is a Breach of the Laws. I hold it abſolutely, that for a general Charge of Money upon the People, it cannot be upon any Pretence of Danger or Neceſſity. Mens Perſons may be uſed in the caſe of Neceſſity or Danger; for every Man is bound to defend the Kingdom, but no Neceſſity can procure this Charge without a Parliament. The Law provideth a Remedy, in Caſe of Neceſſity and Danger; for then the King may command his Subjects, without Parliament, to defend the Kingdom. How? By all Men of Arms whatſoever, for the Land; and by all Ships whatſoever, for the Sea, which he may take from all Parts of the Kingdom and join them with his own Navy; which hath been the Practice of all former Kings: In their Neceſſity they have taken Ships from all Parts of the Kingdom. 10 *Ed.* III. *M.* 2. *Scot.* 10 *Ed.* III. *M.* 16. when there was a great Navy of *Scots* and *French* appeared, and intended to come and invade the Kingdom, the King appointed two Admirals, one towards the *North*, the other towards the *Weſt*, and to meet together at what Place he pleaſed; and *M.* 16. ſent into *North-Wales* and *South-Wales* to maintain one Ship, either of them upon their own Coaſts of the Sea, for the Defence of the Kingdom. And in *Rot. Alm.* 12 *Ed.* III. Writs went for the arreſting of Ships in all Parts of the Kingdom. *Rot. Viag.* 1 *H.* IV. *M.* 12. Writs iſſued to all Archbiſhops and Biſhops, ſhewing imminent Danger, that they ſhould be ready in Arms, to come and aſſiſt *ad cuſtodiendum mare*, whitherſoever he ſhould appoint them. But in that Time, when the Danger was ſuch, yet no Ships appointed to be prepared thro'out the Land. And 5 *Hen.* IV. that all the Men of all Parts ſhould come together in ſuch a Place: This was only an arraying of Men to be in readineſs. 3 *H.* V. to the ſame purpoſe. And 1 *Hen.* VII. which was much ſtood upon, of a Rumour of Wars between the King of the *Romans* and the *French* King, which might, perhaps, in the End tend to an Invaſion of this Kingdom, there was an arraying of Men, from 16 to 60, and gathering of Ships, and taking Order for Watch and Ward upon the Sea-Coaſts, but no Command to make Ships. 4 *Hen.* VIII. *pars* 2. there the King by Proclamation ſaith, That *the Enemy is ready to enter*, *Ships are furniſhed with Men of War to invade the Kingdom.* What then? What was done then? It is no more, but that every County in *England* have Men in readineſs to aſſiſt, from 16 to 60, to defend the Kingdom, and to have good Watches and Wards upon the Sea-Coaſts.

But, I pray you, in all theſe Times of *Hen.* VIII. *Hen.* VII. *Hen.* V. *Hen.* IV. were there ever any Writs went forth for Ships into any County? It doth not appear that any County was to prepare or make any Ships; but only Men in Arms: So the Law makes Proviſion, in Time of Danger, by help of their Perſons, and with Ships, not with a pecuniary Charge; for that cannot hold for any, nor can be done without Parliament. And if new Ships muſt be made, it muſt be made by Parliament. If ſo be the Writs be to make Ships, then let the Sheriffs make them, and ſhew for their Diſcharge upon Record, that they are made and prepared. But to appoint by Writs Ships to be made, and by their Directions appoint the Sheriffs to levy Money to pay off ſome of the Ships, was never yet done, this being a Precedent of the firſt Impreſſion. The Law did always account the Parliament able to provide and to give ſufficient Aid, and moſt fit to conſult *de arduis Regni*; and there is a Conſent of and Grant of the Commons to what is done, they are Actors in it.

By the old Law of *Alfred*, Parliaments were to be held twice a Year; and by expreſs Statute made 4 *Edw.* III. 14. an expreſs Law was made; That every Year a Parliament ſhould be held, eſpecially if Need required. And by another Statute, for avoiding of Grievances that daily happened, a Parliament ſhould be held once a Year. Then it is to be conceived, a Parliament may be called, and Things may be charged that way.

And for the Objection, That a Parliament is not the ſpeedieſt way to prevent the Danger; the Imagination of Man cannot invent a Danger; but Courſe may be taken for Defence, till a Parliament be had. So, for my part, I hold this Point of Neceſſity, or Danger, cannot be held a ſufficient Ground for this Writ.

The next Thing is this; Yea, but this is maintained by Prerogative and Royal Power. I ſay for that, by my Oath I am bound to maintain all the true Prerogatives of the King; and we that are Servants to the King muſt maintain his Prerogatives, and, to the beſt of our Skill, not ſuffer them to be diminiſhed. But I hold there is no ſuch Prerogative in this Kind.

The Prerogative is, that which the Law preſumeth, *That the King can do no Wrong:* And ſo it is in *Bracton*, *Rex poteſt facere quod de jure poteſt facere.* 11 *Rep.* *Magdalen-College* Caſe, 246. *Plowden*'s *Comment.* The King can do no Wrong, nor any Act to wrong the Subject. *Bracton*, *Hoc non poteſt agere quod non poteſt agere juſte.* Therefore if this Charge be againſt the Law, ſo much to the Prejudice of the Subjects, as I conceive it to be, the King will never do it; for it is done by Miſinformation that it hath been uſually done, and may be juſtly done. 21 *Edw.* III. a Patent is made, which is a Wrong to the Subject: the King, *de jure Regis*, ought to revoke the Patent; for the Law hath that honourable Conceit of the King, *That he can do no Wrong.* A King, therefore, to have a Royal Power or Prerogative to do that by his Writs, to command any thing to be done that is againſt the expreſs Laws of the Kingdom, to the infringing of the Liberties of his Subjects, is not admitted by the Law: The Royal Power is to be taken away; for as it is before ſaid by *Forteſcue*, he can change no Law, nor charge his People, but by common Conſent in Parliament. So, for my part, I hold that this ſame Charge upon the Subjects, by his Royal Authority, it is not allowable.

The King, we know, is a moſt juſt and pious King, that he will do nothing againſt his Laws; if he did know it to be againſt Law, he would never deſire it. When a Judge of the Land was called in queſtion, in Queen *Elizabeth*'s Time, about denying ſome Loan, delivering his Opinion againſt the ſame, he ſaid, It was againſt his Oath, and againſt the Law, to adviſe her Majeſty to it. With which ſhe reſted ſatisfied. If the Judges ſay, By Law the King may do this; he may do it: If they ſay no, but by Act of Parliament, he will never do it.

But it is ſaid, The King taketh the Courſe, *More majorum.* There is not any Precedent eſpecially maintained, by any judicial Record, that warranteth this Courſe: and if there were any Precedents, we are to judge according to the Law, and not according to Precedents; not to judge what hath been done, but what of Right hath been done. 11 *Rep.* *Magdalen-College* Caſe, tho' there be many Precedents, that maintaineth not a Right; the Queſtion is ſtill, Whether a Right or not?

But admit that Precedents could make it to be lawful, yet I hold there is not any one Precedent to maintain this Caſe.

For, *Firſt*, I ſay there is no one Precedent goeth to Inland Counties all over *England*, before now. I ſay, to Maritime Counties to prepare, as my Brother *Berkley* confeſſed, that he knew none for any Inland Counties, but 1 *Rich.* II. 11, 52, their Writs went out to divers Inland Towns, but not to Counties, to make Ships; and beſides, theſe were not any to Inland Counties.

To this I ſay, Thoſe Writs that went out at that Time were done by Conveyance in Parliament: for an Order was made in Parliament, That all that had any Charters, the antient Cities, Boroughs and Towns, that had any Charters of Liberties, ſhould there be examined; and appoints how, and by whom; and have their Liberties confirmed without Fine, if they would produce Ships for the Defence of the Kingdom. But yet in this Record not one Inland County or Maritime County is charged, nor no Inland Town, but thoſe that would have their Liberties confirmed.

Now to look upon the Precedents of K. *John*'s Time, 6 *Johan.* 9 *Johan.* 14 *Johan.* &c. here be the ſix Precedents in Court; and I have looked into every Precedent on the King's ſide, to ſatisfy myſelf; and all thoſe Precedents are only for arreſting of Ships, that they ſhould not go forth of the Realm; and 15 *Johan.* all Ships to be ready as the King ſhall have Occaſion.

Then we come to *Hen.* IIId's Time: 13 *Hen.* III. *M.* 5, 13, &c. there are ſix of theſe Records, I have read them all; they are no more, but only to Port-Towns, to arreſt Ships, and the reſt to have Men at Arms, in readineſs upon the Sea-Coaſts, and that but for forty Days.

Then for the Precedents of *Edw.* I.'s Time, all of them being examined, not any one of them go to the Counties. 13 *Ed.* I. 77. divers Ships are appointed to be made, but it is *ad ſumptum Regis*, and only unto Sea-Towns; the Record ſhews, that by the Barons of the Exchequer they have an Allowance for it. 23 *Ed.* I. *M.* 5. ſame Roll, a Writ to the Sheriff of *Norfolk*, to compel them to maintain their Sea-Coaſts. 14 *Ed.* I. a Writ *ad congregandas centum naves paratas*, and armed Men to be put in them. So to command in that kind the King may, and we muſt obey; he commands Ships ready made, not to make them. Afterwards, 14 *Ed.* I. *Rot.* 17. ſeveral Writs to the Archbiſhops and Biſhops, to attend with their Arms in readineſs, to maintain the Coaſts. 14 *Ed.* I. *Rot.* 78. a Writ to the County of *Berks*, a Thing much ſtood on; it is only for Matter of Array, if it be well looked into, and no Matter of making or finding of Ships; and divers other Writs in this King's Reign, for maintaining of Armies in their proper Counties: and no Man can deny but that every Man in his proper County is to go to defend the Kingdom. And alſo for having of all Ships of above 40 Tons in readineſs: but to make new ones, in any Inland County, is not warranted by any Precedent, that I can ſee; tho' I have looked over all the Records that have been brought unto me; no, not in Maritime Counties, to make Ships.

For the Precedents of *Ed.* II.'s Time, 9 *Ed.* II. *&c.* to put them all together, they are only to congregate Ships to be in readineſs, but not to make new Ships.

To come to *Ed.* III.'s Time. 7 *Ed.* III. *M.* 9. Command is to aſſiſt the Admiral with their Ships, as Occaſion ſhall require. 10 *Ed.* III. 11. a Precept to Port-Towns only, to bring their Ships to *Portſmouth*, for 13 Weeks, furniſhed with Victuals, *&c.* 2 *Ed.* III. 16. not to depart without Licence. 10 *Ed.* III. 12 *Ed.* III. *Rot. Alm.* Writs only to Port-Towns, *ad cuſtodiend' Mare.* 12 *Ed.* III. *M.* 12. a Command to *Henry Huſſey*, *&c. ad congregand. homines*, and to attend on the Sea-Coaſts. But theſe were the Cauſes of making the Law, 14 *Ed.* III. that there ſhould be no further Charge laid on the Subject: ſo that all before that Statute do not prove our Caſe. 15 *Ed.* III. A Cuſtody of the Ports commanded, and Warrants to arreſt Ships. 16 *Ed.* III. Command to the Earl of *Dover*, *&c.* to prepare Ships againſt an Enemy that intends to come to ſubvert the Kingdom, and to ſet up Beacons; which is the firſt Original of Beacons that I obſerve. All theſe Precedents in *Ed.* III.'s Time, were but to keep Men and Ships in readineſs, and to bring them to the Sea-Coaſts. 46 *Ed.* III. *M.* 3. that the *French* made great Preparation, whereupon they are commanded all to array, both Clergy and Laity, to guard the Sea-Coaſts. And in thoſe Times, when there was more likelihood of Danger than now, no Writs came out then, but only to array Men, and keep them in readineſs. 50 *Ed.* III. to array Men in *Norfolk* to defend the Coaſts. 29 *Ed.* III. Command to the Biſhop of *Durham*, and into *Cumberland* and *Northumberland*, to have their Men in readineſs. A number of theſe Precedents in that King's Reign.

For *Rich.* II.'s Time, it doth not appear by any one Record there is any thing for Ships, but only for the Cuſtody of the Sea.

And for *Hen.* IV. *Hen.* V. *Hen.* VI.'s Time until 2 *Eliz.* they are all concerning Matters of Arms, not to make Ships. And when the Rebellion in the *North* was in the Queen's Time, then by Writs Men were commanded to be in readineſs, for Defence of the Kingdom.

The next thing we come to is the Writ itſelf. For my part, I hold it to be illegal; mark the Recital of the Writ, it is no more but *Quod datum eſt nobis intelligi*, *&c.* not a plain Affirmation, as Apparency of it. Then the Motives are, Becauſe the Pirates do infeſt the Seas: Such Motives as never were in any Writ before. All former Writs were not to provide great Navies in reſpect of Pirates; there is no ſuch great Danger of them. 15 *Ed.* I. it is there ſet down, when Pirates infeſted the Seas, they took Order that there ſhould be only 10 Ships to ſcour the Coaſts. 16 *Ed.* III. *&c.* Command that Men ſhould be array'd, leſt the Enemy ſhould invade the Kingdom; but no mention made of Pirates, for they will be removed with a few Ships. Mark the Times when great Pirates were upon the Sea, they would be glad to ſculk away when the King's Navy came towards them. Now that this ſhould bring the King's Navy to Sea, is againſt the Law of the Land, and are not Motives ſufficient to induce a Charge of this Kind.

Secondly, The very Commands of the Writ it ſelf are unlawful, in reſpect of the Inconveniences to an Inland County; whereas there was never any Inland County charged in that kind before, as Coaſt-Towns that have been heretofore charged with Soldiers, and had none, were diſcharged. When *Bodmin* in *Cornwal* was charged with finding of a Ship, they ſhewed they never had Ship nor Mariners there, and that divers of them were impriſoned for not finding ſuch a Ship; whereupon Commiſſion iſſued to the Admiral to examine the Truth thereof: And becauſe it was found they had no Mariners, they were diſcharged.

But Mr. Sollicitor anſwered, This was done by the Admiral, beyond his Commiſſion; but 13 *Ed.* III. the ſame Year, there was a Writ awarded to *Chicheſter* in the County of *Suſſex*, to find a Ship, and they complained they had not any Ships uſed to arrive there, nor Mariners therein inhabiting; and thereupon they were diſcharged, upon a Writ out of the Chancery: So I ſay, Inland Counties that are not wont to have Ships, the Law doth not appoint them to do that which they cannot do, nor will not expect from them that which is impoſſible.

The Purſuance of this Writ is againſt Law; it appoints them to provide a Ship, hire Men, and provide Victuals and Wages for them, 26 Weeks, *&c.* I ſay, this is againſt Law plainly, and againſt divers Statutes, and no Law doth warrant it; for Soldiers, which are the King's Servants, ought to have their Pay from the King, at the general Rendezvous. 15 *Johan.* *M.* 3. Ships commanded to be at the Ports upon the King's Pay. Tenants by Knights Service, after forty Days, were to be at the King's Charge. 17 *Ed.* I. 16 *Ed.* III. it appeareth there, the King, upon the Invaſion of the *Scots*, many Men being loſt, appointed Soldiers, and their Wages paid, and what to *Durham*, and what to *Newcaſtle*, *&c.* 31 *Ed.* I. in the Exchequer, Writs went out to levy Men to reſiſt the *Scots*, and they would not ſtir without their Wages. 16 *Edw.* III. to pay Soldiers Wages. 2 *Edw.* III. *Rot.* 16. there it is ſet down in Parliament what Soldiers have received for their Wages. 26 *Stat.* 18 *Ed.* III. *cap.* 7. Soldiers are not to go out of their Counties without Pay. 10 *Ed.* III. the Men of *Bucks* ſtood upon it, and would not go out of their County to the Coaſts of *Southampton* without Wages. *Rot. Alm.* 12 *Ed.* III. *M.* 12. A Writ to compel all Men to make Munition for Ships, for the Town; and thereupon *H.* and *B.* they were commanded to maintain the Men of the ſame Town. *Clauſ.* 13. *Ed.* III. *M.* 14. Men of Arms for the Defence of the Sea-Coaſts complained their Wages were not paid them: Ordered, The Town from whence they came ſhould pay them. The Statute of 11 *Hen.* VII. *cap.* 1. provides, that Soldiers that go out of their own Counties to attend the King in his War, ſhall have their Wages from the Time they go from their Houſes, to be paid by the King's own Officers.

I hold that this Aſſeſſment is not lawful and allowable: then if the Aſſeſſment thus made falls to the Ground, the Power to the Sheriff to aſſeſs doth; and he may do it as he liſts, put more upon one than another, therefore an Aſſeſſment in that kind is not legal.

Then the Clauſe, *Si rebelles fuerint*, *&c.* to impriſon them, then to give Power of Impriſonment to the Sheriff: Clauſes have been in former Writs, in Caſes of Arrays, to diſtrain, if they refuſe to pay; never in Caſe of levying Money, to impriſon for it; it is clearly againſt *Magna Charta* to be impriſoned, unleſs he be indicted, or by due Proceſs of Law.

The next Thing is the laſt Clauſe of the Writ, 'If more be gathered than ſhall be needful, to be returned amongſt thoſe that have paid it:' That ſheweth the Ship muſt be done; we are now upon the Record, and by this Record it doth not appear that a Ship is made. It appears Mr. *Hampden* was aſſeſſed 20*s.* towards the making of a Ship. It is ſaid, If the Money be paid, others can provide Ships. This is not according to Law, to command a Ship of War of 450 Tons, and to turn it into Money; for if a Ship were made by a County, the County ſhould have it again, but in this Caſe it is otherwiſe; this *Scir' Fac'* is brought to have the Money.

For the *Certiorari*, it is directed to a Sheriff out of Office *(que del reſidue de ceo)* and ought not ſo to be, for all Writs are directed to the preſent Sheriff; ſo for the old Sheriffs to ſhew Cauſe what they have done, and the new Sheriffs to make their Return, he is the immediate Officer of the Court.

Admit the *Scir' Fac'* ſhould go forth, it would do ſomething, *onerare*, *&c.* to whom, or how, nothing here; but *Scir' Fac' quare onerari non debet*; but to whom *onerari*, it doth not appear.

Beſides, if the Sheriff levy Money in that kind, and beſtow it on a Ship, it is well. If not ſo beſtowed, then thoſe that received the Money are accountable to thoſe of whom they had it. In *Ed.* III.'s Time, Soldiers received Money to go to Service in War, yet ſtaid at home, but were compelled to repay it to the County where they received their Wages. Alſo two High Conſtables having received Money for Soldiers, were indicted for not employing it accordingly, and adjudged to reſtore it to the County where they received it, and to find Sureties. So it doth not appear that this Ship was builded, there is no Preparation for a Ship; the Sum aſſeſſed is not legal; then the Writ is not legal, becauſe it varieth from all the Precedents formerly; it varieth in the Time of 26 Weeks, before that but for 13 Weeks; in the Manner for Soldiers Wages to Inland Counties, which was never before. I ſay, it varieth from all the Precedents in that Kind. And ſo I hold this particular Writ is not ſufficient, nor warranted by the Law, and that Judgment in this Caſe ought to be given for Mr. *Hampden*.

The Argument of Sir George Crooke *Knight, one of the Juſtices of his Majeſty's Court of* King's-Bench *at* Weſtminſter, *in the great Caſe of* Ship-Money, *as it was preſented to the King's Majeſty.*

The Caſe is this upon the Record.

THE King by Writ under the Great Seal, dated 4 *Aug.* *Anno* 11. of his Reign, directed to the Sheriff of the County of *Bucks*, and to all the Men in that County, commandeth them in theſe words.

1. *Quia datum eſt nobis intelligi, quod Prædones quidam Pirati ac Maris Graſſatores tam nominis Chriſtiani hoſtes* Mahumitani *quam alii congregati Naves & bona & Mercimonia non ſolum Subditorum noſtrorum, verum etiam ſubditorum amicorum noſtrorum in mari quod per gentem* Anglicanam *ab olim defendi conſuevit nefarie diripientes & ſpoliantes & ad libitum ſuum deportavere homineſque in eiſdem in Captivitat' miſerrimam mancipantes.*

Motives of this Writ which are five.

2. *Cumque ipſos conſpicimus Navigium in dies preparantes ad Mercatores noſtros ulterius moleſtand' & ad Regnum gravand' niſi citius remedium apponatur eorumque conatui virilius obvietur.*

3. *Conſideratis etiam periculis quæ undique his guerrinis temporibus imminent, ita quod nobis & ſubditis noſtris defenſionem Regni omni Feſtinatione qua poterimus accelerare convenit.*

4. *Nos volentes defenſione Regni, tuitione maris, ſecuritate Subditorum noſtrorum Salva Conductione Navium & Merchandizarum ad Regn' noſtrum* Angliæ *venient' et de eodem Regno ad partes exteras tranſeunt'* (Auxiliante Deo) *maxime providere; cum nos & Progenitores noſtri Reges* Angliæ *Domini Maris prædicti ſemper hactenus extiterunt, & plurimum nos tæderet ſi honor iſte Regius noſtris temporibus depereat aut in aliquo minuatur.*

5. *Cumque onus iſtud defenſionis quod omnes tangit per omnes debet ſupportari prout per legem & conſuetudinem Regni* Angliæ *fieri conſuevit.*

Vobis Præfat' Vicecom' Balliv' Burgenſibus Majoribuſque probis hominib' & omnib' aliis, quibuſcunque ſupra mentionat' in Burgis Villis, villatis, hamlettis & locis ſupradictis eorumque Membris. 1. *In fide & legiantia veſtra quibus nobis tenemini.* 2. *Et ſicut nos & honorem noſtrum diligitis.* 3. *Nec non ſub foriſfactur' omnium quæ nobis foriſfacere poteritis firmiter injungend' Mandamus.*

Charges of this Writ, which are 3

1. *Quod unam navem de Guerra, Portagii* 450 *doliorum.* 2. *Cum hominib' tam Magiſtris peritis quam Marinariis valentioribus & expertis, centum & octoginta ad minus.* 3. *Ac tormentis tam majoribus quam minoribus pulvere tormentario ac haſtis & telis aliiſque armaturis pro bello ſufficientibus.* 4. *Et cum duplici Eſkippamento, nec non victualibus uſque ad primum diem* Martii *jam proxim' ſequen' ad tot homines competen'.* 5. *Et abinde in viginti & ſex Septimanas ad Cuſtagia veſtra, tam in victualibus quam hominum Salariis & aliis ad Guerram neceſſariis per tempus illud ſuper defenſionem maris in obſequio noſtro, in Comitiva Cuſtodis maris, cui cuſtodiam maris ante prædict' primum diem Martii committemus & prout ipſe ex parte noſtra dictaverit moratur' parari, & ad Portum de* Portſmouth *circa decimum primum diem* Martii *duci facias. Ita quod ſint ib' in eod' die ad ultimum ad proficiſcend' ex inde cum navibus noſtris & navibus aliorum ſubditorum noſtrorum.* 1. *Pro tuitione maris.* 2. *Et defenſione veſtrum & veſtror'.* 3. *Repulſioneque & debellatione quorumcunq' mercatores noſtros & alios ſubditos & fideles prædict' in Dominia noſtra ex cauſa mercaturæ ſe divertentes vel ab inde ad proprium declinantes ſuper mare gravare ſeu moleſtare ſatagentium.*

Commands of the Writ, which are 5.

End for which the Ship is to be.

1. *Aſſigna-*

Clauſes of the Aſſeſs.

1. *Aſſignavimus autem te præfat' vicecom'* Bucks *ad aſſidend' omn' hom' in villis de* Agmondeſham, Wendover *&* Marlow Magna *& in omnibus aliis villis villat' Burgis* Hamlettis *& aliis locis in Com'* Bucks *præd' & terræ tentes in iiſd' navem vel partem navis præd' non habentes vel in ead' non deſervientes ad contribuend' expenſis circa proviſionem præmiſſorum neceſſar'.* 2. *Et ſuper' præd' vill' Burg'* Hamlett' *& locor' membris eorumq' ſic ut præfertur ad aſſidend' & ponend' viz. quemlib' eorum juxta ſtatum ſuum & facultates ſuas.* 3. *Et portiones ſuper ipſos aſſeſſat' per diſtrictiones alioſve modos debitos levand'.* 4. *Et collectores in hac parte nominand' & conſtituend'.* 5. *Ac omnes eos quos rebelles & contrarios inveneris in præmiſſis in carcere mancipand' in eod' moratur' quouſque pro eor' deliberatione ulterius duxerimus ordinand'.*

Precloſe of the Writ for the Eaſe of the Subject.

Et ulterius mandamus quod circa præmiſſa diligenter intendatis & faciatis & exequemini cum effectu ſub periculo incumbente. Volumus autem quod non colore præd' mandati noſtri. 1. *Plus de iiſd' hominibus levari fac': quam ad præmiſſ' ſufficien' ad expenſas neceſſar'.* 2. *Aut quod quiſquam qui pecuniam de contribuentibus ad præd' cuſtag' faciend' levaverit ead' vel partem inde penes ſe detineat.* 3. *Vel ad alios uſus quovis quæſito colore appropriare præſumat.* 4. *Volentes quod ſi pluſquam ſufficiat collectum fuerit hoc inter ſolventes pro ratu portionis ipſis contingen' exſolvatur.*

By virtue of this Writ, Mr. *Hampden* is aſſeſſed to 20*s.* for his Lands in *Stoake Mandevile* in that County, which, not being paid, is certified amongſt others into the *Chancery*, upon a Writ of *Certiorari*, dated 9 *Mar.* 12 *Car.* by a Schedule thereunto annexed. And by a Writ of *Mittimus*, *teſte* 5 *Mar.* 13 *Car.* this Writ of 4 *Aug.* 11 *Car.* and the Writ of *Certiorari*, and the Schedule annexed, is ſent into the *Exchequer*, with a Command there to do, for the levying of Sums ſo aſſeſſed and unpaid, *prout de jure & ſecundum legem regni noſtri Angliæ fuerit faciend'*; whereupon a *Sci' Fa'* iſſued out of the *Exchequer*, reciting the ſaid Writ, to warn Mr. *Hampden* amongſt others, to ſhew Cauſe why he ſhould not be charged with this Money. Upon this he being ſummoned, appeared, and demandeth the hearing of thoſe Writs and Schedule, which being read unto him, thereupon he demurreth in Law. And whether Judgment upon this whole Record be to be given againſt *John Hampden*, that he is to be charged or no, that is the Queſtion; for he is the only Party in this Caſe. And there is no Cauſe why any Man ſhould ſay that the Queſtion is, Whether Judgment ſhould be given for the King, or the Defendant; for as this Caſe is, the King is no Party to the Record, but only it is a judicial Proceſs out of the *Exchequer*, grounded upon the former Record, for the Defendant to ſhew Cauſe why he ſhould not be charged: which hath been very elaborately argued by the Defendant's Counſel, who demurred, that he ſhould not be charged; and by the King's Counſel, very learnedly and elaborately argued, that he ſhould be charged.

This Caſe is a Caſe of great Weight, and the greateſt Caſe of Weight that ever we read, argued by Judges in this Place; and therefore, adjourned into this Place for Advice of all the Judges: For of their ſide it is alledged, That it concerneth the King in his Prerogative and Power Royal: and on the other ſide, That it concerneth all the King's Subjects in their Liberties, their Perſons, and their Eſtates; for which it hath made ſome of us to wiſh and move among ourſelves, that it might have been by his Majeſty's Favour, heard and determined in another Place by his Majeſty, and his great Council of his Realm, where all Convenience and Inconvenience might have been conſidered of, provided for, and prevented for preſent and future Times, and not to be argued only by us, who are accounted his Majeſty's Counſel at Law; wherein if any thing be done amiſs, the Fault muſt light upon us, as miſ-adviſing the King therein. But ſeeing it hath pleaſed his Majeſty, that the ſame ſhould be argued and determined in this Place, whoſe Pleaſure we muſt obey, I muſt give my beſt Advice upon my Oath to the beſt of my Skill; wherein I hope not to trench upon his Majeſty's Prerogatives, which we are all bound by our Oaths, to the beſt of our Skills, to maintain, and not to ſuffer them to be diminiſhed; nor upon his Royal Power; but truely to deliver what I conceive the Law to be, concerning the Caſe in Queſtion.

Wherein I muſt confeſs I have been much diſtracted, having heard ſo learned Arguments on both ſides at the Bar, and ſo many Records and Precedents cited on either ſide; but they did not ſo much move me, for the Counſel have on either ſide propoſed ſuch Reaſons, as they thought convenient for the maintaining of their Opinions, and perhaps with a prejudicate Opinion; as I myſelf by my own Experience when I was at the Bar, have argued confidently, and as I then thought the Laws to be on that ſide for whom I argued. But after being on the Bench, and indifferently weighing all Reaſons and Authorities, have been of a contrary Opinion; and ſo the Law hath been adjudged contrary to that Opinion which I firſt confidently conceived.

But that which hath moved me moſt, and maketh me diſtruſt my own Judgment in this Caſe is, that my Brothers that have argued before me, who have argued upon their Oaths, and I preſume have ſeen the Records and Precedents cited on either ſide, have all argued one way; with whoſe Opinions I ſhould willingly have concurred, if I could have ſatisfied my own Judgment with their Reaſons; but not being ſatisfied, I have learned that I muſt not come with a Multitude againſt mine own Conſcience, for I muſt ſtand or fall with my own Maſter. And therefore I ſhall ſhew Reaſons, and leave myſelf to the Judgment of my Lords and others my Brethren. And whatſoever ſhall be adjudged, I muſt ſubmit unto, and ſo do with all others, and do now declare my Opinion to be, that as this Caſe is, Judgment ought to be given for the Defendant. My Reaſons and Grounds that I ſhall inſiſt upon are theſe:

1. That the Command by this Writ of 4 *Aug.* 11 *Car.* for to make Ships at the Charge of the Inhabitants of the County, being the Ground of this Suit, and Cauſe of this Charge, is illegal and contrary to the Common Laws, not being by Authority of Parliament.

2. That if at the common Laws it had been lawful, yet now this Writ is illegal, being expreſsly contrary to divers Statutes prohibiting a general Charge to be laid upon the Commons in general, without Conſent in Parliament.

3. That it is not to be maintained by any Prerogative or Power Royal, nor Allegation of Neceſſity or Danger.

4. Admitting it were legal to lay ſuch a Charge upon Maritime Ports, yet to charge any Inland County, as the County of *Bucks* is, with making Ships, and furniſhing them with Maſters, Mariners and Soldiers at their Charge, which are far remote from the Seas, is illegal, and not warranted by any former Precedent.

5. I ſhall examine the Precedents and Records cited to warrant this Writ, which have been all the principal Grounds of the Arguments to maintain the ſame. And I conceive there is the chief ground-work being in my Notes, but I forgot it.

But before I proceed to the Argument, I deſire to remove two Difficulties: *Firſt*, That by the Demurrer the Danger of the Kingdom is confeſſed, and ſo it is to be allowed for a Caſe of Neceſſity.

To this I anſwer, That the Demurrer confeſſeth not Matters in Fact, but where the Matter is legally ſet down; but if it be not a legal Proceeding, then the Demurrer is no confeſſing of the Matter of Fact. This appeareth in the Book-Caſe, 5 *Hen.* VII. *fol.* 1. and *Coke lib.* 5. *fol.* 96. in *Burton*'s Caſe, That a Demurrer is no confeſſing of Matters of Fact, but where the Matter precedent is ſufficiently pleaded or laid down; and ſo it is held in all our Books.

The *Second* Difficulty is, That this Caſe is ſo reſolved by all our Opinions under our Hands, that this Writ was legal; which was much preſſed by Mr. Sollicitor.

To this I anſwer, That it is true that I have ſet down my Opinion under my Hand unto Two Caſes, to the firſt voluntarily in *Dec.* 1635, which was thus:

‘ I am of Opinion that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, of which his Majeſty is the only Judge, there the Charge of Defence ought to be borne by all in general.’

This I hold to be agreeable to Law and Reaſon; this Opinion I do ſtill and ſhall always maintain; for where the Kingdom is in Danger, the King may command every Perſon of his Kingdom with all his Force to come and defend it at all Times and in all Places of his Kingdom where he pleaſeth; and the King is the ſole Judge of the Danger, and of War and Peace; and if any do not perform his Commands therein, he is fineable and puniſhable in a deep manner.

The ſecond was in *Feb.* 1636, which is thus, ‘ That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, his Majeſty may by Writ under the great Seal of *England* command all his Subjects of this Kingdom at their Charges to provide and furniſh ſuch Number of Ships with Men, Victuals and Ammunition, and for ſuch Time as his Majeſty ſhall think fit, for the Defence and Safeguard of the Kingdom from ſuch Danger. And that his Majeſty may compel the doing thereof, in caſe of refuſal and refractorineſs. And that in this Caſe his Majeſty is ſole Judge of the Danger, and when and how the ſame is to be prevented and avoided.’

To this Opinion, I confeſs, I then with the reſt of the Judges ſubſcribed my Hand; but I then diſſented to that Opinion, and then ſignified my Opinion to be, that ſuch a Charge could not be laid by any ſuch Writ, but by Parliament: and ſo abſolutely in that Point one other did agree with me, and diſſented from that Opinion; and four others, in ſome other Particulars, from that which was ſubſcribed. But the greater part ſeeming abſolutely to be reſolved upon that Opinion, ſome of them affirming that they had ſeen divers Records and Precedents of ſuch Writs, ſatisfying them to be of that Judgment; I was preſſed to ſubſcribe with them, for that the major part muſt involve the reſt, as it was ſaid to be uſual in Caſes of Difference, and for that the leſſer Number muſt ſubmit to the major, altho' they varied in Opinion; as it is in our Court, if three Judges agree in Opinion againſt one, or two where there are five Judges, Judgment is to be entered *per Curiam*, if the major part agree, and the other are to ſubmit to it: and in Caſes of Conference, and Certificate of their Opinions, if the greater part did agree and ſubſcribe, the reſt were to ſubmit their Opinions. And this by more antient Judges than myſelf was affirmed to be the continual Practice: And that it was not fit, eſpecially in a Caſe of this Nature ſo much concerning the Service of the King, for ſome to ſubſcribe, and ſome to forbear their Subſcriptions: And that altho' we did ſubſcribe, it did not bind us, but that in point of Judgment, if the Caſe came in queſtion judicially before us, we ſhould give our Judgments as we ſhould ſee Cauſe after the Arguments on both Sides, and we were not bound by this ſudden Reſolution.

Hereupon I conſented to ſubſcribe; but I then ſaid, that in the mean time the King might be miſinformed, by our Certificate under our Hands, conceiving us all to agree together, and to give him this Advice under our Hands, and not know there was any diſ-aſſented or was doubtful: but it was then ſaid, the King ſhould be truely informed thereof; and thereupon we that diſ-aſſent, did ſubſcribe our Hands with ſuch Proteſtations as aforeſaid, only for Conformity, altho' contrary to the Opinion I then conceived.

But this being before Arguments heard on either Side, or any Precedents ſeen, I hold that none is bound by that Opinion. And if I had been of that Opinion abſolutely, now having heard all the Arguments on both Sides, and the Reaſons of the King's Counſel to maintain this Writ, and why the Defendant is to be charged; and the Arguments of the Defendant's Counſel againſt the Writ, and their Reaſons why the Defendant ſhould not be charged to pay the Money aſſeſſed him; and having duly conſidered of Records and Precedents cited and ſhewed unto me, eſpecially thoſe of the King's Side, I am now of an abſolute Opinion that this Writ is illegal, and declare my Opinion to be contrary to that which is ſubſcribed by us all. And if I had been of the ſame Opinion that was ſubſcribed, yet upon better Adviſement being abſolutely ſettled in my Judgment and Conſcience in a contrary Opinion, I think it no ſhame to declare that I do retract that Opinion, for *humanum eſt errare*, rather than to argue againſt my own Conſcience. And therefore none having, as I conceive, removed thoſe Difficulties, I ſhall proceed to my Argument, and ſhew the Reaſons of my Opinion, and leave the ſame to my Lords and Brothers. Not one Precedent nor Record in any precedent Time, that hath been produced or ſhewed unto me, that doth maintain any Writ, to lay ſuch a Charge upon any County Inland or Maritime.

I have examined this particular Writ, and the ſeveral Parts thereof; and do conceive it is illegal, and not ſufficient to ground this Charge upon the Defendant.

1. The Motives of this Writ are not ſufficient to cauſe ſuch a Writ to be ſent forth.

2. The Command of the Writ to prepare a Ship at the Charge of the Inhabitants, which mentions Victuals and Men, is againſt the Common Laws and Statutes of this Kingdom.

3. That to lay a Charge of finding Victuals, and Wages of Soldiers and Mariners, is illegal, and contrary to the Common Laws and divers Statutes.

4. The Power of Aſſeſſment given to the Sheriff alone, and to diſtrain for this, is illegal, and not warranted by any Precedent.

5. The Power of Impriſoning is illegal, and contrary to divers Statutes, and not warranted by the Precedents.

6. That the Precloſe of the Writ, and the Practice of it, is contrary to itſelf, and *oppoſitum in objecto*.

7. If this Writ were legal, yet the manner of the Aſſeſſment by the Sheriff as it is certified, is not warranted by this Writ; conſequently the Sum cannot be demanded of the Defendant by virtue of this Writ.

8. That the *Certiorari* and *Sci' Fac'* iſſued not legally, and conſequently no Judgment can be given againſt the Defendant thereupon.

For the firſt Point, that this Writ, 4 *Aug.* 11 *Car.* is againſt the Common Law, my Reaſons are theſe:

1. Becauſe this is the firſt Writ ſince the Conqueſt that went out to any Inland County to prepare a Ship with Men and Ammunition, for aught appeareth by any Record that hath been ſhewn. And where there was never any Precedent, by the Rules of Mr. *Littleton*, *fol.* 23. the Law is conceived not to allow any ſuch Writ. And Sir *Edward Coke* in his Comment upon *Littleton*, *fol.* 81. ſaith, That where there is no Example, it is a great Intendment the Laws will not bear it.

So I conceive here, there never having been a Precedent before of any ſuch Writ to the Sheriffs and Inhabitants of a County, to prepare a Ship with Men and Ammunition upon any Occaſion whatſoever, that it is againſt the Common Law to award ſuch a Writ.

2. For that the Common Law of *England* ſettleth a Freedom in the Subjects in reſpect of their Perſons, and giveth them a true Property in their Goods and Eſtates; ſo that without their Conſent, or implicitly by an Ordinance which they conſented unto by a common Aſſent in Parliament, it cannot be taken from them, nor their Eſtates charged; and for this purpoſe the Law diſtinguiſheth between Bond-men, whoſe Eſtates are at their Lords Will and Diſpoſition, and Free-men, whoſe Property none may invade, charge, or unjuſtly take away but by their own free Conſent, and therefore not warranted by Law; which is proved by theſe Authorities.

Coke in his Reports, *lib.* 8. *fol.* 92. in *Francis'* Caſe, ſets down this Rule, *Quod noſtrum eſt, ſine facto ſeu defectu noſtro amitti, ſeu in alien' transferri non poteſt.*

Mr. *Lambert*, *fol.* 24. ſetteth down the Laws of *England* which were confirmed by *William the Conqueror*, hath theſe Words: *Inter alia volumus & concedimus, quod omnes Monarchæ Regn' ſui præd' habeant & teneant terras ſuas & poſſeſſiones ſuas bene & in pace, liberas ab omni exactione injuſta & ab omni tallagio* (not mentioning their *injuſta) ita quod nihil ab eis exigatur præter ſervitium ſuum juſte debitum.* Hereby it appears there is an abſolute Freedom from all Taillage.

17 of King *John*, in *Mat. Paris*, *fol.* 246. the King doth grant and confirm unto his Barons and Commons, *inter al'* theſe Liberties following: *Nullum ſcutagium vel auxilium ponamus in Regno noſtro niſi per commune Concilium Regni noſtri, niſi ad redimend' corpus noſtrum, filium noſtrum primogenitum Militem faciend' vel ad Primogenitam filiam maritand'.* By this it appears what was then conceived to be amongſt others their Liberties, and then confirmed; which was, that no Aid ſhould be laid upon them but by Parliament, for the Parliament was then called *Commune Concilium.*

That the Law is ſo, appeareth by the Treatiſe written by *Forteſcue*, who had been Chief Juſtice of *England* in King *Henry* IV's Time, and after Chancellor of *England*, when he wrote the Book, intituled, *De laudibus legum Angliæ. Fol.* 25. *cap.* 9. he ſaith thus; That the King of *England* cannot alter nor change the Laws of *England* at his Pleaſure, for *Principatu regali ſed & politico ipſe populo ſuo dominatur.* If his Power were loyal only, then he might change the Laws, *Tallagio quoq; & cætera onera eis imponere ipſis inconſultis*; but adds, that the King of *England ſine ſubditor' aſſenſu leges mutare non poteſt, nec ſubjectum populum renitentem onerari impoſitionibus peregrinis.* And *cap.* 13. *fol.* 31. he compares the King and Subjects of *England* to the Head and Body Natural: *Ut non poteſt corpus phyſicum nervos ſuos commutare neq; membris ſuis proprias vires & propria ſanguinis alimenta denegare ſua, nec Rex qui caput corporis politici mutare poteſt leges corporis illius, nec ejuſd' populi ſubſtantias proprie ſubtrahere, reclamantibus eis aut invitis.* Thus he in this Place; but in *fol.* 84 *cap.* 36. he ſeemeth to ſay, *In hoc individuo, Rex Angliæ neq; per ſe nec miniſtros ſuos, Tallagia, Subſidia, aut quævis onera alia imponit, leges ſuas, aut leges eor' mutat, aut nova condidit ſine conceſſione vel aſſenſu totius Regni ſui in Parliamento ſuo expreſſo.* Which Words ſeem ſo general, that in no Caſe he can do it.

So it appeareth by the Book-Caſe, 13 *Hen.* IV. *fol.* 14. That the Grant of the King, which tendeth to the Charge and Prejudice of his People in general, is not good, unleſs it be by Parliament. But it is agreed there, That Grants of Tolls, of Fairs, of Pontage, Pickage, Murage, Ferrying, or ſuch like, which are for the Profit, Good, and Eaſe of the People, and Profit of them that will take Benefit thereof, and not compulſory to any to pay, but to them that will take the Benefit; and being very ſmall and reaſonable Sums, the Law doth give Allowance to them: but if they were great Sums, that tend to the Charge of the People, the Law will judge them void.

This appeareth in Sir *Ed. Coke*'s Reports, *lib.* 5. *fol.* 63. in the Caſe of the Chamberlain of *London*, That an Ordinance made by the Common-Council of *London*, where they have a Cuſtom by their Common-Council to make reaſonable Ordinances to bind all within the City, concerning Cloths to be brought to *Blackwell-hall*, there to be viewed, meaſured and ſearched, before they were ſold, and a Penny upon a Broad-Cloth appointed for the Officer that did that Service; that ſuch a Charge was reaſonable; for that it was for the Publick Benefit of the City, and the Commonwealth; and a pecuniary Penalty laid for not performance of that Ordinance was allow'd.

Ibid. fol. 64. in *Clark*'s Caſe it is reſolved, That an Ordinance made by the Aſſent of the Plaintiff himſelf, and other Burgeſſes of the Town of *St. Albans*, for a ſmall Tax upon the Inhabitants of the Town, towards the Erection of the Courts, and other Neceſſaries, for the Term to be kept there, was allowed to be good, and did bind the Plaintiff, being by the Plaintiff's own Conſent, and for the public Good of the Town.

Alſo *Coke*, *lib.* 11. *fol.* 86. in *Darcie*'s Caſe citeth this out of *Fitz-Her. Na. B. fol.* 122. That every Grant of the King hath this Conſideration in it, tacit or expreſs, *Quod Patria per Donationes illius, magis ſolito non oneretur.* And as by Grant the King cannot charge his People, ſo neither can he by Writ lay any Charge upon his People, but by their Conſent, or where they have apparent Benefit thereby. And that is the Reaſon of the Writ in the *Reg.* 127, and *Fitz-Her. Na. B.* 113. Where by Breach of the Sea-Walls any Inundation is of the Country, the King, who is *Pater Patriæ*, and taketh care for the good and Safety of his People, ſendeth out his Commiſſion to enquire by whoſe Default any ſuch Breach happened, and to cauſe all that had Lands or Commons to be contributory to the making up of the Sea-Walls; and this is done by a Jury: but this Charge cannot be laid upon a County or Town in general, but upon particular Men that have Loſs or Benefit, or may have Loſs or Benefit thereby: And this is done by Inquiry of a Jury, before the Sheriffs, or Commiſſioners appointed. So it is at this Day, upon Commiſſions of Sewers, as appeareth by *Coke*, *lib.* 10. *fol.* 142. in the Caſe of the Iſle of *Ely*. The Taxation by the Commiſſioners of Sewers muſt be upon every particular Man that hath or may have Loſs or Benefit by ſuch Inundations, and making up of the Walls; and cannot be laid upon any remote Parts, which are out of the Level of ſuch Loſs or Benefit; and it muſt be certain and particular upon Perſons: certain, by reaſon of Loſs or Profit, and cannot be laid in general upon a Town; but in thoſe Caſes there is a particular Loſs or Benefit, and in particular Places, and but in petty Charge. And then where the Law alloweth that which in Reaſon is to be done, that may be done without a ſpecial Statute: for, *De minimis non curat lex.* But in this Caſe there is a general Charge through the whole Kingdom, which the Law doth not permit, without common Conſent in Parliament.

But it hath been alledged, That this Charge hath been impoſed for the publick Safety, and Defence of the Kingdom: and may not this be done when every one hath advantage by it?

To this I ſay, When imminent Danger and Cauſe of Defence is, there muſt be Defence made by every Man (when the King ſhall command) with his Perſon: In ſuch a Caſe every Man, as it is ſaid in the Precedents, is bound *per ſe & ſua* to defend the Kingdom. And I think no Man will be unwiſe, but that he will *exponere ſe & ſua* for the Defence of the Kingdom, when there is Danger; for otherwiſe, he is in danger to look to *ſe & ſua*: but to lay a Charge in general upon the Kingdom, either for making or preparing of Ships, or Money in lieu thereof, is not to be done but by Parliament, where the Charge is to be borne in general by all the Subjects.

To prove further, That no Man may have his Goods taken from him but by his Conſent, appeareth by a Record, *Mich.* 14 *Ed.* II. *Rot.* 60. in the King's-Bench, in a Writ of Error brought upon a Judgment given at *Durham*; where in an Action of Treſpaſs, by *William Heyborne*, againſt *William Keylowe*, for entering his Houſe, and breaking his Cheſt, and taking away 70*l.* in Money, the Defendant pleaded not Guilty; the Jury found a ſpecial Verdict, That the *Scots* having entered the Biſhoprick of *Durham* with an Army, and making great Burning and Spoils, the Commonalty of *Durham* met together at *Durham*, whereof the Plaintiff was one, and agreed to ſend ſome to compound with the *Scots* for Money to depart, and were all ſworn to perform what Compoſition ſhould be made, and to perform what Ordinance they ſhould make in that behalf: and thereupon they compounded with the *Scots* for 1600 Marks. But becauſe that was to be paid immediately, they all conſented that *William Keylowe* the Defendant, and others, ſhould go into every Man's Houſe, to ſearch what ready Moneys were there, and to take it for the making up of that Sum; and that it ſhould be repaid by the Commonalty of *Durham*; and thereupon the Defendant did enter into the Plaintiff's Houſe, and did break open the Cheſt, and took the 70*l.* which was paid accordingly towards the Fine. The Jury was demanded, Whether the Plaintiff was preſent, and did conſent to the taking of the Money? They ſaid No: whereupon the Plaintiff had Judgment to recover the ſaid 70*l.* and Damages, for that otherwiſe he had no Remedy for his Money; and the Defendant was committed in Execution for that Sum. And thereupon the Defendant, *Keylowe*, brought a Writ of Error in the King's-Bench, and aſſigned his Error in point of Judgment; and there the Judgment was reverſed, and the Reaſons ſet down in the Record were, *Firſt*, Becauſe the Plaintiff, *Heyborne*, had his ſufficient Remedy againſt the Commonalty of *Durham* for his Money: *Secondly*, Becauſe he himſelf had agreed to this Ordinance, and was ſworn to perform it; and that the Defendant did nothing but what the Plaintiff had aſſented to by his Oath, and therefore is accounted to do nothing but by his Conſent, and as Servant unto him, therefore he was therein no Treſpaſſer: and therefore the Judgment given in *Durham* was reverſed, becauſe he had aſſented to that Ordinance, though afterwards he was unwilling; yet having once conſented, his Goods were lawfully taken. By which it appeareth, that if he had not particularly conſented, ſuch an Ordinance would not have been good to bind him; although this was in a Caſe of great Danger, and for Defence.

2 *Ric.* II. *pars* 1. The Parliament-Roll proveth this directly; although it be no Act of Parliament, yet the Record is much to be regarded, for it ſheweth what the Law was then conceived to be: for *Scroope*, the Lord Chancellor, then ſhewed to all the Lords and Commons aſſembled in Parliament, That all the Lords and Sages had met together ſince the laſt Parliament, and having conferred of the great Danger the Kingdom was in, and how Money might be raiſed in caſe of imminent Danger, which could not ſtay the Delay of a Parliament, and the King's Coffers had not ſufficient therein; the Record is, they all agreed, Moneys ſufficient could not be had without laying a Charge upon the Commonalty, which, ſay they, cannot be done without a Parliament; and the Lords themſelves,

ſelves, for the time, did ſupply the ſaid Neceſſity with Money they lent: which Record proveth directly, That this Charge without an Act of Parliament is illegal.

So upon theſe Reaſons I conclude, That this Writ, compulſorily to charge the Subjects againſt their Wills, is not warranted by any Book, and therefore illegal.

If this Writ ſhould be allow'd, great Inconveniences would enſue, which the Law will always avoid, and not permit any Inconveniences.

1. If any ſuch Charge may be laid upon the Counties by Writ, without Aſſent in Parliament, then no Man knoweth what his Charge may be; for they may be charged as often as the King pleaſeth, and with making of as many Ships, and of what Burdens, and with what Charge of Ammunition, Men and Victuals, as ſhall be ſet down. Wherein I doubt not, but if the Law were ſo, the King being a very pious and a juſt King, would uſe his Power very moderately; but Judges in their Judgments are not to look to preſent Times only, but alſo to all future Times, what may follow upon their Judgments.

That this Inconveniency may be, appeareth by the *Danegelt*, firſt appointed in Times of Neceſſity, to redeem them from the Cruelty of the *Danes*, which often changed, and ſtill increaſed: for *A. D.* 991, when it began, it was but 10000*l.* In 994, it was increaſed to 16000*l.* And in 1002, it was increaſed to 24000*l.* And in 1007, it was increaſed to 36000*l.* And in 1012, to 48000*l.* So if this Writ be well awarded, it may be at pleaſure what Bounds it ſhall have. Alſo there was never but one ſingle Subſidy and two Fifteenths uſed to be granted in Parliament, until 31 *Eliz.* and then a double Subſidy, and four Fifteenths were granted: Sir *Walter Mildmay*, then Chancellor of the *Exchequer*, moving for it, and ſaying, *his Heart did quake to move it*, *not knowing the Inconvenience that ſhould grow upon it*; he ſhewed great Reaſons for his moving it, it being about the Time of the *Spaniſh* Invaſion, and ſo it was granted. Afterwards, 35 *Eliz.* treble Subſidies and Fifteenths were granted. And 43 *Eliz.* four Subſidies and eight Fifteenths were granted; and yet theſe were not accounted grievous, neither would it have been, if it had been ten Subſidies becauſe in Parliament, and convenient Times and Means appointed for the levying of them. Tonnage and Poundage were granted to this End in 13 *Rich.* II. and have continued ever ſince by ſeveral Grants until this King's Time, wherein it was unhappily queſtion'd in Parliament: but the End thereof was, that the Kings might have Money in their Purſes againſt Times of Need, for extraordinary Occaſions, eſpecially for the Defence of the Realm, and guarding of the Sea, as it is eſpecially declared by the Statute 1 *Jac.* and former Statutes, and for other neceſſary Uſes, as the King pleaſed.

Object. But it is ſaid, That Tonnage and Poundage is not now granted to the King, and therefore the King is enforced to theſe extraordinary Courſes.

Tho' it be not granted, yet I think it is taken; and I doubt not but to the ſame Intent, and for the ſame Purpoſes employ'd for which it was firſt granted; which was, for the Defence of the Kingdom, and Guard of the Sea. Therefore in caſe of Danger and Neceſſity, every Subject, for the Defence of the Kingdom, is bound for *Legianciæ debito*, as ſome Records ſay, and *Legianciæ ſuæ vinculo aſtricti*, as others ſpeak; *ſe & ſua totis viribus & poteſtate exponere*, *&c.* And in ſuch a Caſe, the King may demand the Perſons of his Subjects, and arreſt their Ships to wait on his to defend the Seas; yet with this alſo, When they go out of their Counties, to be at the King's Charges: But to command the Subject by Writ, to build new Ships, or to prepare Ships at their Charges, or to lay a common Charge on the Subjects in general, for matter of Defence, or avoidance of Danger; is not warrantable by the Common Law.

2. Another Inconvenience is, That it is left in the Power of the Sheriff to charge any Man's Eſtate at his Pleaſure, taxing ſome, and ſparing others, as his Affections lead him; and ſometimes, by colour thereof, levying more than he need, and enriching himſelf; which Power the Law never alloweth him, altho' it were in leſſer Matters; as to make an Aſſeſſment for Breach of Sea Walls; but to do it by a Jury, and not by himſelf alone. So for theſe Reaſons, I conclude, This Writ is againſt the Common Law, and ſo illegal.

I conceive, if the Common Law were doubtful in this, whether ſuch a Charge might be impoſed by Writ; yet now it is made clear by divers expreſs Statutes, That the King is not to lay any Charge upon his Subjects, but by their Conſent in Parliament; and that is, by many Acts of Parliament in force, and not repealed: and there is no doubt but that the King by Parliament may bind them and their Succeſſors, every King by Oath being bound to perform the Statutes of his Realm.

The Statute of 25 *Ed.* I. *cap.* 5. which is in theſe Words, 'Foraſmuch
' as divers People of our Realms are in fear, that the Aids and Taxes
' which they have given us before-time towards our Wars, and other
' Buſineſſes of their own Grant and Good-will, however they were made,
' might turn to a Bondage of them and their Heirs; becauſe they might
' be at other time found on the Roll; and likewiſe for the Prizes taken
' throughout our Realm by our Miniſters; We have granted for us and
' our Heirs, That we ſhall not draw any ſuch Aids, Taxes or Prizes
' into a Cuſtom, for any thing that hath been done heretofore, by any
' Roll, or any other Precedent that may be found.'

Ibid. cap. 6. 'Moreover, we have granted for us and our Heirs, as well
' to Archbiſhops, Biſhops, Priors, and other Folk of the holy Church; as
' alſo to Earls, Barons, and all the Commonalty of the Land; that for no
' Buſineſs from henceforth we ſhall take any Aids, Taxes, nor Prizes,
' but by the common Aſſent of the Realm, and for the common Profit
' thereof, (ſaving the antient Aids and Prizes due and accuſtomed)'
which are the expreſs Words of that Statute. Now, what thoſe antient Aids were, is well known, that they were *ad redimendum corpus*, *ad filium primogenitum militem faciend' & ad filiam primogenitam maritand'*: Which Aid concerns not the Subject in general, but particular Men were liable thereunto by their Tenures. So this Saving need not to have been; for the Body of the Act extended not to them, but to the general Aid of the Kingdom.

However, if this *Salvo*, as it hath been objected, would preſerve this Aid now in queſtion, yet the Statute made afterwards, *de Tallagio non concedendo*, being without any *Salvo*, takes it away: Which Statute, *Raſtal* in his Abridgment, *fol.* 441. in his Title of *Taxes*, abridgeth in this manner: '*Anno* 25 *Ed.* I. it is ordained, that the Taxes taken, ſhall
' not be taken in Cuſtom, nor but by the Aſſent of this Realm, except
' the antient Aids and Taxes: and there the Tax of 40*s.* upon the Sack
' of Wool is releaſed.

Ibid. 'That no Taillage, by us or our Heirs in our Realm, be put or
' levied, without the Aſſent of the Archbiſhops, Biſhops, Earls, Barons,
' Knights, Burgeſſes, and other free Commons of our Realm; that nothing
' be taken from henceforth, in the name, or by reaſon of *Male*
' *tout*' of a Sack of Wool. Statute *de Tallagio non concedendo*.'

Object. Mr. Sollicitor laboured much to prove, that there was no ſuch Statute, *de Tallagio non concedendo*: 1. For that it was not to be found on the Rolls of Parliament. 2. For that it was not ſet down when it was made. 3. That it was but an Abſtract out of *Confirmatio Chartarum Libertatum.* Mr. Attorney ſaid, he would not deny it to be a Statute, neither would he affirm it; but that yet it did not extend to take away the Aid demanded, by Prerogative or Power Royal for the Defence of the Kingdom.

Reſponſ. To this I anſwer, This was never doubted to be a Statute until this Argument; and that it is a Statute, appeareth, 1. For that it is printed in the *Book of Statutes*, for a Statute. 2. It is recited in the *Petition of Right*, to be a Statute. To that it is not found on the Rolls, I anſwer, That many Statutes that are known Statutes, are not found on the Rolls, as *Mag' Char'* is not.

And as touching the Time, I conceive it to be made 24 *Ed.* I. *cap.* 1. for ſo it is ſet down in the *great Book of Statutes*, printed 1618, to be the firſt Statute therein made, *viz.* in theſe Words: *No Taillage nor Aid ſhall be taken or levied by us or our Heirs, in our Realm, without the Good will and Aſſent of the Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other Freemen of the Land.*

And that it is a Statute, all my Brothers have agreed.

The only Doubt then is, whether this Statute extendeth to Aid for the Defence of the Kingdom; which I think it doth: for it is the preciſe Words of it, That no Taillage or Aid ſhall be impoſed but by Grant in Parliament, which extends to all manner of Aids: and by this Law the Subjects of *England* have defended themſelves ever ſince, as with a Buckler, as ſaith *Bodinus*, *fol.* 97. whereby it appeareth, that notice was taken of this Law in foreign Parts, and ſo held ſtill to be a Statute in force.

The next Statute is 14 *Ed.* III. *cap.* 1. which recites the Grant of the great Subſidy of the ninth Fleece, the ninth Lamb, *&c.* formerly granted; whereupon theſe Words follow: 'We willing to provide for the Indempnity
' of the ſaid Prelates, Earls, Barons, and others the Commonalty
' of the Realm, and alſo of the Citizens, Burgeſſes, and Merchants
' aforeſaid, will and grant for us and our Heirs, to the ſame Prelates,
' Earls, Barons, and Commons, Citizens, Burgeſſes, and Merchants,
' that the ſame Grant ſhall not be had forth in Example, nor fall to their
' Prejudice in time to come, nor that they be from henceforth charged
' or granted to make any Aid, or ſuſtain any Charge, if it be not by the
' common Aſſent of the ſaid Prelates, Earls, Barons, and other great
' Men and Commons of the ſaid Realm of *England*, and that in the
' Parliament; and that all the Profit ariſing of the ſaid Aid, and of
' Wards, Marriages, Cuſtoms, and Eſcheats, and other Profits, ariſing
' of our ſaid Realm of *England*, ſhall be ſet and diſpended upon the
' Maintenance of the Safe-guard of this Realm of *England*, and of our
' War in *Scotland*, *France*, and *Gaſcoigne*, and in no Place elſewhere
' during our War.'

By this Statute it appeareth that it is expreſly provided, that the Subjects ſhould not be from thenceforth charged nor grieved to make any Aid, nor ſuſtain any Charge but by common Aſſent, and that in Parliament; which is as expreſs as may be, and excluſive to any Charge otherwiſe; which I conceive was made againſt the Appointment of making, or preparing and ſending out of Ships at the Charge of the Towns wherein they were, or ſending Men out of their own Counties at the Charge of the County.

Object. Now whereas it is alledged by my Brother *Weſton*, and my Brother *Berkley*, That this was but a temporary Statute, and ended when the War ended, which appeareth by the laſt Clauſe for Employment of thoſe Profits towards thoſe Wars; I conceive it appeareth to be an abſolute and perpetual Statute, for it is granted for him and his Heirs in Perpetuity. And alſo it appeareth by *Plowden* in his *Comment. fol.* 457. in Sir *Thomas Worth*'s Caſe, where a Grant is by the Name of the King, which is in his Politick Capacity; this extendeth againſt him, his Heirs, and Succeſſors, altho' they be not named. Alſo the Intendment of this Law appeareth to be for the Security of the Subjects, from thenceforth for all future Ages. And then the Office of Judges, as appears by Sir *Edward Coke* his *Reports lib.* 5. *fol.* 7. and *Plowden*'s *Comment*, in *Aſton* and *Stud*'s Caſe, is to conſtrue Statutes according to the true Intent of the Makers thereof, which was in this Statute, that it ſhould be a perpetual Security for the Subjects. And to little purpoſe it had been, to make a Statute to continue but during the Time of the War, or during the King's Life.

Object. Alſo where it is alledged that the Statute of 14 *Ed.* III. is not mentioned in the *Petition of Right*, which is ſome Argument that it was not conceived to be a continuing Statute.

Reſponſ. To that I anſwer, That in the *Petition of Right* it is ſaid, That by the Statute there recited, and other the good Statutes of this Realm, the Subjects ſhall not be compelled to pay any Taxes, Taillage, Aid, nor other like Charge not ſet by Parliament; in which this Statute is as well intended as other Statutes, and as far as if it had been expreſly recited. Alſo it appeareth by all the Books of Statutes, that this Statute is granted as a Statute continuing, whereas others expired, are ſet down as expired.

21 *Ed.* III. *pars* 2. *m.* 11. A Subſidy being granted by Parliament, *viz.* 40*s.* on every Sack of Wool tranſported before *Michaelmas* following, and 6*d.* on every 20*s.* of Merchandize, for the Safe-guarding of the Merchants and Defence of the Coaſt, *&c.* After *Michaelmas*, *viz.* 31 *Octob.* 21 *Ed.* III. by Writ the Collectors were commanded to continue

the Collection of thoſe Subſidies until *Eaſter.* But, 26 *Nov.* 21 *Ed.* III. the King by Writ commanded the ſtay of the 6*d.* in the 20*s.* and to continue the Collection of the Subſidies upon the Sacks of Wool until *Eaſter.*

22 *Ed.* III. *Rot. Parl. m.* 16. The Parliament being holden in *Lent*, the Commons complain of the Continuance of this Collection of the Subſidies upon the Sacks of Wool longer than the Parliament had granted it, and provided that it ſhould not be continued longer than *Eaſter*, at the Procurement of any Perſon. By this it appeareth, that the Parliament being careful that the Time for levying of a Subſidy granted, ſhould not be enlarged by any Power, much leſs would they admit of a Writ to lay a Charge without Grant by Parliament.

25 *Ed.* III. *m.* 8. It was enacted that no Man ſhould be compell'd to find Men at Arms, other than ſuch as hold by ſuch Service, except it be by common Aſſent in Parliament. By this it appeareth, that if Men be not compellable to find a Man at Arms, unleſs it be by common Aſſent in Parliament; much leſs is any bound to be contributory to the preparing of a Ship with 180 Men at Arms, and Victuals, and Wages of Soldiery for 26 Weeks, unleſs it be by common Aſſent in Parliament.

Rot. Parl. 21 *Hen.* IV. *Num.* 22. An Act of Parliament, as I count it, in the very Point, is in theſe Words : ‘ For that of late, divers Commiſſions were made to divers Cities and Burroughs within the Realm, to make Barges and Barringers, without Aſſent of Parliament, and otherwiſe than hath been done before theſe; however the Commons do pray the King that theſe Commiſſions may be repealed, and that they may not be of any Force or Effect.’ To which it is anſwer'd, ‘That the King willeth that the ſaid Commiſſions be repeal'd ;’ which is an abſolute and perfect Statute.

But then there are added theſe Words : ‘ But for the great Neceſſity he hath of ſuch Veſſels for the Defence of the Realm in caſe that the War ſhall happen, he will treat with his Lords of this Matter, and afterwards will ſhew it to the Commons to have their Counſel and Advice in this Point.’ So by the Record it appeareth that the Commons did conceive, that no Cities, Burroughs, nor Towns, without Conſent in Parliament, were to be charged with the making of ſuch Veſſels; to which the King agreeth. And from that Day to this, until the making of theſe Writs, in no Age, altho' the Kingdom hath been many times in danger of Invaſion, and hath been invaded, there do not appear any Records that ever I have ſeen of Writs directed to any Towns or Cities at their Charges, to make or prepare any Ships or Veſſels whatſoever.

Object. And whereas it hath been objected, and eſpecially inſiſted upon by my Brother *Berkley*, that this latter Part, that the King will treat with his Lords concerning them, and after confer with the Commons, is a gentle Denial of that Act; as the Experience is at this Day. *Le Roy ſe aviſera* is a Denial of an Act.

Reſponſ. Hereupon I anſwer, It is an abſolute Act, for it is an abſolute Aſſent to the Petition. And that which came after was but a plauſible Excuſe, for that ſuch Commiſſions had gone out; and this farther Conſultation never appeared to be made, nor ever any ſuch Writ or Commiſſion for ſuch Veſſels to be made went out ſince until this Writ.

13 *Hen.* IV. *m.* 10. A Grant is of a Subſidy of Wools, Woolfels, Hides, and other things there mentioned, and of Tonnage and Poundage for one Year, for the Defence of the Marches of *Calais*, *&c.* and for the Defence of the Realm, and the Safeguard of the Sea. And therein is this expreſs *Proviſo*, ‘ Provided that this Grant of a Subſidy of Wools, *&c.* and Tonnage and Poundage, in time to come, ſhall not be taken in Example to charge the Lords and Commons of this Realm with any manner of Subſidy for the Safeguard of *Calais*, *&c.* nor for the Defence of the Realm, nor the Safeguard of the Seas ; unleſs it by the Will of the Lords and Commons of the Realm, and that by a new Grant to be made, and that in full Parliament to come.’ By this appeareth that it was then provided, that no Charge ſhould be laid on the Lords or Commons, no not for the Defence of the Realm, but by Grant in full Parliament.

13 *Hen.* IV. *m.* 43. A Petition was in Parliament reciting, That there was an Office granted of Alnager within *London* and the Suburbs of the ſame, with Fees to that appertaining, where any ſuch Office never was, nor any ſuch Fees appertaining thereunto ; and that by colour thereof, they levy one Half-penny of the Buyer and a Half-penny of the Seller, and upon Sale of every hundred Ells of *Canvaſs* a Penny of the Seller and a Penny of the Buyer, wrongfully againſt the Statutes in the Times of your Highneſs's Progenitors made to the contrary, by which it is ordained that no Taillage nor Aid ſhall be granted nor levied without Aſſent and Conſent of the Lords and Commons of your Realm, as by the ſaid Statutes is fully declared; wherefore they prayed that ſuch Letters Patents made thereof ſhall be void and holden for none. And this was granted; whereby it appeareth that it is declared then in Parliament, that thoſe Statutes were and did continue ; that no Taillage or Aid ſhall be levied without Grant in Parliament.

1 *Ric.* II. *c.* 1. It is enacted in theſe Words : ‘ Our Sovereign Lord the King remembring how the Commons of this Realm, by new and unlawful Inventions, and inordinate Covetize, have, againſt the Laws of this Realm, been put to great Servitude and importunate Charges and Exactions, and eſpecially by a new Impoſt, called a Benevolence, whereby divers Subjects of this Land, againſt their Wills and Liberties, have paid great Sums of Money, *&c.* It is enacted and ordained, that the Subjects and Commons of this Realm from henceforth ſhall in no wiſe be charged by ſuch Charges or Impoſitions called a Benevolence, or ſuch like Charge : And that ſuch Exactions called a Benevolence, before that time taken, ſhall be taken for no Example to make any ſuch, or any like Charge, from any of his Subjects of this Realm hereafter, but ſhall be damned and nulled for ever.’ By this it appeareth that it is expreſly provided that the Subjects ſhall not be charged by way of Benevolence, which is in nature of a Free Gift, nor ſuch like Charge ; that is, no Charge of Money ſhall be laid upon the Subjects upon any Pretence whatſoever, be it for Defence in time of Danger, or Guarding of the Sea.

The laſt and concluding Statute is the *Petition of Right*, made in the third Year of his Majeſty's Reign, reciting, That it was enacted by a Statute made in the Time of *Edward* I. commonly called *Statutum de Tallagio non concedendo*, that no Taillage or Aid ſhall be laid or levied by the King or his Heirs in this Realm, without the Good-will and Aſſent of the Archbiſhops, Biſhops, Earls, Barons, Knights, and others the Freemen of the Commonalty of this Realm. And by a Statute of 25 *Ed.* III. That none ſhall be compelled to make any Loans to the King, becauſe ſuch Loans were againſt Reaſon, and Franchiſe of the Land. And by another Statute, That none ſhall be charged by any Impoſitions called a Benevolence. By which Statutes, and other the good Statutes of this Realm, your Subjects have inherited the Freedom that they ſhall not be compelled to contribute to any Taxes, Taillage, Aid, or other like Charge not ſet by Parliament.

And then they pray, that none hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or ſuch like Charge, without common Conſent by Act of Parliament. And after five other Things there mentioned, the Concluſion is : ‘ All which they pray as their Rights and Liberties.’ Unto which the King anſwers, ‘ Let Right be done as is deſired.’ Which is a full and perfect Statute, ſhewing in this Point the Liberty of the Kingdom prayed, and allowed; which was not done without the Advice of the Judges, whereof I was one, whoſe Opinions were then demanded, and reſolved that the ſame did not give any new Liberty, but declared what the Liberty of the Subject was in this amongſt others, that they ſhould not be compelled to be contributory to any Tax, Taillage or Aid, nor any like Charge not ſet by Parliament. All which Statutes, thoſe of 25 *Edw.* I. 34 *Edw.* I. and 14 *Ed.* III. being in the negative and in force, I conclude that theſe Writs to lay ſuch a Charge is againſt the Law, and ſo the Aſſeſſment by colour thereof unlawful.

Object. Now whereas the precedent Arguments have been that the Kingdom being in Danger, therefore theſe Writs went forth for the making of Ships, becauſe there could not be ſo ſuddenly any Parliament called, and the Parliament is a ſlow Body, and the Kingdom may be loſt whilſt there is a Conſultation, and the Danger is conceived to be very great, becauſe that the Writ 4 *Aug.* ſo mentions, that the Pirates provided a great Navy to infeſt the Kingdom, and it is fit with Speed to provide a Remedy : And that the Writ of *Mittimus* mentioneth, That *Salus Reipublicæ periclitabatur* : And we muſt believe theſe Suggeſtions to be true, for the King's Certificate by this Writ is *Recordum Superlativum*, as Mr. Sollicitor and my Brother *Berkley* termed it, and muſt leave it upon the King's Conſcience if it be not true, to lay ſuch a Charge upon an untrue Suggeſtion. And the Defendant alſo by his Demurrer hath confeſſed all the Suggeſtions in the Writ to be true ; therefore it muſt be concluded the Kingdom was in great Danger, and preſent Remedy muſt be had by making of theſe Ships, and muſt be commanded by theſe Writs, and not to ſtay for a Parliament; and my Brother *Crawley* ſaid, It may be if a Parliament were called, they will not yield to the going forth of ſuch Writs, altho' the Kingdom was never ſo much in Danger. And this Charge in reſpect of the making of the Defence is not within the Intention of theſe Statutes ; and if it had been expreſsly mention'd within a Statute, that ſuch a Charge ſhould not be impoſed, it had been a void Statute, and contrary to the Laws, that the Kingdom ſhould not be defended.

Reſponſ. 1. To all theſe I anſwer, That the Matter now in queſtion is upon the Writ 4 *Aug.* Whether that be legal or not; and the Suggeſtions therein be ſufficient or not for the Writ of *Mittimus*, mentioning that *Salus Reipublicæ periclitabatur* at the Day of the iſſuing of the Writ 4 *Aug.* which is a Year and an half after the firſt Writ, doth not help it; and this not notified to the Sheriff and Inhabitants of the County to make them the more careful, and in a greater Contempt if a Ship were not provided, but it is only a Notification to the Barons of the *Exchequer*, that the ſame was the Reaſon that the ſame iſſued forth.

Reſponſ. 2. The Suggeſtions are not abſolute, that any ſuch Danger was, or ſuch Navy was prepared by Pirates; but only mentioneth, *Quia datum nobis intelligi*, that the Pirates had done ſuch Miſchief.

Reſponſ. 3. If ſuch Suggeſtions had been abſolutely ſet down, yet we are not always bound abſolutely to believe them ; becauſe many times untrue Suggeſtions are put into Writs and Patents ; and yet it doth not lie upon the King's Conſcience, neither doth the Law impute any Fact to the King, that any ſuch be : for the Law doth always conceive honourably of the King, That he cannot, nor will not, ſignify any Untruth under the Great Seal ; but he is abuſed therein, and the Law imputeth it to them that ſo miſinformed the King, and thruſt in ſuch Suggeſtions into the Writ or Patent. And therefore all Patents grounded upon untrue Suggeſtions, are accounted void.

Reſponſ. 4. That the Demurrer confeſſeth nothing but that which is legally and well ſet down ; but if it be illegal the Demurrer confeſſeth it not, but is well offer'd for that Cauſe.

Reſponſ. 5. If the Kingdom were in Danger, yet a Charge muſt not be laid in general upon the Subjects, without their Conſent in Parliament : for either the Danger is near, and then the preſent Proviſion muſt be made by Men's Perſons, and the preſent Ships of the Kingdom, which the King may command from all Parts of the Kingdom, as Need ſhall require; but cannot command Money out of Men's Purſes, by diſtraining of their Goods, or impriſoning of their Perſons. But if the Danger be further off, by reaſon of any foreign Combinations, (as it is conceived it may be here) that Proviſion muſt be made of Ships by all the Kingdom for Defence; then, as *Philip Commines*, fol. 179. ſaith, That Cloud is ſeen afar off, before that the Tempeſt falls, eſpecially by a foreign War; and ſuch Invaſions cannot happen ſo ſoon, but that the King may call his Sages together, and by Conſent make Proviſion for ſuch Defence.

So I ſay here, If there be Time to make Ships, or prepare Ships at the Charge of the Counties ; then is there Time enough for his Majeſty, if he pleaſes to call his Parliament, to charge his Commons, by Conſent in Parliament, and to have a Subſidiary Aid, as always hath been done in ſuch Caſes. And they are not ſo long coming or meeting, but they will make Proviſion for Defence, it being for all their Safeties : For it appeareth by *Coke*, *lib.* 9. *fol.* 1. in his Epiſtle, that King *Alfred* made a Law, That a Parliament ſhould be held twice every Year, and oftner, if need requir'd, in Times of Peace : So that it was then conceived, that it was neceſſary to have Parliaments to redreſs Inconveniences.

Alſo by a Statute made 4 *Ed.* III. *cap.* 14. it is enacted, A Parliament ſhall be held once every Year, and oftner, if need be. And alſo by a Statute made 36 *Ed.* III. *cap.* 10. it is enacted, for the Redreſs of Miſchiefs and Grievances that daily happen, a Parliament ſhall be holden every Year, as another Time was ordained by a Statute, which, I think, referreth to 4 *Ed.* III. Alſo it appeareth by the Speed that was in the Parliament held in the third Year of his Majeſty's Reign, when five Subſidies were granted, two of them to be paid within few Days after the Seſſion of Parliament ended; and therefore might, as this Caſe is, been order'd and provided for by Parliament within 7 Months, as the Time was between the Teſte of the Writ, and the Time prefix'd for Ships to be prepar'd and ſent.

Object. And whereas it is objected, That perhaps the Parliament would not have conſented, and ſo the Kingdom might have been loſt.

Reſponſ. It is anſwer'd, That it is not to be preſum'd, that the Parliament would deny to do that which is fit for the Safety and Defence of the Kingdom, their own Eſtates and Lives being in Danger, if the Kingdom were not ſufficiently defended: For it is a Rule, *Nihil iniquium eſt præſumend' in lege.* So of the High Court of Parliament, That they would not deny that which is fitting. But I confeſs, I think that if it had been moved in Parliament, they would never have conſented to theſe Writs, ſuch never having been awarded before ſince the Conqueſt. And if they had conſented, they would have taken a Courſe how the ſame ſhould have been made with the moſt Conveniency, and not to leave it to Sheriff to tax them how he would.

Object. To that which hath been ſaid, That this Charge is not within the Statute, and that a Statute to inhibit ſuch a Charge, for Defence were void.

Reſponſ. I anſwer, that it is true, That if a Statute were, that the King ſhould not defend the Kingdom, it were void, being againſt Law and Reaſon. But a Statute that Money ſhall not be charg'd or levy'd, nor that Men ſhall be charg'd to make or prepare Ships at their own Charges, without common Conſent in Parliament, I conceive were a good Law, and agreeable to Law and Reaſon. And the King may by Parliament, reſtrain himſelf from laying ſuch a Charge, but by Conſent in Parliament. And then the King being a juſt and pious King, as ever govern'd the Kingdom, which we that ſerve in his Courts of Juſtice have daily Experience of, would not aſſent unto, or ſuffer any ſuch Charge, if he were truly inform'd the impoſing of this Charge were againſt any one Law of his Kingdom, as this is againſt ſo many; but would ſay, as it is ſaid of the Statute made 35 *Ed.* I. That the Pope ſhould not be permitted to preſent to Benefices; That he was bound by his Oath to ſee that, and other Laws in force, and not repealed, to be performed: That he would not ſuffer ſuch Charges to be laid, contrary to the Laws and Statutes of his Realm: And would do as the late famous Queen *Elizabeth* did, when having required a Charge upon divers of her Subjects, by particular Letters from the Lords of her Council, of ſeveral Sums of Money for preſent Help towards her Wards in *Ireland*, hearing that one of her Judges, being convented before her Lords for the Payment of it, thereby diſcouraging others to pay it, anſwered it was againſt the Laws, that the ſame ſhould be impoſed, there being an expreſs Statute againſt it, which he being a Judge, was bound by his Oath to ſignify; he being, as much as in him was, to be a Conſervator of the Queen's Oath in that behalf. The Queen, I ſay, was very angry that ſuch an Impoſition had been laid againſt Law, and commanded it ſhould be ſtop'd from farther gathering; and to ſome that had paid their Moneys, the ſame was reſtor'd. And therefore the Principal and only Fault in the charging of his Subjects by theſe Writs, if they be unlawful, as I conceive they are, is in thoſe that deviſed them, and informed him that they were lawful, and ſuch as his Progenitors had from time to time uſed to ſend forth; and in his Judges who have affirmed it to be lawful: Therefore upon this Point I conclude, That this Charge, by this Writ, is illegal; and is no ſufficient Cauſe to charge the Defendant. *Object.* Whereas it hath been much urged and argued by Mr. Sollicitor, and Mr. Attorney, That this Writ is warranted by the King's Prerogative and Power-Royal to ſend forth ſuch Writs for Defence and Safety of the Kingdom in Time of Danger.

To this I anſwer, That I do not conceive there is any ſuch Prerogative; for if it were a Prerogative, I ſhould not offer to ſpeak againſt it: for it is part of our Oaths, that are Judges, to maintain the King's Prerogative to the beſt of our Skill, and not to ſuffer the ſame to be diminiſh'd. But if it be as I have argued, That is againſt the Common Law, and againſt ſo many Statutes, that the Subjects ſhould be inforced to ſuſtain, or to contribute to any Charge, without the ſpecial Conſent, or common Aſſent in Parliament, then there is no ſuch Prerogative; for whatſoever is done to the Hurt or Wrong of the Subjects, and againſt the Laws of the Land, the Law imputeth that Honour and Juſtice to the King (whoſe Throne is eſtabliſh'd by Juſtice) that it is accounted not done by the King, but by ſome untrue and unjuſt Informations. This appeareth by the Authorities of our Books; for *Bracton*, *lib.* 3. *fol.* 107. who is an ancient Writer in our Law, ſaid *Nihil aliud poteſt Rex in terris, cum ſit Dei Miniſter & vicarius, quam de jure poteſt*; and there a little after, *Itaq*; *poteſtas Juris ſua eſt, & non injuriæ, cum ſit author Juris, non debet inde Injuriæ naſci occaſio, unde Jura naſcuntur.* Sir *Edw. Coke*, in the 11th Book of his Reports, in the Caſe of *Magdalen College*, where the Queſtion was, Whether Queen *Elizabeth* having taken a long Leaſe of a College, being conceived to be againſt the Statute 13 *Eliz.* it was ſought to be maintain'd by her Prerogative, but reſolv'd it could not, it being againſt a Statute, by which ſhe was bound, tho' not nam'd, and there *fol.* 72. it is ſaid, *Hoc ſolum Rex non poteſt facere, quod non poteſt injuſte agere. Plowden's Comment.* fol. 246, 247. in the Lord *Berkley*'s Caſe it is ſaid, That the Prerogative of the King cannot do Wrong, and his Prerogative cannot be any Warrant to do any Wrong to any. *Plowden's Comment.* fol. 487, in *Mitchell*'s Caſe, it is ſaid by Juſtice *Harper*, Altho' the Common Law doth allow many Prerogatives to the King, yet it doth not allow any, that he ſhall hurt or wrong any by his Prerogative. 21 *Ed.* III. *fol.* 47. the Earl of *Kent*'s Caſe, it is ſaid, That if the King, under his Great Seal, do make any Grant to the Hurt of any other, he ſhall repeal and avoid it, *Jure Regis*; for the King is accounted to be abus'd by untrue Suggeſtions, when he is drawn to do any Wrong to the Hurt of any other; much more I ſay, when he is drawn to do any thing to the Hurt of his Subjects in general. Sir *Ed. Coke*, *lib.* 11. *fol.* 86. in *Darcie*'s Caſe, it is ſaid, That every Grant of the King hath this Condition annexed unto it, *Tacite aut expreſſe, ita quod Patria per Donationem illam magis ſolito non oneretur, ſeu gravetur.* The Book called *Doctor and Student*, *fol.* 8. ſetting down, That the Law doth veſt the abſolute Property of every Man's Goods in him, and that they cannot be taken from him but by his Conſent, ſaith, That is the Reaſon that if they be taken from him, the Party ſhall anſwer the full Value thereof in Damages. And ſure I conceive, that the Party that doth this Wrong to another, ſhall beſides the Damages to the Party, be impriſon'd, and pay a Fine to the King; which in the *King's Bench*, is the tenth Part of as much as he payeth to the Party. So then, if the King will puniſh the Wrong of taking of Goods, without Conſent, between Party and Party; much more will he not by any Prerogative take away any Man's Goods, without his Conſent, particular or general.

So I conclude, that I conceive, there is not any ſuch Prerogative to award ſuch Writs to command Men to ſuſtain ſuch Charge, as to be contributory to it; and to be diſtrain'd and impriſon'd for not Payment thereof.

Alſo I conceive, That this is not an Act of Royal Power; for if it be illegal to impoſe ſuch a Charge, then it is not accounted as a Matter of Royal Power, but as a Matter done upon an untrue Suggeſtion, and a Matter of Wong done: and Wrong is not imputed to the King, for he can do no Wrong; but it is imputed to them that adviſed him to this Courſe.

Royal Power, I account, is to be uſed in Caſes of Neceſſity, and imminent Danger, when ordinary Courſes will not avail; for it is a Rule, *Non occurrendum eſt ad extraordinaria, quando fieri poteſt per ordinaria*; as in Caſes of Rebellion, ſudden Invaſion, and ſome other Caſes, where Martial Law may be uſed, and may not ſtay for legal Proceedings. But in a Time of Peace, and no extreme Neceſſity, legal Courſes muſt be uſed, and not Royal Power.

Therefore, whereas in the Statute of 31 *Hen.* VIII. *cap.* 8. which was made upon the Suppreſſion of Abbeys, when Rebellions were begun to be ſtirr'd, it is recited, That ſudden Occaſions happening, which do require ſpeedy Remedies, and for lack of a Statute, the King was enforced to uſe Royal Power; it was enacted for the Reaſons therein mention'd, That the King, by the Advice of his Counſel therein nam'd, two Biſhops, two Chief Juſtices, and divers others, or the major Part of them, by his Proclamation, may make Ordinance for Puniſhing of Offences, and lay Penalties, which ſhould have the Force of a Law, (with a Promiſe that thereby no Man's Life, Lands or Goods, ſhould be touch'd or impeach'd) ſo that therein Royal Power was fortify'd by a Statute: yet that Statute took care that no Man's Life, Lands or Goods, ſhould be taken or prejudic'd; and that Statute was thought inconvenient, and therefore the ſame by a Statute of 1 *Ed.* VI. was repealed.

So *Bracton*, *lib.* 2. *cap.* 24. *fol.* 55. And the ſame is cited in *Coke*, *lib.* 7. *fol.* 11. in *Calvin*'s Caſe, *Regis Corona eſt facere Juſtitiam & Judicium, & tenere Pacem, ſine quibus Corona conſiſtere non poteſt, nec tenere.*

Coke, lib 7. *fol.* 5. in *Calvin*'s Caſe, cited out of *Forteſcue*, *Rex ad tutelam corporum & bonorum erectus eſt*; which being ſo, he cannot take away Mens Goods, or charge them without their Conſent, by any Prerogative or Royal Power.

Alſo there can be no ſuch Neceſſity, or Danger conceiv'd, that may cauſe theſe Writs to be awarded to all Counties of *England*, to prepare Ships at ſuch a Charge, and with ſuch Men and Ammunition, without Conſent in Parliament; for the Laws have provided Means for Defence in Times of Danger, without taking this Courſe: for that the King hath Power to command all, or any Perſons of his Kingdom, to attend with Arms at the Sea-Coaſts, to defend the Coaſts, or any other Parts of the Kingdom; and alſo by his Officers, to make ſtay or arreſt, all or any the Ships of Merchants, and others having Ships; or as many as he pleaſeth to go with his Navy, to any Parts of his Kingdom, for Defence thereof; and to attend thoſe to whom he appointed the Guard of the Seas, or the Sea-Coaſts, at ſuch Times and Places as they ſhould appoint. And this has been always taken and conceived to be ſufficient for Defence, againſt any Prince whatſoever; and yet the ſame was in Times, when the Navy of *England* was not ſo ſtrong, as now by the Bleſſing of God and the good Providence of his Majeſty it is.

That this Courſe was then ſo taken, appeareth by divers Records, *viz.* 23 *Ed.* I. *m.* 4. the Record reciteth, That the *French* King had prepared a great Navy upon the Sea, and purpoſed to invade the Kingdom, & *linguam Anglicanam de terra delere*; and thereupon the King commanded all the Ships, and Men with Arms, to be in readineſs to defend the Kingdom.

Rot. Scot. 10 *Ed.* III. *m.* 16. reciteth, That certain Galleys in Parts beyond the Seas, were prepared with Proviſions of Men, and Arms, and other Neceſſaries of War, and ready to invade the Land: Command was, that divers Ships ſhould be in readineſs to defend the ſame; and the Ships of the Ports of *Ireland* to be ſent into *England* to help to defend the Kingdom.

Scot. 10 *Ed.* III. *m.* 22. A Writ was to the Bailiff of *South Wales*, (reciting, That the *Scots* and divers others confederating together, prepare themſelves to Arms and Ships in a great Number, and intend to invade the Kingdom) to command them to have one Ship ready upon the Sea to defend their Coaſts. The like Writ was then to *North Wales*.

Alm' 12 *Ed.* III. *m.* 10. A Writ to the Mayor of *London*: *Quia hoſtes noſtri in Galleis cum multitudine non modica congregati in diverſis partibus regni hoſtiliter ingreſſi ſunt, & civitatem prædict' celeriter ſi poſſunt invadere proponunt.* The King commandeth them to ſhut up the City towards the Water, and to put all their Men in Arms ready to defend, &c.

Alm' 13 *Ed.* III. *m.* 13. A Writ to the Bailiff of *Great Yarmouth*: *Quia pro certe didicimus quod hoſtes noſtri Franc' & adhærentes eiſd' Galleas & naves guerrinas in copioſa multitudine in partibus exteris congregarunt, & iis homines ad arma parari faciunt, & proponunt ſe movere verſus regnum noſtrum & navig' regni noſtri & Portus prope mare ſituat' pro viribus deſtruere,*

deſtruere, & id' regnum invadere &c. command the ſame Town to prepare four Ships with 140 Men, *&c.*

At the ſame time Writs went forth to twenty other Towns upon the Sea-Coaſts. *Franc.* 26 *Ed.* III. *m.* 5. Writ to the Earl of *Huntingdon* and others, *Quia adverſarii noſtri Franciæ nos & regnum noſtrum invadere machinantes, magnum navigium præparari fecer' & armari, ne dum ad regnum noſtrum Angliæ ſubito attrahend' ſed ad nos & dominium noſtrum & totam nationem Anglicanam pro viribus ſubvertend' &c.* commanding them to guard all the Sea-Coaſts of *Kent*, and to array all Men to be ready with Arms to defend the Sea-Coaſts.

5 *Hen.* IV. *m.* 28. A Commiſſion is to *Thomas Morley* and others: *Quod cum inimici noſtri Franciæ Britan' Scot' & al' ſibi adhærentes inter ſe obligati magna potentia armat' ſuper mare in æſtat. prox' futur' ordinaverunt regnum noſtr' Angliæ invadere, &c.* commanding them to array Men with Arms to defend, *&c.*

4 *Hen.* VIII. *Par.* 2. The King by Proclamation to the County of *Kent*, ſheweth, that it is come to his Knowledge of certain, that his ancient Enemy, the *French* King, hath prepared and put in readineſs a great and ſtrong Navy, furniſh'd with Men of War, to invade the Kingdom of *England*; the King appoints the Lord of *Abergavenny* and others, to put Men in Array, and to be ready to defend that County.

Anno 1588, when the great Invaſion was by the Navy, termed *the invincible Navy*, which was foreſeen long before, this Courſe of preparing Ships by every County of the Kingdom was not appointed; yet in all theſe Times, when there appeared ſo great Danger of Invaſion, there never went any ſuch Writ into any of the Counties of *England*, to provide Ships: But the Navy of *England*, and Army of *England* was always accounted ſufficient for the Defence of the Kingdom.

So I conclude this Point, that I conceive this Courſe cannot be taken by any Prerogative or Royal Power, nor any Allegation of Neceſſity or Danger.

For the fourth Point, I conceive, that if it were legal to lay ſuch Charge upon maritime Parts; yet to charge any Inland County with making of Ships, and furniſhing them with more Mariners and Soldiers at their Charges, which are far remote from the Sea, is not legal, nor warranted by any former Precedent; for it commandeth an unreaſonable and impoſſible thing by them to be done: and then a Writ, commanding ſuch a thing as is unreaſonable and impoſſible for the Parties of themſelves to perform, without Help of other Counties, is always illegal; for it is a Rule, That *Lex non cogit ad impoſſibilia:* If one by Covenant bind himſelf to do a Thing impoſſible, the Covenant is void.

This appeareth by the Book-Caſe 40 *Ed.* III. *fol.* 6. where the Caſe is expreſly, that if a Man do Covenant to do a Thing impoſſible, the Covenant is void, and the Deed is void in that reſpect: alſo the Book, *m.* 2 *Ed.* IV. *fol.* 2. If a Feoffment be made upon Condition to be void, if the Feoffee did not a Thing which is impoſſible, the Feoffment is good, and the Condition void: for it was the Fault of the Feoffer to annex ſuch a Condition. And this appeareth by the Caſe of an Arbitrement. If the Arbitrator award, that one ſhall enter into Bond, with ſuch a one as his Surety, to pay a Sum of Money, or to do any other Act, it is void, as to the finding of a Surety at the leaſt; for it is not in his Power to compel him to be his Surety: therefore the Law accounteth it unreaſonable, and ſo void. And this appeareth by the Book-Caſe 17 *Ed.* IV. *fol.* 5. where it is ſo reſolved.

So this Writ commanding the Sheriff and Inhabitants of an Inland County to find a Ship with Maſters and Mariners; whereas there are not any Ship-Wrights that have Skill to make Ships, nor any Maſters or Mariners ever there to guide a Ship, for they are ſtill converſant about Matters of the Plough, and feeding Cattel, and Huſbandry, and are trained up by Muſters to Skill of Arms to defend the Country, but not with Sea-Affairs; for moſt of the County never ſaw a Ship, nor know what belongs to Muſters or Mariners; and the County is not bound to ſeek out of the County for ſuch Men; and perhaps if they ſhould, they cannot tell where to have them: Therefore, when ſuch Writs to Inland Towns have been awarded to find Ships with Maſters and Mariners, it being conceived by Information that they were Maritime Towns, and had Ships, and Mariners dwelling with them; the Truth thereof being made appear to the contrary, they have been diſcharged, as appears by a Record, 13 *Ed.* III. *part* 2. *m.* 14. where a Writ went to the Admiral of the Fleet: Upon Complaint to the King by the Men of *Bodmin* in the County of *Cornwall*, that they were unjuſtly charged to find a Ship with Maſters and Mariners, whereas that Town was no Port-Town, nor adjoining to the Sea, but far within the Land, nor ever had Ships lying there, nor Mariners nor Seamen, nor ever uſed to find any ſuch for Sea-ſervice, and that their Major and Officers were impriſon'd for not finding a Ship; thereupon the King appointed to have it inquired whether their Allegations were true, and if it were true, ſignified that he would not have them be unjuſtly charged, but that they ſhould be diſcharged thereof. Which ſheweth, that it was then accounted unjuſt to lay ſuch a Charge upon a Town that was an Inland Town, and had no Mariner inhabiting in it; much more when ſuch a Charge is laid upon an Inland County, which is much farther remote from the Sea, and cannot perform by themſelves that which the Writ commanded.

Object. But this Record being objected by the Defendant's Counſel, Mr. Sollicitor gave Anſwer, that the ſame was becauſe the Admiral of his own Authority had charged them, which was not according to his Commiſſion; for he was only to charge the Port-Towns and Sea-Towns: but that the ſame may not be done by the King's Writ, the Record doth not prove.

Reſponſ. But to this I anſwer, that I conceive it is all one when ſuch a Charge is laid upon a Town by Writ, which is an Inland Town, for ſo it appeareth by another Record of the ſame Year, *viz.* 13 *Ed.* III. *part* 1. *m.* 14. where a Writ was directed to the Admiral of the Fleet, *Ab ore Thameſis verſus partes occidentales*; reciting, that where the King by his Writ to the Town of *Chicheſter*, commanded the Mayor and Commonalty there, that they ſhould make *unam Navem & duos Eſcularios de Guerra parari*, with Mariners and Men at Arms, to be at *Portſmouth* ſuch a Day, to go with the King's Ships; and that they had complained that they had not, nor ever had any Ships arriving in that Town, nor had any Seamen or Mariners dwelling there; and that it appeared to the King, by Inquiſition of a Jury returned into his *Chancery*, this their Allegation to be true: therefore, becauſe the King would not have them *indebite gravari*, (for ſo be the Words of the Record) the King commandeth the Admiral that they ſhall not be troubled nor diſtrained for not Performance of ſuch Service. Whereby it appeareth, that if they being within a few Miles of the Sea, ſhould not be charged to find ſuch a Ship, much leſs more Inland Counties that are farther remote from the Seas, are juſtly to be charged with finding Ships and Mariners. Therefore I conclude this Point, that I conceive, this Writ in that reſpect is not legal, nor warranted by any former Precedent.

The fifth and great Point hath been, and indeed the chief Argument hath been, a multitude of Records and Precedents, which have been cited, that ſhould warrant theſe Writs; and that the King hath done nothing but what his former Progenitors have done, and have lawfully done; and that he doth now but *More Majorum*, and that which always in ancient Times hath been done and allowed, and therefore ought to be done.

I confeſs this Allegation much troubled me, when I heard, theſe Records cited, and ſo learnedly and earneſtly preſſed by Mr. Solicitor, and after by Mr. Attorney, to be ſo clear, that they might not be gainſaid: but that they proved a clear Prerogative, or at leaſt a Royal Power, that the King might do ſo, eſpecially when my Brother *Weſton*, and my Brother *Berkley* (who have ſeen the Records) preſſed ſome of them, and relied upon them for the Reaſons of their Judgments: I ſay, I was much doubtful thereupon, until I had peruſed all theſe Records ſent me by the King's Counſel, and ſatisfied my Judgment therein.

But now I anſwer, That if there were any ſuch Precedent (as I ſhall ſhew there was not one ſhewed to me) to prove this Writ to be uſual, yet it were not material; for now we are not to argue what hath been done *de facto*, for many Things have been done, which were never allowed; but our Queſtion is, what hath been done, and may be *de jure*. And then, as it is ſaid in *Coke*, *lib.* 4. *fol.* 13. in *Witton*'s Caſe, it is ſaid *Multitudo errantium non parit errori patrocinium:* and *lib.* 4. *fol.* 94. in *Slade*'s Caſe; Multitude of Precedents, unleſs they be confirmed by judicial Proceedings, in Courts of Record, are not to be regarded; and none of theſe were ever confirmed by judicial Record, but complained of.

But to give a more clear Anſwer unto them, I ſay that in my Opinion, upon View and ſerious reading of all the Records that have been ſent me on the King's Part; for I have read them all over *Verbatim*, and I preſume they ſent all they conceived to be material, and I have taken Notes of every one of them, and diligently conſidered of them, I conceive that there is not any Precedent or Record of any ſuch Writ ſent to any Sheriff of any Inland County to command the making of Ships at the Charge of the County; but this is the firſt Precedent that ever was ſince the Conqueſt that is produced in this kind.

But it is true, that before 25 *Ed.* I. there have been ſome Writs to maritime Towns and Ports, and other Towns, as *London*, *&c.* where they have had Ships and Mariners, to provide and prepare Ships, and to ſend them to ſuch Places as the King pleaſed to appoint, upon any juſt Cauſe of Fear of any Danger, for the Defence of the Sea and Kingdom; and great Reaſon, that they having Ships and Maſters of Ships and Mariners, ſhould be at the King's Command, to bring all or as many as he pleaſeth for the Defence of the Sea and Kingdom, being thoſe that had the moſt Benefit of the Seas, and likely to have the greateſt Loſs if the Sea and Coaſt were not daily guarded; and thoſe were appointed moſt commonly to be at the King's Charge, but ſometimes upon Neceſſity they were appointed to be at the Charges of the Towns and Ports adjoining: which I think was the true Cauſe of the Complaint in Parliament in 25 *Ed.* I. and of the making that Statute for the ſtaying of that Courſe; for there is no Record of any ſuch Writs afterwards in *Edward* the Firſt's time, after that Statute to maritime Towns, to prepare or ſend Ships at the Charge of the Towns.

But in the time of *Ed.* III. then the War being between him and the *French* King in *Annis* 10, 11, 12, & 13 of that King, where the moſt Writs awarded to maritime Towns, to ſend Ships at their Charges ſufficiently furniſhed; and thoſe I think were the Principal Cauſe of the making of the Statute of 14 *Ed.* III. *cap.* 1. And after that Statute no ſuch Writs, nor any Commiſſions for that Purpoſe were awarded to any maritime Towns, or Inland Towns, for the making of Ships, but one; which Record was much preſſed by Mr. Attorney, and afterwards by my Brother *Weſton*, and my Brother *Berkley*, to prove, that this Courſe was, and might be practiſed after the Statute of 14 *Ed.* III. for ſending forth ſuch Writs, and allowed: But that Record is fully ſatisfied, for it was grounded upon an Ordinance of Parliament in 1 *Rich.* II. *m.* 52. that all antient Cities, Burroughs, and Towns, that would then, ſhould have their Charters confirm'd without any Charge of Fine, ſave only to make a Ship of War for Defence of the Realm: ſo this was not compulſory to any, but voluntary to thoſe that would have their Liberties confirm'd. And afterwards, in 1 *Hen.* IV. Commiſſions were awarded for making ſuch Veſſels of War; but thoſe iſſuing forth without any Ordinance of Parliament, were complained of in Parliament 2 *Hen.* IV. and ſo ſuch Writs iſſued forth in any Age, to any maritime Towns, to make Ships, or prepare Ships at their own Charge for the King's Service, until theſe late Writs.

This general Anſwer I give to all the Records; and now I ſhall take a ſhort View of all the Records that have been cited and ſent to me, and leave them to the Judgment of my Lords and others, if any of them prove theſe Writs uſual and legal.

The Records of King JOHN'*s Time.*

6 *Joh.* *m.* 1. 3 *Joh.* *m.* 3. 14 *Joh.* *m.* 2. 17 *Joh.* *m.* 7. Three of theſe are to arreſt and make ſtay of Ships, that they ſhould not go out of the Kingdom, but to be ready for the King's Service; and the other was to bring Ships of particular Towns to the Mouth of the *Thames*, for the King's Service.

19 *Joh.* *m.* 4. A Commiſſion to guard the Seas to *Joh. de Marſhal*, and to the Sheriff of the County of *Lincoln*, and to all others to attend his Commands.

15 *Joh.* Writ to the Barons of the Cinque-Ports, and divers other Towns, to have their Ships ready for the King's Service.

In the Time of Henry III.

14 *Hen.* III. *m.* 14. 14 *Hen.* III. *m.* 5. A Writ to the Bailiff of *Portſmouth*, to prepare one Galley. A Commiſſion to the Sheriff of *Rocheſter*, and another to the Sheriff of *Kent*, to cauſe all Men to be in Arms in that County, and to aſſeſs them what Arms they ſhould find.

48 *Hen.* III. *m.* 4. A Writ to the Sheriff of *Norfolk*, commanding him to cauſe them appointed to attend all the Coaſts in that County, who having ſerved 40 Days intended to depart, that they ſhould ſtay eight Days longer by reaſon of the Danger, and longer, if Need required. The like were ſent to the Sheriffs of *Suffolk* and *Eſſex*.

48 *Hen.* III. *m.* 2. A Writ to the Mayor of *Bedford*, commanding him to provide for the Expences of them that were ſent from thence for the guarding of the Seas; yet it is but for eight Days more after the Date of the Writ.

48 *Hen.* III. *m.* 3. A Writ to the Men of *Eſſex*, *Norfolk*, and *Suffolk*, appointed to attend for the guarding of the Sea-Coaſts, reciting, that the King had appointed *T. de M. Cuſtod' maris & part' maritim'* within their Counties, commanding them to aſſiſt him, and to perform therein what he required.

48 *Hen.* III. *m.* 7. A Writ to the Sheriff of *Cambridge* and *Huntingdon*, to command all Men of thoſe Counties, able to bear Arms, to come to the King to *London*.

In the Time of Edward I.

25 *Ed.* I. *m.* 5. A Writ to thoſe of *Eſſex*, *Norfolk*, and *Suffolk*, reciting, That ſuch Perſons were appointed *ad cuſtod' maritim'* in thoſe Parts, commanding them to attend them. Another to the Sheriffs of *Norfolk* and *Suffolk*, reciting, That certain Conſtables were appointed to aſſeſs Men at Arms, ſufficient for the guarding of the Sea-Coaſts, commanding them to diſtrain and compel them aſſeſſed to go.

24 *Ed.* I. *m.* 17. Writs to the Sheriffs of *Lincoln*, *York*, and *Northumberland*, reciting, That he had commanded *A. de B. ad congregand' & capiend' centum naves*, between *Leigh* and *Berwick*, *& ad homines potentes in eiſd' ponend'*, commanding them to aſſiſt him therein.

24 *Ed.* I. *Rot.* 62. A Writ out of the *Exchequer* to *Adam de Guerdo & aliis Gardianis* of the Sea-Coaſts in the County of *Southampton*, to diſtrain the Abbot of *Reading*, to find Horſes, which he was aſſeſſed at for that Service.

24 *Ed.* I. *m.* 16. Writs to all Archbiſhops, Biſhops, Earls, *&c.* in the Counties of *Somerſet*, *Devon*, and *Cornwall*, to attend with their Horſemen and Footmen, for Defence of the Sea-Coaſts in thoſe Parts, when they ſhall be required by the Guardian of thoſe Coaſts.

24 *Ed.* I. *m.* 71. A Writ out of the *Exchequer*, directed to all Archbiſhops, Biſhops, Earls, *&c.* in the County of *Norfolk*, reciting, That *Peter de Rutlin* was appointed *ad cuſtodiend' partium maritimar' illarum*, commanding them to aſſiſt him.

24 *Ed.* I. *Rot.* 78. A Writ out of the Exchequer to the Sheriff of *Berks*, reciting, That the King was informed by *Adam de Griden* Guardian of the Sea-Coaſts in the County of *Southampton*, that thoſe Men in the County of *Berks*, who were aſſigned to come to the defending of the Sea-Coaſts in thoſe Parts, came not as they were warned, commanding to diſtrain them, and compel them to come and to do the Service.

The like Writs were then awarded to the Sheriffs of *Wilts* and *Southampton*, *&c.*

24 *Ed.* I. *Rot.* 81. A Writ to the Bailiffs of *Great Yarmouth*, reciting, That the King was informed, that certain in *Flanders* and *France*, in a great Multitude, apparel'd like Fiſhermen, intended to invade their Town, warning them to gather their Ships together, and all their Arms, to defend themſelves againſt ſuch an Attempt.

24 *Ed.* I. *inter Com'*. A Writ to all Sheriffs and Bailiffs, *&c.* reciting, That he had appointed ſome therein named, *ad congregand' numerum navium & galliarum majorum*, *&c.* commanding the Sheriffs in their ſeveral Counties to be aſſiſting to them therein.

24 *Ed.* I. *m.* 9. A Writ of *Superſedeas* to the Guardian of the Seas in the County of *Southampton*, to diſcharge *Hugh de Pleſſis* to find Arms for his Lands in that County, for guarding of the Seas, becauſe he was in ſervice with the King.

Nota, *All theſe Records are for Arrays, and congregating Ships, but none to make or prepare Ships at the Charges of the Counties.*

24 *Ed.* I. *m.* 26. A Writ to the Sheriff of *Eſſex* to diſcharge for the Winter time thoſe that ſtay at the Sea-Coaſt, with their Arms to defend the Coaſt; but commanding them to be in a readineſs when they ſhould be again commanded. The like Writs were then awarded to divers Sheriffs of maritime Counties to the ſame purpoſe.

25 *Ed.* I. *m.* 12. A Writ to the Sheriff of *Lancaſter*, reciting, That whereas the King had formerly commanded him to go to all the Ports and Towns where Ships were, commanding the Bailiffs of the Ports to have all the Ships of Burden of 40 Tons at *Winchelſea*, by ſuch a Day; now commandeth the Sheriff to ſee them made ready, and ſent thither accordingly.

Ibid. m. 13. The like Writs directed to the Sheriffs of *Lincoln*, *York*, *Northumberland*, and *Cumberland*.

Ibid. m. 14. The like Writs directed to nineteen other Ports and Towns in other Counties.

21 *Ed.* I. *m.* 20. A Commiſſion to ſend away Men at Arms in the County of *Weſtmorland*.

21 *Ed.* I. *Rot.* 77. In the *Exchequer*, ſhewed by the Defendant's Counſel, Writs went to ſeveral Maritime Towns upon the Sea-Coaſts, and other Towns where Ships were uſually made, to make Ships and Gallies; and that the King will allow and pay for them, when he knoweth the Charge thereof.

In the Time of King Edward II.

Pat. 9 *Ed.* II. *Part* 2. A Writ to all Men in the Towns upon the Sea-Coaſts, and Ports of the Sea, between *Southampton* and *Falmouth*, reciting, That the King had appointed *John de Norton* to make Proviſion for a Navy in thoſe Towns and Ports, at their Charges, he commandeth them to perform what he in that behalf ſhall require.

Clauſ. 20 *Ed.* II. *m.* 8. A Writ to the Bailiff of *Yarmouth*, reciting, That whereas the King had commanded all the Ships of the Burden of fifty Tons, from the *Thames* Mouth towards the *Weſt* Parts, to be at *Portſmouth* ſuch a Day, *&c.* and they had ſent two Ships: That the Maſters and Mariners complained, that they could not ſerve without Wages, and therefore appointed them to ſend them Wages.

20 *Ed.* II. *m.* 10. A Writ to the Bailiffs of *Yarmouth*; commanding them to ſend all their Ships of the Burden of thirty Tons and above, to *Orewell* in *Suffolk*, with double Tackling, Victuals, and other things neceſſary for one Month.

The like Writs at the ſame time to other Towns, to the Number of four and thirty.

20 *Ed.* II. *m.* 10. A Writ to the Mayor of *London*, to provide three Ships with Men and Ammunition to go with nine Ships of *Kent* to guard the Sea-Coaſts.

15 *Ed.* II. *m.* 15. A Writ to the Sheriff of *Norfolk*, commanding him to warn all Barons, Bannerets, Knights, and others of that County, to attend the King at *Coventry*, at ſuch a Day to go with the King.

15 *Ed.* II. *m.* 15. Writs to the Sheriffs of *Norfolk* and *Suffolk*, commanding them to arreſt all Barons, Bannerets, Knights and Eſquires, who were commanded to attend the King at *Coventry*, ſuch a Day therein named, and came not, to be before the King and his Council to anſwer it.

The Record ſaith, like Writs were then awarded to divers Sheriffs of other Counties.

16 *Ed.* II. *m.* 13. A Commiſſion to array all Perſons between the Ages of Sixteen and Sixty, with Arms convenient, to come to the King, when they ſhall be required.

19 *Ed.* II. *m.* 6. A Writ to the Archbiſhop of *Canterbury*, commanding him to array all his Servants and Families, to be ready to defend the Kingdom, if any Invaſion ſhould be.

The like Writs at that time to all the Biſhops.

In the Time of King Edward III.

2 *Ed.* III. *m.* 92. A Writ to the Mayor and Bailiff of *Southampton*, commanding them to cauſe all their Ships of the Burden of forty Tons, and above, to be furniſhed with Men of Arms, and Victuals, ready to defend the Land, if any Invaſion ſhall happen.

Scot. 7 *Ed.* III. *m.* 19. A Commiſſion to *Hugh Courtney*, to guard the Seas in the Counties of *Devon* and *Cornwal*, and commanding all others to aſſiſt him.

10 *Ed.* III. *m.* 25. The like Commiſſion to *Hugh Courtney*, for guarding the Seas in the ſame Counties.

Ibid. A Writ to *Bartholomew de Inſula*, for Cuſtody of the Sea-Coaſt in the County of *Southampton*; and therein is a Command to *John Tichborne*, and others for the County of *Southampton*, and to *Will. de Parſhire*, and others for the County of *Berks*; and to *Joh. Mareditt*, and others for the County of *Wilts*, to array Men with Arms, and to have them in readineſs to defend the Coaſts of *Southampton*.

Scot. 10 *Ed.* III. *m.* 2. A Writ to *Will. Clinton*, Guardian of the Cinque-Ports and others, to ſurvey all the Ships of the Cinque-Ports, and other Ports from the Mouth of the *Thames* to *Portſmouth*, and to cauſe them to be furniſhed with Arms and Victuals for 13 Weeks, from the time they ſhall go from *Portſmouth*.

Scot. 10 *Ed.* III. *m.* 2. A Writ to the Mayor of *Winchelſea*, to cauſe the Ships appointed for that Town to be furniſhed with Men and Arms, and Victuals, and other Neceſſaries for thirteen Weeks.

Scot. 10 *Ed.* III. *m.* 16. A Writ to the Admiral of the Fleet from the Mouth of the *Thames* to the Weſt Parts, to keep upon the Seas the Ships of the Cinque-Ports, and other Ships arreſted to defend the Kingdom againſt attempt of any Invaſion.

The like Writ was then to the Admiral of the Fleet, from the Mouth of the *Thames* to the North Parts, with the like Command to hold the Ships together upon the Sea.

Scot. 10 *Edw.* III. 16. A Writ commanding the Ships of the Ports of *Ireland* to be ſent hither to guard the Seas here.

10 *Ed.* III. *m.* 12. A Writ to the Bailiff of *Yarmouth*, to cauſe the Men of that Town to contribute to the Charges of the Ships and Men, and Victuals, ſent from thence for the Defence of the Kingdom.

Scot. 10 *Edw.* III. *m.* 22. A Writ to all the Bailiffs of Liberties, and Men of *South-Wales*, to have one Ship riding upon the Seas for Defence of thoſe Parts.

The like to the Men of *North-Wales*.

Scot. 10 *Edw.* III. *m.* 21. A Writ to the Arrayers of Men for the County of *Berks*, to compel them of that County, aſſigned and aſſeſſed for the keeping of the Sea-Coaſt in the County of *Southampton*, to go to *Portſmouth* by a Day therein appointed.

Alm' 12 *Ed.* III. *m.* 12. A Commiſſion reciting, that the King had appointed all the Ships from the Mouth of the *Thames* Northwards, to be arreſted, and to cauſe them to be furniſh'd with Ammunition, Men and Victuals, and to be brought to *Yarmouth*; and that the Men of *Lynn* refuſed to contribute to the Expence of the Charge of the Men ſent in the Ship from that Town, and the furniſhing of that Ship; and therefore commands the Commiſſioners therein named, to aſſeſs them that refuſe to contribute and diſtrain them.

Alm' 12 *Edw.* III. *m.* 13. The like to compel the Men of *Bardeſey* to contribute for the Expences of the Men of that Town.

Clauſ. 12 *Edw.* III. *m.* 17. The like to compel the Men of the Counties of *Surrey* and *Suſſex*, to contribute to the Expences of the Men of thoſe Counties, that did attend for the guarding of the Sea-Coaſts in thoſe Parts.

Vaſc. 12 *Edw.* III. *m.* 8. A Writ to all Archbiſhops, Biſhops, *&c.* and to the Sheriff of *Kent*, and the Barons of the Cinque-Ports, and all others in that County, commanding them to be aſſiſting to *J. de Cobham*, to whom the Cuſtody of the Sea in thoſe Parts is committed; and to defend thoſe Coaſts againſt any foreign Invaſion that ſhall happen.

Alm' 12 *Edw.* III. *m.* 10. A Writ to the Mayor of *London*, reciting the Danger of Invaſion, and commanding to ſhut up the Gates at the Water-ſide, if the Enemies approach.

Alm' 13 *Edw.* III. *m.* 12. A Writ to the Bailiff of *Yarmouth*, reciting, that he had by his Writ commanded four Ships of War of that Town to be made ready with Men, Ammunition, and Victuals for three Months, at the Charges of the Town, to be brought to *Orewell*, and that they failed to come at the Day, to the great Peril of the Land; therefore commandeth the Bailiff to compel them at another Day therein prefixed, to be at the ſame Place.

There it is ſet down, that the like Writs were awarded to the Bailiffs of ſeventeen other Towns, for ſending their Ships, being charged ſome of them for one Ship, and ſome for two Ships.

Clauſ. 13 *Edw.* III. *m.* 38. A *Superſedeas* for the Abbot of *Ramſey*, for being charged with Arms for guarding the Coaſts in *Norfolk*, for his Lands in *Norfolk*, becauſe he was by Command attending with all his Forces in the County of *Huntingdon*, for the Safety of theſe Parts.

Clauſ. 13 *Edw.* III. *m.* 14. A Writ of *Superſedeas* to the Arrayers of Arms in the County of *Oxon*, to diſcharge *John Mauditt* to ſerve there, becauſe he ſerved in *Wilts.*

Clauſ. 13 *Ed.* III. *m.* 14. A Writ to the Arrayers of Arms in the County of *Wilts*, which is only concerning the Payment of Soldiers Wages, who then attended to guard the Sea-Coaſts.

Theſe being all the Records ſhewed me, it appeareth that there were no Writs iſſuing out in thoſe Times to any Sheriffs of Inland Counties, or Maritime Counties, to make or prepare Ships upon any Occaſion whatſoever, but only to Maritime Towns, to ſend their Ships, or prepare their Ships, at their own Charges.

The Records ſhewed me ſince 14 *Ed.* III. do not ſhew any Writs to be awarded to any Maritime Town, to prepare Ships at the Charge of the Towns, except the Records of 1 *Rich.* II. and 1 *Hen.* IV. which I have before anſwered; and they ſince that Time ſhewed unto me, except ſuch as I have mentioned in my Argument, are theſe:

Scot. 10 *Edw.* III. *m.* 14. A Commiſſion to *Nicholas de Cartlope*, to array Men to reſiſt the *Scots.*

Ibid. A Writ to the Mayor of *York*, to array all their Men to be ready when they ſhall be required.

20 *Edw.* III. *m.* 15. A Commiſſion concerning the Arrays of Men in the Counties of *Derby* and *Nottingham*, and to puniſh them that come not when they are warned.

Rot' Franc' 21 *Ed.* III. *m.* 31. A Writ to the Arrayers of Men in the County of *Southampton*, to diſcharge the Abbot of *Battel*, for finding Arms for Defence of the Sea-Coaſts there.

Franc' 25 *Ed.* III. *m.* 20. A Commiſſion to *John Bodingham*, for the Cuſtody of the Port and Maritime Parts in *Cornwal*, and to array all Men to be in readineſs. There is ſet down, that the like Commiſſion is to others in ſeveral other Counties.

Franc' 26 *Edw.* III. *m.* 5. A Commiſſion to the Earl of *Huntingdon* and others, to have the Cuſtody of the Ports in *Kent*, and to array Men, and to ſet up Beacons; which is the firſt I obſerve of this Kind.

Franc' 46 *Ed.* III. *m.* 34. The like Commiſſion then to ſeveral other Perſons, to array Men in ſeveral Counties, as *Warwick*, *Oxon*, *Berks*, and *Bucks.*

A Writ to the Archbiſhop of *Canterbury*, reciting the Danger of Invaſion by the *French*, to hurt the Church and Kingdom, commanding him to array all his Clergy in his Dioceſs, and to be ready to go with the King's Forces, *&c.*

The like Writs to all other Biſhops in the Kingdom.

Franc' 50 *Edw.* III. *m.* 47. A Writ to the Arrayers of Men in the County of *Norfolk*, and to the Sheriff of *Norfolk*, commanding them to command all great Men and others that have Manſions upon or near the Sea-Coaſts, to reſort to them with all their Families, for the Defence of the Coaſts.

The like to the Arrayers and Sheriffs of ten other Maritime Counties.

Scot. 29 *Ed.* III. *m.* 13. A Commiſſion to the Biſhop of *Durham* and others, to array Men in *Durham*, *Cumberland*, and *Northumberland*, to reſiſt the *Scots.*

Franc' 40 *Edw.* III. *m.* 31. A Writ to *William Zouch* and others, to remove with all their Families to their Houſes upon the Sea-Coaſts.

Nota, *That all the Records are for arraying Men, and none for preparing Ships.*

In the Time of King Richard II.

1 *Rich.* II. *m.* 7. A Writ to the Bailiffs of *Scarborough*, becauſe their Town was upon the Coaſts of the Sea, and in danger of Invaſion, carefully to look to the Cuſtody thereof.

Eod' Rot' m. 12. A Writ to the Mayor and Bailiffs of *Oxford*, to repair the Walls of the Town, and to compel thoſe that had Lands there, to contribute to the Expences thereof.

This Record hath been much urged by Mr. Sollicitor and Mr. Attorney, that if the King have ſuch a Power to command the Walls of a Town to be repaired, much more to command Ships to be made, which are the Walls of the Sea, and conſequently the Walls of the Kingdom.

But this is clearly anſwered; for that it is but a private Town, and that which hath been formerly ſo walled, and for Defence and Safety of the Town; and none were to be charged but thoſe that had Benefit thereby; and ſo it proveth nothing to the Caſe in Queſtion.

Eod' Rot. m. 42. One Writ to the Sheriff of *Kent*, and another to the Sheriff of *Eſſex*, commanding them to perform an Ordinance made by the King and his Council, for ſetting up of Beacons, and keeping Watch about them.

Scot. 7 *Ric.* II. *m.* 8. A Writ to the Archbiſhop of *Canterbury*, to command all his Clergy between ſixteen and ſixty, to be array'd and put in Arms, both Horſe and Foot, according to their Qualities, to defend the Kingdom.

Franc' 11 *Ric.* II. *m.* 13. A Writ to Serjeants at Arms, to arreſt all Ships of War in the Ports of *Plymouth*, or *Dartmouth*, and other Ports, in the County of *Cornwal*; and to bring them to *Hunkſhooke*, to go with the King's Majeſty's Ships.

In the ſame Roll, divers other Writs to divers other Sheriffs at Arms, to arreſt the Ships in divers other Ports.

Scot. 21 *Rich.* II. *m.* 3. A Commiſſion to the Duke of *Albemarle*, to array Men in the *Weſt-Marches*, towards *Scotland*, to reſiſt the *Scots.*

In the Time of King Henry IV.

Rot. Viagii, 1 *Hen.* IV. *m.* 11. A Writ to the Sheriffs of *Derby* and *Nottingham*, reciting, That the King certainly underſtood that the *Scots* intended with a great Power to invade the Kingdom; commanding them to proclaim in all Parts in their Counties, That all Men between ſixteen and ſixty, ſhould put themſelves into Arms, competent according to their Degrees and Qualities, to be ready upon two Days warning at any time, to defend the Kingdom.

The like Writs were then directed to the Sheriffs of *Lincoln*, *York* and *Lancaſter.*

Clauſ. 1 *Hen.* IV. *m.* 12. A Writ to the Archbiſhop of *Canterbury: Satis informati eſtis qualiter inimici mei Franciæ & alii ſibi adhærentes, cum magna claſſe Navium, cum magna multitudine armator' ſuper mare congregator' diverſas villas per Coſterum Regn' mei invadere, & nos & Regnum meum deſtruere, & Eccleſiam Anglicanam ſubvertere intendunt & proponunt*; thereupon commands, That the Clergy in that Dioceſs be array'd and arm'd, and to be ready to go againſt the Enemy.

The like Writs to all other Biſhops in *England.*

Nota, *Altho' this great Danger be mention'd, yet no Command to prepare Ships.*

Pat. 5. *Hen.* IV. *Part* 2. *m.* 28. A Commiſſion to *Thomas de Morley*, and others, and to the Sheriffs of *Norfolk* and *Suffolk*, and to the Bailiffs of great *Yarmouth*, reciting, *Quod cum inimici Franciæ, Scotiæ, & alii ſibi adhærentes ſe obligat' magna Potentia armat' ſuper Mare in æſtat' proxim' futur' ordinaver' & intendunt Reg' invadere*, &c. Command to ſurvey the Town of *Yarmouth*, and fortify it.

Nota, *Here alſo, tho' ſuch great Danger and Diſtance of Time, yet no Writs iſſued to any Counties to prepare Ships.*

In the Time of King Henry V.

Pat. 3 *Hen.* V. *Part* 2. *m.* 37. A Commiſſion to array all Men at Arms in the Weſt Riding in *Yorkſhire*, to be ready to defend thoſe Parts.

The like Commiſſions to others, in nineteen other ſeveral Counties.

In the Time of King Henry VI.

Pat. 13 *Hen.* VI. *m.* 10. *Pat.* 39 *Hen.* VI. *m.* 11. *Pat.* 39 *Hen.* VI. *m.* 12. *Pat.* 39 *Hen.* VI. *m.* 1. Commiſſions for arraying of Men for the Defence of the Kingdom, if Invaſion ſhall be; and for repreſſing of Rebels.

In the Time of King Edward IV.

Pat. 10 *Edw.* IV. *m.* 12. Commiſſions to *George* D. of *Clarence*, *& al'* to array Men for Defence.

Pat. 10 *Ed.* IV. *m.* 13. A Commiſſion to *John* Lord *Howard*, to be Captain of all the Forces.

Pat. 49 *Hen.* VI. *m.* 22. A Commiſſion to Marqueſs *Mountague*, to array and put in Arms all Men beyond *Trent.*

In the Time of King Henry VII.

Pat. 1 *Hen.* VII. *Part* 1. A Commiſſion to *Richard Fitz-Hugh*, and others, and to the Sheriff of *Yorkſhire*, to array and cauſe to be armed, all able Perſons, Abbots and others, to be ready to defend the Kingdom.

1 *Hen.* VII. *Part* 1. A Writ to the Sheriffs of *Norfolk* and *Suffolk*, to proclaim in all Parts in thoſe Counties, for that there was likely to be open War between *Charles* King of *France* and the King of the *Romans*, and great Navies are prepared on either ſide; commands, That Watch and Ward be kept, and Beacons kept to give warning; and that every Man be ready, if need be, to come and defend the Kingdom.

In the Time of King Henry VIII.

4 *Hen.* VIII. *Part* 2. A Writ to the Sheriff of *Kent*, commanding him to proclaim in that County, That the King being certainly informed, that the *French* King had prepared a great and ſtrong Navy, furniſhed with Men of War, to invade the Kingdom; therefore commandeth all Men between the Age of ſixteen and ſixty, to put themſelves in Arms, to be ready to defend the Kingdom at an hour's warning.

In the Time of Queen Elizabeth.

11. *Eliz.* Commiſſioners went to take a View of all the Horſes in *England* fit for Service, and to ſurvey all the Arms, to have them all put in readineſs, as Neceſſity ſhould require.

Now it appeareth upon View and Examination of all theſe Records, moſt of them being cited by Mr. Sollicitor and Mr. Attorney, in their ſeveral Arguments, there are none of them to prove the ſending of any ſuch Writs to Inland or Maritime Counties to prepare Ships; altho' there have been many times great Danger; nor yet any Writs to Maritime Towns, after the Statute of 14 *Ed.* III. to charge them to find any Ships at their Charges.

So then I conclude this Point, That I conceive this Writ is not warranted by any former Precedent.

Now I come to examine the Point of this Writ, Whether the ſame be legal and warranted by any former Precedent: And I conceive it is not.

1. The Motives mentioned in the Writ are, *Quia datum eſt nobis intelligi*, which is no certain Information: *Quod quidam prædones & maris graſſatores*, did take the King's Subjects, Merchants, and others, and carry'd them into miſerable Captivity. *Cumque ipſos conſpicimus navig' indies præparantes ad mercatores noſtros moleſtand' & Reg' noſt' gravandum.*

All theſe, and thoſe following, I conceive are not ſufficient Motives, and were never in any Precedent before to have a Royal Navy prepared. For the former Precedents are, that great Princes in open Time of Hoſtility had provided great Navies with Ammunition and Soldiery, with intent to invade the Kingdom, as appeareth by the former Precedents: and againſt ſuch Proviſions it was neceſſary to provide the Royal Navy, the King's Ships, and all the Ships of the Kingdom, to be gathered together to withſtand them. But to make ſuch Preparations againſt Pirates, it was never put in any Writ before; for when Pirates infeſted the Seas, they came as it were by ſtealth, to rob and to do miſchief; and they never dared appear but when they may do miſchief, and eſcape away by their ſwiftneſs. But againſt them, the uſual Courſe hath been, that the Admiral or his Deputy with ſome few Ships have ſecured the Coaſt, and not to employ the whole Navy. And this appeareth by a Record, 25 *Ed.* I. *m.* 9. *William Leighbourn* the Admiral was appointed upon ſuch an Occaſion with ten Ships to lie upon the Seas, for the Safeguard of the Merchants: and the uſual Practice hath been, when they hover upon the Sea, by ſending a few Ships of War to ſcatter them, and make them fly away. And there is no fear of the Loſs of the Dominion of the Sea, by any Act Pirates can do; neither is it convenient that every County of the Kingdom ſhould provide Ships againſt them.

2. The Command of this Writ is to provide a Ship of 450 Tons at the Charges of the County, furniſhed with Maſters and Mariners; which is impoſſible for them to do for the Reaſons before alledged, and therefore is illegal, and not warrantable by any former Precedent.

3. The Command of this Writ to find Wages for Soldiery for 26 Weeks after they came to *Portſmouth*, when they are out of their County, and in the King's Service, is illegal; being againſt the Courſe of Precedents in divers Times, and againſt divers expreſs Statutes, and this appeareth by divers Records.

15 *Johan*. In the Writs of Summons of the Tenants by Knights Service, it is expreſly mentioned, that after forty Days Service (for ſo many Days they were to do Service by their Tenure) they ſhould be ſatisfied *ad denarios Regis*.

Paſch. 26 *Edw*. I. Amongſt the Writs of the Exchequer it is there ſet down, that the Footmen of *Cheſhire* being 1000, who were appointed to go for the Defence of the Borders of *Scotland*, would not ſtir out of their Counties without Wages; and there 'tis ſet down, that one therein named was ſent down with Money to pay the ſaid Footmen.

Mich. 26 *Ed*. I. *inter Bria' irrot'* in the Exchequer, by reaſon of the Invaſion of the *Scots*, many thouſands of Soldiers were taken from divers Parts of the Kingdom *ad vadia Regis*. And there 'tis mentioned, that Clerks were ſent down with Money to pay the Soldiers of ſeveral Counties their Wages.

30 *Edw*. I. In the Exchequer, in Account, the Wages for Land Soldiers for ſeveral Counties, and the Wages for Mariners are ſet down, what the Wages that were paid came to by the Day, and by the Week, both by Sea and by Land.

Trin' 31 *Ed*. I. *inter Brevia* in the Exchequer, the Wardens of the Marches of *Scotland* ſignified to the Barons, that the Men of *Cumberland* and *Weſtmoreland*, appointed for the Defence of the Marches, would not ſtir out of their Counties without Wages; whereupon Order was given for Wages for them.

19 *Edw*. II. Commiſſions went out to pay Soldiers, who ſerved out of the ſeveral Counties, for Defence againſt *Scotland*.

Hil' 2 *Edw*. III. *Rot*. 16. In the Exchequer; it was ordered in Parliament, That whereas ſome Soldiers had received of ſome of the King's Officers, Money for their Wages, they were fain to give Bonds for Repayment, and that thoſe Bonds ſhould be all re-delivered.

1 *Edw*. III. *cap*. 5. That no Man ſhall be compelled to go out of his County, but where Neceſſity required by ſudden coming of ſtrange Enemies into the County; and then ſhall be done, as hath been done in times paſt: which, I conceive, is to be at the King's Wages, when any are out of their Counties.

But to clear all Doubts, the expreſs Statute of 18 *Edw*. III. *cap*. 7. is, That no Men of Arms, Hobbellers and Archers, choſen to go in the King's Service out of *England*, ſhall be in the King's Wages from the time they go out of the Counties where they were choſen, until they come again.

19 *Hen*. VII. *cap*. 1. Thoſe that had any Grants of Lands from the King; and 11 *Hen*. VII. *cap*. 1. Thoſe that had any Offices of the Grant of the King, are to ſerve the King in his Wars: But in both it is appointed, they ſhall have Wages from the time they ſhall come from their Houſes, until they return.

2 & 3 *Edw*. VI. *cap*. 2. It is narrated, That no Captain receiving Soldiers, ſerving by Sea or Land, ſhall receive any Wages for more Soldiers, or more Time than they ſhall ſerve; and ſhall enter the days of their entring into Wages, upon Pain, &c.

All which Records and Statutes do prove, that the Soldiers ſhould be at the King's Wages; therefore the Command for Soldiers Wages for twenty-ſix Weeks, when they go from *Portſmouth*, is illegal, and expreſly againſt theſe Statutes: and ſo the Aſſeſſment being entire, as well for the Wages, as the other Charges, I hold it to be clearly illegal, and not to be demanded.

4. That the Command of this Writ to the Sheriff, to aſſeſs Men at his own Diſcretion, is not legal, nor warranted by the Precedents: for Precedents are commonly, that Aſſeſſments for Contribution, for making or ſetting out of Ships, have been by Commiſſioners, which by Preſumption had Knowledge of ſuch Matters, as commonly Sheriffs have not. Alſo, this leaveth to the Sheriff too great a Power to value Mens Eſtates, as to inhance whom he will, and to favour whom he will.

5. That the Power to the Sheriff and Mayors of Towns, &c. to impriſon, eſpecially as it is uſed, is illegal, and expreſly againſt divers Statutes: for it is provided by *Mag' Char' cap*. 29. *Quod nullus capiatur vel impriſonetur, nec ſuper eum mittimus, niſi per judicium parium ſuorum, vel per legem terræ.*

Alſo, 5 *Edw*. III. *cap*. 9. That no man ſhall be attached, or his Goods ſeized, contrary to the Form of *Mag' Chart'*.

Alſo, by the Statute made 37 *Edw*. III. *cap*. 18. it is recited, That by that great Charter, none ſhould be taken or impriſoned, but by due Proceſs of Law; yet by colour of this Writ, the Sheriff may impriſon any Perſon, yea, any Peer of the Realm: for altho' Peers are not to be arreſted upon ordinary Proceſs between Party and Party, as it is reſolved in the Counteſs of *Rutland*'s Caſe, in *Coke lib*. 6. *fol*. 32. yet upon Contempt, and upon Proceſs of Contempt, which is always for the King, any Peer may be impriſoned, as it is reſolved by all the Lords, and all the Judges, in the *Star-Chamber*, in the Earl of *Lincoln*'s Caſe: and ſo the Sheriff, by colour of this Writ, may arreſt any Peer, as for a Contempt in not paying. But by the Book-Caſe, 2 *Edw*. III. *fol*. 2. it is reſolved, That a Writ to impriſon one upon Suggeſtion, before he be indicted, or without due Proceſs of Law, was illegal. So for this Clauſe, I hold this Writ to be illegal.

6. The laſt Clauſe of this Writ is, That by colour of this Writ, no more ſhould be gathered than will be ſufficient for the neceſſary Expence of the Premiſſes, and that none who ſhall levy any Money towards theſe Contributions, ſhall detain the ſame with them, or employ the ſame to other Uſes; and if more than did ſuffice were collected, it ſhould be repaid amongſt thoſe that paid, after a rateable Proportion. But as the Courſe is taken, it is not to be perform'd: for no Ship, nor Tackling, nor Ammunition, nor Men, nor Wages, nor Victuals being provided, it is not to be known, whether more be gathered, or leſs than would ſuffice: And there being Money gathered, it is of neceſſity either detained with the Collector, or the Sheriff, or employed to other Uſes than are appointed by the Writ; ſo the Writ is not performed: And the Money aſſeſſed and collected, is not duly paid nor collected; and the Money aſſeſſed and unpaid, cannot be duly demanded.

7. Admitting the Writs were legal, and the Commands therein legal, yet the Aſſeſſment, as is certified, is not ſufficient to charge the Defendant; for it is not certified, that any Ships with Ammunition, and Men were prepared: and this is a Year after the Time it ſhould have been prepared, and ſent to *Portſmouth*. And if it were not prepared, there is no cauſe to charge the Defendant; and that not appearing to be done, it ſhall be conceived not to be done.

For if one be charged, in conſideration of a thing to be done, before a certain time to pay a Sum of Money, if the thing be not performed according to the time, none can be charged for not payment of the Money after the time is paſt: for it is in nature of a Condition precedent, to have a Duty or Sum of Money to be paid after the Condition performed; and there, he that will have the Duty, muſt ſhew that the Condition is performed.

This appeareth in the Caſe of 15 *Hen*. VII. and *Coke*, *lib*. 7. *fol*. 9. *Ughtred*'s Caſe. And therefore, if the Ships be not prepared according to the Writ, nor Money employed for preparing a Ship for and in the Name of the County; then every one that paid any Money, either voluntarily as in obedience to the Writ, or compulſorily upon Diſtreſs, may demand their Money again of the Sheriff, or of them that received it: For as they paid their Money, ſo it muſt be diſpoſed of, and cannot be diſpoſed of otherwiſe by any Command whatſoever, altho' it be under the Great-Seal: For the Command being under the Great-Seal, to prepare and furniſh a Ship to ſuch a purpoſe as in the Writ is mentioned, and they paying it to that Purpoſe, it cannot be otherwiſe diſpoſed, altho' it be more for their Advantage; for private Men having Intereſt therein, that cannot be taken from them, nor diſpenſed withal. Therefore, in *Coke*, *lib*. 7. *fol*. 37. in the Caſe of *Penal Laws*, it is reſolved, That if the Penalty appointed to be forfeited upon a penal Statute, be given to the Poor of the Pariſh where the Offence is committed, the King cannot diſpenſe with the Penalty for that Offence, becauſe the Poor have an Intereſt therein: but if the Penalty be given part to the King, and Part to the Poor, the King may diſpenſe with his own Part, but not with the Part of the Poor.

Object. And where it hath been ſaid, That it is by way of Accommodation, becauſe the Country cannot well know how to provide to content, and perhaps with more Charge.

Reſponſ. To this 'tis anſwered, They muſt do it at their Peril, if the Writ be legal; and then if it be done, they ſhall have the Benefit thereof. For as my Brothers *Weſton* and *Berkley* have both agreed, if the Ship were made when the Service was done, the County for which it was made ſhall have the Benefit of the Ship, Ammunition, and Victuals, and of the Service of the Men, being made more expert againſt another Time; and the Ship may with ſome eaſy Charge ſerve again, and nothing loſt, but the Expence of the Victuals; and the Kingdom ſhall be ſo much the more ſtrengthened by having ſo many Ships made or prepared; and they may have Account of their Money how it was beſtowed; and if any Surpluſage be gathered, to have it reſtored. And that the Law is ſo, that if the Money be received of the County, and not imployed accordingly, the Party ſo receiving it, and detaining it, or miſimploying it, is to pay a Fine to the King for the ſame, and is accountable for the Money, appears by two Records.

The one in *Hill*. 16 *Edw*. III. *Rot*. 23. *B. R.* where two Soldiers were indicted, for that they taking 3*l*. a-piece towards their Arms, and the bringing of them to the Place where they were appointed to ſerve the King in *England* in his Wars, they went not, but tarry'd ſtill in their Houſes, and retained the Armour and the Money which they had received for that Purpoſe. They thereupon being convented, pleaded Not guilty; and the one was found to go in the Service according to the Appointment, ſo he was diſcharged: and the other was found, that he received the Money, and went not to do the Service, nor reſtored the Arms nor Money; thereupon he was committed to the Priſon, and paid to the King a Fine, and found Sureties to pay the Money to the Hundred from whom he had received it.

The other was *Hill*. 20 *Edw*. III. *Rot*. 37. *B. R.* There two High-Conſtables were indicted, for that they, 5 *Edw*. III. had received ſix Marks of the Towns in their Hundreds, to ſet forth Soldiers, and had not ſet them forth, but detained the Money; which they denying, it was found that they had received the Money for that Purpoſe, and had diſburſed 10*s*. and 6*d*. thereof towards the ſetting forth of Soldiers, but had retained 38*s*. and 6*d*. and not diſburſed it: thereupon they were fined and impriſoned, and afterwards enlarged upon Sureties to pay the Money they had retained undiſburſed, at the next time the King commanded Soldiers from thoſe Parts. By both which Records, being for Offences done ſo long before, it appeareth, that thoſe that have received Money of the Country to prepare Ships, and not employed it accordingly, are anſwerable to the King and his Succeſſors, to pay a Fine for Miſ-employment of it, and are chargeable to thoſe of the County of whom they received it for Payment thereof.

8. For the laſt Point, I conceive, that this *Certiorari* directed to the two that were late Sheriffs at the Time of the Aſſeſſment, and not to the Sheriff that was at the Time of the *Certiorari* awarded, who is the only immediate Officer to return the Writs, is not legal; for it is the firſt that hath been ſeen of that kind: for all Writs are directed to ſome immediate Sheriff, requiring him to demand of the former Sheriffs, what they did upon the former Writ; and they are to return to him what hath been done, and he to return the ſame to the Court, whereunto he is an immediate Officer; and the former are not any Officers. So the *Sci' Fa'* thereupon grounded, I conceive, is not good: Alſo the *Sci' Fa'* to warn Mr. *Hampden ad oſtendendum ſi quid pro ſe habeat, & quare de prædict' vigint' ſolid' onerar' non debet*, not ſhewing to whom, is uncertain, and is inſufficient. Thereupon I conclude upon the whole Matter, that no Judgment can be given to charge the Defendant.

The Argument of Sir William Jones, *Knight, one of the Juſtices of his Majeſty's Court of* King's-Bench *at* Weſtminſter, *in the* Exchequer-Chamber, *in the great Caſe of* Ship-Money.

IN *Eaſter* Term there iſſued forth a *Sci' Fac'* and this doth rehearſe divers ſums of Money aſſeſſed upon divers Perſons in the County of *Bucks*, for providing a Ship of 450 Tons, with Men, Ammunition, *&c.* to attend the King's Navy for defence of the Kingdom.

And afterwards upon a *Certiorari* out of Chancery, directed to the Sheriff, to certify thoſe Aſſeſſments, and the Names of thoſe that made default of payment, Mr. *Hampden* was returned to be aſſeſſed at 20*s.* and hath made default.

Upon this Return the King by *Mittimus* out of the Chancery ſent the Writ, the *Certiorari*, and the Return, to the Barons of the *Exchequer*, to do as the Court ſhall think fit.

Thereupon a *Sci' Fa'* went forth to the Sheriff to ſummon Mr. *Hampden* to ſhew Cauſe why he ſhould not pay the 20*s.* aſſeſſed upon him: He was returned warned, and appears and demands Oyer of the ſeveral Writs and their Returns, and of the *Sci' Fa'*: and upon all this he demurreth in Law, and Mr. Attorney hath joined in Demurrer with him. And my Lord Chief-Baron and the reſt of the Barons have adjourned this hither, to deſire the Advice of all their Brothers of the Law; and indeed it requires Advice, for it is as great a Caſe as ever came to be adviſed on before Judges.

I ſay it is a great Caſe; it concerns the King in his Royal Prerogative, and the Subject in his Intereſt, in his Land and Goods, and Liberty of his Perſon. They that have ſpoken already, and they that ſhall ſpeak after me, ſhall hardly eſcape the cenſure of the People, of ſome that have ſome Underſtanding, of ſome peradventure that have leſs, and of ſome that have none at all, but ſpeak according to their Opinions, Affections, or Wills. *Fœlices eſſent Artifices, ſi per ſolos Artifices judicarenter*: we ſhould be happy to be judged by them that are learned; but when it is by them that underſtand not, then it is turned into Calumny and Reproach.

Some have taxed them that have gone, or will go with the King, as tho' they were fearful, and went about to captivate the Liberty of the People, and take away their Goods. Some are taxed on the other ſide, if on the contrary, that they are given to Popularity: ſo as I may ſay as the Pſalmiſt, *Domine, me poſuiſti in lubrico loco*; for it is impoſſible to eſcape their Tongues, and between thoſe two Decks of Cenſure I am like to fall. And however I may fall with my Sentence, with God's Grace I ſhall make no ſhipwreck of my Conſcience.

I am truſted by the King to diſplay his Juſtice equally to all, and ſworn to diſpenſe his juſt Prerogative, as well as the Subject's Liberty; and if we do otherwiſe than as Judges, we do as falſe Men. If any Man offend contrary to his Oath, he doth forfeit his Lands, Goods and Tenements. I ſhall not therefore for any reſpect do againſt my own Conſcience; but deſcend to give Judgment, not regarding the watry Mouths of others.

The King's Counſel, and the Counſel at the Bar, have ſpoken ſo largely to this Buſineſs, and it is ſpoken to by my Brothers ſo fully, that I can hardly ſay any thing but what hath been ſaid before; ſo I will ſelect ſome few things, to ſatisfy my own Conſcience, tho' I cannot ſatisfy any Man's elſe; which I will do as plainly as I can, and as I ought to do. And if there had not been a variety of Conteſtation, I ſhould have ſpoken very little; but now neceſſity requireth that I muſt enlarge myſelf a little more.

1. I will ſtate the Queſtion, and in it put many things objected out of doors. The queſtion is, whether the King of *England*, when he perceiveth Danger to be imminent to the Kingdom, and a neceſſity of Defence, may not by his Writ ſend to all Counties as well Inland as Maritime, to require them, at the charge of the County, for a convenient time to provide Shipping, with Men and Ammunition, *&c.* but no Money to come to his Purſe, but the Ships to go to defend the Kingdom.

The Queſtion ſtands not, whether the King may draw it to be a perpetual Charge upon the Subject, which under favour he cannot; for this goeth upon a Fear of Danger, which continueth but for a Time, and therefore this cannot be perpetual; for when the Occaſion ceaſeth, the Taxes muſt likewiſe ceaſe. There is a Caſe to this purpoſe, 39 *Hen.* VI. *fol.* 39. *Protection. Brooke.* A Protection granted to one for three Years, and the Queſtion was, whether a good Protection: The Rule is, the King may grant a Protection for one Year, and at the Year's end, renew it for another Year if the Occaſion require it, and ſo for a third Year; yet he cannot at the beginning give a Protection for three Years together. So in this caſe, tho' the King may, upon an emergent Occaſion, command Ships, yet by reaſon of that Occaſion he cannot make it perpetual, for the Occaſion may ceaſe.

2. In this Caſe, I will not exempt the King's Majeſty himſelf, to bear a part of the Burden; the Head and Body muſt go together, he muſt join with his Subjects in the Defence of the Kingdom.

3. The Queſtion is not, whether for a foreign War he may command this Charge; it muſt be only in defence of the Kingdom in caſe of imminent Danger.

4. It is not whether the King may lay this to draw a Sum of Money into his own Purſe, for the King ſends to have no Money; but to provide a Ship; and if the Sheriff accordingly provides a Ship, there is an end of the Buſineſs; all this is out of the Caſe.

As *Catlyn* Chief-Juſtice compared a Fine to *Janus Bifrons* having two Faces, the one looking backwards, the other forwards; ſo may I of my Argument: I ſhall firſt look backwards, and tell you *Quid fecimus*, what we have done; and then forwards, and tell you *Quid faciemus*, what we ſhall do.

The *Quid fecimus* reſts in the Advice we have given to his Majeſty in the Caſe, and the Opinion of the Judges ſubſcribed with their Hands delivered over to his Majeſty *(which was read at large by him.)* The Advice we gave conſiſts of four Aſſertions.

1. That when the Kingdom is in danger, all the Kingdom is to join in the Charge of Defence.

2. What ſhall be adjudged a Danger, and what not, his Majeſty is the ſole Judge thereof, and of the Means how to prevent and avoid it.

3. That in Caſe of Danger he hath Power to ſend to Inland Counties, as well as to Maritime, to aſſiſt to defend againſt Invaſion.

4. That the King hath a Power of Compulſion, to puniſh thoſe who refuſe to contribute to this Charge.

This Opinion being jointly and ſeverally delivered by us, declared by my Lord Keeper in the *Star-Chamber*, in the preſence of us the Judges, before the Lords of the Council, with an Intimation as if it were the full Conſent of all the Lords of the Council before-hand, and there commanded to be inrolled in all the Courts at *Weſtminſter*; yet we ſo delivered our Opinions, that if better Reaſon was ſhown to alter them, we might recede from them; for we had better *recurrere*, than *male currere*.

Now to the ſecond Point, *quid faciemus*, whether to ſtand to this Opinion or not, and then whether this Book or Record will warrant it, and how far it differeth from what we have done, I ſhall ſpeak my Conſcience.

I am an old Man and ready for my Grave, my Tongue and my Heart ſhall go together. I am of the ſame Opinion I was then; and conceive what we then delivered was according to Law; with all Modeſty ſubmitting to thoſe that have been or ſhall be of a contrary Opinion, for the Grounds of Law and Nature ſupport it.

1. *Salus Populi eſt Suprema Lex. Qui ſentit commodum, ſentire debet & onus. Quod omnes tangit, ab omnibus debet ſupportari.* What do theſe Rules intimate elſe, but that when a Danger is imminent the Charge muſt lie upon the whole Kingdom, and the Burden muſt be borne by all? And that is not denied by them that were of Counſel on the other Side. It muſt not be every kind of Fear and Rumour that muſt draw this kind of Burden upon the Subjects; but ſuch a Danger as the King in his Underſtanding perceiveth doth require a ſpeedy Defence.

2. That the King is ſole Judge of this Danger, and how to prevent and avoid it, is not to be literally underſtood, for we are his Judges deputed, but our Judgment flows from him. Judgment is ſettled in the King, he is the Fountain of Juſtice, from whence all other proceeds. *Bracton* ſaith, *Rex Vicarius Dei eſt in terra ſua.* We are Judges cumulative not primitive; ſo he is the ſupreme Judge. In the Parliament the King is the ſole Judge, the reſt are but Adviſers. 22 *Ed.* III. *fol.* 3. Here it is that the old Faſhion of penning of Statutes was *Rex Statuit.* 7 *Hen.* VII. Afterwards it came to be with the Advice of the Lords and Commons. *Trin.* 6 *Hen.* VI. *Rot.* 41. *Banc. Reg.* There was a Prior brought a Writ of Annuity againſt one in *Ireland*, there was Judgment in the *Common-Pleas*; then at length a Writ of Error in Parliament; the Judgment affirmed; afterwards a Writ of Error in the *King's-Bench* here, and both Judgments reverſed. And in the Entry of the Judgment the Record ſaith, *Nos cum aſſenſu & ad requiſition' Communitat'* do reverſe the Judgment. Where note, the King is the Man that is the ſole Judge thereof. (By the way obſerve, out of this Record, the Power of the *King's-Bench* in *England*; for upon this Record it appears a Writ of Error was brought in the *King's-Bench* in *England* to reverſe a Writ of Error in Parliament in *Ireland.*) This ſheweth the King in Parliament is the ſole Judge, the reſt but Adviſers. So, as I ſaid before, he is the only ſupreme Judge of the Danger himſelf, and of the way of Prevention, whether by his Council or by his Parliament.

The third Aſſertion is, That the King without Parliament, in caſe of imminent Danger, hath Power to ſend to Inland and Maritime Counties to provide Ships. And I think he may do ſo by the Fundamental Laws, Common Laws, and Statute Laws, and by the Precedents.

Firſt of all, for the Common Laws, (here I leave the Divines to talk of the King's Power, who under favour take more Liberty than is fitting to ſay in a Pulpit; for he that will have the Statute *de Tallagio non concedendo*, if it be a Statute, to bind the King, ſuch a Man is not *Cæſar*'s Friend, but ſpeaks without his Book) *Bracton* ſaith, That by the general Law of Monarchy, the Subjects Goods are at the King's Pleaſure: But a King ruling by politick Advice, is to rule according to his fundamental Laws, which yet in *England* take not away, but preſerve thoſe *Jura Supremæ Majeſtatis*, as to pardon all Offences, to ſtamp Money, and infinite others more declared in Parliament, 1 *Jac.* which Court is that *tres hault Court*, of which none ought to think diſhonourably. I leave Divines to talk their Pleaſure: We are to judge according to the fundamental Laws and Cuſtoms of the Realm. There is a Book which Mr. Attorney remembered well, that the King of *England* hath more Power than any other King. If the King muſt by the Law defend the Kingdom, he muſt lay a Charge to provide for the ſame. The Common Law owns the King as Sovereign and Head of the Kingdom, that ſhould defend and protect it. 1 *Sam.* viii. 19, 20. They would have a King to be adjudged by, as other Nations had, and to go in and out before them; that was the Faſhion of Kings before, to judge their People by Laws, and to defend them with Arms. It is an incident Quality inherent in the King. It ſtandeth with Nature and Reaſon, that the King ſhould have the Charge of the Defence. If this inherent Quality ſhould be taken away, how can he defend his People? If he be no more than a common Perſon, he cannot be a King, unleſs he take the Defence and Protection of his People upon him. Mr. Attorney ſhewed learnedly, the King is a Monarch and Sovereign, the People his Subjects: He is the Head of the Body, and therefore may command it. *Fitz-Herb. Na. Br.* and *Stamford* Prerogative, that the King protects the Bodies and Lands of his Subjects: He is *Vicarius Dei*, appointed to protect the Kingdom; ſo there is a Tie of Allegiance that binds every Man. *Stamford, cap.* 2. of *Prerogative*, the King by Law is the Protector of the Body, Lands, and Goods of his Subjects; ſo he hath a Liberty and Prerogative for this End, (not for his own Profit) in the Bodies, Lands, and Goods of his Subjects, in time of Danger. 11 *Hen.* VII. Every Man in his own Perſon is bound to ſerve the King for the Defence of the Realm; and gives a Reaſon, and that is the Reaſon of Protections, becauſe they are bound to it; therefore they ſhould have no harm done unto them. The King himſelf cannot free any Man from his Allegiance, without Act of Parliament; neither can the Subject free himſelf, as in Dr. *Storie's* Caſe. So you ſee the King's Majeſty hath Intereſt *pro bono publico*, in the Perſon.

He hath alſo an Intereſt in our Eſtates, if it be *pro bono publico*; as in the Caſe of *L.* it was adjudged he has Power to come over Mens Lands. Now what Prerogative hath the King concerning that? and yet, according to *Popham*, the two Chief Juſtices and Chief Baron agreed, that where a Man hath an Inheritance in Lands and Woods, the King cannot cut his Woods for his private Uſe, unleſs it be *pro bono publico*; nor dig Gravel in another Man's Lands: but yet in Caſe where it is *pro bono publico*, he may do it, and make Bulwarks on their Grounds for Defence of the Kingdom.

So for Pontage and Murage, the King cannot compel the Subject to make the Walls of his own Houſe, or a Bridge for his own private Uſe; but where it is commanded to be done, where the Subject hath a Benefit, there it is good: ſo here is the Difference of the Caſe, where the King commands for his private Uſe, or *pro bono publico*.

My Brother *Crooke* ſaith, the King may preſs Ships for his Service, in the Defence of the Kingdom, but not command Inland Counties to furniſh Ships: yet there is a Precedent in *Oxford* to the contrary.

By the fundamental Laws of the Kingdom, he is the Defender of his Subjects, of their Bodies, Lands and Goods; and where it is *pro bono publico*, they are to pay towards it. If there had not been Objections that dazzled me, I ſhould have done before this.

The Caſe of the Abbot of *Robertſbridge* is an Allowance of this Charge, a double Charge of Lands there in two ſeveral Places. I remember in a Parliament, where I learned a great deal of Good, 1 *Jac.* the King, without Conſent in Parliament, laid an Impoſition on Merchandize, but was in caſe of Neceſſity, *pro bono publico*.

Now to anſwer Objections, and thoſe were many, my Brother *Crooke* did double and redouble them. Brother, we ſit one next another, antient Judges, tho' different in Opinion. I ſpeak out of my Conſcience, as you have ſpoke out of yours; ſo, tho' there be Variety of Opinions, yet Conſcience is the ſame.

Firſt, ſaith he, the fundamental Laws of the Kingdom have ſettled a Property in the Goods in the Subject, that, without their Conſents, this cannot be taken from them.

This doth not trench upon the Property of the Subject, if you take the Caſe right: If this be a lawful Prerogative in the King to lay this Charge, then how can it be ſaid, that the Subject's Property is invaded? For if the Property *ab initio* be in the King, then the Law annexed this to the Lands and Goods of the Subject in the Beginning, and made them liable to it by a ſecret tacit Condition. If a Man do enter for a Condition broken, this is no diveſting of the Property out of the Subject. If Goods be given to one till ſuch a thing happen, or upon ſuch a Condition, there is a Property in the Donee, yet it is clogged with a Limitation and Condition; and when the one or the other happens, the Property may be reduc'd or transferr'd, as in all Aſſeſſments and Rates, Goods are liable to the Payment thereof: ſo for the Payment of thoſe things neceſſary for the Defence of the Kingdom without their Conſent; for if legal, what needs this Condition? I would wiſh no Man to clamour, that this is to diveſt the Subject of the Property in his Goods; for it is nothing but what is for the Defence of the Kingdom.

The next Authorities objected by my Brother *Crooke*, are the Laws of *William the Conqueror*, and Charter of King *John*, then the Statutes, then *Forteſcue*; and therefrom he ſaith very much, that the King of *England* cannot lay Taxes upon his Subjects, without their Conſent in Parliament.

And where he ſpeaks of Taxes and Charges that cannot be impoſed without Conſent, ſome other Places of the Author do ſhew, that it is where the King impoſeth it for his own private Uſe, and not in Caſe of publick Defence.

The next is 13 *Hen.* IV. the Charges of 1*d.* upon a Cloth for meaſuring, adjudged void. I conceive it was not adjudged void upon that Point. True, in Parliament it was complained of as a Grievance to the Subject; but every Petition in Parliament doth not argue a Right: it may be it was *ad damnum*, yet *abſque injuria*; that Caſe differs much from this, for there was a Charge to a private Benefit, and no Regard to the publick, which perhaps the Law will not allow, but where there is a *quid pro quo*; nor of the Caſe of Dice, Cards, Monopolies, thoſe Caſes nothing like this: ſo a Commiſſion of Sewers may lay a Charge for the Repair of a Bank; when the Lands are overflown, and the Owners be not able, the Neighbourhood muſt be taxed; ſo in caſe of a Bridge.

Then the Statute of 2 *Rich.* II. was objected; nothing muſt come to the King's Purſe, nor to the King's Coffer, but it muſt be for the Defence of the Kingdom.

This was no lawful Charge, becauſe the Intention was to fill the King's Coffers, which were empty, and that could not be done but by Parliament; ſo it is not in our Caſe, no Money is to come to the King's private Uſe.

That of *Hen.* IV. for repealing of Commiſſions that were awarded to provide Barringers, the Record ſaith only that the King's Anſwer to the Complaint was, *Le Roy ſe aviſera avec ſes Signores.*

Then he cometh to the Statute of Tonnage and Poundage only for ordinary Defence of the Kingdom.

Why there ſhould be any Difference between an Inland County and a Maritime I know not, ſince to the Common Defence all are equally engaged as one intire Body; and the Inland Counties have the Benefit by ſending their Wools by Sea, and yet they muſt not help to the Defence of the Sea. As in the natural Body one Member helps another, ſo when the Maritime Counties are not ſufficient to make Defence (as in caſe of extraordinary Defence they cannot be) the Inland County muſt contribute. Beſides, the King may unite an Inland County to a Maritime, and make them but one County; is not he Lord of the Land as well as of the Sea? What was the Law before the Diviſion of Counties? Surely it was equal in charging the whole Kingdom; for I ſee no Reaſon but an Inland County ſhould be chargeable by Law, as well as a Maritime. In antient Times, things done upon the Sea, were tried upon the Land in the *King's-Bench*, as by many Records appeareth. One is of a *Norman* Robber upon the Sea.

Object. But if this be ſo, the Law ſuffereth a greater Inconveniency, *viz.* that the King may by his Writ charge what and when he pleaſeth.

Reſponſ. This the Law truſteth the King's Goodneſs with, that he will not require it of his Subjects but when there is occaſion; and he may do it, ſo long as he continues it no longer than there is occaſion.

Object. But were not Dr. *Cowel* and Dr. *Manwaring* ſentenced in Parliament for ſuch Tenets?

Reſponſ. They were ſentenced, and deſervedly, but different from our Caſe: I was a Member in the Parliament, and was in the lower Houſe when *Cowel* was ſentenced. I will tell you what Dr. *Cowel* did: he wrote a Book, and under the Words *Prerogative*, *Subſidies*, and *Kings*, he inferred as if the King might make Laws without Conſent in Parliament; and wrote againſt the Common Law, which the King is ſworn to maintain: thereupon he was ſentenced, and his Sentence was juſt, and I gave my Voice for it. The other was Dr. *Manwaring*, he preached two Sermons that the King was not bound to obſerve his Laws, that the Right and Liberty of the Subject are at the King's Will and Pleaſure without Parliament, and that this doth bind the Conſcience of the Subjects, and that they are bound to pay Loan-Money upon pain of eternal Damnation; and that they that did refuſe to pay the Loan-Money, did offend againſt the Laws of God, and were guilty of Diſloyalty and Diſobedience; and that the Authority of Parliaments, was not neceſſary to the granting of any Subſidy. For this he was ſentenced, and made his Submiſſion. That was for raiſing of Money for his own Uſe, but this is to require his Subjects to provide Ships for the Defence of the Kingdom.

Object. The next Objection was *Coinage*, that by that Tenure great Profits ariſe to the King for Defence.

Reſponſ. Shall the Defence of the Kingdom be laid only upon thoſe who have their Maintenance out of the publick Revenue? What will the King have left to maintain himſelf, his Queen, his Children, Intelligences abroad? Will you ſtrip him of all? It is true, I hold that the King, with the Subjects, muſt join together in the Defence of the Kingdom. If the King be rich, you ſhould have pleaded that the King had ſufficient in his Purſe.

Object. Then it is objected, that there is no apparent Danger, and that this Charge is not allowable neither by the Common Law, Statute Law, or Cuſtom.

I ſay, it is due by the Common Law; but will you have Danger ſo apparent, as *Hannibal ad portas?* Will you ſuffer an Enemy to come in before you prepare to reſiſt? If once he gets in, you will hardly get him out. Is not that as much to be commended, that doth prevent a Danger before it cometh, as when it comes? Is not the Care to prevent Fire from a Houſe before the Fire takes hold of it, as great as when it is on Fire to quench it? Therefore the King, like a good Phyſician, ſeeing a Diſeaſe growing, before it gets too much Strength prevents it.

Object. In ſix Weeks Time, a Parliament may be called.

Reſponſ. Tho' it may be, yet after they meet, a long Time they ſpend in Conſultation before they can do any thing: which would be too miſchievous in a ſudden Invaſion: and therefore King *Ed.* III. in his 10th, 11th, and 12th Years, whilſt the Parliament was ſitting, ſent forth his Writs for Aid.

Object. It was alledged by Mr. *Holborne*, that the Law of Nature teacheth every Man to defend himſelf.

Reſponſ. What, I pray you, will you then have done, on a ſudden Invaſion, when Forces muſt be raiſed in *Cornwal*, ſome in other Parts of the Kingdom as remote, and all muſt meet together? If the King muſt expect ſuch an actual Invaſion, before ſuch time as he ſends forth his Writs to have them all in readineſs, how poorly would the Kingdom be defended at that time? Our Forces would be ſcattered, and cannot be brought together, which thus divided cannot withſtand a foreign Power.

Object. The laſt Objection was, that the King, at his Pleaſure, may draw when he pleaſeth this Charge upon the Subjects, if he ſay he is of Opinion that there is Danger.

Why may not the Law allow this, and truſt the King's Judgment here as well as in the Caſe of a *Ne exeat Regno*, in which if the King commands his Subjects to ſtay at home, for ſuch and ſuch a Cauſe, the Cauſe is not traverſable? *Fitz-Her. Na. B.* 165. 85. 7 *Hen.* VII. ſaith, if the King doth rectify an Act of Parliament, you cannot ſpeak againſt the King's Certificate under the Great Seal; *Null tiel* Record is no Plea.

Again, God Almighty bleſs the King; it is againſt Preſumption of Law, that the King, whoſe Heart is in the Hand of the Lord, ſhould tell a Lye. God gives Wiſdom to govern aright. Lying Lips do not become a Prince, Truth to God Almighty he owes. The Law ſays, the King may *neſcire verum*, but not *dicere falſum*. The King may not know a Truth, but cannot ſpeak falſely. Next *Juramento ſtrictus*, he is bound to adminiſter Juſtice, and not to grieve his Subjects. Is he ſo unwiſe to charge them and himſelf without Cauſe, with providing of Ships? What Benefit comes to him by it? Surely to tell a Lye will be no Advantage to him; he were a King of Wickedneſs to lay a Charge on the Subject to no Purpoſe; thus he ſhall charge himſelf and his Subjects about nothing. Does any Man think he will put a Burden upon his Subjects without Cauſe? We have a good King, and our Imaginations ought to be good of him.

The fourth Aſſertion is, that the King hath Power to compel them to the contributing to this Charge. This Power of the King is a ſpecial Prerogative, and if good at Common Law, it taketh away the Statute, when it is *pro bono publico*, to defend the Kingdom.

The general Words of a Statute ſhall never be conſtrued to extend to it; the Charter of King *John* ſhall never take away the King's Prerogative, neither the Statute *de Tallagio non concedendo*, which I agree to be a Statute, and ſo my Lord *Coke* allows it to be. Now this Power of the King, of which I argue, is a ſpecial Prerogative in point of Government; it is a *proprium* to a Scepter *quarto modo*, therefore the general Words of a Statute ſhall never be conſtrued to extend unto it: as if the King hath a ſpecial Intereſt in Land by the Prerogative, it doth not paſs away without preciſe Words, as the Books are infinite in it. If the King grants away Land by his Letters Patents, parcel of a Foreſt, without ſpecial Words, this ſhall remain ſubject to the Foreſt-Laws ſtill: ſo many Caſes may be put, when general Words of a Statute extend not to a particular

Prerogative. If general Words of the Statute ſhould take away theſe Aids, why do they not take away the Aids of *pur faire Fitz chevalier, &* *pur file marier*, ſince that general Words may include them as well as this? But you all grant that theſe Aids are not taken away, and by the ſame reaſon I conceive this remains.

My Brother *Crawley* held that ſpecial Words in an Act of Parliament could not take away his Prerogative, becauſe it would have been an Act againſt Reaſon. I will tell you what I have heard adjudged in this Caſe. In the Parliament held 1 *Jac.* there were two Things expreſly moved: One, That there might be no Wardſhip or Tenure of the King: The other, That the King might not allow Surveyors. To theſe Queſtions, after long Diſputes, it was anſwered by the whole Parliament, that ſuch an Act of Parliament to top the Prerogative of Tenures would be void, becauſe it is inherent in the Crown, for every Man holds immediately or mediately of the King. And 2 *Hen.* VII. an Act of Parliament to reſtrain the King's *non obſtante* to diſpenſe with penal Laws, as not to pardon Murder, is void; his Perſon and Royal Prerogative cannot be reſtrained by Parliament. Thus I have done with the former and larger Part of my Argument.

Now I come to ſee if the Record will maintain that which we have here, and I think it will bear it both for Matter and Form. Firſt, let us ſee whether there be Subſtance enough, to ſhew that there is Danger ſufficient for this Prerogative to require Aid and Aſſiſtance; and I think there is ſufficient, the *French* King, the *Spaniard*, the *Low Countries*, all up in Arms; who knows what Danger this Kingdom may be in? and if the King ſay it is in Danger, it is not traverſable; if the King had ſaid no more but this, *pro defenſione Regni*, without any more ſaying, it had been ſufficient. It alſo recites that there were *Prædones*, *Piratæ*, that took away both Men and Ships; and that foreign Proviſion was making to take away the Dominion of the Sea; and that all this was *ad gravandum regnum noſtrum:* and therefore commands a Ship to be provided *ad defenſionem regni.* Here the Danger is general, and therefore the Defence muſt be general.

An indifferent and equal Aſſeſſment is firſt to be made, and then the Overplus of the Proviſion to be reſtored according to the Writ; for until the Money be had, how can the Proviſion be made? Tho' it has been ſaid, let the Ships be firſt built, and then make the Aſſeſſment; that cannot be, for with what ſhall the Proviſion be made? The Money muſt do it.

For matter of Precedents, as *Danegelt, &c.* I do not much ſtand upon, becauſe I had not Time to peruſe them, but conclude on my former Reaſons. (*My Lord Chief Juſtice aſked him what his Advice was*; *he anſwered*,)

My Advice is upon the whole Matter, that the Barons finding the other Proceſs of Court and *Sci' Fa'* to be according to the *Exchequer*, (for that I leave to them) Judgment ſhall be given that Mr. *Hampden* ſhall be charged with the 20*s.* with this Limitation and Condition, that none of it comes to the King's Purſe, for if it do, my Opinion is againſt it.

The Argument of Sir Richard Hutton, *Knt. one of the Juſtices of his Majeſty's Court of* Common-Pleas *at* Weſtminſter, *in the* Exchequer-Chamber, *in the great Caſe of* Ship-Money.

THE King by his Writ 4 *Aug.* informs, that there were gathered *Piratæ ac Maris Graſſatores*, and that they were gathered together in hoſtile manner to hinder our Merchants from bringing their Goods into our Ports; and reciteth, that there are Wars abroad, and that conſidering theſe Perils and Dangers, and that the Defence of the Kingdom conſiſts in the Defence of the Sea, which at all times belonged to this Kingdom, and that the Charge of Defence is to be borne by all; and the King is loth that in his Time ſuch an Honour as the Dominion of the Sea ſhould fall away or be diminiſhed, and not be defended, hath therefore ſent a Writ to the Sheriff of *Bucks* (as to other Counties) to provide a Ship of ſuch a Burden againſt the 1ſt of *March*, and to come to *Portſmouth*, and there to remain for 26 Weeks, and to do as ſhall be directed them for the Defence of this Kingdom. And the Writ directed, that all that are Inhabitants ſhall be aſſeſſed for the providing of this Ship with Men and Ammunition.

By force of this Writ, Mr. *Hampden* being aſſeſſed at 20*s.* there went forth a *Certiorari* a Year and a half after, directed to the Sheriff of the County of *Bucks*, to certify what Sums they had aſſeſſed by virtue of the ſaid Writ 4 *Aug.* and there are two ſeveral Certificates returned into *Chancery*; one, That Mr. *Hampden* was aſſeſſed at 20*s.* the other, That he hath not paid it. 5 *Maii* 13 *Car.* the King, by *Mittimus* out of *Chancery*, recites, that when he awarded the Writ 4 *Aug. Salus regni periclitabatur*, and that it was for the Defence of the Kingdom and Security of his Subjects; and doth ſend this Writ 4 *Aug.* the *Certiorari*, and *Mittimus*, to the Barons of the *Exchequer*, and commands the Barons to do that which appertains to Juſtice to be done. Whereupon a *Sci Fa'* is awarded; whereunto Mr. *Hampden* hath appeared, and demanded *Oyer* of the *Sci' Fa' Mittimus*, *Certiorari*, and the Writ 4 *Aug.* and hath demurred generally; and Mr. *Attorney* hath joined in Demurrer: and how this *Sci' Fa'* lieth, is the Queſtion.

And I am of Opinion that this *Sci' Fa'* doth not lie, and that Judgment in this Caſe ought to be given againſt the King. For the better underſtanding of the Court, I ſhall obſerve in the Method of my Proceedings,

1. Whether a Charge of this nature may, by the King, be impoſed, by original Writ only under the Great Seal, without a Parliament. Wherein I hold it cannot be proved by any Authority or Reaſon, unleſs in time of actual War and Invaſion.

2. I will anſwer thoſe Objections only made formerly by them that have argued, that theſe Statutes do not extend to this kind of Prerogative, and that this Prerogative is not taken away by any of theſe Statutes.

3. I will anſwer the Precedents, both by Precedents of equal Nature, and by ſome Reaſons, whereupon I will conclude, that this Prerogative and Power, which is Monarchical, is included and taken from the King, and that muſt be done by Parliament.

4. I will anſwer ſome Objections that now have been raiſed, and were before made by Mr. Sollicitor.

5. I will juſt open the Writ, that it neither containeth Matter ſufficient in the Writ itſelf, nor is there Matter to warrant any ſuch Levy as is pretended; neither is the ſame lawful, nor can it be mended by *Mittimus*, nor can be commanded by thoſe Sheriffs that are no Sheriffs in this Caſe upon the Matter.

Now, as my Brother *Jones* hath taken a great deal of Pains and Time, I will not be drawn from my own Order by what he hath ſaid; but anſwer him in his Argument.

1. I ſay, that this Power of aſſeſſing of Money, being a great Charge, cannot by the Law at this Day, unleſs in time of actual War, be impoſed upon the People by Act of Parliament.

The Acts of Parliament that have been mentioned, the firſt was *Mag' Char'*, which is an antient and great Statute; it cometh unto us with an *Inſpeximus* from *Ed.* I. confirmed thirty times; the Words are, *Dedimus & concedimus has libertates ſubſcriptas in perpetuum. Nullus liber homo capiatur vel impriſonetur, aut diſſeiſietur de libero Tenemento ſuo vel libertatibus, &c. aut aliquo modo diſtringatur, aut in carcerem mittatur, niſi per legale judicium parium ſuorum, vel per legem terræ.* King *William the Conqueror* made theſe Laws, and ſwore Men to thoſe Laws. And then King *Edward*, in the laſt Chapter, commands them to be kept, and he will keep them ſo long as concerned him and all his People for ever. And for this they granted him a fifteenth Part of all their Goods, and it is a Statute here to this Day, *Stamford fol.* 172. to be tried *per Pares*, as the Barons at this Day have for their Trial the Privilege of this Statute.

The next Statute is 25 *Ed.* III. *chap.* 5. reciting, 'And foraſmuch as 'divers Perſons, *&c.* we have granted for us and our Heirs, that we ſhall 'not draw ſuch Aid and Pride into Cuſtom for any thing done heretofore, 'by any other Rule or Precedent that may be found.' So there is now not only for Taxes for War, but for any other Buſineſs whatſoever, *forſque de commune conſent de touts la Realme*, ſaving the antient Aid and Prizes due and accuſtomed. And this ſaving is nothing, for this Statute extends to no Particular; for if any extend to Aid by Tenure, all *England* is not bound to this, but ſome few. The Statutes extend to ſuch Aids as the whole Kingdom is ſubject unto; none will ſay that all the Kingdom holds of the King *pur fils marier*, &c.

The Statute of 34 *Ed.* I. concerning certain Liberties granted by the King to his Commons, this is printed *Anno* 1534. 25 *Hen.* VIII. No Taillage to be taken or levied to us, our Heirs or Succeſſors, without the Good-will and Aſſent of the Archbiſhops, Biſhops, Barons, and other Burgeſſes and Freemen of the Realm. This Statute hath been quarrell'd withal, but the Words are very effectual.

The Statute of 14 *Ed.* II. agreed to be perpetual by my Brother *Jones*, for my part, I can ſee no Reaſon why it ſhould be ſo. The Statute reciteth, That whereas the Barons and Commons of the Realm have granted of their good Free-will the King an Aid towards his Wars as well on this ſide the Sea as beyond, of the ninth Sheep, the ninth Sheaf, *&c.* and the ninth Part of all their Goods, we will and grant for us and our Heirs, that the ſame ſo charged ſhall not be brought into Example to make any Aids, he doth not ſay ſuch Aids, but by Conſent in Parliament. No Man can ſay againſt theſe Words, they are ſo full and abſolute.

The Statute 25 *Ed.* III. enacts, that none ſhall be compelled to find Hobbellers; *Si il ne ſoit per commune conſent in Parliament.* The Reaſon given in the Parliament-Roll, is very obſervable; *Car ceo eſt incounter le droyt del Royalme.* Theſe Words are in the Roll, yet left out in the printed Statutes, but the Reaſon I know not. This Statute of 25 *Ed.* III. is confirmed by the Statute 4 *Hen.* IV.

The Statute 1 *Rich.* II. a very good Statute, tho' in a young King's Time, enacted and done by the Lords and Commons: There have been many Inventions to charge the Subject. Now *Hen.* IV. invented many Benevolences, and that is recited, That whereas divers Inventions, *&c.* (all the World I think is full of Inventions) it is enacted from henceforth, that the Subject ſhall no ways be charged with any ſuch like Charge. They gave it the Name of Benevolence, but indeed they were Impoſitions, and great Charges were collected with that Name.

I conclude with that Statute of this King, the *Petition of Right*, which reciteth the Statute *de Tallagio.* Very many particular Things are mentioned there, Men are not to be compelled to lend Money without common Aſſent in Parliament; which is a Confirmation of theſe Statutes. I have done with the Statutes.

For the Authority of the Year-Books; I will confirm thoſe two Authorities cited by my Brother *Crooke*, tho' my Brother *Jones* flight the Authority, 13 *Hen.* IV. the principal Caſe being then a Grant of an Office of meaſuring of Cloth and put in Practice, and being granted out of Parliament condemned to be void; for the King cannot grant any common Charge on his People but in Parliament. And tho' my Brother *Jones* ſaid, that perhaps ſuch a Charge was *Damnum*, yet not *Injuria*; ſurely had not there been more in it, it had not been damned as illegal.

The other Authority is that of *Forteſcue*; tho' my Brother *Jones*, in that Book, doth omit that which is material; for that Man he was ſworn Chief Juſtice of *England*, and afterwards made Chancellor, who ſaith expreſly in his 9th Chapter, That the King of *England* cannot alter any Law; That he governeth his People, not only by Royal, but by Politick Power, and can lay no Charge upon them but by Parliament. The King can change no Law, nor make Land Gavel-kind which is not, nor make Land diviſible which is not; which he might do if it were to be done by Power Royal. And *Forteſcue* concludeth with this excellent Saying, *fol.* 26. 6. 'Rejoice therefore, Sovereign Prince, and be glad; for the Law of your 'Realm adminiſtreth to you and to your People no ſmall Comfort and 'Security, *&c.* Prerogative ſtrengtheneth the Subjects Liberty, and 'their Liberty ſtrengtheneth the King's Prerogative.' *Cap.* 38. is full and ſtrong againſt the King, which my Brother *Jones* was pleaſed to omit. The King may by his Officers take Neceſſaries for his Houſe, nevertheleſs he is bound to pay for them; for by the Law he ought not to take away any of the Subjects Goods without making Satisfaction for the ſame; neither can he lay any Taillage, Subſidy or other Burthen, or make new Laws, or alter old, without expreſs Agreement of his People in Parliament.

I have done with the poſitive Part of my Argument. I will not trouble you long; I will anſwer ſome Objections now made, and heretofore made againſt theſe Statutes.

Firſt, For the Statute *de Tallagio non concedendo*. True, it is very probable that it was no Statute, but an Extract out of the Statutes of 25 *Ed.* I. which is upon Record, the other not being to be found upon the Roll. It was averred *una voce*, it was a Statute, tho' not without Probability it was no Statute, as it was learnedly obſerved by Mr. Sollicitor, in reſpect of the King's Abſence beyond the Seas. Only I collect this out of his Argument that he thought that that Statute did reach very far againſt the King, which he could anſwer no way, but to take it away; therefore he thought it a Statute of ſome Force.

Next, my Brother *Berkley* would have the Statute of 14 *Ed.* III. to be but a temporary Statute, and but during the Continuance of the Wars. The 1*ſt* Part of the Statute is abſolute, but the latter part is but a temporary Statute, and but during the Continuance of thoſe Wars. But it muſt (the former part thereof) needs be perpetual, for it is granted for the King and his Heirs.

The next Objection is by my Brother *Jones* and my Brother *Crawley*, That this Power Royal is part of the Prerogative appertaining to his Perſon, and inherent to the Crown, a *proprium quarto modo*, ſo inſeparable, that an Act of Parliament cannot take it away.

I confeſs there are ſome inſeparable Prerogatives belonging to the Crown, ſuch as the Parliament cannot ſever from it. And I will prove to you out of Books, Caſes and Statutes, that the King cannot releaſe his Tenure *in Capite*. It was endeavoured that a Law ſhould be made that the Court of Wards ſhould be ſhut up, it was reſolved it had been a void Law; ſuch is the Care for the Defence of the Kingdom, which belongeth inſeparably to the Crown, as head and ſupreme Protector of the Kingdom: So that if an Act of Parliament ſhould enact that he ſhould not defend the Kingdom, or that the King ſhould have no Aid from his Subjects to defend the Kingdom, theſe Acts would not bind, becauſe they would be againſt natural Reaſon. But in our Caſe here, there is no ſuch thing; for there is no Act that reſtrains the King to lay any Charge at all, but only ties him to one Means, by which he would come by it, to wit, by Parliament. If before the Statute a Man alien Land held of the King without Licence, the King ſhall ſeize the Land, and have it forfeited to him and his Heirs for ever. Now by that Statute the Prerogative is reſtored to a reaſonable Fine only; this was as inherent in his Perſon as any thing could be, and yet it is reſtrained by Parliament.

Before *Mag. Char.* the King might take any Man's Goods for his Proviſion, and cut any Man's Woods down, to build or repair his Caſtles: yet ſince that Statute it is enacted, *Nullus Vicecomes nec Ballivus noſter capiet equos, &c. niſi reddat liberationem. Nec capiemus boſcum alien' ad caſtra vel ad alia agenda noſtra, niſi per voluntatem illius cujus boſcus ille fuerit.* And to this Day this Statute is of force, that the King cannot take theſe things, nor uſe his Prerogative.

The Prerogative of *Nullum tempus occurrit Regi*, is a great one; yet in ſome Caſe of Lapſe of Churches, this Prerogative is taken away by the Statute of 25 *Ed.* III. *cap.* 1. where the King granteth for him and his Heirs, not to preſent but in his own time: and this being pleaded 11 *Hen.* IV. *fol.* 7. is adjudged againſt the King, notwithſtanding the Rule of *Nullum tempus occurrit Regi*.

The Statute of 7 *Hen.* VIII. *c.* 3. concerning Reſtraint of Informations, and that of 21 *Jac.* whereby the King excludeth himſelf to make a Title to any Land, whereof he had not been in poſſeſſion within 60 Years before this time, he was tied to no time, but unlimited; yet this great Prerogative is thus bound. 30 *Ed.* III. *cap.* 10. Parliaments to be holden every Year one, or oftner if need be, becauſe of divers Miſchances that may happen. It is to be acknowledged as a gracious Favour from his Majeſty to his Subjects, that he would admit of this Caſe to be argued in any ordinary Court of Juſtice, and not refer it to the Parliament, to which Place all ſuch weighty Cauſes are moſt fit to be referred. I am ſatisfied in my Conſcience he would do nothing in this Caſe, if he were juſtly informed, or may be informed he ought not to do it by Law.

The Laws of *England mutari non poterunt*, without conſent of Counſel gathered together: *Si inuſitatum emerſerit*, ſaith *Forteſcue* (as the Caſe of ours is) it is referred to the next Parliament; *Si aliquid inconſuetum*, then it is to be put to the Parliament.

2 *Ed.* III. *fol.* 7. There ariſeth a new Queſtion concerning the Statute of *Wincheſter*, about Recovery by Actions againſt the County where Robberies were committed; there the Caſe in reſpect of the Difficulty was referred to the Parliament, and there the Sheriff was warned to have his Money.

You ſhall ſee a notable Caſe in the Regiſter *fol.* 224. among the Writs, of two that were at *York*, and ſerved by a Clerk in the Chancery there to appear at *Rome*; and becauſe of this Contempt they were committed to Priſon, and a Writ came to bail them, returnable *coram nobis in Parliamento:* ſo Matters of Difficulty were adjourned into Parliament.

Weſtminſter 2. *cap.* 28. *In nova cauſa fiat novum remedium in Parliamento.* To reſolve Caſes of difficulty, Statutes have enacted that there ſhould be two Parliaments every Year, *viz.* 4 *Ed.* III. *c.* 4. which was a great Confirmation of the Liberties of this Realm. *Littleton* 110, 180. Parliaments ought to be frequent. I know not how it comes about, that this Kingdom which hath thus long flouriſhed by Parliaments, ſhould now forget her frequent kind of Government by Parliament, whether by Reaſon of ſome thing paſt, or ſome Diſaſter now fallen out, that this which is the antient way (I do not ſay that Parliaments is the Government, but Kings have governed by them) is ſo much out of uſe now-a-days.

I do not preſcribe Power to the Parliament to govern the Realm, but the publick have been governed by the Parliament. There was ſeen too much of the ambitious Humour of ſome in the laſt Parliament, that ſtirred up nothing but Confuſion and Diſcontentment as we now feel it to our great Prejudice.

Now I come to Precedents. *Firſt*, that of *Danegelt* hath been objected; of which there were two Kinds, as Sir *Henry Spelman* in his *Gloſſary* obſerves; the one *ad pacandum*, the other *ad coercendum Danos:* great Sums of Money they had to go home again, from 12000*l.* to 48000*l.* *per Annum*; and it was raiſed in three Years: it was continued until King *Stephen*'s Time; at which time 'tis ſaid it was releaſed. For my part, I ſee not but that it might now be put in uſe as formerly, had it not been for thoſe Statutes of *Ed.* I. and *Ed.* III. before-mentioned: for it was not laid down when the Danger ceaſed, but was continued and taken up by Princes when they had a mind to it, as by *William the Conqueror*, and *William Rufus*; but ſince theſe Statutes it was never taken *(and here he read the Words of the Statutes.)* So if theſe Statutes took that away, why do they not bind in our Caſe? Which is a full Anſwer, in my Opinion, to that and all other Precedents before theſe Statutes: there have been ſhewed 200 on each ſide; but I ſay, it had been better they had never made uſe of them.

So to all the Precedents made before the Statute *de Tallagio non concedendo*, I give this general Anſwer, to be of no force.

For the Precedents in *Henry* III.'s time, which were many; yet in thoſe Commiſſions for preparing of Galleys, after they were made they were at the King's Coſt: This may be done at this time.

And with the Statute of 14 *Ed.* III. I anſwer thoſe Precedents of the 10, 11, 12 *Ed.* III. and by the way obſerve the Times that were then, that Statutes were forced to be made to remedy thoſe Evils; and ſurely thoſe were the Burdens and unreaſonable Taxes which the King, in the 13th Year of his Reign, confeſſed he had oppreſſed his Subjects with, and deſired they might be forgotten, becauſe he was urged to it by his Neceſſities, and not for any ill End of his own, *(and ſo he cauſed the Record itſelf to be read openly before all the Judges.)*

2 *Hen.* IV. 2 *Rich.* II. A general Aſſembly called and reſolved, That Money could not be raiſed but by Parliament. Since this time, all the Precedents that have been vouched were for arraying Men, and putting them in readineſs.

28 *Hen.* VIII. There were ſome forced upon their own Charges to go to ſuppreſs ſome Rebels in *Lincolnſhire*, but afterwards were recompenſed for their Charges; ſaith the Record, Our Pleaſure is to ſend a Meſſenger, and on a Bill of Charges he ſhall ſatisfy them. I do agree, and there are many Statutes that Men ſhould be arrayed, as the Statute of *Wincheſter*, which are only Preparations to make Men ready.

Now for that which hath been urged by Mr. Attorney excellently well, That the King, by the Law of the Land, hath a Prerogative in the Lands and Goods of his Subjects; ſo that in ſome Caſes, the Sheriff may for him break open a Man's Houſe, and the like, becauſe otherwiſe he cannot execute Juſtice.

True, the King hath ſuch a Prerogative, and fit it ſhould be uſed; for otherwiſe Juſtice could not be adminiſtered, as it is in many Caſes, the Sheriff, tho' a Verdict by Default, hath Power by Prerogative of the King to break into the Houſe, and give Poſſeſſion; for otherwiſe Juſtice could not be adminiſtered, if all Laws were contemned: for which Contempt the King may uſe his Power.

Again, the King of his own Charge maintains his Courts of Juſtice, and is bound ſo to do, 39 *Hen.* VI. 34 *Hen.* VI. And in lieu of theſe Charges the Law gives him thoſe Fines and other Duties; ſo there is upon the Matter a *quid pro quo:* But where there is an Intereſt in a Subject, he cannot take it away without his Conſent, as he may do it in Murage and Pontage, and the like; for there is a particular Benefit to the Subject. So I think I am almoſt at an End of anſwering the firſt and ſecond Part of the Precedents; the antient Time was one Way, and the modern Time another Way.

In *Ed.* IV. *Ric.* III. *Hen.* VII.'s Times, they are all for Wages of the Mariners, certain Allowances they had; what a Week, what a Day is ſet down.

But you ſay, here in this Caſe appears no Money to be paid by the Subject, but only for a Ship to be provided by the Sheriff, and not any Money to come into the King's Purſe.

I muſt conclude this Part with what is agreed by all, That if this Writ had been to levy Money, it had been void.

As I do take it, the Writ is to prepare a Ship of ſuch a Burden; ſo the Ship is the Matter: Then give me leave to ſay this, and I ſay, as it appears plainly by the Record, there was no Ship prepared at all; then if no Ship, no Writ can be had againſt him for Diſobedience. 'Tis known to all the World, 'tis not Ships, but Ship-Money: Ship-Money is in every Man's Mouth. It hath a Name of preparing Ships, but the End of it is to prepare Money, as in *Yorkſhire* twelve thouſand Pounds.

If the Proviſion of a Ship had been expreſly alledged, it might have been traverſed, and therefore Mr. *Hampden*'s Counſel could do nothing but demur; and by demurring, they confeſs'd nothing but what is materially and ſufficiently alledged, ſo that it might have been deny'd by a Traverſe.

But you will object, That I did ſubſcribe to a contrary Opinion, and ſet my Hand unto it.

To this, for my own part, I muſt ſay, and I can truly ſay it, 1. My private Opinion was ever againſt it. I did ſubſcribe, but it was but for Conformity; for it is known to all, when a great Number meet together, the Judgment is that which the greater Number ſaith: Beſides theſe Words to which we ſubſcribed are no wiſe purſued.

2. Our Opinions were very ſuddenly required; for the King's Letter bears date *Feb.* 2. and our Opinions upon it bear date *Feb.* 7. following; and it was in a Caſe wherein we never heard any Argument: and we uſually do, and God forbid but we may diſſent from our private Opinions upon a better Reaſon heard. But I am of the ſame Opinion now that I was then.

But it will be ſaid, we might have done it more adviſedly. No Man of us but ſometimes delivers his Opinion, and yet after we have heard an Argument, have changed our Opinions, and gone contrary to our former Judgment.

3. If after any Arguments heard I had been of the ſame Opinion that was delivered, yet this Writ doth not purſue the Direction thereof; for tho' we agreed, that the King might charge in caſe of a general Danger, yet this was, and is intended not a Danger of Pirates, but an imminent Neceſſity, and apparent Danger, which could not be avoided. For I do agree in the Time of War, when there is an Enemy in the Field, the King

may take Goods from the Subject; ſuch a Danger, and ſuch a Neceſſity, ought to be in this Caſe, as in caſe of a Fire like to conſume all without ſpeedy Help, ſuch a Danger as tends to the Overthrow of the Kingdom. Give me leave to ſay, that Kings of *England* have exercis'd great Power in taking this to themſelves. 17 *Hen.* VIII. in the Cardinal's Time, it was counted lawful to ſend forth Commiſſions throughout *England*, to take a ſixth Part of the Subjects Goods; whereupon many upon Refuſal were ſent to Priſon; the Lord *Cobham* among the reſt ſent to Priſon from *Huntington* to *London:* at length *Norfolk* and *Suffolk* grew to ſuch a Heat for taking away their Goods in that undue manner, that the King was forced to call a great Council, who ſuppreſſed thoſe kind of Writs; and the King laid the Fault upon the Cardinal; and the Cardinal ſaid it was the Advice of the King's Council, and they deny'd it; ſo he bore the Shame.

So in the Time of Queen *Elizabeth*, who was a gracious and a glorious Queen, yet in the End of her Reign, whether through Covetouſneſs, or by reaſon of the Wars that came upon her, I know not by what Counſel, ſhe deſired Benevolence; the Statute of 2 *Ric.* II. was preſſed, yet it went ſo far, that by Commiſſion and Direction Money was gathered in every Inn of Court; and I myſelf, for my part, paid 20*s.* But when the Queen was informed by her Judges, that this kind of proceeding was againſt Law, ſhe gave Directions to pay all ſuch Sums, as were collected, back; and ſo I (as all the reſt of our Houſe, and as I think of other Houſes too) had my 20*s.* repaid me again: And Privy Counſellors were ſent down to all Parts, to tell them that it was for the Defence of the Realm, and it ſhould be repaid them again.

Now for the Exceptions to the Writ itſelf, I muſt anſwer my Brother *Berkley*, That no Allegation afterwards (if the Writ be not good) will help it. The Writ is ſaid to contain Matter ſufficient, *Quia datum eſt nobis intelligi quod quidam piratæ naves & bona ſubditor' noſtror' &c.* and lead our Men into miſerable Captivity, and provide Ships, Mariners, *&c. ad gravandum regnum noſtrum.* Now here's nothing for the Defence of the Realm, no *cognoſcimus hoſtium adventus*; as the Writs did antiently run.

Again, Pirates are to be withſtood with ordinary Defence, which appertaineth to the King himſelf; but for extraordinary Defence againſt Invaſion, when the Kingdom is like to be overthrown, there indeed the whole Kingdom is to contribute to the Defence. And our Reſolution was, when ſuch a Danger was apparent, the whole Kingdom in Danger, then the Defence to be extraordinary.

But you object, That tho' there be no Danger ſet forth in the Writ, yet in the *Mittimus* it is certify'd, *Quod ſalus regni periclitabatur.*

The Writ iſſued 4 *Aug.* 11 *Car.* the *Mittimus* came not out till near two Years after: Now the Counſel perceiving the firſt Writ was not ſufficient, they politickly add to the *Mittimus* this Clauſe of *Salus regni periclitabatur:* ſo this coming ſo long after, cannot make that which was not legal *ab initio*, to become good by Matter *ex poſt factum*; this could not be helped by any ſubſequent Matter, as in Caſe of a Fine, *&c.*

This was much ſtood upon by my Brother *Berkley*; but I ſhall anſwer him with two Caſes not to be deny'd: The firſt, *Vernon*'s Caſe in the 4th Report. A Man conveys Land to the Uſe of himſelf for Life, the Remainder to *I. S.* for Life, the Remainder to his Wife for her Jointure; tho' in this Caſe *I. S.* die before her Huſband, ſo that now it falls out to be as advantageous to the Wife, as if it had been limited her immediately after the Death of the Huſband: yet it is reſolved, becauſe it is not ſo limited in the Beginning, no good Jointure to bar her of her Claim to her Dower.

Alſo in *Chenie*'s Caſe, 5 Report. A Will uncertain (and ſo not good) ſhall not be holpen by an After-Averment ſubſequent to alter the Eſtate: So it is in our Caſe, if the Writ were not legal when it firſt iſſued, no ſubſequent Matter ſhall make it good.

The Writ commands the Sheriff & *quos rebelles invenerit* to impriſon, and to diſtrain all ſuch as refuſe to pay. This is directly againſt the Statute of *Mag' Char'* none ought to be diſtrained or impriſoned, but by the lawful Judgment of his Peers, and according to the Laws of the Land; 'twas never contained in any Writ before, nor can any ſuch Writ be maintained.

Beſides, the Words of the Writ are to rate every Man *ſecundum ſtatum & facultates*; ſhall the Sheriff be a Judge and Party? If the Aſſeſſment be done according to the Writ, he muſt be Judge and Party: Never ſuch a Writ before. All Sheriffs muſt pay nothing themſelves, or every Sheriff muſt aſſeſs himſelf, 8 *Hen.* VI. *Dyer* 320. So, for the Reaſons aforeſaid, I hold the Writ to be againſt Law.

Again, no Ship was prepared: If it had been prepared, it had been their own Goods; if not, it might have been pleaded that there was never a Ship; and then the Sheriffs might have been puniſhed for not obeying the King's Commands.

It hath been ſaid, he hath confeſſed all Matters contained in the Writ; whereas in a Demurrer he confeſſeth no Matter of Fact, but what is ſufficiently ſet down, 30 *Eliz.* *Coke* 23. reſolves the ſame.

But to the Writ of *Sci' Fa'* I conceive it not legal; no ſuch Writ can go forth to two Sheriffs of one County, they being neither of them Sheriff at this Time; for it went out after they were out of their Sheriffwick: therefore ſome Return ſhould have been made by Inquiſition. I never did ſee or hear of any Writ that went to two Sheriffs of one County, as it was to *Bucks*; and ſo two Sheriffs made two ſeveral Returns.

Again, this Money cannot be levied by *Sci' Fa'*, becauſe the Writ directs other Means, either to diſtrain or to impriſon; therefore not by *Sci' Fa'*, for it is contrary to the Words of the Writ. And ſeeing the Sheriff hath not followed that Direction, he muſt anſwer the Contempt.

But here to anſwer my Brother *Trevor*; I do agree in ſome Caſes of a Certificate, or Preſentment, that a Bridge was out of Repair, or a Highway ſtopt, there ſhall go a *Sci' Fa'* upon that; but that tells to whom the Money ſhall be paid. But here the Writ doth not demand the Money to be paid to the King for not preparing a Ship; that muſt be by Office or Inquiſition on Record, if a legal Certificate, as it is 2 *Ed.* III. *fol.* 2. The King commands the Sheriff of *Leiceſter* to ſummon *I. S. &c.* to come and meet him with Aid, to go into *Scotland*; he ſpent the Money to a great Value: There went a Writ out of the Exchequer to attach this Man: yet after long Debates it was held fit, the King muſt be informed by Matter of Record.

I agree, that the King, as he is Lord of the Sea, may lay Impoſitions; but then he ought to defend the Merchants Goods from Pirates. That famous Caſe of *Mich'* 4 *Jac.* in which Caſe I was of Counſel, of an Impoſition of 5*s.* a Tun on Currants, one *Bates* ſtood out, and would not pay it; adjudged that that Impoſition was lawful, for the King may lay an Impoſition; for he hath the Rule of the Sea, and hath Power to hinder Merchants to traffick; and if they traffick, he ſecures their Goods.

To conclude with that which my Brother *Berkley* ſaid, that the Subjects of *England* are free Men not Slaves, free Men not Villains. Here is no apparent Neceſſity of any Invaſion; therefore by Law, they cannot be thus compelled to part with their Intereſt in their Goods. If there were any apparent Neceſſity, they were without Limit or Stint.

Thus have I, with as much Perſpicuity as thoſe Imperfections which attend my Age, would give me leave, ſet you forth my Reaſons; and without any farther Proteſtation I conclude, both for Matter and Form, that you are not to give Judgment for the King.

The Opinion of Sir John Denham *Kt. one of the Barons of his Majeſty's Court of* Exchequer, *in the great Caſe of Ship-Money, preſented in Writing.*

May it pleaſe your Lordſhips,

I Had provided myſelf to have made a ſhort Argument, and to have deliver'd my Opinion, with my Reaſons: But by reaſon of want of Reſt the laſt Night, (my old Diſeaſe being upon me) my Sickneſs and Weakneſs are greatly increaſed, inſomuch that I cannot attend the Buſineſs, as I deſired. And if my Opinion be required, it is for the Plaintiff.

Serjeant's-Inn, Fleet-Street,
26 *May* 1638.

Sir John Denham's *ſecond Certificate, directed to the Lord Chief Juſtice* Brampſton, 28 Maii 1638.

My Lords,

UNderſtanding that ſome Miſconſtruction was taken by ſome, of the Declaration of my Opinion, which I deſired your Lordſhip upon the laſt *Saturday* to deliver in my Name; for further Satisfaction therein I have ſent again, altho' I was moſt deſirous to have paſſed my Vote in ſilence in this Work of weight, by reaſon I heard not the four laſt Arguments: yet I delivered my Opinion for the Plaintiff, which I took to be Mr. *Hampden*, by reaſon it appeareth by the Record that he coming in upon Proceſs, *Queritur de colore præmiſſorum graviter vexatum & hoc minus juſte*; which ſatisfied me that he was Plaintiff; and therefore I now declare my Opinion for Mr. *Hampden* who did demur.

I ſhall only deliver theſe two Reaſons for the maintaining of my Opinion. The 1*ſt* is, that the King's Majeſty is *ſola & ſuprema Juſtitia regni*, and the Rule of the Law is and hath always been, that his Majeſty can do no Wrong; and thereupon ariſeth another Rule of our Law, which I gave for my ſecond Reaſon.

The King's Majeſty being of a Corporate Capacity, can neither take any Lands or Goods from any of his Subjects, but by and upon a Judgment on Record, (according to our daily Experience in the Exchequer) there muſt precede ſome Judgment in that or ſome other Court of Record, whereby his Majeſty may be intitled either to the Lands or Goods of a Subject, as namely where Seizure of Goods is made for his Majeſty either upon Outlawries, Attainders, or Matters of the like Nature; as in Caſes of Seizures in the Court of Exchequer, where Seizures are given by Statutes; yet without a Judgment in that Court upon a Trial for the King, the Goods are not to be recovered to the Uſe of the King as forfeited.

Upon Conſideration whereof, and comparing the ſame with his Majeſty's Royal Writ, I find no Judgment thereupon had nor given; which were the chiefeſt Reaſons of my Opinion for Mr. *Hampden.*

The Argument of Sir Humphry Davenport *Kt. Lord Chief Baron of the* Exchequer, *in the great Caſe of* Ship-Money *in the* Exchequer-Chamber.

My Lords,

THERE have appeared unto us upon this Record many ſeveral Arguments, and excellently made; it comes now to my Courſe, to expreſs my own Opinion.

It appeareth upon this Record, that *Paſch.* 13. *Car.* a *Sci' Fa'* iſſued out of the *Exchequer* to the Sheriff of *Bucks*, reciting, Whereas ſeveral Sums of Money mentioned in a Schedule to that Writ annexed, by virtue of the Writ 4 *Aug.* aſſeſſed upon ſeveral Perſons for providing of a Ship, were not paid, whereby he was commanded, *quod ſcire faceret*, to theſe ſeveral Perſons in the Schedule annex'd nam'd, to appear in the *Exchequer*, *Octab' Trin'* 13 *Car.* to ſhew Cauſe why they ſhould not pay thoſe Sums of Money aſſeſſed upon them.

Thereupon a *Certiorari* 9 *Mar.* 13 *Car.* was directed to the Sheriffs of *Bucks*, to certify the Sums, and the ſeveral Perſons upon whom they were aſſeſſed, and of the Warning given unto them to pay the ſame: The *Certiorari* being returned, and in Court in *April* 13 *Car.*

Then on 5 *May* there came a Writ of *Mittimus* out of the *Chancery*, by which the ſaid former Writs were ſent to the Barons of the *Exchequer*; which *Mittimus* recites the Writ 4 *Aug.* and not the Record itſelf: And the Barons are commanded, that they ſhould thereupon proceed, as by the *Mittimus* is required.

Upon theſe Records, thus certify'd, there iſſued out of the Court of *Exchequer* a *Sci' Fa'* that is now in Debate, which was awarded againſt the Parties mentioned in the Schedule; and Mr. *Hampden* being returned, hath appeared, and demandeth Oyer of the Writ 4 *Aug.* 11 *Car.* of the *Certiorari* 9 *Mar.* 13 *Car.* and of the *Mittimus* 5 *Maii* 13 *Car.* Upon Oyer of theſe, and reading them unto him, as was demanded, Mr. *Hampden* hath demurred in Law, alledging, That the Writs, and every of them, and the Returns of them, and the Matters therein contained are not ſufficient to charge him with the Sum of 20*s.* on him charged: And thereupon demandeth Judgment, if the King will be pleaſed any further to proceed upon this Writ.

To this Demurrer, thus tendred by Mr. *Hampden*, Mr. Attorney hath joined, alledging, That the Writs mentioned, and all of them, and the Matters therein contained, are good and ſufficient in Law to charge the Defendant with the Sum of 20*s.* and demandeth Judgment thereupon for the King; and that the Defendant *Hampden* ſhould be charged with the Sum of 20*s.* and thereupon make Satisfaction; but to whom is not expreſſed upon the Record.

This Demurrer being thus warily joined on both Sides, there have been ſeveral Arguments thereupon at the Bar and Bench, excellently (no doubt) argued, and very fully. There hath been introduced and preſſed to the Court (whereof there have been ſeveral Notes delivered) a Number of Records appertaining to the Queſtion; ſo far forth, that in one of the Arguments at the Bar, there were excellently well remembred, at the leaſt above 300 Records, and great Authorities.

Upon this Record, the Demurrer being thus joined, my Purpoſe is, after my Meanneſs, (not being able to give an Account of every Particular) to make a ſummary Collection of what I ſhall ſay, and with that Shortneſs and Brevity that appertains to be (the Weight of the Cauſe not deſerted) upon the Duty of my Place, and upon my Oath, which I have learned and hold to be *ligamentum fidei inter Deum & animam*, to declare unto this Court what I do conceive to be juſt upon the Queſtion ariſing upon the Records, wherein my Meaning is to retain myſelf unto the Parts of the Record.

Judgment is not here to be given, but a judicial Advice; and according to Number of Voices here, Judgment muſt be given in the Exchequer, without Reſpect to any of our particular Opinions who ſit in this Court. I ſhall do my beſt Endeavour to open unto you ſuch Queſtions, as do appear to me upon the Record to be aptly and fitly debated before us.

The State of the Queſtion out of the Record will appear to be this, That 4 *Aug.* 11 *Car.* there iſſued out of Chancery a Writ, not returnable, unto the Sheriff of *Bucks:* This Writ was *inter Breva irretornabilia*, according to the Stile in that Court, and in the Court of Exchequer. By this Writ 4 *Aug.* which I do conceive to be the original main Ground of this Record, it appears what was the Occaſion and Ground that Writ was awarded. It was touching and in reſpect of certains grievous Incurſions by the Pirates upon the Seas, who commit Depredations, and take the Goods and Merchandize, both of the King's Subjects and others that traffick here, and carry them into Captivity; and this is ſaid to be to the great Damage of the Kingdom.

That the Times were dangerous, and hoſtile Times, *tempora hoſtilia*; and therefore, it was fit there ſhould be a convenient Remedy provided by the Kingdom for Defence thereof: And thereupon, in that Writ, two ſeveral Mandates or Commands are impoſed.

The *Firſt* was a Command and Direction to the Sheriff of the County of *Bucks*, and to the Mayor of *Buckingham*, and to the Bailiffs and Burgeſſes of *Chipping-Wiccombe*, and Pariſhes of the County of *Bucks*, *& pro omnib' hominib'* of thoſe Towns, and all others dwelling in that County; theſe are the Perſons who are charged. And by that Writ, 4 *Aug.* they were charged with this Particular, That they ſhould before the firſt of *March* then following at their own Coſt, prepare and provide a Ship of War of 450 Tons, furniſhed and fitted with Men, Ammunition, and Victuals, to be brought to *Portſmouth* at their Charge, at or before the ſaid firſt Day of *March*; and from thence, to be maintained at their own proper Coſts and Charges, for the Space of 26 Weeks then next following, to attend ſuch noble Perſons, to whom the King ſhould be pleaſed to commit the Cuſtody of the Sea, and to purſue their Directions.

The *Second* ſort of thoſe two Mandates deſcends from the Perſons to whom the Writ was directed unto ſome few, and that is upon the Matter to the Sheriff of *Bucks*, and to the Mayor of *Buckingham*, and the Bailiffs and Burgeſſes of *Chipping-Wiccombe:* To theſe is given and limited a Power by the Writ, diſtributively, as therein is appointed, reſpectively to tax and aſſeſs the whole County, *ſecundum ſtatum & facultates:* And thoſe that they ſhould find to be Rebels, they ſhould diſtrain them, or by any due Means commit them to Priſon, there to remain until his Majeſty ſends forth an Order for their Deliverance. This I do conceive to be the End of thoſe two Mandates mentioned and comprized in the Writ 4 *Aug.* 11 *Car.*

After this Writ 4 *Aug.* 11 *Car.* almoſt a Year and an half, then cometh the *Certiorari* out of Chancery, dated 9 *Mar.* 12 *Car.* directed to the Sheriff of *Bucks*, who, with the other Referees, ſhould certify unto the King the Names of ſuch Perſons as were aſſeſſed, and what they were aſſeſſed, and who have performed the Aſſeſſment, and who not. That Writ was returnable 26 *April* then next following. And therein Mr. *Hampden* appears as a Defendant to the *Sci' Fa'*; therein was he certified to have been taxed to the Sum of 20*s.* for his Lands in the Town of *Stoke Mandevile*, and that he did refuſe to pay it, and did not pay it unto him, nor any of the Collectors that were appointed.

This being returned into Chancery, and no Order there made, or any Rule, that the Sum impoſed on Mr. *Hampden* ſhould be paid, 5 *Maii* then following, in the ſame Term cometh a *Mittimus*, reciting the Effect of thoſe Writs, which is directed to the Lord Treaſurer and Barons of the Exchequer; herein the Tenor of the Writ (and not the Writ itſelf) is certified into the Exchequer; and withal it certifieth the reſt of the Record, together with the Schedules annexed to thoſe Writs; and by that it is commended to the Court that they ſhould proceed to do for the further Receipt and Collection of the Sums behind, as by the Law and Cuſtom of the Kingdom of *England* ſhould be required.

And upon this Certificate here cometh a Writ of *Sci' Fa'* directed to the Sheriff of *Bucks*, to give Notice to the Perſons that were Defaulters, that they ſhould appear and ſhew Cauſe, if they could ſay any thing, why they ſhould not be charged therewith according to the Laws and Cuſtoms of the Realm; and the Writ is ſo returned: And upon that Return Mr. *Hampden* appears upon the Day in Perſon, and after Oyer of the Proceeding, hath demurred.

Upon this Record, this being the Caſe, and the Demurrer thereupon joined, we are to ſee what is the Law and Cuſtom of *England* upon the Matter extant in the Record; for I intend not to expatiate beyond the Record, but to ſtick cloſe to it, as it is in the Caſe now depending in Court, upon this Record: And therein I ſhall confine my ſelf to ſome few general Heads, I ſhall not be long in any thing.

The firſt thing is, Whether theſe two Powers and Mandates mentioned in the Writ 4 *Aug.* 11 *Car.* (the original Ground of this Suit) the one for Preparation of a Ship and Furniture, and of the Reſidue therein mentioned; and the other, for Taxation at the Pleaſure of the Sheriffs, and other Perſons to whom it is referred, and that expreſſed upon the Motives of the Writ 4 *Aug.* whether, I ſay, that theſe ſame Mandates were and are good in Law, according to the Law and Cuſtom of the Kingdom of *England*, upon the Matter of this Record; that is the firſt Queſtion: If that do fail, then the *Sci' Fa'* is at an end. If there be no legal Charge impoſed upon the Country, then he ought to be diſcharged.

The ſecond Queſtion is upon the principal Head; admitting theſe were legal in themſelves, according to the Tenor of the Writ, to ſee then how it is reduced by the Record. Therein I ſhall offer to Conſideration, whether on this Certificate on the Writ 9 *Mar.* out of Chancery, after the Time ſo paſt for Execution of the firſt Writ which is irreturnable, that upon that it be ſo legal, and according to the Courſe of Law convey'd over by the Record to be a ſufficient Ground and Warrant of the *Sci' Fa'* here brought, is the ſecond Queſtion.

The Third Queſtion: This Writ of *Sci' Fa'* being iſſued out, and the Defendant having appeared, and demurred in Law, whether hereupon there be ſuch Matter therein, that they may charge the Defendant with the Sum impoſed upon him, ſo that the King may have a Judgment and Execution upon it: That I conceive to be the laſt Queſtion.

This Caſe is a Caſe of very great Weight, and doth nearly concern every one of us to have an eſpecial Eye unto it. It is an uſual Queſtion in our Books, whereof we have much View.

However it be in the Record, to which we are now tied, it concerns the Prerogative of the King, and the Eſtate of the Subject. In my Conſcience I think, for the Act that was done was a gracious, honourable, and royal Act, and proceeding upon juſt Cauſe, that there ſhould be a preſent Remedy for avoiding the Inconvenience that did appear, no doubt for our Good. Herein, tho' it be known to every one that knoweth me, but eſpecially to my ſelf, if I partake of the Rule that every Man is bound unto, *Noſce teipſum*, I know withal, that no Man is more bound, nor oweth a more tender Care to preſerve the King's Prerogative, and to do that which may advance the ſame, as we are all bound to do by the great Oath that we have taken upon our Promotion: And in that Particular, I profeſs none more bound than myſelf.

Upon this I have been told, and I have truly looked into the Records, ſo far forth as my Meanneſs will give leave; and according to what I underſtand of the Law and the Cuſtom of the Kingdom of *England*, to be upon this Record, I muſt needs ſay, tho' I do confeſs for my own particular unwillingly, that upon this Record Judgment ought to be given for the Defendant, *Quod Johannes Hampden ſit quietus, &c.* however with Submiſſion to the greater Vote of my Brothers.

For firſt, I do conceive, that this Charge, thus commanded, and thus taxed, is not warranted by the Laws and Cuſtoms of the Kingdom of *England:* I ſhall therefore offer to the Conſideration of the Court, the ſeveral Diſcuſſions upon the Writ.

Firſt, For the Writ 4 *Aug.* 11 *Car.* directed to the Sheriff of *Bucks*, to the Mayor and Burgeſſes of *Buckingham*, and Bailiffs and Burgeſſes of *Chipping-Wiccombe*, *& probis hominibus Com' Bucks*; hereby are they charged upon their Allegiance, that they ſhould, before the firſt of *March* following, prepare at their own Coſts and Charges, *per probos homines*, thro' out all the County, a Ship of War well furniſhed, and that the ſame Ship of War they ſhall maintain at their own Coſts and Charges, for the Space of 26 Weeks, to attend the King's Navy, for the Cuſtody of the Sea, as the King ſhall appoint and direct.

This firſt Point I take is not warrantable by the Law and Cuſtom of *England*; in reſpect, being a Matter of ſo great a Charge, and by them, being an Inland County, impoſſible to be performed to prepare a Ship before that Time, being no Maritime County, but an Inland County: This I do take in itſelf, that this is not a Charge to be impoſed upon a County, by the Name of *probos homines*, or of the particular Men there named, except it were by their own Conſent and Approbation. And with their Conſent, I agree, a Charge upon *probos homines*, ſo they receive nothing to their own Uſes, is good enough; whereof I find one excellent Record, 24 *Ed.* I. A Writ that iſſued out of the *Exchequer*, and whereof there is the Record remaining to this Day inrolled and certify'd to be a true Copy: There it is directed in Caſe of Neceſſity, when the King is abſent beyond the Sea, upon Information of the Diſcovery of a preſent and inſtant Invaſion of the Enemies in *Flanders* and *France*, under Colour of coming as Fiſhermen to ſurprize the Town of *Yarmouth*, and all the Parts of the Coaſts thereabouts; the Lord Treaſurer that then was (the King being beyond the Sea) the Under-Treaſurer who had the Cuſtody of the Sea, and the Barons of the *Exchequer*, cauſed a Writ to be directed to the Bailiffs *probis hominibus* of that Town: and no doubt of it, in the Judgment of our Predeceſſor himſelf, was good Law, and the Writ legally executed upon the inſtant Neceſſity appearing. But *Forteſcue* ſpeaks not ſo much of the Neceſſity, as hath been obſerved: Therefore it is not good to conclude upon ſome general Words in him, That in no Caſe of Neceſſity the Charge can be laid; for the Scope of the whole Book, conſider'd well, will not warrant it: The Intent of it is not againſt Caſes of Extremity. You ſee not in the Caſe, but that therein the Regal Courſe muſt be obſerved, according to the Law and Cuſtom of the Kingdom of *England.*

But when I do conſider of the firſt Charge of preparing a Ship at their own Charges, and of the Conſideration of the next Charge in the ſame Writ for Taxation, I do not ſee, nor I cannot perceive, how the ſame do agree, but that the one is repugnant unto the other; for that the former Part commands the Charge to be generally by all; and by this laſt Power it is limited to be done by a particular Perſon, and that to be done at his Will, and as he ſhall think fit; whereby the Sheriff, Mayor, and

Bailiff, thus employed, are excluded from the Charge; for they can do no Act upon themſelves. It ſhould have been done *per ſacramentum proborum hominum*, conſidering theſe two different Powers. I hold the Law ſo to be clear in this Point. It appears not upon this Record that they were aſſenting unto it, or agreed upon any Ordinance herein.

Now the Power of the Preparation, upon the whole it is on the Sheriff himſelf, Mayor, Bailiffs, *probos homines* and all; but when you come to the latter *ipſo facto*, by the Laws and Cuſtoms of the Realm, a great Part of the former Charge is removed directly from thoſe that were chargeable: Power of Taxation is appointed, to whom? to the Sheriff, and how can he tax himſelf? He and all his Eſtate within the County of *Bucks* under the firſt Charge, and all diſcharged by the Power of Taxation limited in the ſecond Clauſe: and therein I take it, that this ſame is not legal according to the Cuſtoms and Laws of *England*, the one doth not agree with the other. If you aſk me the Reaſon of it, my Brother *Hutton* hath given it. The Charge is upon the Sheriff, and 'tis not poſſible for the Sheriff to tax himſelf, he cannot find himſelf *inter Rebelles*, he cannot commit himſelf to Priſon, there to remain till ſuch time as the King's Majeſty ſhall deliver him; that he cannot do. So for the other Referees of *Buckingham* and *Chipping-Wiccombe*, exempted likewiſe; if they can do this, then clearly the former Charge, impoſed by the firſt and ſaid to be done by them all, is out of doors.

Now it cannot be done, according to the Law of *England*, upon the Sheriff or upon his Land. The Point I think is very evident in our Books. 18 *Hen.* VIII. If a Defendant that is Sheriff be to be ſummoned, and he return that he cannot do it, Juſtice *H------* ſaid that Return was not good, for that he might ſummon himſelf. 8 *Ed.* III. But if it come to a further Queſtion, that if there be any Execution to be done where another may be prejudiced, he cannot do it, as to impannel a Jury upon a Writ, where he is a Party, which may prove a Prejudice to another; for if he do, it is not lawfully done, as it is in *Dyer*, *fol.* 8, 9. Of the Sheriff in a common Recovery. So upon theſe Authorities, for the firſt queſtion, I hold it manifeſt, that this Act which the Sheriff is charged to do, is afterwards by this ſecond Power diſcharged: theſe two Powers do not cohere, and therefore are not warranted by the Laws and Cuſtoms of the Realm of *England*.

Concerning the firſt Queſtion my Opinion is clear, that there is a material and legal Exception appearing on the ſelf-ſame Writ. My Reaſon is, the Sheriff is the great Officer of the County; but when he muſt do it, I take it legally, he ought to do it according to the Duty of his Place by the Law of *England*; that I do not take to be at his Will and Pleaſure to lay one thing upon one, and another thing upon another: for my part, I conceive this muſt be done *per ſacramentum*; he is not to be Judge in caſe of Uncertainties, when a diviſion of Charge and Taxes is to be made; where things are put in Certainty in any of the King's Courts, there he may execute, as take a Man's Goods, impriſon, *&c.* but in caſe of Uncertainty, the Law hath annexed to his Office a Way and Means how to reduce the thing to a Certainty, and that is, *per ſacrament' proborum hominum:* as in the Caſe of Parceners, if they have a mind to make Partition of their Inheritance, they may do it by Agreement between them if they will, or by making of Lots by a third Perſon, and the Elder ſhall chuſe; but if ſhe herſelf make the Partition, ſhe ſhall not both divide and chuſe; that alters the Caſe for Execution, when it is *in propria perſona*. But admit they cannot agree, the Judgment of the Law is, that the Sheriff ſhall go in his proper Perſon into the Ground; ſhall he at his Diſcretion make the Partition as he pleaſeth? No: The Judgment is, the Sheriff ſhall go in Perſon unto the Land, and that there *per Sacramentum*, *per Inquiſitionem*, to be taken by choſen Jurors, they muſt conſider of it; upon ſuch a thing ſo done *per Sacramentum*, then indeed it is in the Sheriff's Power, he may now chuſe whether he will prefer the Elder or the Younger. But for our Caſe, that this ſhould be done by a Sheriff, by his Diſcretion, whilſt the Intereſt of ſeveral Perſons is concerned, is as it were to make a Rape. I do not find that in any Book of Law, I muſt confeſs. In that Act, which is done by the Law, there can be no Error or Partiality; ſo in *Fitz. Na' Br'* in his Writ *de onerando pro rata portione*, ſee what there is to be done: it goeth to the Sheriff, he is truſted with the doing of this, but he is truſted by legal Means; what ſhall he there do? Where 20 Acres of Land held of the King in chief, they are ſold to ſeveral Hands, there muſt be a Writ *de onerando pro rata* for diſcharging of the Rent; but this muſt be done *per Sacramentum*, not by the ſole Power of the Sheriff. Hereof I find a notable Precedent; it is true, it is not in our Books of Law, but in an Hiſtorian; yet he doth ſet it down in that manner, that a Man may truſt him ſo far. *Matth. Par.* he ſaith, and ſheweth us that 17 *Hen.* III. eight Years after the making of *Mag' Char'* authorized by Parliament, that the King himſelf in his Parliament was pleaſed (according to the Inſtitutions of Parliament) to require *Concilium & Auxilium*, for the King's Wars; where, by the way, let me obſerve, that *Auxilia* from the Subject granted to the King in Parliament are not merely voluntary, but Duties, to give Monies for Supply of Neceſſities of State; and in that I agree with the Opinion of my Predeceſſor, *Ho.* Chief-Baron. 19 *Hen.* VI. The King is bound to defend the Kingdom. The ſame Law that binds him to the Defence of the whole Realm, gives the King a Right of Inheritance to claim Subſidies for the Defence thereof. But to return to *Mat. Paris:* It appeareth there that the King in Parliament did demand Aid of his Subjects, *Concilium & Auxilium*, their Counſel as they were bound, their Help as they were able. It is ſaid, that they made Choice of the Earl of *Cheſter* to give their Anſwer, who at firſt held it not fit to do it, alledging their Eſtates were but weak, that by the Laws of the Kingdom they that had been there in Perſon, they for their Eſcuage might not be troubled. The Prelates they were more courteous in their Anſwer, they deſired Time to aſſemble themſelves together, many being far diſtant: thereupon was a Time aſſigned, till *Mens' Paſch'*. In the mean time they all conſidered, the Lords on the one ſide, and the Lords Spiritual on the other ſide; and being demanded a Fifteenth of their Goods, they anſwered, So as they might have their ancient Laws eſtabliſhed to them, for which they had been ſo much troubled, they would willingly aſſent unto it. The King conſented unto it, and thereupon *Magna Char'* was there confirmed upon grant of a Fifteenth to his Majeſty. But when they came afterwards, they did all agree, that for Neceſſity, and for the King's Charges in his Wars, which did require a ſpeedy Supply, they were contented to yield to him a fourth Part of their Goods, to be levied in this manner, that is, (for ſo it is mentioned expreſly in *Matth. Paris*, and the form is there ſet down *de verbo in verbum*.) I have it here to read it: That every Sheriff within his County ſhould return a Juror in every Town: That to four Gentlemen of good Value, and accounted principal Men in every Town, Power is given, that they ſhall do (as a Jury, to ſet forth upon their Oaths) Aſſeſſments reaſonable according to their Eſtate and Power; and becauſe it appeared then there, (the very Exception now taken) that the Aſſeſſors could not tax themſelves, tho' they had Power to tax the Reſidue, therefore a Power was given to two others of every Town, and they ſhould be ſworn, and upon their Oaths tax the four former Aſſeſſors. This tells unto me, what the antient and uſual Manner was of Taxes and Aſſeſſes by the Cuſtom of *England:* The Manner was not at the voluntary Pleaſure of the great Officer of the County; but they that did tax others, ſhould be taxed by others. And this Opinion is directly in *Matth. Paris*, that the Laws of *England* were ſo. And therefore for my own part, for the Sheriff to tax at his diſcretion, I know no Law for it.

Stat. 1 *Ed.* III. By the true Record, according to the Manuſcript of the *Exchequer* Book here, in *French* it is *Chap.* 7. and ſo it appeareth in the *Tower* there inrolled: It is expreſly there upon a Complaint made, that they held themſelves aggrieved with an Aſſeſſment; their Grief was, that whereas Aid was granted to the Crown, more than formerly was uſed, *&c.* and Taxes not rightly laid upon them by the Sheriff and Commiſſioners: this Grievance thus complained of in Parliament, and the Manner of their Taxing diſliked, the King ſaith that from thenceforth, the Taxations and Aſſeſſments ſhould be made as in ancient Manner, and not otherwiſe. Here is an expreſs Negative, no Taxes to be done but by Jury; which excludes in my Opinion this ſame Tax thus done, that is, by his own Power and Diſcretion, is not warrantable by the Law of the Land. And herein give me leave, as I think in my Conſcience, and as I think the Truth is, if this Inconveniency had not tended to a Grievance in very many Particulars, we ſhould never have heard of this Queſtion; but by this means it cometh in queſtion, both the one and the other: for the Act itſelf, it is a gracious and a royal Act. It is requiſite and neceſſary, as the State and Condition (if it ſo appears upon this Record) of the Kingdom may be in, that there be a Supply according to the Neceſſity: for the King is Lord of the Sea; as it was argued at Bar, in a Cauſe brought before us the Barons of the *Exchequer*, where we did unanimouſly agree, and adjudge that the King was, and is in my Conſcience, rightly true Lord of the very Propriety and Ownerſhip of the Seas. The Occaſion upon which this grew a Queſtion was, as I conceive, upon the writing of two Books: The one called *Mare Liberum*, that no Ownerſhip of the Sea ſhould belong to the King; whereas it is the Sea of our Sovereign, and Defence by Sea, under Almighty God, that is our Protection; and if we ſhould ſuffer any elſe to have an Intereſt in it, it would hazard the whole Kingdom. But in Anſwer to this Book, Mr. *Selden* hath wrote very learnedly a notable Book called *Mare Clauſum*, approved of by his Majeſty, and inrolled in the *Exchequer* by Command from his Majeſty, there to remain. But ſince there is another Book written (which I had at my Argument) by one *Pontanus*, directed to the great Chancellor of the King of *Denmark*; and he undertaketh therein to make an Anſwer to every particular Chapter in Mr. *Selden*'s Book; and truly, as I think in my Opinion tho' weak, Mr. *Selden* hath a Judgment in Law againſt him upon a *nihil dicit*.

Of how great Conſequence the Dominion of the Sea is to this Kingdom, who knows not? So that without queſtion, the Tax was very fit to be done, if the Power given to the Sheriff had been as warrantable. But this ſame ſecond Power, to free himſelf and lay it upon the Reſidue, is not good, nor warrantable by the Law. Thus much for the firſt Queſtion concerning the Powers contained in the Writ 4 *Aug.* which doth not reſort to the Rule and Cuſtom of the Kingdom of *England*.

In the next place, let us ſee whether the Writ mentions Cauſes ſufficient for the iſſuing of it. For the Incurſions of Pirates I conceive it no juſt Cauſe: But the Expreſſions in the Writ, as *Quia datum eſt nobis intelligi, ut informatur, vulgaris opinio eſt & rumor eſt*, &c. If the King undertake it upon this, he is not to ſhew how he diſcovereth it. I am ſatisfied in my Opinion, upon view of the Precedents, it is ſufficient if the King do alledge, *Quia datum eſt nobis intelligi*, or *Quia intelleximus*, &c. it is enough, for it is ſo in theſe Precedents, *Quod vulgaris opinio*, &c. All theſe, or any of theſe containing ſuch a Matter that the Kingdom is in danger, I agree the ſame doth conclude the Party, and that the King is the ſole Judge of it. The Caſe is not traverſable, the Writ muſt be obeyed, agreeing with the Laws and Cuſtoms of *England*.

That this may be done by the King's Writ, excellent and ſtrong Arguments have been made. That this Imperial Power belongeth to the Crown, I heartily acknowledge it; his Power declareth it ſo; Reaſon it ſhould be ſo: Not voluntary at his Pleaſure, but it is according to his *Politick Capacity*, not excluding his natural Imperiality. *Quia Rex*, he doth it not; but *Quia Rex Angliæ* he doth it: So I find it in *Forteſcue*.

The Grounds premiſed in this Writ, that the Kingdom was in preſent danger; Truth in my Conſcience it was ſo, and if that had not been done ſo, *England* had heard of it before this Day. Therefore there muſt be an Expreſſion of the Kingdom to be then inſtantly in danger, or ſuch a Preparation in ſuch a convenient time, or elſe it will be in a great danger; but that muſt be expreſſed, for I hold the Law to be ſo. *Doctor and Student* ſaith, it is the old Cuſtom of the Land, the King ſhall defend the Sea: 'tis true, againſt whom? Againſt Pirates and petty Robbers, but not againſt a ſudden Invaſion at his own Charge. Theſe *Prædones* who were ſpoken of in the Laws of King *Edward*, when *Danegelt* was given, they were of that Condition that they endangered the whole Kingdom. They did occaſion the Tax of *Danegelt*, to raiſe from twelve to forty eight thouſand Pounds; and *William Rufus* raiſed it to 4*s.* a Hide, impoſed upon a juſt Ground to repel the *Danes*, being common Enemies: and this was continued until *Hen.* II.'s time, but ſince taken away by ſeveral Statutes; as 25 *Edw.* I. *&c.* That ſame *Danegelt* which was heretofore impoſed on the Kingdom by the Terror of the *Danes*, continued ſtill, tho' the Name be altered; it is mentioned in the Red Book in the *Exchequer* to be uſed in *Hen.* I.'s Time; but after the Time of *Hen.* II. I hold that it is taken away by the Statutes before-mentioned of *Edw.* I. *&c.* and therefore if for private Danger this Aſſeſſment be impoſed, it is not according to the Laws and Cuſtoms of this Realm.

I am over-troubleſome, and I fear ſhall hardly hold out; give me leave to proceed to the ſecond Conſideration. And admitting thoſe Charges in the firſt Writ to be legal, the next Conſideration to be had is, whether the *Certiorari* and the *Mittimus* do legally revive the firſt Writ; it being a Writ irreturnable, and not executed according to the Tenure of it within the Time limited and prefixed to be done.

This *Certiorari* iſſued long after the firſt Writ, dated a Year and half after. And in my Opinion this cannot be; for the Nature of a Writ not returnable, is to command a poſitive thing to be done within ſuch a Time; if it be not done accordingly, there is an End of the Force of that Writ: ſo that here in our Caſe, the Power given to the Sheriff being not executed in due Time by him, but done out of Time, cannot be renewed now; for otherwiſe you will make a Man an Offender by a Relation, which being a Fiction in Law, cannot ſo operate, nor be made penal to him for non-performance: and tho' afterwards by the *Mittimus*, theſe Words *Salus regni periclitabatur* come in, yet will they not revive or make good the Commands of the firſt Writ. If the firſt Writ had been returnable, and a Return made, and a Default according to the Return, the Writ had been ſtill continued, and muſt have been referred by another Court, and the Party preſented by a Jury upon Default; and upon Preſentation and Indictment, the King ſhall have his Remedy: But not being ſo, it is but a Suggeſtion, upon which a *Sci' Fa'* cannot iſſue, as in *Butler* and *Baker*'s Caſe, Report 3. and being not returnable, is but dead in Law; and being certified upon the ſecond Writ, it is not good, it cannot be to relate to make him a wrong Doer; to that purpoſe is the Caſe cited, 26 *Ed.* III. *Leiceſterſhire* Caſe, reciting; Whereas one Sir *John de Lamſton*, that he had delivered certain Moneys to *Robert de &c.* and that he had waſted ſuch a Manor, and taken away Goods to the Value of 2000*l.* and thereupon it was commanded he ſhould be attached by his Body, he appeared at his Day, and becauſe, *&c.* he was diſcharged of it; and according to that I find it, 7 *Edw.* III. there it was ſuggeſted to be made in one King's Time; and whereas it was not, and there abated, then the Queſtion, Whether the King may do it or no? He giveth the Anſwer, That where it concerneth the King in his own Right, there he may do it; but when the Title came to the King from another Party, there it was otherwiſe.

Upon this I do conceive this *Brev' irretorn'* falleth ſhort of making him puniſhable, as if it had been a Writ returnable; let the Writ 4 *Aug.* be never ſo good, the Writ thereupon is not legally iſſued.

The next thing is upon the *Sci' Fa'*; the Queſtion upon this Record is, Whether this doth appertain to the King? and I conceive, it doth not appertain to the King: My Reaſon is this, becauſe in the very Writ 4 *Aug.* it is expreſly provided, that it ſhall be employed to no other Uſe, but the Preparation of the Ship therein mentioned, and by no means to any other Purpoſe. It doth not now appear, who were Collectors therein appointed to receive the Money, whereby to become chargeable over to the King. It doth not appear upon this Record, that any Ship was provided, or that any Fault was in them that were employed, or of Surpluſage in the Collectors Hands: tho' it was a worthy and gracious Act in his Majeſty, yet this is not ſo legally executed, as the King may have a Writ of *Sci' Fa'*.

If Judgment be for the King, it muſt be with this Limitation, that it muſt not go to the proper Coffer of the King, as my Brother *Jones* obſerved. And in my Conſcience, if it were paid to him, he would be a Loſer by it. You ſee what the Writ is, you ſhould be charged upon *onerare & ſatisfacere* one Ship; *non conſtat* there was any Ship, or any Collector, or any Act, concerning it: This Money was pre-ordained only to prepare a Ship, and to be employed merely upon that, and for no other Purpoſe; and this appeareth not at all, whether any Ship was made, yea or no: now how ſhall we give Judgment? The *Sci' Fa'* is, That Mr. *Hampden* ſhould ſhew Cauſe why he ſhould not ſatisfy the Sum impoſed upon him; but whom he ſhould ſatisfy, or to whom the Money ſhould be paid, *non conſtat*, as was well opened upon the Demurrer; for it is not *Si Dominus Rex valet aut debeat onerare* the Defendant, but that the Defendant *oneretur & inde ſatisfac'*: Nothing is put into the Record to bring this to the King: therefore *quod oneretur* cannot be executed at all; and according to the Books of 39 *Edw.* III. and 49 *Edw.* III. if Judgment be to be given, and it cannot be executed, there it ſhall not be given at all: So the Judgment required on this Demurrer, is upon the Matter *oneretur*, and ſhall by no colour come to the King. God knows it belongs to him, and that deſervedly; but in a legal Courſe *non conſtat*; therefore to give Judgment, *quod oneretur*, and not know to whom (for to the King it cannot) would be wrong; for this Reaſon I cannot ſee how Judgment can be given, *quod oneretur*.

But hereupon another thing troubleth me very much, and which, in my Opinion, makes it clear, that Execution cannot be made upon this *Sci' Fa'*; and that is the *Mittimus* to us in the *Exchequer*, which by *Recordum ipſum* is not certified, but only the Tenor of the Record. I do conceive the Law to be ſo upon this Difference, as it is taken in a Caſe excellently well argued, 33 *Hen.* VI. where it is ſaid, if the Record be in any other Court, whence Execution may be awarded, and the Tenor of that Record is by *Mittimus* ſent into another Court, where Execution may be likewiſe awarded; in ſuch a Caſe a *Sci' Fa'* cannot iſſue upon ſuch a Record; for this is but an Extract of a Record. So if a Man ſhould ſue out Execution upon a Judgment given before the Juſtices of Aſſize, what will you do with this? And if he have no Goods within the Precinct, you muſt remove this. How do you remove it? Not by certifying the Tenor of the Record, but *ipſum Recordum*: But if the Record itſelf be certified into the *Chancery*, and ſent by *Mittimus* into the *Common Pleas*, that is good, and we are Judges of the Record: No other Court can give Judgment upon the Record, but we.

Here is ſent unto us the Tenor of the Writ, and not the Record itſelf that I can find; and ſo two Executions may be upon one Judgment. 37 *Hen.* VI. A Tranſcript or Tenor of a Recognizance came out of the *Chancery* into the *Common-Pleas*, to have executed, *& non allocatur*: and ſo it is *Dyer* 4, *&* 5, *&* 22, of the Queen, there was a Tranſcript there of a Recognizance, to the Intent that they might have a *Sci' Fa'* upon it, and held clearly by the Court, that upon the Tenor of a Record no *Sci' Fa'* could lie. So all this appearing upon the very firſt Branch of the Record, that this was merely a Tenor of the Record, and not *Recordum ipſum*, I do not know how upon this Record there can be Execution.

Thus have I done with the ſeveral Diſcuſſions of the Writ and Record, which upon my Reaſons before alledged, I conceive it not ſufficient in Law to charge Mr. *Hampden*.

I come now to the great Queſtion concerning the Danger of the Kingdom, and our Certificate to his Majeſty. Give me leave, according to our former Reſolution made in anſwer to his Majeſty's Queſtion propoſed, to ſpeak of what we did certify: and in my Conſcience truly, and I hold it real, that when any Part of the Kingdom is in Danger, actually in Danger, or in Expectancy of Danger, and the ſame expreſſed by his Writ; I agree, the King may charge the Subjects without Parliament, towards the Defence thereof; for *neceſſitas eſt lex temporis*, in vain to call for Help when the Enemy is landed. Clearly I hold the King to be the ſole Judge of the Danger: And the Danger being certified by his Majeſty, I hold it not traverſable; and in ſuch a Caſe he may charge the Subject without Parliament, ſo that the very Cauſe be effectually expreſſed upon the Records, that the Kingdom was in Danger. But if a Parliamentary Advice may be called, and the Danger not ſo imminent, then regularly no ſuch Charge can be laid out of Parliament: legally and rightly, I hold, things done by the Advice of Parliament it were the beſt Way: But if it be ſo, the Neceſſity will not admit the Delay of a Parliament, when the Enemy is in View, and expectant; that is ſuch a Danger as we did certify to the King in our Opinion to be the Time when he might ſo charge the Subject. In *Edw.* III.'s Time Writs iſſued, ſitting the Parliament. To ſay, that there cannot be Incurſions, but that they may be known within ſeven Months time, wherein a Parliament might be had, is a great Hazard to the Kingdom. It is poſſible the Danger may be diſcovered before it comes; but it is poſſible it may come unexpected. In 88, when that great Invaſion was, at which Time if the Queen ſhould not have uſed her Royal Power, without calling a Parliament, perhaps the Kingdom might have been loſt by Delays; and yet then great Expectation was of a Parliament. So *William* I. (not *William the Conqueror*, for he did not conquer the Kingdom, he conquered the King of the Kingdom) his coming was ſudden, he landed at *Haſtings*; and was not the King adviſed of this at *York*? Did he not then make all haſte by Poſt, raiſed a ſudden Army, and bad him Battle? And *William the Conqueror* had the Victory, not of the Kingdom, but againſt the King. *Lambert* ſaith, That he came not in *per conqueſtum*, but *per acquiſitionem*. After he was crowned, and received by the *Londoners*, he ſent forth Commiſſions to all the Counties of *England*, to enquire, *per ſacramentum*, what the antient Laws of *England* were, and of the State of the Kingdom; and Certificates being made thereof, that of *Danegelt* was certified to be a Tribute inforced. I ſay in Times of Neceſſity, the King may command this Aid by his Writ under the Great Seal, when the Danger is inſtant; nay, the Expectation of it is not traverſable.

Object. Then upon every Certificate that the King makes, that he is of Opinion that the Danger is inſtant or expectant, this Charge may come to be annual.

Solut. No: we need not fear, that the King will require it but upon juſt Occaſion, the Law preſumes it; and legally it cannot be laid upon the Subject, but in ſuch Caſes of Neceſſity, as aforeſaid. By the Charters of *William* I. King *John*, *Henry* III. no Charge without Parliament: by the Statute of 10 *Edw.* III. none is forced to go out of his County, except it be in caſe of Neceſſity. 14 *Edw.* III. I hold to be a general Statute, and it doth bind, but doth not bind in caſe of Neceſſity; for they are not to be underſtood to be binding in all Caſes. The Charter of King *John*, as it is inrolled, not as it is printed, according to *Mag' Char'*, ſaving two Clauſes that are not now in *Mag' Char'*, hath this Exemption in it to the Subject of theſe, and theſe Immunities; no Tax nor Taillage, but by Parliament; but he excepts three Caſes: 1 *Niſi ad redimendum corpus noſtrum.* 2. *Pur faire Fitz Chevalier.* 3. *Pur Fille marier.* Theſe Prerogatives of the King are not bound up by the Parliaments; the very Commons themſelves did agree to theſe three Caſes. As for the Statute *de tallagio non concedendo*, I hold it to be a good Statute, and much for the Liberty of the Subject. But if you come to a Caſe of Neceſſity, they will not ſtand in force. There is one Omiſſion in the printed Statute, 25 *Edw.* III. which is in the Records at the *Tower* (as it was obſerved by my Brother *Hutton*) *Car ceo eſt encounter le droit del Royalme*: How this comes to paſs, I know not. I cauſed it to be ſearched, and I find theſe Words only in the Articles upon the Roll, where they do complain for the finding of Hobbellers, and are aggrieved for it, and give this as a Reaſon, *Car ceo eſt encounter le droit del Royalme*: And the Anſwer which the King gave unto it, was a Royal Anſwer to the thing propoſed; but thoſe Words are left out of it. But if it were the Right of the Subject *(le droit del Royalme)* as *Littleton* ſaith, that cannot die.

And certainly, in caſe of Neceſſity, there is a Right belonging to the King to prevent Danger; for legally, when the Safety of the Kingdom is in Danger, in danger apparent, in that Caſe the King hath a Power of Prerogative to compel Aid. And if an Act of Parliament ſhould be made to reſtrain ſuch a Charge on the Subjects in caſe of Neceſſity, it would be *Felo de ſe*, and ſo void; for it would deſtroy that *Regale jus*. So this great Queſtion of impoſing this Charge, I am of Opinion it may be done without Parliament, as it was in 88, ſo long as the preſent and apparent Danger continueth. And I am of Opinion, (as I was when we gave in our Certificates to his Majeſty) that the King is the ſole Judge of the Danger, and how to provide againſt it.

But however, I do conceive upon this Record, upon which I am to give Judgment, that the Mandates in the Writ 4 *Aug.* are not good in Law, nor according to the Laws and Cuſtoms of the Kingdom of *England*, nor well grounded upon the Certificate; and that the Information afterwards in the *Mittimus* cannot make a former Writ good, which was firſt defective: And the Sheriffs who were, their Return is not effectual, upon which Judgment may be given.

I cannot ſee how Judgment can be given *quod oneretur*, and not tell to whom, and nothing viſible to whom we may find it: And therefore, in my Opinion, Judgment is to be given for Mr. *Hampden*.

The Argument of Sir John Finch, *Kt. Lord Chief-Juſtice of the Court of* Common-Pleas, *in the* Exchequer-Chamber, *in the great Caſe of* Ship-Money.

A Writ under the Great Seal of *England*, dated 4 *Aug.* 11 *Car.* when to the Sheriff of *Bucks* (Sir *Peter Temple)* commanding a Ship of 450 Tons and 180 Men, to be ready furniſhed with all Ammunition and Tackling at *Portſmouth* for 26 Weeks, to go with other of his Majeſty's Ships, and of the Subjects, to defend the Dominion of the Sea, the Realm being in Danger; and to charge and aſſeſs all his Majeſty's Subjects, and all the Inhabitants within the ſaid County, and all Occupiers, Tenants, and Terr-Tenants there that have not Part in the Ship, nor ſerve in the ſame, to contribute for, and towards the preparation and ſetting forth of the Ship according to their Abilities.

The Record of *Certiorari* ſaith, That *Stoke-Mandevile* is within the ſaid County, and was aſſeſſed at a reaſonable Rate; and that the Sum of 20*s.* was aſſeſſed upon the Lands of *John Hampden* Eſq; as by a Schedule of 9 *Mar.* 12 *Car.* annexed to the *Certiorari*, may appear.

Whereupon a *Mittimus* 5 *Maii* 13 *Car.* with this *Certiorari* and Schedule, was directed to the Barons of the *Exchequer*, to do there for the Sum unpaid, *prout de jure & per legem & conſuetudinem regni noſtri* Angliæ *fuer' faciend'*.

A *Sci' Fa'* upon this went forth of the *Exchequer*, to warn Mr. *Hampden* to ſhew Cauſe why he ſhould not pay the 20*s.* Upon the Return of which Mr. *Hampden* appeared, and demanded Oyer of the Writ, *Certiorari*, Schedule, *Mittimus*, and *Sci' Fa'*; and upon hearing of them read, he demurred, and Mr. Attorney joined in the Demurrer; then my Lord Chief-Baron, and the Court of *Exchequer*, adjourned it to the Court of *Exchequer-Chamber*, deſiring the Advice of all his Majeſty's Judges: and look what Advice we or the greateſt Number of us give, that Court ought and muſt give Judgment accordingly.

In the debating of this Caſe, there hath been great Variety of Opinions among the Judges, a thing uſual and frequent in all great Caſes and Conſultations; which ſhews commonly the Difficulty of the thing, and argueth a Candor and Clearneſs in the Judges, between whom Combination and Conſpiracy would be moſt odious. All that have gone before me, have in one thing agreed, that it is the greateſt Caſe that ever came in any of our Memories, or the Memory of any Man.

As the Sun ariſing in the Horizon ſhews not the Figure ſo clear, as when it is beholden in the Meridian; ſo by mixing many Impertinences with the Caſe in Judgment, it hath been apprehended to be of a far tenderer Conſequence than indeed it is; yet tender and weighty it is. If equally weighed, in the one Balance we may put the Regal Power, or rather the Regality itſelf; in the other the Privileges and Liberties of the Subject, in his Perſon and Eſtate.

To look upon either of theſe, or both, thro' the multiplying Glaſs of Affection, is to behold neither of them truly; neither can they be ſo truly diſcerned, much leſs to multiply by the Glaſs of Fancy: and therefore Juſtice needs to hold the Beam ſtreight.

I cannot fear myſelf, when vulgar Cenſure hath exerciſed itſelf upon every one that hath delivered himſelf upon this Matter: yet I will not ſay, *Domine, poſuiſti me in lubrico loco*; for we that do ſit here, do move in a Sphere, and ſhould be like the *primum mobile*, according to whom all others are to ſteer their Courſe; and Judges themſelves muſt move ſteddily upon their right Poles, as I hope this Court will. What Judge ſoever he be that is elevated by popular Applauſe, or animated by the contrary, to accumulate Honour, is fitter to live *in fæce Romuli quam in Politia* Angliæ.

Nor will I loſe Time in remembring the firſt Oath of a Judge, who ſhould expel all By-Reſpects, and ſpeak his Conſcience. I hope none of us forget the Duty we owe to God, to the King, and to the Commonwealth, and to ourſelves. I ſhall endeavour to ſatisfy my Conſcience in all that I can ſay: And they forget their Duty to the firſt, and Humanity towards us, that ſay or think the contrary of any one of us. Some of us have Fortunes and Poſterities, and therein have given Hoſtages to the Commonwealth, and have as much Intereſt in this Caſe as Mr. *Hampden*. Thoſe that want thoſe Bleſſings, want thoſe Temptations that make them dream of, or hunt for Honour or Riches, to perpetuate their Names and Families; to them nothing can be more precious than the Balm of Integrity, which will preſerve their Names and Memories. It cannot be preſumed, but we will ſpeak our Conſciences; ſince we well know ſhortly, as the Pſalmiſt ſays, *Corruption ſhall ſay, I am thy Father, and the Worm, I am thy Mother.*

In handling this Caſe, no Man can think I ſhall do other than right; and herein I am rather troubled for a Method than for Matter, rather how to diſpoſe of what I find, than to find what to diſpoſe. I ſhall endeavour ſhortly and clearly (conſidering the Time I have to ſpend, and the Weightineſs of the Matters I am to ſpeak of) to deliver my Opinion with the Reaſons of it; and my Endeavour ſhall be rather to contract than omit.

I have, with the beſt Care I could, taken Notes of all that hath been ſaid for or againſt Mr. *Hampden*; and have according to the Meaſure of my Underſtanding, weighed and pondered all that hath been ſpoken, both at the Bar, and by my Brothers, and beſtowed many Hours in Meditation about them, which the Time of Reſt and Repoſe might have challenged.

Before I enter into the Caſe, I ſhall ſpeak of the Steps and Degrees by which this Cauſe has come to Judgment; whereby it will clearly appear, with what Clemency, Wiſdom, Juſtice and Goodneſs, his Majeſty hath proceeded in this Buſineſs.

The firſt Writ went out to the Port-Towns and Maritime Parts of the Land, 20 *Octob.* 10 *Regis*, upon Advice taken between his Majeſty and his Council. Before then, of theſe Writs I can ſay nothing; for I was commanded at that Time to attend another Service, about another Employment, the Foreſt of *Deane*: But it is well known, the Reſolution taken by his Majeſty therein, was grounded, and relied upon the Judgment and Learning of Mr. *Noye*, Attorney-General, a Man of great Learning, and one that had great Inſight into Records, by whom the Matter was firſt prepared, collected and digeſted, and afterwards imparted to ſome of his Majeſty's learned Counſel, and afterwards to ſome other eminent Perſons of the Commonwealth of no leſs Judgment and Knowledge in the Laws of this Realm. And upon Conſultation with my Lord Chief-Baron, and his Majeſty's Barons of the *Exchequer*, his Majeſty commanded thoſe Writs to be ſent forth: Againſt the Legality of which, nothing hath been truly alledged. 'Tis true, they are not in Judgment properly before us: and if Method did not preſs it, I ſhould not have mentioned them.

Primo Octob. Anno 10. of his Majeſty's Reign, his Majeſty was pleaſed to command me to ſerve in the Place that now I do; and thoſe Records, Writs, Commiſſions, and other Precedents, were brought to me, as they had been formerly to my Lord Chief-Juſtice, and my Lord Chief-Baron; and we three did confer together, and did deliver our Opinions in Writing, under our Hands, upon View and diligent Peruſal of a Multitude of antient Records, Writs, and other Precedents of *Edw.* I. *Edw.* II. *Edw.* III. Times and other Records of other Kings Reigns; which Opinions were in theſe Words, ‘That the Dominion of the Sea belongeth to the King; and that he is ſole Lord and Proprietor of the ſame. In which reſpect his Excellent Majeſty theſe Regalities and royal Powers is to defend againſt all hoſtile Actions, Intruſions, and Invaſions, as well for the Good of his Subjects, as Strangers, importing and exporting their Commodities, and for the Defence of the Kingdom: And for the better performing whereof, the Cinque-Ports have been required to prepare ſuch a number of Ships of divers Burdens, and Men of Arms, and at ſuch Times, at their own Charges, from Time to Time, as the ſame Writs and the preſent Occaſion required. And for the Time, and Place, and Reſidence of their Attendance, his Majeſty was the ſole Appointer and only Judge; and this was the conſtant Uſe in the Reigns of thoſe Kings; and this was agreeable to the Common Law of the Kingdom.’

And 15 *Nov.* 1634, before the next Summer, his Majeſty finding the Danger to grow general, and conceiving, that there was little Reaſon theſe Maritime Parts ſhould bear the whole Charge, for that the whole Realm was intereſted therein; afterwards he required our Opinions, *viz.* my Lord Chief-Juſtice, my Lord Chief-Baron, and myſelf, *June* 1635: After Conference together, we delivered our Opinions. And we upon Conſultation conceiving the Reaſon of the Precedents before, and the Rule of the Law, and Reaſon requiring, that when the whole Kingdom was in Danger that the Defence that concerned the whole Kingdom ſhould be borne by all the Subjects of the Kingdom; this was firſt verbally delivered to his Majeſty, and afterwards we put it in Writing under our Hands, in theſe Words.

‘Whereas the Charge of defending the Sea had been impoſed upon the Cinque-Ports; ſo where the whole Kingdom is in Danger, the whole Charge ought to be maintained by all the Subjects of the Realm.’ And amongſt other Writs, thoſe to the Sheriff of *Bucks* went forth at the Time aforeſaid.

After which, his Majeſty finding ſome Queſtion made of the Legality of it, he called all his Judges, not ſingly, nor any one in a Corner, but becauſe he would have every one of them truly informed, required them to adviſe together, and every one of them by themſelves to give his Opinion; according to which, we ſeverally, and every Man by himſelf, and all of us together, delivered our Opinions under our Hands, in this Manner, *viz.*

‘That when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, of which your Majeſty is the ſole Judge, your Majeſty may, by Writ under the Great Seal of *England*, command all the Subjects of this your Kingdom, at their own Charge, to provide ſuch a Number of Ships, with Men, Ammunition, and Victuals, and for ſuch a Time as your Majeſty ſhall think fit, for the Defence and Safeguard of the Kingdom, from ſuch Danger and Peril: And that, by the Law your Majeſty may compel the doing thereof in caſe of Refuſal.’ In which this Clauſe *(his Majeſty is the ſole Judge)* was only put in by ten of us; my Brother *Hutton* having not ſeen nor weighed the Precedents, took Time to adviſe, and gave no Opinion, till Conference between us: And my Brother *Crooke* had the ſame Reaſon, being not acquainted with thoſe Writs, but yet ſubſcribed his Opinion ſingly by himſelf, *Dec.* 1635, *viz.* ‘That where the Good and Safety of the Kingdom is in Danger, of which his Majeſty is the ſole Judge, his Majeſty may command all his Subjects at their Charge, to provide and furniſh ſuch Ships to Sea, with Men and Ammunition, as ſhall be neceſſary for the Defence thereof.’ And this I hold to be agreeable to Law and Reaſon; and tho' I perceived nothing of this his Opinion in his Argument, yet he ſtill holdeth it.

Wherein I obſerve, 1. That the King is ſole Judge of the Danger, and whether it be imminent. 2. Not only that the King may in ſuch Danger command his Subjects to defend the Kingdom in caſe of Neceſſity, but that the Charge of the Defence ought to be borne by all the Realm in general. Which Opinion was more independent than the reſt, for that our Opinion before it had relation to the Precedent of Maritime Parts: but this was, that the Subject might be charged abſolutely; and this was delivered by him readily, chearfully, and without Heſitation; he will not deny it.

I ſpeak not of this as of a thing whereby he ought to have been concluded, but that all the World ſhould know, that his Majeſty's Regal and Legal Power go hand in hand together, and that his princely Love and Affection to his Subjects are ſuch, that he is willing to prevent all Miſtakes: And I ſpeak it alſo to this End, that when Judges ſingly deliver their Opinions to the King, not examining the Reaſons that moved them to it; we ought to ſee very good and pregnant Reaſons to vary from that Opinion, tho' it be not binding.

This his Majeſty required for his own private Satisfaction; and this I dare boldly ſay was ſo delivered by us, that no one Judge knew the Opinion of the reſt.

When his Majeſty found Slackneſs in ſome of his Subjects in contributing to this Charge, and thinking that it proceeded rather from Miſunderſtanding of the Law, than for want of Duty, as deſirous, out of his princely Love, to avoid all miſtakes, he did upon 2 *Feb.* 1636. ſend a Letter to all his Majeſty's Judges and Barons of the *Exchequer*, thereby requiring our ſeveral Opinions: about which we all conferred, and the Particulars, wherein our Opinions were required, had been conſidered of before, or elſe we were much blame; for we had Time enough to think upon it. And though our Anſwers were returned the 7th of the ſame Month, yet we had it in our Conſideration from *June* 1635, which was fifteen Months before the Anſwer returned; ſo there was no Surprize. I will ſpare to name our Opinion then delivered; for it hath been repeated before. When we came to the Debate and Voting of this, we brake the Writ into ſeveral Parts.

1. When the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom is in Danger, Whether it ought not to be defended at the Charge of the whole Kingdom? And agreed it was *una voce*, *nullo contradicente*, that it ought.

2. Whether the Charge of the Defence might not be commanded by the King? Which was alſo agreed, that it might.

3. Whether the King was not the ſole Judge, both of the Danger, and when and how it was to be prevented? Wherein my Brothers *Hutton* and *Crooke* did agree it likewiſe, that he was ſole Judge of the Danger. What their Opinions are now, and wherein they differ, with their good Leave I ſhall examine, and their Reaſons and Differences; (tho' indeed of the King's being the ſole Judge, in their Arguments, my Brother *Crooke* ſpake nothing of his Opinion therein, nor my Brother *Hutton* nothing againſt it.) But we delivered not our Opinion upon the bye; nor was it ſo required of his Majeſty.

It was then alſo declared by all of us, that we did not deliver our Opinions as binding, nor were they ſo required by his Majeſty; of all which I dare boldly ſay, his Majeſty was truly informed. And this was alſo ſoon after publiſhed by his Command, and ſeconded by my Lord-Keeper and Lord Privy-Seal, the firſt of them uſing many Arguments and ſound Collections, deliver'd it in Charge to his Majeſty's Judges, to deliver it in their Circuits, which might have ſatisfy'd any that did not reſpect their own private Benefit. And Mr. *Hampden*, I think, of all hath the leaſt Cauſe to complain, being aſſeſſed but 20*s.* a contemptible Sum, in reſpect of his annual Revenues, to bring this Caſe to Judgment: yet his Majeſty's Clemency appears to be great herein, in that he would not debar any to queſtion the Lawfulneſs of it, tho' he hath permitted *Arcana Imperii*, nay, *Imperium ipſum*, (I would to God I could not ſay even too licentiouſly) to be debated at this Bar; yet I ſpeak it not by way of Reprehenſion, but admonition to the Counſel, who are to be commended, in that they have done their Duty faithfully for their Client: yet I may ſay, ſuch a ravelling and diving into the King's Revenue, and ſecret Eſtate of Princes, and what ſucceeding Kings may be, or may do, it doth not well become theſe preſent Times; it would not have been endured in the beſt preceding Times.

It was not well done to doubt ſucceeding Poſterity, that promiſe as much as any of their Predeceſſors have done for the Good of the Common-wealth.

It is not well to clog the Caſe with ſo many Precedents, impoſſible to be thorowly obſerved; but our Example, I hope, ſhall be a Bar hereafter, and our Care ſhall be to prevent it, being a great Hindrance of Juſtice, and Cauſe of great Expence to the Subjects long Attendance about their Cauſes here; which may prove a greater Charge than in providing Ships for the Realm.

I come to the Caſe now, as it ſtands in Judgment before us; wherein my Method ſhall be,

I. To examine what the Caſe is.
II. I will give my Opinion of the Caſe, with the Reaſons thereof.
III. I will anſwer the Objections made againſt it.
IV. I will ſpeak to the Legality and Form of the Writ 4 *Aug.* the *Certiorari*, the *Mittimus*, and *Sci' Fa'* out of the *Exchequer*. And to all theſe, with what Brevity I can, I will ſpeak according to the Weight of the Caſe, where variety of Opinions gives juſt Cauſe to balance them: the Caſe muſt ariſe out of the Record, and muſt ſtand or fall upon that.

I. For the Caſe itſelf; and therein, 1. I will ſhew what Danger there is, that is the Ground of the Charge. 2. What things there are to maintain it: As for other things, they tend to the Deſtruction of the Caſe.

1. I am of Opinion, that the Danger of the whole Kingdom ought to be expreſſed clearly; for elſe the Ground-work faileth; for if no Danger, no Reaſon of the Charge. And I am of Opinion, that in the Writ 4 *Aug.* it ought to be expreſſed; and not in the *Mittimus*; tho' as my Brother *Jones* obſerved, the *Mittimus* comes time enough to Mr. *Hampden* to give him notice, yet he was not liable to the Charge, but by the Writ 4 *Aug.*

(1.) It is objected, the Danger is not clearly expreſſed; for it is not upon Words of Certainty, but by Way of Uncertainty, *Quod datum eſt nobis intelligi.*

(2.) For the Cauſes of the Writ, that it hath not Relation to the Danger of the Kingdom, but to defend the Sea-Coaſts againſt Pirates, *&c.* And they are not worthy of a Royal Navy, as Brother *Crooke* alſo obſerved.

But I hold firſt, that the Danger is ſufficiently expreſſed, *Certum eſt ſicut res habet*; *Datum nobis eſt intelligi:* A thing very ordinary with us; and in all former Writs, *Ex relatione*, *&c.* *Quod vulgaris opinio eſt*, *&c.*

Altho' my Lord Chief Baron parallel'd this to the Caſe of Patents, *ex certa ſcientia*, *&c.* which is nothing a-like; for there before the King paſs away Land, he may be informed if he may do it: but I hold, as this Caſe is, the Danger will not permit it to be examined, whether there be juſt Cauſe of Fears; for then it might receive Delay, which is dangerous, and the Kingdom be loſt whilſt we are diſputing.

And then for the Phraſe itſelf, *Datum eſt nobis intelligi.* It is ſufficient that the King knows there is a Danger; and therefore, if it had been only *Intelligimus*, none can deny but it had been ſufficient. And what Difference is there between *Intelligimus* and *Datum eſt nobis intelligi?* That ſets forth the Knowledge of the Danger, and this ſhews the Means whereby he doth know it: *Ut datum eſt nobis intelligi.* This goes farther than *ex auditu*, *Rumor eſt*, *&c.* Therefore unleſs the King ſhould go out of the Kingdom to ſee the Danger, can it be otherwiſe expreſſed?

(3.) I hold, that the Danger itſelf, with the Motives in the Writ, are ſufficient.

The Motives are, great Depredations of the Subjects Goods, and Lives: but it is not upon this I reſt, for this hath relation to Pirates leading many Chriſtians into Captivity. Theſe are good Motives, and (as one of my Brothers ſaid well) tho' theſe have relation to Pirates, yet *Bellum Piraticum* points at as much Terror as *Hannibal ad Portas.*

I ſhall not rely much upon that, that the Enemies of Chriſtendom and of this Nation did prepare *ad Mercatores noſtros ulterius moleſtand'*, nor *Ad Regnum gravand' niſi citius remedium apponatur*, *&c.* But this *Conſideratis periculis quæ undique his guerrinis temporibus imminentibus ita quod nobis & ſubditis noſtris defenſionem maris & Regni noſtri omni feſtinatione qua poterimus convenit*, *&c.* ſhews otherwiſe than for the Pirate, this Defence was requiſite. Therefore the next Clauſe is, *Nos volentes defenſionem Regni, tuitionem maris, ſecuritatem ſubditorum noſtrorum*, *&c.* And therefore that *Salva conductione Navium & Merchandizarum quæ ad Regnum noſtrum Angliæ venerint, & de eodem regno ad Partes exteras tranſeunt*, *&c.* takes not away the former Works, nor limits them.

As for the Clauſe in the *Mittimus*, I ſtand not upon it, nor that *Salus Regni & populi noſtri Angliæ periclitabatur*, *&c.*

(4.) Admit there had been no Preamble nor Expreſſment of Danger, I hold the Command itſelf is ſufficient for ſetting forth the Danger, which is, that the Ship be with other his Majeſty's Ships, and the Ships of other his Majeſty's Subjects at *Portſmouth* the firſt Day of *March* next following; the Words of the Record be, *Exinde cum navibus noſtris & navibus aliorum fidelium ſubditorum noſtrorum pro tuitione maris & defenſione noſtrorum & veſtrorum*, *&c.* And particularly to expreſs the Danger is not neceſſary; for the King, the ſole Arbiter both of Peace and War, beſt knows it; and it was the Practice in former Times: and ſo no Wiſdom for the King to expreſs the Danger in particular, when Arms uſually go before Heralds; nor is it the Uſe of Princes to compliment, to tell the Enemy they will, or intend to invade their Lands. And therefore I hold, tho' it might be more clear, yet *ſatis eſt quod ſufficit:* I in my own Conſcience am ſatisfied that the Danger is certain enough expreſſed in the Writ. And ſo I have done with the firſt Particular, the Danger, which was the Ground of this Writ.

(2.) As to the ſecond Particular, What is alledged to be for the preventing of that Danger; my Brother *Hutton*, and my Brother *Crooke*, would have it to be raiſing of Money, by reaſon of that Clauſe in the Writ, for the Diſtribution of the Surpluſage. But the Record is, *Ad aſſidendum omnes homines & ad contribuendum navem vel partem navis non habentes*, *&c.* which ſhews it cannot be for Money, neither is there any colour of Money: for it is to find a Ship: And if they have not of their own, they muſt build, or buy one with their Money. But there is a great deal of Difference between Payment of Money and finding of a Ship. As if my Brother *Crooke* be required to find a light Horſe and Arms, he muſt buy one, or hire with his Money, if he hath none; but yet the Charge is not for Money, but that he finds a light Horſe.

But my Brother *Crooke*'s Objection is, If any Surpluſage remain, it ſhall be divided; and ſo the Sheriff is to detain no Part of it, but employ it for the publick Good, and not convert it to his own proper Benefit.

To this I anſwer, That this ſhews the Equality of the Charge, which is fitteſt to be by Payment of Money.

My Brother *Crooke* hath farther objected, That an Inland County cannot build a Ship: A great Trouble for the County of *Bucks*, ſo far from the Sea, to build a Ship.

To this I anſwer, That thoſe of *Buckinghamſhire* may hire a Ship, if they cannot build one; and the Words are but *parare*, not for the building but preparing a Ship; and it is not meant that they ſhould build it there, but that they ſhould contribute to the building of a Ship in a moſt fit and convenient Place.

II. I ſhall now give my Opinion of the Caſe, with the Reaſons thereof. The King knowing and declaring the whole Kingdom to be in Danger, and neceſſarily requiring his Subjects to defend and provide for this Danger at Sea, he may thereupon command all his Subjects to prepare Ships to join with his Navy Royal againſt the Enemies of the whole Realm, to defend the whole Realm: and it is clear in the caſe, and it was the Meaning of us all, that the King muſt join in the Charge, it being far from us to excuſe the King from his ratable Part.

My reaſons that the King may thus charge his Subjects to join with him in the Defence of the Kingdom, are theſe.

1. The Defence of the Kingdom muſt be at the Charge of the whole Kingdom in general.

2. The Power of laying this Charge is, by the Policy and Fundamental Laws of this Kingdom, ſolely inveſted in the King.

3. The Law that hath given this Power to the King to do theſe Things, hath given him Means to put theſe things in Execution.

And as to all theſe I ſhall ground myſelf upon Authorities in Law, and Precedents in all Ages.

1. That the Defence of the Kingdom muſt be at the Charge of the Kingdom, I ſhall prove, (1.) From the Law of Nature, which is, that every thing in Nature ought to defend itſelf.

(2.) From the Rule of Reaſon: for *Quod omnes tangit*, *ab omnibus ſupportari debet.*

(3.) From the true Uſe of all that we enjoy, which muſt be abuſed, if not employed to and for the Good alſo of thoſe that come after us; and neceſſary it is for our Poſterity to have all ſure and ſafe. A good Patient will ſpare ſome Blood to preſerve his own Health; and a good Huſband will ſpare ſome of his beſt Ground for Ditches and Fences to preſerve the reſt; and he is an ill Huſband that finds not Safety in that he doth.

(4.) From the Law of Property: as every one hath a particular Property in his own Goods, ſo every one hath a Property in general in another Man's Goods, for the common Good. For the Commonwealth hath a Property in every Man's Goods, not only in time of War, but alſo in time of Neceſſity in time of Peace. Therefore if any Man take away my Goods without my Conſent, I have my Action, and recover Damage. *Doctor* and *Student* ſaith, both a Treſpaſs of Lands and Goods is puniſhable by Indictment, and Treſpaſs, at the King's Suit as well as at the Subject's: And this is by reaſon of the publick Intereſt the King hath in every Subject's Goods for the common Good.

Now the Rule and Maxim before ſo clearly and fully put and agreed by all, is, that in caſe of Neceſſity that is apparent, the Subject ought to defend the Kingdom. And my Brother *Crooke* agrees in caſe of Danger, ſo it be eminent, all Men are bound in their Perſons and Eſtates to defend the Kingdom; and he ſays then they muſt *exponere ſe & ſua:* I think he means a Man that takes a Journey may carry his Money with him, *ſe & ſua:* or elſe he means the King cannot command their Money without their Conſent: of which I will ſpeak in its proper Place.

2. I come now to the ſecond Part of my general Head, which is the Power of laying this Charge. By the fundamental Laws and Policy of this Kingdom, the ſole Intereſt and Property of the Sea, *&c.* is in the King. I will not ſpeak of this Monarchy, this is rather fit for Civilians, Hiſtorians, or the Pen of a Divine, than a Judge at *Weſtminſter-Hall*: Nor will I ſpeak of the Diviſion of Monarchies: The Poets ſay that *Saturn* was the firſt Founder of Kingdoms. Only this I will ſay, that for the Excellency of the Government of this Kingdom, thro' God's Bleſſing, none are more happy than we. Look and ſee in other Nations, and tell me if you can find out any Place where they can and do enjoy thoſe Mercies of Peace and Plenty which we do; ſo as we may juſtly ſay, *O fortunatos nimium bona ſi ſua norunt Britannos!* Nor will I perplex myſelf with the Original of the Nation and Monarchy; ſome Stories are fabulous, others doubtful, not any ſo clear as to ſet it forth certainly, tho' they ſpeak truly what is ſufficient for us to know; nor is he the pooreſt, *Qui non poteſt numerare Pecus*, nor he one of the worſt Gentlemen that cannot ſhew the Original of his Pedigree. The Excellency of this Monarchy is, that it is ſufficient it is a Monarchy; and that it is moſt true what *Forteſcue* ſaith of our Laws. I agree that *Forteſcue* was a Lord Chief Juſtice in *Hen.* VI.'s Time, but not Chancellor of *England.* Sea and Land make but one Kingdom, and the King is *Sponſus Regni*; *Magdalen College* Caſe, Sir *Joh. Davie*'s Reports, Stat. 24 *Hen.* VIII. 1 *Eliz.* and 1 *Jac.* The Soil of the Sea belongs to the King, who is Lord and ſole Proprietor of them; and good Reaſon why he ſhould, as is well maintained by Mr. *Selden*, that worthy and learned Author of *Mare Clauſum*; and I hope ſhall be by his Majeſty maintained, with the Sovereignty of the Sea: and without a Navy this Authority can do but little Good.

The King holds this Diadem of God only, all others hold their Lands of him, and he of none but of God: But this is but to light a Candle for others. From hence only I will obſerve, that none other can ſhare with him in his abſolute Power.

A Parliament is an honourable Court; and I confeſs it an excellent Means of charging the Subject, and defending the Kingdom; but yet it is not the only Means. An Honour the laſt Parliament was pleaſed to beſtow on me, which never any ſhall with more reſpect remember than myſelf, when they were pleaſed to chuſe me for their Speaker. And as my Brother *Hutton* ſaid, I conceive it a fit Way to charge the Subject; and I wiſh that ſome, for their private Humour, had not ſowed the Tares of Diſcontent in that Field of the Commonwealth, then might we have expected and found good Fruit. But now the beſt Way to redeem this loſt Privilege (for which we may give thoſe Thanks only) is to give all opportune Appearance of Obedience and Dutifulneſs to his Majeſty's Command.

The two Houſes of Parliament without the King cannot make a Law, nor without his Royal Aſſent declare it: he is not bound to call it but when he pleaſeth, nor to continue it but at his Pleaſure. Certainly there was a King before a Parliament, for how elſe could there be an Aſſembly of King, Lords and Commons? And then what Sovereignty was there in the Kingdom but this? His Power then was limited by the poſitive Law; then it cannot be denied but originally the King had the Sovereignty of the whole Kingdom both by Sea and Land, who hath a Power of charging the whole Kingdom.

3. The Law that hath given that Power, hath given Means to the King by this Authority to put it in Execution. It is a very true Rule, The Law commands nothing to be done, but it permits the Ways and Means how it may be done; elſe the Law ſhould be imperfect, lame and unjuſt: therefore the Law that hath given the Intereſt and Sovereignty of defending and governing the Kingdom to the King, doth alſo give the King Power to charge his Subjects for the neceſſary Defence and Good thereof. And as the King is bound to defend, ſo the Subjects are bound to obey, and to come out of their own Country, if Occaſion be, and to provide Horſe and Arms in foreign War; and ſuch are compellable now to find Guns inſtead of Bows and Arrows, ſo Ammunition, as Powder, Shot, *&c.* Then if Sea and Land be but one entire Kingdom, and the King Lord of both, the Subject is bound as well to the Defence of the Sea as of the Land; and then all are bound to provide Ships, Men, Ammunition, Victuals, and Neceſſaries for that Defence. And for us Iſlanders, it is moſt neceſſary for us to defend ourſelves at Sea: therefore it was the great Argument in 88, whether it was beſt to fight with the Royal and Invincible Navy or *Armada* of *Spain* at Sea, or ſuffer them to land; and it was reſolved clearly, that it was better to fight with them at Sea, tho' we loſt the Battle and our Ships, than to ſuffer them to land.

But then there was *Hannibal ad Portas.*

To this I ſhall anſwer afterwards. But here the Maritime Towns ſhall not help the Inland, nor the Inland the Maritime, but each of them bear their own Charge, and defend themſelves. But of this I ſhall likewiſe ſpeak hereafter; yet undoubtedly it is reaſonable that both ſhould join to defend the Kingdom in caſe of Neceſſity.

Now I ſhall endeavour to prove this clearly by Authority in Law, and Precedents in all Ages. And, (1.) It is a great Authority in Law, that there is no expreſs Authority againſt it: tho' there have been ſome Books cited by my Brother *Hutton* and my Brother *Crooke*, (which I ſhall anſwer in their due Place, amongſt other Objections) yet there is not one Authority or Opinion, much leſs Reſolution or Judgment, in neceſſary Time of Danger, that ſays, the King may not charge the Subjects for Defence of the Kingdom.

2. All theſe Authorities that prove the King is truſted with the Defence of the Kingdom, and in divers Caſes give him Aid, Taxes, Subſidies, *&c.* prove that the Subject is bound in caſe of Danger and Neceſſity, to pay them to the King for Defence of the Kingdom.

(3.) All the Authorities of Murage, Pontage, Salt-Peter, *&c.* ſhew that for the good of the Publick the King is intereſted in the Eſtates of the Subject, and may charge them much more, if for the Well-being, than where the Being itſelf of the Commonwealth is at Stake and in Danger.

(4.) The Authority of commanding the Perſons of the Subjects to come out of their own Countries proves it. The Power of commanding the Perſon of the Subject into foreign Parts is in the King; much more the State of Men ſhould be at his Command, in caſe of neceſſary Defence of the Kingdom.

(5.) All the Commiſſions of arraying Men in *Ed.* I. *Ed.* II. *Ed.* III. *Ed.* IV. *Hen.* VII. and *Hen.* VIII. Times, *&c.* are grounded upon the ſame Reaſon, and went out for the neceſſary Defence of the Kingdom. Theſe Writs are not to command the Perſon, but a Ship only, *juxta facultates ſuas*; which are anſwerable in Reaſon to the antient Precedents.

From Authorities I come to Precedents; tho' they be not Judgments, yet they ſhew the Practice of the Law: and what better Book have we in the Law than the Book of Precedents, or what is there of more Authority than that, for we have not the twelve Tables for our common Laws?

The Common Law is but the common Uſage of the Land; and therefore the Precedents alledged by the King's Counſel are of good Authority to prove the Laws in this Caſe; wherein I ſhall not name the Particulars, they have been well remember'd by Mr. Attorney and Mr. Sollicitor: but I will mention the Subſtance of them.

The firſt ſort of Precedents were before the Conqueſt, in the Times of *Edgar*, *Alfred*, *Etheldred*, *&c.* the Uſe was to defend the Kingdom at the Charge of the whole Kingdom, by the Edict of the King. A ſtrong Inference from the Precedent of the Grant to the Clergy and Church of divers Privileges, with theſe Exceptions of *Pontium*, *&c.* in the Times of *Edgar*, *Alfred*, and *Etheldred*, *&c.*

The Council of *Enoch* in *Edgar*'s Time, about 606, mentioned by the learned Antiquary Sir *Henry Spelman*, *fo.* 510. And after thoſe follows *hæ ſunt conſtitutiones*, *&c. fo.* 523. in which are excellent Things, good for Church and Common-wealth. *Cap.* 23. *Navales Expeditiones*, if it be no Act of Parliament, yet nothing is more like an Act of Parliament: take the Phraſe of thoſe Times, and certainly it was either an Act of Parliament, or a Proof of the King's Power, that without Parliament he might charge the Subject for the Defence of the Kingdom in caſe of Danger. And the Word Expedition is uſed for War, and ſometimes for an Army, as *Caſſiodorus* giving the Reaſon of the Name, ſays. In the third Place, it ſhews the Practice of the Kings of *England* to charge their Subjects for the Defence of the Kingdom in caſe of Danger.

Now if this Charge of *Danegelt* be not taken away by any of the Acts of Parliament, it remains ſtill, ſaith my Brother *Hutton.* And ſo I think it doth, or ſomething in lieu of it; for it is not taken away by any Act of Parliament.

In theſe Precedents, obſerve, (1.) That they are all upon the ſame common Reaſon that this is.

(2.) Theſe Writs are not limited for their Number or Time; ſo they prove the Power was in the King to charge his Subjects.

(3.) In theſe Precedents, ſome were to Inland Counties, as *Bucks*, *Huntingdon*, *Bedford*, *Leiceſter*, *Oxford*, *Berks*, *&c.* And tho' they went not generally to all Counties at one time, yet they went to them as occaſion was. And if the Danger had required it, the King might, if he pleaſed, have ſent to all as well as to ſome.

But becauſe there was never any Time, when all the Ammunition in the Kingdom was drawn at one Time to one Place, may it not therefore be done? The commanding ſometimes of one, ſometimes of another, is an Argument they may be all commanded as occaſion requires. I do not build my Opinion upon confuſed Notions, but on Matters digeſted, on Precedents of Weight, the chiefeſt in reſpect of Time: and after the making of *Magna Charta*, 9 *Hen.* III. 13 *Hen.* III. *m.* 48. 18 *Hen.* III. *m.* 7. 13 *Ed.* III. *m.* 77. 23 *Ed.* III. *m.* 4. 28 *Ed.* I. *m.* 23. and many others in *Ed.* I.'s Time, there is proving Contribution towards the Maintenance of the Sea-Coaſts from Inland Towns, as 25 *Ed.* I. *m.* 13. the Abbot of *Robertſbridge*'s Caſe is a full Precedent, notwithſtanding all that hath been ſaid againſt it. So 9 *Ed.* II. *pars* 1. 20 *Ed.* II. *m.* 7. 2 *Ed.* III. *Scot. Roll.* 7 *Ed.* III. *m.* 9. 10 *Ed.* III. *m.* 16, 17. 11 *Ed.* III. 12 *Ed.* III. 14, 15, 16. 18 *Ed.* III. 46 *Ed.* III. *m.* 34. 25 *Ed.* III. *Rot. Franc' m.* 9. 29 *Ed.* III. 1 *Ric.* II. 1 *Hen.* IV. Yet *Hen.* IV. had as much Reaſon to pleaſe the People as any King of *England.* So in *Hen.* V.'s Time, tho' buſied in the glorious Conqueſts of *France*, or rather Recovery of *France*; God forbid we ſhould ſee ſuch Times. So in the Times of *Ed.* IV. *Hen.* VI. *Hen.* VII. and *Hen.* VIII. by way of offenſive War, Writs and Commiſſions to their Subjects to contribute toward it. So in Queen *Eliz.*'s Time, Commiſſions towards the Maintenance of the Kingdom. 11 *Eliz.* 41 *Eliz.* a Commiſſion to the Earl of *Nottingham.* In 88, Letters from the Lords of the Council, which Letters had the Queen's Writs in them.

But my Brother *Crooke* anſwer'd all theſe with this Rule of Law, *Judicandum eſt legibus non exemplis.* To this I anſwer, that Examples and Precedents are good Law; they are Authorities out of the Law, and what of more Certainty? Digeſt of Writs, theſe are *inter Oracula Legis*, Precedents drawn up by Clerks; tho' they paſs ſometimes *ſub Silentio*, yet are they good Authorities in the Law. The Abbot of *Robertſbridge*'s Caſe is a Precedent of great Authority.

But it is alledged, no Precedent goes to Inland Counties.

I anſwer, in truth the Precedents are quite otherwiſe; for ordinary Defence they go to Maritime Counties only, but when the Danger is general, to Inland Counties alſo, and after another manner. For this I refer you to my Brother *Weſton*'s Argument: Theſe could not be ſo frequent; for firſt, Such Danger was but ſeldom: Secondly, We had then double Hoſtility, one from *France* by Sea, another from *Scotland* by Land. Examine the Precedents therefore.

Another Obſervation that my Brother *Crooke* made, is this, that we are compellable by our Perſons and Arms, but not with any Sum of Money.

I anſwer with my Brother *Jones*, that *bona Corporis* are above *bona Fortunæ:* but this Power of Liberty to command the Perſons of his Subjects, he agrees is in the King; then I ſay, more reaſon that their Eſtates ſhould be in his Power in this Caſe of Defence.

Beſides, the Precedents warrant the quite contrary, and Wages have been paid the Soldiers by the Subject in this Caſe.

III. The third thing I ſhall do in this Caſe, is the anſwering of all the Objections which have been made againſt it, which were three.

1. That this Writ was againſt the Common Law.
2. That it was againſt the Statute Law.
3. That many Inconveniences will grow thereby.

1. It is againſt the Common Law, becauſe it is without Precedent: This is the firſt of this kind ſince the Conqueſt; and where there is no Precedent, the Law will not bear it; *Littleton* fol. 32. Lord *Coke*'s Comment upon it: and they put divers Caſes to the ſame Purpoſe.

I anſwer, that there are Precedents for it, and the Law is ſo, that the King may charge his Subjects towards the Defence of the Kingdom in this Caſe.

2. The ſecond Objection is, that it is againſt the Freedom of the Subject, who hath a true Property in his Goods, which cannot be taken away without his actual or implied Conſent. *Lambert* fol. 294. *Mag. Char.* 17 King *John*, *Mat. Paris* fol. 242. *Forteſcue* fol. 9. *cap.* 13, *&c.* 13 *Hen.* IV. the Chamberlain of *London*'s Caſe, *Reg'* fol. 127 *Fitz-herb. Na. Br. &c.*

I anſwer, That the Authority of *Lambert* rehearſing the Laws of the Conqueror, is, *Volumus & concedimus ut omnes liberi homines totius Monarchiæ Regni noſtri habeant & teneant terras ſuas & poſſeſſiones ſuas bene & in pace, liberas ob omni exactione injuſta, & ab omni tallagio, ita quod nihil exigatur vel capiatur niſi per commune concilium, &c.* It cannot be conſtrued that they ſhould not be charged, but that they ſhould be free from all unjuſt Taxes. The King is not concluded by the ſubſequent Words *omne Tallagium*; this cannot be ſo general, but the King may impoſe juſt Charges towards the neceſſary Defence of the whole Kingdom. For this is meant, as by the Word Taillage plainly appeareth. *Tallagium* is derived from a *French* Word, and is indeed a cutting Word, and therefore *injuſta Exactio*; which ſhews that for the moſt part it is taken in the worſt Senſe, and as my Brother *Crooke* ſaid it, the manner of expounding it muſt be from the Law.

But my Brother *Crooke* quite left out theſe Words following that declare and expound the former, *viz. Statuimus & firmiter præcipimus ut omnes liberi homines totius regni præd' ſint fratres conjurati ad monarchiam noſtram pro viribus ſuis & facultatibus contra inimicos pro poſſe ſuo defendend' & viriliter ſervand' &c.* Whereby it is apparent,

(1.) That the Kingdom is to be defended by the whole Kingdom *pro facultatibus* with their Goods, as well as *viribus* with their Perſons.

(2.) It comes after the Chapter of Tenure and Services, by which they are bound to defend, *Terras & honores ſuos, &c.* which ſhews that he meant not to diſcharge any from the general Charge of defending the Kingdom in caſe of Neceſſity.

The next Objection is the Charter of King *John*, *Nullum tallagium imponatur niſi per commune concilium.*

I anſwer, The Words are concerning the Defence of his own Perſon, and not the Kingdom; and therefore it is excepted, *niſi ad redimendum corpus noſtrum*; and in the original Act theſe Words are left out. Scutage, Murage, and other Aids there mentioned, ſhews that only thoſe were meant, that were of private Benefit. They were not to be impoſed by the King upon any Subject, without Parliament, but not to bar himſelf from laying ſuch as were for the Publick Good.

The next Authority that was objected, was *Forteſcue*, which was moſt preſs'd and inſiſted on by my Brother *Crooke*.

Before I come to the Words themſelves, note (1.) The Time when he wrote that Book, it was after all the Acts of Parliament that took away the Royal Power; yet it did not mention them, ſo as muſt needs relate to the Common Law. It was writ when the Civil Wars were between the two Houſes of *York* and *Lancaſter*, and he himſelf was in Exile; no time then to diſpleaſe the People.

(2.) It ſhews the Difference between Kingdoms, when a Monarch rules, that challengeth all Power over his Subjects, and a Monarch that governs according to the poſitive Laws. The Words that ſeemed to be againſt this Charge are, *fol.* 9. *Cap.* 26. *Rex* Angliæ *politice imperans genti ſuæ nec legem ipſe ſine ſubditorum aſſenſu mutare poterit, nec ſubjectum populum renitentem onerare impoſitionibus peregrinis. Cap.* 13. *fol.* 32. *Rex caput corporis politici mutare non poteſt leges corporis illius nec ejuſd' populi ſubſtantias proprias ſubtrahere reclamantibus eis aut invitis.* And *Cap.* 36. *fol.* 84. which my Brother *Crooke* ſays is the expreſs Authority *in hoc individuo:* The Words are, *Rex regni* Angliæ *ibidem per ſe aut miniſtros tallagia ſubſidia aut quovis onera alia imponit legibus ſuis aut leges eorum mutat vel novas condit ſine conceſſione vel aſſenſu totius regni ſui in parliamento ſuo expreſſo, &c.*

From them all, I take the true Meaning of him to be; and I hold, (1.) That the Kingdom ought to be govern'd by the poſitive Laws of the Land; and that the King cannot change or make new Laws without a Parliament.

(2.) That the Subject hath an abſolute Property in his Goods and Eſtate, and that the King cannot take them to his own Uſe.

(3.) That for his own Uſe he cannot lay any Burden upon his Subjects, without the Subjects Conſent in Parliament.

(4.) That for the Benefit of Trade, the King may lay fitting Impoſitions, and may command that which is for the neceſſary Defence of the Kingdom; which is no Command of Charge, but Command of employing.

(5.) I anſwer therefore to the great Objection, That the Liberty of the Subject is loſt, and the Property is drown'd which they have in their Eſtates.

Firſt, I ſay, all private Property muſt give way to the Publick; and therefore a Treſpaſs to private Men may be puniſhed by Indictment, becauſe it is an Offence of the publick Weal: and tho' every Man hath a Property in his Goods, yet he muſt not uſe them in detriment of the Common-wealth. A Man may give his Graſs or Corn away in the Field, or when it is in his Barn: But if he will cut it unuſually, or burn or deſtroy his Corn, or if he throw his Goods into the Sea, that they may periſh, theſe are Crimes puniſhable by the Common Law: ſo is tranſporting of Goods, Commodities, againſt the publick Good: Therefore the Directions of the Statutes, for the Reſtraint hereof, are from the Common Law. And the Reaſon of this is, becauſe the publick Property muſt take place: And if in petty Buſineſs it may be, then much more in time of publick, and great Neceſſity and Danger. And it is rather an Averment of the Subjects Property, that in Caſe of Neceſſity only they may be taken away, than contrary to it.

My Brother *Hutton* and my Brother *Crooke* agree, that all are bound in caſe of Neceſſity *exponere ſe & ſua*, to defend the Kingdom; and may not the King command a Part, with more Reaſon than all?

In the next place, I ſhall remove a Scandal that hath been put upon the King, how that his Majeſty hath meant to make a private perſonal Profit of it.

What he hath done is well known; and I dare confidently ſay, all hath been ſpent, without any Account to himſelf, and that his Majeſty hath been at great Charge beſides towards the ſame: And I heard it from his own Royal Mouth, he ſpake it to me, and my Lord *Brampſton* can teſtify as much, that he ſaid, it never enter'd into his Thoughts to make ſuch uſe of it; and therefore ſaid, he was bound in Conſcience to convert it to the Uſe it was received for, and none other; and that he would ſooner eat the Money, than convert it to his Uſe. Therefore, he that thinks the King made a Revenue of it, doth highly ſlander his Majeſty. But let Kings be as *David* was, Men after God's own Heart, yet they will not want a *Shimei* to rail on them.

But tho' (bleſſed be God) his Majeſty is ſo gracious and loving to his Subjects, and ſo juſt, that we need not fear he will charge them but upon urgent Neceſſity; yet we know not what ſucceeding Ages will do.

It is not well to blaſt ſucceeding Ages; and if they ſhould hereafter charge unreaſonably without Cauſe, yet this Judgment warrants no ſuch thing. Again, it is no Argument to condemn the true Uſe of a thing, becauſe it may be abuſed. And again, The Law repoſes as great Truſt in the King as this. The King may pardon all Offences; but if he ſhould, then none ſhould be ſafe. The King may make Peace and War at his pleaſure: but yet ſhould he make Peace, when Peace would ruin us; or War, when War would undo us; it would be worſe than this. Therefore it cannot be ſuſpected, that the King will do any thing againſt Law and the publick Good of the Kingdom: Therefore the Law ſays, the King can do no Wrong; for he is *Sponſus Regni*, as in *Magdalen-College* Caſe.

Then they object *Clark*'s, and the Chamberlain of *London*'s Caſe. Theſe Caſes are nothing againſt this, but rather for it.

The Record of 14 *Ric.* II. *Rot.* 60. *B. R. Lever*'s Caſe, in an Action of Treſpaſs, for taking away his Goods, without his Conſent, had Judgment to recover in *Durham*.

But the Caſe was this: One *Lever* of *Durham* brought his Action againſt another for entering into his Houſe, and taking away his Goods, and 60*l.* in Money; the Defendant pleaded Not Guilty, and the Jury upon a ſpecial Verdict found that the Defendant took away his Money, but upon this Occaſion: The *Scots* had invaded the Realm, and were in *Durham*, and could not be gone without a certain Sum of Money: Whereupon the Inhabitants aſſembled, and amongſt the reſt, the Plaintiff was one; and they made an Order to abide the Ordinance of the greater Part, which was to give the *Scots* the Money deſired; and becauſe the Money was to be paid preſently, ready down, therefore they made another Order, to ſearch in all Men's Houſes, and take away what Money they found; and according to which the Defendant ſearched the Plaintiff's Houſe, and took away 60*l.* and becauſe it was without Conſent the Plaintiff had Judgment in *Durham:* but upon the ſpecial Verdict it was reverſed in the *King's-Bench*, becauſe it was with his Conſent. Indeed the Reaſons were, *1ſt*, becauſe he had ſufficient Remedy againſt the Commonalty of *Durham*, and *2dly*, becauſe he did it as a Servant.

But I anſwer, *1ſt*, Tho' the Ordinance was good by Conſent, yet it followed not that it was void without Conſent; the Queſtion is there only, whether good by Conſent. *2dly*, It follows not but that all Men without Conſent are bound to contribute towards a general Charge for neceſſary Defence.

Another Objection made by my Brother *Crooke* was 2 *Ric.* II. *Pars* 1. where all the Lords and Sages met together after Parliament, and it was agreed by them, that they could not charge the Commons without Parliament; that this was a Declaration of the Law in Parliament, and almoſt equivalent to an Act of Parliament.

I anſwer, (1.) that this was no Act, but a Declaration in Parliament of the Law, and indeed no Declaration, but a Relation by the Chancellor.

(2.) If it had been a Declaration, yet it had not been binding without the King.

(3.) It is no Precedent of a good look, it was when the King was young, and the Parliament had the Regency: Counſellors, Treaſurers, and all his Officers about his Perſon, were choſen by the Parliament; and therefore, no wonder if they endeavoured to pleaſe the Parliament.

(4.) It is a Precedent that they, *i. e.* the Lords, could not charge the Commons by themſelves.

Again, the Caſe was not for the Defence of the Realm, but for Wars in *France*, *Scotland*, and *Ireland*; theſe were the many Wars. Tho' Subjects may be charged for neceſſary Defence of the Kingdom, yet if Foreign Wars be together with them, it is otherwiſe. And therefore in the Parliament before, they ſaid ſuch Charge belong not to them; and therefore they hold, they ought not to bear it: and ſo that Rule of *Gaſcoigne*, 24 *Hen.* IV. *fol.* 4. That no Man ſhall be charged without Parliament, where Bulwarks were built, *&c.* it proves not, tho' it implies, that if it had concern'd the Kingdom, it had been otherwiſe.

3. The next general Objection was the great Inconveniency that would hereupon enſue; if ſuch a Charge might be, then none knows what his Charge will be, for the King may command it as often as he pleaſes, an

Example hereof they put in *Danegelt*, that in eleven Years grew from twelve to forty-eight thouſand Pounds: therefore the Law hath provided againſt that Uncertainty, and limited it to a Parliament.

I anſwer to this, (1.) That if Danger increaſe, ſo muſt the Charge; again, the King may command all Perſons when there is Neceſſity, and as often as he pleaſes he may do it. Is not this as great an Inconveniency as in this Caſe, and yet that abates not the Writ? My Brother *Crooke* ſhewed how Subſidies increaſed, and yet no Inconveniency in that he conceived; and indeed this ſhews the Proviſion of Charge muſt be according to the Danger.

Beſides, No Abuſe of any thing, muſt take away the true and lawful Uſe thereof. But we cannot ſuſpect that there will be ſuch Abuſe. *Ubi confidit Deus, & lex, & nos etiam confidemus.* God and the Law hath truſted his Majeſty, and we ſhould not diſtruſt him.

In time of imminent Danger, *tempore belli*, any thing, and by any Man may be done, Murder cannot be puniſhed: yet, ſays my Brother *Crooke*, the King cannot charge his Subjects in any Caſe without Parliament; no, not when the Kingdom is actually invaded by the Enemy. But truly I think, as he was the firſt, ſo he will be the laſt of that Opinion, eſpecially having delivered his Opinion, that the King is ſole Judge of the Danger before, as indeed he is; and that the King is ſole Judge of the Danger, not any have denied it, and therefore elſe it ſhould be no Danger, but when every one ſhall ſay, you ſhall judge that the Kingdom is in Danger.

(2.) There hath been and may be, as great Danger when the Enemy is not diſcerned, as when in Arms and on the Land.

In the Time of War when the Courſe of Law is ſtopped, when Judges have no Power or Place, when the Courts of Juſtice can ſend out no Proceſs, in this Caſe the King may charge his Subjects, you grant. Mark what you grant; when there is ſuch a Confuſion as no Law, then the King may do it. *Dato uno abſurdo, infinita ſequuntur.*

Then there may be a Time of War in one Part of the Kingdom, and the Courts of Juſtice may ſit; as in 14 *Hen.* III. *Rich.* II. and *Hen.* VII.'s Time, Wars were in ſome Parts of the Land, yet the Judges ſat in *Weſtminſter-Hall.*

(1.) Now, whether a Danger be to all the Kingdom, or to a Part, they are alike perillous, and all ought to be charged.

(2.) The King may charge the Subjects for the Defence of the Land. Now the Land and the Sea make but one intire Kingdom, and there is but one Lord of both, and the King is bound to defend both.

(3.) Expectancy of Danger, I hold, is ſufficient Ground for the King to charge his Subjects; for if we ſtay till the Danger comes, it will be then too late, it may be.

And (4.) His Averment of the Danger is not traverſable, it muſt be binding when he perceives and ſays there is a Danger; as in 88, the Enemy had been upon us, if it had not been foreſeen, and provided for, before it came.

But I will not determine the Danger now. Do not we ſee our potent Neighbours, and our great Enemies heretofore, were they not prepared for War; and was there not another Navy floated upon the Sea? and was not the Dominion of the Sea threatned to be taken away? As long as this Danger remains, I ſhall bleſs God for ſuch a King as will provide for the Defence of the Kingdom timely, and rejoice to ſee ſuch a Navy as other Nations muſt veil to; and we are not in Caſe of Safety without it, and ſhould loſe our Glory beſides.

The next Objection of my Brother *Crooke* was, that there is a Means provided by Parliament, which will not with-hold Aid for the Defence of the Kingdom, and it were a Sin to deny it in caſe of Neceſſity. And in *Ed.* I.'s Time, *Ed.* II.'s Time, and 4 *Ed.* III.'s a Parliament was to be held every Year for the Defence of the Kingdom, *& propter ardua Regni.*

I anſwer, that might well be, but then, in the Time of *Ed.* I. *Ed.* II. *Ed.* III. there were Pleas in Parliament, but thoſe are now laid aſide; and that the Subjects ought to give the King Subſidies; I will not ſay that, inferring they will not do it, nor am I apt to believe it; but I hold, Parliaments are the excellent Means to raiſe Aid for the Defence of the Kingdom, and yet they are not the only Means, for then the Parliament, and not the King, ſhould be the only Judge, and have the Defence of the Realm; or elſe it ſhould give the King a Charge of Defence, without Power or Means.

The Objection of the King's Revenues, Tenures and Prerogative, they have been unfitly remembred, and they have been fully anſwered.

The Statute of Tonnage and Poundage given to the King, for and towards the Defence of the Sea, and the other Acts of Parliament, that reſtrain the King's Power, ſo that he cannot now charge the Subject without his Conſent in Parliament, I ſhall anſwer in the next Place; and before I come to the particular Acts, I will ſhew what, in my Opinion, they may do.

1. Acts of Parliament may take away Flowers and Ornaments of the Crown, but not the Crown itſelf; they cannot bar a Succeſſion, nor can they be attainted by them, and Acts that bar them of Poſſeſſion are void.

2. No Act of Parliament can bar a King of his Regality, as that no Lands ſhould hold of him; or bar him of the Allegiance of his Subjects; or the Relative on his Part, as Truſt and Power to defend his People: therefore Acts of Parliament, to take away his Royal Power in the Defence of his Kingdom, are void (as my Lord Chief Baron ſaid;) they are void Acts of Parliament, to bind the King not to command the Subjects, their Perſons and Goods, and I ſay, their Money too: for no Acts of Parliament make any Difference. Now to the particular Statute objected.

(1.) 25 *Ed.* I. *Chap.* 5. *Confirmatio Chartarum*, the Words are theſe, 'Aids or Taxes, granted to the King ſhall not be taken for a Cuſtom or 'Precedent: and *cap.* 6. Moreover, we have granted for us and our 'Heirs, that for no Buſineſs from henceforth, we ſhall take ſuch Man'ner of Aids, Taxes, nor Prizes, due and accuſtomed.' And *cap.* 7. a Releaſe of Toll upon every Sack of Wool: 'And grant, that we will not 'take ſuch things without their common Aſſent and good liking, ſaving to 'us and our Heirs, the Cuſtoms granted by the Commons aforeſaid.'

As to the other Statute, *de Tallagio non concedendo. cap.* 1. *Nullum tallagium imponetur niſi per commune concilium regni noſtri. cap.* 2, 3, 4, 5, *&c.*

Firſt, Theſe Words muſt have relation to the Aids before, and there be divers Aids; as ſome by Taillage, ſome by way of Prize upon Goods, and Ranſom of his Majeſty's Perſon, *&c.* the King thereupon makes this Grant, which hath Relation to ſuch Aids as were granted voluntarily. *Secondly*, Antient Aids are there reſerved, as redeeming the King's Body, *pur faire fitz Chevalier, & pur marier ſon file eigne*; and ſo all other antient Aids, which are to be underſtood with an *ad redimendum corpus, &c.*

And to the Statute *de Tallagio non concedendo*, in ſome Books it is not in Print, but mentioned in *Mag' Char' Raſtal*, and the Petition of Right, 3 *Car.* 1628, to be in 24 or 25 *Edw.* I. And therefore I anſwer, It is not in the Parliament-Roll, and there is Variance about it; and therefore it is but an Abſtract, and no ſubſtantial Statute.

But ſince it hath paſſed for a Statute, and poſſibly may be one, I agree with all the reſt of my Brothers, that it is a Statute: And then I anſwer, (1.) That *nullum tallagium imponetur, &c.* that is, no unlawful Taillage ſhall be impoſed upon the Subject without his Conſent; or elſe the Aids *pur faire Fitz Chevalier & pur file marier*, had not been excepted.

(2.) No Aids ſhall be impoſed but by Contribution of the King and People; and here the King is taxed as well as they.

(3.) An Act of Parliament can by no Means take it away, much leſs by thoſe general Words.

Obj. In 14 *Ed.* III. *cap.* 1. No Man from henceforth ſhall be chargeable, but by common Conſent in Parliament.

To this I anſwer, That tho' it be but temporary in ſome Parts, yet it is binding only *ſecundum ſubjectam materiam*: And the Words are general, as in the other Statute *de tallagio, &c.* beſides, the Practice in that King's Time, and after, beſt interprets it.

Obj. 25 *Ed.* III. *cap.* 8. No finding of Men at Arms, unleſs by Conſent, much leſs finding of Ships.

Anſw. This takes not away any former Law; and therefore the Precedents following, 4 *Hen.* IV. ſhew that it does not reach to this Caſe.

Obj. 2 *Hen.* IV. *m.* 2. which is abſolute in the Point, ſaith my Brother *Crooke*, where a Commiſſion went forth for the Defence of the Sea, whereof Complaint was made in Parliament, with Deſire that it might be repealed, and it was done.

Anſw. I am of the contrary Opinion; for the Petition was, that it might be releaſed; and the Anſwer was but this, that it ſhould, but the King would treat with the Council about it; and it was but a Repeal of his Commiſſion then only.

Obj. 1 *Ric.* III. *cap.* 2. where the King grants, that he would not hereafter charge them by Benevolence, or any ſuch Charge, but that they ſhould be dampned by the Law, by no ſuch Charge or Impoſition, *i. e.* by no ſuch Charge of Money.

Anſw. That Statute was only againſt Benevolences, and made by a King that had Reaſon, as we all know, to pleaſe the People for his own Ends.

Obj. 2. The Statute of *Tonnage* and *Poundage*, granted for the Defence of the Sea, the Words are, That no Taillage or Aid ſhall be without Act of Parliament, 2. That the King hath Means to defend the Kingdom, with a Proteſtation not to draw it into Example, 4 *Hen.* IV. 13 *Hen.* IV. Parl. Roll, *m.* 10.

Anſw. I will not argue whether *Tonnage* and *Poundage* was before this Act of Parliament, nor that Time out of Mind they were granted to the King: But my Anſwer is, They are only for the ordinary Defence of the Sea. And the Proteſtation of 4 *Hen.* IV. is a Proteſtation of the Commons only; and this Charge is not taken away thereby, and *Tonnage* and *Poundage* is for and towards the Defence of the Sea: ſo all the Acts are, and ſo I agree. But for Extraordinaries, and but ſolely in caſe of Danger of the whole Kingdom, that they ſhould not be granted, cannot be collected out of theſe Grants.

The *Laſt* Objection is the Petition of Right, 3 *Car.* That no Charge ſhall be impoſed upon the Subject, but by Parliament.

Anſw. I was then Speaker of the Lower Houſe, and I have Reaſon to remember what then was made. And I ſay, 1. There is no mention of this Caſe. 2. There was no new thing granted, but only the antient Liberties confirmed, taking notice of the Commons Proteſtation, not to bind the King from his ancient Rights. 3. Look upon the Prayer what is deſired; and the main Scope was, (1.) Generally againſt Loans, and this could not be included in theſe Words. (2.) Impriſonment without ſhewing Cauſe. (3.) Billeting of Soldiers. And, (4.) Mariners lying within the Land.

IV. I have now done with my third general Head, I come to the laſt, touching the *Form* and *Legality* of the Writ.

Firſt, For the Legality of the Writ, and the Objections touching the Neceſſity, I have anſwered before; the main Objection is to the Body of the Writ.

It is ſaid, [1.] The Command to charge the Sheriff to levy and aſſeſs Money according to his Diſcretion, is not legal; for that the Sheriff ſhould make it *per ſacramentum*, by the Oaths of a Jury, as in the Writs of Partition, Diſtribution *pro rata, &c.* This Aſſeſſment is not warranted by the Precedents, (ſay my Lord Chief Baron and my Brother *Crooke*) they do it not upon their Knowledge, but Preſumption of Mens Eſtates; and from thence they ſpeak againſt the too vaſt Power given to the Sheriff, to enhance it as he pleaſes.

[2.] The Inconvenience is great hereby; for by this means there is a great Inequality in the Aſſeſſment.

I anſwer, firſt, to the Aſſeſſment *per ſacramentum.* No Reaſon why it ſhould be here; for it is not done in the Commiſſions to levy Subſidies, much leſs ſhould it be done here for a Matter of great Haſte: And beſides, the Sheriff is truſted with more; for he hath the Truſt of the whole County, and takes an Oath to execute his Office juſtly, whereof this is one Part.

As to what they ſay, that there is no Precedent for it. (1.) I ſay, That there is no Precedent that it hath been done by Jury, but always by the Sheriff, or ſuch whom the King was pleaſed to truſt; and ſince one muſt be truſted, none more fit than he.

(2.) By Example, we ſee, he ſpeeds all, and is moſt ready for it.

(3.) I ſay, the Writ leads not the Aſſeſſment, it commands the Ship to be provided; ſo if that be done, there is no Neceſſity of Aſſeſſment: and if the Towns and Counties ſay they will provide a Ship, and do it, then no Aſſeſſment is requiſite;

but if they do it not, then the Sheriff is to levy it, that the Defence may be ſeaſonable: ſo that the Clauſe of the Aſſeſſment ſhews the Manner of it. When a Multitude is to join, none more fit than he to do it; and no way, better, than to write to him to do it according to Mens Abilities.

(4.) The Clauſe of the Aſſeſſment is not only to the Sheriff, but to the Head Officer of the Town and Borough; and tho' the Diſcretion of the Clauſe be to the Sheriff, yet it appears not, that it is limited to him only.

And whereas it was ſaid, That the Sheriff cannot aſſeſs himſelf, and the Precedents warrant not this Aſſeſſment by the Sheriff:

I anſwer, All the Precedents are not againſt it, but commonly it is not ſo; and yet there have been a Multitude of Precedents thus. As to the Inequality of it, Mr. *Hampden* had the leaſt Cauſe of any Man in *England* to complain, conſidering how he was rated.

Again, all that the Writ commands, is but an Aſſeſſment *juxta facultates ſuas, ita quod omnes, &c.* and if the Sheriff do otherwiſe, and wrong the Subjects, he is anſwerable. By divers antient Precedents it appears, where the Sheriffs have been faulty this Way, they have been puniſhed; and Sir *Walter Norton*'s Caſe, now depending in the *Star-Chamber*, concerns this, for an Abuſe in levying this Charge, when High Sheriff of *Lincolnſhire*.

Truly, I think, as my Lord Chief Baron ſaid, if there had not been an Inequality by the Abuſe of the Aſſeſſes, the Charge had not been complained of; yet the like Inequalities is in Subſidies: And this is no juſt Cauſe of Exception againſt it, but of Accuſation againſt the Sheriff who is to anſwer it. And I can ſay truly, his Majeſty hath been very careful to prevent and remedy the Abuſes therein, and hath often ſat daily in the *Council-Chamber* to give his Advice herein himſelf; and upon his Command Reformation hath been in divers Parts; and it hath been given in Command to all his Judges in their Circuits, to endeavour the ſame in all Parts: And I myſelf, by this Command, have rectify'd Rates in this Kind, that have been unequal. And I doubt not, if the Neceſſity of Danger ſhall ſtill require it, or again, hereafter it may be done with all Equity.

The *Second* Objection is, That the Sheriff cannot tax himſelf, for then he ſhould be Judge and Party in one Caſe; nor can he commit himſelf: and if he be omitted out of the Aſſeſſment, then it cannot be equal, nor cannot be according to the Writ, that commands all ſhould be aſſeſſed according to their Abilities rateably.

I anſwer, This *prima facie* carries ſome Shew with it; but examine Cauſes of leſs Conſequence, and it is eaſily anſwered. The Juſtices of Peace, in levying Subſidies, make Rates for themſelves. The Commiſſioners of Sewers tax their own Lands; and ſo if by Jurors it were done, it would be the like. There muſt be either new Aſſeſſors appointed, or they themſelves muſt do it: That would bring Delay, and this requires Haſte and Expedition; and therefore the Sheriff is fitteſt for this Buſineſs. Authorities in Law there are divers herein, as the Writs for the levying Expences for Knights of the Shire, Direction is to the Sheriff to do it, who aſſeſſes himſelf, and yet he is to execute it: So in a Writ of Recovery *de bonis habitantium*, the Sheriff is chargeable with his Part; yet he is to execute it. If a Fine be laid upon the whole County, he levies it, yet is chargeable with his Part towards it.

Obj. The Writ is directed *probis hominibus*, and theſe cannot be charged in an Inland County.

Anſw. What difference there is *inter probos homines*, between Inland Counties and Maritime Counties, I know not. 24 *Edw.* III. a Writ whereby they were charged in caſe of neceſſity; as to *Yarmouth* it was *probis hominibus*, &c. True, a grant by the King *probis hominibus* generally is void. 1 *Hen.* VI. *Dyer Phil' & Mar.* 7 *Edw.* IV. 14. But a Commiſſion or Writ to aſſeſs them good enough. *Probi homines*, that they know not, nor ſee not, it is not material, for that would make them ſole Judges of the Danger, when as the King only is, and this not traverſeable neither.

Obj. The Writ commands an Inland County to find a Ship and Mariners, which is impoſſible; and *lex non cogit ad impoſſibilia*; and for this my Brother *Crocke* puts the common Caſes, that a general Return, 49 *Ed.* III. 6. and Impoſſibilities are void; a Covenant for impoſſible things is void, but a Bond may be good.

I anſwer now to the point of Impoſſibility. And poſſibly the Ship may be built in an Inland County, tho' to carry it to *Portſmouth* is impoſſible; but it is poſſible to provide a Ship and Mariners, as the Writ commands, which may very well be done with Money.

Obj. But we have none but trained Soldiers, no Mariners; our Country conſiſts in Tillage, and our Men are trained up to the Plough and Huſbandry.

I anſwer, We have the like occaſion of Ploughs and Huſbandry in *Kent*, and we have in many places no Maritime Towns; ſome lie 20 Miles from the Sea, and yet we are juſtly charged to find a Ship. Precedents we have as well as you in *Oxon* and *Bucks*, or elſe none ſhould be charged but Port Towns, and in particular no Law or Statute to exempt them. Until *Alfred*'s time, there was no diſtinction of Maritime or Inland Counties, for then all *England* was but one Maritime County.

Then they objected, the Payment of Soldiers Wages for 26 Weeks, to be in the King's Service, is againſt many Precedents: as 16 *Ed.* II. 10 *Edw.* III. and entirely for Wages to be paid by the County is againſt all the Precedents: and Tenants by Knights Service after 40 Days, are to be paid by the King. And other Precedents my Brother *Crooke* cited, when divers refuſed to go out of their own Country till paid, and Order taken for their Pay by the King. And whereas the County had given Bond for Payment of Soldiers Wages, they were cancelled, and Order made in Parliament, that Soldiers ſhould be at the King's Pay, 2 *Edw.* III. 16. 18 *Edw.* III. *cap.* 7.

Theſe are eaſily anſwered, for theſe Precedents prove no more than Payment of Wages *de facto*, and ſo the King may pay it where it is not due; and for their refuſal, I have nothing to do with that now: but 10 *Edw.* III. *M.* 2. there is mention made of *Berkſhire* Men, commanded to carry their Soldiers forth of their County at their own Coſts; and when the Soldiers refuſed to go thence, no Charge or Payment; for Soldiers uſed to be paid by their County, as in that Caſe; and they were forced to go, and did go, and ſtay there three Years: ſo 13 *Edw.* III. *M.* 8.

Obj. 1 *Ed.* III. *M.* 14 None compelled to go out of their County without Wages paid. 18 *Edw.* III. *M.* 6, 7. that none ſhould go out of their Counties: And not only thoſe that had Offices and Patents to ſerve the King, but all with this Proviſo, that the King ſhould pay them their Wages.

Anſw. 1 *Edw.* III. It is clear, and hath in it the Exception in Caſe of Neceſſity, and to be done as in times paſt.

18 *Ed.* III. It is expreſſed in the Act, when they go to the King's Wars out of the Kingdom: ſo 19 *Hen.* VII. *&c.* Theſe are all but declarative to the Common Law, *Corbet*'s Caſe; the Reaſon is, becauſe the Allegiance of the Subject is not natural, but local.

But that the King ſhall give Wages within his Kingdom, there is no Act of Parliament for it. Now it was reſolved in the *Exchequer*, that the Sea and Land made but one entire Kingdom, and ſo no going out of the Kingdom here; and conſequently the Payment of the Soldiers Wages within the Kingdom is not againſt Law.

The laſt Objection is, that the Writ is illegal, becauſe contrary to *Mag' Char'*, *nullus liber homo impriſonetur.*

Anſw. As touching the Objection of the Nobility, that they are privileged from Impriſonment, it might well have been ſpared; and I know not wherefore it was ſpoken of, unleſs to make them think they were more intereſted than the reſt of his Majeſty's Subjects in this Caſe.

Obj. But yet, I ſay, Noblemen may be impriſoned upon Contempt, as my Brother *Crooke* knows well; and it was reſolved in the Earl of *Lincoln*'s Caſe, in the *Star-Chamber.* It is true, that upon ordinary Proceſs, they are not to be brought to Trial or impriſoned.

Now I anſwer, there is no Impriſonment in queſtion, but the Aſſeſſment only, why he ſhould not pay the Money aſſeſſed, or ſhew Cauſe to the contrary.

Secondly, Were the Writ illegal for Form and Circumſtance, yet this makes not the Command itſelf illegal for Subſtance.

The Exceptions to the *Certiorari* are theſe:

1. The Direction of it to two Sheriffs, one out of his Office, when as the Sheriff in being ought only to return it.

Anſw. Of this there is little doubt; nothing more frequent than for a *Certiorari* to iſſue out of the *Chancery* to two Parties, as to the Executors, or the Judge that took the Fine, and is removed. And ſo upon Commiſſion to take a Fine by *dedimus poteſtatem*; in this Caſe the Writ is *inter brevia irretornabil':* and this muſt remain with the old Sheriff, and are never deliver'd over by the Jury to the new Sheriff. In *Hobart*'s Caſe, in the *King*'s-*Bench*, being convicted of *Hereſy* before Sir *Julius Cæſar* Judge of the Admiralty, Certificate to him after Maſter of the Rolls, and directed to him: ſo in the Caſe of my Lord *Paget.*

Obj. The Writ is without Return, ſaith my Lord Chief Baron; and the *Certiorari*, which is a Year and a half after, cannot renew it.

I anſwer, That ſhall not be the determining of it only; for the time limited expiring, ſhall not deprive one of his juſt Debt.

It is not ſufficient, becauſe it appears not, that Mr. *Hampden* was Tenant or Ter-Tenant, or that *Stoke Mandeville* is within the County of *Bucks.*

2. It appears not that there was any Ammunition or Ship prepared.

I anſwer, It doth ſufficiently appear, that Mr. *Hampden* was Ter-Tenant, for the *Certiorari* was to the Sheriff, who certifies that he was Tenant; for it was in purſuance of the Writ: the Words are, *Virtute brevis Domini Regis huic ſchedul' annexat. certifico quod virtute & ſecundum exigentiam ipſius, &c. Aſſeſſavi, Anglicè* have aſſeſſed, *ſuper ſeparales homines & terræ tenentes Com' Bucks præd' quorum nomina ſubſcribuntur*, &c. It relates to the Place there, Tenants in the County of *Bucks*, and makes Mr. *Hampden* one. And thus the buſineſs of Knighthood was done, and in no other manner.

Then it appears not that the Ship was prepared.

To this I anſwer, *1ſt*, That the Ship was done according to the Command of the Writ. *2dly*, It was prepared. *3dly*, If none had been prepared, the Fault was in them, for that they paid not in their Money.

For the Exceptions to this *Mittimus* I ſay nothing, becauſe I told you the Caſe reſts not upon theſe Words, *Salus Regni periclitabatur*, which is only to bring it to iſſue.

Then they except againſt the *Sci' Fa'*, *1ſt.* That the King is not intitled to bring the *Sci' Fa'.* So there is no *cui oneretur*, to whom he ſhould pay the Money, for whoſe Good or Benefit Mr. *Hampden* ſhould ſatisfy the Money aſſeſſed.

I anſwer, the King is intereſted in all Actions for publick good, and ſhall recover accordingly, as in Caſe of *High-ways*, *Pontage*, *Murage*, &c. much more when it is for the general Defence of the Realm. In a *quare impedit* between two common Perſons; tho' the King be neither Plaintiff nor Defendant, the King ſhall recover therein. Many times in Caſe of a common Informer, the King recovers the one Moiety, tho' no Party; ſo it was in the Caſe of Knighthood, tho' Suit was depending.

Again, all Writs in the Kingdom are the King's Writs, tho' no Fine, much more here for the Defence of the Realm. And it is uſual for the King's Attorney to compel Men to perform charitable Uſes; and the King may queſtion any one for them, in the Caſe of *Aurum Reginæ*, by Proceſs out of the Exchequer.

Again, where it is ſaid, *Quare ipſe de præd' ſumma ſpecificat' onerari & inde ſatisfac' debeat, prout ulterius tibi præcept'*, &c. for tho' the Writ be in the King's Name, yet it is but for the performance of the Work and Charge; and tho' it appears not, who were Collectors or Aſſeſſors, yet it appears it was done. Upon publick Service, Proceſs goes forth in the King's Name; but then it is not ſo fit it ſhould be expreſſed in particular for the King, when it is for the general Good only.

Was not this Objection made by my Brother *Denham?* tho' none more chearfully did ſubſcribe to his Majeſty's Letter, neither was the *Sci' Fa'* without his Advice, being the apteſt Courſe, and better than Treſpaſs: but the Objection that he made was, That the King cannot do any Wrong, nor take without Record, as in Seizure upon Outlawry, Attainder, or the like; and in this Caſe there is no Record upon the Writ 4 *Aug.* no Judgment, *&c.*

I anſwer, This *Sci' Fac'* is not annexed to the Writ, and is a new Action, that Mr. *Hampden oneretur & inde ſatisfaciet*, and after that Judgment upon the Writ, and upon his ſaying nothing, why *revocetur*, there ſhall be a good Record whereupon he ſhall be charged. 3 *Eliz. Dyer* 156. *Ignoramus* is ſufficient Title for the King, and Ground for a *Melius inquirendum.*

No *Sci' Fa'* lies upon the Tenor of a Writ, ſay they: 39 *Hen.* VI. *fol.* 34. 21 *Eliz. Dyer fol.* 205.

I anſwer, a *Sci' Fa'* upon a Recognizance will not lie in *Chancery*, but upon the Record there; yet in debate, an Action of Debt lies upon the Tenor of the Record. 39 *Hen.* VI. the doubt was becauſe the Party might be ſubject to a double Execution, one upon the Record there, and the other upon the Tenor of the Record in another Court. 33 *Edw.* III. Title Tenure by tranſcript 8 *Hen.* V. *Fitz-Her' Error Sci' Fa' Reg' fol.* 51. The Record was before the Juſtices of the *King*'s-*Bench*, the Tenure was of the Treaſury to the Barons of the *Exchequer*; and it is the uſual Order, if a Recognizance be forfeited, to certify the Tenor of a Recognizance; ſo of a Fine of Amerciament, *&c.* to certify the Tranſcript thereof. So the Tranſcript was ſent from *Ireland* of an Act of Parliament; a *Sci' Fa'* thereupon went againſt a Baron in *England:* ſo in Debt, upon the Tranſcript of a Record from *Ireland*, a *Sci' Fa'* here went forth.

Objected it was in the laſt place by my Lord Chief Baron, that Judgment in this Caſe would be fruitleſs, and none ſhould take Benefit thereby; upon this Record he put ſeveral Caſes, wherein Judgment in ſuch a Caſe ought to paſs.

I anſwer my Lord Chief Baron with a Judgment of his own, in Caſe of Knighthood, reſolved here in this Court; the Caſe was this, The King by Writ *Jan.* 1. of his Reign, commanded the Sheriff of *Berkſhire*, that all that had 40*l.* ſhould be in the *Chancery* 31 *January* following, to take upon them the Order of Knighthood. Sir *John Dayxel*, Sheriff of *Berkſhire*, made his return, (as the Sheriff of *Bucks* here) all that are not Knights under the Name of *Illorum*, and ſets down their Names. A *Mittimus* thereupon went out of the *Chancery*, reciting the Subſtance of the former Writ, *Vobis Mittimus præſentibus*, &c. with a Clauſe to enquire after ſuch as were not returned, and to fine them. And upon this a Writ of *diſtringas* to the Sheriff. My Lord Chief Baron and my Brother *Denham* know what Judgment was given; when I obſerved, 1*ſt*, Not the Record, but the Tenor of the Record, was ſent into the *Exchequer*, yet returnable in the *Chancery*. 2*dly*, For the returning of the Names of the Defaulters as here: 3*dly*, Upon the *diſtringas* thereupon was had Execution, much more than here, upon the *Sci' Fa'*. 4*thly*, There was no more Judgment of Record to warrant than here in this.

Now I come to conclude. I have been ſomewhat too bold, in taking more time than is uſual, but I did it to ſatisfy my own Heart, according to which I muſt give my Judgment. What I have omitted I refer to the reſt of my Brothers that went before me, and to my Lord Chief Juſtice that comes after me. The Reaſons I ſhewed whereupon I conceive by the Common Law, and the Fundamental Policy of the Kingdom, that the King may charge his Subjects for the Defence of the Kingdom, and that the King may charge his Subjects towards the Defence thereof when it is in danger; and I hold that the King is ſole Judge of the Danger; and ought to direct the means of Defence.

And therefore this Writ of *Sci' Fa'*, and all the Proceedings in this Caſe, are well grounded according to Law.

My Opinion therefore is, That Mr. *Hampden* ſhall be charged with 20*s.* aſſeſſed, and that my Lord Chief Baron ought to give Judgment accordingly.

The Argument of Sir John Brampſton *Kt. Lord Chief Juſtice of his Majeſty's Court of* King's-Bench, *in the great Caſe of* Ship-Money.

QUARTO *Aug* 11 *Car.* a Writ iſſued out of the *Chancery*, being directed to all Counties of the Realm of *England*, both Inland and Maritime; and among the reſt it was directed to the Sheriff of *Bucks*, for the making and building of a Ship of 450 Tons, and to provide a certain Number of Men with Ammunition and Victuals, to be brought to *Portſmouth*, and from thence to be employed in his Majeſty's Service, for Defence of the Realm, and of the Sea.

Mr. *Hampden*, in the County of *Bucks*, was aſſeſſed at 20*s.* for his Manor of *Stoke Mandeville*, who refuſed to pay the ſame; whereupon a *Certiorari* iſſued to the Sheriff of *Bucks*, to return the Defaulters; amongſt whom Mr. *Hampden* was returned to make Default of Payment of the 20*s.* aſſeſſed upon him.

Whereupon it was by *Mittimus* ſent into the *Exchequer*, and a *Sci' Fa'* thereupon iſſued out of the *Exchequer* againſt Mr. *Hampden*, to ſhew Cauſe why he made Default of Payment of the ſaid 20*s.* Whereupon Mr. *Hampden* appeared in Perſon, and demanded Oyer of the Writs, and Returns thereof, and demurred in Law, with whom Mr. Attorney joined in Demurrer.

Now three Points have been debated already at large in this Matter, *viz.* 1. Whether the King may command this general Charge of his Subjects by Law, or no, without their Conſent in Parliament? 2. Whether this Kind of Aſſeſſment be warrantable by Law, or no? and, 3. Whether the *Sci' Fa'* did well iſſue or not?

In all theſe Matters, ſo much hath been already ſpoken, that if I ſhould not ſay what hath been already ſpoken, I ſhould ſay little to purpoſe. I will not be long; for if I had intended it, my Lord *Finch* hath prevented me in it; for he hath taken from me very much that I ſhould have ſaid, and inſiſted upon.

That which this Caſe reſteth upon, in my Opinion, the Vote of the Court hath paſſed already by the greater Number of Voices, that mine will do nothing which way ſoever I go: yet being to deliver my Opinion, I ſhall ſhew my Reaſons; and that I ſhall do without any other Defence.

Concerning the firſt Point, Whether his Majeſty may impoſe that general Charge upon his Subjects by Law or no? I am of Opinion, that whenſoever the whole Kingdom is in danger, his Majeſty may command all his Subjects to join with him in this Caſe for the Defence of the Kingdom.

My Brother *Finch* hath inſiſted ſo fully upon this Matter, that I ſhall need to ſay but little: But yet ſomething I muſt ſay, as well as my Brothers that have ſpoken before me, to diſcharge my Conſcience: And for that which I ſhall ſay, my Intent is to inſiſt upon ſome few of the principal Statutes, which have been already recited.

For this Point, in my Opinion, will reſt upon the ſeveral Statutes and Acts of Parliament that concern this Caſe; and I take theſe Statutes to be merely Declarations in affirmance of the Common Law. And I ſhall begin with the Statute 1 *Edw.* III. *cap.* 5. and I ſhall not go far from the Intent of the Statute; I ſhall ſcarce make uſe of any Precedents, tho' many have been uſed, but only ſo far as they may ſeem to expound and declare the true Meaning of thoſe Statutes.

And whereas it is objected from the Statute 1 *Edw.* III. That no Man ſhall be compelled to go out of his County wherein he liveth, except in caſe of Invaſion, and Neceſſity requireth, and then it ſhall be done as in Times paſt:

I anſwer, That this is merely declarative, and ſpoken in affirmance of the Common Law, and this Uſe is declared by this Statute to be the antient Law of the Realm. Now what that Uſe was, will be a very great Queſtion in this Caſe. Indeed it hath been much inſiſted upon, both by Mr. *Hampden*'s Counſel and my Brother *Crooke*, that the Subjects going forth of the Shire ſhall be at the King's Charge, which they have affirmed by divers Statutes: But that which will go far in this Caſe, as my Brother *Berkley* well obſerved, is out of the Precedents of *Edw.* I. *Edw.* II. and *H.* III's times; and in them you ſhall find it to be for foreign Wars, or elſe for ordinary Defence, as for pillaging of Boroughs or private Towns by Pirates, when the Subjects have not given their Aids in ſuch Caſes. And there is no doubt but the King hath paid the Charge in ſuch a Caſe, for the Defence of the Realm; but the Subjects gave the King Subſidies to do it withal.

But the Queſtion is, What the Subject in this Caſe, *ſecundum legem Angliæ*, may be compelled to, in caſe of Neceſſity, for Defence of the Kingdom?

I anſwer, They may be compelled to this Charge, *ſumptibus propriis*, for the Soldiers Wages; but to go out of the Realm, or their Shire, muſt be at the King's Pay, according to the Common Law of *England:* But in times of ſudden Defence, there is no time to ſtand upon Wages. It appears both in *Fitz-Herb. Na. Br. fol.* 28. and alſo in my Lord *Coke* in *Calvin*'s Caſe, the King may command his Subjects upon their Allegiance, to go with him, as well in Wars without the Realm, as in his Wars within, and with him, and without him, in the King's Service.

By the Statute of 18 *Edw.* III. and 11 *Edw.* III. Men of Arms, as Hobbellers, Archers, *&c.* are to go in the King's Service, as in *England*, ſo out of *England*, was the Matter of theſe Laws.

And my Lord *Finch* ſaid, This was the very Common Law of *England*; ſo that it is clear, theſe two Statutes are declaratory Laws in affirmance of the Common Law. In 7 *Hen.* IV. Title *Tenure* 44. there it is ſaid, a Man is not to go with the King in his Wars, out of the Realm, without Wages. And ſo 7 *Hen.* IV. Title *Tenure* 73. the Subjects of *England* are not to go with the King beyond the Seas, without their Wages: But in the Realm they are at his Command, and there is no Wages to be given. So it is in going out of *England*, when they are at the King's Charges; but within, at their own. And if the going out of the County be at their own Charges, I know not but that ſhould put an end to the Caſe, that the Defence of the Realm muſt be at the Subjects Charge.

It is of dangerous Conſequence for Judges, in their Judgments, to rely too much upon Precedents, that perhaps went forth thro' the Neceſſity of the preſent Times. But that is not our Caſe here; we are here directed to know what was uſed in times paſt, in this Caſe, before the making of this Statute: So that in this Caſe we take the Uſage not to declare or prove a Law, but that Uſe is declared by this Statute to be a Law. Now therefore, we muſt know what the Uſe was: now that the Uſe was, that the Subjects of this Realm ought to be charged in time of common Danger, appears by a Multitude of Precedents applied rightly to the Statute of *Edw.* III. which do declare the Law upon the Statute.

And to ſhew what the Uſe was, I ſhall rely chiefly upon thoſe Precedents that are moſt judicial. *Firſt*, that of 25 *Edw.* I. *Term' Mich' Rot.* 72. *Banc' Regis*, in the Abbot of *Robertsbridge*'s Caſe; compare that and this together, and I know not what more can be anſwered, than that this Uſe for the Subject to maintain their Peace, was an Uſage, Law, and Cuſtom of the Realm. 10 *Ed.* III. *M.* 2. *fo.* 18. the King by his Writ ſent a Command to ſend to *Portſmouth* one hundred Foot and twenty Horſemen to guard the Sea-Coaſts. They refuſed to do that Service, and would not go without Wages. The King ſent Anſwer in theſe very Words, *That no Wages were due, for it was a publick Danger.* And ſo 25 *Ed.* III. *cap.* 8. it is generally aſſented to by Parliament.

But there we have a general Law in the firſt Statute 1 *Edw.* III. which was grounded merely on the Common Law, and ſo was the Statute 25 *Edw.* III. and the reſt to the ſame purpoſe, becauſe it was againſt the Right of the Realm. And this Statute of 25 *Edw.* III. was merely grounded upon the Petition of the Commons; then certainly this finding of Arms was intended by that Statute to be againſt the Right of the Realm.

Beſides all this, to keep ourſelves to that which is legal and authentical, ſo the Parliament Roll 13 *Ed.* III. *M.* 9. & 11. it is there apparent, that it is not againſt the Right of the Land to charge the Subject; then how comes it to be againſt the Right of the Realm 25 *Edw.* III. for then there was no Statute?

Now to bring it down to our Times. In 26 *Ed.* III. *M.* 44. every Maritime Town was charged to keep a petty Watch, there being ſome imminent Danger; therefore they pray, not to be diſcharged, but that it might be reduced to a leſſer Charge, being it was but a petty Watch to guard the Sea-Coaſt; much leſs then is there cauſe for the Subject to ſeek to be diſcharged when the Enemy is approaching. 5 *Ed.* III. there was a Commiſſion iſſued out, to diſtrain every one *ſecundum poteſtatem*, in Matters of Array; here is now the Judgment of the whole Houſe of Parliament, that Men according to their Abilities are to be charged to join in charge with the King, to defend the Realm *ſumptibus propriis.* Thus much for Defence upon the Land; now for Defence upon the Sea.

In the Statute 18 *Ed.* III. *cap.* 7. that they who ſerve the King out of the Kingdom, ſerve for Wages; but in caſe of neceſſity, without the Realm, in times paſt, by no Precedents, ſaith my Brother *Crooke*, can it be proved it was done before.

I anſwer, that the Sea is within the Kingdom; ſee 2 *Ed.* III *cap.* 10. *Protect.* 46. *Bract' lib.* 2. *fol.* 365. there the Sea is made part of the Kingdom.

Doctor and Student, *cap.* 51. It is the ancient Cuſtom of *England*, that the King is Lord of the narrow Seas. But that which I moſt rely upon is, from the Statutes of 1 and 18 *Ed.* III. for they both meet in one, which is according to the Common Law; for all the difference thereof is, the Subject to go out of his own County whether to defend the Land or the Sea.

In the Statute of 1 *Ed.* III. it is objected, that there is no Precedent for Inland Counties.

But I anſwer, if not from Inland Counties, yet there is for Maritime, as in 14 *Ed.* III. *Term. Mich.* But I rely not upon Precedents for either, but only upon thoſe Precedents that went out to the Ports and Maritime Towns: for it was well obſerved by the King's Counſel, that they were not grounded upon any Precedents or Charters, but only upon ancient Cuſtoms. But if the Precedents to the Maritime Towns were directed in Caſe of Neceſſity, then I ſee no Reaſon but that it may be done now; which was indeed intended by the Statute of 1 *Ed.* III. as the Precedents do plainly declare; and they were then more common than Writs of this nature iſſuing forth in this Caſe, and the Commons were then bound to Land-Service, and the Mariners to Sea-Service; and they were compelled to it at their own Charge, merely upon their Allegiance, both in *Bedford*, *Bucks*, *Lincoln*, with many other Counties. If then they may be compelled to go out of their own proper Counties, to defend that Part of the Realm that they live near unto, why may they not alſo be compelled to go to defend the Sea-Coaſt? The Sea-men were willing to bear ſome Part of the Charge for the Defence of the Sea, becauſe the Inland Counties did bear their Charge of the Land-Service and of the Ports: And if they may be compelled in the Inland Counties to defend their Inland Counties, and the Sea-Men to defend the Sea-Coaſt; then I know no Reaſon but that they may be compell'd all in general to bear a public Charge in Caſe of Neceſſity.

I am ſtill upon the Statute 1 *Ed.* III. wherein I find Mr. *Selden* in his *Mare Clauſum*, ſays it was an ancient Uſe to charge the Inland and Maritime Counties in Caſe of Neceſſity; and therefore in my underſtanding, I hold it to be *ſecundum legem Angliæ*.

But here my Brother *Crooke* objects, there is no Statute or Precedent to ſhew that any Inland Counties were charged.

I anſwer, that Statutes and Precedents do not extend to our Caſe, for this was in uſe many Years before the making of any Statute. See the Statutes of 1 *Ed.* I. and 1 *Ed.* III. They cannot croſs one another, for then could not the Statute of *Ed.* I. be confirmed by the Statute of *Ed.* III.

Again, concerning the Statute of finding of Men and Arms, it is true, it is merely the Common Law of *England*, and that merely without common conſent in Parliament, as my Brother *Berkley* ſaith, that the Statute of 9 *Hen.* III. and 25 *Ed.* III. *cap.* 11. are the great Charters rather than Statutes; and in King *John*'s time it was not taken for a Statute, but only for a Declaration. And ſo it was taken in the time of *Hen.* IV.

But now if concerning the charging of the County, the ſaid Statutes were nothing but according to the Common Law of *England*, I cannot ſee how they ſhould croſs another now; for there is no difference, but only in ſuch things as are given as a Benevolence to the King, as in 1 *Ed.* III. *cap.* 5, 6.

As for the Statute *de Tallagio non concedendo*, we deny it not; but the difference is in the occaſion of the Statute of 14 *Ed.* III. There was a pretty Caſe put by Mr. *Holborne* about the Office of Alnage, where there was but a Fee to be paid out of it, and held a Taillage; but there is great difference between the Taillage and this Service, which every Subject is bound to do by his Allegiance to his Sovereign Lord, *Fitz' Her'*. *Na. Br.* 103. The King may impoſe this Charge upon the Subject in Caſe of Neceſſity, *pro bono publico*; and it is nothing but what every Subject owes to the Common-wealth in a time of common Danger. And after King *Edward the Confeſſor*, it was ordered by ſeveral Statutes, Let every one have their own Goods and Lands free from Taillage, and let nothing be taken from them. But in this Caſe of Neceſſity in common Danger is another thing, the King may then compel his Subjects to this Charge; and I may add the Reaſons ſtrongly inſiſted upon by the King's Counſel. My Lord *Coke* ſaid, it could never be the meaning of the great Charter of the Liberty of the Subjects by this Statute to take away the Power of the King's Prerogative, and ſo to exempt themſelves from this Charge of Defence: for there is a difference between a Taillage upon the People, and a Service in a Caſe of Neceſſity, which they may be compelled unto. My Brother *Jones* cited a moſt excellent Caſe 4 *Jac.* upon the Opinion of *Coke* and *Popham*, that the Taillage-Statute taketh not away: And ſhall it take away this Royal Power of the King, ſo inherent in the Crown, the Protection and Preſervation of his Kingdom?

From this Statute 1 *Ed.* III. Mr. *St. John* raiſed this Objection. Here is 7 Months from the Date of the Writ, to the time the Ship was to be brought to *Portſmouth*, in which time there might have been a Parliament, and therefore it ought to have been done in a Parliamentary Way.

But this will not admit the calling of a Parliament; but if the Danger be not ſudden, you muſt have it in a Parliamentary Way.

My Lord *Finch* gave a full Anſwer to this: There muſt be a Preparation before the Enemy come, elſe the Defence is too late: there is a Neceſſity to prevent a Neceſſity, and who ſhall give warning in ſuch a Caſe but the King? Saith *Littleton*, who gives Warning? Not the Tenant by Caſtle-guard, but the Lord; and ſo conſequently in this Caſe our Sovereign Lord the King: And therefore in ſuch a Caſe the Subject is bound by his Allegiance to the King, to aſſiſt in Caſe of publick Danger. My Lord *Coke* tells us the Reaſon of the Warning: He ſaith, there muſt in that Caſe be a Preparation before hand, leſt your Defence come too late: Enemies are more eaſily kept out than overcome when they are got in.

By the Statute of 8 *Ed.* IV. there Bulwarks may be made in another Man's Ground; but this Preparation cannot be without Warning, and none can give the Warning but the King, and the Subjects are to be at his Command, and none other; for there muſt be a Preparation of the Subjects in the Realm, to meet the Enemy before he enter the Land. No Subjects can take upon them to build Bulwarks, &c. It is an Aſſuming of the Royal Power, for it muſt be done *juxta præceptum Domini Regis*.

Now I come to the ſecond Part, whether this Aſſeſſment be warranted by Law or not. The Writ was dated 4 *Aug* to prepare a Ship againſt the *1ſt* of *March*. Therefore we ſee it is not againſt the great Laws concerning the Subjects Liberty, becauſe it is no Taillage but a Service: for howſoever it muſt be granted, it muſt be a general Danger that cauſeth a general Defence; and there muſt be Matter in the Body of the Record to ſatisfy therein; there muſt be, I ſay, a publick Danger, and then it is *ſecundum legem & conſuetudinem Regni Angliæ*, as appears 20 *Ed.* III. *M.* 21. And alſo in *Doctor and Student*, cited before, that when Neceſſity doth require, the King may compel his Subjects to this publick Service and Charge. Tho' the King be the ſole Judge, and his Certificate is not traverſeable and cannot be denied, yet there muſt be Matter apparent within the Record to ſatisfy the Conſcience of the Court, or elſe we cannot be Judges of the Caſe at all. If the Danger be general, then the Defence muſt be general; but if ordinary Danger, as robbing of Merchants by Pirates, &c. it muſt be at the King's Charge. And we do ſee by the Petitions of the Commons in many Parliaments, that they never conceived themſelves ſubject to the Charge of ordinary Defence.

Now upon all that which hath been obſerved by my Brothers, there is enough in the Record to ſatisfy them fully (as if the King were not ſole Judge) that it was a Publick Danger, being *pro defenſione regni & tuitione maris*, &c. It did iſſue to all the King's Subjects, as a general Charge, and not to the County of *Bucks* alone: Therefore I may conclude, when the whole Kingdom is in Danger, the King may compel his Subjects to aſſiſt in ſuch publick Danger.

Then for the Aſſeſſment; many Exceptions have been taken to it, and to the Record and *Sci' Fa'*: I had provided myſelf to have given a full Anſwer thereunto, but my Lord *Finch* hath prevented me, and hath cited the very Authorities that I myſelf did rely upon.

But for the Aſſeſſment itſelf to the Sheriff, I do not ſay that I do find he hath like Power in any other Caſe of Law: Commiſſions of Sewers may be directed to the Sheriff, but not to give Power to aſſeſs Men's Goods.

I anſwer, that this is in Caſe of Neceſſity: for the very main Caſe is but a Caſe of Neceſſity, the ordinary and uſual Way is *per ſacramentum.* My Lord *Finch* gave an excellent Anſwer to that, and warranted it by Law, that the Sheriff hath no ſuch unlimited Power granted him; he is not made Judge of the Eſtates of Men, but only to purſue the Direction of the Writ, to aſſeſs them as he is commanded, and not *ſecundum diſcretionem ſuam*; but as my Lord *Coke* 5 *Rep.* 99. ſaith, he muſt do it *ſecundum legem & ſecundum arbitrium*; that is to ſay, according to Law and Reaſon. But it is impoſſible, in ſuch a Caſe of Neceſſity, to put it into ſuch an Equality, to make it without Exception; but in as much as in him lieth, he ought to order it proportionably, his Power is unlimited; for by his Diſcretion he is to diſcern between Right and Wrong, between Subſtance and Shadow; and he muſt go within the Bounds of Law and Right. In the Chamberlain of *London*'s Caſe, they might rate and aſſeſs *in bono publico*, as in making a High-way to a Church, and the like, wherein the Subject is brought to no Diſtreſs or Inconvenience, ſo as the greater Part, in ſuch a Caſe as this, ſhall ever bind the leſſer, it being *pro bono publico.* Yet this Aſſeſſment cannot make a Law a Debt or a Duty, but is only a Means to bring this Duty to a Certainty, and ſo make it a Duty, ſo that he be rated in an equal Proportion. Hath the Sheriff rated Mr *Hampden* diſproportionably, according to his Eſtate and Degree? If he hath, let him tell. If the Sheriff hath followed his own Will, and done corruptly, then he hath done contrary to the Intent of the Writ; it turneth upon the Sheriff himſelf; and a great Offence it is for a publick Miniſter of Juſtice to abuſe himſelf in ſuch a Place of Juſtice. The Sheriff returns, he hath aſſeſſed 20ſ. which is no great Sum; and alſo confeſſeth upon the Record, that it is an equal Aſſeſſment. When Mr *Hampden* appeared upon the *Sci' Fa'* he demanded Oyer of the Writs, and ſo demurred in Law; which upon the Matter, being a general Demurrer, is a Confeſſion.

And as for the *Sci' Fa'*, my Lord *Finch* hath handled it fully, and hath cited the ſame Books and Authorities that I intended to have cited; and ſo hath prevented me in that. And alſo in *Bodmin*'s Caſe in *Cornwal*, and upon the Exception *ſuper tenorem record' in* 9 *Hen.* VI. *fol* 23. And the Reaſon why he ſhould not have Execution *ſuper tenorem record'* is, becauſe otherwiſe the Subject might be charged double. And divers Caſes were put upon ſuing forth Execution upon the Tenor of the Record; and yet no Execution can go out of the Chancery at the firſt, becauſe it is not returnable by the Sheriff, but it is ſent out of the Chancery, by *Mittimus* into the *Exchequer*, 24 *Hen.* VI. 4 *Hen.* VI.

But it is true, it doth concern every one to be ſatisfy'd in the truth of the Caſe; for if the Sheriff ſhould not aſſeſs *per ſacramentum*, it might be made another way.

And as for the *Certiorari*, my Lord *Finch* hath likewiſe cited the ſame Books and Authorities, which I alſo intended; therefore I forbear to inſiſt upon that.

There is another Exception to the Record, *Quod oneretur*, and not know to whom it ſhould be, no Money demanded to the King by the firſt Writ, no, nor by the ſecond Writ; therefore can give no Judgment *quod ſatisfaceret domino regi*: then if Judgment ſhall not be given for the King, then for whom? *non conſtat*, it doth not appear to whom it is due, for any thing I can ſee in this Record.

Truly for my own part, of all the Exceptions that I have heard, none ſticketh with me but this Exception; for I do not know any Precedent, that a Judgment was given, and not ſay to whom. This Scruple, I confeſs, ſtill remaineth with me. I muſt needs ſay, That in my Opinion, I do rather incline, as far as I am well ſatisfy'd, that this is a good Exception, according and upon thoſe Reaſons which my Lord Chief Baron gave; and yet I am not ſo far ſatisfy'd, that it is Law.

I muſt rather incline as my Opinion inclines, than go againſt the Inclination of my own Opinion: as I have gone thro' all the reſt with the Warrant of my own Conſcience, I cannot go upon any String in a thing of the leaſt Weight, but I muſt deliver my Opinion as it inclines; and therefore, upon thoſe Reaſons that I have heard, and upon Conſideration taken with myſelf, I do rather incline to the Opinion of my Lord Chief Baron, and upon his Reaſons, which I think was in that with the leſſer Number: But for my Opinion in all other Points, I agree with the general Vote of the Court.

Upon

Upon the 12*th of* June, 14 Cat. *Mr.* Attorney *moved the Court of* Exchequer *for Judgment againſt Mr.* Hampden ; *and after he had opened the Record he ſaid,*

YOUR Lordſhip and the Court, in reſpect of the Greatneſs of the Cauſe, did adjourn it into the *Exchequer Chamber*, that your Lordſhip and the Court might receive Advice of all the Judges ; whoſe Advice and Opinions your Lordſhip hath already received, and the Plurality of their Voices is, that Judgment ſhould be given againſt Mr. *Hampden*, and accordingly I do pray Judgment.

To which my Lord Chief Baron anſwered :

It is very true, it was referred from hence to the *Exchequer-Chamber*, to receive the Advice of all the Judges of the Land. We do not take them to aſſiſt only by way of Advice, but for a judicial Direction : For admitting we four were of one Opinion, and the reſt of the Judges of another, (though the Cauſe properly depend in this Court) yet we muſt apply ourſelves to their Reſolution, and our four Voices are involved in theirs ; and therefore accordingly, *ſecundum legem*, &c. *oneretur Johannes Hampden.*

The Copy of the Order, as it was drawn upon the Motion of Mr. Attorney-General, *and now remains entered in the* Exchequer.

Remem' Regis. *Termin' Stæ' Trin' Anno* 14 Car. 12 *die* Junii.

Bucks. WHEREAS ſeveral Sums of Money by virtue of the King's Majeſty's Writ under the Great Seal of *England*, bearing Date the 4th Day of *Auguſt* in the 11th Year of his Majeſty's Reign, were aſſeſſed and charged upon ſeveral Perſons, for and towards the Proviſion of a Ship of War, together with the Furniture and other things thereunto belonging, in the ſaid Writ particularly mentioned ; which ſaid ſeveral Sums of Money, ſo aſſeſſed and charged, and not being ſatisfied and paid, the Names of the ſaid ſeveral Perſons, together with the ſeveral Sums charged upon them, were returned into the *Chancery*, whereby his Majeſty's Writ of *Certiorari*, bearing Date the 9th Day of *March*, in the 12th Year of his Majeſty's Reign, certified into his Court of *Chancery*, and by his Majeſty's Writ of *Mittimus*, under the ſame Seal, bearing Date the 5th Day of *May* in the 13th Year of his Majeſty's Reign, were ſent into the Court of *Exchequer* for further Proceſs to be had thereupon, as by the ſaid ſeveral Writs may appear : And whereas Proceſs of *Sci' Fa'* was the 20th Day of *May*, in the ſaid 13th Year of his Majeſty's Reign, awarded to the Sheriff of the County of *Bucks*, directing to garniſh the ſeveral Perſons, in a Schedule to the ſaid *Sci' Fa'* annexed contained, to ſhew Cauſe the Octaves of the Holy Trinity then enſuing, why they ſhould not be charged, and ſatisfy the ſaid Sums of Money aſſeſſed upon them ; in which Schedule it was contained, amongſt divers others, that *John Hampden*, Eſq; was aſſeſſed at 20*s*. as by the ſaid *Sci' Fa'* and Schedules thereunto annexed may alſo more fully appear : Whereupon the ſaid *John Hampden*, Eſq; being garniſhed by Sir *Anthony Cheſter*, Baronet, then Sheriff of the ſaid County of *Bucks*, appeared, and demanded Oyer of all the aforeſaid Writs ; which being read unto him, he thereupon demurred in Law. And thereupon Sir *John Banks*, Knight, his Majeſty's Attorney-General, joined in the ſaid Demurrer : And the Record thereof being made up, it pleaſed the Barons of this Court (the ſame Matter being a Matter of great Conſequence and Weight) to adjourn the Arguing of the ſame Matter into the *Exchequer-Chamber*, and to deſire the Aſſiſtance and Judgment of all the Judges of *England*, touching the ſame. Now upon the Motion of his Majeſty's Attorney-General this Day, informing this Court, that ſeeing the ſaid Matter hath been ſo ſolemnly debated and argued, as well by the Counſel of the ſaid Defendant, and by ſome of his Majeſty's learned Counſel, and alſo by all the Judges of *England*, and by the Barons of the *Exchequer*, and that the major Part of the ſaid Judges and Barons have deliver'd their Opinions and Judgments that the ſaid *John Hampden* ought to be charged with, and to ſatisfy the ſaid Sum of 20*s*. and therefore the ſaid Mr. *Attorney* moved the Court, That Judgment might be entered accordingly : It is thereupon ordered by this Court, that Judgment ſhall be forthwith entered, that the aforeſaid *John Hampden* ought to be charged with, and ſatisfy the aforeſaid Sum of 20 *s*.

A Copy of the Judgment in Engliſh, *as it is enter'd upon Record, in purſuance of the ſaid Motion, and according to the major Votes.*

“ * AND becauſe the Barons here will adviſe themſelves of and upon the Premiſes, before they give Judgment thereupon, a Day is given to the aforeſaid *John Hampden*, in the ſame State as now here, upon the Octave of St. *Michael*, that the ſaid Barons in the mean while of the ſaid Premiſes may adviſe, and with the Juſtices of both Benches may thereupon deliberate: for the ſaid Barons here, not yet thereupon, *&c.* And upon this it is agreed between the Barons here, as well with Conſent of the ſaid Attorney-General of our ſaid Lord the King, as of the ſaid Attorney of the aforeſaid *John Hampden*, and the Counſel learned in the Law of the ſaid *John Hampden*, that ſome Perſons learned in the Law as well of Counſel, and on the behalf of our ſaid Lord the King, as of Counſel and on the behalf of the ſaid *John Hampden*, of the aforeſaid Matter in Law and the other Premiſes, in the Chamber of this *Exchequer*, commonly called the *Exchequer-Chamber*, before the ſaid Barons, together ſitting with the aforeſaid Juſtices of both Benches, ſhould in the mean time be heard publickly to argue : At which ſaid Octave of St. *Michael*, came the aforeſaid *John Hampden* here as before. And becauſe the Barons here further will adviſe themſelves of and upon the Premiſes, before they give Judgment thereupon, a Day is further given to the aforeſaid *John Hampden* in the ſame ſtate as now here, until the Octave of St. *Hilary*, that ſome Perſons learned in the Law, as well of Counſel and on the behalf of our ſaid Lord the King, as of Counſel and on the behalf of the ſaid *John Hampden*, of the aforeſaid Matter in Law, and the other Premiſes, in the Chamber of this *Exchequer*, commonly called the *Exchequer-Chamber*, before the ſaid Barons together ſitting with the aforeſaid Juſtices of both Benches, ſhould in the mean time be heard publickly to argue, and the ſaid Barons with the ſaid Juſtices deliberate thereupon ; ſo that no Perſon learned in the Law, either of the Counſel of our ſaid Lord the King, or of the Counſel of the ſaid *John Hampden*, is yet heard, and the Barons here thereupon are not adviſed, *&c.* And afterwards in the time between the aforeſaid Octave of St. *Michael*, and the aforeſaid Octave of St. *Hilary*, as well the Attorney and Sollicitor of our ſaid Lord the King, as two learned in the Law of the Counſel of the aforeſaid *John Hampden* in the Premiſes, being on the Part of the ſaid *John Hampden*, twelve ſeveral Days in the aforeſaid *Exchequer-Chamber*, before the Barons of this *Exchequer*, ſitting with them then there the aforeſaid Juſtices of both Benches, were openly and ſingly heard to argue at large, and particularly of the ſaid Matter in Law, and other the Premiſes (the aforeſaid Record being recited) and what thereupon they could or would ſay. And the aforeſaid Attorney, and Sollicitor-General, divers and very many Records, Writs, Commiſſions and Precedents, as well of this *Exchequer*, as of the Court of *Chancery*, the Court of *King*'s-*Bench* and *Common Pleas*, the Matter in Law, and other Premiſes in the ſeveral Writs, Returns, and Schedules aforeſaid contained, on the Part of our ſaid Lord the King, to prove, confirm and maintain, then and there produced, ſhewed and expounded. And on the aforeſaid Octave of St. *Hilary*, the ſaid *John Hampden* came here as before ; and becauſe the Barons here further will adviſe themſelves of and upon the Premiſes before they give Judgment thereupon, a Day is further given to the aforeſaid *John Hampden*, in the ſame ſtate as now here, until from the Day of *Eaſter*, on fifteen Days, that the ſaid Barons in the mean while, with the aforeſaid Juſtices of both Benches, may further thereupon deliberate, for that the ſaid Barons have not yet thereupon, *&c.* At which Day, the ſaid *John Hampden* came here as before ; and becauſe the Barons here further will adviſe themſelves of and upon the Premiſes, before they give Judgment thereupon, a Day is further given to the aforeſaid *John Hampden*, in the ſame ſtate as now here, until upon the Morrow of the Holy Trinity, that the ſaid Barons in the mean while, with the aforeſaid Juſtices of both Benches, may further thereupon deliberate, for that the ſaid Barons have not yet thereupon, *&c.* At which Day the aforeſaid *John Hampden* came here as before ; and upon this, the Premiſes being ſeen, and by the Barons here plainly underſtood, and mature Deliberation thereupon being had with the aforeſaid Juſtices of both Benches, and after the Arguments, as well by the ſaid Juſtices, as by the aforeſaid Barons ſingly, in the aforeſaid *Exchequer-Chamber*, publickly thereupon made, it appeareth thereupon to the Barons, by Advice of the Juſtices aforeſaid, that the ſeveral Writs aforeſaid, and their Returns, and the Schedules aforeſaid to the ſame annexed, and the Matter therein contained, are ſufficient in the Law to charge the aforeſaid *John Hampden* with the aforeſaid 20*s*. aſſeſſed upon him in the Form and for the Cauſe aforeſaid : It is therefore agreed by the ſaid Barons, that the aforeſaid *John Hampden* be charged with the ſaid 20*s*. and thereof make Satisfaction, *&c.*”

THIS Judgment in the Caſe of Ship Money gave much Offence to the Nation, and occaſioned great Heart-burnings in the Houſe of Commons : It was particularly taken notice of in Mr. *Waller*'s Speech in that Houſe *April* 22, 1640, which was as follows:

Mr. *Speaker*,

I Will uſe no Preface, as they do who prepare Men for ſomething in which they have a particular Intereſt. I will only propoſe what I conceive fit for the Houſe to conſider ; and ſhall be no more concerned in the Event than they that ſhall hear me.

Two Things I obſerve in his Majeſty's Demands.

Firſt, the Supply.

Secondly, our ſpeedy Diſpatch thereof.

Touching the firſt : His Majeſty's Occaſions for Money are but too evident. For to ſay nothing how we are neglected abroad, and diſtracted at home ; the calling of the Parliament, and our ſitting here (an Effect which no light Cauſe could have in thoſe times produced) is enough to make any reaſonable Man believe, that the *Exchequer* abounds not ſo much in Money, as the State does in Occaſions to uſe it : and I hope we ſhall all appear willing to diſprove thoſe who have thought to diſſuade his Majeſty from this way of Parliaments, as uncertain ; and to let him ſee it is as ready, and more ſafe for the Advancement of his Affairs, than any new or pretended old way whatever.

For the ſpeedy Diſpatch required, which was the ſecond thing, not only his Majeſty, but *Res ipſa loquitur* ; the Occaſion ſeems to importune no leſs ; Neceſſity is come upon us like an armed Man.

Yet the Uſe of Parliaments heretofore (as appears by the Writs that call us hither) was to adviſe with his Majeſty, of all things concerning the Church and Commonwealth. And it hath ever been the Cuſtom of Parliaments, by good and wholeſome Laws, to refreſh the Commonwealth in general, yea and to deſcend into Remedies of particular Grievances, before any mention made of a Supply. Look back upon the beſt Parliaments, and ſtill you ſhall find, that the laſt Acts are for the free Gifts of Subſidies on the People's part, and general Pardons on the King's part. Even the wiſeſt Kings have firſt acquainted the Parliaments with their Deſigns, and the Reaſons thereof ; and then demanded the Aſſiſtance both of their Counſel and Purſes. But Phyſicians, tho' they be called of the lateſt, muſt not ſtomach it, or talk what they might have been, but apply themſelves roundly to the Cure. Let us not ſtand too nicely upon Circumſtances, nor too rigidly poſtpone the Matter of Supply, to the healing of our lighter Wounds. Let us do what poſſibly may be done with Reaſon and Honeſty on our Parts, to comply with his Majeſty's Deſires, and to prevent the imminent Ills which threaten us.

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* Cr. Car. 524, 601.

But conſider, Mr. *Speaker*, that they who think themſelves already undone, can never apprehend themſelves in Danger: And they that have nothing left, can never give freely. Nor ſhall we ever diſcharge the Truſt of thoſe that ſent us hither, or make them believe that they contribute to their own Defence and Safety, unleſs his Majeſty be pleaſed, firſt to reſtore them to the Property of their Goods and lawful Liberties, whereof they eſteem themſelves now out of Poſſeſſion. One need not tell you that the Property of Goods is the Mother of Courage, and the Nurſe of Induſtry; makes us valiant in War, and good Huſbands in Peace. The Experience I have of former Parliaments, and my preſent Obſervation of the Care the Country has had to chuſe Perſons of Worth and Courage, makes me think this Houſe like the *Spartans*, whoſe forward Valour required ſome ſofter Muſick to allay and quiet their Spirits, too much mov'd with the ſound of martial Inſtruments. 'Tis not the Fear of Impriſonment, or if need be, of Death itſelf, that keeps a true-hearted *Engliſh* Man from the Care to leave this Part of his Inheritance as entirely to Poſterity, as he received it from his Anceſtors.

This therefore let us firſt do, and the more ſpeedily, that we may come to the Matter of Supply; let us give new Force to the many Laws which have been hitherto made for the maintaining of our Rights and Privileges, and endeavour to reſtore this Nation to its fundamental and vital Liberties, the Property of our Goods, and the Freedom of our Perſons: no way doubting, but we ſhall find his Majeſty as gracious and ready, as any of his Royal Progenitors have been, to grant our juſt Deſires therein. For not only the People do think, but the wiſeſt do know, that what we have ſuffered in this long Vacancy of Parliaments, we have ſuffered from his Miniſters: that the Perſon of no King was ever better beloved of his People, and that no People were ever more unſatisfied with the Ways of the levying Monies, are two Truths which may ſerve, one to demonſtrate the other; for ſuch is their averſion to the preſent Courſes, that neither the Admiration they have of his Majeſty's native Inclinations to Juſtice and Clemency, nor the pretended Conſent of the Judges could make them willingly ſubmit themſelves to the late Tax of Ship-money: And ſuch is the natural Love and juſt Eſteem of his Majeſty's Goodneſs, that no late Preſſure could provoke them, nor any Example invite them, to Diſloyalty or Diſobedience.

But what is it then, that hath bred this miſunderſtanding betwixt the King and his People? How is it, that having ſo good a King we have ſo much to complain of? Why, we are told of the Son of *Solomon*, that he was a Prince of a tender Heart; and yet we ſee, by the Advice of violent Counſellors, how rough an Anſwer he gave to his People. *That his Finger ſhould be as heavy as his Father's Loins*, was not his own but the Voice of ſome Perſons about him, that wanted the Gravity and Moderation requiſite for the Counſellors of a young King. I love not to preſs Allegories too far; but the reſemblance of *Job*'s Story with ours holds ſo well, that I cannot but obſerve it to you. It pleaſed God to give his Enemy leave to afflict him more than once or twice, and to take all he had from him; and yet he was not provok'd to rebel ſo much as with his Tongue; tho' he had no very good Example of one that lay very near him, and felt not half that which he ſuffered. I hope his Majeſty will imitate God in the benigner Parts too: and as he was ſevere to *Job* only while he diſcourſed with another concerning him, but when he vouchſafed to ſpeak himſelf to him, began to rebuke thoſe who had miſtaken and miſ-judged his Caſe, and to reſtore the patient Man to his former Proſperity; ſo now, that his Majeſty hath admitted us to his Preſence, and ſpoken face to face with us, I doubt not but we ſhall ſee fairer Days, and be as rich in the Poſſeſſion of our own as ever we were.

I wonder at thoſe that ſeem to doubt the Succeſs of this Parliament, or that the Miſunderſtanding between the King and his People ſhould laſt any longer, now they are ſo happily met. His Majeſty's Wants are not ſo great, but that we may find Means to ſupply him; nor our Deſires ſo unreaſonable, or ſo incompatible with Government, but that his Majeſty may well ſatisfy them. For our late Experience, I hope, will teach us what Rocks to ſhun, and how neceſſary the Uſe of Moderation is: and for his Majeſty, he has had Experience enough, how that proſpers which is gotten without the concurrent Good-Will of his People: Never more Money taken from the Subject; never more went into the *Exchequer*. If we look upon what has been paid, it is more than ever the People of *England* were wont to pay in ſuch a time: If we look upon what has been effected therewith, it ſhews as if never King had been worſe ſupplied. So that we ſeem to have endeavoured the filling a Sieve with Water. Whoſoever gave Advice for theſe Courſes, has made good the Saying of the wiſe Man; *Qui conturbat domum ſuam, poſſidebit ventum.* By new Ways they think to accompliſh Wonders; but in truth they graſp the Wind, and are at the ſame time cruel to us, and to the King too. For if the Commonwealth flouriſh, then he that hath the Sovereignty can never want, nor do amiſs; ſo as he govern not according to the Intereſt of others, but go the ſhorteſt and the ſafeſt Ways to his own, and the common Good.

The Kings of this Nation have always govern'd by Parliaments; and if we look upon the Succeſs of things ſince Parliaments were laid by, it reſembles that of the *Græcians*,

> *Ex illo fluere & retro ſublapſa referri*
> *Res Danaum*————

eſpecially on the Subject's Part. For tho' the King hath gotten little, they have loſt all.

But his Majeſty ſhall hear the Truth from us, and we ſhall make appear the Errors of thoſe Divines, who would perſuade us, that a Monarch muſt be abſolute, and that he may do all things *ad libitum*; receding not only from their Text (tho' that be a wandring too) but from the Way their own Profeſſion might teach them, *ſtate ſuper vias antiquas*, and *remove not the antient Bounds and Land-marks which our Fathers have ſet.* If to be abſolute, were to be reſtrained by no Laws, then can no King in Chriſtendom be ſo; for they all ſtand obliged to the Laws *Chriſtian*, and we aſk no more: for to this Pillar are our Privileges fixed, our Kings at their Coronation taking a ſacred Oath not to infringe them.

I am ſorry theſe Men take no more care to gain our belief of things, which they tell us for our Souls Health; while we know them ſo manifeſtly in the wrong, in that which concerns the Liberties and Privileges of the Subjects of *England*: But they gain Preferment, and then 'tis no matter; tho' they neither believe themſelves, nor are believed by others. But ſince they are ſo ready to let looſe the Conſcience of their Kings, we are the more careful to provide for our Protection againſt this Pulpit Law, by declaring and reinforcing the municipal Laws of this Kingdom.

It is worth obſerving, how new this Opinion is, or rather this Way of ruling, even among themſelves. For Mr. *Hooker*, who ſure was no refractory Man, (as they term it) thinks that the firſt Government was arbitrary, *till it was found, that to live by one Man's Will, became the Cauſe of all Mens Miſery* (theſe are his Words): concluding, that this was the Original of inventing Laws. And if we look farther back, our Hiſtories will tell us, that the Prelates of this Kingdom have often been the Mediators between the King and his Subjects, to preſent and to pray Redreſs of their Grievances; and had reciprocally then as much Love and Reverence from the People.

But theſe Preachers, more active than their Predeceſſors, and wiſer than the Laws, have found out a better Form of Government. The King muſt be a more abſolute Monarch than any of his Predeceſſors; and to them he muſt owe it, tho' in the mean time they hazard the Hearts of his People, and involve him in a thouſand Difficulties: For ſuppoſe this Form of Government were inconvenient, and yet this is but a Suppoſition; for theſe five hundred Years, it hath not only maintain'd us in Safety, but made us victorious over other Nations: But, I ſay, ſuppoſe they have another Idea of one more convenient, we all know how dangerous Innovations are, tho' to the better: and what Hazard thoſe Princes muſt run, that enterprize the Change of a long eſtabliſh'd Government. Now, of all our Kings that have gone before, and of all that are to ſucceed in this happy Race, why ſhould ſo pious and ſo good a King be expoſed to this Trouble and Hazard? Beſides that, Kings ſo diverted can never do any great Matter abroad.

But while theſe Men have thus bent their Wits againſt the Laws of their Country, whether they have neglected their own Province, and what Tares are grown up in the Field which they ſhould have tilled, I leave to a ſecond Conſideration; not but that Religion ought to be the firſt thing in our Purpoſes and Deſires: but that which is firſt in Dignity, is not always to precede in Order of Time, for Well-being purports a Being. And the firſt Impediment which Men naturally endeavour to remove, is the Want of theſe things, without which they cannot ſubſiſt. God firſt aſſigned to *Adam* Maintenance of Life, and gave him a Title to the reſt of the Creatures, before he appointed a Law to obſerve. And let me tell you, if our Adverſaries have any ſuch Deſign, as there is nothing more eaſy than to impoſe Religion on a People depriv'd of their Liberties; ſo there is nothing more hard than to do the ſame upon Freemen.

And therefore, Mr. *Speaker*, I conclude with this Motion, That there may be an Order preſently made, That the firſt thing this Houſe will conſider of, ſhall be the reſtoring this Nation in general to its Fundamental and Vital Liberties, the Property of our Goods, and Freedom of our Perſons; and that then we will further conſider of the Supply deſired.

And thus we ſhall diſcharge the Truſt repoſed in us by thoſe that ſent us hither: his Majeſty will ſee, that we make more than ordinary Haſte to ſatisfy his Demands; and we ſhall let all thoſe know, that ſeek to haſten the Matter of Supply, that they will ſo far delay it, as they give Interruption to the former.

AFTERWARDS the Houſe of Commons took the Affair directly under Conſideration, in calling thoſe Judges to an account, who had given their Opinions for the Ship-Money; at which time Lord *Falkland* deliver'd himſelf in the following manner:

Mr. Speaker,

THE Conſtitution of this Commonwealth hath eſtabliſhed, or rather endeavoured to eſtabliſh to us the *Security of our Goods*, and the *Security of thoſe Laws* which would ſecure us and our Goods, by appointing for us *Judges*, ſo ſettled, ſo ſworn, that there can be no oppreſſion, but they of neceſſity muſt be acceſſary; ſince if they neither deny nor delay us Juſtice, which neither for the great nor little Seal they ought to do, the greateſt Perſon in this Kingdom cannot continue the leaſt Violence upon the meaneſt. But this Security hath been almoſt our Ruin; for it hath been turned, or rather turned itſelf into a Battery againſt us: and thoſe Perſons who ſhould have been as Dogs to defend the Sheep, have been as Wolves to worry them.

Theſe Judges, to inſtance not them only, but their greateſt Crime, have delivered an Opinion, and Judgment in an extrajudicial manner, that is, ſuch as came not within their Cognizance, they being Judges, and neither Philoſophers, nor Politicians. In which when that is ſo abſolute and evident, the Law of the Land ceaſes; and of general Reaſon and Equity, by which particular Laws at firſt were framed, returns to his Throne and Government, where *Salus Populi* becomes not only *ſuprema*, but *ſola lex*; at which, and to which end, whatſoever ſhould diſpenſe with the King, to make uſe of any Money, diſpenſes with us to make uſe of his, and one another's. In this Judgment they contradicted both many and learned Acts and Declarations of Parliaments; and thoſe in this very Caſe, in this very Reign: ſo that for them they needed to have conſulted with no other Record, but with their Memories.

2. They have contradicted apparent Evidences, by ſuppoſing mighty and imminent dangers, in the moſt ſerene, quiet, and halcion days that could poſſibly be imagined, a few contemptible Pirates being our moſt formidable Enemies, and there being neither Prince nor State, with whom we had not either Alliance or Amity, or both.

3. They contradict the Writ itſelf, by ſuppoſing that ſuppoſed Danger to be ſo ſudden, that it would not ſtay for a Parliament, which required but forty days ſtay, and the Writ being in no ſuch haſte, but being content to ſtay ſeven times over.

It ſeemed generally ſtrange, that they ſaw not the Law which all Men elſe ſaw but themſelves. Yet tho' this begot the more general Wonder, three other Particulars begot the more general Indignation.

When they had allowed to the King, the *ſole Power in Neceſſity*, the *ſole Judgment of Neceſſity*, and by that enabled him to take both from us, what he would, when he would, and how he would, they yet continued to perſuade us, that they had left us our Liberties and our Properties.

And, which I confeſs moved moſt, that by the Transformation of us from the ſtate of Free-Subjects (a good Phraſe under Dr. *Heylin*'s Favour) unto that of Villains, they diſable us by legal and voluntary Supplies to expreſs our Affections to his Majeſty, and by that to cheriſh his to us, that is, by Parliaments.

The Cauſe of all the Miſeries we have ſuffer'd, and the Cauſe of all the Jealouſies we have had, that we ſhould yet ſuffer, is, That a moſt excellent Prince hath been moſt infinitely abuſed by his Judges telling him, that *By Policy he might do what he pleaſed.*

We muſt now be forced to think of aboliſhing of our Grievances, and of taking away this Judgment and theſe Judges together, and of regulating their *Succeſſors* by *their exemplary Puniſhment*,

Hereupon the Opinions of the Judges, the Ship-Writs, and the Judgment againſt Mr. *Hampden* being read openly in the Houſe on *Monday*, *Dec.* 7, 1640. after long Debate theſe four ſeveral Votes were agreed to by the Houſe, *nemine contradicente*,

1. THAT the Charge impoſed upon the Subjects for the providing and furniſhing of Ships, and the Aſſeſſment for raiſing of Money for that purpoſe, commonly called *Ship-Money*, are againſt the Laws of the Realm, the Subjects Right of Property, and contrary to former Reſolutions in Parliament, and to the Petition of Right.

2. That the extrajudicial Opinions of the Judges, publiſhed in the *Star-Chamber*, and inrolled in the Courts at *Weſtminiſter*, *in hæc verba*,

The CASE.

Charles Rex.

WHEN the good and ſafety of the Kingdom in general is concerned, and the whole Kingdom in danger, whether may not the King by Writ under the Great Seal of England, *command all the Subjects in this Kingdom at their Charge to provide and furniſh ſuch Number of Ships, with Men, Victual, and Munition, and for ſuch a time as he ſhall think fit, for the Defence and Safeguard of the Kingdom from ſuch Danger and Peril, and by Law compel the doing thereof, in Caſe of Refuſal or Refractorineſs; and whether in ſuch Caſe is not the King the ſole Judge both of the Danger, and when and how the ſame is to be prevented and avoided?*

C. R.

Their Opinions.

MAY it pleaſe your moſt excellent Majeſty, We have according to your Majeſty's Command, ſeverally, and every Man by himſelf, and all of us together, taken into ſerious Conſideration the Caſe and Queſtions ſigned by your Majeſty, and incloſed in your Letter: And we are of Opinion, that when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, your Majeſty may by Writ under the Great Seal of England, *command all the Subjects of this your Kingdom, at their Charge to provide and furniſh ſuch Number of Ships, with Men, Victual, and Munition, and for ſuch time as your Majeſty ſhall think fit for the Defence and Safeguard of the Kingdom from ſuch Danger and Peril; and that by Law your Majeſty may compel the doing thereof in caſe of Refuſal or Refractorineſs. And we are alſo of Opinion, that in ſuch Caſe your Majeſty is the ſole Judge both of the Danger, and when and how the ſame is to be prevented and avoided:*

In the whole, and in every part of them, are againſt the Laws of the Realm, the Right of Property and the Liberty of the Subjects, and contrary to former Reſolutions in Parliament, and to the Petition of Right.

3. That the Writ following *in hæc verba*, *viz.*

CHARLES *by the Grace of God, King of* England, Scotland, France, *and* Ireland, *Defender of the Faith*, &c. *To our Right Truſty and Well-beloved Counſellor*, Thomas *Lord* Coventry, *Keeper of our Great Seal of* England, *greeting. Theſe are to will and require you, that for the Safeguard of the Seas, and Defence of the Realm, you iſſue forth, or cauſe to be iſſued forth of our High Court of Chancery theſe enſuing Writs in the Form following, with Duplicates of them, under our Great Seal of* England, *unto the Counties, Cities, Towns, and Places hereafter enſuing, and for ſo doing this ſhall be your Warrant:*

And the other Writs, commonly called the Ship-Writs, are againſt the Laws of the Realm, the Right of Property, and the Liberty of the Subjects, and contrary to former Reſolutions in Parliament, and to the Petition of Right.

4. That the Judgment in the *Exchequer* in Mr. *Hampden*'s Caſe, a Tranſcript whereof followeth *in hæc verba: (viz. Quod ſeparalia brevia prædicta & retorna eorundem, ac ſchedul. prædict. eiſdem annexat. ac materia in eiſdem content. ſufficien. in lege exiſt. ad præf. Joh. Hampden de prædictis viginti ſolidis ſuper ipſum in forma & ex cauſa præd. aſſeſſis, onerand. Ideo conſideratum eſt per eoſden Barones, quod præd. Johannes Hampden de eiſdem viginti ſolidis oneretur, & inde ſatisfaciat.)* in the Matter and Subſtance thereof, and in that it was conceived that Mr. *Hampden* was any way chargeable, is againſt the Laws of the Realm, the Right of Property, the Liberty of the Subjects, and contrary to former Reſolutions in Parliament, and to the Petition of Right.

Theſe Votes were afterwards tranſmitted by the Houſe of Commons to the Lords, and delivered by Mr. *Saint-John* (afterwards his Majeſty's Sollicitor-General) at a Conference of both Houſes of Parliament, held 16 *Car.* 1640.

Mr. St. John *addreſſed himſelf to the Lords as follows.*

My Lords,

THE Knights, Citizens, and Burgeſſes of the Commons Houſe have entruſted me with a Meſſage to your Lordſhips of a general and very high Concernment; ſo general, that the whole Body of the Kingdom, both Peers and People, are intereſted in it; of ſo high a Conſequence, as that there is nothing that can concern us nearer.

It's one of the *Grandia Regni*; ſo great, as that I ſhall not need to preſent it to your Lordſhips in a magnifying Glaſs; it will appear too big in its own Dimenſions.

It's not that Ship-money hath been levied upon us; but it's that Right whereby Ship-money is claimed, which, if it be true, is ſuch as that makes the Payment of Ship-money the Gift and earneſt Penny of all we have.

It's not that our Perſons have been impriſoned for Payment of Ship-money, but that our Perſons, and (as it is conceived) our Lives too, are, upon the ſame Grounds of Law, delivered up to bare Will and Pleaſure.

It's that our Birth-right, our Anceſtral Right, our Condition of continuing free Subjects, is loſt; that of late there hath been an Endeavour to reduce us to the State of Villainage, nay to a lower.

It's true, the Lord might tax his Villain *de haute & de baſſe*, might take all his Lands and Goods; the Villain had no Property againſt the Lord, the Villain he could not *ire quo voluit*, he had no liberty of Perſon, the Lord might impriſon him at his pleaſure: but the Villain's Life was his own, and not his Lord's, the Law ſecured him that. But, my Lords, as the Law ſtands now declared, it's diſputable whether it doth ſo much for us.

My Lords, the Subject of this Meſſage is, to preſent the Senſe of the Commons to your Lordſhips; that the Laws of the Realm inſtituted at firſt, and freely aſſented unto, and choſen by their Anceſtors for the Preſervation of themſelves and us their Deſcendants, in our Perſons, Lives and Eſtates, have been of late entruſted unto ſuch Hands, as have endeavoured to force upon them a contrary End to that for which they were ordained; from defenſive to turn them to offenſive; and inſtead of protecting us, to make the Laws the Inſtrument of taking from us all we have. Thoſe Carriages which have produced this Senſe of the Commons, I am commanded at this preſent to declare to your Lordſhips.

They are certain extra-judicial Opinions delivered by the Judges at ſeveral times; the one in *November* 1635, the other a Year after, in *February* 1636.

The Ship-Writs, that have iſſued to all the Counties of *England* for theſe many Years laſt paſt without Intermiſſion: The principal thing in theſe Writs which I am to preſent to your Lordſhips, is not the Charge and Burden which hath been thereby impoſed upon the Subjects, tho' that be great, but the Declarations in them of the Law, and of the Right whereby this Burden may be impoſed.

The laſt is, the Judgment in Maſter *Hampden*'s Caſe in the Exchequer upon theſe Ship-Writs.

My Lords, the two laſt, that is, the Ship-Writ and the Judgment, becauſe they are very long, I am only to open them without reading, and to deliver them to your Lordſhips; the other two, I am to read them, and then to deliver to your Lordſhips.

The firſt Opinion in November 1635. *was read as followeth.*

‘ I Am of Opinion, that as where the Benefit doth more particularly re-
‘ dound to the Good of the Ports or Maritime Parts, as in caſe of Pi-
‘ racy or Depredations upon the Seas, there the Charge hath been, and may
‘ be lawfully impoſed upon them according to Precedents of former Times;
‘ ſo where the Good and Safety of the Kingdom in general is concerned,
‘ and the whole Kingdom in danger, (of which his Majeſty is the only
‘ Judge) there the Charge of the Defence ought to be borne by all the
‘ Realm. This I hold agreeable both to Law and Reaſon.’

My Lords, theſe Opinions were delivered by the Judges ſeverally and apart, they were procured by the Solicitation of my Lord *Finch*. The Judges, as he ſeverally procured their Hands, were by him enjoined Secrecy: accordingly theſe Opinions walked in the dark for a Year and upwards. Afterwards the Procurer of them, my Lord *Finch*, liked them ſo well, as that he preſumed to deliver them to his Majeſty. By his Procurement, a Letter was directed from his Majeſty to the Judges, for the delivery of their Opinions in theſe and ſome other Additionals. The former that hath been read is more modeſt; it's only that his Majeſty is the ſole Judge of the Danger, and that the Inland as well as the Maritime Towns are chargeable to the Defence of the Kingdom.

It's not declared in theſe, that this Charge may be impoſed by his Majeſty alone; for the Expreſſion is only, that the Charge may lawfully be impoſed; ſay not by whom.

In the other Opinions they proceed *a malo ad pejus*, and ſpeak plain *Engliſh*, which followeth *in hæc Verba.*

The Caſe.

Charles Rex.

‘ WHEN the Good, and the Eaſe and Safety of the Kingdom in
‘ general is concerned, and the whole Kingdom in Danger, whether
‘ may not the King, by Writ under the Great Seal of *England*, command
‘ all the Subjects in this Kingdom, at their Charge, to provide and fur-
‘ niſh ſuch number of Ships with Men, Victuals and Ammunition, and
‘ for ſuch Time as he ſhould think fit, for the Defence and Safeguard of
‘ the Kingdom from ſuch Danger and Peril; and by Law compel the doing
‘ thereof, in caſe of Refuſal or Refractorineſs? and whether in ſuch Caſe,
‘ is not the King the ſole Judge, both of the Danger, and when and how
‘ the ſame is to be prevented and avoided?’

The Judges Anſwer.

‘ MAY it pleaſe your excellent Majeſty, We have, according to your
‘ Majeſty's Command, ſeverally, and every Man by himſelf, and
‘ all of us together, taken into ſerious Conſideration the Caſe and Queſ-
‘ tions ſigned by your Majeſty, and incloſed in your Royal Letter; and
‘ we are of Opinion, That when the Good and Safety of the Kingdom in ge-
‘ neral is concerned, and the whole Kingdom is in Danger, your Majeſty
‘ may by Writ under the Great Seal of *England*, command all the Subjects
‘ of this your Kingdom at their charge to provide and furniſh ſuch number
‘ of Ships, with Men, Victuals and Ammunition, and for ſuch time as
‘ your Majeſty ſhall think fit, for the Defence and Safeguard of the King-
‘ dom from ſuch Danger and Peril; and that by Law your Majeſty may
‘ compel the doing thereof, in caſe of Refuſal or Refractorineſs: And we
‘ are alſo of Opinion, that in ſuch caſe your Majeſty is the ſole Judge,

‘ both of the Danger, and when and how the ſame is to be prevented
‘ and avoided.’

Theſe Opinions were ſubſcribed by all the Judges in *Serjeants-Inn-Hall*; they were afterwards publiſhed in the *Star-Chamber*, that the Subjects might take notice of them; and that they might never be forgotten, they are enrolled in all the Courts of *Weſtminſter-Hall*, in *perpetuam rei memoriam.* Your Lordſhips will be pleaſed to give me leave to repeat them in their plain and legal ſenſe, which I conceive to be thus:

That his Majeſty, as often as himſelf pleaſeth, may declare that the Kingdom is in Danger; that ſo often, for prevention of ſuch Danger, his Majeſty, by his Writ under the Great Seal of *England*, may alter the Property of the Subjects Goods, without their Conſent in Parliament, and that in ſuch Proportion as his Majeſty ſhall think fit; and beſides, the altering of the Property of their Goods, for the prevention of ſuch Danger, may deprive them of the Liberty of their Perſons, and of their Lives, and that in ſuch manner as himſelf ſhall pleaſe.

1. The firſt of theſe, *viz.* That his Majeſty may declare the Danger as often as he pleaſeth, is made good in theſe Words, That the King is the ſole Judge of the Danger, and when the ſame is to be prevented and avoided.

2. The ſecond, that ſo often he may alter the Property of the Subjects Goods, without Conſent in Parliament, in theſe Words, That his Majeſty may, by Writ under the Seal of *England*, command and compel all the Subjects of the Realm, at their Charge, to provide and furniſh Ships.

3. That this may be in what proportion his Majeſty ſhall pleaſe, in theſe Words; That his Majeſty may command them to provide and furniſh ſuch number of Ships, with Men, Victuals, and Ammunition, and for ſuch time as his Majeſty ſhall think fit.

4. The laſt, *viz.* that which concerns our Perſons, in theſe two Clauſes:

1. That his Majeſty in caſe of Refractorineſs may compel the doing of it. This Compulſion in caſe of Refractorineſs includes the Perſon as well as the Eſtate; nay, it ſounds more in the Perſonality than otherwiſe. For the other, *viz.* whether this perſonal Compulſion may extend ſo far as to Life, I humbly leave it to your Lordſhips Conſideration, upon the other Clauſe; that is, that his Majeſty is the ſole Judge of ſuch Danger, and when and how the ſame is to be prevented: Whether the Words, how it is to be prevented, in this Caſe of perſonal Compulſion, doth not leave the manner of it wholly in his Majeſty's Breaſt.

My Lords, if theſe Opinions extend only to Ship-Money, it is enough his Majeſty takes what he will, and when he will. If all be taken to Day, and afterwards by Deſcent or my own Labour I got a new Stock or Livelihood, that is no more mine than the former, ſo that there is no Property left unto the Subject, tho' the Opinions go no further. But, my Lords, Ship-Money is not the whole Extent of them; Ship-Money, by theſe Opinions, is not due by any Peculiarity in Ship-Money: But Ship-Money is therefore due, becauſe his Majeſty is the ſole Judge of the Danger of the Kingdom, and when and how the ſame is to be prevented; becauſe his Majeſty, for the Defence of the Kingdom, may at his Will and Pleaſure charge the People. This is the Ground; and upon the ſame Reaſon the Compulſion may be as well for the making and maintaining Caſtles, Forts and Bulwarks, making of Bridges, for tranſporting his Armies, for Proviſion of Wages and Victuals, for Soldiers, for Horſes and Carriages; it may be multiplied *in infinitum.*

It may be done when the Good and Safety of the Kingdom is concerned; this extends to all Things, and at all Times: *Qui jacet in terra, non habet unde cadet.*

If theſe Opinions be Law, I humbly leave it to your Lordſhips Conſiderations, whether the Government be not *Imperium legibus ſolutum.* The next thing I ſhall offer to your Lordſhips is the Ship-Writs: a Tranſcript of one of them directed to the Sheriff of *Dorſetſhire*, I ſhall deliver; all the reſt being of the ſame Form. Becauſe the Writ is long, I ſhall open it briefly; 'tis to this Effect.

There is a Declaration in it, that *Salus Regni periclitabatur:* That the Safety of the Kingdom was in Danger.

Therefore the Inhabitants of the ſeveral Counties are commanded, for the Defence of the Kingdom, for the Cuſtody of the Seas, for the Safeguard of the Merchants from Piracy inward and outward, that they ſhould provide a Ship of War, furniſhed with Guns, Gun-powder, double Tackle, and all other Neceſſaries; and this Ship thus furniſhed at a day ſet, to be brought to *Portſmouth*, to be provided for 26 Weeks of Mariners Wages, Victuals and other Neceſſaries: and for the doing of this, Authority is given to the Sheriffs of the ſeveral Counties, to aſſeſs every one of the Inhabitants *ſecundum ſtatum & facultates ſuas*, according to their Eſtates and Means; and further Power given him, by diſtraining and ſelling of the Diſtreſs, to levy theſe Monies; *ſi contrarios invenerit*, then to impriſon their Perſons: And further declares, that all this may be done, *ſecundum Legem & Conſuetudinem Regni.* The Senſe I conceive is briefly thus: That by the Laws of the Kingdom, when his Majeſty ſhall declare that the Kingdom is in Danger, he may alter the Property of the Subjects Goods, and impriſon their Perſons; nay, that not only his Majeſty, but the Sheriffs may impriſon their Perſons. By the Law the Lord might impriſon his Villain, but could not transfer that Power to the Bailiff, or to any other; it was perſonal. That the Execution of this Power over the Perſons of the Subjects hath gone no farther than their Impriſonment, whether therein we be not beholden to his Majeſty's Grace and Goodneſs, and nothing at all to the Opinions of the Judges, I leave it to your Lordſhips Conſiderations.

The laſt thing is, the Judgment in the *Exchequer*, in the 13th Year of his now Majeſty's Reign, againſt Mr. *Hampden.* The Record is very long: I ſhall briefly open it to your Lordſhips. *Quarto Aug.* 11 *Car.* there iſſued Ship-Writs to the ſeveral Counties; amongſt the reſt to the County of *Bucks.* The Sheriff aſſeſſed the Inhabitants; ſome of them made Default, and did not pay. Upon a *Certiorari* out of the *Chancery*, directed to the Sheriff, he certifies the Perſons that made default, together with the Sums aſſeſſed upon them. From the *Chancery*, by *Mittimus*, theſe Certificates were ſent into the *Exchequer*, to the intent Proceſſes might iſſue againſt the Defaulters. A *Scire facias* iſſued to the Sheriff of *Bucks*, who thereupon, amongſt other Returns, returns that Mr. *Hampden* had been aſſeſſed 20 Shillings, for ſome Lands in *Stoke-Mandeville* in that County, which he had not paid. Mr. *Hampden* appeared, and upon his Appearance demands *Oyer* of the Ship-Writs, and the other Proceedings. After his hearing thereof, and underſtanding the Contents, he demurs in Law, that is, demands the Judgment and Opinion of the Judges, whether this Writ was ſufficient in Law, and to force him to pay the ſaid 20 Shillings.

This being a great and general Caſe, the Barons of the *Exchequer* deſired the Aſſiſtance of the reſt of the Judges, who did join accordingly. The Caſe came to be argued; there were four Arguments, two on Mr. *Hampden*'s Side, and two on the other Side: The firſt was in *Michaelmas* Term, after *All-Hallontide*; and all the four Arguments were ſpeeded before *Chriſtmas* Day, two of them in the Term; and no longer time could be procured for the reſt, but the ſhort Vacation between *Michaelmas* Term and *Chriſtmas.* It was a Caſe of ſo little Concernment, that whereas in *Weſtminſter-Hall* Term after Term is uſually given to argue any Demurrer, this muſt be argued betwixt *All-Hallontide* and *Chriſtmas* thro'-out. After the Arguments, the Counſel on both ſides were commanded to bring before the Judges the Records and Authorities cited: They were brought; and for the Eaſe of the Judges, many of them on Mr. *Hampden*'s part were abbreviated on the back ſides: thoſe abbreviations were commanded to be expounded. Afterwards the Caſe came to Argument at the Bench; there the Caſe was judged, and by the greater part of the Judges Judgment was given againſt Mr. *Hampden.* When the Judges had deliver'd their Opinions, it was the Barons part to give Judgment; the Judgment was, *Quod ſeparalia brevia prædict' & return' eorundem ac Schedulæ prædict' eiſdem annex' ac materia in eiſdem content' ſufficien' in lege exiſtunt ad præfatum Johannem Hampden de prædict. viginti ſolidis ſuper ipſum in forma & ex cauſa prædict. aſſeſſis onerand' Ideo conſideratum eſt per eoſdem Baron' quod prædictus Johannes Hampden de eiſdem viginti ſolidis oneratum exinde ſatisfiat.*

My Lords, this Judgment is a full and plenary Execution of the former Opinions of the Judges, and of the Ship-Writs, for ſo much as it concerns our Propriety: It was given in Mr. *Hampden*'s Caſe only, but binds all the Subjects; for ſo binding it is, as that an honourable Perſon, now in my Eye, in a Caſe depending in the *King*'s-*Bench*, was denied any Argument or Debate concerning the Right of Ship-Money, for no other Reaſon but that it had been by the former Judgment adjudged already in the *Exchequer.*

My Lords, theſe extra-judicial Opinions of the Judges, theſe Ship-Writs, and this Judgment, are thoſe Carriages which have introduced this Senſe of the Commons, That the fundamental Laws of the Realm concerning our Property and our Perſons are ſhaken.

My Lords, the Commons have taken the extra-judicial Opinions publiſhed and inrolled, and the reſt, ſeverally into Conſideration; they have been read openly in the Houſe; and after long Debate, and long rather in conſideration of the Greatneſs of the Matter than of the Difficulty of it, they came to vote; four ſeveral Votes paſſed upon them; the Votes paſſed without ſo much as one negative Voice to any of them.

The Votes were in Subſtance, That they were againſt the Laws of the Realm, the Right of the Property, the Liberties of the Subject, contrary to the former Reſolutions of the Parliament, and to the Petition of Right.

The extra-judicial Opinions inrolled, they voted in the whole, and every part of them, to be contrary to all theſe; for they did conceive, that in theſe Opinions there was not any one Clauſe that was agreeable to the Law, but that throughout they were contrary to the Laws.

My Lords, The Things which the Commons took into their Conſideration, before they proceeded to their Votes, were the Proceedings in the Parliament held 3 *Car.* when the Petition of Right was framed.

The Commons went no higher; the Reaſons inducing them thereto were, becauſe in that Parliament all thoſe three had been debated, Property of Goods, Liberty of Perſons, and Security of our Lives.

Two of them, that is, Property of Goods and Liberty of Perſons, by the Occaſion of the Commiſſions for the Loan, and the Inſtruction wherewith theſe Commiſſions were accompanied; that concerning our Lives, by Occaſion of the Commiſſions that had iſſued for the executing of Martial Law.

They conceive, that if any thing concerning theſe had paſſed both Houſes and his Majeſty, or the Judgment of both Houſes without his Majeſty, it would be in vain to look further, that it would be *actum agere:* Nay, my Lords, they had further Conſideration, that if thoſe were already ſettled in that Parliament, it would not only be derogatory to the Juriſdiction of Parliament, but dangerous to look higher, as that they would infer a Defect in thoſe Proceedings, and caſt an Aſperſion upon that Parliament. I am commanded now to preſent to your Lordſhips Conſideration thoſe things which ſatisfy the Commons, which are theſe three:

1. The Commiſſions for the *Loans*, with the Inſtructions.

2. A Commiſſion call'd, *The Commiſſion of Exciſe.*

3. An Addition of Saving, which was deſired by your Lordſhips to have been added to the Petition of Right, at the time of the framing of it.

The Caſe upon the Commiſſion for the *Loans* ſtandeth thus:

13 *Octob.* 2 *Car.* divers Commiſſions were directed to ſundry Commiſſioners, to the number of ſixty or ſeventy Lords and Gentlemen, in the ſeveral Counties iſſued, whereby a compulſory Aid, by way of Loan, was required of the Subject: The Cauſes and Grounds of this Command are in the Commiſſions expreſſed to be theſe:

The King found the Crown engaged in a War, by the Advice of both Houſes in Parliament; that not only the King and the Subject, but alſo his Allies beyond Sea were in danger.

The Parts beyond Sea, where our Cloth is vented, and from whence we have moſt of our Proviſion for Shipping, were endangered; his Majeſty's Treaſures were exhauſted, and his Coffers empty. A Parliament had been ſummoned, but no Supply.

Unavoidable Neceſſity both at Home and Abroad multiplied the Enemies. Great and mighty Preparations, both at Sea and Land, threatned the Kingdom daily.

Not only the King's Honour, but the Safety and very Subſiſtence of the King and People, and of the true Religion abroad, are in apparent danger of ſuffering irreparably, unleſs not only a ſpeedy, but alſo a preſent Stop be made; which cannot admit ſo long Delay as the calling of a Parliament. The King aſſured on the Royal Word of a King, that not one Penny ſhould be beſtowed, but upon thoſe publick Services only wherein every one of them, and the whole Body of the Kingdom, their Wives, Children, and Poſterity, have their perſonal and common Intereſts.

The Commiſſioners Diligence commanded, as they tendred the King's Honour and Safety of the Realm. Here *Salus regni periclitabatur*, the whole Kingdom was in danger, as in the Judges Opinions, and as in the Ship-Writs, and Judgments in the *Exchequer*. Nay, my Lords, further, the Safety and very Subſiſtence of the King, People, and true Religion, were in danger of ſuffering irreparably; the dangerous Inſtance, not a ſpeedy, but preſent Stop muſt be made; the Supply could not ſtay for a Parliament; at this time his Majeſty's Coffers were exhauſted; the King found the Crown engaged in this War, before the Acceſs of it to himſelf, and that by Advice in Parliament; all this expreſſed, only lending of Monies for Prevention required; but it was a compulſory thing, and became compulſory, by the Inſtructions to bind over to the Board, and Impriſonment for Refuſal. Theſe Commiſſions were, in the Parliament 3 *Car.* firſt reſolved in the Commons Houſe to be againſt Law, afterwards by your Lordſhips, and conſented unto by his Majeſty; and are declared to be ſo in the *Petition of Right*; and the Impriſonment of the Subjects for Refuſal, declared in the *Petition of Right* to be againſt Law.

My Lords,

The next is the Commiſſion called, *The Commiſſion of Exciſe*. This was dated *ultimo Febr.* it was dated after the Summons to that Parliament: This Commiſſion iſſued to 33 Lords, and others of his Majeſty's Privy-Council; the Commiſſioners are thereby commanded to raiſe Monies by Impoſitions, or otherwiſe; as in their Judgments they ſhall find to be moſt convenient.

The Cauſes wherefore theſe Monies are to be raiſed, are expreſſed to be theſe:

The Defence and Safety of the King and People, which without extremeſt Hazard of the King, Kingdom, and People, and of the King's Friends and Allies beyond Seas, cannot admit any longer Delay; inevitable Neceſſity, wherein Form and Circumſtance muſt rather be diſpenſed withal, than the Subſtance loſt.

The Commiſſioners not to fail therein, as they tendred his Majeſty's Honour, and the Safety of the Kingdom and People.

Here *Salus Regni periclitabatur*, the whole Kingdom declared to be in danger, in greater and nearer than in the Opinion of the Ship-Writs, or Judgment in the *Chequer*.

In the Parliament 3 *Car.* this Commiſſion was adjudged by the Commons to be againſt the Laws of this Realm, and contrary to the Judgment given in the *Petition of Right*; and after a Conference with your Lordſhips, deſired his Majeſty, that it might be cancelled. The then Lord-Keeper ſhortly after brought it cancelled to your Lordſhips in the Houſe, and there ſaid, it was cancelled in his Majeſty's Preſence: You ſent it cancelled to the Commons to be viewed, who afterwards ſent it back to your Lordſhips.

My Lords, The laſt is the Addition of Saving, deſired to be added to the *Petition of Right*, which was in theſe Words:

'We humbly preſent this Petition unto your Majeſty, not only with a 'Care of preſerving our own Liberties, but with due Regard to leave en'tire the ſovereign Power, wherewith your Majeſty is truſted, for the 'Protection, Safety, and Happineſs of your People.' Your Lordſhips Deſire of this Addition to the Petition of Right, was taken into conſideration by the Commons; and after Debate, it was thought fit by them to be rejected. A Conference was had with your Lordſhips, and Mr. *Noy* appointed by the Commons to declare the Reaſons of their Reſolution. Your Lordſhips not receiving Satisfaction at that Conference, whether this Addition ſhould be rejected or not; it was again debated in the Commons Houſe, they ventur'd upon the ſame Bottom again: It was thereupon reſolved to be rejected; the Reaſons of their Rejection were theſe in Sum:

Firſt, They confeſs, that if theſe Words were taken as a bare Propoſition only, without any further reference to the Petition of Right, that it was a true Propoſition.

That is, that the Law hath truſted the King with ſovereign Power for the Protection, Safety, and Happineſs of the People.

But if it ſhould be added to the Petition of Right, as was deſired, then was it not true, but would make the Petition of Right *felo de ſe*, and wholly deſtructive to itſelf in all the Parts of it; that it would proceed *a bene diviſis ad mala conjuncta*: for then the Petition of Right, as they reſolved, would have this Senſe.

Whereas in the Petition of Right it is ſaid, That no Aid, Tax, Taillage, or other Charge whatſoever, may be impoſed upon the People, without their free Conſent in Parliament; it would have this Conſtruction. 'Tis true, it cannot be done by the King's ordinary Power, but it may be done by that ſovereign Power wherewith the Law hath entruſted his Majeſty for the Protection, Safety, and Happineſs of the People.

So likewiſe for Impriſonment, that they ought not to be impriſoned without due Proceſs of Law. It is true ordinarily, but the King may impriſon by his ſovereign Power, wherewith the Law hath intruſted him for the Protection, Safety, and Happineſs of the People.

So that, for that Martial Law, that the Subjects Lives ought not to be taken away, unleſs by due Proceſs of Law. 'Tis true ordinarily, but the King may do it by his ſovereign Power, wherewith the Law hath intruſted him for the Protection, Safety, and Happineſs of the People. Whereby they conceived that it would not only make the Petition of Right to be wholly deſtructive of itſelf, but likewiſe this Petition of Right would leave the Subjects in a far worſe Condition than it found them; for it would neceſſarily infer, that which is againſt the Law, *viz.* That the King by his ſovereign Power, when he pleaſed to declare that it was for the Good of the People, might do all this.

Your Lordſhips, at a Conference of both Houſes, engaged on the Part of the Commons by Serjeant *Glanvile* and Sir *Henry Martin*, received Satisfaction from theſe Reaſons, and conſented to the leaving out this Addition; and accordingly the Petition of Right paſſed, and is printed without it.

My Lords, Theſe were the things I was commanded to preſent unto your Lordſhips; other things there were, as the Sentence againſt Biſhop *Manwaring*: But theſe weighed ſo much with the Commons, as that they conceived they needed no more.

My Lords, Theſe Precedents of that Parliament, and theſe Opinions of the Judges, the Ship-Writs, and the Judgments in the *Exchequer*; they are like the two Buckets of a Well, if one go up, the other muſt go down: *Non bene conveniunt.*

My Lords, We have not cited theſe Precedents out of diffidence that your Lordſhips had forgotten them, but becauſe others have; or that we diſtruſt your Lordſhips Juſtice, if you had forgot them: for before theſe were, your Lordſhips concurred in Opinion with your worthy Anceſtors, that firſt gave them. Their noble Blood runs in your Veins. It's now to confirm your own Judgment as well as theirs: In your Lordſhips Breaſts, there are the ſame Magazines and Fountains of Honour and Juſtice as were then; theſe Judgments and Proceedings were the Actions of both Houſes; the Danger by the Violation is equal.

The Commons ſee nothing in the Judges Opinions or Judgment, why they ſhould recede from their former Judgments; they hope the ſame from your Lordſhips.

Beſides, *my Lords*, that the Caſe is now much varied from what it was then; not only in the Matter, but as it concerns the Honour and Juriſdiction of this great Judicatory, the Parliament.

The Breach of Privileges in the Members is tenderly reſented, becauſe that without this Freedom they cannot adviſe and conſult concerning the *Ardua Regni.*

But when they have done all, to have their Judgments and their Acts of Parliament overthrown by the Judges afterwards, this makes Parliaments to be nothing; this ſets up the Judges above the Parliament, this puts us out of hope of Redreſs: if they may overthrow the Proceedings of that Parliament of 3 *Car.* they may by the ſame Reaſon overthrow the Actions of this, and of all future Parliaments.

My Lords, This was not the Practice of their Predeceſſors, tho' but in private Cauſes; if difficulty of Law aroſe, they always conſulted this Oracle, and thence received their Anſwer how to give Judgment. Judgments in the higheſt Court of *Weſtminſter-Hall*, I mean in the *King*'s-*Bench*, where the Proceedings are *coram Rege*, are here reverſable by Writ of Error. In Cauſes of great and general Concernment, they ever adjourned them hither, as things too high for them.

Qui conſulta patrum, qui leges juraque ſervat, doth well; they have taken that in their hands they had not to do withal; and how they have handled the Matter, your Lordſhips have heard.

The Judges, as is declared in the Parliament Roll of *Rich.* II. are the Executors of the Statutes, and of the Judgments and Ordinances of Parliament; they have here made themſelves the Executioners of them; they have endeavoured the Deſtruction of the Fundamentals of our Laws and Liberties. *Holland* in the *Low-Countries* lies under the Sea, the Superficies of the Land is lower than the Superficies of the Sea: It's capital therefore for any Man to cut the Banks, becauſe they defend the Country.

Beſides our own, even foreign Authors, as *Commines*, obſerve, that the Statute *de Tallagio*, and other old Laws, are the Sea-Walls and Banks which keep the Commons from the Inundation of the Prerogative.

Theſe Pioneers, they have not only undermined theſe Banks, but they have levelled them even with the Ground.

If one that was known to be *Hoſtis Patriæ* had done this, tho' the Damage be the ſame, yet the Guilt is leſs.

But the *Conſervatores Riparum*, the Overſeers intruſted with the Defence of theſe Banks, for them to deſtroy them, the Breach of Truſt aggravates, nay, alters the Nature of the Offence.

Breach of Truſt, tho' in a private Perſon, and in the leaſt things, is odious amongſt all Men; much more in a publick Perſon, and in things of great and publick Concernment, becauſe great Truſt binds the Party truſted to greateſt Care and Fidelity.

It's Treaſon in the Conſtable of *Dover* Caſtle to deliver the Keys to the known Enemies of the Kingdom; becauſe that Caſtle is the Key of the Kingdom: Whereas if the Houſe-keeper of a private Perſon deliver'd Poſſeſſion to his Adverſary, it's a Crime ſcarce puniſhable by Law.

The Judges under his Majeſty are the Perſons truſted with the Laws; and in them, with the Lives, Liberties, and Eſtates of the whole Kingdom: This Truſt of all we have is primarily in his Majeſty, and from him delegated to his Judges.

His Majeſty, at his Coronation, is bound by his Oath to execute Juſtice to his People, according to the Laws; thereby to aſſure the People of the faithful Performance of this great Truſt. His Majeſty again, as he truſts the Judges with the Performance of this part of the Oath, ſo doth he likewiſe exact another Oath of them, for their due Execution of Juſtice to the People, according to the Laws: Hereby the Judges ſtand entruſted with this part of his Majeſty's Oath.

If therefore the Judges ſhall do wittingly againſt Law, they do not only break their Oaths, and therein the common Faith and Truſt of the whole Kingdom, but do as much as in them lies ſmear and blemiſh the ſacred Perſon of his Majeſty with the odious and hateful Sin of Perjury.

My Lords,

The Heinouſneſs of this Offence is moſt legible in the ſevere Puniſhments which former Ages have inflicted upon thoſe Judges who have broken any part of their Oaths wittingly, tho' in things not ſo dangerous to the Subject as in this Caſe in queſtion.

Sir *Thomas Wayland*, Chief Juſtice of the *Common Pleas*, *Edw.* I. was attainted of Felony for taking Bribes, and his Lands and Goods forfeited, as appears in the Pleas of Parliament, 18 *Edw.* I. and he was baniſhed the Kingdom as unworthy to live in that State, againſt which he had ſo much offended.

Sir *William Thorpe*, Chief Juſtice of the *King*'s-*Bench*, in *Edw.* III's times, having of five Perſons received five ſeveral Bribes, which in all amounted to 100*l.* was for this alone adjudged to be hanged, and all his Lands and Goods forfeited. The Reaſon of this Judgment is entered in the Roll, in theſe Words:

Quia prædict' Willielmus Thorpe, *qui ſacramentum Domini Regis erga populum ſuum habuit ad cuſtodiendum, fregit malitioſe, falſe & rebelliter, quantum in ipſo fuit*; becauſe that he, as much as in him lay, had broken the King's Oath made unto the People, which the King had intruſted him withal.

There is this notable Declaration in that Judgment; that is, That this Judgment was not to be drawn into Example againſt any other Officers who ſhould break their Oaths, but only againſt thoſe *qui prædictum ſacramentum fecerunt & fregerunt, & habent leges* Angliæ *ad cuſtodiendum*; that is, only to the Judges Oaths, who have the Laws entruſted to them.

This Judgment was given 24 *Ed.* III. The next Year in the Parliament 25 *Ed.* III. it was debated in Parliament, whether this Judgment was legal; *& nullo contradicente*, it was declared to be juſt, and according to the Law; and that the ſame Judgment may be given in time to come upon the like Occaſion. This Caſe is in point, that it's Death for any Judge wittingly to break his Oath, or any part of it.

This Oath of *Thorpe* is entered in the Roll, and is the ſame *verbatim* with the Judges Oath in 18 *Ed.* III. and the ſame which the Judges now take.

Your Lordſhips will give me leave to obſerve the Differences between that and the Caſe in queſtion.

Firſt, That of *Thorpe* was only a ſelling of the Law by Retail to thoſe five Perſons; for he had only five ſeveral Bribes of thoſe five Perſons; the Paſſage of the Law to the reſt of the Subjects, for aught appears, was free and open.

But theſe Opinions are a Conveyance of the Law by wholeſale, and that not to, but from the Subject.

In that of *Thorpe*, as to thoſe five Perſons, it was not an abſolute Denial of Juſtice; it was not a damming up, but a ſtreightning only of the Channel.

For whereas the Judge ought *judicium reddere*, that is, the Law being the Birth-right and Inheritance of the Subject, the Judge, when the Parties in Suit demand Judgment, ſhould *redare*, freely reſtore this right unto them; now he doth not *dare*, but *vendere*, with the Hazard only of perverting Juſtice; for the Party that buys the Judgment may have a good and honeſt Cauſe.

But theſe Opinions, beſides that they have coſt the Subject very dear, dearer than any; nay, I think I may truly ſay, than all the unjuſt Judgments that ever yet have been given: Witneſs the many hundred thouſand Pounds which under Colour of them have been levy'd upon the Subject, amounting to ſeven hundred thouſand Pounds and upwards in Money paid unto the Treaſurer of the Navy; beſides what the Subjects have been forced to pay to Sheriffs, Bailiffs, and others, which altogether, as is conceived, amounts not to much leſs than a Million; beſides the infinite Vexation of the Subjects by Suits in Law, binding them over to Attendance at the Council-Board, taking of them from their neceſſary Employments in making of Aſſeſſes and Collections, and Impriſonment of their Perſons: I ſay, *my Lords*, beſides what is paſt, to make our Miſeries complete, they have as much as in them lies made them endleſs; for by theſe Opinions they have put upon themſelves and their Succeſſors an Impoſſibility of ever doing us Right again, and an Incapacity upon us of demanding it ſo long as they continue.

My Lords, In that ſore Famine in the Land of *Egypt*, when the Inhabitants were reduced to the next door to Death, for there they ſay, *Why ſhould we die for Bread?* Firſt, they gave their Money; next, their Flocks and Cattle; and laſt of all, their Perſons and their Lands, for Bread; and all became *Pharaoh*'s. But by this *Lex Regia*, there is a Tranſaction made, not only of our Perſons, but of our Bread likewiſe, wherewith our Perſons ſhould be ſuſtained. That was for Bread, this is of our Bread. For, *my Lords*, ſince theſe Opinions (if we have any thing at all) we are not at all beholden to the Law for it, but are wholly caſt upon the Mercy and Goodneſs of the King.

Again, There the *Egyptians* themſelves ſold themſelves and all they had to the King; if ours had been ſo done, if it had been done by our own free Conſent in Parliament, we had the leſs Cauſe to complain: but it was done againſt our Wills, and by thoſe who were truſted, and that upon Oath, with the Preſervation of thoſe things for us.

My Lords, The Laws are our Forts and Bulwarks of Defence. If the Captain of a Caſtle, only thro' Fear and Cowardice, and not from any Compliance with the Enemy, ſurrender it; this is Treaſon, as was adjudged in the Parliament, 1 *Ric.* II. in the two Caſes of *Grymes* and *Weſton*, and in the Caſe of the Lord *Gray*, for ſurrendering of *Berwick Caſtle* to the *Scots* in *Edw.* III.'s time, tho' good Defence had been made by him, and that he loſt his eldeſt Son in maintenance of the Siege; and yet the Loſs of a Caſtle only loſeth not a Kingdom, but the Place and adjacent Parts, without Trouble to the whole.

But by theſe Opinions, there is a Surrender made of all legal Defence of Propriety; that which hath been preached is now judged, that there is no *meum & tuum* between the King and the People, beſides that which concerns our Perſons.

My Lords, The Law, it is the Temple, the Sanctuary whither the Subject is to run for Shelter and Refuge. Hereby it is become *Templum ſine Numine*, as was the Temple built by the *Roman* Emperor, who, after he had built it, put no Gods into it.

We have the Letter of the Law ſtill, but not the Senſe.

We have the Fabrick of the Temple ſtill; but the Gods, the *Dii Tutelares*, are gone.

But, *my Lords*, this is not all the Caſe (that is) that the Law now ceaſeth to aid and defend us in our Rights, for then Poſſeſſion alone were a good Title, if there were no Law to take it away; *occupanti concederetur, & melior eſſet poſſidentis conditio.* But this (tho' too bad) is not the worſt; for beſides that which is privative in theſe Opinions, there is ſomewhat poſitive: for now the Law doth not only not defend us, but the Law itſelf is made the Inſtrument of taking all away.

For whenſoever his Majeſty or his Succeſſors ſhall be pleaſed to ſay, That the good and Safety of the Kingdom is concerned, and that the whole Kingdom is in danger, then when and how the ſame is to be prevented, makes our Perſons and all we have liable to bare Will and Pleaſure.

By this Means, the Sanctuary is turned into a Shambles: The Forts are not ſlighted, that ſo they might neither do us Good or Hurt; but they are held againſt us by thoſe who ought to have held them for us; the Mouth of our own Cannon is turned upon ourſelves.

My Lords, in theſe Expreſſions there is no Reflection upon his Majeſty: It is only that thoſe Judges would have forced upon the Law an unnatural and contrary Motion; his Majeſty's Carriage in the Buſineſs clears his Juſtice.

The firſt Opinion of the Judges under their Hands was procured by my Lord *Finch*'s Sollicitation only, and by him brought to his Majeſty. Theſe Opinions procured the Letter from his Majeſty for the Opinions inrolled, wherein, as likewiſe in the Caſe in the *Exchequer*, the Judges were left free, as was acknowledged by two of the Judges in the *Exchequer-Chamber*, who argued againſt thoſe Opinions, with this Proteſtation, that if there were any Miſcarriages in that Buſineſs, it muſt fall wholly upon themſelves; that the King was blameleſs.

My Lords, we know his Majeſty's Juſtice is the faireſt, the richeſt Diamond in his Crown; the Duſt which theſe Men would have blown and forced upon it, is fallen ſhort; and with your Lordſhips helping Hands, it will, we hope, be caſt upon their own Faces, a fitter place for it than the other.

My Lords, the Oaths of the Judges, as they bind them to the due Adminiſtration of Juſtice to the Subjects, according to the Laws, ſo as they be of the King's Council by their Oaths, they are bound lawfully to counſel him; that is, when their Opinions are demanded, they are to deliver them according to the Law.

I ſhall therefore put your Lordſhips in mind of the memorable Proceedings againſt thoſe Judges who have broken this part of their Oath, in that notable Parliament held the eleventh of *Richard* the Second.

In this Parliament, Judgment of High-Treaſon was given againſt eighteen ſeveral Perſons, † and all (ſave one of them) of eminent Rank; three Privy Counſellors; the Arch-Biſhop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*; the Biſhop of *Exeter* the King's Confeſſor; five Knights, ſome whereof had been Servants to *Edward* the Third, and all, ſave one, Servants to the then King; and ſome of them of Noble Deſcent; ſix Judges, *Lockton* the King's Serjeant at Law, *Blake* of the King's Counſel at Law, and *Uſke* the Under-Sheriff of *Middleſex*. Of theſe eighteen, eight were executed; that is, Sir *Robert Treſilian* the Chief Juſtice, five Knights, *Blake* of the King's Counſel at Law, and *Uſke* the Under-Sheriff. Three, that is, the Arch-Biſhop of *York*, Duke of *Ireland*, and Earl of *Suffolk*, fled.

The reſt had their Lives pardoned, but were baniſhed; their Lands and Goods forfeited, and little Penſions allowed them during their Lives. It was made Felony for any one to procure their Pardons, and they to be dealt with as Traitors, if they returned from their Baniſhment: And of thoſe eighteen Perſons all ſave three were impeached by the Commons.

The Offences which procured theſe exemplary Puniſhments, altho' their Proceedings be long, and comprehended all that was done in this Parliament, I'll briefly open them to your Lordſhips. During the Minority of that King, by ill Counſel of ſome near his Perſon there were Miſcarriages in Government. In the tenth Year of his Reign, and the twentieth of his Age, a Parliament was holden: in that Parliament, in aid of good Government, and of due Execution of the Laws, a Commiſſion was awarded to 12 ſeveral Peers, and others of greateſt Wiſdom and Fidelity. The Commiſſioners had Power in all things concerning the Houſhold, Courts of Juſtice, and the Revenues; in a Word, in all things concerning the Good of the Realm; with full Power finally to determine and put in Execution ſuch Determination for the Honour of the King, the better Governance of the Peace and Laws of the Realm, and Relief of the People.

This Commiſſion was to endure one Year; at the Year's end the King would be of full Age.

My Lords, the endeavouring to overthrow this Commiſſion iſſued by Authority of Parliament for the Welfare of the Realm, upon pretence that it trenched upon the Royal Power, tended to the Diſheriſon of the King, and Derogation of the Crown, together with the Deſtruction of the Commiſſioners who procured it, and put the ſame in Execution, upon pretence that they and ſome others had in Parliament forced the Royal Aſſent.

My Lords, the conſpiring to overthrow this Commiſſion and the Procurers of it, is the Caſe in brief: for altho' there be divers other Articles againſt many of them, yet this was the Ground-work of all; and this ſingly and alone is declared in all the Proceedings in Parliament to be Treaſon.

Of theſe 18 Perſons condemned, 5 of them were Plotters, *viz.* the Arch-Biſhop, Duke of *Ireland*, Earl of *Suffolk*, *Treſilian* the Chief Juſtice, and Sir *Nicholas Bramber*: theſe inſinuated into the King, That this Commiſſion was in diminution of his Kingly Power, that the Procurers of it had extorted his Royal Aſſent; and that this was Treaſon. Thereupon *Blake*. one of the King's Counſel at Law was adviſed withal, who declared his Opinion, that it was Treaſon: he was commanded to prepare an Indictment of Treaſon againſt the Commiſſioners, and ſome of the Procurers of it, who had been active therein.

The Indictment was drawn by him, which is entered in the Roll, and is to this Effect:

That they had traitorouſly conſpired amongſt themſelves in the Parliament, to make this Commiſſion by Authority of Parliament againſt the Regality of the King, to his Diſheriſon, and Derogation of the Crown; that they compelled the King's Conſent, and that they confederated and bound themſelves to maintain one another in ſo doing.

It was intended that they ſhould be tried upon this Indictment in *Middleſex* or in *London*. *Uſke* the Under-Sheriff of *Middleſex* was acquainted with the Buſineſs, who was to prepare Things for the effecting of this Deſign, ſome of the Parties to be indicted not being Peers: which he performing accordingly, was therefore executed.

The five Plotters, that the King might the more confide in their Counſels, (for ſo are the Words of the Record) and that under the Colour of Law they might cover their Malice from the King and the Kingdom, before the Trial was to be had, they adviſe the King to demand the Opinion of ſome of the Judges, that is of the two Chief Juſtices, and Chief Baron, the Judges of the *Common Pleas*, ſix in number, and of *Lockton* the

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† *Vid.* Trial I. in this Collection.

King's Serjeant. *Blake* of the King's Counſel at Law was commanded to draw up theſe Queſtions for the Judges Opinions, who did it accordingly.

For the drawing up of theſe Queſtions, and the Indictment, *Blake* was condemned and executed.

The Queſtion being drawn into Writing, the Judges were ſent for to *Nottingham* Caſtle; where, in the King's Preſence, they were commanded upon their Allegiance to deliver their Opinions.

1. The firſt Queſtion was, Whether the Commiſſion was in Derogation of the Crown? They anſwered, It was.

2. The ſecond Queſtion was, Whether the perſuading and urging the King's Conſent in Parliament thereto was Treaſon? They anſwered, That it was. Tho' there were ſome other Queſtions aſked, all concerning Parliamentary Proceedings, yet theſe were the main, and thoſe for which they were condemned; as appears by the Replication of the Commons to the Judges Anſwer, and by the Words of the Judgment, *viz.* That they knew that this Commiſſion was awarded in Parliament, that it was for the publick Good; that they knew of the traitorous Intents to deſtroy the Procurers of this Commiſſion; that they knew the Law, and that it was not Treaſon; and had delivered their Opinions thereby under colour of Law, to cover their treaſonable Intent: and therefore Judgment of Treaſon was given againſt them, and againſt *Lockton* the King's Serjeant at Law, who had ſubſcribed the Opinions with the Judges.

Sir *Simon Burley*, one of the five Knights that were executed, was condemned only for conſpiring the Death of the Procurers of this Commiſſion: and altho' there be other Articles againſt the reſt, yet this alone is adjudged Treaſon in the ſeveral Judgments againſt every one of the eighteen.

1. My Lords, it is obſervable in all theſe Judgments, that they are adjudged Traitors, as well againſt the Perſon of the King as againſt the Commonwealth.

2. It is there declared upon great Advice taken, that in Treaſons which concern the King and Kingdom, they are not bound to proceed according to the Rules of the Common Law and inferior Courts, but according to the Courſe of Parliaments, ſo as may be for the common Good.

3. Judgment was given in Parliament, and Execution awarded, and afterwards a Bill of Confirmation paſſed, in reſpect of their Lands, to give them from a Day paſt; and for Declaration that this ſhould be no Precedent to inferior Courts to adjudge the ſame Caſes Treaſon, ſave only in Parliament.

Theſe Judgments were not huddled up in haſte, but they were given upon long and mature Deliberation. Theſe Judgments were the whole Work of that Parliament; and the Proceedings againſt the five Plotters were begun the fourteenth of *November*, and the Judgments were not given till the thirteenth of *February* following, which was a quarter of a Year. And it is declared in the Roll, that they ſpent a long time, and took great pains to examine the Evidences, the better thereby to ſatisfy their own Conſciences and the World.

I inſiſt the more upon this, to take away all Blemiſh from theſe Proceedings.

It is true, my Lords, theſe Judgments were afterwards in the Parliament of 21 *Rich.* II. revoked and made void.

But, my Lords, that Parliament of 21 *Rich.* II. of Revocation was held by Force, as it is declared in the Parliament Rolls of 1 *Hen.* IV. *N.* 21, 22. that it was held *viris armatis, & ſagittariis immenſis.*

The Knights of Parliament were not elected by the Commons, *prout mos exigit, ſed per regiam voluntatem:* And ſo the Lords, *ſummoniri fecit Rex Dominos ſibi adhærentes.*

My Lords, by theſe Proceedings it doth appear, that this Parliament of Revocation was no free Parliament, if at all it deſerves the name of a Parliament. But to put all out of doubt, in the Parliament of 1 *Hen.* 4. *N.* 48. theſe Judgments of Revocation are declared to be *πονηρα, iniqua, & omni juri & rationi repugnantia*, erroneous, wicked, and contrary to all Right and Reaſon. In the Parliament of 1 *Hen.* IV. in Print, theſe Attainders are confirmed: So that theſe Judgments of Attainder have the Authority of two Acts of Parliament, both of them of Force at this Day.

Your Lordſhips will give me leave to obſerve the Differences and Agreements between the Offences of thoſe and of the preſent Judges, and as well in the Way and Manner of Procurement, as in the Matter of them. For the Manner of Procurement, thoſe Judges in *Rich.* II's time were in the King's Preſence: and as it is in the Parliament Roll of 1 *Hen.* IV. *N.* 18. they were *violenter attracti*, violently drawn to deliver their Opinions, and that *metu mortis & cruciatu corporis*, for the fear of Death and Tortures of their Bodies: and at their Trials ſeverally they ſay, That in part Violence had been offered to their Perſons, becauſe they had differed in the delivery of their Opinions. My Lords, this was ſuch a Miſcarriage in the Judges, theſe Circumſtances conſidered, as might *cadere in virum fortem & conſtantem.* But, my Lords, Fear or Cowardice is no Plea for delivering up of the Forts and Bulwarks of the Kingdom.

But in the preſent Buſineſs there is none of all this; it came from within; there is no outward Force. In thoſe of *Rich.* II. it was *Actus unicus*, once done at *Nottingham* Caſtle: if the Judges had been put to it the ſecond time, perhaps the reſt, as well as ſome of them, had repented, and would not have done it over again; for *Belknape*, the Chief Juſtice of the *Common-Pleas*, the ſame Day declared his Sorrow, and ſaid, That now there remained nothing but a Horſe, a Hurdle, and a Halter; and *Fulthorp*, another of them, the next Day declared his Grief for what he had done. But here, after the Opinion in *November* 1635, a Year after, *viz.* 1636, they proceed *a peſſimo ad pejus peſſimo*; for that was with Additions: Moſt of them declared their Opinions in their Circuits, and a Year after confirmed it again by the Judgment in the *Exchequer*. Here it was done Year after Year in cold Blood: One murderous Blow, whereupon Death follows, is Felony; but to multiply Wounds upon the dead Body, and to come again in cool Blood to do it, it ſhews the Height of Malice. In theſe two things they agree.

1. That which the Judges did in *Rich.* II's time, they did againſt their own Knowledge; they knew the Commiſſion was done by Act of Parliament; ſo here theſe knew the Petition of *Right* damned the Commiſſioners of *Loans*, a ſtronger Caſe than that; they ſubſcribed many of them, knew that the Commiſſion of *Exciſe* was damned in Parliament; they knew the other Proceedings in Parliament, and if they had forgotten them, they were afterwards put in mind of them; they needed not to have conſulted with Books and Journals of Parliaments, ſaving only with their own Memories.

2. They agree in this, That their Opinions tended to the Subverſion of the Laws and Statutes of the Kingdom: for in that of *Rich.* II. the Pretence was, the endeavouring to overthrow Parliaments and Parliamentary Proceedings; the Conſpiracy of the Death of the Procurers was only an Aggravation. It was not Treaſon to conſpire the Death of a Privy-Counſellor, or to kill a Judge, unleſs he be upon the Bench; and in that Caſe it is Treaſon, becauſe of the Malice, not of the Perſon, but to the Law: ſo that there the Treaſon lay in this, not that they conſpired barely againſt their Perſons, but with reference to their Proceedings in Parliament; and thereby to overthrow the Acts of Parliament, wherein theſe Perſons had been principal Actors. But in this again they diſagree; for in that Caſe there was only a Conſpiracy; no Death followed to the Procurers of the Commiſſion, nor was the Commiſſion overthrown; all that was done was only this, That a Warrant was directed to the Lord Mayor of *London*, for apprehending their Perſons to bring them to Trial, which yet was not done. But here (after the Opinions delivered) Judgment was afterwards given by them in the *Exchequer*, and Execution awarded thereupon, for ſo much as concerns our Property.

And likewiſe in the *King*'s-*Bench*, where the Judges after the Judgments in the *Exchequer* refuſed to hear any more Debate of the Matter; and ſo for the Liberty of our Perſons, by keeping divers of the Subjects in Priſon, Term after Term, for not paying Ship-Money, and other things depending upon thoſe Opinions, when they had been brought before them upon their *Habeas Corpus.*

In that of *Rich.* II. it was for overthrowing but one Act of Parliament, which was likewiſe introductive of a new Law; for the Commiſſion had no Riſe from the Common Law; for in truth it was derogatory to the Crown: It had only the Strength of the Parliament to ſupport it, which was ſufficient; it was for the common Good.

But here the Endeavour was at once, not to blow up one Act of Parliament, but all; and theſe not introductive, but declaratory of the Common Law; as was the Petition of *Right*, the Statutes there mentioned, and the Reſolutions.

That of *Rich.* II. was but the blowing up of the upper Deck; this of the Common Law, and the Statutes too, and the old Foundations, and the Structures built upon them, all together.

In that of *Rich.* II. it was only to overthrow a temporary Act of Parliament, that was to continue no longer than one Year; but this, to make an eternal Devaſtation; for (*toties quoties*) to the World's End, as his Majeſty or his Succeſſors ſhall ſay that the Kingdom is in Danger, may theſe Opinions be put in Execution; and likewiſe they are enrolled in all the Courts of *Weſtminſter-Hall, in perpetuam rei memoriam.*

This Sin againſt the Holy Ghoſt is therefore unpardonable, becauſe it takes from the Party Repentance, the Means of Pardon. To put us therefore into a Caſe of Deſperation, ſome of them have publickly, and upon the Bench, declared, That this Prerogative is ſo inherent in the Crown, as that it cannot be taken away by Act of Parliament.

As they have put an Impoſſibility upon themſelves, ſo would they put an Impoſſibility upon his Majeſty, your Lordſhips, and the whole Parliament, for ever righting us again.

My Lords, *Contraria juxta ſe poſita magis eluceſcunt.* I have preſented your Lordſhips with the Obliquity of the ill Judges in *Rich.* II's Time, give me leave to preſent your Lordſhips with one Example of a contrary Nature; and that was in Queen *Elizabeth*'s time, in the 29th Year of her Majeſty's Reign: She erects a new Office in the *Common-Pleas*, for the making of *Superſedeas* in *Exigents* that iſſued there; ſhe grants it to *Richard Cavendiſh*, her Servant, ſends to have him admitted; but the Judges delay the doing of it, for this Reaſon, becauſe the *Prothonotaries* and *Philazers* claimed the making of thoſe Writs. The Queen ſends a ſharp Letter, and commands them forthwith to admit him; yet the Judges forbear. The Queen ſends a ſharper Letter, commanding them to ſhew the Reaſons of their Contempt and Diſobedience to the then Lord Keeper and the Earl of *Leiceſter*, no mean Men in thoſe Days: the Judges deliver their Reaſons why they had refuſed, that it was becauſe others claimed the making of thoſe Writs.

The Queen ſends a fourth peremptory Meſſage for their admitting him, with this Reaſon, That if the others were put out, they were rich and able Men; and that her Courts of Juſtice were open, where they might demand their Rights.

This was not to take away the Right, but to put them to their Action.

The Judges humbly returned this Anſwer, That the Queen had taken her Oath for the Execution of Juſtice according to the Law; that they did not doubt, but that when her Majeſty was inform'd that it was againſt Law, ſhe would do what befitted her: for their parts, they had taken an Oath to God, to her, and the Commonwealth; and if they ſhould do it without Proceſs of Law before them, and only upon her Command put the other out of Poſſeſſion, tho' the Right remained to them, it were a Breach of their Oaths; and therefore if the Fear of God were not ſufficient, they told her the Puniſhment that was inflicted upon their Predeceſſors for Breach of their Oaths, (citing theſe of *Thorpe* in *Rich.* II's time) that they might be ſufficient Warning to them. The Queen hearing of theſe Reaſons was ſatisfy'd; and the Judges heard no more of the Buſineſs.

This remains under the Hand of Anderſon *the Lord Chief Juſtice in his Reports, Vol.* I. *pag.* 152--158.

Theſe Judges have had Examples of both kinds before them; they might have choſen the Good, and refuſed the Bad.

My Lords, Beſides theſe Judgments and Opinions, the Commons will in due time bring up theſe Judges with their other Judgments, *Corpora cum cauſis*; for your Lordſhips will eaſily conceive, that they who have done this, have done more: the Principal of them, I mean my Lord Keeper, ſtands accuſed before your Lordſhips of High-Treaſon: He is not here: Juſtice goes *pede lento, ſed certo*; it will overtake him at the laſt.

The next Step that is making after him are the Articles of his Impeachment, which, with your Lordſhip's Patience, are now ready to be opened and delivered to your Lordſhips.

Mr. Hide * *ſpake afterwards in the following manner:*

My Lords,

'THERE cannot be a greater Inſtance of a ſick and languiſhing Commonwealth than the Buſineſs of this Day. Good God! how have the Guilty theſe late Years been puniſhed, when the Judges themſelves have been ſuch Delinquents! 'Tis no marvel that an irregular, extravagant Arbitrary Power, like a Torrent, hath broke in upon us, when our Banks and our Bulwarks, the Laws, were in the Cuſtody of ſuch Perſons. Men who had loſt their Innocence could not preſerve their Courage; nor could we look that they who had ſo viſibly undone us themſelves, ſhould have the Virtue or Credit to reſcue us from the Oppreſſion of other Men. It was ſaid by one who always ſpoke excellently, That the twelve Judges were like the twelve Lions under the Throne of *Solomon: Under the Throne in Obedience, but yet Lions.* Your Lordſhips ſhall this day hear of ſix, who (be they what they will be elſe) were no Lions, who upon vulgar fears delivered up the precious Forts they were truſted with, almoſt without aſſault; and in a tame eaſy Trance of Flattery and Servitude, loſt and forfeited (ſhamefully forfeited) that Reputation, Awe, and Reverence, which the Wiſdom, Courage, and Gravity of their venerable Predeceſſors had contracted and faſtened to the Places they now hold; and even rendered that Study and Profeſſion, which in all Ages hath been, and I hope now ſhall be of an honourable Eſtimation, ſo contemptible and vile, that had not this bleſſed Day come, all Men would have had that quarrel to the Law itſelf, which *Marcius* had to the *Greek* Tongue; who thought it a Mockery to learn that Language, the Maſters whereof lived in Bondage under others. And I appeal to theſe unhappy Gentlemen themſelves, with what a ſtrange Negligence, Scorn, and Indignation, the Faces of all Men, even of the meaneſt, have been directed towards them, ſince (to call it no worſe) that fatal Declenſion of their Underſtandings, in thoſe Judgments of which they ſtand here charged before your Lordſhips.

But, my Lords, the Work of this Day is the greateſt Inſtance of a growing and thriving Commonwealth too; and is as the Dawning of a fair and laſting Day of Happineſs to this Kingdom.

It is in your Lordſhips Power (and I am ſure it is in your Lordſhips Will) to reſtore the dejected broken People of this Iſland to their former Joy and Security, the Succeſſors of theſe Men to their own Privilege and Veneration: *Et ſepultas prope leges revocare.*

So theſe Judges enter themſelves, and harden their Hearts by more particular Treſpaſſes upon the Law; by Impoſitions and Taxes upon the Merchants in Trade; by Burdens and Preſſures upon the Gentry in Knighthood; before they could arrive at that univerſal Deſtruction of the King by Ship-Money, which promiſed Reward and Security for all their former Services, by doing the Work of a Parliament to his Majeſty in Supplies; and ſeemed to delude Juſtice, in leaving none to judge them, by making the whole Kingdom Party to their Oppreſſion.

My Lords, the Commons aſſembled in Parliament hope that your Lordſhips will call theſe Judges ſpeedily before you to anſwer theſe Articles laid to their charge, that the Nation may be ſatisfied in your Lordſhips Juſtice upon them, as their Crimes demerit.

Then Mr. *Pierpoint* delivered in the following Articles againſt Sir *Robert Berkley*, one of the Juſtices of the *King's-Bench:*

Articles of Impeachment of Sir Robert Berkley *Kt. one of the Juſtices of the Court of* King's-Bench, *by the Commons in this preſent Parliament aſſembled, in their own Name, and in the Name of all the Commons of* England, *in maintenance of their Accuſation, whereby he ſtandeth charged with High-Treaſon, and other great Miſdemeanours.*

Imprimis, THAT the ſaid Sir *Robert Berkley*, then being one of the Juſtices of the ſaid Court of *King's-Bench*, hath traitorouſly and wickedly endeavoured to ſubvert the fundamental Laws and eſtabliſh'd Government of the Realm of *England*; and inſtead thereof, to introduce an Arbitrary and Tyrannical Government againſt Law, which he hath declared by traitorous and wicked Words, Opinions, Judgments, Practices, and Actions appearing in the ſeveral Articles enſuing.

2. Whereas by the Statute made in the 25th Year of the Reign of K. *Henry* VIII. Prices of Victuals are appointed to be rated in ſuch manner, as in the ſaid Statute is declared; but it is manifeſt by the ſaid Statute, Corn is none of the Victuals thereby intended: Nevertheleſs ſome ill-affected Perſons endeavouring to bring a Charge upon the Subjects contrary to Law, did ſurmiſe, that the Prices of Corn might be rated, and ſet according to the direction of that Statute; and thereupon great gain might be raiſed to his Majeſty by Licences and Diſpenſations for ſelling Corn at other Prices: And a Command from his Majeſty being procured to the Judges, and ſent to them by *William Noy* Eſq. his Majeſty's then Attorney-General, to deliver their Opinions touching the Queſtion, Whether Corn was ſuch Victuals as was intended to have the Price rated within the ſaid Statute: In anſwer to which, the ſaid Sir *Robert Berkley* then being one of his Majeſty's Juſtices of the Court of *King's-Bench*, in furtherance of the ſaid unlawful Charge endeavoured to be impoſed as aforeſaid, the thirtieth day of *November*, in the eighth year of his now Majeſty's Reign, did deliver his Opinion, That Corn was ſuch Victual as was intended to have the Price rated within the ſaid Statute; which ſaid Opinion was contrary to Law, and to the plain ſenſe and meaning of the ſaid Statute, and contrary to his own Knowledge, and was given and delivered by him, with a purpoſe and intention that the ſaid unlawful Charge might be impoſed upon the Subject.

3. That an Information being preferred in the Court of *Star-Chamber* by the ſaid *William Noy*, his Majeſty's then Attorney-General, againſt *John Overman*, and fifteen other Soap-makers, Defendants, charging them with ſeveral pretended Offences, contrary to divers Letters Patents and Proclamations touching the making and uttering Soap, and uſing the Trade of Soap-makers, and other offences in the ſaid Information mentioned; whereunto the Defendants did plead, and demur as to part, and anſwer to other parts of the ſaid Information: And the ſaid Plea and Demurrer being over-ruled, for that the Particulars therein inſiſted upon would appear more full after Anſwer and Proof; therefore the Defendants were ordered to anſwer without Prejudice, and were to be admitted to ſuch Exceptions to the ſaid Informations, and Advantages of the matter of the Plea and Demurrer upon the Hearing as ſhall be material; and accordingly the Defendants did put in their Anſwers, and ſet forth ſeveral Acts of Parliament, Letters Patents, Charters, Cuſtoms, and Acts of Common-Council of the City of *London*, and other matters materially conducing to their Defence; and, in concluſion, pleaded Not Guilty. The ſaid Sir *Robert Berkley* then being one of the Juſtices of the Court of *King's-Bench*, upon the 30th day of *March*, in the eighth Year of his Majeſty's Reign, upon an Order of Reference to him and others, by the ſaid Court of *Star-Chamber*, to conſider of the Impertinency of the ſaid Anſwers, did certify the ſaid Court of *Star-Chamber*, That the whole Anſwers, excepting the four Words and ten laſt Lines, ſhould be expunged; leaving thereby no more Subſtance of the ſaid Anſwers, than the Plea of Not Guilty. And after, upon a Reference to him and others, by order of the ſaid Court, of the Impertinency of the Interrogatories, and Depoſitions of Witneſſes taken on the Defendants part in the ſame Caſe, Sir *Robert Berkley*, upon the ſecond day of *May*, in the eighth year of his now Majeſty's Reign, certified, That nine-and-thirty of the ſaid Interrogatories, and the Depoſitions upon them taken, ſhould be ſuppreſſed, with the Anſwers (except as aforeſaid) and Depoſitions: altho' the ſame did contain the ſaid Defendants moſt material Defence, yet were they expunged and ſuppreſſed, according to the ſaid Certificates; both which ſaid Certificates were contrary to Law and Juſtice, and contrary to his the ſaid *Robert Berkley*'s own Knowledge, and contrary to the ſaid former Order, whereby the Advantages were ſaved to the Defendants, as aforeſaid: And by reaſon thereof the ſaid *John Overman* and the ſaid other fifteen Defendants were ſentenced in the ſaid Court of *Star-Chamber* to be committed Priſoners to the *Fleet*, and diſabled from uſing their Trade of Soap-makers; and one of them fined in 1500*l.* two of them in 1000*l.* a-piece, four of them in 1000 Marks a-piece; which Fines were eſtreated into the *Exchequer* without any mitigation: And the ſaid Defendants, according to the ſaid Sentence, were impriſoned, and deprived of their Trade and Livelihood, tending to the utter Ruin of the ſaid Defendants, and to the Overthrow of free Trade, and contrary to the Liberty of the Subject.

4. That he the ſaid Sir *Robert Berkley*, then being one of the Juſtices of the *King's-Bench*, and having taken an Oath for the due Adminiſtration of Juſtice, according to the Laws and Statutes of this Realm, to his Majeſty's Liege People, on or about the laſt of *December* ſubſcribed an Opinion, *in hæc verba:* ‘I am of opinion, that as where the Benefit doth more particularly redound to the good of the Ports or Maritime Parts, (as in Caſe of Piracy or Depredations upon the Seas) there the Charge hath been, and may be lawfully impoſed upon them, according to Precedents of former Times; ſo where the Safety and Good of the Kingdom in general is concerned, and the whole Kingdom in danger, (of which his Majeſty is the only Judge) there the Charge of the Defence ought to be borne by all the Realm in general: This I hold agreeable both to Law and Reaſon.’

5. That he the ſaid Sir *Robert Berkley*, then being one of the Juſtices of the Court of *King's-Bench*, and duly ſworn as aforeſaid, in *Feb.* 1636 ſubſcribed an extra-judicial Opinion, in anſwer to Queſtions in a Letter from his Majeſty, *in hæc verba:*

Charles Rex.

‘WHEN the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger; whether may not the King, by Writ under the Great Seal of *England*, command all the Subjects of this Kingdom at their charge to provide and furniſh ſuch number of Ships with Men, Victuals and Munition, and for ſuch time as he ſhall think fit, for the defence and ſafeguard of the Kingdom from ſuch Danger and Peril? and by Law compel the doing thereof in caſe of refuſal or refractorineſs? And whether, in ſuch caſe, is not the King ſole Judge both of the Danger, and when and how the ſame is to be prevented and avoided?

C. R.

‘May it pleaſe your moſt excellent Majeſty, we have, according to your Majeſty's Command, ſeverally every Man by himſelf, and all of us together, taken into ſerious conſideration the Caſe and Queſtion ſigned by your Majeſty, and incloſed in your Royal Letter: And we are of opinion, that when the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in danger, your Majeſty may, by Writ under the Great Seal of *England*, command all your Subjects of this your Kingdom, at their charge to provide and furniſh ſuch number of Ships with Men, Victuals, and Munition, and for ſuch time as your Majeſty ſhall think fit, for the defence and ſafeguard of the Kingdom from ſuch Danger and Peril; and that by Law your Majeſty may compel the doing thereof in caſe of refuſal and refractorineſs: And we are alſo of opinion, that in ſuch Caſe your Majeſty is the ſole Judge, both of Danger, and when and how the ſame is to be prevented and avoided. *John Bramſton*, *John Finch*, *Humphry Davenport*, *John Denham*, *Richard Hutton*, *William Jones*, *George Crooke*, *Thomas Trevor*, *George Vernon*, *Robert Berkley*, *Francis Crawley*, *Richard Weſton*.’

6. That he the ſaid Sir *Robert Berkley*, then being one of the Juſtices of the Court of *King's-Bench*, and duly ſworn as aforeſaid, did on the deliver his Opinion in the *Exchequer-Chamber* againſt *John Hampden*, Eſq; in the Caſe of Ship-Money. That he the ſaid *John Hampden*, upon the matter and ſubſtance of the Caſe, was chargeable with the Money then in queſtion; a Copy of which Proceeding and Judgment the Commons of this preſent Parliament have deliver'd to your Lordſhips.

7. That he the ſaid Sir *Robert Berkley*, then being one of the Juſtices of the Court of *King's-Bench*, and one of the Juſtices of *Aſſize* for the County of *York*, did, at the Aſſizes held at *York* in *Lent* 1636, deliver his

Charge

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* *Afterwards Lord Chancellor of* England.

his Charge to the Grand-Jury, *That it was a lawful and inſeparable Flower of the Crown for the King to command, not only the Maritime Counties, but alſo thoſe that were Inland, to find Ships for the Defence of the Kingdom.* And then likewiſe falſly and maliciouſly affirmed, That it was not his ſingle Judgment, but the Judgment of all his Brethren, witneſſed by their Subſcriptions. And then alſo ſaid, That there was a Rumor, that ſome of his Brethren that had ſubſcribed were of a contrary Judgment; but it was a baſe and unworthy thing, for any to give his Hand contrary to his Heart; and then wiſhed for his own part, that his Hand might rot from his Arm, that was guilty of any ſuch Crime; when as he knew that Mr. Juſtice *Hutton* and Mr. Juſtice *Crooke*, who had ſubſcribed, were of a contrary opinion, and was preſent when they were perſuaded to ſubſcribe; and did ſubſcribe for Conformity, only becauſe the major number of the Judges had ſubſcribed. And he the ſaid Sir *Robert Berkley* then alſo ſaid, That in ſome Caſes the Judges were above an Act of Parliament; which ſaid falſe malicious Words were uttered, as aforeſaid, with intent and purpoſe to countenance and maintain the ſaid unjuſt opinions, and to terrify his Majeſty's Subjects that ſhould refuſe to pay Ship-Money, or ſeek any Remedy by Law againſt the ſaid unjuſt and illegal Taxation.

8. That whereas *Richard Chambers* Merchant, having commenced a Suit for Treſpaſs, and falſe Impriſonment, againſt Sir *Edward Bromfeild* Knt. for impriſoning him the ſaid *Chambers* for refuſing to pay Ship-Money, in the time that the ſaid Sir *Edward Bromfeild* was Lord Mayor of the City of *London*; in which Suit the ſaid *Edward Bromfeild* did make a ſpecial Juſtification: The ſaid Sir *Robert Berkley*, then being one of the Juſtices of the Court of *King*'s-*Bench*, in *Trinity* Term laſt, then ſitting on the Bench in the ſaid Court, upon debate of the ſaid Caſe between the ſaid *Chambers* and Sir *Edward Bromfeild*, ſaid openly in the Court, That *there was a Rule of Law*, and a *Rule of Government*; and that *many things which might not be done by the Rule of Law, might be done by the Rule of Government:* And would not ſuffer the point of *Legality of Ship-Money to be argued* by *Chambers*'s Counſel. All which Opinions, Declarations, Words, and Speeches, contained in the third, fourth, fifth, ſixth, ſeventh and eighth Articles, are deſtructive to the fundamental Laws of this Realm, the Subjects Right of Property, and contrary to former Reſolutions in Parliament, and to the Petition of Right; which Reſolution in Parliament, and Petition of Right, were well known to him, and reſolved and enacted when he was the King's Serjeant at Law, and attendant in the Lords Houſe of Parliament.

9. That the ſaid Sir *Robert Berkley*, then being one of the Judges of the Court of *King*'s-*Bench*, and being in Commiſſion of the Peace, and duly ſworn to execute the Office of a Juſtice of the Peace in the County of *Hertford*, on or about the 7th of *January* 1638, at which time the General Seſſions of the Peace for the ſaid County were there holden; the ſaid Sir *Robert Berkley*, then and there ſitting on the Bench, did revile and threaten the Grand-Jury returned to ſerve at the ſaid Seſſions, for preſenting the Removal of the Communion-Table in *All-Saints* Church in *Hertford* aforeſaid, out of the place where it anciently and uſually ſtood, and ſetting it Altar-ways, againſt the Laws of this Realm in that Caſe made and provided, *as an Innovation in matters concerning the Church*; the ſaid Grand-Jury having delivered to them in charge at the ſaid Seſſions, by Mr. Serjeant *Atkins*, a Juſtice of the Peace for the ſaid County of *Hertford*, that by the Oath they had taken, they were bound to preſent all Innovations concerning Church-Matters. And he the ſaid Sir *Robert Berkley compelled the Foreman of the Jury to tell him who gave him any ſuch Information*; and thereby knowing it to be one *Henry Brown*, *one of the ſaid Grand-Jury*, he aſked the ſaid *Brown*, how he durſt meddle with Church-Matters? Who affirming, that in the ſaid Charge from Mr. Serjeant *Atkins* the ſaid Jury was charged ſo to do, he the ſaid Sir *Robert Berkley* told the ſaid *Brown*, He ſhould therefore find Sureties for his good Behaviour; and that he the ſaid Sir *Robert Berkley* would *ſet a great Fine on his Head*, to make him an example to others: and thereupon the ſaid *Brown* offered ſufficient Bail; but he the ſaid Sir *Robert Berkley* being incenſed againſt him, refuſed the ſaid Bail, and committed the ſaid *Brown* to Priſon, where he lay in Irons till the next Morning; and uſed to the ſaid *Brown*, and the reſt of the Jurors, many other *reviling and terrifying Speeches*; and ſaid, he knew no Law for the ſaid Preſentment; and told the ſaid *Brown*, that he had ſinned in the ſaid Preſentment: And he compelled the ſaid Grand-Jurors to ſay, *they were ſorry for what they had done in that Preſentment*, and did bid them to trample the ſaid Preſentment under their Feet; and cauſed *Brown* to tear the ſaid Preſentment in his ſight. And he the ſaid Sir *Robert Berkley*, when as *John Houland* and *Ralph Pemberton*, late Mayors of *St. Albans*, came to deſire his Opinion on ſeveral Indictments againſt *John Brown*, Parſon of *St. Albans*, and *Anthony Smith*, Vicar of *St. Peter's* in *St. Albans*, at the Quarter-Seſſions held at the ſaid Town of *St. Albans*, on the 24th of *June* 1639, for the *Removal of the Communion Table out of the uſual Place*, and not adminiſtering the Sacrament according to Law in that caſe provided; he the ſaid Sir *Robert Berkley* then told them, that ſuch an Indictment was before him at *Hertford*, and that he quaſhed the ſame, and impriſoned the Promoters: by which threatening and reviling Speeches, unjuſt Actions and Declarations, he ſo terrified the Jurors in thoſe parts, that they durſt not preſent any Innovations in Church-Matters, to their great Grief, and Trouble of their Conſciences.

And whereas ſeveral Indictments were preferr'd againſt *Matthew Brook*, Parſon of *Yarmouth*, by *John Ingram* and *John Carter*, for refuſing ſeveral times to adminiſter the Sacrament of the Lord's Supper to them without any lawful Cauſe, at the Aſſizes held at *Norwich* in the Year 1633; he the ſaid Sir *Robert Berkley*, then being one of the Judges of the Aſſize, proceeded then to the Trial on the ſaid Indictments; where the Matter in iſſue being, That the ſaid *Brook* refuſed to adminiſter the ſaid Sacrament, becauſe the ſaid *Ingram* and *Carter* would not receive Tickets with their Sir-names before their Chriſtian-names; which was a Courſe never uſed amongſt them, but by the ſaid *Brook:* And the ſaid Sir *Robert Berkley* did then much diſcourage the ſaid *Ingram*'s Counſel, and over-rule the Cauſe for Matter of Law, ſo as the Jury never went from the Bar, but there found for the ſaid *Brook:* And the ſaid Sir *Robert Berkley* bound the ſaid *Ingram* to the good Behaviour for the proſecuting the ſaid Indictments, and ordered him to pay Coſts to the ſaid *Brook* for wrongfully indicting him. And whereas the ſaid *Carter*, not expecting the Trial at the ſame Aſſizes he preferred his Indictment, was then abſent; whereupon the ſaid Sir *Robert Berkley* did cauſe to be entered upon the ſaid Indictment a *Vacat, quia non ſufficiens in lege*, and order'd an Attachment againſt the ſaid *Carter:* Which ſaid Proceedings againſt the ſaid *Ingram* and *Carter*, by the ſaid Sir *Robert Berkley*, were contrary to Law and Juſtice, and to his own Knowledge.

10. That the ſaid Sir *Robert Berkley*, being one of the Juſtices of the Court of *King*'s-*Bench*, and duly ſworn as aforeſaid, in *Trinity* Term 1637, deferred to diſcharge or bail *Alexander Jennings* Priſoner in the *Fleet*, (brought by *Habeas Corpus* to the Bar of the ſaid Court; the Return of his Commitment being, that he was committed by two ſeveral Warrants from the Lords of the Council, dated the 5th of *November* 1636. the firſt being only read in Court, expreſſing no Cauſe; the other, for not paying Meſſengers Fees,) until he ſhould bring a Certificate that he had paid his Aſſeſſment for Ship-Money in the County of *Bucks*, but remitted him. And in *Michaelmas* Term after, the ſaid *Jennings* being brought by another *Habeas Corpus* before him as aforeſaid, and the ſame returned; yet he the ſaid Sir *Robert Berkley* refuſed to diſcharge or bail him, but remitted him. And in *Eaſter*-Term, after ſeveral Rules were given for his Majeſty's Counſel to ſhew Cauſe why the ſaid *Jennings* ſhould not be bailed, a fourth Rule was made for the ſaid *Jennings* to let his Majeſty's Attorney-General have notice thereof, and notice was given accordingly; and the ſaid *Jennings* by another *Habeas Corpus* being brought to the Bar in *Trinity* Term after, and the ſame Return made, with this Addition, of a new Commitment of the 4th of *May*, ſuggeſting the ſaid *Jennings* had uſed divers ſcandalous words in derogation and diſparagement of his Majeſty's Government: He the ſaid *Jennings* after ſeveral Rules, in the end of the ſaid *Trinity* Term, was again remitted to Priſon. And he the ſaid Sir *Robert Berkley* did, on the 5th of *June* laſt, defer to grant his Majeſty's Writs of *Habeas Corpus* for *William Pargiter* and *Samuel Danvers* Eſquires, Priſoners in the *Gate-Houſe*, and in the *Fleet*; and afterwards having granted the ſaid Writ of *Habeas Corpus*, the ſaid *Pargiter* and *Danvers* were on the 18th of *June* laſt brought to the Bar of the ſaid Court, where the Returns of their Commitments were ſeveral Warrants from the Lords of the Council not expreſſing any Cauſe: yet he the ſaid Sir *Robert Berkley*, then ſitting in the ſaid Court, deferred to bail the ſaid *Pargiter* and *Danvers*, and the 18th of *June* laſt made a Rule for a new Return to be received, which was returned the 25th of *June* laſt, *in hæc verba:*

‘ Whereas his Majeſty finding that his Subjects of *Scotland* have in rebellious and hoſtile manner aſſembled themſelves together, and intend not only to ſhake off their Obedience unto his Majeſty, but alſo as Enemies to invade and infeſt this his Kingdom of *England*, to the danger of his Royal Perſon, &c.

‘ For prevention whereof his Majeſty hath by the Advice of his Council-board, given ſpecial Commandment to all the Lord-Lieutenants of the Counties of this Realm, to aſſemble the Militia at the Places appointed for their Rendezvous in their ſeveral and reſpective Counties, there to be conducted and drawn together into a Body for this Service. And whereas his Majeſty, according to the Laws and Statutes of this Realm, and the conſtant Cuſtom of his Predeceſſors Kings and Queens of this Realm, hath Power, for the defence of this Kingdom and reſiſting the Force of the Enemies thereof, to grant forth Commiſſions under his Great Seal to ſuch fit Perſons as he ſhall make choice of, to array and arm the Subjects of this Kingdom, and to compel thoſe who are of able Bodies and able Eſtates, to arm themſelves; and ſuch as ſhould not be of able Bodies, but of Ability in Eſtate, to aſſeſs them according to their Eſtates to contribute towards the Charge of arraying others, being able of Body, and not able in Eſtate to arm themſelves; and ſuch Perſons as ſhould be contrarient to commit to Priſon, there to remain until the King ſhould take further order therein: And whereas the Earl of *Exeter*, by virtue of his Majeſty's Commiſſion to him directed for the arraying and arming of a certain number of Perſons in the County of *Northampton*, hath aſſeſſed *William Pargiter*, being a Man unfit of Body for that Service, but being of Eſtate and Ability to contribute amongſt others to pay the Sum of five Shillings towards the arraying and arming of others of able Bodies, and wanting Ability to array and arm themſelves:

‘ And whereas we have received Information from the ſaid Earl, that the ſaid *William Pargiter* hath not only in a wilful diſobedient manner refuſed to pay the ſaid Money aſſeſſed upon him towards ſo important a ſervice, to the diſturbance and hindrance of the neceſſary defence of this kingdom; but alſo by his ill example hath miſled many others; and, as we have juſt cauſe to believe, hath practiſed to ſeduce others from that ready Obedience which they owe, and would otherwiſe have yielded to his Majeſty's juſt Command for the publick defence of his Perſon and Kingdom, which we purpoſe with all convenient ſpeed to enquire further of and examine: Theſe are therefore to will and require you to take into your Cuſtody the Perſons of the ſaid *William Pargiter* and *Samuel Danvers*, and them ſafely to keep Priſoners till further Order from this Board, or until by due Courſe of Law they ſhall be delivered.’

Yet he the ſaid Sir *Robert Berkley* being deſired to bail the ſaid *Pargiter* and *Danvers*, remitted them, where they remained Priſoners till the ninth of *November* laſt, or thereabouts; altho' the ſaid *Jennings*, *Pargiter* and *Danvers*, on all and every the ſaid Returns, were clearly bailable by Law; and the Counſel of the ſaid *Jennings*, *Pargiter* and *Danvers*, offered in Court very ſufficient Bail. And he the ſaid Sir *Robert Berkley*, being one of the Juſtices of the Court of *King*'s-*Bench*, denied to grant his Majeſty's Writs of *Habeas Corpus* to very many others his Majeſty's Subjects; and when he had granted the ſaid Writs of *Habeas Corpus* to very many others his Majeſty's Subjects, and on the Return no Cauſe appeared, or ſuch only as was clearly bailed by Law; yet he remanded them, where they remained Priſoners very long: which ſaid deferring to grant the ſaid Writs of *Habeas Corpus*, and Refuſals and Delays to diſcharge Priſoners, or to ſuffer them to be bailed, contained in this Article, are deſtructive to the fundamental Laws of this Realm, and contrary to former Reſolutions in Parliament, and to the Petition of Right; which ſaid Reſolutions and Petition of Right were well known to him the ſaid Sir *Robert Berkley*, and were reſolved on and enacted when he was the King's Serjeant at Law, and Attendant in the Lords Houſe of Parliament.

11. That whereas there was a Cauſe depending in the Court-Chriſtian at *Norwich*, between *Samuel Booty* Clerk and *Collard* for two Shillings in the Pound, for Tithes for Rents and Houſes in *Norwich*, and the ſaid *Collard* moved by his Counſel in the Court of *King*'s-*Bench* for a Prohibition to ſtay Proceedings in the Court-Chriſtian at *Norwich*, and delivered into the ſaid Court of *King*'s-*Bench* his Suggeſtions, that the ſaid Cauſe in the ſaid Court-Chriſtian was only for Tithes for Rents of Houſes in *Norwich*, which was determinable by the Common-Law only; yet he the ſaid Sir *Robert Berkley*, being one of the Juſtices of the ſaid Court of *King*'s-*Bench*, and ſitting in the ſaid Court, deferred to grant a Prohibition to the ſaid Court-Chriſtian in the ſaid Cauſe, altho' the Counſel did move in the ſaid Court many ſeveral times, and ſeveral Terms, for a Prohibition. And he the ſaid Sir *Robert Berkley* deferred to grant his Majeſty's Writ of Prohibition to ſeveral other Courts, on the Motions of divers others of his Majeſty's Subjects, where the ſame by the Laws of this Realm ought to have been granted, contrary to the Laws of this Realm and his own Knowledge.

All which Words, Opinions, and Actions, were ſo ſpoken and done by him the ſaid Sir *Robert Berkley* traitorouſly and wickedly, to alienate the hearts of his Majeſty's Liege People from his Majeſty, and to ſet a Diviſion betwixt them, and to ſubvert the fundamental Laws and eſtabliſhed Government of his Majeſty's Realm of *England*: For which they do impeach him the ſaid Sir *Robert Berkley*, one of the Juſtices of the Court of *King*'s-*Bench*, of High-Treaſon againſt our Sovereign Lord the King, his Crown and Dignity, and of the Miſdemeanors abovementioned.

And the ſaid Commons by Proteſtation, ſaving to themſelves only the liberty of exhibiting at any time hereafter any other Accuſation or Impeachment againſt the ſaid Sir *Robert Berkley*, and alſo of replying to the Anſwer that he the ſaid Sir *Robert Berkley* ſhall make to the ſaid Articles, or any of them, or of offering Proof of the Premiſſes, or any other Impeachments or Accuſations that ſhall be exhibited by them, as the Caſe ſhall, according to the courſe of Parliaments, require; do pray that the ſaid Sir *Robert Berkley*, one of the Juſtices of the Court of *King*'s-*Bench*, may be put to anſwer to all and every the Premiſſes; and that ſuch Proceedings, Examinations, Trials, Judgments and Executions may be upon every of them had and uſed, as is agreeable to Law and Juſtice.

At the preſenting theſe Articles, Mr. *Pierpoint* deliver'd himſelf as follows:

My Lords,

I AM commanded to preſent your Lordſhips theſe Articles, with which the Knights, Citizens, and Burgeſſes of the Commons Houſe of Parliament, in their own name and in the name of all the Commons of *England*, impeach Sir *Robert Berkley* Kt. one of the Juſtices of his Majeſty's Court of *King*'s-*Bench*, in maintenance of their Accuſation of High-Treaſon, and other great Miſdemeanors; the Articles they deſire may be read. Whereupon the Articles were read by Mr. *Francis Newport*, a Member of the Houſe of Commons. Then Mr. *Pierpoint* proceeded and ſaid,

The High-Treaſon is in the firſt Article, in his Endeavours to ſubvert the fundamental Laws of this Realm, and to introduce an arbitrary and tyrannical Government, which hath been lately adjudged Treaſon in the Cauſe of the Earl of *Strafford*.

The other Articles prove the firſt by his Opinions, Certificates, Judgments, by his Denials of the Benefit of our Laws, which have been read by your Lordſhips. No fundamental Law to the Subjects is left; our Goods, our Lands, our Bodies, the Peace of a good Conſcience, are by him given up to arbitrary tyrannical Government.

Nothing hath been omitted to make a Judge know the Laws, to make him juſt, or fright him from being evil: We have Inns of Court peculiar to that Study, Judges from thence only choſen; ſeldom any but what have been twenty years there; Honours and Revenues are given to Judges, encouragement to do well; this Judge had theſe: Judges are ſworn according to Law to ſerve the King, and his People; according to Law to counſel the King; and for not ſo doing, to be at his Will for Body, Lands, and Goods. This Judge took that Oath; the Laws (the Judges Study) impoſe the greateſt Puniſhment upon unjuſt Judges; they ſhew that theſe Puniſhments have been inflicted, and more could not be done to perſuade or fright a Judge.

His Offences ſhew in him great Ambition, yet he was moſt timorous of diſpleaſing the great in Power; he did not only forbear doing what he was ſworn to do, but was moſt active againſt our Laws, and in oppoſing and puniſhing any that did maintain them.

To have only received Bribes, (tho' they blind the Eyes, and tho' the deſire to get Money increaſeth with Age) that heinous Crime in a Judge had been, in compariſon with his Offences, a tolerable Vice; for from ſuch a Judge Juſtice is alſo to be had for Money. Ambition is violent, and ruins whilſt Covetouſneſs is making a bargain.

The Words of his Opinion and Judgment are for the King's *Power*. It is pleaſing to the nature of Man, that others ſhould obey his Will; and well-framed Diſpoſitions of Princes may eaſily be perſuaded their Power is unlimited, when they are alſo put in mind, that therefore they have more cauſe to do well, and for doing well are more renowned: for in the moſt oppreſſive Deſigns, (which we have ſuffered under) the Pretences of his Majeſty have ever been the Good of his Subjects; his is the Sin, that is to judge by the Laws, and knows the Laws are to the contrary, yet puts and confirms ſuch thoughts in his Prince.

He that incites another to arbitrary Government, when his Self-ends are thereby compaſſed, hates him for taking that Power he perſuaded him unto.

The Writs, thoſe *Monſters of Neceſſity*, to provide Ships to avoid imminent Danger, that could not ſtay 40 Days for the Calling of a Parliament, were therefore to go out in *September*, to have Ships ready in *March*. This hath been adjudged by your Lordſhips to be deſtructive to the fundamental Laws of this Realm, and to the Subjects Right of Property and Liberty, &c. that I ſhall ſay but this concerning them; that this Judge publiſhed them to be inſeparable Flowers of the Crown; and that we have lived to ſee for five Years together imminent Danger, and thus to be prevented.

This Judge did adviſe to ſuch a Government, as future Kings here might exerciſe the higheſt Tyranny, and the Subjects want the Benefit of Reſtraints, known to the moſt ſlaviſh Eaſtern Nations; where, if their Prince do unjuſtly, he hath Hatred for it, and the Dangers that follow that. This Judge will have that Hatred to go to our good Laws: *No ſuch Bondage, as when the Laws of Freedom are miſ-interpreted by Judges to make Men Slaves.*

What can be conſidered of in a Judge of Law, to give his Opinion and Advice to his Prince, how the Laws (the mutual Covenants of Kings and Subjects) are to be broken, but that his intentions are to have his Prince do ill, by making his evil Servants to ſtudy, and to be pleaſed with their wicked Deſigns; becauſe they ſee means to put them in execution, by making them to perſuade their Prince, becauſe in imminent Danger his Subjects Goods are at his Will, *that there is ſuch Danger when there is not*, and that they have only ſome by-ends of their own?

This Judge will have the Law to be what to him ſeems Reaſon; the Reaſon limited to him to judge of, is what the Common Law ſaith is ſo, what a Statute hath ſo enacted. For him to judge this or that is Law, elſe a Miſchief ſhall follow, becauſe the Law in ſuch a thing is imperfect, therefore he will make a Law to ſupply it; or becauſe that the Law written in ſuch Particulars is againſt his Reaſon, therefore his Reaſons to be Law; then muſt follow, as often as a Judge's Reaſon changes, or Judges change, our Laws change alſo.

Our Liberties are in our Laws, which a Subject may read, or hear read; this is his, this he may do and be ſafe: and that thus the Judge ought to give Judgment, and then he is free. The exceſſive growth of Courts of Reaſon and Conſcience came from great and cunning Perſons; and tho' not the moſt ſudden, yet the moſt dangerous, and ſure ways to eat out our Laws, our Liberties.

Unlimited Power muſt be in ſome to make and repeal Laws, to fit the diſpoſitions of Times and Perſons: Nature placeth this in common Conſent only; and where all cannot conveniently meet, inſtructeth them to give their Conſents to ſome they know or believe ſo well of, as to be bound to what they agree on. His Majeſty, your Lordſhips, and the Commons, are thus met in Parliament; and ſo long as we are often reduced to this main Foundation, our King and we ſhall proſper.

This Judge will not allow us our Knowledge, or any Reaſon; he will have our Minds our Souls Slaves. A Grand-Jury Man gave his Fellows true Information; they preſent an Innovation in Church, are threatned and reviled for it; he that told this truth is charged (I ſhall uſe this Judge's own words) to ſin in that, and that he made others forſwear themſelves; this Judge ſent him to the common Goal, where he is laid in Irons; and all this, becauſe he and they durſt meddle with Church Matters. He is forced to tear the Preſentment in Pieces in open Court. Our Laws provide for the Peace of our Conſciences, many Acts of Parliament are for it, and the Truſt by thoſe Acts ſet to Juries: this Judge well knew all this; your Lordſhips have heard what he did to the Jury at *Hertford*; he would have us know no more Divinity than to obey what the chief of the Clergy directed, no more Law than what he ſaid was ſo.

Judges in former Times (except only ſuch as were examples of Puniſhment, as of Injuſtice in Caſes of great and publick Concernment) forbear Proceedings till the next Parliament. This neceſſitated the Calling of Parliaments. This Judge had as many ſuch Cauſes before him, as ever any had; yet he never deſired the Reſolution of Parliament in any one; for the ways he went, the Neceſſity was never to have a Parliament; he would pull up that Root of our Safeties and Liberties, which whilſt ye enjoy, the Malice and Injuſtice of all other Courts and Perſons can never ruin; and when near to Ruin, (as moſt near of late) this only ſure Remedy will help us; nothing can ruin a Parliament, but itſelf.

The Evils which we have ſuffered under, they were committed by the Judges; or by them ought to have been, and might have been prevented.

This Judge aſſiſted in cauſing the Miſeries we ſuffered in the *Star-Chamber*, and at the Council-Table: he denied the known Rights, which he ought to have granted us, to ſtop our Grievances in the Eccleſiaſtical Courts; he was the Cauſer of our Sufferings in other Courts.

The beſt Lovers of their Laws and Liberties, the moſt honeſt, ſuffer moſt by an unjuſt Judge; they moſt oppoſe his Vices; diſhoneſt Perſons find ſuch a Judge to fit their purpoſes; the Judge finds them for his; the Bond of Iniquity confederates them.

He that will do no wrong, will ſuffer none which he can help: The Man that knows himſelf born free, will do his utmoſt to live ſo, and to leave Freedom to his Poſterity; were he in Slavery, when by outward geſture thought to be moſt delighted, were his Mind then known, there would be found vexation, and his buſy thoughts employed to redeem himſelf and his Poſterity from Thraldom. But to ſay, could this Judge intend to make himſelf and his own Poſterity Slaves? What he did was thro' Error of Judgment only. No, my Lords; what his Aims and Endeavours were, is apparent. To conſider Man in the general, we ſhall find in every Age he will be a Slave to ſome few, that many may be Slaves to him, he looks to himſelf only; this he would do, or forbear doing, to be great, to be rich, had he Children or Kindred, or had he none. This highly unjuſt Judge, by continuing Sins, maintained his actions to preſerve himſelf; he knows, to be found guilty in one of his Offences, the Penalty of the Law for it, therefore covers the Offences committed with inventing and acting other.

For a Judge to be unjuſt, more hurts the Publick than any other; he is not ſuſpected. What a Judge doth, is looked on as a thing that ought to be done. The moſt pernicious great Man, that by Cunning hath got to himſelf the Heart and Tongue of his Prince, his ill Acts have died with him, if not taken up by others, and then they walk in Darkneſs; no Man will juſtify what he doth, by ſaying ſuch a Favourite did it: But the unjuſt Judgments of this Judge were given in Noon-day, were done in the face of the whole Kingdom, in the hearing of ſuch as might carry the news to all parts of the Realm, and was therefore done; his unjuſt Judgments were our Records. We have ſeen wicked great Men moſt craftily politick; they hated our Laws, yet not meeting with active Judges moulded to their purpoſes, they and their Acts have died, the Realm flouriſhed: but of late, others leſs politick meeting with moſt unjuſt Judges, every way as ill as they could wiſh them to be, then did the Kingdom faint, under the load of it's Miſery did long ſtruggle: Now it's riſing, I aſſure myſelf your Lordſhips will aſſiſt to take off the burden.

If the Deſigns of ſome would not have ſuch a Man to be at liberty, a Warrant from ſome Lords of the Council would ſoon have laid him in Priſon, and given no Cauſe; had he moved this Judge to be diſcharged or bailed, he could have obtained neither. If their Ways would not have endured that Man to live, a Judge reviling the Priſoner, and the Counſel that moved for his Diſchage or Bail, joined with the hate of ſome great Man, might ſoon have moved a Goaler for unwholeſome Rooms and Lodging, and ill Diet for his Priſoner, and they may ſoon take Life away. Offenders in Priſons are looked after to be ſafe only; ſuch as are brought in by Power againſt Law, are abuſed.

Had a great Man deſired the Eſtates of others, the breach of a Proclamation might readily have been charged againſt them in *Star-Chamber*; but they, it may be, could have anſwered and cleared themſelves, and proved their Anſwer by Teſtimonies: had they been referred to this Judge, he would have expunged the one, ſuppreſſed the other. Then followed Fines to the value of their Eſtates, or more; then Impriſonment of courſe, till they paid ſuch Fines: your Lordſhips have heard what this Judge did to the *Soap-boilers*.

The Country-man followed the Plough, and to his thinking he was aſſured of his Right, Property, and Liberty, which gave him ability to do it. He believed his Neighbour, his Landlord, his King, could not take his Goods from him without his conſent. He knew the uſual Payments by Law; and in extraordinary Cauſes thought to have that care to chuſe ſuch for the Knights of his Shire, or for his Burgeſſes, as might be mindful of the Cauſe of Payment, and of his Eſtate.

This Country-man hath heard the Opinions and Judgment of this Judge, hath ſeen his Goods taken from him without his, or his Knights of the Shire, or Burgeſſes Conſent or Advice. Theſe have made him, his Wife and Children, to join in tears to wiſh they had never been born; they have made them think on many ways to keep ſafe that Eſtate which was yet left them, have made them deſire to ſell all their Goods, and hide the Money: but then he remembers this Judge, how that he ſhall be carried to Priſon, and remain there, if he pay not what it pleaſes others to aſſeſs him. Then they think idle perſons (the Drones and Moths of the Commonwealth) to be a wiſe People, whilſt the Country-men expect, and can think of nothing but being Beggars.

Where publick and enormous Offences have been committed, eminent and notorious Puniſhments muſt be: ſuch will make your Lordſhips Proceedings highly eſteemed; elſe there will be ſo many Offenders, and none without danger can be puniſhed.

This Judge ſubverting our Laws, took away the Hearts of many; he ſubſcribes for the King's Power, but ſo as he put him on taking his Subjects Goods; and of all other, ſuch ways be moſt dangerous: for we know his Majeſty is not the laſt that ſuffers, and is not the King worth many thouſands?

The place of this Judge was to have given and preſerved to the King the Hearts of his Subjects; the due Execution of the Laws had done this; and when ſuch notice is taken of a Prince, none will conſpire againſt him, who cannot feign to themſelves Safety before or after any Fact committed; foreign Enemies will not invade his Kingdoms.

Thus hath his Majeſty now got our Hearts, and will for ever have them. This Judge is to anſwer for what his Majeſty, and for what we have ſuffered.

I am commanded by the Houſe of Commons to deſire of your Lordſhips, that the Proceedings againſt Sir *Robert Berkley* Kt. one of the Juſtices of his Majeſty's Court of *King*'s-*Bench*, may be put in as ſpeedy a way of Trial, as the Courſe of Parliament will allow.

At the ſame time Mr. *Hollis* made a Speech in behalf of Sir *Randolph Crew*, formerly Lord Chief Juſtice of the *King*'s-*Bench*, but remov'd for giving his Opinion againſt Loan-Money.

My Lords,

THESE Gentlemen have preſented unto your Lordſhips the ſad Object of Juſtice perverted, Liberty oppreſſed, of Judgment turned into Wormwood, the Laws, which ſhould be the Bars of our Gates to protect us, keep us, and all that is ours in ſafety, made weak and impotent, to betray us unto the hands of Violence; inſtead of Props to ſupport us, become broken Reeds to deceive us, and run into our ſides when we lean upon them; even ſo many Snares to entrap and entangle us.

And all this by the Perfidiouſneſs of thoſe who are intruſted with our Laws, who call themſelves the Guardians and the Interpreters of the Law; but by their accurſed Gloſſes have confounded the Text, and made it ſpeak another Language, and another Senſe, than ever our Anceſtors the Lawmakers intended.

Our Anceſtors made Laws to keep themſelves, and their Poſterity after them, in the poſſeſſion of their Eſtates: theſe Judges could make the Law itſelf rob us, and deſpoil us of our Eſtates. Were we invaded or proſecuted at any time for pretended Crimes, or rather becauſe we were free from Crimes? And did we put ourſelves upon a Legal Defence, and ſhelter ourſelves under the Buckler of the Law, uſe thoſe lawful Weapons which Juſtice, and Truth, and the common Right of the Subject did put into our Hands, would this avail us? No: Theſe Judges would make the Law wreſt our Weapons from us, diſarm us, take away all our Defence, expunge our Anſwers, even bind us hand and foot, and ſo expoſe us naked and bound to the Mercileſſneſs of our Oppreſſors. Were our Perſons forced, and impriſoned by an Act of Power, would the Law relieve us when we appealed unto it? No: It would join hands with Violence, and add Bitterneſs to our Sorrow. Theſe Judges would not hear us when we did cry; no Importunity could get a *Habeas Corpus*: Nay, our Cries would diſpleaſe them, and they would beat us for crying; and over-do the unjuſt Judge in the Goſpel, with whom yet Importunity could prevail.

My Lords, the Commons of *England* finding themſelves in this lamentable Condition, by the Wickedneſs of theſe Judges, it is no wonder that we complain of them. It is no wonder if the Knights, Citizens, and Burgeſſes aſſembled in Parliament, have ſent up ſome of their Members to ſtand upon Mount *Ebal* to curſe theſe Judges; to denounce a Curſe upon them who have removed our Land-Marks, have taken away the Bound-Stones of the Propriety of the Subject, have left us no *Meum & Tuum*; but he that had moſt Might had moſt Right, and the Law was ſure to be of his ſide.

It hath been the part of theſe Gentlemen who have ſpoken before me, to pray for Juſtice upon thoſe Men who would not do Juſtice to others. My Lords, I come upon another Errand, and yet for Juſtice too; for there is Juſtice upon Mount *Gerizim*, as well as upon Mount *Ebal*. It is a great point of Juſtice to give a Bleſſing, a Reward where it is due, as Puniſhment where Puniſhment is due: for Reward and Puniſhment, *præmium & pœna*, be the two Legs that Juſtice walks on; and Reward is her right Leg, the more noble and the moſt glorious Supporture of that Sacred and Divine Body, that which God himſelf, the Foundation of Juſtice, doth more delight in.

Tardior ad pœnas Deus eſt, ad præmia velox;

Puniſhment is as good as Phyſick in the Conſequence, Reward as wholſome and nouriſhing Food in the Eſſence; the one we do, becauſe we muſt do it as neceſſary; the other, becauſe we love to do it, as being pleaſing and delightful.

Your Lordſhips, then, I doubt not, will as willingly join with the Commons in doing good to a good Judge, as in publiſhing of the bad.

My Lords, We honour them, and reckon them Martyrs for the Commonwealth, who ſuffer any thing by defending the common Right of the Subject, when they will not part with their own Goods contrary to Law; when indeed their private Intereſt goes along with it, or rather before it; and the publick Concernment ſeems to come but in a ſecond place. Such were thoſe many whom theſe Judges have oppreſſed; yet theſe Men we magnify, and judge worthy of Praiſe and Reward.

But what Honour, then, is he worthy of, who merely for the Publick hath ſuffered himſelf to be diveſted and deprived of his particular? ſuch a Judge as would loſe his Place, rather than to do that which his Conſcience told him was prejudicial to the Commonwealth? Is not he worthy of double Honour?

And this did that worthy reverend Judge, the Chief Judge of *England* at that time, Sir *Randal Crew*. Becauſe he would not, by ſubſcribing, countenance the Loan in the firſt Year of the King, contrary to his Oath and Conſcience, he drew upon himſelf the Diſpleaſure of ſome great Perſons about his Majeſty, who put on that Project, which was afterwards condemned by the Petition of Right, in the Parliament of *Tertio*, as unjuſt and unlawful; and by that means he loſt his Place of Chief Juſtice of the *King*'s-*Bench*; and hath theſe 14 Years, by keeping his Innocency, loſt the Profit of that Office, which upon a juſt Calculation, in ſo long a Revolution of time, amounts to 26000*l.* or thereabout. He kept his Innocency when others let theirs go; when himſelf and the Commonwealth were alike deſerted: which raiſes his Merit to a higher pitch. For to be honeſt when every body elſe is honeſt, when Honeſty is in Faſhion, and is Trump, as I may ſay, is nothing ſo meritorious; but to ſtand alone in the Breach, to own Honeſty when others dare not do it, cannot be ſufficiently applauded, nor ſufficiently rewarded. And that did this good old Man do; in a time of general Deſertion he preſerved himſelf pure and untainted.

Temporibuſque malis auſus is eſſe bonus.

My Lords, The Houſe of Commons are therefore Suitors unto your Lordſhips, to join with them in the Repreſentation of this good Man's Caſe unto his Majeſty, and humbly to beſeech his Majeſty to be ſo good and gracious unto him, as to give him ſuch Honour (the quality of this Caſe conſidered) as may be a noble Mark of Sovereign Grace and Favour, to remain to him and his Poſterity; and may be in ſome meaſure a proportionable Compenſation for the great Loſs he hath with ſo much Patience and Reſolution ſuſtained.

After the Conference the Lords came to the following Reſolutions:

Die Mercur. 20 *die Jan.* 1640.

It was Reſolved by the Lords upon the Queſtion, *Nemine contradicente*,

I. THAT the Ship-Writs, the extra-judicial Opinions of the Judges therein, both firſt and laſt, and the Judgment given in Mr. *Hampden*'s Caſe, and the Proceedings thereupon in the *Exchequer-Chamber*, are all illegal, and contrary to the Laws and Statutes of this Realm, contrary to the Rights and Properties of the Subjects of this Realm, contrary to former Judgments in Parliaments, and contrary to the Petition of Right.

Likewiſe Reſolved upon the Queſtion, *Nemine contradicente*,

II. THAT the extra-judicial Opinions enrolled in the *Exchequer-Chamber*, and in other Courts concerning Ship-Money, and all the Proceedings thereupon, are illegal in part and in whole, and contrary to the Laws and Statutes of this Realm, and contrary to the Rights and Properties of the Subjects of this Realm, and contrary to former Judgments in Parliaments, and contrary to the Petition of Right.

Die Veneris, 26 *die Februarii*, 1640.

UPON the Report of the Right Honourable the Lords Committees appointed to conſider of the way of Vacating of the Judgment in the *Exchequer* concerning Ship-Money, it was Ordered by the Lords Spiritual and Temporal in the High Court of Parliament aſſembled, That the Lord Keeper or the Maſter of the Rolls, the two Lord Chief Juſtices, and the Lord Chief Baron, and likewiſe the Chief Clerk of the Star-chamber, ſhall bring into the Upper Houſe of Parliament the Record in the *Exchequer* of the Judgment in Mr. *Hampden*'s Caſe concerning Ship-Money; and alſo the ſeveral Rolls in each ſeveral Court of *King*'s-*Bench*, *Common-Pleas*, *Exchequer*, *Star-Chamber*, and *Chancery*, wherein the Judges extra-judicial Opinions in the Caſes made touching Ship-money be entred; and that a *Vacat* ſhall be made in the Upper Houſe of Parliament of the ſaid ſeveral Records: And likewiſe the Judgment of Parliament touching the Illegality of the ſaid Judgments in the *Exchequer*, and the Proceedings thereupon; and touching the Illegality of the extra-judicial Opinions of the Judges in the ſaid ſeveral Courts concerning Ship-Money, be annexed and apoſtiled unto the ſame. And that a Copy of the Judgment of the Parliament concerning the Illegality of the ſaid Judgment in the *Exchequer*, and the ſaid extra-judicial Opinions of the ſaid Judges concerning Ship-Money, be delivered to the ſeveral Judges of Aſſize; and that they be required to publiſh the ſame at the Aſſizes in each ſeveral County within their Circuits, and to take care that the ſame be entered and enrolled by the ſeveral Clerks of Aſſizes: And if any Entry be made by any *Cuſtos Rotulorum*, or Clerk of Aſſize, of the ſaid Judgment in the *Exchequer*, or of the ſaid extra-judicial Opinions of the Judges, that ſeveral *Vacats* be made thereof, *per judicium in Parliamento:* And that an Act of Parliament be prepared againſt the ſaid Judgment and extra-judicial Opinions, and againſt the Proceedings touching Ship-Money.

Memorandum quod viceſimo ſeptimo die Febr. 1640. *Annoque regni Regis Domini noſtri Caroli Angliæ decimo ſexto*;

VAcatur iſtud Recordum & Judicium inde habitum per conſiderationem & judicium Dominorum Spiritual. & Temporal. in Curia Parliam. & Irrotulamentum ejuſdem cancellatur.

Memorand' quod viceſimo ſeptimo die Febr. præd.

IStud Irrotul. & omnia & ſingula in eodem contenta & expreſſa vacantur per Judicium Dominorum Spiritualium & Temporalium in Curia Parliament.

And that all the Rolls be raſed croſs with a Pen, and ſubſcribed with the Clerk of the Parliament's Hand. All which was accordingly done in open Court.

After this it was Reſolved upon the Queſtion, *Nemine contradicente*,

THAT the Reſolutions of the Judges touching the Shipping-Money, and the Judgment given againſt Mr. *Hampden* in the *Exchequer*, and all the Proceedings thereupon, are againſt the great Charter, and therefore void in Law.

Reſolved upon the Queſtion, *Nemine contradicente*,

THAT *Vacats* and Cancellations ſhall be made of the Reſolutions of the Judges touching the Shipping-Money; and of the Enrolments thereof in the ſeveral Courts, and of the Warrants for Ship-Writs, and Proceedings therein; and the Judgment given againſt Mr. *Hampden*, and Proceedings thereupon; and that Entries be made of thoſe *Vacats* upon the ſeveral Rolls, according to the Form read in the Houſe.

The ſame Seſſion an Act of Parliament paſſed for that purpoſe, *viz.*

THAT the Charge impoſed upon the Subject for providing and furniſhing of Ships, commonly called Ship-Money, and the extra-judicial Opinions of the Juſtices and Barons, and the Writs, and every of them, and the Agreement or Opinion of the greater part of the Juſtices and Barons, and the Judgment given againſt *John Hampden*, Eſq; for the Payment of Ship-Money, were and are contrary to, and againſt the Laws and Statutes of the Realm, the Right of Property, the Liberty of the Subjects, former Reſolutions of Parliament, and the Petition of Right made in the third Year of his Majeſty that now is.

That all and every the Particulars prayed and deſired in the Petition of Right, ſhall from henceforth be put in execution, and ſhall be firmly and ſtrictly holden and obſerved, as in the ſame Petition they are prayed and expreſſed; and that all and every the Records and Remembrances of all and every the ſaid Judgments againſt the ſaid *John Hampden*, and all and every the Proceedings whatſoever, upon or by colour of any of the ſaid Writs, called *Ship-Writs*, and all and every the Dependants on every of them, ſhall be adjudged to all Intents, Conſtructions and Purpoſes, to be utterly void; and that all and every the ſaid Judgment, Inrolment, Entries, Proceedings, and Dependants of what kind ſoever, ſhall be vacated and cancelled, in ſuch Manner and Form as Records uſe to be that are vacated.

Afterwards Articles were exhibited againſt the other Judges. Thoſe againſt Mr. Juſtice *Crawley* were delivered by Mr. *Waller*, *July* 6, 1641. who ſpoke as follows:

My Lords,

I Am commanded by the Houſe of Commons to preſent you with theſe Articles againſt Mr. Juſtice *Crawley*, which when your Lordſhips ſhall have been pleaſed to hear read, I ſhall take leave (according to Cuſtom) to ſay ſomething of what I have collected from the Senſe of that Houſe, concerning the Crimes therein contained.

Then the Charge was read, containing his extra-judicial Opinions ſubſcribed, and Judgment given for Ship-Money; *and after a Declaration in his Charge at an Aſſize, That* Ship-Money *was ſo inherent a Right in the Crown, that it would not be in the Power of a Parliament to take it away.*

My Lords,

Not only my Wants, but my Affections, render me leſs fit for this Employment; for tho' it has not been my Happineſs to have the Law a part of my Breeding, there is no Man honours that Profeſſion more, or has a greater Reverence towards the grave Judges, the Oracles thereof. Out of Parliament, all our Courts of Juſtice are govern'd or directed by them; and when a Parliament is called, if your Lordſhips were not aſſiſted by them, and the Houſe of Commons by other Gentlemen of that Robe, Experience tells us, it might run a Hazard of being ſtyl'd *Parliamentum indoctorum*. But as all Profeſſions are obnoxious to the Malice of the Profeſſors, and by them moſt eaſily betray'd; ſo, my Lords, theſe Articles have told you, how theſe Brothers of the Coif are become *fratres in malo*; how theſe Sons of the Law have torn out the Bowels of their Mother: But the Judge (whoſe Charge you laſt heard) in one Expreſſion of his, excels no leſs his Fellows, than they have done the worſt of their Predeceſſors, in this Conſpiracy againſt the Commonwealth. Of the Judgment for *Ship-Money*, and thoſe extra-judicial Opinions preceding the ſame, (wherein they are jointly concern'd) you have already: How unjuſt and pernicious a Proceeding that was, in ſo publick a Cauſe, has been ſufficiently expreſſed to your Lordſhips: But this Man adding Deſpair to our Miſery, tells us from the Bench, That *Ship-Money* was a Right ſo inherent in the Crown, that it would not be in the power of any Act of Parliament to take it away. Herein, my Lords, he did not only give as deep a Wound to the Commonwealth as any of the reſt, but dipped his Dart in ſuch a Poiſon, that, ſo far as in him lay, it might never receive a Cure. As by thoſe abortive Opinions, ſubſcribing to the Subverſion of our Property, before he heard what could be ſaid for it, he prevented his own; ſo by this Declaration of his, he endeavours to prevent the Judgment of your Lordſhips too, and to confine the Power of a Parliament, the only Place where this Miſchief might be redreſs'd. Sure he is more wiſe and learned, than to believe himſelf in this Opinion, or not to know how ridiculous it would appear to a Parliament, and how dangerous to himſelf: And therefore, no doubt, but by ſaying no Parliament could aboliſh this Judgment, his Meaning was, That this Judgment had aboliſh'd Parliaments.

This Impoſition of *Ship-Money* ſpringing from a pretended Neceſſity, was it not enough that it was now grown annual, but he muſt entail it upon the State for ever; making Neceſſity inherent to the Crown, and Slavery to the Subject? Neceſſity, which, diſſolving all Law, is ſo much more prejudicial to his Majeſty than to any of us, by how much the Law has inveſted the Royal State with a greater Power and ample Fortune: For ſo undoubted a Truth it has ever been, that Kings as well as Subjects are involved in the Confuſion which Neceſſity produces, that the Heathen thought their Gods alſo obliged by the ſame: *Pareamus neceſſitati, quam nec Homines nec Dii ſuperant.* This Judge then having in his Charge at the Aſſize declared the Diſſolution of the Law, by this ſuppoſed Neceſſity; with what conſcience could he, at the ſame Aſſize, proceed to condemn and puniſh Men, unleſs, perhaps, he meant the Law was ſtill in force for our Deſtruction, and not for our Preſervation? that it ſhould have power to kill, and none to protect us? A thing no leſs horrid, than if the Sun ſhould burn without lighting us, or the Earth ſerve only to bury, and not to feed and nouriſh us. But, my Lords, to demonſtrate that it was a ſuppoſititious, impoſed Neceſſity, and ſuch as they could remove when they pleaſed; at the laſt Convention in Parliament, a Price was ſet upon it, *for twelve Subſidies you may reverſe this Sentence.* It may be ſaid, that ſo much Money would have removed the preſent Neceſſity; *for twelve Subſidies you ſhall never ſuffer Neceſſity again, you ſhall for ever aboliſh that Judgment.* Here this Myſtery is revealed, this Vizor of Neceſſity is pull'd off; and now it appears, that this Parliament of Judges hath very frankly and bountifully preſented his Majeſty with twelve Subſidies, to be levy'd on your Lordſhips and the Commons. Certainly there is no Privilege, which more properly belongs to us, than to open the Purſe of a Subject; and yet theſe Judges, who are neither capable of ſitting among us in the Houſe of Commons, nor with your Lordſhips otherwiſe than your Aſſiſtants, have not only aſſumed to themſelves the Privilege of Parliament, but preſumed at once to make a Preſent to the Crown of all that either your Lordſhips or the Commons of *England* do or ſhall hereafter poſſeſs.

And becauſe this Man has had the Boldneſs to put the Power of Parliament in Balance with the Opinion of the Judges, I ſhall intreat your Lordſhips to obſerve, by way of Compariſon, the ſolemn and ſafe Proceeding of the one, with the precipitate Diſpatch of the other. In Parliament (as your Lordſhips know well) no new Law can paſs, or old be abrogated, till it has been thrice read with your Lordſhips, thrice in the Commons Houſe, then it receives the Royal Aſſent; ſo that 'tis like Gold ſeven times purify'd: Whereas theſe Judges, by this one Reſolution of theirs, would perſuade his Majeſty, that by naming *Neceſſity*, he might at once diſſolve (at leaſt ſuſpend) the great Charter, thirty-two times confirmed by his Royal Progenitors, the Petition of *Right*, and all other Laws provided for the Maintenance of the Right and Property of the Subject. A ſtrange Force, *my Lords*, in the Sound of this Word *Neceſſity*, that like a Charm it ſhould ſilence the Laws, while we are deſpoil'd of all we have; for that but a Part of our Goods was taken, was owing to the Grace and Goodneſs of the King: for ſo much as concerns theſe Judges, we have no more left than they perhaps may deſerve to have, when your Lordſhips ſhall have paſſed Judgment upon them for this Neglect of their Oaths, and betraying that publick Truſt, which, for the Conſervation of our Laws, was repos'd in them.

Now, for the Cruelty and Unmercifulneſs of this Judgment, you may pleaſe to remember, that in the old Law they are forbid to ſeethe a Kid in his Mother's Milk; of which the received Interpretation is, That we ſhould not uſe that to the Deſtruction of any Creature, which was intended for its Preſervation. Now, *my Lords*, God and Nature have given us the Sea, as our beſt Guard againſt our Enemies; and our Ships, as our greateſt Glory above other Nations: And how barbarouſly would theſe Men have let in the Sea upon us at once, to waſh away our Liberties; and to overwhelm, if not our Land, all the Property we have therein, making the Supply of our Navy a Pretence for the Ruin of our Nation! For obſerve, I beſeech you, the Fruit and Conſequence of this Judgment, how this Money has proſper'd, how contrary an Effect it has had to the End for which they pretended to take it. On every County a Ship is annually impoſed; and who would not expect, but our Seas by this time ſhould be cover'd by the Number of our Ships? Alas! *my Lords*, the daily Complaints of the Decay of our Navy tell us, how ill *Ship-Money* has maintain'd the Sovereignty of the Sea; and by the many Petitions which we receive from the Wives of thoſe miſerable Captives at *Algiers* (being between four and five thouſand of our Countrymen) it does too evidently appear, that to make us Slaves at Home is not the Way to keep us from being made Slaves Abroad. So far has this Judgment been from relieving the preſent, or preventing the future Neceſſity, that as it changed our real Property into a Shadow of a Property, ſo of a feigned it is made a real Neceſſity.

A little before the approach of the *Gauls* to *Rome*, while the *Romans* had yet no apprehenſion of that Danger, there was heard a Voice in the Air, louder than ordinary, *The* Gauls *are come*; which Cry, after they had ſack'd the City and beſieged the Capitol, was held ſo ominous, that

Livy * relates it as a Prodigy. This Anticipation of Neceſſity ſeems to have been no leſs ominous to us: Theſe Judges, like ill-boding Birds, have call'd Neceſſity upon the State, in a time which, I dare ſay, they thought themſelves in greateſt Security. But if it ſeem ſuperſtitious to take this as an Omen, ſure I am we may look on it as a Cauſe of the unfeigned Neceſſity we now ſuffer: For what Regret and Diſcontent had this Judgment bred among us? And as when the Noiſe and Tumult in a private Houſe grows ſo loud as to be heard in the Streets, it calls in the next Dwellers, either kindly to appeaſe, or to make their own uſe of domeſtick Strife; ſo in all likelihood, our known Diſcontentments at Home have been a concurrent Cauſe to invite our Neighbours to viſit us, ſo much to the Expence and Trouble of both theſe Kingdoms.

And here, my Lords, I cannot but take notice of the moſt ſad Effect of this Oppreſſion, the ill Influence it has had upon the antient Reputation and Valour of the *Engliſh* Nation: And no wonder; for if it be true, that Oppreſſion makes a wiſe Man mad, it may well ſuſpend the Courage of the Valiant. The ſame happened to the *Romans*, when, for Renown in Arms, they moſt excelled the reſt of the World; the Story is but ſhort. 'Twas in the Time of the *Decemviri* (and I think the chief Troublers of our State may make up that Number). The *Decemviri*, my Lords, had ſubverted the Laws, ſuſpended the Courts of Juſtice, and (which was the greateſt Grievance both to the Nobility and People) had, for ſome time, omitted to aſſemble the Senate, which was their Parliament: This, ſays the Hiſtorian, did not only deject the *Romans*, and make them deſpair of their Liberty, but cauſed them to be leſs valued by their Neighbours. The *Sabines* take the Advantage, and invade them; and now the *Decemviri* are forced to call a long-deſired Senate, whereof the People were ſo glad, that *Hoſtibus belloque gratiam habuerunt:* This Aſſembly breaks up in Diſcontent, nevertheleſs the War proceeds; Forces are raiſed, led by ſome of the *Decemviri*; and with the *Sabines* they meet in the Field. I know your Lordſhips expect the Event: My Author's Words of his Countrymen are theſe: *Nequid ductu aut auſpicio Decemvirorum proſpere gereretur, vinci ſe patiebantur*; they choſe rather to ſuffer a preſent Diminution of their Honour, than by Victory to confirm the Tyranny of their new Maſters. At their Return from their unfortunate Expedition, after ſome Diſtempers and Expoſtulations of the People, another Senate, that is, a ſecond Parliament, is call'd; and there the *Decemviri* are queſtioned, depriv'd of their Authority, impriſon'd, baniſh'd, and ſome loſe their Lives: And ſoon after this Vindication of their Liberties, the *Romans*, by their better Succeſs, made it appear to the World, that Liberty and Courage dwell always in the ſame Breaſt, and are never to be divorced. No doubt, my Lords, but your Juſtice ſhall have the like Effect upon this diſpirited People. 'Tis not the Reſtitution of our antient Laws alone, but the Reſtoration of our antient Courage, which is expected from your Lordſhips. I need not ſay any thing to move your juſt Indignation, that this Man ſhould ſo cheaply give away that which your noble Anceſtors, with ſo much Courage and Induſtry, had ſo long maintain'd. You have often been told how careful they were, tho' with the hazard of their Lives and Fortunes, to derive thoſe Rights and Liberties as entire to Poſterity as they received them from their Fathers; what they did with Labour, you may do with Eaſe; what they did with Danger, you may do ſecurely. The Foundation of our Laws is not ſhaken with the Engine of War; they are only blaſted with the Breath of theſe Men, and by your Breath they may be reſtored.

What Judgment your Predeceſſors have given, and what Puniſhments their Predeceſſors have ſuffered for Offences of this Nature, your Lordſhips have already been ſo well informed, I ſhall not trouble you with a Repetition of thoſe Precedents. Only, my Lords, ſomething I ſhall take leave to obſerve of the Perſon with whoſe Charge I have preſented you, that you may the leſs doubt of the Wilfulneſs of this Offence.

His Education in the Inns of Court, his conſtant Practice as a Counſellor, and his Experience as a Judge, conſidered with the Miſchief he has done, makes it appear that this Progreſs of his thro' the Law has been like that of a diligent Spy thro' a Country into which he meant to conduct an Enemy.

To let you ſee he did not offend for Company, there is one Crime ſo peculiar to himſelf, and of ſuch Malignity, that it makes him at once uncapable of your Lordſhips Favour, and his own Subſiſtence incompatible with the Right and Property of the Subject. For if you leave him in a Capacity of interpreting the Laws; has he not declared his Opinion, That your Votes and Reſolutions againſt Ship-Money are void, and that it is not in the Power of Parliament to aboliſh that Judgment? To him, my Lords, that has thus played with the Power of Parliament, we may well apply what was once ſaid to a Goat browſing on a Vine:

Rode, Caper, vitem, tamen hinc cum ſtabis ad aras,
In tua quod fundi Cornua poſſit, erit.

He has cropt and infring'd the Privileges of a baniſh'd Parliament; but now it is returned, he may find it has Power enough to make a Sacrifice of him, to the better Eſtabliſhment of our Laws: And in truth, what other Satisfaction can he make his injured Country, than to confirm, by his Example, thoſe Rights and Liberties which he had ruined by his Opinion?

For the Proofs, my Lords, they are ſo manifeſt, that they will give you little trouble in the Diſquiſition: his Crimes are already upon Record; the Delinquent and the Witneſs is the ſame; having from ſeveral Seats of *Judicature* proclaimed himſelf an Enemy to our Laws and Nation, *ex ore ſuo judicabitur*. To which purpoſe I am commanded by the Knights, Citizens, and Burgeſſes of the Houſe of Commons, to deſire your Lordſhips, that a ſpeedy Proceeding may be had againſt Mr. Juſtice *Crawley*, as the Courſe of Parliament will permit.

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* Lib. 5. c. 32.

XXXVIII. *The Trial of* THOMAS HARRISON, † *Clerk, at the* King's-Bench, *for a* Miſdemeanour *in ſpeaking reflecting Words of Judge* Hutton. 1638. Trin. 14. Car. I. *

Middx' ſſ.

' BEFORE this time, that is to ſay, upon *Thurſday* next after the Octaves of the Holy Trinity in the ſaid Term, before our Sovereign Lord the King at *Weſtminſter*, upon the Oath of twelve Jurors, it is preſented, That whereas the Court of our Lord the King of *Common Pleas* is, and from the time to the contrary of which there is no Memory of Man, hath been an antient Court of Record of our ſaid now Lord the King and his Progenitors and Anceſtors, Kings and Queens of *England*, for the Adminiſtration of Juſtice to the Subjects of this Kingdom of *England*, and others in *Common Pleas*, moved and ariſing thro' all the Kingdom of *England:* And whereas it is againſt the Crown and Dignity of the King's Majeſty, and againſt the Law and Cuſtom of this Kingdom of *England*, for any Perſon or Perſons to diſturb the Court aforeſaid, or any Juſtices of the ſaid Court, the ſaid Court being open, and the Judges of the ſaid Court being preſent, and Judicially ſitting: And whereas *Richard Hutton* Knight is, and for divers Years now laſt paſt hath been, and yet is one of the Juſtices of our ſaid now Lord the King of this Court: Nevertheleſs one *Thomas Harriſon* of *Creeke* in the County of *Northampton*, Clerk, not having God before his Eyes, but by the Inſtigation of the Devil moved and ſeduced, maliciouſly with himſelf imagining, and in his Mind compaſſing by what Means he might, the aforeſaid *Richard Hutton* Knight, there and then, and yet being one of the Juſtices of our ſaid now Lord the King of the *Common Pleas* aforeſaid, many ways to defame and ſcandalize, and contriving and maliciouſly intending, as much as was in his power, to bring the ſaid *Richard Hutton* into Scandal, Ignominy, Contempt, and vile Character, and the ſaid *Richard Hutton* of his Life and Goods and Chattels, Lands and Tenements, wickedly and maliciouſly to deprive; as alſo the Diſpleaſure and Indignation of our ſaid now Lord the King againſt the ſaid *Richard Hutton* to ſtir up and provoke, and uſing his utmoſt Endeavour to make the ſaid *Richard Hutton* be held and eſteemed a Traitor as well by our ſaid Lord the King and the Peers of this Kingdom of *England*, as by all the loyal Subjects of our ſaid Lord the King: And the aforeſaid Court of our ſaid now Lord the King of *Common Pleas*, and the Juſtices of our ſaid Lord the King of the ſaid Court in the ſaid Court being preſent, and Judicially ſitting, to diſturb, and the Adminiſtration of Juſtice in the ſaid Court to hinder, the fourth Day of *May*, in the fourteenth Year of the Reign of our Lord *Charles* by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland*, King, Defender of the Faith, &c. at the City of *Weſtminſter* in the County of *Middx'*, *viz.* in the great Hall of Pleas there, the Court of our ſaid Lord the King, that is to ſay, the Court of our ſaid Lord the King before him the King, the Court of *Chancery*, and the Court of our ſaid Lord the King of *Common Pleas*, in the aforeſaid great Hall of Pleas aforeſaid open, and the Juſtices of our ſaid Lord the King in the Court aforeſaid then there preſent, and Judicially ſitting, in aſſiduouſly attending and hearing the Matters and Cauſes of our ſaid Lord the King, his People and Kingdom of *England*, and in miniſtring the Laws of the Kingdom aforeſaid to the Subjects of our ſaid Lord the King; the aforeſaid *Thomas Harriſon* to the Bar of the aforeſaid Court of our ſaid Lord the King of the *Common Pleas*, then and there violently and by Force and Arms, *&c.* came, the ſaid Court of *Common Pleas* then and there in the aforeſaid great Hall being open as aforeſaid, and the aforeſaid *Richard Hutton* Knight, and the other Juſtices of our ſaid Lord the King of the Court of *Common Pleas* aforeſaid in that Court, then there as aforeſaid being preſent, and Judicially ſitting; and the aforeſaid *Thomas Harriſon*, then and there out of his mere Malice, evil Mind, and wicked Intention, in the Preſence and Hearing of the aforeſaid Juſtices of the aforeſaid Court of *Common Pleas*, and divers Serjeants at Law, and many venerable Men, and other faithful Subjects of our ſaid now Lord the King, falſely, wickedly, and maliciouſly accuſed the aforeſaid *Richard Hutton* Knight, of High Treaſon, and then and there falſely, wickedly, and maliciouſly, theſe ſcandalous, venomous, defamatory *Engliſh* Words, openly, publickly, and with a loud Voice ſaid, publiſhed and ſpoke, *viz.* *I* (him the ſaid *Thomas Harriſon* meaning) *do accuſe Mr. Juſtice* Hutton (the aforeſaid *Richard Hutton* Knight, one of the Juſtices of our ſaid Lord the King of the *Common Pleas*, meaning) *of High Treaſon:* To the great hurt and derogation of the Crown and Dignity of our ſaid Lord the King, and of his Royal Power, and the manifeſt Contempt and Scandal of his Courts aforeſaid, and of the Juſtice and Laws of our ſaid Lord the King, his Kingdom aforeſaid, and the Court of *Common Pleas* aforeſaid, and the Juſtices of our ſaid Lord the King, and

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† He was Parſon of *Creeke* in *Northamptonſhire.*

* Cr. Car. 503. *Hut.* Rep. 131.

‘ Adminiſtration of Juſtice in the ſaid Court, to the moſt evil Example ‘ of all other Offenders hereafter in the like Caſe, and to the more ‘ grievous Scandal, Infamy, Diſgrace, and final Deſtruction of the afore- ‘ ſaid *Richard Hutton* Knight, and againſt the Peace of our ſaid now ‘ Lord the King, his Crown and Dignity, *&c.*’

To this the ſaid *Thomas Harriſon* hath pleaded Not Guilty, and hath put himſelf upon the Country, and the King's Attorney of this Court likewiſe. You are now to enquire whether the ſaid *Thomas Harriſon* be guilty of this Crime, Yea or No.

Mr. Serjeant *Heath.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury do hear, that by reading of the Record, that there is an Indictment preferred on the Behalf of the King againſt *Thomas Harriſon* who is now at the Bar, and that it is for a notable and inſolent Contempt in this Hall againſt Juſtice *Hutton* and the Laws of this Kingdom. The Indictment ſets it out thus: That the Court of *Common Pleas* is an antient Court, and that it is againſt the Crown and Dignity of the King, and the Courts of Juſtice, that when the ſaid Courts were ſitting, they or any of the Miniſters of the ſaid Court ſhall be diſturbed. It is further ſaid, that Mr. Juſtice *Hutton* is, and for many Years laſt paſt hath been one of the Judges of the Court of *Common Pleas*; and that the Defendant who is now at the Bar (Mr. *Harriſon* a Clerk) being moved with Malice againſt the Perſon of Mr. Juſtice *Hutton*, and intending to bring Mr. Juſtice *Hutton* into the King's high Diſpleaſure, and to hazard the loſing of his Life and his Eſtate, and the Forfeiture of his Goods, and to diſturb the Peace of the King, and the Court of Juſtice ſitting, did falſely and maliciouſly the 4th of *May* laſt in *Weſtminſter-Hall* in the City of *Weſtminſter*, the Court being ſitting, this Court and the Court of *Chancery*, and the Court of *Common Pleas*, this Defendant, boldly, audaciouſly, and maliciouſly did ruſh to the Bar of the ſaid Court of *Common Pleas*, Mr. Juſtice *Hutton* and Mr. Juſtice *Crawley* then and there ſitting, there attending to the Service of the ſaid Court, there with a loud Voice ſpake to Mr. Juſtice *Hutton* ſitting as a Judge: *I do accuſe Mr. Juſtice* Hutton *of High-Treaſon.* This Offence being committed in this Manner and in this Place, and with ſuch a Boldneſs, is laid to be of a high Nature, and to the Contempt of the Crown, and Dignity of all the Courts of Juſtice, where the King is wholly intereſted. Whether this Offence may be puniſhed, that is the Force and Intent of this Indictment. My Lords, to this the Defendant hath pleaded Not Guilty: We that be of the King's Counſel ſhall make it appear, that this Defendant did do this, and in this Manner as it is ſet forth.

Mr. *Attorney**. I deſire that this Examination may be read; but let him ſee it, whether it be his Hand, yea or no.

* *Sir* John Banks.

Harriſon. It is my Hand.

The Examination of *Thomas Harriſon*, of *Creeke*, in the County of *Northampton*, Clerk; being examined before my Lord Chief Juſtice *Brampſton*, ſaith, that it is true, that whereas Mr. Juſtice *Hutton* and Mr. Juſtice *Crawley* ſitting in the Court of *Common Pleas*, he came to the Bar, and there did publickly charge Mr. Juſtice *Hutton* with High-Treaſon. He charged him firſt with denying the King's Supremacy, next with moving the People to Sedition; and theſe be the Points on which he charged him with High-Treaſon, as aforeſaid. Farther, he was aſked why he charged him with the firſt, and how he doth deny the King's Supremacy: He anſwers, For that by common Fame upon *Saturday* laſt in the *Exchequer-Chamber* he did deliver his Opinion, that the King had no lawful Power to levy the Ship-Money. Being aſked whether he heard the Argument; he anſwered, He heard it not, but received it from the common Report of others. Being further aſked why he charged him with ſtirring up the People to Sedition; he anſwered, That was becauſe by the Report of divers near to the Place where this Examinant dwells, the People go on more and more in their Stubbornneſs, refuſing the paying of Ship-Money; the which is contrary to the Opinion of all the Orthodox Divines of this Kingdom; and in that Mr. Juſtice *Hutton* riding that Circuit, hath given the People ſuch an Encouragement to their Diſobedience. Being farther aſked, whether any other Perſon did know of this his Intent; he anſwered, that there were two other Perſons with him, but they did not know any thing of his Intentions, till they heard it ſpoken at the Bar. Being aſked why he made choice of this publick Way; the Reaſon he ſaith was, becauſe he delivered his Opinion publickly, therefore he thought that to be the beſt Way; and if it had been done in a private Way, he thought it fit to acquaint him with it in a private Way.

THOMAS HARRISON.

Mr. *Attorney.* May it pleaſe your Lordſhip, and you of the Jury, the Priſoner at the Bar, Mr. *Harriſon*, ſtands indicted of a very foul and horrible Offence, of a forged Accuſation framed and contrived out of his own Brain. It ſhould ſeem it was out of ſome rotten and inveterate Malice, a thing for which there is no Colour nor Appearance of Truth, and he confeſſeth it was upon the Ground of common Fame. Now you know what common Fame is, a *Mendax:* he charged this Reverend Judge, as you have heard, that he did deny the King's Supremacy; and the Reaſon was, becauſe he heard by common Fame, that the Judge had delivered his Opinion, that the King had no Power to levy Ship-Money. Secondly, becauſe he ſtirreth up the King's Subjects to Sedition; and he giveth that for a Reaſon, in that the People of *Northampton* do go on in the Denial of the Payment of Ship-Money.

My Lord, it is a heavy Thing to accuſe any Man of Treaſon, whereby he ſhall forfeit his Lands and Goods, and loſe his Life: and ſurely by the old Law, this falſe Accuſer ſhould undergo the ſame Puniſhment as he ſhould, that is accuſed, if found guilty.

My Lord, the Place of a Judge is a Place of great Honour and Truſt: Of Honour, for they be reckoned in the old Statutes among the *Magnates Regni*, 2 *Ric.* II. *&c.* And theſe People that be the Authors and Publiſhers of theſe baſe Scandals, they are reckoned to be the Sowers of Diſcord, and are Subverters of the Peace of the Commonwealth. And ſurely if Mr. *Harriſon* had looked upon theſe Statutes, he would have been better adviſed: Of Truſt, for he is truſted with the Adminiſtration of equal Juſtice between the King and his Subjects, and the Lives, Fortunes, and Eſtates of Men. Therefore being a Place of ſo great Honour and Truſt, the Scandal is the greater; and Offences and Crimes againſt them have been puniſhed not with ordinary Puniſhment.

25 *Ed.* III. 1 *pr.* It is declared to be Treaſon to kill a Judge in execution of his Office.

Our Books ſay, That if one draw a Weapon upon a Judge ſitting in Judicature, tho' he ſtrike him not, he ſhall be impriſoned during Life, and forfeit his Goods and Lands, and loſe his Right Hand.

Tho' the Offence be not done to the Judge, yet being in the Judges preſence (the Courts ſitting), as if one ſtrike a Juror, or any other Perſon in *Weſtminſter-Hall*, ſitting in the Courts, it hath been puniſhed with the loſs of Hand, Goods, and Lands during Life; this appeareth, 19 *Ed.* III. Judgment, 174. 22 *Ed.* III. 13. *Mich.* 6 *Ed.* III. *Coram Rege*, *Rot.* 55. *Stamford*'s Pleas of the Crown, 38.

The Offence of Mr. *Harriſon* is not for accuſing Judge *Hutton*, or any other, of Treaſon, for God forbid but that ſhould be lawful where there is juſt Cauſe; but to do it without any colour of Ground, and to forge a falſe Accuſation out of his own Brain, and to act in ſuch an inſolent and mad way againſt a reverend Judge, ſitting in the Seat of Judgment, this is the Offence.

37 *Hen.* VI. 3. If one call another Traitor, an Appeal lieth before the Conſtable and Marſhal; and if the Appellant be killed in Battle, it is juſtifiable.

30 *lib. Aſs.* One called Juſtice *Seaton* Traitor, and anſwered well in Damages, as appeareth more at large in the Record than in the Printed Book

Mich. 5 *Car. in Banco Regis*, *Nich. Jeoffes* was indicted and fined in the *King*'s-*Bench*, for writing a Petition, wherein he ſaid the Lord Chief Juſtice *Coke* was a Traitor.

Treaſons are declared by the Statute 25 *Ed.* III. and this Gentleman may expound a Text, he cannot expound Statutes, for this is proper for the Judges of the Realm.

He is not to judge what is Treaſon, and what not: *Tractent fabrilia fabri*; let him keep himſelf within the compaſs of his own Profeſſion.

This Offence is *contra Coronam & Dignitatem*, and the Scandals againſt the King's Judges and Miniſters trench upon the King himſelf; and therefore his Royal Majeſty, deteſting this odious and foul Fact in the Priſoner at the Bar, hath commanded us his Counſel to give Evidence.

The Perſon of the Party accuſed is beſt known to your Lordſhips to be a moſt grave, honeſt, learned, and reverend Judge, and I preſume, free from any thought of Treaſon.

Mich' 33. 34 *Ed.* I. In this Court, *Rot.* 75. there was *Roger de Heigham* gave Judgment againſt one *De Bruce* in the *Exchequer-Chamber.* This *De Bruce* was of a noble Family: He aſked this *Roger*, whether he would avow the Judgment, and he told him Yes. Now, ſays *De Bruce*, thou haſt thy Will, which of long time thou haſt ſought: The Judge aſked him what was that? He ſaid, My Shame and Loſs, and this I will think on. For this Offence, in a kind of implicit Way taxing the Judge of Injuſtice, he was indicted, and confeſſed the Indictment, as Mr. *Harriſon* doth: The Judgment was, That he ſhould be committed, and there to remain during the King's Pleaſure, beſides a great Fine.

The Record ſaith, *Et quia ſicut honor, & reverentia qui Miniſtris Domini Regis ratione officii ſui faciuntur, ipſi Regi attribuuntur, ſic dedecus & contemptus miniſtris ſuis fact. eidem Domino Regi inferuntur, conſideratum eſt quod prædictus Willielmus de Bruce diſtrictus in corpore, capite nudo, toga depoſita eat è Banco Domini Regis ubi placita tenentur in Aula Weſtmonaſterii per medium Aulæ prædictæ cum curia plena fuerit, uſque ad Scac. ubi deliquit & ibidem veniam petat à præfato Rogero, &c. Et poſtea committatur Turri London. ibidem moretur ad voluntatem Regis.*

My Lords,

This Offence, which was offered to the Perſon of a moſt reverend, learned, and honeſt Judge, by the Rules of our Books, is a Scandal done to the King himſelf, if there be no Colour nor Ground why he ſhould take upon him to make this bold and impudent Aſſertion.

I doubt not but you will maintain the Honour of a Judge, and puniſh this Delinquent according to his Demerits. His Offence contained in the Indictment, is confeſſed in his Examination, and by himſelf *ore tenus*; therefore you of the Jury need not depart from the Bar.

Whereupon the Jury immediately gave in a Verdict, that he was guilty of the Indictment.

Mr. *Attorney-General.* Now, my Lord, I deſire Judgment.

Upon which the Court pronounc'd the following Sentence *:

That he ſhould pay a Fine to the King of 5000 l. *and be impriſoned during the King's Pleaſure, and ſhould have a Paper upon his Head, ſhewing his Offence, and go therewith to all the Courts of* Weſtminſter, *and make his Submiſſion in every Court in* Weſtminſter-Hall, *and in the* Exchequer: *For it is an Offence to every Court. Afterwards Juſtice* Hutton *brought an Action for theſe Words againſt* Harriſon, *in which he recovered Ten thouſand Pounds Damages.*

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* Vide *Croke*'s Reports, pag. 362. *Thomas Harriſon*'s Caſe.

XXXIX. *The Trial of* THOMAS *Earl of* STRAFFORD *, *Lord Lieutenant of* Ireland, *for* High-Treaſon, *the 22d of* March 1640. 16 Car. I.

Articles of the Commons aſſembled in Parliament againſt Thomas *Earl of* Strafford, *in maintenance of the Accuſation, whereby he ſtands charged of High-Treaſon.*

I. THAT he the ſaid *Thomas* Earl of *Strafford* hath traitorouſly endeavoured to ſubvert the fundamental Laws and Government of the Realms of *England* and *Ireland*, and, inſtead thereof, to introduce an Arbitrary and Tyrannical Government againſt Law; which he hath declared by traitorous Words, Counſels, and Actions; and by giving his Majeſty Advice, by Force of Arms to compel his loyal Subjects to ſubmit thereunto.

II. That he hath traitorouſly aſſumed to himſelf Regal Power over the Lives, Liberties, Perſons, Lands, and Goods of his Majeſty's Subjects in *England* and *Ireland*; and hath exerciſed the ſame tyrannically, to the ſubverſion and undoing of many, both of Peers, and others of his Majeſty's liege People.

III. That the better to enrich and enable himſelf to go thro' with his traitorous Deſigns, he hath detained a great Part of his Majeſty's Revenue, without giving legal Account; and hath taken great Sums out of the *Exchequer*, converting them to his own Uſe, when his Majeſty wanted Money for his own urgent Occaſions, and his Army had been a long time unpaid.

IV. That he hath traitorouſly abuſed the Power and Authority of his Government, to the increaſing, countenancing, and encouraging of Papiſts; that ſo he might ſettle a mutual Dependance and Confidence betwixt himſelf and that Party, and, by their Help, proſecute and accompliſh his malicious and tyrannical Deſigns.

V. That he hath maliciouſly endeavoured to ſtir up Enmity and Hoſtility between his Majeſty's Subjects of *England* and thoſe of *Scotland.*

VI. That he hath traitorouſly broke the great Truſt repoſed in him by his Majeſty, of Lieutenant-General of his Army, by wilful betraying divers of his Majeſty's Subjects to Death, his Army to a diſhonourable Defeat by the *Scots* at *Newborne*, and the Town of *Newcaſtle* into their Hands; to the end, that by the Effuſion of Blood, by Diſhonour, and ſo great a Loſs as that of *Newcaſtle*, his Majeſty's Realm of *England* might be engaged in a national and irreconcileable Quarrel with the *Scots.*

VII. That to preſerve himſelf from being queſtioned for thoſe, and other his traitorous Courſes, he laboured to ſubvert the Right of Parliaments, and the antient Courſe of Parliamentary Proceedings; and, by falſe and malicious Slanders, to incenſe his Majeſty againſt Parliaments. By which Words, Counſels, and Actions, he hath traitorouſly, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majeſty, to ſet a Diviſion between them, and to ruin and deſtroy his Majeſty's Kingdoms: for which they impeach him of High-Treaſon againſt our Sovereign Lord the King, his Crown and Dignity.

VIII. And he the ſaid Earl of *Strafford* was Lord-Deputy of *Ireland*, and Lieutenant-General of the Army of his moſt Excellent Majeſty, for his Kingdoms both of *England* and *Ireland*, and the Lord Preſident of the North, during the Time that all and every the Crimes and Offences before ſet forth were done and committed; and he the ſaid Earl was Lieutenant-General of all his Majeſty's Army in the North Parts of *England*, during the time that the Crimes and Offences in the fifth and ſixth Articles ſet forth were done and committed.

IX. That the ſaid Commons, by Proteſtations ſaving to themſelves the Liberty of exhibiting at any time hereafter any other Accuſation or Impeachment againſt the ſaid Earl; and alſo of replying to the Anſwers that he the ſaid Earl ſhall make unto the ſaid Articles, or to any of them, and of offering Proofs; alſo of the Premiſes or any of them; or any other Impeachment or Accuſation that ſhall be exhibited by them, as the Cauſe ſhall, according to the Courſe of Parliament, require: do pray that the ſaid Earl may be put to anſwer for all and every of the Premiſes, that ſuch Proceedings, Examinations, Trials and Judgments may be upon every of them had and uſed, as is agreeable to Law and Juſtice.

Articles of the Commons aſſembled in Parliament againſt Thomas *Earl of* Strafford, *in maintenance of their Accuſation, whereby he ſtands charged with High-Treaſon.*

WHEREAS the ſaid Commons have already exhibited Articles againſt the ſaid Earl, *in hæc verba*, now the ſaid Commons do further impeach the ſaid Earl as followeth: *(That is to ſay)*

I. That the ſaid Earl of *Strafford*, the 21ſt Day of *March*, in the eighth Year of his Majeſty's Reign, was Preſident of the King's Council in the Northern Parts of *England.*

That the ſaid Earl being Preſident of the ſaid Council, on the 21ſt of *March* a Commiſſion under the Great Seal of *England*, with certain Schedules of Inſtructions thereunto annexed, was directed to the ſaid Earl, and others the Commiſſioners therein named, whereby, among other Things, Power and Authority is limited to the ſaid Earl, and others the Commiſſioners therein named, to hear and determine all Offences and Miſdemeanours, Suits, Debates, Controverſies and Demands, Cauſes, Things and Matters whatſoever therein contained, and within certain Precincts in the ſaid Northern Parts therein ſpecified, and in ſuch manner as by the ſaid Schedule is limited and appointed.

That, amongſt other Things in the ſaid Inſtructions, it is directed, that the ſaid Preſident, and others therein appointed, ſhall hear and determine according to the Courſe of Proceedings in the Court of *Star-Chamber*, divers Offences, Deceits and Falſities, therein mentioned, whether the ſame be provided for by Acts of Parliament or not; ſo that the Fines impoſed be not leſs than by the Act or Acts of Parliament provided againſt thoſe Offences is appointed.

That alſo, amongſt other Things in the ſaid Inſtructions, it is directed, that the ſaid Preſident, and others therein appointed, have power to examine, hear, and determine, according to the Courſe of Proceedings in the Court of *Chancery*, all manner of Complaints for any Matter within the ſaid Precincts; as well concerning Lands, Tenements, and Hereditaments, either Free-hold, Cuſtomary, or Copy-hold, as Leaſes, and other Things therein mentioned; and to ſtay Proceedings in the Court of *Common Law* by Injunction, or otherwiſe, by all Ways and Means, as is uſed in the Court of *Chancery.*

And altho' the former Preſidents of the ſaid Council had never put in practice ſuch Inſtructions, nor had they any ſuch Inſtructions; yet the ſaid Earl, in the Month of *May*, in the ſaid eighth Year, and divers Years following, did put in practice, exerciſe and uſe, and cauſed to be uſed and put in practice the ſaid Commiſſion and Inſtructions; and did direct and exerciſe an exorbitant and unlawful Power and Juriſdiction over the Perſons and Eſtates of his Majeſty's Subjects in thoſe Parts, and did diſinherit divers of his Majeſty's Subjects, in thoſe Parts, of their Inheritances, ſequeſtred their Poſſeſſions, and did fine, ranſom, puniſh and impriſon them; and cauſed them to be fined, ranſomed, puniſhed, and impriſoned, to their Ruin and Deſtruction; and namely, Sir *Coniers Darcy*, Sir *John Bourcher*, and divers others, againſt the Laws, and in ſubverſion of the ſame. And the ſaid Commiſſion and Inſtructions were procured and iſſued by Advice of the ſaid Earl.

And he the ſaid Earl, to the intent that ſuch illegal and unjuſt Power might be exerciſed with the greater Licence and Will, did adviſe, counſel, and procure further Directions, in and by the ſaid Inſtructions to be given, that no Prohibition be granted at all, but in Caſes where the ſaid Council ſhall exceed the Limits of the ſaid Inſtructions: And that if any Writ of *Habeas Corpus* be granted, the Party be not diſcharged till the Party perform the Decree and Order of the ſaid Council.

And the ſaid Earl, in the 13th Year of his Majeſty's Reign, did procure a new Commiſſion to himſelf, and others therein appointed, with the ſaid Inſtructions, and other unlawful Additions.

That the ſaid Commiſſion and Inſtructions were procured by the Sollicitation and Advice of the ſaid Earl of *Strafford.*

II. That ſhortly after the obtaining of the ſaid Commiſſion, dated the 21ſt of *March*, in the eighth Year of his Majeſty's Reign, to wit, the laſt Day of *Auguſt* then next following, he the ſaid Earl (to bring his Majeſty's liege People into a diſlike of his Majeſty, and of his Government, and to terrify the Juſtices of the Peace from executing of the Laws; he the ſaid Earl being then Preſident, as aforeſaid, and a Juſtice of Peace) did publickly, at the Aſſizes held for the County of *York*, in the City of *York*, in and upon the ſaid laſt Day of *Auguſt*, declare and publiſh before the People there attending for the Adminiſtration of Juſtice according to Law, (and in the preſence of Juſtices ſitting) that ſome of the Juſtices were all for Law, and nothing would pleaſe them but Law; but they ſhould find that the King's Little-finger ſhould be heavier than the Loins of the Law.

III. That the Realm of *Ireland* having been time out of mind annexed to the Imperial Crown of this his Majeſty's Realm of *England*, and governed by the ſame Laws; the ſaid Earl being Lord-Deputy of that Realm, to bring his Majeſty's liege Subjects of that Kingdom likewiſe into diſlike of his Majeſty's Government, and intending the Subverſion of the fundamental Laws and ſettled Government of that Realm, and the Deſtruction of his Majeſty's liege People there, did upon the 30th Day of *September*, in the ninth Year of his now Majeſty's Reign, in the City of *Dublin* (the chief City of that Realm, where his Majeſty's Privy-Council and Courts of Juſtice do ordinarily reſide, and whither the Nobility and Gentry of that Realm do uſually reſort for Juſtice), in a publick Speech, before divers of the Nobility and Gentry of that Kingdom, and before the Mayor, Aldermen, and Recorder, and many Citizens of *Dublin*, and other his Majeſty's liege People, declare and publiſh, That *Ireland* was a conquered Nation, and that the King might do with them what he pleaſed. And ſpeaking of the Charters of former Kings of *England* made to that City, he further then ſaid, That their Charters were nothing worth, and did bind the King no further than he pleaſed.

IV. That *Richard* Earl of *Cork* having ſued out Proceſs in Courſe of Law, for Recovery of his Poſſeſſions, from which he was put by colour of an Order made by the ſaid Earl of *Strafford*, and the Council-Table of the ſaid Realm of *Ireland*, upon a Paper-Petition, without legal Proceeding, did the 20th Day of *February*, in the 11th Year of his now Majeſty's Reign, threaten the ſaid Earl (being then a Peer of the ſaid Realm) to impriſon him, unleſs he would ſurceaſe his Suit; and ſaid, That he would have neither Law nor Lawyers diſpute or queſtion his Orders. And the 20th Day of *March*, in the ſaid 11th Year, the ſaid Earl of *Strafford*, ſpeaking of an Order of the ſaid Council-Table of that Realm, made in the Time of King *James*, which concerned a Leaſe which the ſaid Earl of *Cork* claimed in certain Rectories or Tythes, which the ſaid Earl of *Cork* alledged to be of no Force, ſaid, That he would make the ſaid Earl and all *Ireland* know, that ſo long as he had the Government there, any Act of State there made, or to be made, ſhould be as binding to the Subjects of that Kingdom, as an Act of Parliament: And did queſtion the ſaid Earl of *Cork*, in the Caſtle-Chamber there, upon pretence of Breach of the ſaid Order of Council-Table: and did ſundry other Times, and upon ſundry other Occaſions, by his Words and Speeches, arrogate to himſelf a Power above the Fundamental Laws and Eſtabliſhed Government of that Kingdom; and ſcorned the ſaid Laws and eſtabliſhed Government.

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* *Clar.* Hiſt. Vol. I. pag. 118, 152, *&c.* See the larger Trial, which being an entire Volume in *Ruſhworth*'s Collections, to be had by itſelf, is here purpoſely omitted, and this inſerted in the ſtead thereof.

V. That according to ſuch his Declarations and Speeches, the ſaid Earl of *Strafford* did uſe and exerciſe a Power above, and againſt, and to the ſubverſion of the ſaid Fundamental Laws and Eſtabliſhed Government of the ſaid Realm of *Ireland*; extending ſuch his Power to the Goods, Freeholds, Inheritances, Liberties, and Lives of his Majeſty's Subjects of the ſaid Realm: and namely, the ſaid Earl of *Strafford*, the 12th Day of *December*, 1635. in the time of full Peace, did in the ſaid Realm of *Ireland* give, and procure to be given, againſt the Lord *Mountnorris*, (then and yet a Peer of the ſaid Realm of *Ireland*, and then Vice-Treaſurer and Receiver-General of the Realm of *Ireland*, and Treaſurer at War, and one of the Principal Secretaries of State, and Keeper of the Privy-Signet of the ſaid Kingdom) a Sentence of Death by a Council of War, called together by the ſaid Earl of *Strafford*, without any Warrant or Authority of Law, or Offence deſerving any ſuch Puniſhment. And he the ſaid Earl did alſo at *Dublin*, within the ſaid Realm of *Ireland*, in the Month of *March*, in the fourteenth Year of his Majeſty's Reign, without any legal or due Proceedings or Trial, give, and cauſe to be given, a Sentence of Death againſt one other of his Majeſty's Subjects, whoſe Name is yet unknown; and cauſed him to be put to death in execution of the ſame Sentence.

VI. That the ſaid Earl of *Strafford*, without any legal Proceedings, and upon a Paper Petition of *Richard Rolſton*, did cauſe the ſaid Lord *Mountnorris* to be diſſeized, and put out of poſſeſſion of his Freehold and Inheritance of his Manor of *Tymore* in the County of *Armagh*, in the Kingdom of *Ireland*, the ſaid Lord *Mountnorris* having been eighteen Years before in quiet poſſeſſion thereof.

VII. That the ſaid Earl of *Strafford*, in the Term of *Holy Trinity*, in the thirteenth Year of his now Majeſty's Reign, did cauſe a Caſe, commonly called *The Caſe of Tenures upon defective Titles*, to be made and drawn up without any Jury or Trial, or other legal Proceſs, and without the Conſent of Parties; and did then procure the Judges of the ſaid Realm of *Ireland* to deliver their Opinions and Reſolutions to that Caſe: and by colour of ſuch Opinion did, without any legal Proceedings, cauſe *Thomas* Lord *Dillon*, a Peer of the ſaid Realm of *Ireland*, to be put out of the Poſſeſſion of divers Lands and Tenements, being his Freehold, in the Counties of *Mayo* and *Roſcommon*, in the ſaid Kingdom: And divers other of his Majeſty's Subjects to be put out of Poſſeſſion, and diſſeized of their Freehold, by colour of the ſame Reſolution, without legal Proceedings; whereby many Hundreds of his Majeſty's Subjects were undone, and their Families utterly ruinated.

VIII. That the ſaid Earl of *Strafford*, upon a Petition of Sir *John Gifford* Knight, the firſt Day of *February*, in the ſaid thirteenth Year of his Majeſty's Reign, without any legal Proceſs, made a Decree or Order againſt *Adam* Viſcount *Loftus* of *Ely*, a Peer of the ſaid Realm of *Ireland*, and Lord Chancellor of *Ireland*, and did cauſe the ſaid Viſcount to be impriſoned, and kept cloſe Priſoner, on pretence of Diſobedience to the ſaid Decree or Order.

And the ſaid Earl, without any Authority, and contrary to his Commiſſion, required and commanded the ſaid Lord Viſcount to yield up unto him the Great Seal of the Realm of *Ireland*, which was then in his Cuſtody by his Majeſty's Command, and impriſoned the ſaid Chancellor for not obeying ſuch his Command.

And without any legal Proceeding did, in the ſame thirteenth Year, impriſon *George* Earl of *Kildare*, a Peer of *Ireland*, againſt Law, thereby to enforce him to ſubmit his Title to the Manor and Lordſhip of *Caſtleleigh* in the *Queen's County*, (being of great yearly Value) to the ſaid Earl of *Strafford*'s Will and Pleaſure, and kept him a Year Priſoner for the ſaid Cauſe; two Months whereof he kept him cloſe Priſoner, and refuſed to enlarge him, notwithſtanding his Majeſty's Letters for his Enlargement, to the ſaid Earl of *Strafford* directed.

And upon a Petition exhibited in *October*, *Anno Domini* 1635, by *Thomas Hibbots*, againſt Dame *Mary Hibbots* Widow, to him the ſaid Earl of *Strafford*; the ſaid Earl of *Strafford* recommended the ſaid Petition to the Council-Table of *Ireland*, where the moſt part of the Council gave their Vote and Opinion for the ſaid Lady: but the ſaid Earl finding fault herewith, cauſed an Order to be entered againſt the ſaid Lady, and threatned her, that if ſhe refuſed to ſubmit thereunto, he would impriſon her, and fine her Five hundred Pounds: that if ſhe continued obſtinate, he would continue her Impriſonment, and double her fine every Month. By means whereof ſhe was enforced to relinquiſh her Eſtate in the Lands queſtioned in the ſaid Petition, which ſhortly after were conveyed to Sir *Robert Meredith*, to the Uſe of the ſaid Earl of *Strafford*.

And the ſaid Earl in like Manner did impriſon divers others of his Majeſty's Subjects, upon pretence of Diſobedience to his Orders, Decrees, and other illegal Commands by him made for pretended Debts, Titles of Lands, and other Cauſes, in an arbitrary and extra-judicial Courſe, upon Paper Petitions to him preferred, and no Cauſe legally depending.

IX. That the ſaid Earl of *Strafford*, the ſixteenth Day of *February*, in the twelfth Year of his Majeſty's Reign, aſſuming to himſelf a Power above and againſt Law, took upon him, by a General Warrant under his Hand, to give power to the Lord Biſhop of *Downe* and *Connor*, his Chancellor or Chancellors, and their ſeveral Officers thereto to be appointed, to attach and arreſt the Bodies of all ſuch of the meaner and poorer ſort, who, after Citation, ſhould either refuſe to appear before them, or appearing, ſhould omit or deny to perform or undergo all lawful Decrees, Sentences, and Orders, iſſued, impoſed, or given out againſt them, and them to commit, and keep in the next Goal until they ſhould either perform ſuch Sentences, or put in ſufficient Bail, to ſhew ſome reaſon before the Council-Table of ſuch their Contempt and Neglect. And the ſaid Earl, the Day and Year laſt mentioned, ſigned and iſſued a Warrant to that effect; and made the like Warrants to ſeveral other Biſhops, and their Chancellors, in the ſaid Realm of *Ireland*, to the ſame effect.

X. That the ſaid Earl of *Strafford*, being Lord Lieutenant or Deputy of *Ireland*, procured the Cuſtoms of the Merchandizes exported out and imported into that Realm to be farmed to his own uſe.

And in the ninth Year of his now Majeſty's Reign, he having then Intereſt in the ſaid Cuſtoms, (to advance his own Gain and Lucre) did cauſe and procure the Native Commodities of *Ireland* to be rated in the Book of Rates for the Cuſtoms (according to which the Cuſtoms were uſually gathered) at far greater Values and Prices than in truth they were worth; that is to ſay, every Hide at twenty Shillings, which in truth was worth but five Shillings; every Stone of Wool at thirteen Shillings four Pence, tho' the ſame were really worth but five Shillings, at the utmoſt nine Shillings: by which means the Cuſtom, which before was but a twentieth part of the true Value of the Commodity, was enhanced ſometimes a fifth part, and ſometimes to a fourth, and ſometimes to a third Part of the true Value, to the great Oppreſſion of the Subjects, and decay of Merchandize.

XI. That the ſaid Earl, in the ninth Year of his Majeſty's Reign, did by his own Will and Pleaſure, and for his own Lucre, reſtrain the Exportation of the Commodities of that Kingdom without his Licence; as namely, Pipe-ſtaves, and other Commodities; and then raiſed great Sums of Money for Licences of Exportation of thoſe Commodities, and Diſpenſation of the ſaid Reſtraints impoſed on them: by which means the Pipe-ſtaves were raiſed from four Pound ten Shillings or five Pound *per* Thouſand, to ten Pound, and ſometimes eleven Pound *per* Thouſand. And other Commodities were enhanced in the like proportion, and by the ſame means, by him the ſaid Earl.

XII. That the ſaid Earl, being Lord Deputy of *Ireland*, on the ninth Day of *January*, in the thirteenth Year of his now Majeſty's Reign, did then, under colour to regulate the Importation of Tobacco into the ſaid Realm of *Ireland*, iſſue a Proclamation in his Majeſty's Name, prohibiting the Importation of Tobacco, without Licence of him and the Council there, from and after the firſt Day of *May*, *Anno Dom.* 1638. After which Reſtraint, the ſaid Earl, notwithſtanding the ſaid Reſtraint, cauſed divers great quantities of Tobacco to be imported to his own uſe, and freighted divers Ships with Tobacco, which he imported to his own uſe: and that if any Ship brought Tobacco into any Port there, the ſaid Earl and his Agents uſed to buy the ſame to his own uſe, at their own Price; and if that the Owners refuſed to let him have the ſame at under-values, then they were not permitted to vent the ſame there. By which undue means the ſaid Earl having gotten the whole Trade of Tobacco into his own hands, he ſold it at great and exceſſive Prices, ſuch as he liſt to impoſe for his own profit.

And the more to aſſure the ſaid Monopoly of Tobacco, he the ſaid Earl, on the three-and-twentieth Day of *February*, in the thirteenth Year aforeſaid, did iſſue another Proclamation, commanding that none ſhould put to ſale any Tobacco by wholeſale from and after the laſt Day of *May* then next following, but what ſhould be made up into Rolls, and the ſame ſealed with two Seals by himſelf appointed, one at each end of the Roll. And ſuch as was not ſealed to be ſeized, appointing Sixpence the Pound for a Reward to ſuch Perſons as ſhould ſeize the ſame; and the Perſon in whoſe cuſtody the unſealed Tobacco ſhould be found, to be committed to Goal: which laſt Proclamation was coloured by a Pretence for the reſtraining of the Sale of unwholeſome Tobacco, but it was truly to advance the ſaid Monopoly.

Which Proclamation the ſaid Earl did rigorouſly put in execution, by ſeizing the Goods, fining, impriſoning, whipping, and putting the Offenders againſt the ſame Proclamation on the Pillory; as namely, *Barnaby Hubbard*, *Edward Cavena*, *John Tumen*, and divers others; and made the Officers of State, and Juſtices of Peace, and other Officers to ſerve him in the compaſſing and executing theſe unjuſt and undue Courſes. By which Cruelties, and unjuſt Monopolies, the ſaid Earl raiſed 100,000*l.* *per annum* Gain to himſelf. And yet the ſaid Earl, tho' he enhanced the Cuſtoms where it concerned the Merchants in general, yet drew down the Impoſt formerly taken on Tobacco from ſix Pence the Pound to three Pence the Pound; it being for his own Profit ſo to do.

And the ſaid Earl, by the ſame and other rigorous and undue means, raiſed ſeveral other Monopolies and unlawful Exactions for his own Gain, *viz.* on Starch, Iron Pots, Glaſſes, Tobacco-Pipes, and ſeveral other Commodities.

XIII. That Flax being one of the principal and native Commodities of that Kingdom of *Ireland*, the ſaid Earl having gotten great quantities thereof into his hand, and growing on his own Lands, did iſſue out ſeveral Proclamations, *viz.* the one dated the one-and-thirtieth of *May*, in the twelfth of his Majeſty's Reign; and the other dated the one-and-thirtieth of *January*, in the ſame Year; thereby preſcribing and enjoining the Working of Flax into Yarn and Thread, and the ordering of the ſame in ſuch ways, wherein the Natives of that Kingdom were unpractiſed and unſkilful. Which Proclamations ſo iſſued, were by his Commands and Warrants to his Majeſty's Juſtices of Peace, and other Officers, and by other rigorous means, put in execution: and the Flax wrought or ordered in other manner than as the ſaid Proclamation preſcribed, was ſeized and employed to the Uſe of him and his Agents: and thereby the ſaid Earl endeavour'd to gain, and did gain in effect, the ſole Sale of that native Commodity.

XIV. That the ſaid Earl, by Proclamation dated the ſixteenth of *October*, in the fourteenth Year of his Majeſty's Reign, did impoſe upon the Owners, Maſters, Purſers, and Boatſwains of every Ship, a new and unlawful Oath, *viz.* That they (or two or more of them) immediately after the Arrival of any Ship within any Port or Creek in the ſaid Kingdom of *Ireland*, ſhould give in a true Invoice of the outward Bulk of Wares and

Merchandizes firſt laden aboard them, together with the ſeveral Marks and Number of Goods, and the Qualities and Condition of the ſaid Goods as far as to them ſhould be known; the Names of the ſeveral Merchants Proprietors of the ſaid Goods, and the Place from whence they were fraughted, and whither they were bound to diſcharge: which Proclamation was accordingly put in execution, and ſundry Perſons enforced to take the ſaid unlawful Oath.

XV. That the ſaid Earl of *Strafford* traitorouſly and wickedly deviſed and contrived, by Force of Arms, and in a warlike manner, to ſubdue the Subjects of the ſaid Realm of *Ireland*, and to bring them under his Tyrannical Power and Will; and in purſuance of his wicked and traitorous Purpoſes aforeſaid, the ſaid Earl of *Strafford*, in the eighth Year of his Majeſty's Reign, did by his own Authority, without any Warrant or Colour of Law, tax and impoſe great Sums of Money upon the Towns of *Baltimore*, *Baudenbridge*, *Talowe*, and divers other Towns and Places in the ſaid Realm of *Ireland*; and did cauſe the ſame to be levied upon the Inhabitants of thoſe Towns by Troops of Soldiers, with Force and Arms, in warlike manner. And on the ninth Day of *March*, in the twelfth Year of his now Majeſty's Reign, traitorouſly did give Authority unto *Robert Savile*, a Serjeant at Arms, and to the Captains of the Companies of Soldiers in ſeveral parts of that Realm, to ſend ſuch numbers of Soldiers to lie on the Lands and Houſes of ſuch as would not conform to his Orders, until they ſhould render Obedience to his ſaid Orders and Warrants; and after ſuch ſubmiſſion (and not before) the ſaid Soldiers to return to their Garriſons: And did alſo iſſue the like Warrants unto divers others, which Warrants were in warlike manner, with Force and Arms, put in execution accordingly; and by ſuch warlike means did force divers of his Majeſty's Subjects of that Realm to ſubmit themſelves to his unlawful Commands.

And in the ſaid twelfth Year of his Majeſty's Reign, the ſaid Earl of *Strafford* did traitorouſly cauſe certain Troops of Horſe and Foot, armed in warlike Manner and in warlike Array, with Force and Arms, to expel *Richard Butler* from the Poſſeſſion of the Manor of *Caſtle-Cumber*, in the Territory of *Idough*, in the ſaid Realm of *Ireland*; and did likewiſe, and in like warlike manner, expel divers of his Majeſty's Subjects from their Houſes, Families, and Poſſeſſions; as namely, *Edward Obrenman*, *Owen Oberman*, *John Brenman*, *Patrick Oberman*, Sir *Cyprian Horſefield*, and divers others, to the number of about an hundred Families; and took and impriſoned them and their Wives, and carried them Priſoners to *Dublin*, and there detained, until they did yield up, ſurrender or releaſe their reſpective Eſtates and Rights.

And the ſaid Earl in like warlike manner hath, during his Government of the ſaid Kingdom of *Ireland*, ſubdued divers others of his Majeſty's Subjects there to his Will; and thereby, and by the means aforeſaid, hath levied War within the ſaid Realm againſt his Majeſty and his liege People of that Kingdom.

XVI. That the Earl of *Strafford*, the two-and-twentieth of *February*, in the ſeventh Year of his Majeſty's Reign, intending to oppreſs the ſaid Subjects of *Ireland*, did make a Propoſition, and obtained from his Majeſty an Allowance thereof, That no Complaint of Injuſtice or Oppreſſion done in *Ireland*, ſhould be received in *England* againſt any, unleſs it appeared that the Party made firſt his Addreſs to him the ſaid Earl: and the ſaid Earl having by ſuch uſurped, tyrannical, and exorbitant Power, expreſſed in the former Articles, deſtroyed and oppreſſed the Peers, and other Subjects of that Kingdom of *Ireland*, in their Lives, Conſciences, Lands, Liberties and Eſtates; the ſaid Earl, to the intent the better to maintain and ſtrengthen his ſaid Power, and to bring the People into a Diſaffection of his Majeſty, as aforeſaid, did uſe his Majeſty's Name in the Execution of the ſaid Power.

And to prevent the Subjects of that Realm of all means of Complaints to his Majeſty, and of Redreſs againſt him and his Agents, did iſſue a Proclamation, bearing date the ſeventeenth Day of *September*, in the eleventh Year of his Majeſty's Reign, thereby commanding all the Nobility, Undertakers, and others who held Eſtates and Offices in the ſaid Kingdom, (except ſuch as were employed in his Majeſty's Service, or attending in *England* by his ſpecial Command) to make their perſonal Reſidence in the ſaid Kingdom of *Ireland*, and not to depart thence without Licence of himſelf.

And the ſaid Earl hath ſince iſſued other Proclamations to the ſame Purpoſe, by means whereof the Subjects of the ſaid Realm are reſtrained from ſeeking Relief againſt the Oppreſſions of the ſaid Earl, without his Licence; which Proclamations the ſaid Earl hath by ſeveral rigorous ways, as by Fine, Impriſonment, and otherwiſe, put in execution on his Majeſty's Subjects; as namely, one —— *Parry*, and others, who came over only to complain of the Exorbitances and Oppreſſions of the ſaid Earl.

XVII. That the ſaid Earl having, by ſuch means as aforeſaid, ſubverted the Government and Laws of the Kingdom of *Ireland*, did, in *March*, in the ſixteenth Year of his Majeſty's Reign, in ſcandal of his Majeſty's Government of all his Kingdoms, and in further execution of his wicked Purpoſes aforeſaid, ſpeaking of the Army in *Ireland*, declare, That his Majeſty was ſo well pleaſed with the Army of *Ireland*, and the Conſequences thereof, that his Majeſty would certainly make the ſame a Pattern for all his three Kingdoms.

XVIII. That the ſaid Earl of *Strafford*, for the better effecting of his traitorous Deſigns and wicked Purpoſes, did endeavour to draw a Dependency upon himſelf of the Papiſts in both Kingdoms of *England* and *Ireland*; and to that end, during the time of his Government in *Ireland*, he reſtored divers Fryeries and Maſs-Houſes (which had been formerly ſuppreſſed by the precedent Deputies of that Kingdom; two of which Houſes are in the City of *Dublin*, and had been aſſigned to the Uſe of the Univerſity there) to the pretended Owners thereof, who have ſince employed the ſame to the Exerciſe of the Popiſh Religion.

And in the Months of *May* and *June* laſt the ſaid Earl did raiſe an Army in the ſaid Realm, conſiſting of 8000 Foot, all of which, except one thouſand, or thereabouts, were Papiſts; and the ſaid one thouſand were drawn out of the old Army there, conſiſting of two thouſand Foot, and in their Places there were a thouſand Papiſts, or thereabouts, put into the ſaid old Army by the ſaid Earl.

And the more to engage and tie the ſaid new Army of Papiſts to himſelf, and to encourage them, and to diſcourage and weary out the ſaid old Army; the ſaid Earl did ſo provide, that the ſaid new Army of Papiſts were duly paid, and had all Neceſſaries provided for them, and permitted the Exerciſe of their Religion; but the ſaid old Army were for the Space of one whole Year and upwards unpaid.

And the ſaid Earl being appointed a Commiſſioner within eleven ſeveral Counties of the Northern Parts of *England*, for compounding with Recuſants for their Forfeitures due to his Majeſty, which Commiſſion beareth Date the 8th Day of *July*, in the fifth Year of his Majeſty's Reign that now is; and being alſo Receiver of the Compoſition-Money thereby ariſing, and of other Debts, Duties, and Penalties, by reaſon of Recuſancy within the ſaid Counties, for his Majeſty's Uſe, by Letters Patents dated the 9th Day of the ſame *July*; he, to engage the ſaid Recuſants to him, did compound with them at low and under Rates, and provided that they ſhould be diſcharged of all Proceedings againſt them in all his Majeſty's Courts, both Temporal and Eccleſiaſtical, in manifeſt breach of, and contrary to, the Laws and Statutes of this Realm, in that Behalf eſtabliſhed.

XIX. That the ſaid Earl having taxed and levied the ſaid Impoſitions, and raiſed the ſaid Monopolies, and committed the ſaid other Oppreſſions in his Majeſty's Name, and as by his Majeſty's Royal Command; he the ſaid Earl, in *May*, the fifteenth Year of his Majeſty's Reign, did of his own Authority contrive and frame a new and unuſual Oath, by the Purport whereof, among many other Things, the Party taking the ſaid Oath was to ſwear, That he ſhould not proteſt againſt any his Majeſty's Royal Commands, but ſubmit himſelf in all due Obedience thereunto. Which Oath he ſo contrived, to inforce the ſame on the Subjects of the *Scotiſh* Nation inhabiting in *Ireland*; and out of a Hatred to the ſaid Nation, and to put them to a Diſcontent with his Majeſty and his Government there; and compelled divers of his Majeſty's ſaid Subjects there to take the ſaid Oath againſt their Wills; and of ſuch as refuſed to take the ſaid Oath, ſome he grievouſly fined and impriſoned, and others he deſtroyed and exiled; and namely, the 10th of *October*, *Anno Dom.* 1639, he fined *Henry Steward* and his Wife, who refuſed to take the ſaid Oath, 5000*l.* a-piece, and their two Daughters and *James Gray* 3000*l.* a-piece, and impriſoned them for not paying the ſaid Fines: the ſaid *Henry Steward*, his Wife and Daughters, and *James Gray*, being the King's liege People of the *Scotiſh* Nation. And divers others he uſed in like manner. And the ſaid Earl upon that occaſion did declare, That the ſaid Oath did not only oblige them in point of Allegiance to his Majeſty, and Acknowledgment of his Supremacy only, but to the Ceremonies and Government of the Church eſtabliſhed, and to be eſtabliſhed by his Majeſty's Royal Authority; and ſaid, That the Refuſers to obey he would proſecute to the Blood.

XX. That the ſaid Earl hath in the 15th and 16th Years of his Majeſty's Reign, and divers Years paſt, laboured and endeavoured to breed in his Majeſty an ill Opinion of his Subjects, namely, of thoſe of the *Scotiſh* Nation; and divers and ſundry times, and eſpecially ſince the Pacification made by his Majeſty with his ſaid Subjects of *Scotland* in Summer, in the 15th Year of his Majeſty's Reign, he the ſaid Earl did labour and endeavour to perſuade, incite, and provoke his Majeſty to an offenſive War againſt his ſaid Subjects of the *Scotiſh* Nation. And the ſaid Earl, by his Counſels, Actions, and Endeavours, hath been and is a principal and chief Incendiary of the War and Diſcord between his Majeſty and his Subjects of *England*, and the ſaid Subjects of *Scotland*; and hath declared and adviſed his Majeſty, that the Demands made by the *Scots*, in their Parliament, were a ſufficient Cauſe of War againſt them.

The ſaid Earl having formerly expreſſed the Height and Rancour of his Mind towards his Majeſty's Subjects of the *Scotiſh* Nation, *viz.* the 10th Day of *October*, in the 15th Year of his Majeſty's Reign, he ſaid, That the Nation of the *Scots* were Rebels and Traytors; and he being then about to come to *England*, he then farther ſaid, That if it pleaſed his Maſter (meaning his Majeſty) to ſend him back again, he would root out of the ſaid Kingdom (meaning the ſaid Kingdom of *Ireland)* the *Scotiſh* Nation both Root and Branch, ſome Lords and others, who had taken the ſaid Oath in the precedent Article, only excepted: And the ſaid Earl hath cauſed divers of the Ships and Goods of the *Scots* to be ſtayed, ſeized, and moleſted, to the Intent to ſet on the ſaid War.

XXI. That the ſaid Earl of *Strafford*, ſhortly after his Speeches mentioned in the laſt precedent Articles, to wit, in the 15th Year of his Majeſty's Reign, came into this Realm of *England*, and was made Lord Lieutenant of *Ireland*, and continued his Government of that Kingdom by a Deputy: at his Arrival here, finding that his Majeſty with much Wiſdom and Goodneſs had compoſed the Troubles in the *North*, and had a Pacification with his Subjects of *Scotland*, he laboured by all means to procure his Majeſty to break that Pacification, incenſing his Majeſty againſt his Subjects of that Kingdom, and the Proceedings of the Parliament there.

And having incited his Majeſty to an offenſive War againſt his Subjects of *Scotland* by Sea and Land; and the Pretext thereof, to raiſe Forces for the Maintenance of that War; he counſelled his Majeſty to call a Parliament in *England*: yet the ſaid Earl intended, that if the ſaid Proceedings of that Parliament ſhould not be ſuch as would ſtand with the ſaid Earl of *Strafford*'s miſchievous Deſigns, he would then procure his Majeſty to break the ſame, and by ways of Force and Power to raiſe Moneys upon the Subjects of this Kingdom. And for the Encouragement of his Majeſty to hearken to his Advice, he did before his Majeſty and his Privy-Council, then ſitting in Council, make large Declaration, That he would ſerve his Majeſty in any other Way, in caſe the Parliament ſhould not ſupply him.

XXII. That in the Month of *March*, before the beginning of the laſt Parliament, the ſaid Earl of *Strafford* went into *Ireland*, and procured the Parliament of that Kingdom to declare their Aſſiſtance in a War againſt the *Scots*, and gave Directions for the raiſing of an Army there, conſiſting of 8000 Foot, and 1000 Horſe, being for the moſt part Papiſts. And confederating with one Sir *George Radcliffe*, did, together with him the ſaid Sir *George*, traitorouſly conſpire to employ the ſaid Army for the Ruin and Deſtruction of the Kingdom of *England*, and of his Majeſty's Subjects, and of altering and ſubverting of the fundamental Laws and eſtabliſhed Government of this Kingdom.

And ſhortly after the ſaid Earl of *Strafford* returned into *England*, and to ſundry Perſons declared his Opinion to be, That his Majeſty ſhould firſt try the Parliament here; and if that did not ſupply him according to his Occaſions, he might uſe then his Prerogative as he pleaſed, to levy what he needed; and that he ſhould be acquitted both of God and Man, if he took ſome other Courſes to ſupply himſelf, though it were againſt the Wills of his Subjects.

XXIII. That upon the 13th Day of *April* laſt the Parliament of *England* met, and the Commons Houſe (then being the Repreſentative Body of all the Commons in the Kingdom) did, according to the Truſt repoſed in them, enter into Debate and Conſideration of the great Grievances of this Kingdom, both in reſpect of Religion and the Public Liberty of the Kingdom; and his Majeſty referring chiefly to the ſaid Earl of *Strafford* and the Archbiſhop of *Canterbury* the ordering and diſpoſing of all Matters concerning the Parliament; he the ſaid Earl of *Strafford*, with the Aſſiſtance of the ſaid Archbiſhop, did procure his Majeſty by ſundry Speeches and Meſſages to urge the ſaid Commons Houſe to enter into ſome Reſolution for his Majeſty's Supply for Maintenance of his War againſt his Subjects of *Scotland*, before any Courſe taken for the Relief of the great and preſſing Grievances wherewith this Kingdom was then afflicted. Whereupon a Demand was then made from his Majeſty of twelve Subſidies, for the Releaſe of Ship-money only. And while the ſaid Commons then aſſembled (with Expreſſion of great Affection to his Majeſty and his Service) were in Debate and Conſideration concerning ſome Supply, before any Reſolution by them made; he the ſaid Earl of *Strafford*, with the Help and Aſſiſtance of the ſaid Archbiſhop, did procure his Majeſty to diſſolve the ſaid Parliament upon the 5th Day of *May* laſt. And upon the ſame Day the ſaid Earl of *Strafford* did treacherouſly, falſly, and maliciouſly endeavour to incenſe his Majeſty againſt his loving and faithful Subjects, who had been Members of the ſaid Houſe of Commons, by telling his Majeſty they had denied to ſupply him: And afterwards, upon the ſame Day, did traitorouſly and wickedly counſel and adviſe his Majeſty to this Effect, *viz.* That having tried the Affections of his People, he was looſe and abſolved from all Rules of Government, and that he was to do every thing that Power would admit; and that his Majeſty had tried all Ways, and was refuſed, and ſhould be acquitted towards God and Man; and that he had an Army in *Ireland*, (meaning the Army above-mentioned, conſiſting of *Papiſts*, his Defendants, as is aforeſaid) which he might imploy to reduce this Kingdom.

XXIV. That in the ſaid Month of *May*, he, the ſaid Earl of *Strafford*, falſely, traitorouſly, and maliciouſly publiſhed and declared before others of his Majeſty's Privy Council, that the Parliament of *England* had forſaken the King; and that in denying to ſupply the King, they had given him Advantage to ſupply himſelf by other Ways. And ſeveral other times he did maliciouſly, wickedly, and falſely publiſh and declare, That ſeeing the Parliament had refuſed to ſupply his Majeſty in the ordinary and uſual Way, the King might provide for the Kingdom in ſuch Ways as he ſhould hold fit; and that he was not to ſuffer himſelf to be maſter'd by the Frowardneſs and Undutifulneſs of the People. And having ſo maliciouſly ſlandered the ſaid late Houſe of Commons, he did, with the Help and Advice of the ſaid Archbiſhop of *Canterbury*, and the Lord *Finch*, late Lord-Keeper of the Great-Seal of *England*, cauſe to be printed and publiſhed in his Majeſty's Name a falſe and ſcandalous Book, entitled, *His Majeſty's Declaration of the Cauſes that moved him to diſſolve the laſt Parliament*, full of bitter and malicious Invectives, and falſe and ſcandalous Aſperſions againſt the ſaid Houſe of Commons.

XXV. That not long after the Diſſolution of the ſaid laſt Parliament *(viz.* in the Months of *May* and *June)* he, the ſaid Earl of *Strafford*, did adviſe the King to go on vigorouſly in levying the Ship-Money, and did procure the Sheriffs of ſeveral Counties to be ſent for, for not levying the Ship-Money, divers of which were threaten'd by him to be ſued in the *Star-Chamber*; and afterwards, by his Advice, they were ſued in the *Star-Chamber* for not levying the ſame; and divers of his Majeſty's loving Subjects were ſent for and impriſoned, by his Advice, for that and other illegal Payments.

And a great Loan of a hundred thouſand Pounds was demanded of the City of *London*; and the Lord Mayor, and Sheriffs, and Aldermen of the ſaid City were often ſent for, by his Advice, to the Council-Table, to give an Account of their Proceedings in raiſing of Ship-Money, and furthering of that Loan; and were required to certify the Names of ſuch Inhabitants of the ſaid City as were fit to lend: which they with much Humility refuſing to do, he the ſaid Earl of *Strafford* did uſe theſe and the like Speeches, *viz.* That they deſerved to be put to Fine and Ranſom; and that no Good would be done with them till an Example were made of them, and that they were laid by the Heels, and ſome of the Aldermen hanged up.

XXVI. That the ſaid Earl by his wicked Counſels having brought his Majeſty into exceſſive Charge, without any juſt Cauſe, he did in the Month of *July* laſt (for the Support of the ſaid great Charges) counſel and approve two dangerous and wicked Projects, *viz.*

To ſeize upon the Bullion and the Money in the *Mint*.

And to imbaſe his Majeſty's Coin with the Mixtures of Braſs.

And accordingly he procured one hundred and thirty thouſand Pounds, which was then in the *Mint*, and belonged to divers Merchants, Strangers, and others, to be ſeized on and ſtayed to his Majeſty's Uſe. And when divers Merchants of *London*, Owners of the ſaid Bullion and Money, came to his Houſe to let him underſtand the great Miſchief that Courſe would produce here and in other Parts, and what Prejudice it would be to the Kingdom, by diſcrediting the *Mint*, and hindering the Importation of Bullion; he, the ſaid Earl, told them that the City of *London* dealt undutifully and unthankfully with his Majeſty; and that they were more ready to help the Rebels than to help his Majeſty; and that if any Hurt came to them, they may thank themſelves; and that it was the Courſe of other Princes to make uſe of ſuch Monies to ſerve their Occaſions.

And when in the ſame Month of *July* the Officers of his Majeſty's *Mint* came to him, and gave him divers Reaſons againſt the imbaſing the ſaid Money, he told them, That the *French* King did uſe to ſend Commiſſaries of Horſe with Commiſſion to ſearch into Men's Eſtates, and to peruſe their Accounts, that ſo they may know what to levy of them by Force, which they did accordingly levy. And turning to the Lord *Cottington*, then preſent, ſaid, That this was a Point worthy of his Lordſhip's Conſideration: Meaning, this Courſe of the *French* King to raiſe Monies by Force was a Point worthy of his Lordſhip's Conſideration.

XXVII. That in or about the Month of *Auguſt* laſt, he was made Lieutenant-General of all his Majeſty's Forces in the *North*, prepared againſt the *Scots*; and being at *York*, did then in the Month of *September*, by his own Authority, and without any lawful Warrant, impoſe a Tax on his Majeſty's Subjects in the County of *York* of Eight-pence *per diem* for Maintenance of every Soldier of the Trained-Bands of that County, which Sums of Money he cauſed to be levied by Force. And to the end to compel his Majeſty's Subjects out of Fear and Terror to yield to the Payment of the ſame, he did declare, That he would commit them that refuſed the Payment thereof, and the Soldiers ſhould be ſatisfied out of their Eſtates; and they that refuſed it were in very little better Condition than of High-Treaſon.

XXVIII. That in the Months of *September* and *October* laſt, he the ſaid Earl of *Strafford* being certified of the *Scotiſh* Army coming into the Kingdom, and he the ſaid Earl of *Strafford* being Lieutenant-General of his Majeſty's Army, he did not provide for the Defence of the Town of *Newcaſtle*, as he ought to have done, but ſuffered the ſame to be loſt, that ſo he might the more incenſe the *Engliſh* againſt the *Scots*.

And for the ſame wicked Purpoſe, and out of a malicious Deſire to engage the Kingdoms of *England* and *Scotland* in a National and Bloody War, he did write to the Lord *Conway*, the General of the Horſe, and under the ſaid Earl's Command, That he ſhould fight with the *Scotiſh* Army at the Paſſage over the *Tine*, whatſoever ſhould follow; notwithſtanding that the ſaid Lord *Conway* had formerly by Letters informed the ſaid Earl, that his Majeſty's Army, then under his Command, was not of Force ſufficient to encounter the *Scots*: by which Advice of his he did, contrary to the Duty of his Place, betray his Majeſty's Army, then under his Command, to apparent Danger and Loſs.

All and every which Words, Counſels, and Actions of the ſaid Earl of *Strafford* were ſpoken, given, and done by him, the ſaid Earl of *Strafford*, traitorouſly, and contrary to his Allegiance to our Sovereign Lord the King, and with an Intention and Endeavour to alienate and withdraw the Hearts and Affections of the King's liege People of all his Realms from his Majeſty, and to ſet Diviſion between them, and to ruin and deſtroy his Majeſty, and his Majeſty's ſaid Kingdoms; for which they do further impeach him the ſaid *Thomas* Earl of *Strafford* of High-Treaſon againſt our Sovereign Lord the King, his Crown and Dignity. And he, the ſaid Earl of *Strafford*, was Lord Deputy of *Ireland*, or Lord Lieutenant of *Ireland*, and Lieutenant-General of the Army there under his moſt excellent Majeſty, and a ſworn Privy-Counſellor to his Majeſty for his Kingdoms both of *England* and *Ireland*, and Lord Preſident of the *North*, during the Time that all and every the Crimes and Offences, before ſet forth, were done and committed; and he, the ſaid Earl, was Lieutenant-General of his Majeſty's Army in the North Parts of *England* during the Time that the Crimes and Offences, in the 27th and 28th Articles ſet forth, were done and committed.

Anſwer to the Twenty-eight Special Articles.

TO the Firſt Article, he ſaith, He conceives that the Commiſſion and Inſtructions differ not from thoſe formerly granted, but refers to them; and that ſuch Alterations and Additions as were made, were (for aught he knoweth) rather for the Explanation, than for the enlarging of the Juriſdiction: The Care whereof was left to the Secretary of that Council, and to the King's Learned Counſel, to be paſſed for the Good of the King's Service, and the publick Welfare of that Province. For the Legality of the Proceedings, divers eminent Lawyers were joined with the Preſident, who, for the Legal Parts, was by them to be directed. He did not adviſe or procure the Enlargement of the Commiſſion and Inſtructions, and he believeth nothing hath been practiſed ſince, that was not in former Times contained in former Commiſſions, under general Words. He believeth Sir *Conyers Darcy* was lawfully fined for Miſdemeanours, as a Juſtice of Peace; and hath heard, he being in *Ireland*, that Sir *John Bourcher* was fined for ſome great Abuſe at the King's being at *York*, going into *Scotland* to be crowned: to the Proceedings he refers himſelf. He denies that he hath done any thing by that Commiſſion or Inſtructions, other than he conceived he might by Virtue thereof lawfully do.

To the Second Article, He denieth the ſpeaking of thoſe Words: but ſaith, That 30, 40*l.* or more, being returned as Iſſues out of the *Exchequer*, againſt ſome that had compounded for Knighthood for 10*l.* or 30*l.* ſo as the Iſſues far exceeded the Compoſition, and yet would next time have been increaſed; the ſaid Earl upon this Occaſion ſaid, That now they might ſee, that the Little-finger of the Law was heavier than the King's Loins; which he ſpake to nouriſh good Affections in them towards his Majeſty, and not to threaten or terrify any, as the Article ſuppoſed.

To the Third Article, he ſaith, *Ireland* is not governed by the ſame Laws that this Kingdom is, unleſs it be meant by the Common Laws; their Cuſtoms, Statutes, Execution of Martial Laws, Proceedings at Council-Board very much differ: the Words in the Article were not ſpoke to any ſuch Intent. He ſaith, It might be fit enough for him to remember them of the great Obligation they had to the King and his Progenitors, that ſuffered them, being a conquered Nation, to enjoy Freedom and Laws, as their own People of this Kingdom: and it might be, that upon ſome ſuch occaſion he ſaid to thoſe of *Dublin*, That ſome of their Charters were void and nothing worth, and did not bind his Majeſty farther than he pleaſed; which he believes to be true, having been formerly ſo informed by his Majeſty's Learned Counſel upon ſundry occaſions.

To the Fourth, he ſaith, That the legal and ordinary Proceedings at Council-Table are, and time out of mind have been, by Petition, Anſwers, Examination of Witneſſes, as in other Courts of Juſtice concerning *Britiſh* Plantations, the Church, and Caſes hence recommended by the King for the time being, and in Appeals from other Courts there; and the Council-Board have always puniſhed Contempts to Orders there made, to Proclamations, and Acts of State, by Fine and Impriſonment. He ſaith, That it might be, he told the Earl of *Cork*, that he would impriſon him if he diſobeyed the Orders of the Council-Table, and that he would not have Lawyers diſpute or queſtion thoſe Orders, and that they ſhould bind; but remembreth not the Compariſon of Acts of Parliament: and he hath been ſo far from ſcorning the Laws, that he hath endeavoured to maintain them. The Suit againſt the Earl in the Caſtle-Chamber was concerning the Poſſeſſions of the College of *Youghall*, worth 6 or 700*l.* which he hath endeavoured to get, by cauſing of unlawful Oaths to be taken, and very undue means: the matter proceeded to Examination and Publication of Witneſſes; and after, upon the Earl of *Cork*'s humble Suit, and Payment of 15000*l.* to his Majeſty, and his Acknowledgment of his Miſdemeanours, obtained a Pardon, and the Bill and Proceedings were taken off the File: and he remembers not any Suit for breach of any Order made at Council-Table.

To the Fifth, he ſaith, The Deputies and Generals of the Army have always executed Martial Law, which is neceſſary there; and the Army, and the Members thereof, have been long time governed by printed Orders, according to which, divers, by Sentence of the Council of War, have formerly been put to death, as well in the time of Peace as War. The Lord *Mountnorris* being a Captain of a Company in the Army, for mutinous Words againſt the ſaid Earl, General of that Army, and upon two of thoſe antient Orders, was proceeded againſt by a Council of War, being the principal Officers of the Army, about twenty in number, and by them, upon clear Evidence, ſentenced to Death: wherein the ſaid Earl was no Judge, but laboured ſo effectually with his Majeſty, that he obtained the Lord *Mountnorris*'s Pardon; who by that Sentence ſuffered no perſonal Hurt or Damage, ſave about two Days Impriſonment. And as to the other Perſons, he can make no Anſwer thereunto, no Particulars being deſcribed.

To the Sixth, he ſaith, The Suit had depended many Years in Chancery; and the Plaintiff complaining of that Delay, the ſaid Earl upon a Petition, (as in ſuch Caſes hath been uſual) calling to him the then Maſter of the Rolls, the now Lord Chancellor, and the Chief Juſtice of the *Common-Pleas*, upon the Proofs in the *Chancery*, decreed for the Plaintiff; to which he refers himſelf: and it may be the Lord *Mountnorris* was thereupon put out of his Poſſeſſion.

To the Seventh, he ſaith, His Majeſty being intitled to divers Lands, upon an Inquiſition found, Proclamation was made, That ſuch as claimed by Patent ſhould come in by a Day, and have their Patents allowed, as if they had been found in the Inquiſition; and accordingly divers were allowed. The Lord *Dillon* produced his Patent, which being queſtionable, he conſented, and deſired that a Caſe might be drawn; which was drawn by Counſel, and argued, and the Judges delivered their opinions: but the Lord *Dillon* nor any other were bound thereby, or put out of Poſſeſſion; but might have traverſed the Office, or otherwiſe legally have proceeded, that Caſe or Opinion notwithſtanding.

To the Eighth, he ſaith, That upon Sir *John Gifford*'s Petition to the King, his Majeſty referred it to the Deputy and Council of *Ireland*, where the Matter proceeded legally to a Decree againſt the Lord *Loftus*; and upon his Appeal, that Decree by his Majeſty and his Council of *England* was confirmed: to which Decree and Order he refers himſelf, believing the Lord *Loftus* was committed for diſobeying that Decree, and for Continuance in Contempt committed cloſe Priſoner. He ſaith, That the Lord *Loftus* having committed divers Contempts, the Council by Warrant required him to appear at the Board, and to bring the Great Seal with him; which Order he diſobeyed, and was ſhortly after committed, and the Great Seal was delivered up by his Majeſty's expreſs Command, and not otherwiſe. And an Information was exhibited in the *Star-Chamber*, for grievous Oppreſſions done by the Lord *Loftus* as Chancellor; whereof he was ſo far from juſtifying, as that he ſubmitted, deſiring to be an Object of his Majeſty's Mercy, and not of his Juſtice.

The Earl of *Kildare*, for not performing of an Award made by King *James*, and of an Award made in purſuance thereof by the ſaid Earl of *Strafford*, upon a Reference from his Majeſty, was by the Deputy and Council committed: and a Letter being unduly obtained, he did not thereupon enlarge him: but upon another Letter, and Submiſſion to the Orders, as by the King was directed, he was enlarged.

The Lady *Hibbots*, and one *Hoy* her Son, having upon a Petition, Anſwer, Examination of Witneſſes, and other Proceedings at Council-Board, been found to have committed foul Abuſes by Fraud and Circumvention, to have made a Bargain with the Petitioner *Hibbots*, for Lands of a great value, for a ſmall Sum of Money; was ordered to deliver up the Writing, no Aſſurances being perfected, or Money paid; and it's like he threatened her with Commitment if ſhe obeyed not that Order; but denieth that the Lands were after ſold to Sir *Robert Meredith* to his uſe, or that, by any Order by himſelf made, any one hath been impriſoned concerning Freeholds, but for Debts and perſonal Things, as ſome have been uſed by all his Predeceſſors in like Cauſes.

To the Ninth, he ſaith, Warrants to ſuch effects have been uſually granted to the Biſhops in *Ireland*, in the times of all former Deputies; but the Earl not ſatisfied with the Conveniency thereof, refuſed to give any ſuch Warrants in general to the Biſhops as had been formerly done: but being informed that divers in the Dioceſe of *Downe* gave not fitting Obedience, he granted a Warrant to that Biſhop, whereto he referreth, which was the only Warrant he granted of that nature; and hearing of ſome Complaints of the Execution thereof, he recalled it.

To the Tenth, he ſaith, The Lord Treaſurer *Portland* offered the Farm of the Cuſtoms for 13000*l.* *per Annum*, in ſome particular Species, but the Earl of *Strafford* advanced the ſame Cuſtoms to 15500*l.* *per Annum*, and 8000*l.* Fine; and by his Majeſty's Command became a Farmer at thoſe Rates propoſed, without addition to thoſe Rates, as by the printed Books 7 *Car. Regis* may appear. He diſſuaded the Advance of Rates lately propoſed by Sir *Abraham Dawes*, ſo as it was declined: The Rates of Hides and Wool are moderate, Conſideration being had of their true Value, and of the Places whereto they are to be tranſported, and of the Statute made in the Time of Queen *Elizabeth*, and there in force, prohibiting the Exportation of Wool, unleſs they pay to the Crown 5*s.* the Stone. The Trade and Shipping of that Kingdom are exceedingly increaſed.

To the Eleventh, he ſaith, Pipe-ſtaves were prohibited in King *James*'s Time, and not exported but by Licence from the Lord Treaſurer of *England*, or Lord Deputy of *Ireland*, who had 6*s.* 8*d.* *per* 1000, and his Secretary 3*s.* 4*d.* for the Licence: but to reſtrain that Deſtruction of Timber, by Command of his Majeſty and Advice of his Council for his Revenue in *Ireland*, firſt 30*s.* then 3*l.* was charg'd. The Money was paid to his Majeſty, who hath thereby about 1500*l.* *per Annum*; and his Lordſhip loſt about 4 or 500*l.* *per Annum*, which his Predeceſſors had for ſuch Licences. This is paid by the Tranſporter, not by the Natives, whoſe Commodity nevertheleſs appears by the Article to be very much increaſed.

To the Twelfth, he ſaith, The Subſidies there are an Inheritance in the Crown by Act of Parliament; 6*d.* was paid for Subſidy, and 1*s.* 6*d.* for Impoſt upon every Pound of Tobacco, and farmed at 10 or 20*l.* *per Annum*. The Commons in Parliament, 10 *Car. Regis*, finding the Revenue to be ſhort of the Expence of that Kingdom 24000*l.* *per Annum*, petitioned thoſe Grants might be applied to increaſe his Majeſty's Revenue, without calling upon the Subject but upon urgent Occaſions. Hereupon, upon the Advice of the Committee of the Revenue, and in Conſideration of a Proclamation made in *England*, ſeveral Proclamations were made, and this ſettled in a Way, till it could be confirmed by Parliament; for which Purpoſe a Bill is tranſmitted, according to the Deſire of the Commons, and the Impoſt of Tobacco is lett to Contractors for eleven Years, at 5000*l.* *per Annum* for the firſt five Years, and 10000*l.* *per Annum* for the other ſix Years. And the Earl hath lent Money to forward the Buſineſs, and by his Majeſty's Allowance is a Partner; but hath not as yet, in two Years laſt paſt, had any Accounts thereof, or made Benefit thereby. He knoweth of no Whipping, or other Puniſhment. The Farms of the Cuſtoms are better than formerly 2000*l.* *per Annum*, five 8 parts whereof is yearly paid unto his Majeſty: the Prices of Tobacco exceed not 2*s.* or 2*s.* 4*d.* the Pound; the ſettling of that Revenue is according to the Petition of the Commons; he hath not raiſed or countenanced any Monopolies, but oppoſed the ſame.

To the Thirteenth, he ſaith, He endeavoured to advance the Manufacture of Linen rather than of Woollen-Cloth, which might prejudice that Trade here: he bought Flax-Seed in the *Low-Countries*, and ſold it at the ſame Rate to ſuch as deſired it; they making their Cloths not above a Foot broad, and winding eight or ten Threads from ſeveral Bottoms together; the contrary was twined: their Flax, formerly not above a Foot, became a Yard in length: and that Soil is fit to bear it, and the People love ſuch eaſy Works. He hath ſet up many Looms, made much Cloth, and ſold it to the Loſs of ſome Thouſands of Pounds; but when the State ſaw the Natives would not change their old Courſes for new and better, the Proclamation was declined. What he did was for the publick Good, and had nothing from them that was not fully paid for.

To the Fourteenth, he ſaith, He refers to the Oath and Proclamation, which was ſet forth by the ſaid Earl and Council of State there, at the inſtance of the Farmers of the Cuſtoms, to prevent the defrauding of the King's Duties, whereof his Majeſty had five eight parts. He never heard any Complaint of the Oath, or of any that refuſed to take it; and conceived it to be lawful, divers of the Council approving it, being learned Judges of the Law, to whoſe Judgment for the Legality he ſubmitted, as well in that, as to other Matters of the like nature.

To the Fifteenth, He denieth what is in the Article objected; but ſaith, That about the Year 1626, certain Agents authorized in *Ireland* were ſent into *England*, and offered and agreed to pay to his Majeſty 120,000*l.* in ſix Years, towards the Maintenance of his Army; and a like Payment of 20000*l.* *per Annum*, was after agreed, and continued for three Years longer. The Aſſeſſments were made, and it was ſhortly after, by them and the Lord *Faulkland*, then Deputy, agreed in *Ireland*, that the Money ſhould not be charged upon Record, but levied by Captains, by Paper-Aſſignments, upon Warrants from the Lord Deputy: and this Courſe was held four Years in the Lord *Faulkland*'s time, and the four Years wherein the Lord *Loftus* and the Earl of *Cork* were Lords Juſtices there; and it held for the remaining Year only, after the Earl of *Strafford* came thither. But the Earl of *Cork* having ſpared thoſe Towns, for the Benefit of himſelf and Tenants, during the time of his being Juſtice; the Earl of *Strafford* reduced the Aſſeſſment to what it was made by the Lord *Faulkland*, and gave way to Sir *William St. Lieger*, Lord Preſident of *Munſter*, ſhould take the ſame Arrearages, in ſatisfaction of a Debt due unto him by his Majeſty: and he is confident no Force was uſed in levying the ſame. It hath been uſual to lay Soldiers to levy that Contribution, to ſend Soldiers to apprehend Contemners of Orders made at Council-Board, and the like; and when Out-laws and Rebels have been in the Woods, no Soldiers have in his time been laid, but by the Advice of the Council there. Touching the *Caſtle-Cumber*, it's a Parcel of the Territory of *Idough*, whereto the King was intitled by Inquiſition, and the Poſſeſſion eſtabliſhed in a legal Way, when the ſaid Earl was in *England*; and no Soldiers were ſent, but only Twelve, at the Intreaty of Mr. *Waneſford*, for the Security of his Houſes and Plantations againſt Rebels that then were out, and burned and ſpoiled Houſes thereabouts: and neither *Richard Butler*'s, nor any other Family, were thence expelled by the ſaid Earl from their Eſtates.

To the Sixteenth, he ſaith, There was ſuch a Propoſition, which was juſt, to prevent clamorous Complaints here, which there might be redreſſed; but conceives, that by the Laws there, and the Articles known ſince, (by the Name of the Articles of Grace, made about fourteen Years ſince) none ought to depart that Kingdom without Licence.

Thereupon, by the Advice of the State, the Proclamations were ſet forth, but not with ſuch Intent as in the Article.

He denied Licence only to Three, the Earl of *Cork*, the Lord *Mountnorris*, and Sir *Frederick Hamilton*: To the two former, in regard of Criminal Suits then againſt them in the *Caſtle-Chamber*; to the other, by ſpecial Command from his Majeſty. But ſo ſoon as Sir *Frederick* ſaid he would complain of the Earl, he made Suit to his Majeſty that Sir *Frederick* might come over; which was granted. He conceives ſuch Reſtraint to be neceſſary, and if that be not continued, it will prove of evil Conſequence to that Kingdom.

Parry was queſtioned at the Council-Board for Miſdemeanours, and, to avoid Sentence, ſecretly went out of the Kingdom; and at his Return, for that and other Offences, was fined and impriſoned; to the Sentence thereof he refers, and knows of no other that were impriſoned, as by the Article is charged.

To the Seventeenth, he ſaith, It's like he might ſay, (for the better Encouragement of the Officers and Soldiers of the old *Iriſh* Army, in Diſcharge of their ſeveral Duties) that his Majeſty was ſo well ſatisfied in the Way and Pains they took in uſing and practiſing of their Arms, that, in that Point, he would ſet them as a Pattern to be imitated: and conceives it would not be ill if they were ſo; they being, in the Opinion of thoſe that have ſeen them exerciſe, very able and expert Soldiers. He ſpake not other Words, or to other Purpoſe.

To the Eighteenth, he ſaith, When the Earl of *Cork* was one of the Lords Juſtices, he ſeized ſome Houſes in *Dublin*, pretending they belonged to Jeſuits and Friars, without legal Proceedings; which upon Suits proſecuted at Council-Board, were, according to Juſtice, reſtored to the Owners: but how ſince employed, the Earl of *Strafford* knoweth not, but endeavoured the utmoſt he could to maintain that Seizure. Touching the 8000 Men, he ſaith, They were raiſed according to the King's Warrant, and that the ſaid Earl left the Care thereof to the Earl of *Ormond* and others; and what Number are Proteſtants, what Papiſts, he knoweth not, but believeth ſuch a Body cannot be there raiſed, without many Papiſts: the greateſt Number of the Captains and Officers are Proteſtants, choſen by the ſaid Earl. The Thouſand Men were drawn out of the old, to make Officers for the new Army; and believeth the Thouſand put to the old Army are Proteſtants, in regard, by his expreſs Order, no Papiſt is to be admitted there a common Soldier. He never preferred any Captain, Lieutenant, or Enſign, to be of that Army that was a Papiſt, and conceives they are duly paid; and believes thoſe newly raiſed exerciſe the Religion no otherwiſe than was practiſed before the Earl's coming thither. He was a Commiſſioner to compound with the Recuſants for their Forfeitures, and endeavoured to be informed of the utmoſt Value of their Eſtates: in four Years he brought that Revenue from 2300*l.* to between 11 and 12000*l.* *per Annum*, more than ever was raiſed formerly in ſo ſhort a Time; by which faithful Dealings for his Majeſty, he procured the hard Opinion of the Recuſants throughout the Kingdom: That out of thoſe Compoſitions he hath paid near 100,000*l.* into the *Exchequer*; and they had no other Privileges than what were exerciſed in the Commiſſion, and in former like Commiſſions, and as are in the preſent Commiſſion to the Lord Treaſurer, and others.

To the Nineteenth, he ſaith, The laſt Summer was twelve Months, when the *Engliſh* and *Scotch* lay in the Fields near *Berwick*, the Earl and Council of *Ireland* having a general Notion thereof, were in Fear that the *Scots* in *Ulſter* (being almoſt 100,000 in Number) might be drawn to ſide with the Covenanters; and adviſing how to ſecure that Kingdom, the Principal of the Nation of *Scotland*, living in *Ireland*, came to *Dublin*, and petitioned, that they might have an Oath whereby they might give Teſtimony of future Obedience to his Majeſty. Whereupon an Oath was by the Advice of the Council of State framed, and chearfully taken by thoſe *Scotch* Gentlemen, and generally by all the Nation in *Ireland*, as the Earl conceives, to their Advantage, and the Satisfaction of others. He believes that ſome were ſentenced for refuſing it, but none were otherwiſe exiled. The Earl in his Vote ſaid, That he would endeavour that all of that Nation ſhould take that Oath, or leave the Kingdom. All which was done by his Majeſty's Direction and Approbation: And it was not contrived to the Intents of the Article charged, but to prevent their adhering to the Covenanters then in open Arms, and not concerning the Ceremony or Government of the Church.

To the Twentieth he ſaith, That in the Year 1638, the Earl was in *Ireland*, when Preparations were made for War, and Summons ſent to the Nobility of this Kingdom. In the Year 1639, a General was appointed, and an Army drawn to the Field, and encamped near *Berwick*; whereby it appears he was not acquainted that the Article of Pacification had been broken on both Sides, and ſo diſtempered, that it was held fit an Army in *England* ſhould be raiſed to ſuppreſs the Covenanters, if the Buſineſs could not with Honour and Safety be otherwiſe compoſed. The ſaid Earl humbly adviſed his Majeſty to call a Parliament, and uſed many Motives thereunto. After the Parliament was called, and before the Sitting thereof, ten of the Lords, and other of the Council for foreign Affairs, being aſſembled, his Majeſty then preſent, an honourable Perſon related the Covenanters Demands. It was then voted by all, That they were ſuch as might not in Honour and Safety be condeſcended unto by his Majeſty; and if they could not be otherwiſe reduced, his Majeſty muſt be conſtrained to bring them to it by Force. The like Reſolution was after at the Council-Table by twenty of the Council. Whereupon his Majeſty appointed a Council of War; and it was held neceſſary to borrow 200,000*l.* upon good Security, till the Supplies by the Parliament might come in. He never ſaid the *Scotch* Nation were Rebels, but was ever perſuaded that many of them were moſt loyal Subjects.

Thoſe that raiſed Arms, when they were at ſuch a diſtance from his Majeſty, he might ſay they were no leſs than Rebels and Traitors. By Warrant from the Lord Admiral he cauſed divers Ships and Goods to be ſeized, but not with an Intent to ſet on the War, but, as much as in him lay, to bring all to fair Accommodations without Expence of Blood.

To the Twenty-firſt, he ſaith, The Pacification was broken before he came over, as in the Anſwer to the former Article: he moved his Majeſty for a Parliament in *England*, but not with ſuch Intent as in the Article, but out of a Deſire to have ſettled a right Underſtanding between the King and his People. It may be ſaid, (tho' he remembereth it not) That if the Parliament would not ſupply his Majeſty, he would ſerve his Majeſty in any other lawful way; being well aſſured that his Majeſty would not imploy him, nor any Man elſe, in any other kind.

To the Twenty-ſecond, he ſaith, According to his Majeſty's Inſtructions, he did ſet forth to the Parliament of *Ireland* the State of the Affairs, as they then ſtood; and they freely gave four Subſidies, as an Acknowledgment of his Goodneſs and happy Government, as by the Act and Remonſtrance appears in Print. He, by his Majeſty's Direction, then gave Order for the raiſing of 8000 Men, who ſtill remain in the King's Pay, and were ſent into *Ulſter* to ſecure thoſe Parts, or to land in *Scotland*, to divert the Earl of *Argyle*, in caſe he joined with the Covenanters Army againſt the King. But it was mentioned in the King's Letter, 2 *Martii* 1639. he had purpoſely given out, That they ſhould join with the King's Army at *Berwick*, to colour other Deſigns: But the true Cauſe of their levying was made known to be as aforeſaid unto the Earl of *Ormond*, Sir *John Burlace*, and the Marquis of *Hamilton*, and the Earl of *Northumberland*, at the time of the writing the Letter. And he denies the Words charged in the Articles, or any other Words to ſuch Intent and Purpoſe.

To the Twenty-third, he ſaith, The Matters of the Parliament were no otherwiſe referred to him than to the reſt of the Council: That coming ſick from *Ireland* about ten Days after the Parliament were ſet, and after the Treaty with the Earl of *Dunfermline* and Lord *Lowdon*, *Scotch* Commiſſioners, was broken off, and the Army preparing, and the Parliament not ſupplying Monies as his Majeſty deſired, his Majeſty adviſed what might move them to prefer his Supply. In debate whereof, he humbly adviſed his Majeſty, by a Meſſage to the Houſe, to lay down Ship-Money, and promiſe never to demand it, and give way to reverſe the Judgment by a Writ of Error in Parliament, and to promiſe a Redreſs of Grievances when they ſhould be prepared. And ſecondly, That they would preſently agree upon ſuch Supply as ſhould maintain his Army for reducing the *Scots* to their Obedience, wherein their Safety and his Honour was concerned. His Majeſty aſſented conditionally, that he might have twelve Subſidies: The Earl beſought him that it might not paſs as a Condition, but to relinquiſh Ship-Money, and put himſelf upon their Affections; and drew up the Meſſage in Writing, and delivered it to Mr. Secretary *Vane*, to deliver to the Houſe of Commons. He deſired to know if his Majeſty would not take leſs than twelve. His Majeſty anſwered, He feared leſs would not ſerve his Occaſions. The Earl of *Strafford* beſought his Majeſty to accept of eight. So his Majeſty aſſented, and deſired Mr. Secretary to ſignify ſo much, as Occaſion ſhould be offer'd: But whether he did ſo or not, the ſaid Earl knoweth not. The Houſe of Commons being in debate two Days, and not reſolving, his Majeſty about the 5th of *May* laſt called a Council at ſeven of the Clock in the Morning: The ſaid Earl being ſick, came late, and was told (as he remembreth) by the Earl of *Berkſhire*, the King had declared his Reſolution to diſſolve the Parliament. The Earl of *Strafford* beſought his Majeſty to hear the Advice of his Council, and firſt of thoſe that were Members of the Houſe of Commons, by whom the reſt might the better be guided. Mr. Secretary *Windebank* ſaid, He feared the Houſe would firſt be anſwered of their Grievances, and voted for a Breach of the Parliament. Mr. Secretary *Vane*, in oppoſite Terms, ſaid, That there was no Hope that they would give the King a Penny, and therefore abſolutely voted for a Breach. And the Earl of *Strafford* conceiving his Majeſty's Pleaſure to have accepted eight Subſidies had been deliver'd to the Houſe of Commons by Mr. Secretary *Vane*, did in his Turn deliver his Vote for Breach of the Parliament, which otherwiſe he would not have done, it being contrary to what he reſolved when he came thither; and the like Opinion was delivered by the reſt of the Lords, being about twenty, except two or three at the moſt. The Parliament being diſſolved, his Majeſty deſired Advice of his Council how Money might be raiſed, affirming that the *Scotch* Army was ready to enter into the Kingdom: The ſaid Earl, in preſence of others in the Council, delivered his Opinion, That in a Caſe of abſolute and unavoidable Neceſſity, which neither would nor could be prevented by ordinary Remedies provided by the Laws, nor all his Majeſty's other means ſufficient to defend the Commonwealth, himſelf, or their Lives and Eſtates from an Enemy, without Force of Arms, either actually entred, or daily expected to invade the Realm; he conceived that his Majeſty was abſolved from ordinary Rules, and might uſe (in a moderate way, as the Neceſſity of the Cauſe would permit) all Ways and Means for defence of himſelf and Kingdom; for that he conceived in ſuch Extremity, *Salus Populi* was *Suprema Lex*, provided it were not colourable, nor any thing demanded imployed to other uſe, nor drawn into Example, when Law and Juſtice might take place: and that when Peace was ſettled, Reparation was to be given to particular Men, otherwiſe it would be unjuſt. This was not officiouſly declared, but in Council, forced by the Duty of the Oath of a Counſellor, which is, That he ſhall in all things to be moved, treated, and debated in Council, faithfully and truly declare his Mind and Opinion according to his Heart and Conſcience: Which Oath the ſaid Earl took, and humbly prays their Lordſhips Conſideration thereof. He denies the Words in the Article, or any Words to the Intent thereby expreſſed.

To the Twenty-fourth, he ſaith, He delivered his Opinion with ſuch Cautions and Reſtrictions, as in the Anſwer to the precedent Article; and is well aſſured his Diſcourſe at all Times hath been without ill Intentions to either of the Houſes of Parliament, which he ever did and ſhall ſpeak of with all Reverence. He denies that he knew of the publiſhing or printing of the Book, or who cauſed it to be printed or publiſhed; for at that time he was ſick in his Bed, more like to die than to live.

To the Twenty-fifth, he ſaith, Ship-Money was levied, and adjudged to be due, before his coming over. Sheriffs were then called up as before, and not otherwiſe. If any were ſued in *Star-Chamber*, it was without any particular endeavour of his. It appearing at the Board that the Mayor and Sheriffs of *London* had been ſlow in collecting Ship-Money, he ſaith, They were but miniſterial, and ought to exact, and not diſpute the King's Writs; and that if through their remiſſneſs the King ſhould be leſs able to provide for the public Safety, when any foreign Army was ready to enter the Kingdom, they might deſerve to be fined and ranſomed: which he ſpake more to haſten them, than of purpoſe to adviſe any ſuch Proſecution. But denies the other Words, being, under favour, ſuch Expreſſions as he is not accuſtomed unto.

To the Twenty-ſixth, he ſaith, He adviſed not either of thoſe Projects (being then ſick in Bed): But it being debated at the Council-Table whether it were better for the King to raiſe Gold and Silver, or coin baſe Money, he (for the Reaſons then given) deliver'd his Opinion for the latter. Sundry Merchants Adventurers coming to his Houſe, deſired him to move his Majeſty, then at *Oatlands*, to releaſe the Bullion, or Money: He told them he knew of no ſuch Thing, and would not meddle with it; nor would his Health permit him to go abroad: and ſaid, That if by their denying the King in ſuch a public Danger the Loan of 100,000 *l.* upon good Security, the King were conſtrained, for the Preſervation of the Land, to ſtay the Bullion, they might thank themſelves; and the City receiving ſo great a Benefit by reſiding amongſt them, they made but an unthankful Acknowledgement in ſuch a Strait, to refuſe the Loan of that Sum. The Officers of the *Mint* came to the Council-Board, and the Earl then ſhewed a Letter he received from the Earl of *Leiceſter*, wherein was related, That the Cardinal had appointed Commiſſioners to go into the Merchants Houſes at *Paris*, to peruſe their Shop-Books and Accompts, and ceſs every Man according to his Ability, towards the Payment of the King's Army; and then ſaid, That it was but juſt for us here in *England* to bleſs God for being under a King which could not think upon ſuch a preſſing upon the People. But the Words in the Article, or Words to any ſuch Intent, he did not ſpeak; and cannot ſufficiently bemoan himſelf to have been in all his Words ſo ill underſtood, or ſo untruly reported as he hath been.

To the Twenty-ſeventh, he ſaith, He perſuaded the Gentry of that County to allow the Trained-Bands a Month's Pay; which they yielded, and his Majeſty graciouſly accepted. It was by Council of War (his Majeſty being preſent) thought fit the Trained-Bands ſhould return, ſave the two Regiments under the Command of Sir *William Pennyman* and Sir *Thomas Danby*. It was aſſented unto by his Majeſty, and the Great Council of Peers then aſſembled, That thoſe ſpared ſhould contribute; and the ſaid Earl was commanded by them to ſee it done. Which was done accordingly by Warrants from him, and from his Deputy-Lieutenants, which was much leſs Charge to the Counties than otherwiſe. And denies the other Particular in the Article mentioned.

To the Twenty-eighth, he ſaith, He was Lieutenant-General to the Earl of *Northumberland*, about the 24th of *Auguſt*, of 10 or 12000 Foot, and 2000 Horſe, being at *Newcaſtle*, under the Command of the Lord *Conway* and Sir *Jacob Aſtley*, and the reſt of the Army at *York*. The ſaid Earl went from *London* on the 26th of *Auguſt*, notwithſtanding his extreme Weakneſs, and came to *York*. And having received a Letter from Sir *Jacob Aſtley* that *Newcaſtle* was fortified, and that they muſt be infamous Beaſts to loſe it, and that it was fully ſecured; and being acquainted with ſeveral Diſpatches ſent by Mr. Secretary *Vane*, by his Majeſty's Directions, to the Lord *Conway*, General of the Horſe, to oppoſe the Paſſage of the *Scots* over the River *Tyne*, the one dated 22 *Auguſti*, the other 23 *Auguſti*, another 24 *Auguſti*, another 26 *Auguſti*, the Subſtance of which Letters are particularly mentioned in the Anſwer to this Article: and to the ſame Letters the ſaid Earl referreth himſelf.

The ſaid Earl, upon ſight of this and Sir *Jacob Aſtley*'s Letter, had reaſon to believe that all fitting Preparation was made; and then underſtanding that if the *Scotiſh* Army ſhould paſs the River, not only *Newcaſtle*, altogether unfortified on the ſouth part, would be loſt, but the ſaid Army of 11000 Foot and 2000 Horſe endangered; and hearing that the *Scotiſh* Army was diſtreſſed for want of Victuals, and knowing the Advantage that was in oppoſing the Paſſage of ſuch a River: Hereupon the ſaid Earl, by a Letter dated the 27th of *Auguſt*, adviſed the Lord *Conway*, with all the Horſe, and at leaſt 8000 Foot, and all the Cannon, to march and fight with them upon the Paſſage of the River: At which time the ſaid Earl had no Charge of the Army. But the Truth is, the Lord *Conway* having not with him all the Horſe, and not above 1500 Foot, and only ſome part of the Cannon, was in a poſture to fight for the Paſſage before the ſaid Letter of Advice came, which he received not half an Hour before the Fight began, and proceeded according to his own Judgment, and his Majeſty's ſaid general Direction. And afterwards, that is, about the 30th of *Auguſt*, and not before, the ſaid Earl took upon him the Charge of the Army at *Darlington*, and brought it to *York* to be ſupplied with Neceſſaries that they wanted, and purpoſed to have ſtaid where they were quartered. But hearing from many Hands that there was a Purpoſe to queſtion him in Parliament, and his Majeſty having given him liberty of ſtaying there, or coming away, he left the Charge of the Army with the Lord *Conway*, and other Officers, as his Majeſty had directed, and came to *London* on Monday the 9th; and the 11th of *November* was put under Reſtraint, and ſo hath ever ſince remained. And ſaith, That the Town of *Newcaſtle* was no way under his care. And as to other Matters, whereto by Law he ought to anſwer, and hath not anſwered, he ſaith, He is not guilty of them, or any of them, in ſuch Manner and Form as in the ſaid Article is expreſſed; and humbly prayeth a convenient Time for making his Proofs, and to juſtify and maintain his Actions in *Ireland* by Sight of his Majeſty's Warrants, Records, and Witneſſes in that Kingdom; and that if any Miſtake be in his Anſwer, it may be amended.

And this the ſaid Earl hopeth, that, upon equal Conſtruction of his Words and Actions, he ſhall appear free from any great and heinous offences wherewith he is charged: And howſoever it ſhall pleaſe God to diſpoſe of him, he ſhall ever pray, that by their Lordſhips great Wiſdom and Prudence, the Affections of his Majeſty, and Duty of his Subjects, may this Parliament be ſo ſurely knit together, as may by God's Bleſſing laſtingly tend to the Proſperity and flouriſhing Eſtate both of King and People.

THE Place appointed for the Trial was the great Hall in *Weſtminſter*, where there was a Throne erected for the King, on each Side thereof a Cabinet encloſed about with Boards, and before with a Terras. Before that were the Seats for the Lords of the Upper Houſe, and Sacks of Wool for the Judges; before them, ten Stages of Seats, extending farther than the midſt of the Hall, for the Gentlemen of the Houſe of Commons: at the End of all was a Deſk cloſed about, and ſet apart for the Lord-Lieutenant and his Counſel.

March 22. *Monday* Morning about ſeven of the Clock he came from the *Tower*, accompanied with ſix Barges, wherein were one hundred Soldiers of the *Tower*, all with Partizans, for his Guard, and fifty Pair of Oars. At his landing at *Weſtminſter*, there he was attended with two hundred of the Trained-Bands; and went in, guarded by them, into the Hall. The Entries at *White-Hall*, *King-ſtreet*, and *Weſtminſter*, were guarded by the Conſtables and Watchmen, from four of the Clock in the Morning, to keep away all baſe and idle Perſons.

The King, Queen, and Prince, came to the Houſe about nine of the Clock, but kept themſelves private within their Cloſets, only the Prince came out once or twice to the Cloth of State; ſo that the King ſaw and heard all that paſſed, but was ſeen of none. Some give the Reaſon of this, from the received Practice of *England* in ſuch Caſes: Others ſay, that the Lords did intreat the King either to be abſent, or to be there privately, leſt Pretenſions might be made hereafter, that his being there was either to threaten, or ſome otherwiſe to interrupt the Courſe of Juſtice: A third ſort, That the King was not willing to be acceſſary to the Proceſs till it came to his part, but rather choſe to be preſent, that he might note and underſtand what Violence, Rigour, or Injuſtice happened.

When the Lieutenant entered the Hall, the Porter of the Hall (whoſe Office it is) aſked Mr. *Maxwell*, whether the Axe ſhould be carried before him or no? Who did anſwer, That the King had expreſly forbidden it: nor was it the Cuſtom of *England* to uſe that Ceremony, but only when the Party accuſed was to be put upon his Jury. Thoſe of the Upper Houſe did ſit with their Heads covered, thoſe of the Lower Houſe uncovered. The Biſhops upon the *Saturday* before did voluntarily decline the giving of their Suffrages in Matters Criminal, and of that Nature, according to the Proviſion of the Canon Law, and Practice of the Kingdom to this Day; and therefore would not be preſent: yet withal they gave in a Proteſtation, that their Abſence ſhould not prejudice them of that or any other Privilege competent to them as the Lords Spiritual in Parliament; which was accepted.

The Earl of *Arundel*, as Lord High Steward of *England*, ſat apart by himſelf, and at the Lieutenant's Entry commanded the Houſe to proceed. Mr. *Pym* being Speaker of the Committee for his Accuſation, gave in the ſame Articles which were preſented at his laſt being before the Upper Houſe; which being read, his Replies were ſubjoined and read alſo, the very ſame which were preſented before in the Upper Houſe. Some give the Reaſon of this, becauſe the Lower Houſe had not heard thoſe Accuſations in publick before; others, that the Formality of the Proceſs required no leſs: However, that Day was ſpent in that Exerciſe.

The Queen went from the Houſe about eleven of the Clock; the King and Prince ſtaid till the Meeting was diſſolved, which was after Two. The Lieutenant was ſent to the *Tower* by his Guard, and appointed to return upon *Tueſday* at nine of the Clock in the Morning. The Croud of People was neither great nor troubleſome; all of them ſaluted him, and he them, with great Humility and Courteſy, both at his Entrance and at his Return: therefore let Fame pretend what it pleaſe about the Malice and Diſcontent of the Multitude, *That if he paſs the Stroke of Juſtice, they will tear him in Pieces*; yet I ſee there is more in Rumour than in Sight and Appearance; and in this Report, as in all others of this Nature, more is thruſt upon the Vulgar (who ſeem as well fearful of Puniſhment, as exempt from it, for all their great Number) than they do juſtly deſerve.

March 23. On *Tueſday* in the Morning he came accompanied as before to *Weſtminſter*; and having ſtaid in the *Exchequer-Chamber* till nine of the Clock, the King, Queen, and Prince came as before upon the firſt Day.

Then Maſter *Pym* being called for, aggravated the Charge, which was given the Day before, by a very ample Speech. It is impoſſible to call to Mind all the Hyperboles, the Flaſhes, and ſuperlative Expreſſions that he uſed; the main Points were, That it was Treaſon far beyond the Reach of Words, that he the Lieutenant, a native Subject and a Peer of *England*, the Prime Governor of *Ireland*, the Commander of his Majeſty's Forces, and a Proteſtant in Religion, ſhould have in ſuch an impious and groſs Manner recompenſed his Majeſty's Favours, abuſed his Goodneſs, and drawn all his Dominions into Hazard and Peril of their Religion, Lives, Goods, and Privileges: That one of theſe Faults alone had been enough, and too much, for the fulfilling of the Exorbitancy and Wickedneſs of any one Man; and that no Puniſhment could be thought upon, ſufficient to expiate Crimes of ſuch a tranſcendent Nature.

The Lieutenant, with no leſs Moderation and Wiſdom than the other with Heat and Paſſion, ſpake to his own Defence; and that with ſuch a Meaſure of Eloquence and Livelyhood, that his very Enemies were affected with it, and do marvellouſly report of it.

He modeſtly recounted his Services done to the King and Crown of *England*, his Endeavours for Advancement as well of the Honour as Commodity of both Kingdoms in general, but in particular that of *Ireland*; how he had engreatened and advanced the King's Revenues there, reſtored the Church's Maintenance, ſuppreſſed the Outlaws, eſtabliſhed Obedience to Royal Authority, and impedited the Tyranny and Uſurpation of greater

Ones over the Commons. And for the effecting of all theſe Actions, he mentioned himſelf the moſt weak and meaneſt Inſtrument, with a wonderful Prudence, in a middle Way, betwixt the Affectation of Baſeneſs, or Dejectedneſs, and Arrogance.

Maſter *Pym*, after the Cloſe of his Speech, told him that there were three new Articles adjoined (by an After-ſearch) to his Charge; and deſired that he might preſently reply to the ſame.

Whereunto the Lieutenant anſwered, It was very ſtrange, that after the Cloſe of the Proceſs, and when Matters were come to be ſcann'd, and examin'd by Proof, that any new Charge ſhould be given in; yet, leſt he ſhould ſeem to decline the Maintenance of his own Innocency, and the juſt Defence of his Honour, he was moſt willing to hear them, and have them alledged, provided that a convenient Time might be aſſigned him to make his Replies againſt them, as he had done to the other given in before.

But Maſter *Pym* excepted againſt this, and told him, that the Houſe did conceive it to be dangerous to grant any farther Prorogation.

Upon this, the Lords of the Upper Houſe (who did not think it fit as yet to voice any Particular in the Audience of the Houſe of Commons) did retire themſelves, and after a pretty time of Stay they returned and declared, that they had found the Lieutenant's Suit to be equitable, in deſiring of further Time for anſwering; yet ſeeing the Articles themſelves, neither for Number nor Weight, ſeemed to be of that Importance, but that he might furniſh out a preſent Anſwer, they thought it fitting to grant no delay.

The Lieutenant then (intreating them to paſs by and pardon the Weakneſſes of his extemporary Anſwers) deſired to hear the Articles read, which were theſe:

Firſt, *That he had within theſe two Years withdrawn Forty Thouſand Pounds* Sterling *from the Exchequer in* Ireland, *and employed it to his own private Uſes.*

Secondly, *That in the beginning of his Government, the Garriſons in* Ireland *had been maintained by the* Engliſh *Treaſury.*

Thirdly, *That he had advanced Popiſh and Infamous Perſons, as the Biſhop of* Waterford *and others, to the prime Rooms in the Church of* Ireland.

To the firſt he anſwered, That Thirty Thouſand Pounds were ſet apart for the King's late Service, at his own moſt ſpecial and moſt peremptory Commands; for which he produced the King's own Letter, already approved as his Acquittance at the *Exchequer* Board in *Ireland*.

To the ſecond, That at the beginning of that Charge againſt him, as ever before his time, the Garriſons had been burdenſome to the Kingdom of *England*; but that he had ſo improved it, and ſettled the King's Revenue there, that the like is not to be heard in all the times that are bypaſt: for which (if the beſt Endeavours of a Subject may juſtly expect any Reward from his King and Country) he craved leave to think that he rather deſerved many Thanks, than the leaſt Puniſhment.

To the third, He appealed to all the Clergy in *Ireland*, if ever he had taken upon him any particular meddling in advancing their Churchmen, or whether he had done any thing concerning ſuch Affairs, but upon the ſpecial Advice and Deſire of the beſt and wiſeſt of their Number. For his part, when he befriended the Biſhop of *Waterford*, he conceived of him as a Man of Integrity and Learning, fit for ſuch an Employment; nor was there then the leaſt Suſpicion of thoſe monſtrous Impieties, wherewith he was afterwards charged; that he had now juſtly ſuffered for the ſame, and that he hoped they would not lay a Neceſſity upon him to propheſy and divine of the future Conditions and Deportments of Men. For others of the Church, ſuſpected of Popery, he knew none ſuch, but ſhould anſwer to the Particulars ſo far as they concerned him, when they ſhould happen to be alledged.

After this the Houſe diſſolved for that Night, the King's Majeſty and the Prince having ſtaid all the time; and the Lord Lieutenant was appointed to come thither again on *Wedneſday* Morning; at which time they are to proceed to the firſt Article, to give an Oath to the Witneſſes, and to examine all the Proofs whereon the Proceſs was builded.

It will be a very hard Matter for him to expect every Man's Teſtimony, and to give his Anſwers, either for full Satisfaction or Diminution of all Objections; which way of Proceeding will ſpend at leaſt a Fortnight, if not a greater Space of time; yet it is thought the Lower Houſe are impatient of Delays. The Expectations are exceeding various and different about the Event of this great Action: ſome think it will be impoſſible to eſcape the many and great Accuſations laid to his Charge; others, and that the greater Number too, are of Opinion that he will be in no Hazard of his Life, and that it will not be poſſible to bring him into the Compaſs of Treaſon (*quod tam miſere cupio ut non credam*). His adverſe Party is ſo great, and ſo far intereſted both in Point of Safety and Honour againſt him, that *flectere ſi nequeunt Superos, &c.* nothing will be left uneſſay'd, that may accelerate his Ruin.

He hath all this time carried himſelf courageouſly, to the Admiration (and withal ſo moderately, that it is to the great Satisfaction) of his very Enemies; ſo that he ſeems neither dejected with Fear, nor to affect Boldneſs with Confidence, but to carry himſelf with that Conſtancy and Reſolution, which his Innocency and brave Parts do promiſe.

The *Iriſh* Commiſſioners here, have hitherto abſtained from giving in any Remonſtrance againſt the Lieutenant, and do ſtill plead to have an immediate Dependance from the King, and not from the Parliament of *England*. There was a Report that the Parliament of *Ireland* had ſent a Proteſtation againſt the Act made the laſt Year, for the King's Supply in his Expedition againſt the *Scots*, as a thing which was violently in part, and in part ſurreptitiouſly obtained from them: but I have learned this to be an Untruth. I had almoſt forgotten one Paſſage of Mr. *Pym*, who in the Aggravation of the Lieutenant's Faults, had this Expreſſion, That he was like the Whore in the *Proverbs*, *He wiped his Mouth, and with a brazen Face ſaid he had done no Evil.*

To this the Noble Lord replied, That he wiſhed his Innocence might not be taken for Impudence; that he hoped ſhortly to clear himſelf of all thoſe foul Aſperſions which his malicious Enemies had caſt upon him; and he was very confident that he ſhould give the Honourable Houſes full Satisfaction concerning his Life hitherto, and thought of nothing more hereafter than to retire himſelf from all publick Employments.

Mr. *Pym* gave at this a great Shout, and deſired the Houſe to take notice what an Injury he had done to the Honourable Houſe of Commons, in calling them his malicious Enemies.

Whereupon the Lieutenant falling down upon his Knees, humbly beſought them that they would not miſtake him; and withal gave a large Panegyrick of their moſt juſt and moderate Proceedings, proteſting that if he himſelf had been one of the Houſe of Commons, (as he had the Honour once to be) he would not have adviſed them to have done otherwiſe againſt his deareſt Friend: but withal told them, that he might juſtly ſay he had his own Un-friends, which he hoped in time to make known. Nor did he all this time ſpeak one bitter Word againſt Mr. *Pym*, tho' juſtly incenſed; which hath infinitely advanced his Reputation.

I have been a daily Hearer of theſe Proceedings againſt this great Perſonage now upon the Stage, therefore do preſume I can give a reaſonable Account thereof. The Book of his Charge is extant in Print; ſo it ſhall be needful for me only to name the Articles, as they were canvaſſed, and thoſe deſigned by the Houſe of Commons to be his Accuſers; which were theſe that follow:

The Names of his Accuſers.

Pym, *Glyn*, *Maynard*, *Whitlock*, Lord *Digby*, *St. John*, *Palmers*, Sir *Walter Earle*, *Stroud*, *Selden*, *Hampden*, &c.

One of theſe began the Speech; the reſt, after their Collegue hath done, follow in their Turn: ſo that he hath all of them to wreſtle againſt, and yet ſufficiently able for them all; tho' by his Agitation his Spirits are much exhauſted.

Mr. *Glyn*, after a large Flouriſh, on *Wedneſday*, told the Lords, That the Lord *Strafford* was impeached, not with ſimple, but accumulative Treaſon: For tho', in each particular Article, ſuch a monſtrous Crime could not be deprehended; yet when all was conceived in the Maſs, and under one View, he ſhould be undoubtedly found the moſt wicked and exorbitant Traytor that ever was arraigned at the Bar. He added, That his Charge was for intending to ſubvert and change the Fundamental Laws, Liberties, and Privileges of both the Kingdoms, and to introduce an Arbitrary and Tyrannical Form of Government. This, he ſaid, could not appear but by the Fruits, which were either in Expreſſion or Action. The Expreſſions were four:

Firſt, That before ſeveral Witneſſes he had ſaid at *York*, *That the King's Little-finger ſhould be heavier to them than the Loins of the Law.*

To this the Lieutenant replied, That having ſpoken ſufficiently before to his Juſtification in general, he would moreover add theſe few Words, by their Favours: That it did ſtrike him to the Heart to be attached of ſuch a wicked Crime, by ſuch honourable Perſons; yea, that it wounded him deeper, in regard that ſuch Perſons who were the Companions of his Youth, and with whom he had ſpent the beſt of his Days, ſhould now riſe up in Judgment againſt him: yet he thanked God for it, it was not Guilt, but Grief, that ſo much troubled him. He added, That it was a Wonder how he had gotten Strength ſufficient in ſuch Infirmity of Body, and ſuch Anguiſh of Mind, to collect his Thoughts, and ſay any thing at all for himſelf; but the Almighty God, who knows him to be innocent, had furniſhed him with ſome Abilities to give Teſtimony to the Truth, and to a good Conſcience: He therefore intreated, that if either in Judgment or in Memory he ſhould at any time fail, it might be imputed to his great Weakneſs. And altho' the Gentlemen his Accuſers ſhould ſeem more ready in their Accuſations than himſelf in his Defence, yet that might not prejudice his Cauſe; who, in very unequal Terms, had to do with learned and eloquent Lawyers, bred up a long time and inured to ſuch judiciary Pleadings, and whoſe Rhetorick, he doubted not, might preſent many things to their View in a Multiplying-Glaſs. He told them farther, That for theſe many Years he had been weary of publick Service, and that now it was his Reſolution, after he had vindicated his Honour, to retire himſelf, and enjoy his much long'd-for Privacy: and yet he could not but tell them ſo much, that it had been his hearty Wiſh and Deſire, rather voluntarily to have reſigned his Places of Honour, like a ripe Fruit fallen from the Tree, than to be violently pulled from thence, as a fruitleſs and unprofitable withered Branch.

To the Charge of Treaſon, he ſaid, That under Favour he conceived, that altho' all the Articles contained in his Impeachment were verified againſt him, yet they would not all amount to Treaſon; neither ſimple nor accumulative: For (ſaid he) I do not underſtand by what Interpretation of Law the Diverſion of Juſtice can be called a Subverſion of the ſame; or the exceeding of a Commiſſion, the Uſurpation of a new Power. To the Particular he replied, That his Words were clearly inverted, for that his Expreſſion was, *That the Little-finger of the Law (if not ſupported by the Regal Power, in granting Pardons for Penalties of the ſame) was heavier than the King's Loins.* That this was his Expreſſion, he verified,

Firſt, By the Occaſion: for he ſpake the Words, a long time ſince, to ſome Men who had lain impriſoned at *York*, and were then by the King's Favour ſet at Liberty; whom he incited to Thankfulneſs (by this Expreſſion) towards his Majeſty.

Secondly, By Witneſſes produced by him. In the Examination of their Witneſſes he convinced one of them of Untruth, by interrogating him where he was when the Speech was heard, and how far diſtant from him: when the Man replied, that he was twelve Yards from him; he anſwered, that it was impoſſible for him to hear a Man three Yards off, by reaſon of a Deafneſs that had held him fourteen Years: which being found true, the Witneſs was rejected.

Another Witneſs (Sir *David Foulis*) was brought againſt him; againſt whom he excepted, as his known and profeſſed Enemy: 'twas told him, that he himſelf did not uſe to admit of Exceptions againſt Witneſſes, and therefore was to expect the ſame Meaſure.

He replied, That Maſter *Pym* might one Day perhaps be attached, for perſuading the Houſe of Commons to commit the ſame Crime that was laid upon him as a Charge of Treaſon. But for all this, the Witneſs was received, becauſe in Matter of Treaſon a Man's Enemy may witneſs againſt him *pro Domino noſtro Rege:* tho', I ſuppoſe, the King's Advice was never aſked for the preſent. This was all that was done for that time.

On *Thurſday* he was charged with the ſecond Expreſſion: *That he ſaid* Ireland *was a conquered Kingdom, and that the King might preſcribe them what Law he pleaſed.*

This they aggravated as a prime Note of his Tyrannical Will and Affection, that would permit no Law to bound the Subject, but what himſelf, and ſuch as he, might draw up by ſiniſtrous Informations from a gracious and well-meaning Prince: and if this were admitted, the whole Power and Liberty of the Republick would be utterly loſt.

To this he replied, That neither was the Expreſſion in thoſe words, nor in that ſenſe ſpoken or meant by him. The firſt part of it (ſaid he) cannot be denied: To the ſecond, that he had ſaid only, *That the King was the Law-giver*, which he hoped none could deny without incurring the Crime of Treaſon; and that *the King's Sentence was a Law in matters not determined by Acts of Parliament*, which all but diſloyal Subjects would grant. And that it had ever been his endeavour to have the Liberty of the Subject and the Royal Prerogative follow both in one Channel; if either of them croſſed other, we could expect nothing but a Subverſion of the Commonwealth, either by Tyranny or Rebellion: That the Prerogative was like the firſt, the Liberty of the Subject like the ſecond Table; either both or neither can be preſerved. That in his Duty he ſtood obliged firſt to the King, as God's Anointed; then in the ſecond place to his Country, if it did not croſs the Regal Power. And therefore hoped, that what he had ſpoken was ſo far from being Treaſon, that he thought a thouſand ſuch Expreſſions would not make up one Felony.

March 26. On *Friday* the two other Expreſſions were followed: That he ſaid, *He would not ſuffer his Ordinances to be diſputed by Lawyers, before inferior Judicatories, and that he would make an Act of State equivalent to an Act of Parliament.*

To the firſt he ſaid, That he had often ſaid (more than once) that he would not ſuffer his Ordinance to be contemned; becauſe, in him, his Maſter's Honour was wounded.

To the ſecond, He thought a proportionable Obedience was due to Acts of State, as well as to Acts of Parliament; otherwiſe they were made in vain, if that both did not bind in one kind.

The Lord *Cork* (tho' his mortal Enemy) was now examined, and admitted as a Witneſs; whom in his Depoſition he convinced of two ſhameful Overſights: for *Cork* had declared upon his Oath, that the Lieutenant had cauſed to be interlined an Ordinance againſt himſelf, and had cauſed ſome words to be ſcraped out; which words were notwithſtanding ſtill found to be in the Sentence, by an authentick Copy under the hand of Sir *Paul Daviſon*, Clerk to the Council-Board of *Ireland*.

Then *Cork* alledged, That he had advanced a Groom of his to be a Preacher; who by a Teſtimony from the Univerſity of *Dublin* he verified to have been a Maſter of Arts ten or twelve years before his Advancement: adding withal, that my Lord of *Cork* was an excellent Scholar, who was able to breed ſuch Grooms.

Upon *Saturday*, having done with his Expreſſions, they canvaſſed the firſt Article about his Actions:

Againſt the Lives of the King's Subjects, both in the Caſe of the Lord *Mountnorris*, and alſo of another of the King's Subjects, both of whom he had ſentenced to death by Martial Law, contrary to all Law, and to the manifeſt Subverſion of the Privileges of Subjects, *Magna Charta*, and the Petition of Right.

To the Lord *Mountnorris*'s Caſe, he replied,

1. That tho' that Sentence had been unjuſtly given and rigorouſly proſecuted againſt him, yet the greateſt Crime that he could be charged withal, would but amount to Manſlaughter, or Felony at the moſt.

2. That he hoped (tho' this were true) to obtain a Pardon from his gracious Maſter the King's Majeſty, as well as *Conway* and Sir *Jacob Aſtley* had lately done, for exerciſing martial Law in the Northern Army.

Then he replied to all the Parts of the Charge, which were four:

1. That he had exerciſed Martial Law in time of Peace.

To this he anſwered,

(1.) That all Armies have been, and muſt be, governed ever by Martial Law.

(2.) That there is a ſtanding Army in *Ireland*, and therefore the Caſe is all one in time of Peace or War; and that the Army might be undone, if they ſhould not uſe Martial Law, but were to expect Remedy for the ſettling of a Mutiny, or Aſſurance of Obedience, from the Common Law.

(3.) That it had ever been the Practice of the Deputies, particularly of *Wilmot*, *Falkland*, *Chicheſter*, yea *Cork* himſelf; and therefore was no new thing brought in by him. This he proved, both by the Production of the military Ordinances, and by divers Witneſſes who knew Sentences given in that kind by them.

(4.) That he had a particular Warrant in his Commiſſion for this Power.

(5.) That in the Lord *Mountnorris*'s Caſe, he was commanded to exerciſe the ſame by the King's particular Letter: both which he cauſed to be read.

The ſecond Charge was, That he was both Party and Judge in the Lord *Mountnorris*'s Cauſe.

To this he replied, That he had ſitten in Judgment, becauſe he was one *ſine quo non*, the Judgment could not proceed without him: but that he was not Judge, but Party, appeared,

1. Becauſe he ſat uncovered all the time.
2. Becauſe he refuſed to give his own Opinion.
3 Becauſe he did not give his Suffrage one way or other.
4. Becauſe he removed his Brother Sir *George* from having a hand in the Proceſs, in regard of Intereſt of Blood.

The third Charge was, That he proceeded ſummarily in the matter of the Lord *Mountnorris*.

He replied, Firſt, That he was not Judge in it, and that the Council of War was to be anſwerable in the Juſtification of their own Proceedings.

Secondly, That after a long Reaſoning he had heard them ſay, that no delay could ſafely be granted in Martial Courts.

The fourth Charge was, That he had not heard the Exceptions made by *Mountnorris* againſt his Witneſſes.

To this he anſwered, as before, That he was not Judge in the Caſe, and that he remembers no Exceptions made againſt any Witneſſes. To which he added, That as he had been regulated in his Proceedings, ſo he had been moderate in the Execution of that Sentence: for tho' the Lord *Mountnorris* juſtly deſerved to die, yet he had obtained him the King's Pardon, for the ſaving of his Life; and proteſted, that he intended nothing by that Sentence, but in ſome meaſure to repair his own Honour, and to give *Mountnorris* fair reproof, who was known to be of an exorbitant and licentious Tongue and Spirit. Adding, that if the Houſe of Commons would go on the ſame way with him, and aſſure him that the Iſſue of his Charge ſhould be nothing elſe but to admoniſh him for the time to come, he would thank them heartily for it, and ſtudy Amendment in all pretended Overſights. And whereas *Mountnorris* complained that he had jeeringly told him, when the Sentence was paſſed and pronounced againſt him, That ere he loſt his Head, himſelf would loſe his Hand; he anſwered, That he had been thought to be very inſolent and haughty, yet he was never ſo impertinent to uſe this Expreſſion: If any fault were, it was for undervaluing himſelf, in ſaying, That ere a Hair of *Mountnorris*'s ſhould periſh, he would loſe his Hand. And truly (ſaid he), if *Mountnorris* would ſay ſo to me now, even in the worſt ſenſe that can be conceived, That ere I died he would loſe his Hand, I would take it very kindly from him.

For the other Man, he avouched that he himſelf had voiced to hang him, both becauſe he was an arrant Thief, and alſo had fled from his Colours, which by the Common Law (and to this effect he cited a Statute 20 *Hen.* VI. and 7 *Hen.* VII.) is Felony. He concluded, That ſeeing he was not acceſſary to the Sentence againſt *Mountnorris*, had not ſat there as Judge, had a power to keep Martial Courts by his Commiſſion, had not exerciſed the ſame till a new Command came from his Majeſty, had done no more than ever was practiſed in *Ireland* before his time, and had at laſt obtained *Mountnorris*'s Pardon; he hoped there was nothing accuſable in him, but his too remiſs and too moderate Proceedings.

Maſter *Glyn* bitterly replied, That he knew the time when the Earl of *Strafford* was no leſs active and ſtirring to enlarge the Liberty of the Subject, and advance the Petition of Right, than now he is for extending his own Arbitrary and Tyrannical Government

To this he replied, without the leaſt Semblance of Paſſion, That if at any time he had done the leaſt Service to the Houſe of Commons, he thought his whole Life well ſpent; nor could they ever ſo graciouſly reward him, as to give Commiſſion to that Gentleman to expreſs ſo much before that Honourable Aſſembly: But withal, if ever any ſuch thing was done by him, he intreated it might now be remembred, and might now ſerve to overballance ſome ſlight and mean Overſights committed by him; which he hoped ſhould never make him guilty of Treaſon, unleſs it were Treaſon for a Man to have no more Wit and Prudence than God and Nature had beſtowed upon him. And ſo much for *Saturday*.

March 29. Upon *Monday* he was charged with the ſixth Article: That he had uſed a Tyrannical Government, not only over the Lives (as appeared by the laſt), but alſo over the Lands and Goods of the King's Subjects, as appeared by this Article; wherein he was charged to have diſpoſſeſſed the Lord *Mountnorris* of a Tenure of Lands, by a Summary Proceſs before himſelf, contrary to all Law: and therefore had failed,

1. Againſt the Act 7 *Hen.* VI. which provides all Matters to be determined by the ordinary Judges.
2. Againſt the Cautions ſent to *Ireland* by King *James*, expreſly forbidding ſuch Power hereafter to be exerciſed.
3. Againſt the King's late Proclamation.
4. Againſt the Practice of all Deputies before that time.

Withal they added, That it was a Tyranny that could not be expreſſed, to exerciſe this Power over the Perſons of the Peers of the Land, and their Goods.

To this he replied, That for his part, in matter of Juſtice (under favour he ſpake it) he thought there was no diſtinction to be made betwixt a Peer of the Land and one of the Commons, except they did think that either Fear or Faction ſhould do ſomething, which had no Place in him.

To the Particulars:

1. That the Act of *Hen.* VI. anſwered itſelf ſufficiently, both becauſe it excepted the Court of Requeſts (and that his Proceedings were nothing elſe in *Ireland*), and alſo makes an expreſs Reſervation of the King's Prerogative; which he ſaid was his Strength, becauſe he derived his Commiſſion from the King, and that the Act was the moſt expreſs Warrant in the World for him.

2. That he had not failed againſt the Cautions given by King *James*,

(1.) Becauſe they were not charged upon him.

(2.) Becauſe they were never obſerved, nor could be by the Deputies to whom they were given; which he proved both by Witneſſes and Writings.

(3.) Becauſe the Caution made rather for him than againſt him, in that it contained the Word *hereafter*; which manifeſtly implied that the Power had been ſometimes before exerciſed in *Ireland*, and not only by himſelf; and therefore thanked them for that Teſtimony and Hint.

(4.) That tho' the Cautions had been given to him, yet he had received an expreſs Command from the King his Maſter to put that Power in uſe: cauſing the King's Letter, for that purpoſe, to be read; and profeſſing withal, That he was tender to exerciſe that Power, till the King (induced by the humble Remonſtrance of the meaner ſort of People) had moſt peremptorily, and upon moſt juſt Reaſons, commanded him.

3. That he could not obey the King's Proclamation five Years before it came out; and that he wiſhed from his heart, that they would but reſpect the King's Commands and Commiſſions with that Tenderneſs of Affection and Obedience, as he did his Proclamations.

4. He proved it to be the conſtant Practice of all Deputies that went before him.

It was objected, That other Deputies had indeed upon Suits of Equity determined themſelves, as to Matters of Debt, but never of Land.

He replied, Firſt, That the ſame Authority reacheth as well to the one as to the other. Secondly, That neither he nor they had ever given Sentence, or determined any thing concerning Matters of Inheritance; but only concerning violent Intruſion, which fell directly within a Suit of Equity. To which he added,

Firſt, the Equity of that Court; that it proceeds upon the ſame Grounds and Evidences as that of the *Common-Pleas*, and that he had the Aſſiſtance of two of the learned Judges in deciding the Controverſy.

Secondly, The Profit of that Court, which diſpatcheth the Poor in a Day or two; whereas the Common Law would keep them ſo many Years, which they are not able to ſuſtain.

Thirdly, The Neceſſity of that Court in that Kingdom, which ever hath been governed by that way, and therefore impoſſible to debar the Natives from it, without great inconvenience; for it would utterly undo them, and none is prejudiced by it but the Lawyers. And therefore ſeeing that he had done nothing but what was cuſtomary, neceſſary, and equitable, being commanded to it, and the Sentence juſt; he hoped rather for Thanks from the State, than a Charge for his ill Deportment. Withal, he ſhewed with what Extortion and Violence the Lord *Mountnorris* had taken ſeizure of that piece of Land, and made the playing of his Game to be very foul. And at laſt he added, That he had done no more in *Ireland*, than the *Court of Requeſt* in *England* uſually doth, and that the *Chancery* Court in *Ireland* doth the ſame daily; and the laſt Chancellor was never charged (ſaid he) for ſuch Proceedings, tho' this his Power and Authority was leſs than mine: but the difference of the Perſon and his Authority (it ſeemeth) differeth the matter. And this was the Buſineſs on *Monday*.

On *Tueſday* they paſſed by the 7th Article, and the two firſt Parts of the 8th, and inſiſted on that Part about the Lady *Hibbot*'s Land, That he had violently thruſt her from her Poſſeſſion by this ſummary way of Juſtice, and afterwards purchaſed the Land to his own uſe, by borrowing the Name of Sir *Robert Meredith*.

In this Probation, the Teſtimony of the Gentlewoman's own Son was uſed, of the Lord *Cork*, and the Lord *Mountnorris*, all his Back-friends, or profeſſed Enemies: And yet they prove very little, but what they took upon Hear-ſays. Their prime Allegation was,

Firſt, That tho' the major part of the Council-Board had voted for the Lady, yet the Lord-Lieutenant had given Decrees againſt her.

Secondly, That all was done to his own behoof.

To the Firſt, He produced the Sentence under the Hand of the Clerk of the Council-Board, ſubſcribed by the major part.

To the Second, He atteſted that he had no Under-dealing with *Meredith*; for the Lady had got her own Lands back from the ſaid Sir *Robert Meredith*. He alſo declared, at length, with what Fraud and Deceit the Lady had come to her Lands, and upon what Reaſons they were reſtored.

After this Article they fell upon the 9th, about the giving of Commiſſion to the Biſhop of *Downe* and *Connor*, for apprehending all ſuch Perſons, and preſenting them before the Council-Board, as contemned the Eccleſiaſtical Ordinances. This was aggravated as a Point mainly againſt the Liberty of the Subject. To this he replied:

Firſt, He produced the Primate of *Ireland*'s Teſtimony under his Hand, (he being himſelf ſick) that the ſame Courſe had been uſed in *Ireland* before; and that Biſhop *Mountgomery*, his Predeceſſor in the Biſhoprick of *Meathe*, had had the ſame.

Secondly, He ſhewed the Equity that ſuch Aſſiſtance ſhould be given to Churchmen, who otherwiſe, becauſe of Papiſts and Schiſmaticks, either to God or the King, would have no Reſpect or Obedience given them in that Kingdom.

Thirdly, He proved by two Witneſſes, that ſuch Warrants were in uſe before his time.

Fourthly, He ſaid, he had never granted any but that one, and had preſently, within ſome few Months, called the ſame in again. What (ſaid he) was the Biſhop of *Downe*'s Carriage in it, he had no reaſon to anſwer for: But he preſumed the Biſhop could give a ſatisfactory Anſwer for himſelf, when he ſhould be called in queſtion. And ſo he concluded, that a Matter ſo juſt, ſo neceſſary, ſo cuſtomary and practical before, he hoped ſhould not be charged upon him as an Introduction of a new and tyrannical Form of Government; and therefore ſubmitted himſelf to the Mercy of God, and the Equity of his Peers in his Trial. And this was the Work on *Tueſday*.

The Ability of this brave Gentleman raviſhed his Hearers with Admiration, tho' he be infinitely ſpent both in Body and Mind by the continued and almoſt uninterrupted Agitation.

After the 9th Article was paſſed againſt the Commiſſion iſſued in favour of the Biſhop of *Downe* and *Connor*, upon *Wedneſday* Mr. *Glyn* proceeded to the 10th Article. The Charge was, That the Earl of *Strafford* having eſtabliſhed an arbitrary and tyrannical Government over the Lives, Lands, and Liberties of the King's Subjects, his next Deſire was to make Intruſion upon the Crown itſelf; that by applying to his own uſe the publick Revenues, he might be the more enabled to accompliſh his diſloyal and traitorous Intentions. To which end, having by a new Book of Rates enhanced the Cuſtoms, he had gotten by Advantage of his Leaſe above Twenty-ſix thouſand Pound yearly. This (they added) was a Crime of a higher nature than thoſe contained in the preceding Articles, becauſe in thoſe there was ſome Colour or Pretext of Juſtice, here none; thoſe in particulars, this in general; thoſe againſt the Subject only, this againſt the King himſelf.

For the Proof of the Charge, they produced the Leaſe of the Duke of *Buckingham*.

Which was read and compared with that Leaſe to the Dutcheſs of *Buckingham*, (which the Lieutenant hath now by Aſſignment) and ſome Differences ſhewn, ariſing to the Sum of Two thouſand Pounds in the Duke's Leaſe; only the Moiety of concealed and forfeited Goods were due to him, but the whole Goods to the Dutcheſs in her Leaſe. Again, the King's Ships of Prizes did not pay Cuſtom in the Duke's Leaſe; in the Dutcheſs's they did. Again, the Impoſt of the Wines (then belonging to the Earl of *Carliſle*) was not in the Duke's Leaſe: in the Dutcheſs's it was. Laſtly, Whereas the Earl of *Strafford* paid but Fourteen thouſand Pounds *per Annum* for the Cuſtom; it was worth to him, as was apparent by the Books of the *Exchequer*, Forty thouſand Pounds.

Witneſſes were examined.

Firſt, Sir *James Hay*, who depoſed, That the Earl of *Carliſle* had an Advantage of One thouſand ſix hundred Pounds *per Ann.* by his Leaſe of Wines.

Secondly, The Lord *Ranelagh*; who depoſed, That by the Inſpection of the Books of Accompts, he had found the Cuſtoms to be *Anno* 1636 Thirty-ſix thouſand Pounds, *Anno* 1637 Thirty-nine thouſand Pounds, *Anno* 1638 Fifty-four thouſand Pounds, *Anno* 1639 Fifty-nine thouſand Pounds.

With the Proof they concluded the Charge, That notwithſtanding the Lord *Strafford* pretended a great Meaſure of Zeal and Honeſty in his Majeſty's Service, yet it is evident he had abuſed the Truſt put upon him; and by withdrawing ſo great Sums of Money from the Crown, had weaken'd the King, prejudiced the Subjects of the Protection they were to expect from him, and had been the Cauſe that the extraordinary way of Impoſt and Monopolies had been undertaken for ſupplying of the Royal Neceſſity. And that this Act, therefore, ought to be enough to make the Charge and Impeachment of High-Treaſon laid againſt him.

The Lieutenant's Reply was, That he conceived he had given full Satiſfaction to all hitherto brought againſt him about that pretended arbitrary Government; nor would he ſpend Time in vain Repetitions: For the preſent Article, tho' in all its Parts it were granted to be true, yet he could not perceive by what Interpretation of Law it could imply the leaſt Act of Treaſon; and when it ſhould be directly charged upon him as a point of Miſdemeanour, Oppreſſion, or Felony, he made no doubt but he ſhould be very able to clear himſelf abundantly in that Point alſo; yet, leſt any Prejudice might ſtick to his Honour by theſe bold Aſſertions, he was content to ſtep ſo far out of the way, as to give anſwer:

Firſt, That it concerned him nothing what Particulars in the Leaſe had paſs'd betwixt the King and the Dutcheſs of *Buckingham*, or whether ſhe had obtained a more eaſy Condition than the Duke her Huſband, eſpecially ſeeing that ſame was granted ſome Years before his coming to that Government: yet thus much he could ſay, That the Dutcheſs had paid Thirty thouſand Pound Fine; and therefore no marvel her yearly Rent was the leſs.

Secondly, For the Book of Rates (wherein the chief Matter of Oppreſſion and Grievance ſeemed to reſt), the ſame was there eſtabliſhed by the Deputy *Falkland*, *Anno* 1628, three Years before his going into *Ireland*; and therefore it was exceeding ſtrange, in his Apprehenſion, how that could riſe up in Judgment againſt him.

Thirdly, That he had his Intereſts in the Cuſtoms by Aſſignation of a Leaſe from the Dutcheſs, which was given her before his Government: Nor did he ever hear it alledged as a Crime of Treaſon, for a Man to make a good Bargain for himſelf.

Fourthly, That not of his own Accord, but at the King's ſpecial Command, he had undergone that Charge; in hopes that, upon the Enquiry into the Worth thereof, the Cuſtoms might be improved for the Benefit of the Crown, and the true Value thereof diſcovered. This he proved by the Lord *Cottington* and Sir *Arthur Ingram*.

Fifthly, That when a new Book of Rates was recommended to him by the Council-Board of *England*, in the time of his Leaſe, he ſo far preferred a Fear he had that the Trade of *Ireland* might thereby be diſcouraged before his own Commodity, as he preſumed, in all humility, to refuſe the ſaid Book of Rates, and tendered his Reaſons thereof to the Kingdom and Council-Board of *England*.

Sixthly, That he never underſtood that the Cuſtoms could ariſe to thoſe great Sums alledged: But tho' they ſhould, yet his Advantage was but ſmall. For, firſt dividing the Fourteen thouſand Pounds he paid to the King; then five parts of eight, which was yearly given in upon Oath (and that procured firſt by himſelf) at the *Exchequer*-Board; the other three parts divided amongſt four of them, which were equal Sharers in the Leaſe, would not amount to any great Sum of Money. And therefore, except it were Treaſon for him to have improved the King's Revenue, encouraged the Trade, and refuſed the new Book of Rates, he could, in his own weak Judgment, diſcern none there; nor could he think it a Crime for him to take an Aſſignation of a Leaſe granted before his time, and to inſiſt on the Book of Rates uſed before his coming over. And therefore was confident the Lords would rather take his Accuſation as an exerciſe of Rhetorick in the Gentlemen his Adverſaries, than as a Thing ſpoken in good earneſt by them.

The ſame Day the 11th Article, concerning Tobacco, was charged on him by the ſame Man, Mr. *Glyn*, after this manner: That for the farther Advancement of his tyrannical and avaritious Deſigns, he had of himſelf eſtabliſhed a Monopoly for the Reſtraint of Tobacco in that Kingdom: where they offered five Particulars to the Proof:

1ſt, That he had reſtrained the Importation of Tobacco.

2dly, That in the mean time he had brought in a great Quantity himſelf, and ſold the ſame at exorbitant Prices.

3dly, That of Tobacco already imported, he had forbidden any to be ſold but what was firſt ſealed by his Officers.

4thly, That upon a pretended diſobedience he had puniſhed a great Number of People by Seizures, Impriſonments, Fining, Whipping, Pillory, and ſuch-like cruel and inhuman Uſages.

5thly, That by theſe Means he had gained One hundred thouſand Pounds yearly.

For Proof hereof,

Firſt, The Proclamation for reſtraining Tobacco was read.

Secondly, The Proclamation about the ſealing of the ſame.

Thirdly, Some Witneſſes, who declared that Ships had been reſtrained from landing Tobacco.

Fourthly, Others, who had known ſome Tobacco ſeized on as forfeited.

Fifthly, The Remonſtrance of the Houſe of Commons in *Ireland*, declaring that the Earl had ſold 500 Tun of Tobacco, which, ſold at 2*s.* 6*d.* *per* Pound, amounts to 100,000*l.*

They concluded the Charge, That he had ſucked up the Blood, and eaten up the King's liege People; and had, by this one Point of Oppreſſion, raiſed greater Sums to himſelf than all the King's Revenue in that Kingdom extended unto. And therefore was liable to the Crime of Treaſon, for troubling the Peace, and bereaving the People of their Goods, who were intruſted to his Care and Government.

The Lieutenant's Reply was,

That his moſt ſecret Thoughts were conſcious of nothing but a ſincere Intention and Endeavour to promote and advance the Welfare of that Kingdom: And withal, he conceived (by their leaves) that nothing in that Charge could have the leaſt reference to Treaſon; yet, as he ſaid before, for removing of all Prejudice, he was contented to anſwer:

Firſt, That long before his coming to *Ireland* the ſame Reſtraint had been of Tobacco, and the ſame Impoſt of Eighteen-pence *per* Pound enjoined by King *James*.

Secondly, That at that time the Tradeſmen for this Commodity paid but Twenty Pounds a Year to the Crown for the Impoſt, but now 400*l.*

Thirdly, That the Parliament in *Ireland*, 1628, had petitioned to have this Impoſt ſettled by an Act of State for ever afterwards, as a part of the Revenue of the Crown.

Fourthly, That he had expreſs Command from the King for iſſuing thoſe Proclamations; and therefore could not imagine more danger in them, than in others for Monopolies in *England*, in the worſt Senſe.

Fifthly, That the Proclamations were not put forth by himſelf alone, but by the whole Council-Board of *Ireland*.

Sixthly, That for the Contract of Tobacco, he was ſo tender of it, that it was ſent over hither, and ſeen and approved of by the Council-Board of *England* before it was condeſcended to in *Ireland*.

For the Proclamations, he told them it was his own Opinion, (and if he failed in it, he humbly craved Pardon, and hoped that it ſhould not be Treaſon to have no more Judgment than God had beſtowed on him,) that the King was endued by God with a Power to make temporary Laws, and cauſe the ſame to be promulgated for the Good of his People, upon ſudden emergent Occaſions; to which Laws Obedience is due, till they be abrogated by enſuing Parliaments. That he reſtrained no Man from importing Tobacco, who was willing to pay the appointed Impoſt. That for his part, he had never traffick'd in all his time in that kind, nor had any part with the Contractors: And if any Tobacco was ſeized on, it was upon contempt of the Proclamations. And if any Perſon were cenſured to the Pillory or Whipping, it was for known Perjury, the ordinary and uſual Puniſhment in ſuch a Caſe. Concerning the Tobacco imported, (he ſaid) no Conſideration was taken of the Prices given for the Tobacco beyond Seas, of the King's Revenue of four thouſand Pound, of the Merchants Pains and Danger in bringing the ſame home. For his part, if any Advantage were made, ſurely it was not his; nor could he annul every Contract or Leaſe made by the King. And therefore, ſeeing his Intereſt was none, he had done nothing but at the King's Directions, and at the Advice of the Council-Board; ſeeing the ſame Impoſt was in King *James*'s Time, and petitioned for by themſelves in *Ireland*, he hoped his Carriage in the Buſineſs ſhould be ſo far from a Crime of Treaſon, that it ſhould rather be thought no Crime at all. So much for *Wedneſday*.

April 1. Upon *Thurſday* he was charged with the 12th Article, concerning Flax, by Maſter *Maynard*, on this manner: That the Flax being the native and principal Commodity of that Kingdom, was by him (the Lieutenant) reſtrained, and the Subjects put to that which was unknown, yea, impoſſible for the *Iriſh* to make the ſame into Yarn. Here they complain'd of three Things:

Firſt, That by Proclamation he had reſtrained ſelling of Flax.

Secondly, that he had ordered the making of Yarn of ſuch and ſuch Lengths and Numbers of Threads.

Thirdly, That the native *Iriſh* being unacquainted with ſuch Cuſtoms, upon pretended Diſobedience, had all their Flax and Yarn ſeized on to his uſe; whereby a great many Families were reduced to ſuch Penury, that they died by great Numbers in the Fields for want of Food.

For proof hereof, they brought,

Firſt, The Proclamation about the Reſtraint.

Secondly, The Warrant for ſeizing the forfeited Goods.

Thirdly, The Execution of the Warrant proved by Sir *John Clotworthy*, and Lord *Ranelagh*.

Fourthly, The Remonſtrance from the Houſe of Commons in *Ireland*, That upon the rigorous Courſe and Execution of this Warrant many Perſons died for want of Food. They concluded the Charge therefore, Tho' the Article did not individually imply Treaſon, yet it did make very much for the Accumulation of Treaſon.

The Lieutenant's Reply was,

That, as before, he would, and muſt ever repeat it, that nothing was in the Charge that contained Treaſon. To the Matter itſelf he anſwered,

Firſt, That the Proclamations iſſued forth were grounded not only upon Convenience, but upon Neceſſity; becauſe that, except ſome way had been taken for ordering of Yarn, the Merchants had abſolutely given over the Linen-Trade in that Kingdom.

Secondly, That the Council-Board was as liable to the Charge as himſelf, amongſt whom were at that time the Primate of *Ireland*, the Archbiſhop of *Dublin*, Chancellor *Loftus*, and the Lord *Mountnorris*, all Subſcribers to the Proclamation, Men to them of known Integrity and Judgment.

Thirdly, That nothing was more common than for the Council-Board of *Ireland* to give Orders for reducing the Natives to the *Engliſh* Cuſtoms, and to fine them for drawing their Horſes by the Tails, during their Corn, and ſuch like; and he conceived that to be a thing of the ſame nature.

Fourthly, That the ſpecial Thing inducing him to it was, becauſe he perceived the Trade of Wool to increaſe much in that Kingdom. He diſſuaded by all means the making of Woollen-Cloth, becauſe of the infinite Detriment that might happen thereby to the Kingdom of *England*; and therefore thought this the beſt way to encourage the wear of Linen-Cloth. For the Warrant to ſeize upon the Goods, he affirmed the ſame to be neceſſary, becauſe there ſhould be no Contempt to Proclamations: But that any part thereof did accrue to him, he flatly denied. If any Rigour was uſed in the Execution, he ſaid, not he, but his Officers were to anſwer for it: for this might happen in the moſt juſt and neceſſary Commands; nor was there ever any Complaint preſented to him of any ſuch matter. For his part, he had loſt three thouſand Pound in the Manufacture, eſtabliſhed by himſelf for the Encouragement of others.

To that, That Perſons died by that means, he replied, That it was more than ever he heard, or could think poſſible; yea, that he was cleared by the Allegation itſelf, which ſaith, that the ſame happened ſince his coming from *Ireland*.

To the Remonſtrance of *Ireland*, he conceived, That a Charge was but a ſlender Proof of a Charge; and that eſpecially upon Interrogatories, not upon Oath, ſeeing that Privilege was not due to the Houſe of Commons neither here nor there; that he might ſay it in Truth and Modeſty, he deſerved much better of that People, and might take up that in the Goſpel, *For which of all my good Deeds, &c.* yet he hoped to be better underſtood ſhortly both here and there. And for his part, tho' his Purſuit had been very hot, yet God was his Witneſs, he never intended to take the leaſt Impreſſion of Revenge for thoſe Diſcontents and Affronts which had been eagerly put upon him; or to carry any thing hence with him from that Bar, where ſo many foul Aſperſions had been unjuſtly thrown upon him, but only *gratuitas cicatrices*.

The ſame Day a freſh Man (Maſter *Palmer*) enter'd the Liſts againſt him; who having paſs'd by, for want of Proof, the thirteenth, fourteenth, and part of the fifteenth Articles, inſiſted only upon the ſecond Part, for giving Warrant to Serjeant *Savil* for ſeizing and laying Soldiers upon the Subjects. He charged thus: That the Lord *Strafford*, having by a tyrannical Power inverted the ordinary Courſe of Juſtice, and giving immediate Sentence upon the Lands and Goods of the King's Subjects, under pretence of Diſobedience, had uſed a military Way for redreſſing of the Contempt, and laid Soldiers upon the Lands and Goods of the King's Subjects, to their utter Ruin, this Article (he ſaid) of itſelf did contain an individual Treaſon; ſo that if there were no more than this, it were more than ſufficient to convince him of his Impeachment.

Here he offered two Things:

Firſt, The Proof of the Point.

Secondly, By what Statute this Act of Tyranny directly, and by itſelf, implied Treaſon. For the firſt, Serjeant *Savil* was called, who produced the Copy of the Warrant upon which he had ſettled the Soldiers.

At this the Lieutenant roſe, and humbly intreated the Lords no Evidence ſhould be received againſt him upon an Article of ſuch Importance, but what might be thought authentick; and ſuch a one, under favour, he conceived that Copy not to be:

Firſt, Becauſe no Tranſcript, but the Original only, can make Faith before the *King's-Bench* in a Matter of Debt; therefore far be it from them to receive a moſt ſlender Teſtimony in Matter of Life and Death, before the Supreme Judicatory of the Kingdom.

Secondly, If Copies be at any time received, they are ſuch as are given in upon Oath to have been compared with the Originals, which are upon Record: ſuch an one was not that Copy.

It was replied by Maſter *Glyn*, (for all of them ſpake as occaſion ſerved) That the Houſe had but the Day before admitted Copies as Evidences; much more ſhould they do this, when it was produced by the Officer himſelf, who beſt knew it, having executed the ſame.

To this the Lieutenant anſwered, That all other Copies ought to be received upon Oath, to have been compared with the Original, as right Reaſon requireth; but that this was not ſo: and for the Officer himſelf producing it, That was the beſt Argument he could uſe, why it ſhould not be admitted. For (ſaid he) Maſter *Savil* may be charged with Treaſon, for ceſſing Men of War upon the King's Subjects; he hath nothing for his Defence, but a pretended Warrant from me. Now, what he ſwears to my Prejudice, is to his own Advantage; nor can a Man, by any Equity in the World, be admitted to teſtify againſt another *in ſuam juſtificationem*.

The Point ſeemed exceeding weighty, and in Effect was the Groundwork of the whole Article; which not proved, nothing could evince him to have been acceſſary to the Conſequence. The Upper Houſe therefore adjourned themſelves, and went up to their own Court; and after a very hot Conteſtation between the Factions, and above an Hour's Stay, they returned, and declared that the Lords, after mature Deliberation, had reſolved that the Copy ſhould not be admitted; and deſired them to proceed to other Proofs: which after a little Pauſe they did.

Firſt, the Lord *Ranelagh* affirms, that he heard of ſuch a Warrant, and knew ſometimes three, ſometimes five Soldiers billeted by it.

Secondly, Maſter *Clare* declares the very ſame.

Thirdly, Another depoſeth, he hath ſeen ſuch a Warrant under the Deputy's Hand and Seal. And ſo much for the Proof.

For the Statute, they alledged one of *Ed.* III. 6. That whoſoever ſhould carry about with them *Engliſh* Enemies, *Iriſh* Rebels, or Hooded-Men, and ceſs them upon the Subject, ſhould be puniſhed as a Traytor. Another of *Hen.* VI. 7. That whoſoever ſhould ceſs Men of War in his Majeſty's Dominions, ſhould be thought to make War againſt the King, and puniſhed as a Traytor. They concluded, It was evident the Lord *Strafford* had incurred the Penalty and Breach of both the Statutes, and therefore deſired the Lords ſhould give out Judgment againſt him as a Traytor.

The Lord Lieutenant's Reply was, That in all the Courſe of his Life he had intended nothing more than the Preſervation of their Lives, Goods, and Welfare of the King's Subjects; and that he dared profeſs, that under no Deputy, more than under himſelf, had there been a more free and uninterrupted Courſe of Juſtice.

To the Charge he anſwered, Firſt, That the Cuſtoms of *Ireland* differed exceedingly from the Cuſtoms of *England*, as was clear by *Cook*'s Book; and therefore thought ceſſing of Men might ſeem ſtrange here, yet not ſo there.

Secondly, That even in *England* he had known Soldiers preſſed upon Men by the Preſidents of *York* and *Wales*, in caſe of known and open Contempts; and that both in Point of Outlawry and Rebellion, and alſo even for Sums of Debt between Party and Party, there is nothing more ordinary than theſe Ceſſings to this Day in *Scotland*, whereby the chief Houſe of the Owner is ſeized upon.

Thirdly, That to this Day there hath been nothing more ordinary in *Ireland*, than for the Governors to appoint Soldiers to put all manner of Sentences in Execution; which he proved plainly to have been done frequently, and familiarly exerciſed in *Grandiſon*'s, *Falkland*'s, *Chicheſter*'s, *Wilmot*'s, *Cork*'s, *Evers*'s, and all preceding Deputies times; and had even for Outlawries, for the King's Debts in the *Exchequer*, of Collection, of Contribution-Money, and (which comes home to the Point) for petit Sums of Money between Party and Party: ſo that he marvelled, *qua fronte*, or with what Boldneſs it could be called an Arbitrary Government lately brought in by him.

To this the Lord *Dillon*, Sir *Adam Loftus*, and Sir *Arthur Teringham* depoſed; the laſt of whom told, that in *Falkland*'s time he knew twenty Soldiers ceſſed upon a Man for refuſing to pay ſixteen Shillings *Sterling*.

Fourthly, That in his Inſtructions for executing his Commiſſions, he hath expreſs Warrant for the ſame, as were in the Inſtructions to the Lord *Falkland* before him; both of which were produced and read.

Fifthly, That although theſe Precedents were not, yet it were not poſſible to govern the Kingdom of *Ireland* otherwiſe, which had been from all times accuſtomed to ſuch ſummary Proceedings.

Sixthly, That no Teſtimony brought againſt him can prove that ever he gave warrant to that Effect; and for the Deeds of the Serjeant at Arms, he did not conceive himſelf to be anſwerable for it.

As for the Acts of Parliament, he had reſerved them to the Diſpute of his Lawyers; but was content to ſay thus much for the preſent:

Firſt, That it is a Ground in the Civil Law, that where the King is not mentioned, there he cannot be included: But (with all Deference to his ſacred Perſon be it ſpoken) he conceived himſelf to be in his Maſter the King's Place (for ſo his Commiſſion did run) in that Kingdom of *Ireland*.

Secondly, The Words of the Statute are not applicable to him; for God knows, he never went about in Perſon to lay Soldiers upon any of the King's Subjects.

Thirdly, That the King's own Soldiers, requiring in a cuſtomary Way Obedience to his Orders, could in no Conſtruction be called *Iriſh Rebels*, *Engliſh Enemies*, or Hooded-Men.

Fourthly, That the Uſe and Cuſtom of the Law was the beſt Interpreter thereof; and for that he had already ſpoken enough.

Fifthly, That it ſavoured more of Prejudice than Equity, to ſtart out ſuch an old Statute againſt him, and none others, though culpable of the ſame Fact, to the Overthrow and Ruin of him and his Poſterity.

Sixthly, That (under Favour he conceived) for any *Iriſh* Cuſtom, or upon any *Iriſh* Statute, he was to be judged by the Peers of *Ireland*.

Seventhly, That Statute, of what Force ſoever, was repealed;

1ſt, By the tenth of *Henry* VII. where it is expreſly declared, nothing ſhall be reputed Treaſon hereafter, but what is ſo declared by the preſent Statute: now, not a Word there of any ſuch Treaſon.

2dly, By the eleventh of Queen *Elizabeth*, where expreſly Power is given to the Deputy of *Ireland* to ceſs and lay Soldiers, although the ſame be reputed Treaſon in any other.

To the Statute of *Henry* VI. he replied, That a ſlender Anſwer might ſerve: He hoped that no Man would think him ſo inconſiderate, to war againſt the King of *Britain* and *Ireland*, by the ceſſing of five Soldiers; that he had been charged by many for taking Arms for the King, but to that time never for taking Arms againſt him; and that he heartily wiſhed, that no Man in all his Majeſty's Dominions had more Practices with Rebels, and rebellious Deſigns againſt the King than himſelf. So much for *Thurſday*.

At the Cloſe he deſired the Intermiſſion of a Day, that he might recollect his Spirits and Strength againſt the next Quarrel; and with ſome Difficulty obtained Reſt till *Saturday*.

April 3. Upon *Saturday* Mr. *Palmer* proceeded to the ſixteenth Article, and charged thus: That the Lord *Strafford* having eſtabliſhed a Tyrannical and Independent Authority, by giving ſummary Decrees and Sentences, had deprived the Subject of all juſt Remedy; for in that Kingdom there was none ſupreme to himſelf, to whom they might appeal: and leſt their juſt Grievances might be made known to his Majeſty, he had obtained a Reſtraint, that no Complaint ſhould be made of Injuſtice or Oppreſſion done there, till the firſt Addreſs had been made to himſelf, and that no Perſon ſhould come out of that Kingdom but upon Licence obtained from himſelf.

For Proof of this, Firſt, The Inſtructions were read, whereby that Reſtraint was permitted.

Secondly, The Proclamation, That all Noblemen, Gentlemen, Undertakers, Officers or other Subjects that ſhould reſort into that Kingdom, ſhould not come from thence without a Licence from him.

Thirdly, That he had reſtrained the Earl of *Deſmond*, becauſe of a Suit in Law depending between the Earl and himſelf, till Publication of the ſame was paſſed.

Fourthly, That the Lord *Roch* being informed againſt before the *Star-Chamber*, he would not licenſe him to come into this Kingdom, till the Sentence was paſſed againſt him.

Fifthly, That one *Marchatee* having pretended a Mind to travel, was denied a Licence.

Sixthly, That the whole Committee for the Parliament was reſtrained this laſt Year by Deputy *Wansford*, which they ſaid might be interpreted to be his Fact, both becauſe they had ſuch Intelligence the one from the other, as alſo by the Proclamation iſſued by him before.

Seventhly, That one *Parry*, Servant to Chancellor *Loftus*, was fined Five Hundred Pounds at his Return, for departing *Ireland* without Licence.

Eighthly, That the *Iriſh* Remonſtrance complained of this, as the greateſt Innovation and Thraldom put upon them ſince the time of the Conqueſt.

They concluded the Charge, That by this Means having taken off that Intelligence which ſhould be between the King and his People, and having deprived them of that Remedy which in Reaſon they might expect from ſo juſt and ſo gracious a Prince, he had taken upon him a Royal and Independent Power, and had faulted highly both againſt King and State.

The Lieutenant's Reply was, That he hoped to make it clear, that he had done nothing in that Particular, but what was uſual, neceſſary, and juſt; and that he ſhould be very well able (by the Grace of God) not only of that, but of all other his publick Actions, to give a reaſonable Account, though not free from much Weakneſs, yet certainly from all Malice and Treaſon.

To the Particulars:

Firſt, For Inſtructions laid upon him, he was not ſo much chargeable as thoſe of the Council of *England*, whereof there was a great many preſent who could witneſs their Commands; but leſt any thing ſhould ſeem unjuſtly enjoined by them, or embraced by him, he deſired that the Reaſons of their Inſtructions might be read: which were, *That it were Injuſtice to complain of Injuries, of Oppreſſion done in that Kingdom, till firſt the Deputy's Judgment was informed, and trial made of his Integrity: That it would much diſcourage the Miniſters of State there, and expend the Monies of that Kingdom, if upon every trifling Buſineſs Complaints ſhould be admitted in* England; *and that if Juſtice were there denied by the Depxty, it ſhould be lawful for any Man to come over.*

Secondly, For the Proclamation, that the ſame was builded upon the Statute of that Kingdom, the 25th *Hen.* VI. which contained the ſame Reſtraint *verbatim*.

Thirdly, That *Anno* 1628, the Agents for the *Iriſh* Nation had petitioned for the ſame from the King.

Fourthly, That the Deputy *Falkland* had ſet forth the ſame Proclamation.

Fifthly, That he had the King's expreſs Warrant for it, *Anno* 1634, which was read.

Sixthly, That he had received the Warrant in *January*, yet the Proclamation iſſued not out till *September* after.

Seventhly, That the whole Council-Board of *Ireland* had not only condeſcended, but alſo preſſed him to it.

Eighthly, The Neceſſity of the Kingdom required the ſame; for if the Gentlemen had the Ports open to go to *Spain*, and their Scholars to *Doway*, *Rheims* or *St. Omers*, it were likely that at their return they would put fire both in Church and State, and produce very ſad Events, by practiſing to diſtemper both.

Ninthly, He conceived that the King, as great Maſter of the Family, might reſtrain whom he pleaſed from departing his Kingdom without his privity: and here it was not lawful for any to go from *England* without Licence; how much more neceſſary was this from *Ireland!*

To the Proofs he anſwered, Firſt, For *Deſmond*, he granted he was reſtrained indeed, but not for any Suit of Law betwixt them, but becauſe at that time he ſtood charged with Treaſon before the Council in *Ireland*, for practiſing againſt the Life of one Sir *Valentine Cooke*.

Secondly, For the Lord *Roch*, he had oftentimes marvelled with what reaſon the Man at that time could ſeek a Licence, ſeeing he was a Priſoner for Debt in the Caſtle of *Dublin*; and if he had granted a Licence to him, then it had been a far more juſt Charge of Treaſon than now.

Thirdly, For *Marchatee*, he was afraid of his going to *Spain*; and if he had intended to go for *England*, and complain of himſelf, he would not have refuſed him Liberty, as he never did to any.

Fourthly, That the Committee of *Iriſh* was not reſtrained by him, and therefore did not concern him at all.

Fifthly, That for *Parry*, he was fined indeed; but that it is expreſly ſaid in his Sentence, that it was not for coming over without Licence, (as is ſuggeſted) but for ſundry Contempts againſt the Council-Board in *Ireland*.

Sixthly, That he had replied in the laſt Article, a Remonſtrance was no Proof at all. He concluded, that he hoped the leaſt Suſpicion of Treaſon could not accrue to him from the Article: For Oppreſſion or Miſdemeanour, when it was laid to his Charge, he made no doubt but he ſhould be able to anſwer it.

The ſame day a new Man was hurried out againſt him (Mr. *Whitlock*); who having paſs'd over the 17th and 18th Articles, reſteth on the 19th, about the Oath adminiſtered to the *Scots* in *Ireland*, and charged thus:

That it was the height of his Tyranny, not only to domineer over the Bodies, but alſo over the Conſciences of Men; to which purpoſe, he had enjoined an Oath to the *Scots* in *Ireland*: and becauſe ſome out of Tenderneſs of Conſcience did refuſe to take the ſame, he had fined them in great Sums of Money, baniſhed a great number from that Kingdom, called all that Nation Traytors and Rebels; and ſaid, if ever he returned home from *England*, he would root them out both Stock and Branch.

For Proof of this, Firſt, Sir *Jammy Mountgomery* was produced; who declared at large how that Oath was contrived.

Secondly, Sir *Robert Maxwell* of *Orchiardon*, who ſpoke to the ſame Purpoſe.

Thirdly, Sir *John Clotworthy*, who declared, that a great Number had fled the Kingdom for fear of that Oath.

Fourthly, One Mr. *Samuel*, who depoſed, that upon the 10th of *October*, 1638, he heard the Deputy ſay theſe Words, *That if he returned, he would root them out Stock and Branch.*

They concluded, That this was a Point of the moſt Tyrannical and Arbitrary Government that before this time was ever heard of, not only to lord it over the Fortunes, but alſo over the Souls of Men: and that it reſted only in the Parliament, which hath the Legiſlative Power, to enjoin Oaths. And that therefore this was one of the chief Points he had done againſt the Privileges and Liberty of the Subject.

The Lieutenant replied, That every new Article acquainted him with a new Treaſon; that if he had done any thing in all his Life acceptable to the King and Country, he conceived it to be this.

To theſe Particulars; Firſt, He deſired the Lords would call to mind the Condition of thoſe Times; no Man (pointing to my Lord Steward) knows better than your Lordſhip, who had then the chiefeſt Place in his Majeſty's Service. I would be very ſorry to rub (ſaid he) old Sores, eſpecially ſeeing I hope things are in a fair way to a firm Peace, and I wiſh that I may not be deceived, that is, that it may be ſo; only thus much I may ſay, we had then greater Fears and Apprehenſions in *Ireland*, leſt the *Scots* in the Kingdom (who were above One hundred thouſand Souls) might have joined with their Countrymen at home, for the diſturbance of our Peace: mean time we detected a Treaſon of betraying of the Caſtle of *Knockfergus* to a great Man in that Kingdom, (whoſe Name I now ſpare) by one *Freeman*, who upon the Diſcovery was executed.

The Council-Board therefore in *Ireland* reſolved to preſcribe the *Scots* an Oath, whereby they might declare their Diſcontent at their Countrymen's Proceedings, and oblige themſelves to the King's Service: But while we were about this, they of their own accord came to *Dublin* to petition for it, and took it with a wonderful Alacrity and Heartineſs; ſo that it is a marvellous Falſehood for any man to ſay it was invented, or violently enjoined by me.

Secondly, About the ſame time the ſame Oath, *verbum verbo*, was by the Council of *England* preſcribed to the *Scots* at *London*, and elſewhere; which was no ſmall Encouragement to us in *Ireland*.

Thirdly, I had, (ſaid he) which I never ſhewed, becauſe I had no need before this time, a ſpecial Warrant from the King, all written with his own Hand, to that effect: and when the King commands a matter not contrary to Law, truly I (ſaid he) do conceive it both contrary to Law and Conſcience not to yield him all due Obedience. For the Proof brought againſt him, there was nothing ſeemed to be of any moment but the Words.

For the firſt Words, *That he had called all the Nation Rebels and Traytors*, he ſaid there was no Proof at all, nor indeed could there be any: for if I had ſaid it, (quoth he) I had been perfectly out of my wits; and, he thanked God, ſuch irrational Speeches uſed not to eſcape him. He honoured that Kingdom very much, becauſe it was the native Soil of our dread Sovereign, his gracious Maſter; and becauſe he knew a part, yea, (he hoped) the greateſt Part of them had been, and ever will be, as loyal and dutiful to the King as any other of his Subjects: and of thoſe too who had ſubſcribed that unhappy Combination, he knew a great many had done it againſt their Hearts and Wills, and would be ever ready upon occaſion to remonſtrate the ſame, by adhering to the King's Service. So that this Accuſation was nothing but a wreſting and perverting his Words and Meaning, of purpoſe to make him odious, and irritate a whole Nation againſt him.

For the other Words, they were proved only by one Witneſs, which could make no ſufficient Faith; and that Witneſs too he would evince, if not of Perjury, yet of a notable Miſtake: for he had ſworn poſitively that he had ſpoken theſe words the tenth of *October*, whereas he was come out of *Ireland* into *England* the twelfth of *September* before, and was at *London* the one-and-twentieth.

For thoſe that had fled the Kingdom becauſe of that Oath, he knew none ſuch; and if they did, they fled into *Scotland*; which might ſufficiently argue their Intentions and Reſolutions. For his part, if they were not willing to give that Teſtimony of their Loyalty to their Prince, although he had known of their Departure, he would have been very loth to have kept them againſt their wills, but ſhould have been gladly rid of them, and have made them a Bridge to be gone, rather than ſtay.

April 5. Upon *Monday*, Maſter *Whitlock* proceeded to the 20th Article, and told him, That becauſe the Matter was intervenient, & *conſimilis naturæ*, they had reſolved to join the five next Articles together, becauſe all of them tended to one Point or Period; that is, to ſhew what bad Deſign he had, to have ſubdued the Kingdoms both of *England* and *Scotland* by Force of Arms, and to reduce them to that Arbitrary Government he had lately introduced into *Ireland*.

The Lieutenant intreated that they would proceed according to the Order preſcribed by the Houſe, which was Article by Article: he ſaid, five Articles were many, the Matter weighty, his Memory treacherous, his Judgment weak.

It was bitterly replied by Maſter *Glyn*, That it did not become the Priſoner at the Bar to preſcribe them in what way they ſhould give in their Evidences.

The Lieutenant modeſtly anſwered, That if he ſtood in his Place, he would perhaps crave the like Favour, unleſs his Abilities did furniſh him with more Strength than he could find in himſelf: for his part, he was contented they ſhould proceed any way, always provided they would grant him a competent time for replying.

Then *Whitlock* went on, and told the Lords, That ſomething in thoſe Articles concerned the *Scotiſh*, ſomething the *Engliſh* Nation. That which concerned the *Scotiſh* he reduced to five Heads:

Firſt, That the Deputy had ſaid at the Council-Board, *That the* Scots *Demands contained ſufficient Matter to perſuade to an offenſive War*.

Secondly, *That the ſame Demands did ſtrike at the Root and Life of Monarchical Government, and were only to be anſwered by the Sword.*

Thirdly, That he cauſed ſome *Scotiſh* Goods and Ships to be ſeized on in *Ireland*.

Fourthly, That he had engaged the *Iriſh* Parliament, by their Declaration, in that War againſt the *Scots*.

Fifthly, That by all poſſible means he had put bad Thoughts and Suſpicions into his Majeſty againſt his *Scotiſh* Subjects, and laboured to make a National Quarrel between them and *England*; which, if the King's Piety and the Prudence of better-affected Stateſmen had not prevented, could not have been ſodder'd up again without much Blood.

Concerning *England*, his Speeches were either before or after the Parliament.

Firſt, Before his Creature and Boſom-Friend Sir *George Ratcliff*, he had ſaid to Sir *Robert King*, when he was doubting how the King might have Monies to pay his Armies, *That the King had Four Hundred Thouſand Pounds in his Purſe, Thirty Thouſand Men in the Field, and his Sword by his Side; and if he wanted Money afterwards, who would pity him?*

Secondly, That his Brother Sir *George Wentworth* had ſaid to Sir *Robert Barington*, upon the Diſſolution of the laſt Parliament, *That ſeeing the* Engliſh *would not grant Supply to the King, it ſeems they were weary of their Peace, and deſired to be conquered a ſecond time.*

Thirdly, That he himſelf, upon a Diſcourſe with the Primate of *Ireland*, had ſaid, *That he was much of the mind of thoſe* Engliſh *Divines, who maintained it lawful for a King, having tried the Affection and Benevolence of his People, and then denied their Help, upon an inevitable Neceſſity and preſent Danger of the Kingdom, that he might uſe his Prerogative for his own Supply, and the Defence of his Subjects.*

Fourthly, To the Lord *Conway*, in a Diſcourſe, he had ſaid, *That if the Parliament* (meaning the laſt Parliament) *ſhould not grant a competent Supply, that then the King was acquitted before God and Man, and might uſe the Authority put into his Hands.*

Fifthly, That he did ſay at the Council-Board, *If the Parliament ſhould deny to help the King, he would take any other way he could for his Majeſty's Service and Aſſiſtance.*

His Expreſſions after the Parliament were two:

Firſt, *That the Parliament had forſaken the King, and that the King ſhould not ſuffer himſelf to be over-maſtered by the Frowardneſs, Obſtinacy, and Stubbornneſs of his People.*

Secondly, *That if his Majeſty pleaſed to employ Forces, he had ſome in* Ireland *that might ſerve to reduce this Kingdom.*

The Proofs for the *Scots* Particulars were theſe:

Firſt, The Lord *Traquair*, who was indeed very favourable to the Lord-Lieutenant, and ſpake nothing to his diſadvantage but what was ſkrewed from him: with much difficulty he told them, That when he gave in the Demands, he heard him ſay, *That it was high time for the King to put himſelf into a poſture of War*; but that firſt all the Council of *England* ſaid the ſame as well as he. 2dly, That it was a double Suppoſition: 1. That the Demands were truly given in. 2. That there was no other Remedy left but Arms, to reduce them.

Secondly, The Earl of *Morton*'s Teſtimony (being ſick himſelf) was produced, and it was one and the ſame with the Article.

Thirdly, Sir *Henry Vane* was examined, who declared, That he had heard the Lieutenant to adviſe the King to an Offenſive War, when his own Judgment was for a Defenſive.

Fourthly, The Teſtimony of the Earl of *Northumberland* was produced, which was the very ſame with Sir *Henry Vane*'s.

Fifthly, The Treaſurer of *England* depoſed the ſame with *Traquair*.

Sixthly, One *Beane* from *Ireland* told, That he had known ſhips ſeized on there; but by whoſe Procurement or Warrant, he knew not.

To the Articles about *England*:

Firſt, Sir *Robert King* and the Lord *Ranelagh* depoſed the ſame, That Sir *Robert King* and the Lord *Ranelagh* had heard Sir *George Ratcliff* ſpeak thoſe words in the Article.

Secondly, Sir *Robert Barington*, of Sir *George Wentworth*.

Thirdly, The Primate's Teſtimony (who is ſick) was the ſame with the Article.

Fourthly, The Lord *Conway* depoſed the ſame with the Article.

Fifthly, Sir *Henry Vane* depoſed, he had heard thoſe words ſpoken at the Council-Board.

For the Words ſpoken after the Parliament:

To the firſt, Sir *Tho. Jermyne*, Lord *Newburg*, Earl of *Briſtol*, Earl of *Holland*, were examined. *Briſtol* did mince the matter, but *Holland*'s Teſtimony was expreſs, becauſe of the exceeding great Love he carried to the Man.

For the laſt, which were the moſt dangerous Speeches, (about reducing of this Kingdom) there was only Sir *Henry Vane*'s Teſtimony; who declared only thus, That he had heard either thoſe words, or the like.

Here ſome of the Lieutenant's Friends ſhewed themſelves:

1. The Lord *Savil*, who deſired of Sir *Henry Vane* to know whether he ſaid *their*, or *this*, or *that Kingdom*; and withal ſaid, It was very hard to condemn a Man for Treaſon upon ſuch petit Circumſtances.

2. The Earl of *Southampton* deſired to know, whether Sir *Henry Vane* would ſwear thoſe words poſitively or not. Sir *Henry Vane* ſaid, Poſitively either them or the like. The Earl replied, That under favour *thoſe or the like* could not be poſitive.

3. The Earl of *Clare* deſired to know what could be meant by *this* Kingdom; for his part (he ſaid), he thought it meant of the Kingdom of *Scotland*, to which the Word *this* might very well be relative, that Kingdom being only mentioned in the preceding Diſcourſe: And that he was the more ready to be of that Opinion, becauſe he could not ſee by what Grammatical Conſtruction it could be gathered from his Words, that he meant to reduce *England*, which neither then was, neither is now (God be thanked) out of the way of Obedience, nor upon rebellious Courſes.

They at laſt concluded the Charge, That the Words were ſo monſtrous, that to aggravate them was to allay them; and therefore they would ſimply leave them to the Judgment of the Lords.

The Lieutenant's Reply was,

That tho' the heaping up of thoſe Articles had put him to a great Confuſion, yet he would endeavour to bring his Anſwer into the beſt Method he could; and firſt he would reply to the Proof, then add ſomething in general for himſelf, in what a hard Taking and lamentable Condition he was, to have his private Diſcourſes, his moſt intimate and Boſom-Friends ſearched and ſifted to the leaſt Circumſtance, that he might ſeem guilty of that which, by God's Aſſiſtance, he ſhould never be.

To the Lord *Traquair*'s and the Deputy's Depoſitions, he thought their Proofs did not much ſtick upon him. For upon the Suppoſitions, *Firſt*, That the Demands were true; *Secondly*, That they were not juſtifiable; *Thirdly*, That no other Courſe could prevail: He could not ſee what other Advice he could poſſibly give the King, than to put himſelf into a Poſture of War, eſpecially ſeeing then there were frequent Reports of the *Scots* invading or entering into *England*; nor was he of any other Mind than all the reſt of the Council-Board.

For that of *Morton*'s, he doth not poſitively remember the Words, but if the Demands were read, perhaps they would imply nothing leſs; and if ſo, how otherwiſe to be anſwered but by the Sword, and other Means being firſt eſſayed, which is ever to be ſuppoſed?

For Sir *Henry Vane*'s and *Northumberland*'s Teſtimony, about perſuading of an Offenſive War, he ſaid, He remembered it very well, and thought it as free for him to give his Opinion for an Offenſive, as they for a Defenſive War: Opinions, ſaid he, if they be attended with Obſtinacy or Pertinacy, may make an Heretic, but that they ever made a Traitor, he never heard it till now; nor (under favour) ſhould I be an Heretic either (ſaid he); for as I was then, ſo am I now, moſt willing to acknowledge my Weakneſs, and correct my Errors, whereof no man hath more, or is more ſenſible of them, than I myſelf; yet if that Opinion of mine had been followed, It might perhaps have ſpared us ſome Money (ſaid he) and ſome Reputation too, of which we have been prodigal enough.

For the laſt, about the Ships, it proves nothing: but he would willingly confeſs, that ſome Ships were there detained, and that by himſelf and his own Direction, as Vice-Admiral of *Connaught*, but it was at the Command of the Lord Admiral the Earl of *Northumberland*; and produced his Letter to that Purpoſe.

To the *Engliſh* Proof: He marvelled much how Sir *George Ratcliff*'s Words could be put upon him; Sir *George* (tho' alledged to be his Boſom-Friend, yet) had thoughts of his own, and he (the Earl) might have other thoughts in his Boſom, and uſe other Expreſſions than Sir *George Ratcliff*: No Man (ſaid he) can commit Treaſon by his Attorney; and ſhould I, by my friend Sir *George*, as by a Proxy?

For his Brother, he never knew him before ſo raſh; but that was nothing to him, except they could prove a nearer Identity than Nature had inſtituted, and that his Brother's Words and his were all one: yet withal he conceived, that his Brother's Words might be very well underſtood of the *Scots* conquering *England*, but not at all of the *Iriſh*; and ſo he wiſhed with all his Heart, that he had not ſpoken ſomething which is like a Prophecy.

To the *Primate*'s Teſtimony (with all Reverence to his Integrity be it ſpoken), he is but one Witneſs, and in Law can prove nothing: Add to this (ſaid he), that it was a private Diſcourſe between him and me, and perhaps ſpoken by me *tentandi gratia*; and how far this ſhould be laid to a Man's Charge, let your Lordſhips judge.

Yea, this ſeems to me againſt Humanity itſelf, and will make the Society of Men ſo dangerous and loathſome to us, that our Dwelling-houſes will be turned to Cells, and our Towns to Deſarts: That which God and Nature (our Tongues) have beſtowed upon us (for the greater Comfort of

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ventingourownConceptions, or craving the Adviceof wiſer and learneder Men) ſhould become Snares and Burdens to us, by a curious and needleſs Fear; yet if my Words be taken, ſaid he, with all that went before and followed after, I ſee no danger in it.

To the Lord *Conway* I may reply the ſame, with this Addition, That it is a very natural Motion for a Man to preſerve himſelf; every Creature hath this Privilege, and ſhall we deny it to Monarchy, provided this be done in a lawful, tho' in an extraordinary way? This Grain of Salt muſt be added to ſeaſon all my Diſcourſe.

To that of Sir *Henry Vane*, of offering my Service to the King, I thank him for the Teſtimony, and think he hath done me much Honour thereby; but if he or any body elſe do ſuſpect that his Majeſty will employ me in unlawful Enterprizes, I ſhall think them more liable to the Charge of Treaſon than myſelf.

To the ſubſequent Teſtimonies, I ſhall not need to wreſtle about them much, only the laſt of Sir *Henry Vane*'s pinches, and lies ſore upon me; but to that which the Earl of *Clare* (and I thank him for it) hath ſaid already, give me leave to add this, That the Teſtimony of one Man is not a ſufficient Witneſs, nor can a Man be accuſed, much leſs condemned, of Treaſon, upon this; and for that read the Stat. *Hen.* VII. 12. and of *Edw.* VI. 5.

Now, my Lords, (ſaid he) to give you further ſatisfaction, I ſhall deſire all the Lords of the Council which were then preſent (only to the Number of Eight) may be examined whether they heard theſe Words or not; for the Archbiſhop and Sir *Francis Windebank*, they cannot be had: Sir *Henry Vane* gives the Teſtimony, I deny it; four only remain.

Firſt, The Earl of *Northumberland*'s Teſtimony, which was read, had declared expreſly, that he had never heard thoſe Words, nor any like them, from the Lord *Strafford*, but he ſpake with great Honour and Regard to the Kingdom of *England*.

Secondly, The Marquiſs *Hamilton*, who declared upon his Oath, that he had never heard ſuch Words, but that he had heard the Lieutenant often ſay, that the King was to rule his Royal Power *candide & caſte*; that it would never be well for this Kingdom, till the Prerogative of the Crown and the Privilege of the Subject went in one pace together; and that Parliaments were the happieſt way to keep a Correſpondence between the King and People.

The very ſame was delivered by the Lord Treaſurer, and the Lord *Cottington*.

Now, my Lords, you may marvel how theſe Words reſted only on the Ears of Sir *Henry Vane*: but, my Lords, (ſaid he) that I may remove all Scruple from you, I will make it evident, that there was not the leaſt Intention that the *Iriſh* Army ſhould ſet a Foot in *England*; and then, I hope, you will conceive that I had no Meaning to reduce this Kingdom.

This he made clear by the Teſtimony of *Northumberland*, the Oaths of Marquiſs *Hamilton*, Lord *Cottington*, Lord Treaſurer, Sir *Thomas Lucas*, who only were privy to that Matter.

For other of my Words, my Lords, (ſaid he) I deſire you would not take them by halves; if ſo, who ſhould be free from Treaſon? Certainly, if ſuch a Precedent take footing, *Weſtminſter-Hall* ſhall be more troubled with Treaſon than with Common-Law; look therefore to the Antecedents and Conſequents of my Speeches, and you ſhall find the State of the Queſtion clearly altered: the Antecedents were upon an abſolute or inevitable Neceſſity, upon a preſent Invaſion, when the Remedy of a Parliament cannot be expected; the Conſequents, for the Defence of the Kingdom, which accounts afterward to the Parliament. The Qualifications too in a lawful, convenient, and ordinary Way, ſo far as the preſent Neceſſity can permit. Add but theſe, and which of you are not of my Mind? Is the King endowed with no Power from the Lord? Is he not *publicus Inſpector Regni?* Stands it not him in hand to do ſomething on preſent Neceſſities?

And that theſe were his Words, he often proved, over and over again, by the Marquiſs, by the Lord Treaſurer, *Cottington*, Sir *Tho. Jermyne.*

My Lords, what I have kept to the laſt (ſaid he) is this, and I would intreat you ſeriouſly to think of it: If a Man's Table, his Bed, his Houſe, his Brother, his Friends (and that too after they have given an Oath of Secrecy) are to be rack'd to find out Treaſon againſt him, who never knew what it meant, what earthly Man ſhall paſs free from Treaſon? Let my Misfortune, my Lords, be your Advertiſement: your wiſe Anceſtors were glad to put Bands and Limits to this Lion, Treaſon; if you give him the large Scope of Words to range into, he will at laſt pull you or yours all to pieces.

But, my Lords, I did never think till now, that Matter of Opinion ſhould be objected as Matter of Treaſon.

For, *Firſt*, Opinions are free, and Men may argue both *Pro* and *Con*, in all Faculties, without any Stain of Reputation; otherwiſe all Conſultations would be vain.

Secondly, I may be of another Judgment than I declare myſelf to be, of Opinion, perhaps, to gain better Arguments for the Maintenance of my own Grounds.

Thirdly, Many, and myſelf oftentimes, have propounded my Opinion; yet upon hearing better Judgments, have preſently changed it.

Fourthly, We uſe to ſtrain our Opinions too high ſometimes, that we may meet in a juſt moderation with thoſe whom ~~we conceive in~~ the other Extremity to be too low.

Fifthly, It is expreſly commanded by the Stat. *Hen.* VI. 9. That tho' a Man ſhould ſay, the King is not lawful Heir to the Crown, and may be depoſed, yet he is not to be charged with Treaſon, but only with Felony; and I hope, my Lords, thoſe Words are of a more tranſcendent and ſuperlative nature, than any alledged by me to be ſpoken. But, my Lords, (ſaid he) lay it to your Hearts, it muſt come to you; you and your Poſterity are they whom God and Nature, Birth and Education have fitted to beautify the Royal Throne, and to ſuſtain the weighty Affairs of the Kingdom; if to give your Opinions in Political Agitations ſhould be accounted Treaſon, who will be willing to ſerve the King, or what a Dilemma are you in? If, being ſworn Counſellors, you ſpeak not your Minds freely, you are convict of Perjury; if you do, perhaps of Treaſon. What Detriment, what Incommodity ſhall fall to King and Kingdom, if this be permitted! Which of you hereafter will adventure, yea dare adventure ſo much as to help by your Advice, unleſs you be weary of your Lives, your Eſtates, your Poſterity, yea your very Honour? Let me never live longer than to ſee this Confuſion—yea, I may ſay it, this Inhumanity in *England*. For my part (my Lords), I here confeſs myſelf, I ever have, and ever ſhall ſpeak my Opinion freely in any thing that may concern the Honour and Safety, either of my gracious King or my dear Country, tho' the Sword be two-edged; fearing rather him that killeth the Soul, than him whoſe Power reaches only to the Body.

Nor do I ſee how I am culpable of Treaſon, unleſs it be Treaſon for not being infallible; and if it be ſo, my Lords, you have this Rag of Mortality before you, loaden with many Infirmities; tho' you pull this into ſhreds, yet there is no great Loſs; yea, there may be a great Gain, if by the ſame I may ſeem to have dared too far, to give a Teſtimony to the World of an innocent Conſcience towards God, and a reſolute Loyalty towards my Prince [which have ever been my only Pole-Stars in the whole Courſe of my Life]: and if by ſpilling of mine, there be not a way found how to trace out the Blood of the Nobility (which I hope your Lordſhips will look to), there is no Diſadvantage at all ſuffer'd by the Loſs of me. (You have his very Words as near as I could recollect.)

Tueſday was a Day of Reſt.

April 7. Upon *Wedneſday Whitlock* charged thus: That the preceding Articles were of ſo high a Conſequence, and of ſo tranſcendent a Nature, that nothing wanted to make up the perfect meaſure of the moſt horrid Treaſon and monſtrous Attempt that ever by a Native was intended againſt his King and Country, by putting theſe deſigned Projects into execution; which had undoubtedly happened to the Ruin and Subverſion both of Church and State, had not the Clemency and Goodneſs of the Prince, and the Piety and Carefulneſs of the well-affected Peers, timouſly foreſeen and prevented the ſame: That ſtill the Principles of Tyranny and Oppreſſion had lodged within his Boſom, and therefore had burſt forth into theſe Expreſſions and Advices contained in the following Articles; where firſt in the twenty-fifth they charged him with three things:

Firſt, That he had adviſed the King to a rigorous and unlawful Exaction of Ship-Money.

Secondly, That he had given Counſel, That if the Sheriffs ſhould deny their beſt Endeavours and Aſſiſtances to that Effect, they ſhould be ſent for, and be fined and impriſon'd by the *Star-Chamber*.

Thirdly, That when the Aldermen of *London* had in all Humility repreſented the Cauſes why the Ship-Money could not be collected amongſt them, and had given in the Reaſons why they refuſed to give in a liſt of their Names, within their City, who were able to afford the Loan-Money; he in a contemptuous and tyrannical manner, in the face of the Council-Board, had ſaid to the King: *Sir, theſe Men, becauſe of their Obſtinacy and Frowardneſs, deſerved very well to be fined, ranſomed, and laid by the Heels; and it will never go well with your Service, until ſome of them be hanged up for Examples to others.*

The Proofs were theſe:

Firſt, The Biſhop of *London*, Lord Treaſurer, who declared, That he remembred the Words very well, that the Lord-Lieutenant had adviſed the King to cauſe the Ship-Money to be gathered in; but he remembred withal, that both himſelf and all the Council had done the like; and that it was upon a preſent Neceſſity, and Defect of Money for entertaining the Army, which (the Condition of the Times conſidered) they all conceived was by any means to be kept on foot.

Secondly, Alderman *Wiſeman* declared, that upon an humble Remonſtrance made to the Council-Board, the City would take it ill, if a Tax-Roll ſhould be delivered of their Eſtates who were thought able for the Loan-Money; the Lord *Strafford* ſaid, They ought to be fined, ranſomed, and laid by the heels: but for Words of hanging them up, he heard not at all.

Thirdly, The Earl of *Berkſhire* declared, that the Lord *Strafford* had ſaid, That upon the Refuſal of ſuch a Service enjoined by the King's peremptory Command, it was his Opinion they might be fined.

Fourthly, Alderman *Garway* atteſted the preceding Words; and withal added, that the Lord Lieutenant, to his beſt Remembrance, had ſaid, *It were well for the King's Service if ſome of them were hanged up.*

They cloſed the Charge, That by ſuch undutiful Expreſſions he had injured the Propriety of the Subject, and had put ſuch Diſcontent upon the City, that they were the leſs willing upon any Occaſion to concur for the Advantage of the King's Service.

The Lieutenant replied,

Firſt, That tho' all the Charge were in the moſt ſtrict and rigid way or ſenſe verified againſt him, yet he could not conceive by what Interpretation of Law it could be reached home to High-Treaſon: and to that common Objection [That the Treaſon was not individual, but accumulative], he replied, That under favour, he thought, talking in that manner were as much as to ſay, no Treaſon at all. Becauſe,

1ſt, That neither in Statute Law, Common Law, nor Practice, there was ever till this Time heard of ſuch a matter as accumulative Treaſon, or a Treaſon by way of Conſequence; but that it is a Word newly coined to attend a Charge newly invented, ſuch an one as never was before.

2dly, That Treaſon was a Thing of a ſimple and ſpecificative nature, and therefore could not be ſo by Accumulation: but either muſt be ſo in ſome or either of the Articles, or elſe could not be ſo at all.

3dly, He did conceive that it was againſt the firſt Principles of Nature, and falſe, That an Heap or Accumulation ſhould be, and not be, of homogeneous Things; and therefore that which in its firſt Being is not treaſonable, can never confer to make up an accumulative Treaſon. *Cumulus*, an Heap of Grain, ſo called, becauſe every, or at leaſt ſome of the Individuals, are Grain; if otherways, an Heap it may be, but not an Heap of Grain. Juſt ſo, perhaps, theſe Articles may make up an Heap of Felonies, Oppreſſions, Errors, Miſdemeanours, and ſuch like (and to the thing itſelf I ſhall give an anſwer, when under that name they ſhall be charged againſt me); but they can no ways confer to the making up of Treaſon, unleſs ſome, at the leaſt, be Treaſon in the Individual.

Secondly, That the Teſtimonies brought againſt him were all of them ſingle, not two one way; and therefore could not make Faith in matter of Debt, much leſs in matter of Life and Death; yea, that it was againſt the Statute expreſly, to impeach a Man of High Treaſon under the Evidence of two famous Witneſſes, much leſs to adjudge and convince him upon Atteſtation of one.

Thirdly, To the Lord Treaſurer's Teſtimony, he did with all his Heart condeſcend unto it; but upon theſe Grounds only, That there was a preſent Neceſſity of Money; that all the Council-Board had ſo voiced with him, yea, before himſelf, and he always thought it Preſumption in a Man not to follow the wiſer and more judicious: and that there was then a Sentence of the *Star-Chamber* for the Right of paying Ship-Money. For his part, he would never be more prudent than his Teachers, nor give Judgment againſt the Judges. And therefore he thought it not far amiſs to adviſe the King for the collecting of that, which by Law was his own, in ſuch a preſent and urgent Neceſſity. And altho' his Opinion (and it was no more) had been amiſs, he hoped that tho' in caſe of Religion, being attended with Stubbornneſs and Pertinacy, it might come home to Hereſy, yet in his caſe Opinion could not reach ſo far as Treaſon; unleſs it be Treaſon for a Man to ſpeak his Judgment freely, when he is upon his Oath to do the ſame.

Fourthly, For the Words about Fining, he had already acknowledged them in his general Anſwers to be true; but with theſe Qualifications, That it was his Opinion only; that it was upon the Refuſal (as he conceived) of a juſt Service that he had ſpoken them, by no means to prejudice the Citizens, but to make them the more quick and active in the King's Service; that no ill Conſequence happen'd upon them; that they were Words might have been ſpared indeed, but innocently, tho' ſuddenly ſpoken, which he hoped might proceed from a Man of ſuch a haſty and incircumſpect Humour as himſelf, (made ſo both by Nature and his much Infirmity of Body) without any mind at all to Treaſon; and that if all cholerick Expreſſions of that nature ſhould be accounted treaſonable, there would be more Suits of that kind fly up and down *Weſtminſter-Hall* than Common-Law.

Fifthly, to thoſe Words atteſted by the Alderman, he poſitively denied them; and hoped they ſhould never riſe up againſt him in Judgment, becauſe the Teſtimony was ſingle, and not poſitive, but only to his beſt Remembrance; and that it was exceeding ſtrange that no Man, neither of the Council or other Aldermen, were ſo quick to obſerve them, but only Alderman *Garway*; which he thought ſufficient to nullify that ſingle Teſtimony, except he could demonſtrate himſelf to have ſome rare and ſingular Faculty of hearing.

In the cloſe, he deſired the Lords, from his Misfortune, to provide for their own Safety, and ſeriouſly to conſider what a Way was chalked out to ruin them both in their Lives and Eſtates, if for every Opinion given in Council, or Words ſuddenly or haſtily ſpoken, they (who are born to wield the great affairs of the Kingdom) ſhould be arraigned and ſentenced as Traytors.

Then they went to the 26th Article, and charged thus:

That the Lord *Strafford*, having by his wicked Advices exhauſted the King's Treaſury, did alſo counſel him,

Firſt, To imbaſe the Coin by an Allay of Copper-Money.

Secondly, To ſeize upon all the Bullion in the *Mint*.

Thirdly, That in Diſcourſe with ſome of the Aldermen about that Buſineſs, he had ſaid, The City was more ready to countenance and relieve the Rebels than the King; and that the King of *France* did uſe to manage ſuch Buſineſſes, not by Treaties or Requeſts, but by ſending forth his Commiſſaries to take account of Mens Eſtates, accompanied with Troops of Horſes.

The Proofs were;

Firſt, Sir *Thomas Edwards*, who declared, That in Diſcourſe with the Lord *Strafford*, having remonſtrated unto him that their Goods were ſeized on beyond Seas, becauſe of the Money taken out of the *Mint*, he told him, *That if the* Londoners *ſuffered it, it was deſervedly, becauſe they had refuſed the King a ſmall Loan of Money upon good Security; and that he thought them more ready to help the Rebels than the King.*

Secondly, Mr. *Palmer* declared that he ſpake ſomething about the King of *France*; but whether with relation to *England*, or not, he did not remember.

Thirdly, Sir *William Parkiſe* atteſted in the ſame Words; and withal, that the Lord *Cottington* was then preſent, and could declare the whole Buſineſs.

Fourthly, Sir *Ralph Freeman* declared, that in a Diſcourſe with the Lord *Strafford* he had ſaid, that the Servants in the *Mint-Houſe* would refuſe to work the Copper-Money; and he replied, *That then it were well to ſend thoſe Servants to the Houſe of Correction.*

They cloſed the Charge, That by ſuch undutiful Counſel and Words, he had given more than ſufficient Proof of his Deſign and Purpoſe to ſubdue this Kingdom, and ſubvert the fundamental Law and Privileges of the ſame.

The Lieutenant's Reply:

Firſt, That he expected ſome Proofs about the two firſt Particulars, but did hear of none; and that it was no ſmall Diſadvantage to him to be charged with a great many odious Crimes by a Book, printed and flying from hand to hand thro' the whole Kingdom, yet when they came to prove, there ſhould be no ſuch thing laid againſt him.

Secondly, About the Speeches: He ingenuouſly confeſſed, that ſome ſuch thing might perhaps have eſcaped the Door of his Lips, when he ſaw their Backwardneſs to his Majeſty's Service; and as the Times were then conditioned, he did not think it much amiſs to call that Faction by the Name of Rebels; but yet he thought he had abundantly ſatisfied for that Over-ſight (if it was any) at *York*: For having underſtood there, that the City of *London* were willing to make a Loan of Money, he there, before the Great Council of the Peers, expreſſed himſelf to this Senſe, *That the* Londoners *had ſufficiently made up all their Delays hitherto by their Act: that the King was obliged to their Forwardneſs; and that he himſelf ſhould be as ready to ſerve them as any poor Gentleman in* England. About the other Words, he ſaid, That being in conference with ſome of the *Londoners*, there came at that time to his hands a Letter from the Earl of *Leiceſter*, then at *Paris*, wherein were the *Gazettes* incloſed, reporting that the Cardinal had given ſome ſuch Order, as to levy Money by Forces. This, he ſaid, he only told the Lord *Cottington*, ſtanding by, without the leaſt Application or Intention concerning the *Engliſh* Affairs. *Cottington*, being examined upon this, declared the ſame in the ſame Manner.

Thirdly, To Sir *Ralph Freeman*, he ſaid, That his Teſtimony did not concern the Charge at all; nor did he think any thing amiſs in it, though he had ſaid it: If the Servants of the *Mint* refuſed to work according to Directions, they did deſerve the Houſe of Correction; nor was it treaſonable to ſay, the King might uſe that Houſe for the Correction of his Servants, as well as any Man in the City for theirs.

Fourthly, He ſaid that there was no great Likelihood that he had committed real Acts of Treaſon, when his adverſe Party was content to trifle away ſo much time about Words; neither was there any Treaſon in them, tho' they had been fully verified: and therefore in that (as in all other Articles) he reſerved a Power for his Counſel to diſpute in matter of Law.

They went to the 27th Article, and charged thus: That immediately after his Appointment to be Lord-Lieutenant of the Army here in *England*, he ſhewed what Principles of Arbitrary Government lurked within his Boſom; for by his own immediate Authority, without and againſt Law, he had laid an Impoſt of Money upon the King's Subjects. Where they mention three Particulars:

Firſt, That he had impoſed 8*d. per diem* upon the County of *York*, for entertaining the Trained-Bands there one whole Month.

Secondly, That he had ſent out Warrants for collecting the ſame, and threatened to impriſon ſuch as ſhould refuſe to pay.

Thirdly, That he ſaid, *That it was a Crime nigh to the Crime of High-Treaſon, not to pay the ſame.*

Fourthly, They added, That in his general Replies he had brought two Things for his Defence: 1ſt, That this Money was freely and voluntarily offered by thoſe in *Yorkſhire*. 2dly, That the Great Council of the Peers had Notice of the ſame.

To the firſt they anſwered, That a Petition was indeed preferred by the *Yorkſhire* Men, and a Month's Pay offered; but that the Lord *Strafford* had refuſed to preſent the ſame, upon this Exception only, Becauſe in the ſame they had petitioned for a Parliament: whereby he evidently declared what little Inclination he had to that way.

To the ſecond, They appealed to all the Lords preſent, whether any ſuch Order did paſs before the Council of the Peers at *York*.

The Proofs were;

Firſt, A Warrant iſſued by Colonel *Pennyman* for this Money, and another by Sir *Edward Oſborne*.

Secondly, Sir *John Burrowes*, who declared that he was Clerk to the Great Council, but did remember of no Order; and withal added, that it might have paſſed at that time when he attended at *Rippon*.

Thirdly, Mr. *Dunſton*, who declared that he had known that Money alevied by ſome Muſqueteers.

Fourthly, By Sir *William Ingram*, who declared that he had heard the Lieutenant ſay, *That to refuſe the ſame, came nigh to the Crime of High-Treaſon.*

They concluded the Charge, That by theſe Particulars it was more than evident what unhappy Purpoſe and traitorous Deſigns he had to ſubdue this Kingdom, and ſubvert the fundamental Laws and Privileges.

The Earl replied, Firſt, To the Petition, That it was true, a Petition was drawn up by the *Yorkſhire* Gentlemen; and as true, that he had refuſed to preſent the ſame, becauſe of that Clauſe about the Parliament. But the Matter was thus: At his Majeſty's coming to *York*, it was thought neceſſary for the Defence of that Country, to keep the Trained-Bands on foot, becauſe the Enemy was upon the Borders; and therefore the King directed him to write to all the Freeholders in *Yorkſhire*, to ſee what they would do for their own Defence.

The Time and Place were deſigned by the King; but the Night before the Meeting, a ſmall Number convened, and in a private and factious Way did draw up that Petition. Upon the Morrow, at their appointed Dyet, in Preſence of the whole Number, the Petition was preſented to him; where he did adviſe them to leave out that Clauſe, and that becauſe he knew the King, out of his own gracious Diſpoſition, had intended to call a Parliament, which he deſired ſhould rather be freely done, than upon the Conſtraint and Importunity of Petitions: Moreover, it would ſeem a mercenary Thing in them, at one and the ſame Time to offer a Benevolence, and withal to petition for his Favour. Upon this Remonſtrance, they were all willing to recal the Petition, and directed him by Word of Mouth to offer unto the King the Month's Pay in their Names; which he did accordingly in the Preſence of Forty of them, to their no ſmall Advantage.

This he proved by Sir *William Pennyman*, Sir *Paul Neale*, Sir *George Wentworth*, Sir *William Savile*, Sir *Thomas Danby*, who all of them declared as much in ample Terms; and withal added, That nothing was done upon better Grounds of Neceſſity and Obedience than the Offer of that Money, and that they never had heard any Man grudge againſt it to this time.

For the Second, about the Council of Peers, he alledged, that he never made mention of any Order of theirs; but he remembred very well it was twice propounded before them, that the King had approved it at that time a juſt and neceſſary Act, and none of the Council had contradicted it; which he conceived as a tacit Approbation, and an Order in Equivalence.

But tho' that had not been, yet there was nothing done in the Buſineſs, but at the ſpecial Deſires of the Gentlemen themſelves, and for their neceſſary Defence and Protection; yea, tho' he had done it by himſelf alone, yet he conceived he had ſo much Power by his Commiſſion (cauſing the Commiſſion to that effect to be read). That albeit he ſhould miſtake his Commiſſion, and do ſome inferior Act beyond it, (becauſe military Proceedings are not always warranted by the Common Law) yet it ſhould not be imputed as an Act of Treaſon to him. (And to this Effect he read a Statute of the Seventh of *Henry* the Second.)

To the Proofs: Firſt, Colonel *Pennyman*'s Warrant, or Sir *Edward Oſborne*'s, it nothing concerned him; and he doubted not but theſe worthy Gentlemen could juſtify their own Act, and that he had enough to do to anſwer his own Miſdemeanours.

Secondly, For Sir *John Burrowes*, he was at *Rippon* when the Propoſition was made.

Thirdly, That as the Warrant, ſo neither the Execution, troubled him at all.

Fourthly, For Sir *William Ingram*, he was but a ſingle Teſtimony, and that ſuch an one too, as he could produce an Evidence to teſtify he had miſtaken himſelf in his Teſtimony upon Oath, if it were not to diſadvantage the Gentleman.

He concluded, That he had done nothing in that Buſineſs but upon the Petition of that County, the King's ſpecial Command, the Connivance at leaſt of the Great Council, and upon a preſent Neceſſity, for the Defence and Safety of the County.

And ſo much for *Wedneſday*.

Upon *Thurſday* the Committee for the Charge declared that they had done with all the Articles, and were content to wave the laſt, for Reaſons beſt known to themſelves: only Sir *Walter Earles* added, That he had ſome Obſervations to bring forth upon the two-and-twentieth Article, which he conceived might do much to prove the Earl of *Strafford*'s Deſigns for landing the *Iriſh* Forces in *England*.

And they were, firſt, That in his Commiſſion he had Power to land them in *Wales*, or in any Part of *England*, or in *Scotland*; which were altogether ſuperfluous, unleſs there had been ſome Purpoſe for the ſame.

Secondly, That within two Days before the Date of the Commiſſion, Letters were ſent to the Lord *Bridgewater* and *Pembroke* from Sir *Francis Windebank*, to aſſiſt the Earl of *Worceſter* in levying Forces for the King's Service; and theſe might be ſuppoſed to have intended a joining with the *Iriſh*.

Thirdly, That the Lord *Ranelagh*, at the raiſing of the *Iriſh* Army, did fear ſuch a Deſign as this.

Fourthly, That the Town of *Ayre* in *Scotland*, where the Lord *Strafford* pretended he would land thoſe Forces, was fortified with a Bulwark, a Garriſon, and Block-houſe, which would prohibit landing there; and the Earl of *Argyle*'s Bounds were divided thence by the Sea, and that the Bar or Entry into the Town was very dangerous and ſhallow.

The Proofs were only the Reading of the Commiſſion granted to the Lord *Strafford*.

The Lieutenant replied, Firſt, That his Commiſſion was the ſame *verbatim* with *Northumberland*'s for *England*, and that it was drawn up by the Council-Board here, and ſent over unto him; ſo no more Deſign in him than in the Gentlemen of the *Engliſh* Army, nor no larger than that was put upon him.

Secondly, That this was the firſt time he heard of any ſuch Letters, nor did they concern him more than any of the Houſe.

Thirdly, That he was not bound to purge the Lord *Ranelagh* from all his Fears, and that he had his own Fears too, which God forbid ſhould be Evidence of Treaſon againſt any Man whatſoever!

Fourthly, That it ſeemed the Gentleman had better Information from that Kingdom than himſelf; yet he would not be confident to ſay, at *Ayre* there was never ſuch a thing as a Block-houſe or Garriſon. But to remove all Scruples, (for indeed the Road or Landing-place is not there ſafe) he declared that it was his Intention to have landed ſome Miles above *Ayre*, and made only his Magazine of that Town.

To the Earl of *Argyle*'s Bounds, he hoped the Gentleman knew they came not on foot out of *Ireland*, but had Ships to waft and tranſport themſelves, and that one of his prime Houſes (*Roſneth*) was within ſome few Miles of the ſame Frith.

The Lord *Digby* finding Sir *Walter Earles* on Ground, did handſomely bring him off, and told the Lords, That all their Proofs for that Article were not yet ready, and that this was a Superfetation only of the Charge; and that in ſuch a Buſineſs as the Plotting of Treaſon, they muſt be content ſometimes with dark Probabilities.

Then Mr. *Glyn* deſired the Lieutenant to reſume his Defence, that they might give a Repetition of their Charge, and ſo cloſe the Proceſs ſo far as concerned the Matter of Fact.

He replied, That in this Caſe all Slackneſs is Speed enough; the Matter touched him narrowly, even in his Life and Eſtate, yea, in that which he eſteemed above them both, his Honour and Poſterity; and therefore he confeſſed he had no Deſire to ride Poſt in ſuch a Buſineſs. That he knew the Gentlemen of the Bar, if they were in his Caſe, would think the time little enough, except their more able Judgments could ſooner diſpatch the Matter in Hand; and therefore he humbly intreated, that that Day might be granted to him for ſtrengthening himſelf, and recollecting his Thoughts and Spirits, and To-morrow he would be ready with his laſt Replies for himſelf: which, after a little Ceremony and Conteſtation, was condeſcended unto by the Houſe of Commons.

Upon *Friday* Morning, about eight of the Clock, the Lieutenant of the *Tower* and my Lord's Chamber-Groom came to the Hall, and gave Information to the Houſe upon Oath, That the Lord *Strafford* was taken with an exceeding great Pain, and Fit of the Stone, and could not upon any Condition ſtir out of his Bed.

Mr. *Glyn* replied, That it was a Token of his Wilfulneſs, not his Weakneſs, that he had not ſent a Doctor to teſtify the ſame.

The Lord Steward made anſwer, That a Doctor could not be had, perhaps, ſo ſoon in a Morning; nor was it poſſible for any Phyſician to give a certain Judgment concerning a Man's Diſability by the Stone, becauſe there is no outward Symptoms that appear.

Mr. *Glyn* excepted, That if he did not appear upon *Saturday* Morning, he ſhould loſe the Privilege to ſpeak in his own Defence afterwards, and they permitted to proceed.

The Lord Steward replied, That the Lords had appointed four of their Number to go to the *Tower*, and learn the juſt Cauſe of his Stay; and if by any Means he were able, he ſhould be obliged to come then; if not, Humanity and common Equity would excuſe him.

In the Afternoon it was reported that he was dead; of which there can be no better Reaſon given than the Humour and Genius of the Times, that dally with nothing oftner than Untruths and Calumnies: and certainly there are many Men of ſhallow Underſtandings and weak Affections, who either will not, or cannot underſtand the Gentleman's Worth; but out of fearful and needleſs Apprehenſions are ſo deſirous to hear of his Ruin any Way, that their buſy Tongues will dare to anticipate the Stroke of Juſtice.

Mr. *Glyn* proffers new Proofs concerning the two-and-twentieth Article.

Upon *Saturday* Morning, *April* 10, he preſented himſelf at the Bar, where he expected nothing but Repetitions of Charges and Defences; but mean while Mr. *Glyn* proffers ſome new Proofs concerning the two-and-twentieth Article, which the noble Lord refuſed, alledging the Proceſs was cloſed. Mr. *Glyn* anſwered, The Proceſs is not cloſed, as long as the Buſineſs ſtands unrepealed; and that it did not become a Priſoner at the Bar to preſcribe a Method of Proceeding to the Houſe of Commons in *England*.

It was anſwered by the Lord Lieutenant, That he thought it ſtood him in hand as nearly to maintain his Life, as it did any to purſue him for it; yet he was willing they ſhould bring in new Proofs, provided that he might have time to make new Replies, and withal uſe ſome new Witneſſes in ſome Articles that concern his Juſtification.

The Lord *Newark*, upon theſe Motions, deſired the Houſe might be adjourned: after two Hours Stay, and a hot Conflict among the Lords, they returned, and the Lord Steward commanded the Order to be read, which conſiſted of two Articles:

Firſt, That as it was granted unto them to bring in Proofs concerning the two-and-twentieth Article, ſo it was to the Lord *Strafford* to make his Replies, and uſe his Witneſs concerning the ſame.

Secondly, That if they went to no more Articles, no more ſhould the Lord *Strafford*; but if they did, that he might pitch upon any one Article as he pleaſed.

The Houſe of Commons preſently declined all other Articles, and conceived the Order expreſly for them, reſtraining him from all other Articles, except that only.

He conceived the Order was for him, and ſaid, That ſeeing they had pick'd out their Article, it was againſt all common Equity to tie up his Hands, and not admit of a common Rule for them both. They replied, That when the Article was canvaſſed, they reſerved Witneſſes till another time. He anſwered, That he had done the ſame upon every Article. They replied, That the Houſe had refuſed his Reſervation. He anſwered, Nor had they paſſed an Order for theirs.

Upon this new Conteſtation the Houſe roſe again, and was adjourned. It is ſuppoſed that the Houſe of Commons had the better Ground, becauſe they had particularly named their Witneſſes in their Reſervation, the Lord *Strafford* not ſo; they preſſed but one Article, he many. But ſuch was the Pleaſure of the Lords, that tho' the Matter did not deſerve to be much ſtood upon, yet after two Hours vehement Agitation of the Buſineſs in the Upper Houſe, they returned, and the Order was in favour to this Effect:

Firſt, That both of them ſhould wave their new Proofs, and go immediately to that which follows.

Secondly, If they would not do ſo, the Lords conceived themſelves common Judges to both, and therefore would not deny *Strafford* the Liberty of pitching upon what Article he pleaſed, as they had done.

Thirdly, That both of them ſhould name their Witneſſes at the Bar inſtantly.

The Commons were much grieved at this, yet deſired him to nominate his Witneſſes, if he would make any Benefit of the Order. He anſwered, That he would nominate after them, becauſe they were firſt in Order. They replied, That he knew their Article, they not his. He ſaid, He was to bring Proofs about the ſecond, fifth, thirteenth, and the fifteenth Articles, and did deſire them that they would now proceed to Nomination.

But they told him, they could not embrace the Order without Advice of the whole Houſe. Then on a ſudden a mighty Noiſe followed of the whole Houſe, *Withdraw, Withdraw!* and was in ſo uncouth and tumultuous a Confuſion, that it produced both Admiration and Fear in the Beholders, wherein we might eaſily feel the Pulſe of a diſtempered State. Both the Houſes break up, not appointing ſo much as the next Dyet; each Man's Countenance ſpake Anger and Diſcontent, and nothing ſounded in our Ears all *Sunday*, but Terrors and Affrightments of a preſent Diviſion and Breach between the two Houſes: That the Houſe of Commons would declare him a Traytor, and all ſuch Lords too as were his Adherents; that he ſhould be no more heard in publick, that (tho' Parties, and not his Peers) they would vote in his Sentence: That a Bill of Attainder ſhould preſently be drawn up againſt him, and that nothing ſhould content them but preſent Execution.

Big Words flew up and down all *Monday*, *April* 12. That whole Day was ſpent in a Conference betwixt the Houſes, without any meeting in the Hall; but the Lords (who had learned, as it ſeems, to foreſee their own Ruin by his Misfortune, and now conceive that Monarchy and Nobility are of ſuch Identity, that one and the ſame is the Diminution of both) kept faſt to their Concluſion, and would not paſs from their Order, notwithſtanding all the many Dangers repreſented: ſo that the Houſe of Commons were conſtrained at laſt to give way, and embrace the firſt Part of the Order, by waving Witneſſes on both Sides.

This hath been no ſmall Diſcouragement to his Enemies; for a more real Demonſtration of his Party amongſt the Lords could not have been ſhewn.

Upon *Monday*, ſome of the Lords went ſo high in their Heat, as to tell the Houſe of Commons, That it was an unnatural Motion, for the Head to be govern'd by the Tail; That they hated Rebellion as bad as Treaſon; That the ſame Blood that ennobled their Anceſtors, did move alſo in their Veins, and therefore they would never ſuffer themſelves to be ſuppreſſed by a popular Faction.

After a great deal of Storm, all was (as well as might be) ſodder'd up again, and *Tueſday* appointed to be the Day for the Lieutenant to reſume his Defences, and they their Charge, without any more Proof to be uſed on either Side.

Upon *Tueſday*, *April* 13, the Lord Steward at the Entry told them, the Lords had order'd that both their Teſtimonies ſhould be waved, that they ſhould proceed immediately to what followed, ſo that that Day might put an End to what concerned the Matter of Fact.

The Lord Lieutenant replied, That in all Humility and Obedience he would ſubmit himſelf to that, or any other their Decrees whatſoever, tho' it ſhould reach as far home unto him as his own Life; but withal humbly begged, That if hereafter he ſhould be troubled (for they were to ſpeak laſt) with new Matter, or with ſupplemental Proof, he might have leave to ſpeak ſomething in his own Defence.

The Lord Steward anſwered, It was all the Reaſon in the World.

The Lieutenant went on thus:

My Lords,

THIS Day I ſtand before you charged with High-Treaſon: the Burden is heavy, yet far the more, in that it hath borrowed the Patrociny of the Houſe of Commons; if they were not intereſted, I might expreſs a no leſs eaſy, than I do a ſafe Iſſue and good Succeſs to the Buſineſs: But let neither my Weakneſs plead my Innocence, nor their Power my Guilt. If your Lordſhips will conceive of my Defences, as they are in themſelves, without reference to either, (and I ſhall endeavour ſo to preſent them) I hope to go away from hence as clearly juſtified, as I am now in the Teſtimony of a good Conſcience by myſelf. My Lords, I have all along my Charge watched to ſee that poiſoned Arrow of Treaſon, that ſome Men would fain have to be feathered in my Heart, and that deadly Cup of Wine, that hath ſo intoxicated ſome petty miſ-alledged Errors, as to put them in the Elevation of High-Treaſon; but in truth it hath not been my Quickneſs to diſcern any ſuch Monſter yet within my Breaſt, though now, perhaps, by a ſiniſtrous Information, ſticking to my Clothes. They tell me of a twofold Treaſon, one againſt the Statute, another by the Common-Law; this direct, that conſecutive; this individual, that accumulative; this in itſelf, that by way of conſtruction.

For the firſt, I muſt, and do acknowledge, that if I had the leaſt ſuſpicion of my own Guilt, I would ſpare your Lordſhips the pains; caſt the firſt Stone at myſelf, and paſs Sentence of Condemnation againſt myſelf: and whether it be ſo or not, I refer myſelf to your Lordſhips Judgment and Declaration. You, and only you, (under the favour and protection of my gracious Maſter) are my Judges: under favour, none of the Commons are my Peers, nor can they be my Judges. I ſhall ever celebrate the Providence and Wiſdom of your noble Anceſtors, who have put the Keys of Life and Death (ſo far as concerns you and your Poſterity) into your own hands, not into the hands of your Inferiours; none but your own ſelves know the Rate of your noble Blood, none but yourſelves muſt hold the Ballance in diſpenſing the ſame.

I ſhall proceed in repeating my Defences, as they are reducible to theſe two main Points of Treaſon: and for Treaſon againſt the Statute, (which is the only Treaſon in effect) nothing is alledged for that, but the fifteenth, two-and-twentieth, and twenty-ſeventh Articles. [Here he brought the Sum of all his Replies made to theſe three Articles before, and almoſt in the ſame Words as before; only that Teſtimony of Sir *Henry Vane*'s, becauſe it ſeemed preſſing, he ſtood upon it, and alledged five Reaſons for the nullifying thereof.]

Firſt, That it was but a ſingle Teſtimony, and would not make Faith in a Matter of Debt, much leſs in a Matter of Life and Death; yea, that it was expreſly againſt the Statute to impeach (much leſs to condemn) him upon High-Treaſon, under the Teſtimony of two famous Witneſſes.

Secondly, That he was dubious in it, and expreſs'd it with an *as I do remember*, and *ſuch or ſuch like Words*.

Thirdly, That all the Council of Eight, except himſelf, diſclaim the Words; as if by a ſingular Providence they had taken hold of his Ears only.

Fourthly, That at the time the King had levied no Forces in *Ireland*, and therefore he could not be poſſibly ſo impudent as to ſay to the King, *That he had an Army there, which he might employ for the reducing this Kingdom.*

Fifthly, That he had proved by Witneſſes beyond all Exceptions (Marquis *Hamilton*, the Lord Treaſurer, the Earl of *Northumberland*, Lord *Cottington*, Sir *William Pennyman* and Sir *Arthur Terringham)*, that there was never the leaſt Intention to land thoſe Forces in *England*.

[He went on:]

So much for the Articles that concern Individual Treaſon.

To make up the Conſtructive Treaſon, or Treaſon by way of Accumulation, many Articles are brought againſt me, as if in a heap of Felonies or Miſdemeanours (for in their conceit they reach no higher) ſome prolifical Seed, apt to produce what is treaſonable, could lurk. Here I am charged to have deſigned the Ruin and Overthrow both of Religion and State. The firſt ſeemeth rather to have been uſed to make me odious than guilty, for there is not the leaſt Proof alledged concerning my Confederacy with the Popiſh Faction, nor could there be any indeed; never a Servant in Authority beneath the King my Maſter was ever more hated and maligned by thoſe Men than myſelf, and that for an impartial and ſtrict executing of the Laws againſt them.

Here your Lordſhips may obſerve, that the greater number of the Witneſſes uſed againſt me, either from *Ireland* or from *Yorkſhire*, were Men of that Religion: But for my own Reſolution (I thank God), I am ready every Hour of the Day to ſeal my Diſſatisfaction to the Church of *Rome* with my deareſt Blood.

But, my Lords, give me leave here to pour forth the Grief of my Soul before you: theſe Proceedings againſt me ſeem to be exceeding rigorous, and to have more of Prejudice than Equity, that upon a ſuppoſed Charge of my Hypocriſy or Errors in Religion, I ſhould be made ſo monſtrouſly odious to three Kingdoms; a great many thouſand Eyes have ſeen my Accuſations, whoſe Ears ſhall never hear, that when it came to the upſhot I was never accuſed of them. Is this fair dealing amongſt Chriſtians? But I have loſt nothing by that: Popular Applauſe was ever nothing in my conceit; the Uprightneſs and Integrity of a good Conſcience was, and ever ſhall be, my continual Feaſt; and if I can be juſtified in your Lordſhips Judgments from this grand Imputation, (as I hope I now am, ſeeing theſe Gentlemen have thrown down the Bucklers) I ſhall account myſelf juſtified by the whole Kingdom, becauſe by you, who are the Epitome, the better Part, yea, the very Soul and Life of the Kingdom.

As for my Deſign againſt the State, I dare plead as much Innocency here, as in Matter of my Religion: I have ever admired the Wiſdom of our Anceſtors, who have ſo fixed the Pillars of this Monarchy, that each of them keep a due Proportion and Meaſure with the other; and have ſo handſomely tyed up the Nerves and Sinews of the State, that the ſtraining of any one may bring danger and ſorrow to the whole Œconomy. The Prerogative of the Crown, and the Propriety of the Subject, have ſuch mutual Relations, this takes Protection from that, that Foundation and Nouriſhment from this: And as on the Lute if any one String be too high or too lowly wound up, you have loſt the Harmony; ſo here the Exceſs of a Prerogative is Oppreſſion; of pretended Liberty in the Subject, Diſorder and Anarchy. The Prerogative muſt be uſed as God doth his Omnipotency, upon extraordinary Occaſions; the Laws (anſwerable to that *Potentia ligata in Creaturis)* muſt have place at other times. And yet there muſt be a Prerogative, if there muſt be extraordinary Occaſions; the Propriety of the Subjects is ever to be maintained, if it go in equal pace with this: They are Fellows and Companions, that are and ever muſt be inſeparable in a well-governed Kingdom; and no way ſo fitting, ſo natural to nouriſh and entertain both, as the frequent Uſe of Parliaments; by thoſe a Commerce and Acquaintance is kept betwixt the King and Subject. Theſe Thoughts have gone along with me theſe fourteen Years of my publick Employments, and ſhall, God willing, to my Grave: God, his Majeſty, and my own Conſcience, yea, and all thoſe who have been moſt acceſſary to my inward Thoughts and Opinions, can bear me witneſs that I ever did inculcate this, That the Happineſs of a Kingdom conſiſts in a juſt Poize of the King's Prerogative and the Subject's Liberty; and that Things would never go well, till they went hand in hand together.

I thank God for it, by my Maſter's Favour, and the Providence of my Anceſtors, I have an Eſtate, which ſo intereſteth me in the Common-wealth, that I have no great mind to be a Slave, but a Subject; nor could I wiſh the Cards to be ſhuffled over again, upon hopes to fall upon a better Set: nor did I ever nouriſh ſuch baſe mercenary Thoughts, as to become a Pandar to the Tyranny and Ambition of the greateſt Man living. No; I have, and ever ſhall aim at a fair, but a bounded Liberty; remembring always that I am a Freeman, yet a Subject; that I have a Right, but under a Monarch. But it hath been my Misfortune now, when I am grey-headed, to be charged by the Miſtakers of the Times, who are now ſo highly bent, that all appears to them to be in the extreme for Monarchy, which is not for themſelves. Hence it is, that Deſigns, Words, yea Intentions, are brought out for real Demonſtrations of my Miſdemeanours: ſuch a Multiplying-Glaſs is a prejudicate Opinion.

The Articles contain Expreſſions and Actions; my Expreſſions either in *Ireland* or *England*, my Actions either before or after theſe late Stirs.

[In this Order he went thro' the whole Charge, from the firſt Article to the laſt, in an excellent Method, and repeated all the Sums and Heads of what was ſpoken by him before; only added in the twenty-eighth Article, If that one Article had been proved againſt him, it contained more weighty Matter than all the Charge beſides: and it had not only been Treaſon in him, but alſo Villany, to have betrayed the Truſt of his Majeſty's Army. Yet becauſe the Gentlemen had been ſparing (by reaſon of the Times) to inſiſt upon that Article, tho' it might concern him much, he reſolved to keep the ſame Method, and not utter the leaſt Expreſſion that might ſeem to diſturb the happy Agreement intended, tho' he wiſhed the ſame might deceive his Expectation: Only thus much he admired, how himſelf, being an Incendiary againſt the *Scots* in the twenty-third Article, is now become their Confederate in the twenty-eighth Article; or how he could be charged for betraying *Newcaſtle*, and for fighting with the *Scots* at *Newborne* too, ſeeing fighting with them was no poſſible Means for betraying the Town, but to hinder their Paſſage thither.

That he never adviſed War farther than (in his poor Judgment) concerned the very Life of the King's Authority, and the Safety and Honour of his Kingdoms: Nor ſaw he what Advantage could be made by a War in *Scotland*, where nothing could be gained but many hard Blows. For his part, he honoured the Nation, but he wiſhed they might be ever under their own Climate, and had no deſire they ſhould be too well acquainted with the better Soil of *England:* But he thought that Article had been added in jeſt, or as a Supernumerary; and he very little ſuſpected to be reckoned a Confederate with the *Scots*, and wiſhed (as he hoped it was) that every *Engliſhman* were as free from that Imputation as himſelf: cloſing his Defence with this Speech.]

My Lords, You ſee what may be alledged for this Conſtructive, rather Deſtructive Treaſon. For my part, I have not the Judgment to conceive that ſuch a Treaſon is agreeable either with the fundamental Grounds of Reaſon or Law: not of Reaſon, for how can that be Treaſon in the Lump or Maſs, which is not ſo in any of the Parts? Or how can that make a Thing treaſonable, which in itſelf is not ſo? Not of Law, ſince neither Statute, Common-Law, nor Practice, hath from the beginning of this Government ever mentioned ſuch a Thing; and where, my Lords, hath this Fire, without the leaſt appearance of any Smoke, lien hid ſo many hundred Years, and now breaks forth into a violent Flame to deſtroy me and my Poſterity from the Earth? My Lords, do we not live by Laws, and muſt we be puniſhed by Laws before they be made? Far better were it to live by no Laws at all, but to be governed by thoſe Characters of Diſcretion and Virtue that Nature hath ſtamped in us, than to put this Neceſſity of Divination upon a Man, and to accuſe him of the Breach of Law, before it be a Law at all. If a Waterman upon the *Thames* ſplit his Boat by grating upon an Anchor, and the ſame have a Buoy appending to it, he is to charge his own Inobſervance; but if it hath none, the Owner of the Anchor is to pay the Loſs.

My Lords, If this Crime, which they call Arbitrary Treaſon, had been marked by any Diſcerner of the Law, the Ignorance thereof ſhould be no Excuſe for me; but if it be no Law at all, how can it in rigour or ſtrictneſs itſelf condemn me? Beware you do not awake theſe ſleeping Lions, by the ſearching out ſome neglected Moth-eaten Records; they may one Day tear you and your Poſterity in pieces: It was your Anceſtors Care to chain them up within the Barricadoes of Statutes; be not you ambitious to be more ſkilful and curious than your Forefathers in the Art of killing.

My Lords, It is my preſent Misfortune, for ever yours; and it is not the ſmalleſt part of my Grief, that not the Crime of Treaſon, but my other Sins, (which are exceeding many) have preſented me before this Bar; and except your Lordſhips Wiſdoms provide for it, it may be, the ſhedding of my Blood may make way for the tracing of yours: you, your Eſtates, your Poſterities, lie at the ſtake. If ſuch learned Gentlemen as theſe, whoſe Tongues are well acquainted with ſuch Proceedings, ſhall be ſtarted out againſt you; if your Friends, your Counſel denied Acceſs unto you; if your profeſſed Enemies admitted to witneſs againſt you; if every Word, Intention, or Circumſtance of yours, be ſifted and alledged as treaſonable, not becauſe of a Statute, but becauſe of a Conſequence, or Conſtruction of Lawyers pieced up in a high Rhetorical Strain, and a Number of ſuppoſed Probabilities; I leave it to your

Lordſhips Conſideration, to foreſee what may be the Iſſue of ſuch dangerous and recent Precedents.

Theſe Gentlemen tell me they ſpeak in defence of the Commonwealth, againſt my Arbitrary Laws; give me leave to ſay it, I ſpeak in defence of the Commonwealth, againſt their Arbitrary Treaſon: for if this Latitude be admitted, what Prejudice ſhall follow to King and Country, if you and your Poſterity be by the ſame diſenabled from the greateſt Affairs of the Kingdom? For my poor ſelf, were it not for your Lordſhips Intereſt, and the Intereſt of a Saint in Heaven, who hath left me here two Pledges on Earth, [*At this his Breath ſtopp'd, and he ſhed Tears abundantly in mentioning his Wife, which moved his very Enemies to Compaſſion*] I ſhould never take the pains to keep up this ruinous Cottage of mine; it is loaden with ſuch Infirmities, that in truth I have no great pleaſure to carry it about with me any longer: nor could I ever leave it in a better time than this, when I hope the better part of the World would perhaps think, that by this my Misfortune I had given a Teſtimony of my Integrity to God, my King, and Country. I thank God, I count not the Afflictions of this preſent Life comparable to that Glory, which is to be revealed in the time to come.

My Lords! my Lords! my Lords! Something more I had to ſay, but my Voice and Spirits fail me: only I do in all humility and ſubmiſſion caſt myſelf down before your Lordſhips Feet, and deſire that I might be a *Pharos* to keep you from Shipwreck; do not put ſuch Rocks in your own Way, which no Prudence, no Circumſpection, can eſchew or ſatisfy, but by your utter Ruin. And whether your Judgments in my Caſe (I wiſh it were not the Caſe of you all) be either for Life or Death, it ſhall be righteous in my Eyes, and received with a *Te Deum laudamus*: (and then he lifted up his Eyes, and ſaid) *In te, Domine, confido, ne confundar in æternum!*

This he ſpake with an inimitable Life and Grace. You have his very Words as near as I can remember, only with ſo much loſs and detriment as hath periſhed by tranſcribing the Copy from his own Mouth. But you deſire Impartiality, and indeed you have it, and with ſome Grains too of Allowance; for I was ſo afraid of my own Affection to the Gentleman, that I rather bowed to the other Extremity, and therefore have ſet down his Defences rather to his Diſadvantage by my rude Pen, than in the native Colour, to his eternal Glory, and the Confuſion of his Enemies.

The Repetition of the Charge did not ſpend much time; they proceeded orderly Article by Article, in the very ſame Words and Matter as before; only there was ſome remarkable Flaſhes that paſſed from Mr. *Glyn* (who was the Man) in the time of their handling.

He told them, That he ſhould repreſent the Lord *Strafford* as cunning in his Replies, as he had been crafty in his Actions; that he waved all that was material, and inſiſted only upon the ſecondary Proofs; that it was more than evident throughout all his Charge, how he had endeavoured to bring in an Arbitrary and Tyrannical Form of Government over the Lives, Lands and Liberties of the King's Subjects; yea, had exerciſed a Tyranny over their Conſciences too, by the Oath adminiſtred in *Ireland*: And tho' his malicious Deſigns had taken no effect, yet no Thanks to him, but to the Goodneſs of the King, and the Vigilancy of the Peers. Had they pleaſed, it had been too late to have puniſhed him; for no Rule of Law had been left whereby to cenſure him, after the Death and Expiration of the Laws. And if the Intention of *Guido Faux* might be thought Treaſon, tho' the Houſe was not blown up, then this Intention of his may admit the ſame Cenſure.

He cloſed; That throughout all his Defences he had pretended either Warrants from the King, or elſe the King's Prerogative: and what was this elſe but to draw up a Cloud, and exhale the Vapour for the eclipſing of the bright Sun, by the Jealouſies or Repinings of his Subjects, if the ſtrength of his Piety and Juſtice ſhould not diſpel all theſe Miſts, and ſend them down to their Original? That the very ſtanding and falling of theſe three Kingdoms ſtood upon this Proceſs; all of which do conceive their Safety ſo far intereſted in his juſt Puniſhment, that no ſettling of their Peace or Quiet could be expected without this: That they hoped the Law ſhould never protect him, who had gone about to ſubvert all Law; nor the Nobility (who had the ſame Blood moving in their Veins), by ſubmitting themſelves to his baſe Tyranny, loſe that Privilege and Liberty, which their Anceſtors had bought with their deareſt Lives. Tho' there was no Statute for this Treaſon, was it the leſs monſtrous? For there were none for many hundreds of Years that durſt ever venture upon ſuch Inſolences, to occaſion ſuch a Statute. And were not the fundamental Grounds and Rules of Government ſufficient to riſe up in Judgment againſt him, without the making a particular Statute? This, he ſaid, he left to the Diſpute of the Law; and concluded, that ſeeing they had found out the *Jonah*, who theſe many Years had toſſed and hazarded the Ship of the Commonwealth with continual Storms and Tempeſts, there could be no Calms expected, but by caſting him out into the Seas; which, in all juſtice, they muſt, and do expect from their Hands, who are intruſted by the Body of the Kingdom to do the ſame. The Aggravation of the Offence, he ſaid, he had left to Mr. *Pym*, who here ſpake that Speech which is now in Print.

It was a Sport to ſee how Mr. *Pym* in his Speech was fearfully out, and conſtrained to pull out his Papers, and read with a great deal of Confuſion and Diſorder, before he could recollect himſelf; which failing of his Memory was no ſmall Advantage to the Lieutenant: becauſe, by this means, the Houſe perceived it was a premeditated Flaſh, not grounded upon the Lieutenant's laſt Anſwer, but reſolved on before, whatſoever he ſhould ſay for his own Juſtification. But the Lieutenant was not ſuffered to reply a word, either to *Glyn* or *Pym*, becauſe the laſt Word muſt be theirs. And ſo with *Tueſday* ended the Matter of Fact.

On *Thurſday* the Diſpute in Law is expected.

Upon *Wedneſday*, *April* 14, we were big with Expectation for the Matter of Law, having done before with Matter of Fact; but it ſeems the Houſe of Commons had perceived a great Defection of their Party, and a great Increaſe of the Lord *Strafford*'s Friends in both the Houſes, occaſioned by his inſinuating, honeſt, and witty Defences, and therefore reſolved of no more hearing in publick: therefore it was thought upon by his Accuſers to draw up a Bill of Attainder, and preſent the ſame to the Lords; whereby, Firſt, the Matter of Fact ſhould be declared to have been ſufficiently proved; and then in the Matter of Law, that he had incurred the Cenſure of Treaſon, for intending to ſubvert the fundamental Laws of the Kingdom: For tho' (ſaid they) he cannot be charged by the Letter of the Statute of the twenty-fifth of *Edward* the Third, yet he is within the Compaſs of the *Salvo*, whereby it is provided, That the King and Parliament hath power to determine what is treaſonable, and what not; and that they were confident the Lords would ratify and approve of this Bill of theirs, and give Judgment accordingly.

The Motion was ſtoutly oppoſed by three great Lawyers, (all Members of the Houſe) *Selden*, *Holborne* and *Bridgeman*, who made it manifeſt, that the *Salvo* of 25 *Edw.* III. was repealed, and that no Man could now be convicted of Treaſon, but by the Letter of that Statute: But being put to Voice, it was carried for the Bill, and a Committee appointed for to draw it up.

This gave occaſion of much talk abroad, and they who were otherwiſe the Lord *Strafford*'s Enemies could not find Equity enough in the Bill of Attainder. Some could not conceive what difference imaginable was betwixt the Bill and the Charge preſented before; for in the Charge he was accuſed of Treaſon, and the Bill (tho' they had not the Legiſlative Power) ſeemed nothing but an Affirmation of the ſame. Others (who would have the Bill underſtood of a definitive Sentence, becauſe it was conſecutive to the Proofs) were not ſatisfied, but that it was againſt all Practice, that the Commons ſhould give Sentence upon the Death of a Peer; and that it was againſt common Equity too, that the Complainers ſhould be admitted to be Judges, and that the Party accuſant ſhould give the Judgment. A third ſort gave it out, That this was no Sentence againſt the Lord *Strafford*, but only a paſſing of a new Act of Parliament, about a Matter not hitherto declared treaſonable: But yet theſe doubted, that by declaring the Matter of Fact to be approved, and applying the Cenſure to it, in reference to the Lord *Strafford*, it would ever be thought a Sentence againſt him, to blemiſh his own Fame, and the Blood of his Poſterity. Moreover, that if they were about to make a new Act, it were ſtrange to puniſh a Man for the Breach of ſuch a Statute as was not yet extant *in rerum natura*; which ſhould in reaſon refer only to future Obedience: And (what is more ſtrange) tho' there were a new Statute, yet by what Authority can the Parliament declare any individual or accumulative Act to be treaſonable, which was not ſo before? for it muſt be Treaſon by virtue of a Statute, or elſe no Treaſon at all. Now there is none can be brought, except the twenty-fifth of *Edward* the Third, whereof the Letter of that Statute cannot, by their own Confeſſion, nor was not ſo much as once alledged againſt the Lord *Strafford*: And for the *Salvo* or *Proviſo* (which they mainly inſiſted on), the ſame ſtands repealed by two poſterior Acts of Parliament.

You have the Mutterings of all ſorts of People.

The Lords fearing the Proceedings, as a beaten Path trodden out to the Ruin of their own Lives and Eſtates, told the Houſe of Commons in their Conference upon *Thurſday*, *April* 15, That they would go on the ſame way they did already; and, according to the Order of the Houſe, give full Audience to the Lord *Strafford*'s Counſel in Matter of Law, and that they themſelves, as competent Judges, would by themſelves only give Sentence in the Cauſe; nor was there any other Courſe ſuitable to the Practice and Statutes of the Kingdom, the Safety of the Nobility, or to Equity or common Juſtice.

It was replied by them of the Lower Houſe, That they were reſolved to go on with their Bill; and if the ſame ſhould be rejected by the Lords, they feared a Rupture and Diviſion might follow, to the utter Ruin and Deſolation of the whole Kingdom; that no Content would be given to the Subject, (and this was a ſtrong argument indeed, yet better beſeeming Partiality and Violence, than the pretended Juſtice and Piety of the Times) unleſs the Man who had ſo much intruded upon their Right, and diſcontented the People, might be puniſhed as a Traytor; and for the Practice of the Kingdom, that no Man had ever found ſuch a favourable Hearing; and that the Proceſs againſt *Eſſex*, *Norfolk*, *Somerſet*, were all of them cloſed up in one Day.

Upon *Friday*, *April* 16, the Lords gave Anſwer, That they could expect nothing from the Houſe of Commons, but what ſhould tend to the Peace and Preſervation of the Kingdom: nor was there a more forceable way than to preſerve the Laws and Cuſtoms thereof, leſt Innovation, ſo much complained of by them, might unhappily be found among themſelves: That the Subjects ſhould have all that Juſtice could afford, but that an Act of Injuſtice would never give Satisfaction to the World, nor Safety to themſelves; the Eyes of all foreign States being fixed upon the Buſineſs now in agitation, and the Wiſdom of our Nation either to be much advanced or depreſſed by their Judgments in this Caſe: That the Proceſs againſt *Norfolk* and *Eſſex* (for *Somerſet* was convict only of Felony, and had not ſo much Animadverſion to ſave himſelf by his Book) were for direct and formal Treaſons, comprifed in one or two individual Acts; but this againſt the Lord *Strafford* only arbitrary and accumulative, to be pickt out of Twenty-eight Articles: And therefore that it was impoſſible to have a full examination of them all to give Sentence againſt him. And thoſe Noblemen were charged with ſome actual Breach of Statutes, formerly made; but here a new Statute was to be made, or elſe he to be found guiltleſs. They concluded, that they had given order for his Appearance on *Saturday*, and that in the great Hall at *Weſtminſter*, where the Houſe of Commons might, if they pleaſed, be preſent.

After ſome Deliberation with the Houſe, the Conferrers anſwered, That ſince the Lords had ſo reſolved, they would not deny to be there preſent, and to hear what his Counſel could ſay for him; but to reply any more in publick, they neither could nor would, becauſe of the Bill already paſt: only if the Lords ſhould take any ſcruple in the Matter of Law, they would be ready to give them Satisfaction by a private Conference. (So they willingly declined to do what indeed they could not poſſibly do, that is, to give publick Satisfaction in the Matter of Law.)

Upon *Saturday*, *April* 17, they convened in the great Hall; but they that were of the Committee for the great Charge did not ſtand at the Bar, as before, but ſat promiſcuouſly with the reſt of their Fellows: ſo that a Mouth was not opened in the behalf of the Houſe of Commons all that

Day. After they were ſat, the Lord Steward told the Lieutenant, That the Lords had reſolved to give him a fair Hearing in the Matter of Law, and therefore deſired that the Counſel might keep that Diſtance, Moderation and Reſpect to the Judicatory that was fitting, and not at all to meddle with the Matter of Fact.

The Lieutenant replied, That in all Humility he did acknowledge that Favour from the Lords; and that it was ſuch an one too, as he could not but expect from ſuch honourable Peers and juſt Perſons in whoſe Integrity and Goodneſs (under that which he had placed above) he had repoſed his chiefeſt Confidence; for his Counſel, they knew much better than himſelf what concerned the Point of Diſcretion and Reverence; and that he doubted not but that they would give all Satisfaction and Obedience.

Then his Counſel were called to the Bar, Mr. *Lane*, the Prince's Attorney; Mr. *Gardiner*, Recorder of *London*; Mr. *Loe*, and Mr. *Lightfoot*. Mr. *Lane* ſpake, and much to this Senſe and Purpoſe:

My Lords, there is a heavy Charge lieth on me and my Fellows, nothing leſs than to defend the Life, the Eſtate, the Reputation, yea the Poſterity of this Honourable Perſon at the Bar; if therefore we ſhall be more preſſing, we hope your Lordſhips will interpret this our Forwardneſs to be for Honour and Conſcience-ſake, in a Matter that concerneth both ſo nearly: But it ſhall be our Endeavour to carry ourſelves with our beſt Reſpects to your Lordſhips, and with all Content and Satisfaction to the Honourable Houſe of Commons. And becauſe your Lordſhips mentioned the Matter of Fact, one thing I dare be bold to ſay, That all the Time of this Noble Lord's Defences, he did not ſo much as crave any one of our Opinions; yea, or acquainted us with any thing that tended that way. And for the Matter of Law, thoſe Statutes cited by himſelf were none of our Stock, but taken up at his own adventure: nor do I ſpeak this to derogate from the Pertinency of thoſe Statutes (for they ſhall be the Subject of my Diſcourſe), but that the Nobleman be not diſappointed of your right Conceptions, and his own due Praiſe.

My Lords, it is your pleaſure we meddle not with Matter of Fact, and indeed we need not meddle at all with it, becauſe we hope it is already done, and that ſufficiently to our hands; yet the Matter of Law doth ſo naturally riſe out of the Matter of Fact, that of neceſſity (under your Lordſhips Favour) we muſt ſomewhat grate on this, if we ſpeak on that; nor do I conceive it poſſible for us to ſpeak advantageouſly enough for the Lord *Strafford*'s juſt Defence, unleſs the whole Matter of Fact be determined, either as proved or not proved, or at leaſt ſome ſtates of Queſtions agreed upon, where we may fix and ſettle our Arguments. And therefore it is, my Lords, that I have choſen not at all to touch the Matter of Law (until your Lordſhips ſhall be pleaſed to chalk me out a way), unleſs it be to clear your Judgments in one Statute only, *viz.* 25 *Edw.* III. Becauſe when the ſame was alledged by the Lord *Strafford* in his own Defence, that not being convicted of the Letter thereof, he could not be convicted of Treaſon; I remember the *Salvo* of that Statute was much inſiſted upon by thoſe from the Houſe of Commons, as much conducing to their own ends. My Lords, I will firſt ſpeak of the Statute itſelf, and then of its *Salvo*, or Proviſion. The Statute is, *That if any Man ſhall intend the Death of the King, his Queen, their Children*; *kill the Chancellor, or Judge upon the Bench*; *imbaſe the King's Coin, or counterfeit the Broad-Seal*, &c. *he ſhall be convicted and puniſhed as a Traytor.* That the Lord *Strafford* comes within the Letter of this Statute, is not ſo much as once alledged, nor indeed can it be with any reaſon: All that can be ſaid is, That by Relation, or by Argument *a minori ad majus*, he may be drawn thither; yet that this cannot be, I humbly offer theſe Conſiderations:

Firſt, This is a Declarative Law, and ſuch are not to be taken by way of Conſequence, Equity, or Conſtruction, but by the Letter only; otherwiſe they ſhould imply a Contradiction to themſelves, and be no more Declarative Laws, but Laws of Conſtruction, or Conſtitutive.

Secondly, This is a Penal Law, and ſuch (if our Grounds, hitherto unqueſtioned, hold good) can admit of no Conſtructions or Inferences; for Penalties are to perſuade the keeping of known Laws, not of Laws conjectural, ambiguous, and by conſequence, which perhaps the moſt Learned may not in their Diſputes queſtion; much leſs the Subject (who is not obliged to interpret the Statute) doubt of in the Point of Obedience; yea, rather without any Doubt, he is to obey the Letter of the Statute, and conceive (and that truly) that he is not liable to the Penalty.

Thirdly, We have a notable Law, 13 *Eliz. cap.* 2. whereby it is declared, that the bringing in of Bulls from *Rome* to ſtir up the Subject to Mutiny and Rebellion ſhall be puniſhed as Treaſon. Now if by Interpretation, or by Conſequence, this Senſe might have been thruſt upon the preceding Statutes, the making of this had been ſuperfluous; yea, the Perſons then charged with that Crime might have been impeached of Treaſon, even before the making of this Act.

Anno 21 *Ed.* III. We have a Statute declaring, That for a Servant to kill his Maſter, is an Act of Treaſon: And in the three-and-twentieth Year of the ſame King, a Proceſs of Treaſon was framed againſt a Man for killing his Father, grounded upon the ſame Argument, *a minori ad majus:* But it was found (and the Sentence is yet in the Records), that altho' in the one-and-twentieth Year of *Edward* the Third, that Argument might have been admitted; yet in the twenty-ſeventh it could not, by reaſon of the Declarative Law intervening in the twenty-fifth Year: And this Caſe comes very home to the Point in Law.

My Lords, I will not demand what kind of Offence it may be, for a Man to ſubvert the Fundamental Laws of a Kingdom; the Crime doubtleſs is unnatural and monſtrous, and the Puniſhment muſt keep the ſame Proportion: only I preſume to offer theſe few Things to your Lordſhips Conſiderations:

Firſt, That one or more Acts of Injuſtice, whether maliciouſly or ignorantly done, can in no Senſe of Law be called the Subverſion of the Fundamental Laws; if ſo, as many Judges (perhaps) ſo many Traytors. It is very incident to Man's Nature to err; nor doth the Lord *Strafford* plead his Innocency in Over-ſights, but in Treaſon.

Secondly, I do remember the Caſe of *John de la Pool*, Duke of *Suffolk:* This Man, in the twenty-eighth of *Henry* the Sixth, was charged by the Houſe of Commons with Articles of Treaſon, and thoſe too very like to theſe againſt my Lord *Strafford.*

1. That he had given the King bad Advices.
2. That he had embaſed his Coin.
3. That he had ceſſed Men of War.
4. That he had given out ſummary Decrees.
5. That he had impoſed Taxes.
6. That he had corrupted the Fountain of Juſtice.
7. That he had perſuaded the King to unneceſſary War, and to the giving over of *Anjou* in *France*, *Ovum Ovo.*

And for all theſe, tho' he was charged with High-Treaſon, for wronging the Right of the Subject, and ſubverting the Fundamental Laws of the Kingdom; yet, after a long Agitation, the Matter was found by the Lords of Parliament, not to imply Treaſon, but only Felony. Add to this another, who in the twenty-third of *Henry* the Eighth was charged for ſubverting the *Engliſh* Laws, and yet no Treaſon charged upon him. Add to both the Charge of *Richard Larks*, pleaded at the *Common-Pleas*, who was charged with Treaſon for ſubverting the Law, but convicted only of Felony: By which you may ſee, my Lords, what to this time hath been ſubverting the Laws.

Thirdly, It is very conſiderable, that the Lord *Strafford* is not charged to have ſubverted, but only to have intended to ſubvert the Fundamental Laws: And this I conceive, if there were no more, might keep him free from that Statute of the twenty-fifth of *Edward* the Third. For although, as touching the King, his Queen and Children, Intention is Treaſonable; yet in all other things there mentioned, there muſt be Action beſide Intention: for it is not ſaid, If a Man do intend to kill a Chancellor, it ſhall be Treaſon; but only, if he do kill him; and if he doth actually counterfeit the Broad-Seal. And although a Man ſhould prepare a Furnace, make ready his Stamp, melt his Bullion; yet if he gives not the King's Impreſſion upon the Coin, all his Intentions, yea, his Preparations will not ſerve to make up a Treaſon.

And this (under Favour) may ſerve to anſwer the Caſe of *Guido Faux*, lately objected; unleſs it be alledged, that the Lord *Strafford* had as real an Intention againſt the King's Life as *Faux* had: For tho' the Intention in that Caſe be Treaſon by the Statute, yet in all other things there is no Treaſon without the Action; ſo immenſe and vaſt a Difference both is, and ought to be, betwixt a Project againſt the Royal Blood, and all things elſe of a lower and under Nature.

You ſee therefore, my Lords, that the Body of the Statute cannot ſtick againſt the Lord *Strafford*, neither in Letter, nor in Conſequence; this is not, that muſt not be: All that can be ſaid is, That this Fact may be Treaſon by the Common Law. For my Part, I profeſs my Ignorance, who ever thought the Common Law might declare, but never make a Treaſon; that is, it might be preſuppoſed that there is a Statute whereupon to build a Declaration; and therefore to ſay there is no Statute for it, is to ſay it is no Treaſon at all. The Statute ever makes the Treaſon; and to be declared to be Treaſon, either by Common Law, or by Parliament, are but two different Ways of Proceedings, and muſt both reſolve into one Principle: yea, which comes home to the Point, in the one-and-twentieth of *Edward* the Third, to kill a Man imployed in the King's War, was Treaſon; and the twenty-third, to kill the King's Meſſenger, was Treaſon by Declaration of the Common Law, but always by Reaſon of the Statute; yet none of theſe are now Treaſons, but Felonies only, by Reaſon of the intervening Statute, the twenty-fifth of *Edward* the Third: Such hath ever been thought the Force of its Letter and Declaration; and ſo I will leave it, and ſpeak a Word or two of the *Salvo*, which is this: That becauſe all Particulars could not be then defined, therefore what the Parliament ſhould declare to be Treaſonable in time to come, ſhould be puniſhed as Treaſon.

And according to this Reſervation, in the eighth Year of *Richard* the Second, one who was charged before the *King*'s-*Bench* was afterwards referred to the Parliament; and there, though the Fact was not contained in the Body of the Statute, yet becauſe of the *Proviſo* afore-mentioned it was adjudged Treaſon.

In the eleventh Year of the ſame King, the Duke of *Ireland* and *Nevil* Archbiſhop of *York* were impeached of High-Treaſon by *Glouceſter*, *Arundel*, and *Warwick*; and notwithſtanding the Statute, were convicted thereof by the *Salvo*. But in the one-and-twentieth of the ſame *Richard* the Second, the Tide turned, and the King had ſuch a Hand with the Parliament, that the Sentence was recalled, and thoſe three Noblemen themſelves adjudged Traytors. Again, in the firſt of *Henry* the Fourth, his Succeſſor, that Revocation of the one-and-twentieth of *Richard* the Second was repealed, and the Sentence of the eleventh of his Reign eſtabliſhed. Such were the Toſſings to and fro of Treaſon; and all becauſe of that uncertain *Proviſo*.

Therefore it was, that in the ſame Parliament, the firſt of *Henry* the Fourth, a Petition was preferred by the Nobility to have Treaſon limited with ſome Statute; becauſe they knew not what to ſpeak, or what to do, for fear thereof. And in the tenth Chapter an Act was made upon this Petition, that the *Salvo* ſhould be holden repealed in all times to come, and nothing eſteemed Treaſon but what was literally contained in the Statute of the twenty-fifth of *Edward* the Third: And therefore it is ſaid in the Records, That there was great Joy at the making of this Act, in that the drawn Sword hanging over every Man's Head, by this ſlender Thread of a Conſequence, or Illation, was moved by that Act. Add to this, That in the firſt of Queen *Mary*, the firſt Chapter, the ſame is repeated, *That no Man ſhall be puniſhed in Life or Eſtate as a Traytor, but for the Crime contained in the Statute* 25 *Ed.* III. without the leaſt mention of a pretended *Salvo.*

The Earl of *Northumberland*'s Caſe comes nigh to the Point: he was charged with Treaſon, the firſt of *Henry* the Fourth; and if the Statute of the fifth of *Henry* the Fourth, the firſt Chapter, whereby this *Proviſo* is repealed, had not intervened, no doubt he had been condemned of Treaſon: but he was only convict of Felony, and that becauſe he could not be drawn within the Letter of the Statute of the twenty-fifth of *Edward* the Third. And I dare confidently ſay it, That ſince that Act was made, the firſt of *Henry* the Fourth, the firſt Chapter, whereby the *Proviſo* is repealed, no Man hath ever been declared a Traytor, either by King or Parliament, except it were upon that, or ſome other Statute, literally and declaratively taken. Theſe two things I do offer to your Lordſhips Conſiderations; That the Lord *Strafford* cannot be impeached of Treaſon by the Statute of the twenty-fifth of *Edward* the Third, and that the *Salvo* contained in the ſame ſtands repealed almoſt two hundred Years ago: And this is all I conceive to be neceſſary for that Statute which was alledged by the Lord *Strafford* in his Defence for Matter of Fact.

Then the Recorder ſpake ſome few Words to this Purpoſe; That what was ſpoken upon the Statute, was becauſe it ſeemed inſeparable from the Matter of Fact, that they could proceed no farther, till a State were afforded them; that to do otherwiſe, they conceived, might be very prejudicial unto my Lord *Strafford.*

Firſt, In that they ſhould ſuppoſe that to be done, which is not proved to be.

Secondly, That the Matter of Law ariſeth ſo naturally from the Matter of Fact, that it will be impoſſible to ſeparate one from the other.

Thirdly, That it is the Courſe of all Judicatories, firſt to ſettle the Verdict, and upon that to fix the Arguments, otherwiſe he could conceive no poſſible Way of Proceeding; and therefore, in the Lord *Strafford*'s Name, he moſt humbly intreated, that the Lords would either wholly determine the Matter of Fact (not whether it was Treaſon or no, for then all other Proceedings in the Law were unneceſſary, but whether done or not done) or elſe to give them ſome States of the Queſtion whereunto they might confine themſelves.

Upon this Motion the Houſe was adjourned for that Day, nor hath it met ſince; for the Houſe of Commons are returned to their old Biaſs, and will hear of nothing but the Bill of Attainder; but the Lords ſeem to be more reſolute than before, becauſe they find that they have no Authority to declare a Treaſon in a Fact already paſt, the *Salvo* of the twenty-fifth of *Edward* the Third being repealed; withal, that if the Bill of Attainder ſhould proceed, the King hath as great Power to hinder that at the laſt Blow, as any other Statute: but I hope the Lords will diſburden him of that Envy.

All they which ſtand obliged to the Lord *Strafford*, in Blood, Affection or Deſerving; and all who have been intereſted with him in the King's Service, and many too, who both hate his Perſon, and diſlike his Proceedings; will doubtleſs look upon it, and tender their own Safety, all of them in Likelihood being ſubject to the Charge of Treaſon, if ever they chance to be called to do the King's Service in any Place of Importance.

I cannot expreſs how much the Voice of the Multitude is now altered from what it was lately, nothing now talked of what ſhould be done, but only of what muſt be done: So that if the Lord *Strafford* dies, his very Enemies will confeſs, that it is done more for Neceſſity, than for Juſtice; and rather for the Satisfaction of rancorous Apprehenſions, than for any Guiltineſs in the Cauſe.

Thurſday laſt, *viz. April* 29, was deſigned for the Agitation of the long intermitted Buſineſs concerning the Lieutenant; and the Way was this:

The Lords did meet at the great Hall at *Weſtminſter* about nine of the Clock, not in their Robes, nor did the Lord Steward ſit upon his Sack, but with the reſt promiſcuouſly; nor did the Committee for the Houſe of Commons ſtand at the Bar, but ſat with the reſt of their Fellows; and the Earl of *Strafford* ſat behind the Place where he uſed to ſit before; the Reaſon of theſe Changes was, becauſe the Dyet was appointed not for a Meeting, but for a Conference: ſo curious are we (and that's all) about Formalities. The King, Queen, and Prince were there, according to their Cuſtom: not a Man ſpake a Word in the Houſe all the time, but only Mr. *St. John*, the King's Sollicitor, one of the Committee; whoſe Drift and Purpoſe was to furniſh the Lords with Reaſons, why the Houſe of Commons had proceeded with a Bill of Attainder: and withal, to reply to what the Lord *Strafford* had ſpoken, either by himſelf or his Council, in Matter of Law. The Speech is in Print.

Upon the Cloſe of Mr. *St. John*'s Speech, the Houſe diſſolved; nor was there a Word ſpoken but by Mr. *St. John:* only the Lord Lieutenant uſed the laſt Part of his Rhetorick, and by a dumb Eloquence, *manibus ad ſydera tenſis*, all along Mr. *St. John*'s Speech, made his Replies with a deep Silence.

Upon *Friday*, *April* 30, he petitioned the Lords to be heard again, and that becauſe his Lawyers had not fully ſpoken at their laſt Meeting; but this was denied him, becauſe the Houſe were to have the laſt Speech, nor were they content to ſpeak again.

Upon this Information, or what elſe is not known, the King (it ſeems, fearing the Inconſtancy of the Lords) came to the Houſe on *Saturday*, *May* 1, at Ten of the Clock, and having called for the Houſe of Commons, ſpake much to this Effect.

The King's Speech to the Houſe of Commons.

‘THAT he had ſincerely, without Affection or Partiality, endeavoured to inform himſelf concerning the Lieutenant's Charge; and had, at length, ſeriouſly pondered with himſelf, both concerning the Matter of Fact, and the Matter of Law: and now it ſtood him in hand to clear their Judgments, than to exonerate his own Conſcience. For them, he had two things to declare:

‘*Firſt*, That there was never ſuch a Project, nor had the Lord *Strafford* ever offered ſuch Advice, for the tranſporting of the *Iriſh* Army into *England*; ſo that in nothing the Lieutenant had been more miſunderſtood than in that: which Imputation did in no ſmall Meaſure reflect on himſelf (*the King*) as if he had intended to make War upon his own Subjects; which Thought (*he ſaid*) was far enough from his Breaſt, nor could any Man in Probability think ſo unworthily of him, who had perceived how graciouſly he had dealt with his Subjects elſewhere, that had deſerved a great deal worſe.

‘*Secondly*, That the Lieutenant had never adviſed him to eſtabliſh an Arbitrary Government; nor, if he had, ſhould he have eſcaped condign Puniſhment: nor would any of his good Subjects ever think otherwiſe, unleſs they conceived him either to be a Fool or a Tyrant; that he either could not, or would not diſcern ſuch Wickedneſs. He was well

content (he ſaid) with that Authority and Power which God had put into his Hands; nor ſhould he ever think it his Prerogative, to intrude upon the Propriety of the Subject.

‘For himſelf, and his own Conſcience, (he ſaid) he was now to declare, That, in his own Judgment, there was nothing in the Proceſs againſt the Lieutenant that deſerved the Cenſure of Treaſon. Overſights and Miſdemeanours there were, in ſuch a meaſure, that he confeſſed the Lord *Strafford* was never worthy hereafter to bear any Office in his Kingdoms, no, not ſo much as of a Conſtable; but was to be anſwerable for all his Errors, when they were to be charged upon him; and to this none of them ſhould concur with greater Alacrity than himſelf. That he hoped none of them would deny to give him the Privilege of the firſt Voice, which was, That he would never, in Heart nor Hand, concur with them to puniſh this Man as a Traytor; and deſired therefore, that they would think of ſome other way how the Buſineſs might be compoſed: Nor ſhould it ever be leſs dear to him (tho' with the Loſs of his deareſt Blood) to protect the Innocent, than to puniſh the Guilty.’

Upon *Saturday*, *May* 8, the Bill againſt the Lord *Strafford* paſs'd the Lords; there were Forty-five preſent, of which Nineteen voiced for him, and Twenty-ſix againſt him. The greateſt part of his Friends abſented themſelves, upon Pretence (whether true or ſuppoſititious) that they feared the Multitude; otherwiſe his Suffrages had more than counterpoiſed the Voters for his Death.

Sunday all the Day the King was reſolute never to give way to the Bill againſt the Lord *Strafford*, telling them withal, That it ſeemed ſtrange to him that the Man could not die, unleſs he, and he only, by giving Sentence the King's legiſlative way, ſhould condemn him.

The ſame Day the King received the following Letter from the Earl*.

IT hath been my greateſt Grief in all my Troubles, to be taken as a Perſon that ſhould endeavour to preſent, and ſet Things amiſs between your Majeſty and your People, and to have given Counſel tending to the Diſquiet of your Majeſty and your three Kingdoms.

Moſt true it is, that ſuch an Attempt (my private Condition conſider'd) had been a great Madneſs, ſeeing, thro' your gracious Favour, I was ſo provided, as I could not expect in any kind to mend my Fortune, or to pleaſe my Mind, more than by reſting where your bounteous Hand had placed me; nay, the Buſineſs is moſt mightily miſtaken; for unto your Majeſty it is well known, that my poor and humble Advices concluded ſtill in this, That your Majeſty ſhould never be happy, till there were a right Underſtanding procured betwixt you and them: No other Means to effect and ſettle this Happineſs, but by the Counſel and Aſſent of the Parliament; and no way to prevent the growing Evils of this State, but by putting yourſelf entirely upon the Loyalty and good Affection of your Subjects.

Yet (ſuch is my Misfortune) the Truth finds little Credit, the contrary (it ſeems) generally believed, and myſelf reputed the Cauſe of this great Separation betwixt you and your People: Under a heavier Cenſure than this, I am perſuaded no Gentleman can ſuffer; and now I underſtand, that the Minds of Men are the more incenſed againſt me, notwithſtanding your Majeſty hath declared, That in your Princely Opinion I am not guilty of Treaſon, nor are you ſatisfied in Conſcience to paſs the Bill. This brings me into a great Streight. Here is before me the Ruin of my Children and Family, hitherto untouch'd in all the Branches of it with any foul Crime. Here are before me the many Evils which may befal your ſacred Perſon, and the whole Kingdom, ſhould yourſelf and the Parliament be leſs ſatisfied the one with the other than is neceſſary for the King and People. Here are before me the Things moſt valued, moſt feared by mortal Men, Life and Death: To ſay, Sir, there hath not been a Conflict within me about theſe Things, were to make myſelf leſs Man than (God knows) my Infirmities will give me leave; and to call a Deſtruction upon myſelf and my young Children, where the Intentions (at leaſt) of my Heart have been innocent of this great Offence, (may be believed) would find no eaſy Conſent from Fleſh and Blood.

But, out of much Sadneſs, I am come to a Reſolution of that which I take to be beſt becoming me, that is, To look upon that which is principally to be conſider'd in itſelf, and that is, doubtleſs, the Proſperity of your ſacred Perſon and the Commonwealth, infinitely to be preferred before any Man's private Intereſt: And therefore, in few Words, as I have put myſelf wholly upon the Honour and Juſtice of my Peers, and ſo clearly as I wiſh your Majeſty had been pleas'd to have ſpared that Declaration of yours on Saturday *laſt, and to have left me intirely to their Lordſhips; ſo now, (to ſet your Majeſty's Conſcience at liberty) I do moſt humbly beſeech you, for the preventing of ſuch Miſchiefs as may happen by your Refuſal to paſs the Bill, by this Means to remove (praiſed be God I cannot ſay this accurſed, but I confeſs) this unfortunate Thing forth of the Way towards that bleſſed Agreement, which God, I truſt, ſhall for ever eſtabliſh betwixt you and your Subjects. Sir, my Conſent herein ſhall acquit you more to God than all the World can do beſide. To a willing Man there is no Injury done; and, as by God's Grace, I forgive all the World, with a Calmneſs and Meekneſs of infinite Contentment to my diſlodging Soul, ſo, Sir, I can give the Life of this World with all Chearfulneſs imaginable, in the juſt Acknowledgments of your exceeding Favours, and only beg, that in your Goodneſs you would vouchſafe to caſt your gracious Regard upon my poor Son and his three Siſters, leſs or more, and no otherwiſe, than their unfortunate Father ſhall appear more or leſs guilty of this Death.* God preſerve your Majeſty,

Your Majeſty's moſt Humble,
And Faithful Subject and Servant,

Tower, *May* 9,
1641.

STRAFFORD.

Upon the Receipt whereof, and after they had wreſtled him breathleſs, at laſt *victus dedit manus*; being overcome with ſuch unceſſant Importunities, he yielded. And about nine of the Clock at Night the King promiſed to ſign both the Bills the next Morning; which was accordingly done, and a Commiſſion drawn up for his Execution, which was on the *Wedneſday* following.

HAving mounted the Scaffold, he made his Obeiſances, and began to take his laſt Farewell of his Friends, who appear'd much more concern'd

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* Clar. *Hiſt.* Vol. I. p. 202.

concern'd than himſelf: and obſerving his Brother, Sir *George Wentworth*, to weep exceſſively, Brother, (ſaid he, with a chearful Briſkneſs) What do you ſee in me to deſerve theſe Tears? Doth any indecent Fear betray in me a Guilt, or my innocent Boldneſs any Atheiſm? Think now that you are accompanying me the third time to my Marriage-bed: Never did I throw off my Clothes with greater Freedom and Content than in this Preparation to my Grave: That Stock [pointing to the Block] muſt be my Pillow; here ſhall I reſt from all my Labours: No Thoughts of Envy, no Dreams of Treaſon, Jealouſies or Cares for the King, the State, or myſelf, ſhall interrupt this eaſy Sleep; therefore, Brother, with me, pity thoſe who, beſides their Intention, have made me happy; rejoice in my Happineſs, rejoice in my Innocence.

Then kneeling down, he made this Proteſtation: I hope, Gentlemen, you do not think that either the Fear of Loſs, or Love of Reputation, will ſuffer me to bely God and my own Conſcience at this time. I am now in the very Door going out, and my next Step muſt be from Time to Eternity, either of Peace or Pain: To clear myſelf before you all, I do here ſolemnly call God to witneſs, I am not guilty, ſo far as I can underſtand, of the great Crime laid to my Charge, nor have ever had the leaſt Inclination or Intention to damnify or prejudice the King, the State, the Laws, or the Religion of this Kingdom; but with my beſt Endeavours to ſerve all, and to ſupport all: *So may God be merciful to my Soul.*

Then riſing up, he ſaid, he deſired to ſpeak ſomething to the People, but was afraid he ſhould be heard by few, in regard of the Noiſe: but having firſt fitted himſelf to the Block, and riſing again, he thus addreſs'd himſelf to the Spectators.

MY Lord Primate of *Ireland*, and my Lords, and the reſt of theſe noble Gentlemen, It is a great Comfort to me to have your Lordſhips by me this Day, becauſe I have been known to you a long time, and I now deſire to be heard a few Words. I come here, by the good Will and Pleaſure of Almighty God, to pay that laſt Debt I owe to Sin, which is Death; and by the Bleſſing of that God, to riſe again thro' the Merits of Jeſus Chriſt to Righteouſneſs, and Life eternal. [Here he was a little interrupted.]

My Lords, I am come hither to ſubmit to that Judgment which hath paſſed againſt me, I do it with a very quiet and contented Mind; I thank God I do freely forgive all the World; a Forgiveneſs that is not ſpoken from the Teeth outward, (as they ſay) but from the very Heart: I ſpeak it in the Preſence of Almighty God, before whom I ſtand, that there is not a diſpleaſing Thought ariſing in me towards any Man living. I thank God I can ſay it, and truly too, my Conſcience bearing me witneſs, that in all my Employments, ſince I had the Honour to ſerve his Majeſty, I never had any thing in the Purpoſe of my Heart, but what tended to the joint and individual Proſperity of King and People, altho' it hath been my ill Fortune to be miſconſtrued.

I am not the firſt that hath ſuffered in this kind; it is the common Portion of us all, while we are in this Life, to err; righteous Judgment we muſt wait for in another Place, for here we are very ſubject to be miſjudged one of another. There is one Thing that I deſire to free myſelf of, and I am very confident [ſpeaking it now with much Chearfulneſs] that I ſhall obtain your Chriſtian Charity in the Belief of it. I was ſo far from being againſt Parliaments, that I did always think the Parliaments of *England* were the moſt happy Conſtitutions that any Kingdom or Nation lived under, and the beſt Means, under God, to make the King and People happy.

For my Death I here acquit all the World, and beſeech the God of Heaven heartily to forgive them that contrived it, tho' in the Intentions and Purpoſes of my Heart I am not guilty of what I die for: And, my Lord Primate, it is a great Comfort for me, that his Majeſty conceives me not meriting ſo ſevere and heavy a Puniſhment, as is the utmoſt Execution of this Sentence. I do infinitely rejoice in this Mercy of his, and I beſeech God to return it into his own Boſom, that he may find Mercy when he ſtands moſt in need of it.

I wiſh this Kingdom all the Proſperity and Happineſs in the World; I did it living, and now dying, it is my Wiſh. I do moſt humbly recommend this to every one who hears me, and deſire they would lay their Hands upon their Hearts, and conſider ſeriouſly, whether the Beginning of the Happineſs and Reformation of a Kingdom ſhould be written in Letters of Blood; conſider this when you are at your Homes, and let me be never ſo unhappy, as that the leaſt Drop of my Blood ſhould riſe up in Judgment againſt any one of you: But I fear you are in a wrong Way.

My Lords, I have but one Word more, and with that I ſhall end. I profeſs that I die a true and obedient Son to the Church of *England*, wherein I was born, and in which I was bred. Peace and Proſperity be ever to it.

It hath been objected (if it were an Objection worth the anſwering) that I have been inclined to Popery; but I ſay truly from my Heart, that from the time that I was One and twenty Years of Age, to this preſent, going now upon Forty-nine, I never had in my Heart to doubt of this Religion of the Church of *England*, nor ever had any Man the Boldneſs to ſuggeſt any ſuch thing to me, to the beſt of my Remembrance. And ſo being reconciled by the Merits of Jeſus Chriſt my Saviour, into whoſe Boſom I hope I ſhall ſhortly be gathered, to thoſe eternal Happineſſes which ſhall never have end; I deſire heartily the Forgiveneſs of every Man for any raſh or unadviſed Words, or any thing done amiſs. And ſo, my Lords and Gentlemen, farewell; farewell all Things of this World.

I deſire that you would be ſilent, and join with me in Prayer, and I truſt in God we ſhall all meet and live eternally in Heaven, there to receive the Accompliſhment of all Happineſs; where every Tear ſhall be wiped away from our Eyes, and every ſad Thought from our Hearts: And ſo God bleſs this Kingdom, and Jeſus have Mercy on my Soul.

Then turning himſelf about, he ſaluted all the Noblemen, and took a ſolemn Leave of all conſiderable Perſons upon the Scaffold, giving them his Hand.

After that, he ſaid, Gentlemen, I would ſay my Prayers, and intreat you all to pray with me, and for me; then his Chaplain laid the Book of *Common-Prayer* upon the Chair before him as he kneeled down, on which he prayed almoſt a Quarter of an Hour, and then as long, or longer, without the Book, and concluded with the *Lord's-Prayer*.

Standing up, he ſpies his Brother, Sir *George Wentworth*, and calls him to him, ſaying, Brother, we muſt part; remember me to my Siſter, and to my Wife, and carry my Bleſſing to my Son, and charge him that he fear God, and continue an obedient Son to the Church of *England*, and warn him that he bear no private Grudge, or Revenge, toward any Man concerning me; and bid him beware that he meddle not with Church-Livings, for that will prove a Moth and Canker to him in his Eſtate; and wiſh him to content himſelf to be a Servant to his Country, not aiming at higher Preferments.

'*Aliter.*] To his Son, Mr. *Wentworth*, he commends himſelf, and 'gives him charge to ſerve his God, to ſubmit to his King with all Faith 'and Allegiance in Things temporal, to the Church in Things ſpiritual; 'chargeth him again and again, as he will anſwer it to him in Heaven, 'never to meddle with the Patrimony of the Church; for if he did, it 'would be a Canker to eat up the reſt of his Eſtate.'

Carry my Bleſſings alſo to my Daughters, *Anne* and *Arabella*, charge them to ſerve and fear God, and he will bleſs them; not forgetting my little Infant, who yet knows neither Good nor Evil, and cannot ſpeak for itſelf; God ſpeak for it and bleſs it. Now, ſaid he, I have nigh done; one Stroke will make my Wife huſbandleſs, my dear Children fatherleſs, and my poor Servants maſterleſs, and will ſeparate me from my dear Brother, and all my Friends; but let God be to you and them all in all.

After this, going to take off his Doublet, and to make himſelf unready, he ſaid, I thank God I am not afraid of Death, nor daunted with any Diſcouragement riſing from any Fears, but do as chearfully put off my Doublet at this time, as ever I did when I went to Bed: Then he put off his Doublet, wound up his Hair with his Hands, and put on a white Cap.

Then he called, Where is the Man that is to do this laſt Office? [meaning the Executioner] call him to me; when he came and aſk'd him Forgiveneſs, he told him, he forgave him and all the World. Then kneeling down by the Block, he went to Prayer again himſelf, the Primate of *Ireland* kneeling on the one ſide, and the Miniſter on the other: To the which Miniſter, after Prayer, he turned himſelf, and ſpake ſome few Words ſoftly, having his Hands lifted up, and cloſed with the Miniſter's Hands.

Then bowing himſelf to lay his Head upon the Block, he told the Executioner, That he would firſt lay down his Head to try the Fitneſs of the Block, and take it up again before he would lay it down for good and all; and ſo he did: And before he laid it down again, he told the Executioner, that he would give him Warning when to ſtrike by ſtretching forth his Hands; and preſently laying down his Neck upon the Block, and ſtretching forth his Hands, the Executioner ſtruck off his Head at one Blow; and taking it up in his Hand, ſhewed it to all the People, and ſaid, *God ſave the King.*

His Body was afterwards embalmed, and appointed to be carried into *Yorkſhire*, there to be buried amongſt his Anceſtors.

An Act for Reverſing the Earl of Strafford's *Attainder.*

WHEREAS *Thomas* late Earl of *Strafford* was impeached of High-Treaſon, upon pretence of endeavouring to ſubvert the Fundamental Laws, and called to a public and ſolemn Arraignment and Trial before the Peers in Parliament, where he made a particular Defence to every Article objected againſt him; inſomuch that the turbulent Party then ſeeing no hopes to effect their unjuſt Deſigns, by any ordinary Way and Method of Proceedings, did at laſt reſolve to attempt the *Deſtruction* and *Attainder* of the ſaid Earl, by an Act of Parliament, to be therefore purpoſely made, to condemn him upon *Accumulative Treaſon*, none of the pretended Crimes being Treaſon apart, and ſo could not be in the whole, if they had been proved, as they were not: and alſo judged him guilty of *Conſtructive Treaſon*, (that is, of levying War againſt the King) tho' it was only the commanding an Order of the Council-Board in *Ireland*, to be executed by a Serjeant at Arms and three or four Soldiers, which was the conſtant Practice of the Deputies there for a long time. To the which end, they having firſt preſented a Bill for this Intent to the Houſe of Commons, and finding there more Oppoſition than they expected, they cauſed a Multitude of tumultuous Perſons to come down to *Weſtminſter*, armed with Swords and Staves, and to fill both the *Palace-Yards*, and all the Approaches to both Houſes of Parliament, with Fury and Clamour, and to require *Juſtice*, *ſpeedy Juſtice*, againſt the Earl of *Strafford*; and having by thoſe and other undue Practices obtained that Bill to paſs the Houſe of Commons, they cauſed the Names of thoſe reſolute Gentlemen, who in a Caſe of innocent Blood had freely diſcharged their Conſciences, being Fifty-nine, to be poſted up in ſeveral Places about the Cities of *London* and *Weſtminſter*, and ſtiled them *Straffordians*, and Enemies to their Country; hoping thereby to deliver them up to the Fury of the People, whom they had endeavoured to incenſe againſt them. And then procured the ſaid Bill to be ſent up to the Houſe of Peers, where it having ſome time reſted under greater Deliberation; at laſt, in a time when a great part of the Peers were abſent by reaſon of the Tumults, and many of thoſe who were preſent proteſted againſt it, the ſaid Bill paſſed the Houſe of Peers: and at length his Majeſty, the late King *Charles* I. of glorious Memory, granted a Commiſſion for giving his Royal Aſſent thereunto; which nevertheleſs was done by his ſaid Majeſty with exceeding great Sorrow then, and ever remembred by him with unexpreſſible Grief of Heart; and out of his Majeſty's great Piety, he did publickly expreſs it, when his own Sacred Life was taken away, by the moſt deteſtable Traytors that ever were.

For all which Cauſes, be it declared and enacted by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, That the Act, intitled *An Act for the Attainder of* Thomas *Earl of* Strafford *of High-Treaſon*, and all and every Clauſe and Article, and

Thing therein contained, being obtained as aforeſaid, is now hereby repealed, revoked, and reverſed.

And to the end that Right be done to the Memory of the deceaſed Earl of *Strafford* aforeſaid, be it farther enacted, That all Records and Proceedings of Parliament, relating to the ſaid *Attainder*, be wholly cancelled and taken off the File, or otherwiſe defaced and obliterated; to the intent the ſame may not be viſible in After-Ages, or brought into example, to the Prejudice of any Perſon whatſoever.

Provided, That this Act ſhall not extend to the future queſtioning of any Perſon or Perſons, however concerned in this Buſineſs; or who had any hand in the Tumults, or diſorderly procuring the Act aforeſaid; any thing herein contained to the contrary thereof notwithſtanding.

A Copy of the Paper poſted up at the Corner of the Wall of Sir William Brunkard'*s Houſe, in the* Old Palace-yard *in* Weſtminſter, Monday May 3, 1641.

The Names of the *Straffordians* poſted.

1. Lord *Digby*
2. Lord *Compton*
3. Lord *Buckhurſt*
4. Sir *Robert Hatton*
5. Sir *Thomas Fanſhaw*
6. Sir *Edward Alford*
7. Sir *Nicolas Slaning*
8. Sir *Thomas Danby*
9. Sir *George Wentworth*
10. Sir *Peter Wentworth*
11. Sir *Frederick Cornwallis*
12. Sir *William Carnaby*
13. Sir *Richard Winn*
14. Sir *Jarvis Clifton*
15. Sir *William Withrington*
16. Sir *William Pennyman*
17. Sir *Patrick Curwent*
18. Sir *Richard Lee*
19. Sir *Henry Slingſby*
20. Sir *William Portman*
21. Mr. *Jarvis Hollis*
22. Mr. *Sydney Godolphin*
23. Mr. *Cooke*
24. Mr. *Coventry*
25. Mr. *Benjamin Weſton*
26. Mr. *William Weſton*
27. Mr. *Selden*
28. Mr. *Alford*
29. Mr. *Lloyd*
30. Mr. *Herbert*
31. Captain *Digby*
32. Serjeant *Hyde*
33. Mr. *Taylor*
34. Mr. *Griffith*
35. Mr. *Scawen*
36. Mr. *Bridgeman*
37. Mr. *Fettiplaſs*
38. Dr. *Turner*
39. Captain *Charles Price*
40. Dr. *Parry*, Civilian.
41. Mr. *Arundel*
42. Mr. *Newport*
43. Mr. *Holborne*
44. Mr. *Noel*
45. Mr. *Kirton*
46. Mr. *Pollard*
47. Mr. *Price*
48. Mr. *Trevanian*
49. Mr. *Jane*
50. Mr. *Edgecombe*
51. Mr. *Chicheley*
52. Mr. *Mallery*
53. Mr. *Porter*
54. Mr. *White*, Secret. E. D.
55. Mr. *Warwick*

XL. *The Trial of Colonel* Nathanael Fiennes[*], *before a Council of War at* St. Albans, *for cowardly ſurrendering the City and Caſtle of* Briſtol, *the* 14*th of* December 1643. 19 Car. I. *Taken out of the Account given thereof by Mr.* Prynn *and Mr.* Walker.

COLONEL *Fiennes* having been taxed with a cowardly Surrender of *Briſtol*, thought proper to juſtify himſelf by a ſet Speech in the Houſe of Commons, and alſo by a printed Relation of the Fact, in both which he deſired that the Affair might be examined in a Council of War, for which Purpoſe he obtained an Order of the Houſe.

To this Relation Mr. *Walker* publiſhed an Anſwer, and Mr. *Prynn*, in a Book intitled *Rome's Maſterpiece*, ſtiles this Action, *the moſt cowardly and unworthy Surrender of* Briſtol.

Hereupon Mr. *Prynn* and Mr. *Walker* were ſummoned to the Council of War, to make good what they had alledged againſt Colonel *Fiennes*. Mr. *Prynn* and Mr. *Walker* being thus made Parties, Petitioned his Excellency the Lord General[†] to appoint a proper Time and Place within *London* or *Weſtminſter* for the Trial and Examination of this Affair: They alſo drew up Articles of Impeachment againſt Col. *Fiennes*, and preſented them, together with a Petition, to the Houſe of Commons, who upon reading the Petition came to the following Reſolutions.

Die Mercurii 15 Novembris 1643.

T*HE humble Petition of* Clement Walker *and* William Prynn *Eſquires, concerning Mr.* Nathanael Fiennes, *and the Surrender of* Briſtol, *was this Day read in the Houſe of Commons; and Articles of Accuſation of the ſaid Mr.* Fiennes *touching the Surrender of the ſaid City of* Briſtol, *and Caſtle, were this Day likewiſe preſented to the ſaid Houſe. A Letter from Mr.* Prynn *to Mr.* Nathanael Fiennes *was likewiſe read.*

Ordered by the Houſe of Commons, that as they ſhall be careful that there ſhall be a fair and equal Trial of Mr. Nathanael Fiennes, *ſo they will take the Petition of the Petitioners, and the Articles, after the Trial, into Conſideration, inaſmuch as it ſhall concern my Lord General and the Council of War, and as it ſhall concern the Privilege of Parliament.*

Reſolved, &c.

That the Articles, entituled, Articles of Accuſation and Impeachment againſt Colonel Nathanael Fiennes, *late Governor of the City and Caſtle of* Briſtol, *touching the diſhonourable Surrender thereof to the Enemy, contrary to his Truſt and Duty, by* Clement Walker, *and* William Prynn *Eſquires, ſhall be now read. The ſaid Articles and Impeachment were accordingly read.*

The Petition and Articles were ſigned Clement Walker, *and* William Prynn; *and they were both called in, and at the Bar being demanded, whether the Names ſubſcribed were of their own Hand-writing, did avow the Names to be of their own Hand-writing, and did avow the ſaid Petition and Articles.*

Ordered that a Copy of theſe Articles, atteſted under the Clerk's Hand, be forthwith ſent to my Lord General.

H. Elſynge, Cler. Parl. D. Com.

Soon after theſe Reſolutions, *viz.* on *Thurſday December* 14, came on the Trial before the Council of War at St. *Albans*.

The Council being aſſembled in a Room adjoining to the Town-Hall, Mr. *Prynn* and Mr. *Walker* appeared there, when Dr. *Doriſlaus*, Judge-Advocate of the Army, there demanded of them, whether they had any Articles of Impeachment drawn againſt Colonel *Fiennes?* To which Mr. *Prynn* replied, that he being a Member of the Houſe of Commons, they had exhibited their Articles to that Houſe, who by Order had ſent a Copy of them to his Excellency, upon which they were to proceed. Which the Advocate thereupon acknowledging, my Lord *Roberts*, Preſident of the Council of War, commanded him to read the ſaid Order, and Articles ſent together with it. As ſoon as the Order was read, Mr. *Prynn* tendred a Copy of the Articles of Impeachment under Mr. *Walker*'s and his own Hands, agreeing with thoſe deliver'd to the Houſe, which he averred they were there ready to make good in each Particular; deſiring the Council to proceed upon them, becauſe the other was but a Copy which they had not ſubſcribed, but this they now tendered an Original; which was aſſented to.

Upon this Dr. *Doriſlaus* the Judge-Advocate was commanded to read the Articles; but Mr. *Prynn* then perceiving the Doors kept cloſe, contrary to Expectation, and all Perſons, Auditors, but themſelves alone, excluded; and fearing that by this Means a Door would be opened to miſreport the Proceedings of this Trial, before the Reading of the Articles made this requeſt to the Council, that this Hearing might be as publick as the Cauſe itſelf, and as that Place could afford, the Door ſet open, and none excluded; the rather, becauſe himſelf and Mr. *Walker* (being no Challengers, but challenged) were engaged in this Proſecution, not in their own particular Intereſts but the Republick's, and that by ſpecial Order of Parliament (the repreſentative Body of the Kingdom) which had ordered *a fair and equal Trial*, which they humbly conceived to be a free and open one, agreeable to the Proceedings of Parliament, and all other Courts of Juſtice in the Realm; which ſtand open to all, and from whence no Auditors are, or ought to be excluded.

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[*] Ruſh. Col. *Vol.* 3. p. 153, 284. Clar. Hiſt. *Vol.* 2. p. 315.

[†] *The Earl of* Eſſex.

Colonel *Fiennes* oppoſing this Motion, alledged, That we ſuſpected the Integrity of that Court, as appeared by this Requeſt for an open Trial, and our Endeavours to appeal therefrom by ſeveral Petitions to the Parliament, for a Trial before the Houſe in *London* or *Weſtminſter*; whereas he had caſt himſelf freely and clearly upon their Juſtice, (which he no ways ſuſpected) to whom the Cognizance of ſuch Cauſes properly belonged; and therefore deſired the Hearing might be private, according to the Proceedings uſed in ſuch Courts. Upon which Dr. *Doriſlaus*, Judge-Advocate, intervening, told the Proſecutors and Council that it was againſt *the Stile and Courſe of a Court Martial to be publick* and open: therefore it might not be admitted upon any Terms.

To which Mr. *Prynn* replied, That he no ways diſtruſted the Juſtice or Integrity of this Honourable Council, for then he would not have appeared before them at this Place and Time to crave Juſtice from them: That he was a Common Lawyer, and by his Profeſſion, his late Proteſtation, and *ſolemn Covenant*, bound to maintain the fundamental Laws of the Kingdom and Liberty of the Subject: That the Members of this Honourable Council, as well as himſelf, had not only taken the like ſolemn Proteſtation and Covenant, but alſo put themſelves in Arms, to maintain and defend the ſaid Laws and Liberties of the Subject to the uttermoſt: That by the Laws and Statutes of the Realm, all Courts of Juſtice ever have been, are, and ought to be held openly and publickly, not cloſe like a Cabinet-Council; witneſs all Courts of Juſtice at *Weſtminſter*, and elſewhere, yea, all our Aſſizes and Seſſions, wherein Men, tho' indicted but for a private Felony, Murder, or Treſpaſs, (which nothing near concerns the Republick ſo highly as this diſhonourable Surrender of *Briſtol)* have always open Trials: And if ſuch petty Cauſes, then much more this of moſt general Concernment to the whole Realm, recommended to *a fair Trial* by the Parliament itſelf, ought to be as open and publick as poſſible, to ſatisfy both the Parliament and People: That not only in Courts of Common Law, but in the Admiralty itſelf, and all other Courts, proceeding by the Rules either of the Civil or Canon Law, the Proceedings have ever been publick, the Courts open. And even in late Proceedings by martial Law before a Council of War, the Trials of Delinquents in *England* have been public, as appears by the Trials of *Yeomans* and *Butcher* at *Briſtol*, before Colonel *Fiennes* himſelf, which were publick; and by the Trial of Mr. *Tomkins*, *Challoner*, and others ſince, before a Council of War at the *Guild-Hall* of *London*, in preſence of both Houſes of Parliament and the whole City, no Comers being thence excluded. Wherefore this Caſe being of the ſame publick Nature, and as much or more concerning the Kingdom as theirs, ought to receive as publick a Trial as theirs did.

To which *Doriſlaus* anſwered, that himſelf proteſted againſt the open Trial of *Tomkins* and *Challoner*, as a breach upon the Council of War's Privileges; but was over-ruled therein, to give the Parliament and City Content; adding, that all Councils of War in foreign Parts were ever private, and ours now uſed not to be guided by Common or Statute Laws, or the Courſe of other Courts, but by their own Orders; and this being a Council, it was againſt the Nature and Conſtitution of it to be publick.

To which Mr. *Prynn* rejoined: Firſt, That there was as great cauſe to give the Parliament, City, and Kingdom Satisfaction in this, as in the other fore-named Caſe, it being of as publick Concernment. Next, That we of *England* are not to be guided by foreign Laws or Precedents, but by our own domeſtick: That the Common Law, the Statutes of the Realm, and conſtant Practice of all our other Courts of Juſtice, ought to regulate the Proceedings of the Council of War, not the Council of War's to repeal and controul them; eſpecially in an Army which hath taken up Arms, which are waged by the Parliament of purpoſe to defend the fundamental Laws and Subjects Liberties, not to thwart them: That it was both againſt the Laws and Subjects Liberty (as he humbly conceived) to deny any Proſecutor or Subject an open Trial, and thus to chamber up or reſtrain Juſtice *intra privatos parietes*, in any, much more in this publick Cauſe. That the Judge-Advocate could produce no one Precedent for ſuch a cloſe Trial within our Realm in any former Age; and therefore he ſhould make no ſuch new Precedent now. That all Caſes of this nature, touching the cowardly ſurrendring of Towns and Caſtles, were, in former Times, tried only in full Parliament, as appears by the Caſes of *Gomines*, *Weſton*, the Biſhop of *Norwich*, and others, and that upon very good reaſon; ſince Caſes, which concern all, are fitteſt to be determined in that higheſt Court which repreſents all the Realm. That this Council of War had a double Capacity and Conſideration; Firſt, as a Council of War only, to deliberate of things neceſſary for the regulating and managing of military Affairs; and in this Regard it ought to be ſecret in all ſuch Debates, and not communicate their Councils: But in this Capacity we were not now before it. Secondly, as a Court of Juſtice, to proceed criminally againſt Malefactors; and in this Reſpect it ought (as he believed) to be publick and open to all Comers. To put this out of doubt, he would inſtance only in one Example: The High Court of Parliament is both the *ſupremeſt great general Council* for Peace and War, and the *higheſt Court of Juſtice* in the Realm: as it is a Council to conſult, debate, or deliberate of the military or civil Affairs of the Kingdom, ſo it is always private, none but the Members and Officers of either Houſe being admitted to their Conſultations or Debates. But as it is a Court of Juſtice to puniſh Malefactors, ſo the Proceedings of both or either Houſe are always open and publick; as appears by the late Trial of the Earl of *Strafford* in *Weſtminſter-Hall*, and infinite other Precedents of antient and preſent Times. If then this ſupremeſt Council of all others, as it is a Court of Juſtice, ſtands ever open unto all, and the Proceedings of it be always publick, without any Infringement of its Privileges as a ſupreme Council of War and Peace; then certainly this honourable Council of War (inferior to it both in Power and Juriſdiction) as it is now a Court of Juſtice, may and ought to hold their Proceedings and Seſſions publickly in this common Cauſe, without any violation of its Privileges as a Council. What therefore the Peers in Parliament once anſwered the Prelates in a Caſe of *Baſtardy*, he hoped this honourable Council would now anſwer the Advocate in this Caſe of our Impeachment, **Nolumus leges Angliæ mutare, quæ hucuſque uſitatæ ſunt & approbatæ*; and ſo allow us a publick Trial, to ſatisfy both the Parliament and People, whoſe Eyes are fixed on it; elſe, if it ſhould be private, they would be apt to report, *it was huddled up in a Corner:* For which innocent Expreſſion, as we intended it, (St. *Albans* and this Council, in reſpect of *London* and the Parliament, being but a *Corner*) ſo much Exception was taken in the Houſe againſt our Petition. In fine, he alledged, that Colonel *Fiennes* himſelf, who had made ſuch publick Profeſſions of his Innocency, both before the Houſe of Commons, his Excellency, and the World, in printed Speeches, Relations, and Letters, had moſt cauſe to deſire, and leaſt reaſon to decline an open Trial, *ſince Truth and Innocency ſeek no Corners:* And his Honour, his Honeſty now openly charged, could not otherwiſe than openly be diſcharged; no Trial being publick enough for him who preſumes his Innocency able to endure, and profeſſeth a Deſire to bring it to the touch, that it may be cleared. And if he ſhould now decline an open Trial, after ſo many publick Bravadoes in *London* and elſewhere, it would draw upon him a juſt Suſpicion of Guilt in moſt Mens Opinions, ſince no Man *fleeth the Light, but he whoſe Works are evil.*

**Stat. Merton* 20 H. 3, c. 9.

Upon this, the Lord *Roberts* demanded of Mr. *Prynn*, what he meant by a publick Trial? whether only the reading of the Articles, Anſwers, producing of Witneſſes, and managing the Evidence to make good the Articles; or elſe, the Council's private Debates of the Cauſe among themſelves, after the Hearing? To which Mr. *Prynn* replied, That he meant only the former of theſe, the Judges Debates many times in Caſes of difficulty being private after Hearings, till they come to deliver their Reſolutions in publick. Hereupon all were commanded to withdraw; and then one of the Council, after a ſhort Debate, was ſent to his Excellency to know his Pleaſure, whether the Trial ſhould be publick, as the Proſecutors deſired, or private? Who returned anſwer, that it ſhould be private; with which Reſolution the Proſecutors (being called in) were acquainted.

Mr. *Prynn* upon this Anſwer deſired, that he might put in writing the Reaſons he had ſuddenly offered to the Council for an open Trial, that ſo they might be preſented to his Excellency; for that (as he conceived) he had not been made acquainted with them, who upon conſideration of them, might happily alter his Reſolution. Upon which Motion, the Council ordered the Judge-Advocate and Proſecutors to repair to his Excellency, to acquaint him with the former Reaſons by word of mouth, which they did very briefly: But the Advocate informing his Excellency, that it was againſt the Privileges of the Council that the Trial ſhould be open; he anſwered that he would not infringe the Privileges of the Council, whom he thought the Proſecutors ſeemed to diſtruſt by demanding a publick Trial.

The manner of the Trial being thus ſettled, the Articles of Impeachment were firſt read, and then his Anſwer delivered in writing unto them.

Articles of Accuſation and Impeachment againſt Colonel Nathanael Fiennes, *late Governor of the City and Caſtle of* Briſtol, *touching his diſhonourable Surrender thereof to the Enemy, contrary to his Truſt and Duty; exhibited by* Clement Walker *and* William Prynn *Eſquires, in the behalf of the Commonwealth of* England.

1. IMprimis, That he, the ſaid Colonel *Nathanael Fiennes*, did ſuddenly apprehend, impriſon, and remove Colonel *Thomas Eſſex*, late Governor of the ſaid City and Caſtle, from his Government there, upon pretence that he intended to deliver up the ſame (not then fully fortified, or ſufficiently provided to withſtand any long Siege) into the hands of the common Enemies of the Kingdom and Parliament, contrary to the Truſt repoſed in him; and that hereupon, he, the ſaid Colonel *Fiennes*, obtained the Government of the ſaid City and Caſtle for himſelf, and undertook to defend and keep the ſame, to the uttermoſt Extremity, againſt the ſaid Enemy, for the uſe of the King and Parliament, and not to ſurrender the ſaid City and Caſtle, or either of them to the ſaid Enemies, or to any other Perſon whatſoever, without the previous Conſent, and Order of the Parliament.

2. *Item*, That the ſaid Colonel, ſoon after he became Governor of the ſaid City and Caſtle, did, by martial Law, apprehend, condemn, and execute ſome chief Citizens thereof; namely, Mr. *Yeomans*, Mr. *Butcher*, and others, only for intending to deliver up the ſame to Prince *Rupert*, when he came firſt before *Briſtol*, (not then fully fortified and ſtored) tho' they did not actually ſurrender the ſame.

3. *Item*, That he, the ſaid Colonel, did put the Parliament, Kingdom, Country, and City to a vaſt Expence, in fortifying and furniſhing it, and the Caſtle thereof, with Forts, Sconces, Cannons, Ammunition, Arms, Victuals, Proviſions of all ſorts, and with Garriſons ſufficiently able to defend and maintain the ſame for three Months ſpace or more, againſt all the Power of the Enemies, that might or did come againſt the ſame; and did likewiſe promiſe and undertake to divers Gentlemen and Inhabitants thereof, to defend the ſame for ſo long ſpace or more, in caſe they ſhould be beſieged.

4. *Item*, That he, the ſaid Colonel, notwithſtanding the Premiſſes, when the Enemy came before the ſaid City and Caſtle, with no extraordinary Forces or Ammunition able to force the ſame, and beſieged them not above three Days at the moſt, did, before ever the Enemy had taken any of the Out-Forts, or Sconces about the ſame, or had made ſo much as the leaſt Battery or Aſſault upon the Walls of the ſaid City or Caſtle, or any Mine or Breach into any of the Forts thereof, contrary to his former Truſt, Promiſes, Duty, and the Honour of a Soldier, moſt diſhonourably, cowardly, and traiterouſly delivered up the ſaid City and Caſtle, with all the Priſoners, Cannons, Ammunition, Artillery, Arms, military Proviſions, Magazines, Victuals therein, and the very Colours too, without

and againſt the Conſent of the Parliament, or his Excellency their General, into the Hands and Power of Prince *Rupert*, and other common Enemies of the Kingdom and Parliament, to the extraordinary great Danger, Diſhonour, Loſs and Prejudice of the whole Kingdom and Parliament, the evil Example of other Governors and Towns, the Loſs of moſt of the Weſtern Parts of *England*, and great encouraging, enriching, and ſtrengthening of the ſaid Enemies, both by Land and Sea; and that upon very diſhonourable Articles, to which he was no ways neceſſitated, and had no care to ſee them punctually performed by the Enemy, when Complaint thereof was made to him for Relief; to the great Prejudice and impoveriſhing of the Inhabitants and Garriſon-Soldiers there.

5. *Item*, That the ſaid Colonel, without the Privity or Conſent of any general Council of War, did, of his own Head, ſend out for a Parley with the Enemy, when divers Officers and Soldiers adviſed and perſuaded the contrary, and would have repulſed the Enemies, and defended the ſaid City and Caſtle to the utmoſt: That the ſurrendering up of the ſame was principally occaſioned by the earneſt Perſuaſion, Advice, and Cowardice of the ſaid Governor, contrary to his Truſt and Duty to keep the ſame. And that the ſaid Governor, when as the Council of War unanimouſly voted upon the Parley, that it was neither ſafe nor honourable for them to depart the Town, unleſs they might march thence with half their Arms at leaſt, and with their Colours; thereupon, after ſome private Conference with Colonel *Gerrard*, one of the Enemies Commiſſioners, in the Garden, without the Privity, and contrary to the Vote, of the ſaid Council, did make and inſert the laſt Article, That they ſhould leave all their Cannon and Ammunition, with their Arms and Colours, behind them; and returning to them out of the Garden, told them plainly, that they muſt now deliver up all to the Enemy, but what was expreſſed in the Articles he then produced, and leave their Arms and Colours behind them, to the ſaid Council's and Soldiers great Diſcontent. And whereas by thoſe very Articles, the ſaid Town and Caſtle were not to be delivered up till Nine of the Clock the next Morning, nor the Enemies to enter them till the Soldiers, and other Gentlemen were marched out; the ſaid Governor was ſo over-haſty to ſurrender up the ſame, that he delivered them up to the Enemy above one Hour or more before the Hour agreed on; and ſuffered the Enemies to enter and poſſeſs them before the Soldiers were marched out: whereby many of the Soldiers were pillaged in the Caſtle and Town, and divers of the Inhabitants beſt affected to the Parliament, were plundered before the Hour of Surrender came, to their great Loſs and Undoing.

6. *Item*, That he the ſaid Colonel, during the three Days Siege of the ſaid City and Caſtle, did not give any ſuch Encouragement to the Soldiers and Officers (who bravely defended the ſame, and ſlew near one Thouſand of the Enemies beſt Men, by his own printed Relation, with the Loſs only of eight Perſons) as his Duty and Place required, and they expected, which much diſcouraged them: And that when a ſmall Number of the Enemies, not two Hundred (who gave themſelves for loſt) had entred the Line of Communication at the weakeſt Place, which was worſt guarded, on *Wedneſday* Morning the 26th of *July* laſt, (being bravely repulſed by the Soldiers with great Loſs in all Places elſe;) he the ſaid Colonel, for two Hours Space or more (during which time no more Enemies entred or approached the ſaid Breach) both neglected and refuſed to command or encourage the Officers and Soldiers who offered to beat them out in due time, as he was adviſed and preſſed to do by Captain *Bagnall*, Lieutenant Colonel *Daviſon*, and divers others, who would have undertaken that Service; and inſtead of encountering the ſaid Enemies (againſt whom the very Women offered to go on with their Children to dead the Cannon, if the Soldiers were afraid, rather than the City and Caſtle ſhould be yielded) called off the Soldiers and Officers from the Line and Out-works (that the Enemies might the better enter them without Reſiſtance) upon pain of Death, much againſt their Wills, who ſhould and would have hindered and repulſed the Enemies; and diſcouraged and hindered ſuch as were forwards to have cut them off, ſounding a Parley when the Enemies were ſo beaten, that they threw down their Arms and cried for Quarter: inſomuch that divers of the Soldiers and Inhabitants cried out they were betrayed, and ſome of the Soldiers brake their Arms in diſcontent, ſwearing they would ſerve the Parliament no more.

7. *Item*, That the ſaid Governor, notwithſtanding his Promiſes to defend the ſaid City and Caſtle, and diſpute it to the laſt, had yet a real Intention to deliver up the ſame to the Enemies before ever they were beſieged by them, and no thought at all to defend them to the uttermoſt, or till they might be relieved by his Excellency; as appears by the premiſed Articles, by the ſaid Governor's refuſal to ſend the Priſoners, formerly taken, out of the ſaid Caſtle, before the Enemy approached, when moved to it by Sir *William Waller*; ſaying to him and others, that he would detain thoſe Priſoners ſtill there, to make his own Conditions, and Compoſition the better with the Enemies, if they came before it; by his commanding Mr. *Haſſard*, the Maſter-Gunner there, to lay aſide a Reſerve of thirty Barrels of Powder, with Match and Bullet anſwerable, to which when he was reduced he would then treat with the Enemy; (which he did long before he was reduced to this large Reſerve) by other Speeches to the like Effect; and by his moving Sir *William Waller* to depart from *Briſtol* before it was beſieged, who otherwiſe would have adventured his Life in its Defence.

8. *Item*, That he the ſaid Governor, when he ſurrendered the ſaid Caſtle to the Enemy, had at leaſt ſixty Barrels of Powder therein, (beſides what was in the City and Forts) being above twenty more than were in *Glouceſter* when it was firſt beſieged, five hundred Cannon-ſhot, fifty great Granadoes, fourteen hundred Weight of Match or more, great Store of Muſket-Bullets, and Tin to make more; a Match-maker, a Bullet-maker, with Materials to make Match and Bullets; and all manner of Proviſions and Victuals, ſufficient to maintain one thouſand Men for three or four Months Space at leaſt; eleven Cannons therein mounted; (beſides forty-four Cannons mounted in the City and Forts) all which were ſurrendered to the Enemy before any Battery or Aſſault made againſt the ſaid Caſtle (tho' he had Men more than enough by his own Relation to defend it) contrary to his Promiſe made to divers Inhabitants of the ſaid City, beſt affected to the Parliament, to defend the ſame to the uttermoſt, and diſpute every Foot thereof with the Enemy, and to keep it, or to lay his Bones therein; who thereupon ſent their Eſtates with Proviſions for them and their Families, for three Months ſpace or more, into the ſaid Caſtle, where the ſaid Colonel promiſed to ſecure and defend the ſame, moſt of which their Eſtates were there ſeized on by the Enemy to their undoing; by reaſon the ſaid Colonel admitted the Enemy into the ſaid Caſtle, and deliver'd up the Keys thereof unto them, before the Hour agreed on in the Articles, ſuch was his extraordinary haſte to quit the ſame.

9. *Item*, That the ſaid Colonel, to aggravate this his diſhonourable Action, hath preſumed to juſtify the ſame, not only before the honourable Houſe of Commons, by word of mouth, but likewiſe before the whole Kingdom and World, in printed Relations and Letters, wherein he hath laid an extraordinary great Blemiſh both upon the honourable Houſes of Parliament, and his Excellency the Earl of *Eſſex*, their Lieut. General, by publiſhing in print, that had he manfully held out the ſaid City and Caſtle to the laſt, yet he could not have expected any Relief from them in ſix or eight Weeks ſpace at the leaſt; when as *Gloceſter*, ſince beſieged with far greater Force than *Briſtol*, was yet relieved by them in leſs than half the time (as *Briſtol* doubtleſs might and would have been) and held out a full Month's Siege or more, as *Briſtol* might have done: tho' he the ſaid Colonel, to add to his former Offence, and hinder or anticipate the Relief of *Gloceſter*, that it might be loſt as *Briſtol* was, gave out in Speeches to ſome Members of the Houſe of Commons and others, and namely to Maſter *Samuel Browne*, and Maſter *John Sedgwick*, that he would loſe his Head, or be hanged, if *Gloceſter* could or would hold out three days Siege, if the Enemy once came before it, or Words to the like effect.

10. *Item*, That the ſaid City and Caſtle were ſo cowardly and unworthily deliver'd up to the Enemies, that they have ſince publiſhed in Print, and given out in Speeches, *That the ſaid Colonel* Fiennes *did beſtow the ſame upon his Majeſty*; that they *were deliver'd up to them beyond their expectation, and that they could not have taken the ſame had it been defended by the Governor*; who eventually at leaſt, if not intentionally, did but ſtrongly fortify, and plentifully ſtore the ſame with all manner of Proviſions to make it tenable, at the Kingdom's and the Country's extraordinary expence, to render up the ſame to the Enemies with greater Advantage to them, and far more Prejudice and Damage to the Commonwealth, as ſoon as it was made defenſible.

Clement Walker.
William Prynn.

The Anſwer of Col. *Nathanael Fiennes*, to the Articles exhibited by *Clement Walker*, and *William Prynn*.

1. TO the firſt Article, Colonel *Fiennes* denieth, that he did ſuddenly apprehend, impriſon, and remove from the Government of the City and Caſtle of *Briſtol*, Col. *Thomas Eſſex*, the Governor thereof, upon pretence that he intended to deliver up the ſame into the Hands of the common Enemies of the Kingdom and Parliament; or upon any pretended Cauſe whatſoever, or that Col. *Thomas Eſſex* was ever Governor of the ſaid City or Caſtle; but doth acknowledge that ſoon after his coming to *Briſtol*, by an expreſs Order from his *Excellency*, written all with his own Hand, he did ſend unto him Col. *Thomas Eſſex*, who at that Time commanded a Regiment in that City: and as he is well aſſured that his *Excellency* had very good Cauſe to ſend that Order to him, altho' he knew nothing before it came unto him; ſo he did not put it in Execution, but upon *mature deliberation and advice with moſt of the wiſeſt and beſt affected Gentlemen to the Parliament*, and of the beſt Quality in the Town and Country, and *upon good cauſe appearing unto him*; and that for the Security and Preſervation of that City, *which in all probability could not otherwiſe at that time have been ſecured*. And he doth further deny, that thereupon or at any Time after, he did ſeek or deſire the Government of that City for himſelf: But on the contrary, that he did ſeek and endeavour to be freed from that Employment, and that not in compliment, but really, earneſtly, and frequently, as he is ready to make good by Proof. And laſtly, he doth deny, *That ever he undertook to the Parliament, or my Lord General, to make good that City or Caſtle; or that ever he had any Charge of the Caſtle as a Fort, or otherwiſe than he had of any Church or Houſe in the City:* But on the contrary, *That he did from time to time declare, that he could not keep the City in the Condition it was, and that it would certainly fall into the Hands of the Enemy, unleſs better proviſion were made for it; and that he would not be anſwerable for it, unleſs certain propoſitions which he ſent to the Parliament, or ſomething equivalent thereunto might be granted unto him, which he could never obtain.* And further he affirmeth, *That he never did undertake not to ſurrender the ſaid City or Caſtle, both or either of them, without the previous Conſent and Order of the Parliament, or that the Parliament ever did, or in reaſon and juſtice could require any ſuch Undertaking of him, or that he ever did or would have undertaken it.* All which he is ready to make good by proof.

2. To the ſecond Article, Col. *Fiennes* doth acknowledge, that not many days after his ſending away Col. *Eſſex*, by the Bleſſing of God upon his Care and Vigilance, *he diſcovered* and defeated a wicked Conſpiracy, plotted between divers Inhabitants of the City of *Briſtol* and ſome of the Officers of Col. *Eſſex* his Regiment, for the delivering up of the City into the Hands of Prince *Rupert*, and other common Enemies of the Kingdom and Parliament; and thereupon apprehending and impriſoning divers of the Conſpirators, and thereby diſappointing the deſign of the Enemy, he was a means, under God, at that Time of preſerving that City, for which he received publick thanks by a Letter from both Houſes of Parliament, which he hath to ſhew: and after, by virtue of a Commiſſion from his Excellency, by Order of both Houſes of Parliament, he called a Council of War, whereof himſelf was appointed Preſident by the ſaid Commiſſion, and by that Council of War divers of the Conſpirators, after due Trial were condemned, and the Sentence of Death paſſed upon them, which Sentence Col. *Fiennes* did forbear to put in Execution till ſuch time as

he had acquainted the Houſe of Parliament, and his Excellency therewith, and the Grounds thereof; and then by his Excellency's Command, according to a Vote of the Houſe of Commons, he did execute two of the principal Conſpirators, (*viz.* M. *Yeomans* and M. *Butcher*) notwithſtanding the Importunity and moſt earneſt Interceſſion of the Mayor and Aldermen, and divers of the City to the contrary, and the *Threats and deſperate Speeches given out by the Malignants*, altho' it ſo happened at that time, that a *conſiderable Strength was drawn forth of that Town to the Aſſiſtance of Sir* William Waller; inſomuch that ſome ill-affected Perſons in the Town conceiving *us ſo weak that the Malignants were able to maſter us*, had procured his Majeſty to ſend a Trumpeter with a Letter from himſelf to the City, to ſtir them up, and command them to riſe and reſcue the ſaid Conſpirators, and to kill and ſlay all thoſe that ſhould oppoſe them therein: yet for all this Col. *Fiennes*, in Obedience to the Parliament and his Excellency, did put the Sentence in Execution, and that at midday, and in the middle of the Town; in all which he conceiveth that he diſcharged his duty faithfully, temperately, and reſolutely.

3. To the third Article, he anſwereth, that notwithſtanding, that without any, or very little Help at all, by his own proper Induſtry, and unceſſant Travel and Pains, he endeavoured to fortify and furniſh that Place in ſuch ſort that it might be in poſture of Defence, *and that without troubling the Parliament at all*; he had well nigh brought a Line or Rampart of Earth round about the Town; whereupon there were ſome ſmall Works or Redoubts, which in this Charge are called Forts and Sconces; and that he had procured ſome proportion of Powder, Artillery, Guns, Granadoes, and other Proviſions, whereof he found the Town very much deſtitute: yet he denies that there ever was, or that he ever did, or could raiſe a ſufficient Garriſon to defend and maintain that City againſt all the Power of the Enemy, that might or did come againſt it, *for the ſpace of three Months or more, or for three Days*; or that he *did undertake or promiſe to any Gentlemen or Inhabitants of the ſame, to keep it for ſo long Space, in Caſe that they ſhould be Beſieged.*

4. To the fourth, *He denieth, that he did deliver up the City or Caſtle of* Briſtol, *with all the Arms therein*; *or that he did deliver the ſame up, with all the Priſoners, Cannons, Ammunition,* &c. *againſt the Conſent of the Parliament, or his Excellency their General*; *or that he did deliver them up Traitorouſly, Cowardly, or Diſhonourably, or contrary to any former Promiſe of his, or contrary to his Truſt or Duty, to the extraordinary great Danger, Diſhonour, Loſs, or Prejudice of the whole Kingdom and Parliament*; *and the evil Example of other Governors, and Towns, upon diſhonourable Articles, to which he was no ways neceſſitated*; or, that he had no care to ſee the Articles agreed upon, punctually performed by the Enemy, when Complaint was made to him for Relief, to the great Prejudice and Impoveriſhment of the Inhabitants and Garriſon-Soldiers there: But on the contrary, is ready to juſtify, that over and above his former good Services, in ſending away Col. *Eſſex* without Diſorder or Blood-ſhed, in diſcovering and preventing that wicked Conſpiracy, and preſerving the City thereby, notwithſtanding a Proclamation ſet forth of Purpoſe by the King, wherein he offered Pardon to all, both Soldiers, Citizens, and others (except himſelf) within the City of *Briſtol*, at that Time, in caſe they would peaceably yield up the ſaid City: And over and above, his great Pains and Care to put the City in as good a Poſture of Defence as poſſibly he could; *and notwithſtanding, he never undertook to make good the City or Caſtle, or either of them, declaring that he could not, nor would not undertake it*; and that alſo he could never obtain a ſufficient Garriſon for the Defence of that Place for any conſiderable Time, or Monies to maintain it, or Means to raiſe it; *Yet he did defend that Town and Caſtle to the utmoſt Point, not only of Duty, but alſo of Honour, that any Soldier could, or ought to have maintained the ſame: And that he ſurrendered them upon good and honourable Conditions, in reſpect to the State he was in:* And that he did take all the Care that any Governor could or ought to do, that they might be punctually performed; and that the breaking of them was not any Fault of his, but principally by the failing and unfaithfulneſs of the Enemy, and partly by the diſobedience and diſorder of ſome of his Soldiers; all which he is ready to juſtify in every Particular. *Notwithſtanding that after the Line or principal Rampart of the Town was entered, and the Enemy lodged within it, he did ſurrender the Town and Caſtle, with all the Priſoners, Cannons, Ammunition, Artillery, Military-Proviſions, Magazines, Victuals, and part of the Arms therein, before the Enemy had taken any of the Out-Forts about the ſame, or had made the leaſt Aſſault or Battery upon the Walls of the City,* (which had none at all on that Part againſt which the Enemy then lay, nor at all defenſible in any Part on that Side the Town) *or upon the Walls of the Caſtle, or any Mine or Breach into any of the Forts thereof:* All which (nor the Caſtle) could not prevent the Enemy being lodged in the Suburbs by *Froome-Gate*, from immediately entering the Town by force. *And neither could, nor ought to have been kept in the Condition that Things then ſtood, to the prejudice of the City and Garriſon, and the Surrender thereof upon Terms of Compoſition, but ought to have been ſurrendered together with it, as they were by the conſtant Practice and Policy of War in all Places, the Principles of Juſtice and Honeſty, and the Rules of Wiſdom and Diſcretion, for the Honour, Profit, and beſt Advantage of the Kingdom and Parliament.*

5. To the fifth Article, he anſwereth, that he did not of his own Head, without the privity of any Council of War, ſend out for a Parley with the Enemy, when the Officers and Soldiers adviſed and diſſuaded the contrary, and would have repulſed the Enemy, and defended the City to the uttermoſt: And that the ſurrendering of the Town was not principally, or not at all could poſſibly be, by his earneſt Perſuaſion or Advice, nor that it was by his Advice or Cowardice, contrary to his Truſt and Duty to keep the ſame: But on the contrary, he was adviſed to the Treaty by the far major part, if not by the unanimous Conſent of his whole Council of War, and of the Gentlemen there preſent, unleſs it were Mr. *Strode* (who alſo, to the remembrance of many preſent, was not heard to give any Diſſent when the Queſtion was put; and all that he ſaid, tended only to a deferring, rather than a denial of the Treaty, without any good Reaſon, that he either then did, or yet can give for his Opinion;) and that by many Expreſſions and other clear Evidences, it did, *at the time of the firſt Propoſition of the Treaty appear, that Col.* Fiennes *had for his principal Aim therein, the Honour and Advantage of thoſe by whom he was intruſted.* And he doth deny that when the Council of War unanimouſly voted upon the Parley, that it was neither ſafe nor honourable for them to depart the Town, unleſs they might march thence with half their Arms at leaſt, and their Colours, he did thereupon offer ſome private Conference with Col. *Gerrard*, one of the Enemies Commiſſioners, in the Garden; at which, without the Privity, and contrary to the Vote of the ſaid Council, he did make and inſert the ſaid Article, that they ſhould leave all their Cannons, and Ammunition, with their Arms and Colours behind them, and returning to them out of the Garden, told them plainly, that they ſhould now deliver up all to the Enemy, or that it was expreſſed in the Articles he then produced, that they ſhould leave their Arms and Colours behind them, to the ſaid Council's and Soldiers great Diſcontent: But on the contrary, he doth affirm, and will juſtify, that he bid the Soldiers make Conditions for themſelves, the Gentlemen of the Country for themſelves, and the Citizens for themſelves, which was done accordingly: And after, when upon the Treaty the Gentlemen of the Country, and Citizens were ſatisfied with their Demands; Colonel *Fiennes* was the firſt and the chief, if not the only Man that took exception at the Condition for the Soldiers; the Commiſſioners of the Enemy ſtanding upon it, that they would allow only the Officers their Horſes and Arms; and he on the other Side ſtanding as peremptorily for all their Horſes and Arms, and Colours: whereupon he was about to break off the Parley, and the Commiſſioners of the Enemy ready to return to the Army, but by the earneſt Perſuaſion of the Mayor and Citizens, the Commiſſioners of the Enemy were perſuaded to walk into the Garden, and to leave us at the Council of War to debate amongſt ourſelves concerning that point of the Arms and Colours: Whereupon Col. *Fiennes* ſtood very ſtifly, till at length he was perſuaded by the Council of War to reſt ſatisfied with half Arms, and our Colours, if we could obtain them; whereunto Col. *Fiennes* expreſſed a great deal of Reſolution to adhere, and he had done it to the End, had the Soldiers upon their Guards done their Parts as well as he did; but returning into the Garden with this Reſolution, many of his Officers following him, and it being free for any to enter, openly and before the Mayor and divers of his Officers, he began to inſiſt upon his former Propoſitions for all his Arms and Colours; whereupon they yielded that our Troopers ſhould have their Horſes and Swords, and then Col. *Fiennes* deſcended to the Propoſitions of half Arms and our Colours, but being not able to obtain it, he yielded ſo far to the Intreaty of the Mayor and Citizens, that he would not break upon that point of his own Head without the Advice of his Officers; and thereupon withdrawing into a Room with all his Officers that there were preſent, he debated the Matter a good while with them, and could not be brought to yield thereunto, till ſix or ſeven of his Officers came out of the Town, and told him, that they could not get ſix Men a-piece of their Companies together, they ran ſo faſt over the Key to the Enemy: Whereupon, altho' with much reluctancy, he was content to yield to that Condition, for fear of putting ourſelves into a far worſe Condition; and after calling in the Commiſſioners of the Enemy, we fell to ſet down all the Articles in Writing, there being Liberty to any Man to take his Exceptions upon the penning of them: At which time Captain *Birch* coming in, and deſiring a more clear Expreſſion for the Citizens and Inhabitants to have Liberty to carry away their Eſtates, which Col. *Gerrard* boggling at, Col. *Fiennes* roſe up, and with great earneſtneſs proteſted, *That he would rather die than not provide for his Friends and their Eſtates, as well Citizens as Soldiers*; whereupon Col. *Gerrard* conſented to it: and it was further expreſſed, that they ſhould have three Days Liberty, to reſolve whether they would ſtay or depart with their Goods; and the laſt Article was no new Article inſerted at the latter End, but only a clear Expreſſion of what was before agreed upon, and fully contained in the firſt Article, as by the Article itſelf doth appear. And laſtly, Col. *Fiennes* doth deny, that he was ſo over-haſty to ſurrender up the Town and Caſtle, that he delivered them up to the Enemy one Hour or more before the Time agreed, or that he ſuffered the Enemy to enter and poſſeſs them before the Soldiers were marched out. But on the contrary, that he gave Order to all his Officers that came to him for Orders, to keep their Soldiers upon their Guards, until one Hour before we were to march out of the Town: at which Time having given Order to his Captain Lieutenant *Stokes* with his Company to ſtay in the Caſtle, and to keep it till Prince *Rupert* ſent to demand it, and then to deliver it up unto him according to the Articles, he gave Order to the reſt of his Officers to draw their Men into the Marſh, whither he did repair unto them, and about nine of the Clock marched out with the greateſt Part of them to the Gate which leadeth to *Warminſter*, where he ſtayed within the Town for an Hour or two after: *But the Enemy did enter the Town, contrary to their Faith, and the Articles agreed upon, an Hour or more before nine of the Clock, about the Time that we were drawing off to a Rendezvous, and fell upon our Men, diſarming, diſmounting, and pillaging them, by means whereof, and by no Fault of Col.* Fiennes, *many, both Soldiers and Citizens, were Pillaged and Plundered.*

6. To the ſixth, he acknowledgeth and owneth the Clauſe mentioned to be in his printed Relation, and that the Enemy having entred in one Place on *Wedneſday* Morning the 26th of *July*, were valiantly repulſed in all Places elſe with great Loſs; but doth deny, that to his Knowledge any Women made any ſuch Offers as in the Articles is expreſſed, or that he ſhould have thought it a fit means to dead the Cannon-bullets, or that any ſuch Speeches were given out, or any ſuch Actions done by any Inhabitants or Soldiers to his Knowledge, as that they brake their Arms, and ſaid they were betrayed; or that he would have ſuffered them unpuniſhed, if he had heard or known any ſuch thing: and for the reſt of the Articles he denieth it in the whole, and in every part thereof; and on the contrary affirmeth, and is ready to prove, that during the whole Siege, he did both by his Words and Actions encourage the Soldiers and Officers to do their Duty, thanking ſome, praiſing others, ſtirring up others, ſending them Bread, Wine, Victuals, and giving them Monies, and promiſing them further Rewards, but eſpecially by his own Example, going conſtantly the

round at all hours of the Night, ſometimes in the beginning of the Night, and ſometimes in the latter end thereof, and repairing upon all occaſions to the places of moſt Danger, and ſtanding moſt uſually with his Troop, in the Place of greateſt danger, and by all other ways and means that could be expected from any Governor. And he further affirmeth, that the place where the Enemy entred, was not a likely place for the Enemy to enter by, was weaklieſt aſſaulted; could not have been better guarded without drawing Forces from other places, which were in more apparent danger and more ſtrongly aſſaulted, was more ſtrongly guarded than ſome other places that were more ſtrongly aſſaulted, and yet the Enemy repulſed, and that the Enemy might have been in all probability repulſed there alſo, had the Guards of Foot or Horſe that were to ſecond them done their duty, as well as they did elſewhere, or had Colonel *Stephens* or his Major ſent down ſome Foot together with the Governor's Troop when they went to charge the Enemy, out of the Men that were under their Command upon the next adjoining Guards, which they might and ought to have done, and could only well do it. And he further affirms, that when the Enemy firſt enter'd they were at the leaſt two hundred; that ſoon after they dug down the Rampart of Earth all flat for their Horſe and Foot to enter, and that then immediately they poſſeſſed themſelves of Walls, Houſes, *Eſſex-Fort*, and other places of advantage; that within one hour's ſpace at the fartheſt, after the entry of the firſt, there entred at leaſt 300 Foot more, and a Regiment of Horſe with Ordnance, and after both Horſe and Foot entred as faſt as they could; that Col. *Fiennes*, ſo ſoon as he had notice of the entry of the Enemy at that place, made all the haſte he could to repair thither, but that before he got thither, his Men were come off the Lines for half a Mile together, and his own Troop (unto which he was going up) beaten off alſo: that afterwards both by his Commands and his own Perſon, he uſed the beſt, the ſafeſt, the ſpeedieſt, and the moſt effectual means that any then could, or yet can ſhew for the ſecuring of the City, the ſafeguard of his Soldiers, and for the repulſing of the Enemy, but divers of his Soldiers did diſobey, and other of the Soldiers and Commanders did refuſe to yield ready Obedience to his Commands, eſpecially Major *Lewes*, to whom he was conſtrained to ſend an Order upon pain of death to yield obedience before he would do it; and by his and others Diſobedience, the Service was hindred and retarded, that a Sally could not be made ſo ſeaſonably as otherwiſe it might have been, and with better Succeſs than it was, altho' when it was made, it was performed with ſuch Reſolution, that it gave a ſtop to the Enemy, who otherwiſe had, in all probability, entred the reſt of the Town by force, being already poſſeſſed of two of the greateſt Works thereof; and Col. *Fiennes* did not cauſe any Parley to be ſounded till ſuch time as his Men were beaten back again with freſh Regiments of Foot and Horſe brought down upon them, but was ſtill ready to have ſeconded them with his own Company, had there been any hopes to have beaten them off, and till ſuch time as going round the Town with his Lieutenant Colonel, he ſpake with great earneſtneſs to all his Officers that he could meet to get their Men to their Colours again; commanding them to repair to the Marſh, and that there ſhould be Victuals, and Twelve pence a Man given them, which accordingly was given to as many as came together, but could never get together, or to their Guards, two hundred, of ten or twelve hundred of the Men that were on that ſide the Town: whereupon by the Advice of his Council of War, he ſent forth a Parley; all which he is ready to prove.

To the ſeventh, he anſwereth, that notwithſtanding he declared that he could not keep the Town with the Force he had in it, yet he denieth that he had a real Intention to deliver up the ſame to the Enemy before ever it was beſieged by them, or that he had no thought at all to defend it to the uttermoſt, or till it might be relieved by his Excellency, or that he refuſed to ſend the Priſoners, formerly taken, out of the Caſtle before the Enemy approached, or that he commanded Mr. *Haſard* the Maſter-Gunner, to lay aſide a Reſerve of thirty Barrels of Powder, with a purpoſe to treat when he was reduced thereunto; or that he moved Sir *William Waller* to depart from *Briſtol*; or that Sir *William Waller* would otherwiſe have adventured his Life in its Defence; or that it doth appear by any of the premiſed Articles, or any Speeches of his concerning the Priſoners, or a Reſerve of Powder, of Sir *William Waller*'s Departure from *Briſtol*, or any other Speeches of his, that he had not a real Intention to keep the Town and Caſtle to the uttermoſt, that in Honour, Wiſdom, and Faithfulneſs, unto thoſe by whom he was intruſted, he ought to have done: but that the contrary doth appear by very many Deeds and Speeches of his, and by thoſe very Particulars inſtanced in, ſo far, and in ſuch a manner as they were ſpoken and done by him. And he further affirmeth, that he did often move Sir *William Waller* to free him from the care and danger of ſo many Priſoners, but could never obtain it; but when he thought neither Town nor Caſtle ſafe enough to keep them, he ſpoke to him to ſend them away to a Place of more ſafety, but neither ſhewed him the means how to do it, nor offer'd to take any of the moſt conſiderable with him, altho' he had an abſolute Command over them at all times, whenſoever he pleaſed to ſignify his Pleaſure concerning the Diſcharge or Diſpoſal of them, as he did diſcharge Major-General *Bret*, and divers others (whereof ſome led on thoſe that aſſaulted us at *Briſtol.)* That Colonel *Fiennes* ſpoke to Sir *Arthur Haſlerigge*, when he took leave of him, to take ſome of the Priſoners away with him in the Ship, but he refuſed it: that he ſpake to Captain *Birch* (who ſeemed forward to undertake ſuch a matter) to ſee if he could find means to ſend them away ſpeedily and ſafely by Sea, and that he would contribute his beſt Aſſiſtance thereunto, but he alſo gave it over: That he commanded *Haſard* the Maſter-Gunner, when the Enemy was approaching the Town, to lay apart a Reſerve of thirty Barrels of Powder, and to keep it private, that every Man might be careful to huſband that which appeared, and to make no waſte thereof; and that in caſe he was forced to retreat into the Caſtle before he came to Treaty, he might have wherewith to defend himſelf: but Mr. *Haſard* did ſo over-do his Command, that tho' afterward at ſeveral times he commanded him to give a perfect Account of all his Ammunition to his Brother Colonel *John Fiennes*, who was to have the chief care thereof over him, *yet he did conceal from him this Reſerve*; inſomuch that when Col. *John Fiennes*, was required to declare at the Council of War, what ſtore of Ammunition was left, *he informed us that he had taken a particular Account thereof, and that there was not above three or four hundred weight of Match, and between twenty and thirty Barrels of Powder (as indeed he knew of no more;) and that they were ſpending of that too: whereby (as by like Speeches of the Maſter-Gunner to the like purpoſe) Col.* Fiennes *did believe he had broken up his Reſerve, and that he was ſpending of that alſo, and that there was not above twenty Barrels of Powder left; and did not certainly know the contrary, till ſuch time as he was come to* London, *and had particularly informed himſelf by Mr.* Haſſard *of the truth: and that the Enemy knew not of more Powder in the Caſtle than twenty Barrels, for divers Weeks after the ſurrender of the Town, he is able to prove.* And laſtly, he doth affirm, that Sir *William Waller* was ſo far from needing to be ſtirred up to depart the Town, that on *Friday*, the Day after he came to *Briſtol*, commanding ſome of his Officers to draw forth ſome of their Men into the Marſh, and they conceiving that it would not be poſſible to do it till the next Morning, he replied, that then it might be too late: and the next Day drawing them out upon *Durdam Down*, where Col. *Fiennes* there aſked, in caſe the Enemy ſhould advance towards *Briſtol*, how he would diſpoſe of himſelf and his Horſe, he anſwer'd, that he muſt retreat. And it is evident in many reſpects, that it was neceſſary for him to draw out of the Town; for it is moſt likely, that had he not done it, the Town would have been left ſooner than it was, and the Diſhonour and Loſs of the State been greater; and that if he had, when he firſt came to *Briſtol*, followed the advice given him by Col. *Fiennes* and his Officers, or done according as he promiſed Col. *Fiennes*, when he took his leave of him, he would have done better Service, both for the preſervation of that City, and the reſt of *England*, than by the courſe he took: all which he is ready to prove and juſtify.

8. To the eighth Article, he doth deny that there were ſixty Barrels of Powder in the Caſtle when it was ſurrendred, or that he did promiſe to any Inhabitant of the City to defend the ſame, but in caſe he was forced to retreat into it; nor any longer than he thought fit, for the honour and beſt advantage of them by whom he was intruſted; or that there was in it all manner of Proviſion and Victuals ſufficient to maintain One thouſand Men for three Months ſpace; or that he deliver'd up the Keys of the Caſtle before the Hour agreed on in the Articles; or that by reaſon thereof many Inhabitants of the City, or any other Perſon whatſoever, had their Eſtates which they brought into the Caſtle ſeized upon: But on the contrary he affirmeth, *That there were but fifty Barrels in the Caſtle when it was ſurrendred, and that was thirty more than either he or his Council of War knew of before they came to* London; *and that therewith he was leſs able to defend the Town four Days, or the Caſtle fourteen Days, than* Glouceſter *might with the like proportion be defended twenty-four Days: That there were about eleven Cannons mounted in and about the Caſtle, and that there was need of more, to ſupply the many defects and univerſal weakneſs thereof; but that there was never any one amongſt them all, or in the Town, fit for Battery, or to hinder the approach of the Enemy in any effectual way; but he had ſent to* London *for three to that purpoſe, and that they were at hand, but not yet come to him: that altho' he had no Charge of the Caſtle, more than of any Houſe in the Town, nor was obliged to hold it further than he judged it for the good of the Publick, yet he did reſolve to make uſe of it for the advantage of the State, and of their Friends and Soldiers; as alſo he did, by making the Terms of Compoſition the better by the Countenance thereof, which was the beſt uſe he could make of it in that Condition he was in, and would have been as ready to have done it by the Defence thereof, if he had been forced thereunto, or that it had been fit in Wiſdom and Juſtice to have taken this Courſe, as if Succours had been at hand, and in ſome other Caſes it might have been. And for this, and divers other Reaſons, he did take ſome pains, and was at ſome coſt, for the ſtrengthening of it, and furniſhing of it with great and ſmall Shot, and Granadoes, and Proviſion of Victuals, and other Neceſſaries, whereof what was the quantity of each Sort he is uncertain; but is certain, that none was employed but where there was occaſion, nor ſhould have been ſpared, if there had been occaſion to uſe them: but doth affirm, that he never gave order to the Commiſſary of Victuals, to make proviſion of Victuals for more than One thouſand Men for a Month, wherein he aimed at a double Proportion to what he thought he ſhould have need of; or that he ever hoped to keep the Caſtle for more than a Fortnight, or three Weeks at the fartheſt: That he was content, for divers good Reaſons, to ſuffer the beſt affected Perſons to carry into the Caſtle ſome of their principal Goods, but was very angry when he ſaw them offer to carry in their Lumber, and ſtraitly forbad it.* That a ſpecial Article was made for them that carried in their Goods, that they might have free Liberty to carry them out at leiſure: That the Citizens themſelves, being divers of them upon the Guard in the Caſtle, that had their Goods there, made ſuch haſte to get them out on *Thurſday* Morning, that leaving their Guards, and Major *Wood*, and others that had charge of the Soldiers in the Caſtle, ſuffering their Soldiers to go from their Guards without and againſt order, the Paſſage into the Caſtle was ſo thronged, that none could paſs in nor out, and by that means ſome of the Priſoners *got looſe in the Caſtle, and grew diſorderly, and ſome of the Enemies got in before the time*; but Col. *Fiennes* coming thither, and ſeeing this Diſorder, with his Sword in his Hand beat back the People that thronged the Draw-Bridge, drew up the Bridge, and got ſome of his Soldiers to their Guards again, put their Arms into their Hands, and had drawn all his Soldiers into it, had he not received News while he was doing this, that the Enemy was broken into the Town, contrary to the Articles, and were diſmounting, diſarming, and pillaging our Men: Whereupon he gave order unto his Captain-Lieutenant *Stokes*, to keep the Caſtle with his Company, and to deliver it up to Prince *Rupert* when he ſent to demand it; and was forced himſelf to go into the Marſh with Captain *Teringham*, one of the Enemies Hoſtages, with him, for the Safeguard of his Soldiers, both Horſe and Foot, and of his Friends in the Town, as is expreſſed in anſwer to the fifth Article. And laſtly, *he doth affirm, and will juſtify, That the Caſtle was in no ſort tenable, neither in reſpect of the Strength thereof, or of the Proviſion wherewith it was furniſhed, for one quarter of the ſpace, wherein poſſibly he could have had Succours; nor for half the quarter of the time, where, in poſſibility, he could have expected them: And that if it had been tenable, yet neither by the conſtant Practice or Maxims of War in all Places, nor by the Rules of Honeſty or Chriſtianity, that he ought to have held the ſame; or that it had been for the Honour and Advantage of thoſe by whom he was intruſted*

ed ſo to have done; and therefore ought to ſurrender it together with the Town, without diſputing it at all, as he did.

9. To the ninth, he denieth that he hath done any diſhonourable Action, or that he hath ſaid or done any thing amiſs, or unduly, or untruly, in the Juſtification which he made of the Surrender of the City and Caſtle of *Briſtol* in the honourable Houſe of Commons, or any other ways. And the reſt of the Article he denieth in the whole, and in every part thereof; and doth affirm, and doubteth not but to make appear to any that are vers'd in military Affairs, that without detracting any thing from the worthy Governor, who did as much as the Enemy put him to, and as honourably as any man could do, that he had a harder Taſk to hold *Briſtol* in the condition it was in, and in the manner that it was aſſaulted four Days, than Col. *Maſſy* had to defend *Glouceſter* four Weeks: and that he was ſo far from declaring that *Glouceſter* would not hold out three Days, that he often declared, that if they had Ammunition enough, they might do well enough, and hold out till relief came to them; but oft he feared they might be ſtrained therein, as having good cauſe to know it: for had he not ſupplied them with ten Barrels of Powder; and had they not had two or three more out of *Berkley* Caſtle, which he ſent thither but a Week or two before, the Town had been loſt for want of Powder. And, in this reſpect, he deſired thoſe whom it concerned to relieve them, not to be too confident of their holding out, and to haſten relief unto them; ſo far was he from deſiring to hinder relief to be ſent unto them, that it might be loſt as *Briſtol* was.

10. To the tenth he anſwereth, that it is an Article without a Charge, an Argument without a proof; for that the Teſtimony of the Enemy can make nothing againſt him, it being their Parts to diſhonour and diſgrace their Enemies as much as they can; but the Teſtimony of an Enemy, tho' it be of no Validity againſt him, yet it is ſtrong for him: and as he doth deny, that thoſe that are Soldiers on the Enemies Side have any ſuch ſenſe of the Action, ſo he doth affirm that they had, and have expreſſed the contrary.

The firſt Day's Hearing upon the three firſt Articles.

THE Articles and this Anſwer to them being read, the Proſecutors proceeded preſently to the Proof of their Articles: And whereas they conceived the Defendant would have granted the three firſt Articles, being but introductive to the Impeachment, yet he put the Proſecutors to their Proofs;

Firſt, *That Colonel* Eſſex *was ever Governor of* Briſtol.

Secondly, *That he ever removed or ſent Colonel* Eſſex *thence.*

Thirdly, *That himſelf was ever Governor of* Briſtol.

And then bid Mr. *Prynn* prove theſe Particulars ere he proceeded farther.

Mr. *Prynn* thereupon replied, that he much admired how a Man of his Birth and Breeding ſhould ſo much forget himſelf, as to deny that in private before the Council, which himſelf had not only confeſſed, but profeſſed before the Houſe of Commons, (the repreſentative Body of the Realm) the City of *Briſtol*, and publiſhed in print to all the World in publick: But ſince he denied theſe Particulars, he would eaſily make them good againſt him.

(1.) For the firſt it is clear, that Colonel *Eſſex* was both acknowledged and ſtyled *Governor of* Briſtol, by the Parliament, his Excellency, the Committees of *Somerſetſhire*, *Glouceſterſhire*, *Wiltſhire*, the Citizens and Garriſon of *Briſtol*, and all the Gentlemen of thoſe Parts, and by Col. *Fiennes* himſelf at his firſt coming to *Briſtol*, who gave him the Title of *Governor*.

(2.) That he made out his Warrants, Commands, and ordered all Things for the City's Defence and Fortification, as Governor, having the Command in chief of the City, Caſtle, and Forces there, as abſolutely as any Governor whatſoever.

(3.) That in the Book, intitled, *A full Declaration of Colonel* Fiennes's *March to, and Proceedings at* Briſtol, compiled and publiſhed by himſelf, or his Major *Langriſh* with his Approbation, *pag.* 3, 4, 10, 12 *to* 16. Colonel *Eſſex* is both acknowledged and ſtyled *Governor of* Briſtol, and that by himſelf, in his own printed Letter to his Father to juſtify his Removal; and the Depoſitions which he took and publiſhed againſt him, atteſt him to be the Governor. Therefore he muſt even bluſh to deny all theſe pregnant Evidences, and to put us thus to prove that only now, which he ever confeſſed before.

Whereupon Colonel *Fiennes* ſaid, *I confeſs he was a Governor* de facto, *but not* de jure.

To which Mr. *Prynn* replied; Firſt, that he was ſent thither, and placed there, by his Excellency's ſpecial Command, and the Parliament's Approbation; therefore he was as much Governor *de jure* as himſelf or any other. Secondly, that he was obeyed as a rightful Governor till he ſent him thence, and ſo eſteemed by the Parliament, his Excellency, the Garriſon, City, and Committee. Thirdly, if he was not Governor *de jure*, then all his Commands and Acts there done, during his Government, were injurious, unwarrantable, which he preſumed the Defendant durſt not affirm.

Then he replied, that Colonel *Eſſex* had no Commiſſion, and therefore was no rightful Governor.

To which Mr. *Prynn* rejoined, Firſt, that for ought he knew he had a Commiſſion. Secondly, that his Excellency's ſending of him thither, to take in command the City, and his confirming him there as Governor, with the Parliament's Conſent, was a Commiſſion ſufficient to make him Governor *de jure*. Thirdly, that if his Excellency commanded an Officer by Word of Mouth alone, without a Commiſſion under Seal, to lead any Brigade out upon Service, or to take in any Town or Caſtle, (as he had lately commanded Major *Skippon* to take in and fortify *Newport-Pannel)* this was warrant enough to make him Governor both of the Brigade, Town and Fort; and if he ſhould betray, or baſely deliver up that Brigade, Town, or Fort, when taken in, he ſhould be condemned for it by martial Law as a Traitor, and the want of a Commiſſion would be no excuſe to acquit him from being a Governor, and betraying his Truſt.

Secondly, *That he removed and ſent away Colonel* Eſſex *from* Briſtol.

(1.) Mr. *Prynn* proved it, firſt by his own printed Letter, and the Depoſitions publiſhed by his Direction, in *a full Relation*, &c. *pag.* 4, 6, 10, 11, 12. where he uſeth theſe Expreſſions: *Colonel* Fiennes (writes his Major *Langriſh) who communicated unto me an Order that he had received from his Excellency, whereby he was enjoined to ſend Colonel* Eſſex *to* Windſor, *or the Parliament, in caſe he ſaw cauſe for it; and having given me Reaſon to ſee and know that there was cauſe ſo to do, he aſked me, whether I would aſſiſt him in the Execution of it or no? The which, ſeeing cauſe for, I promiſed to do. But it will be neceſſary here to annex the Reaſons which cauſed Colonel* Fiennes *to put in Execution the Order given him by my Lord General, to ſend up Colonel* Eſſex *from* Briſtol; *not as an Accuſation againſt Colonel* Eſſex *in this Place, (let that be followed by thoſe to whom it appertains) but by way of Vindication of Colonel* Fiennes, *that he had done nothing herein, but what the Truſt repoſed in him, and the Safety of that important Place did require him; and that the rather, becauſe it begins ſo far to reflect upon Colonel* Fiennes, *as if he had done him Injury, and there had been no Plot at all, but a Plot to put himſelf in the Governor's Place. The Malignants in the Town taking up this, and ſpreading it, and adding Strength to it by Colonel* Eſſex's *own Speeches and Carriages, it will be a great Injuſtice to him, who hath done his Duty, and therein no inconſiderable Services, to be requited with Calumny*, &c. Beſides, Colonel *Fiennes* writes thus in a printed Letter to his Father: *My Lord*, &c. *I have ſent a Letter long enough, and full enough of Particulars, concerning Colonel* Eſſex, *and which I think were ſufficient to ſatisfy any Man, that it was neceſſary he ſhould be removed from hence, before the Town could be put in any Poſſibility of Security, altho' he had not been touched in the Point of his Fidelity: His being here, I found inconſiſtent with the Good and Safety of this City; and tho' there were no apparent Proof of his Falſhood, which I never affirmed, yet there were ſhrewd Grounds of Jealouſy, as may appear by the Depoſitions, whereof I have ſent your Lordſhip a Copy, together with this Letter. For my part, ſo my Lord General and the World be ſatisfied, that I had good Reaſon to ſend him away from hence, according to his Direction, I would not have things proſecuted too hard againſt him, altho' I am very much deceived, if many a Governor of a Town hath not been called to an Account, in Point of his Fidelity, upon weaker Grounds than thoſe which I have ſent.*

(2.) By his own expreſs Confeſſion, in the latter end of his *Anſwer to the ſecond Article*, tho' he denies it in the Beginning, that he did it not upon any *pretended Cauſe*.

To the third, *That himſelf was never Governor of* Briſtol, Mr. *Prynn* anſwered, That it ſeemed he had carried himſelf ſo diſhonourably in that Government, that he was now aſhamed or afraid to confeſs himſelf Governor, for fear he ſhould ſuffer for it, elſe he could not have the Impudence to deny it. But ſince he thus denied himſelf Governor, he would quickly prove him ſo;

Firſt, by his own Warrants, during his Government, wherein he ſtiled himſelf *Governor of* Briſtol. Secondly, by his Acceptance of that Title from his Officers, Soldiers, the Committee, and all others. Thirdly, by the Parliament's, his Excellency's, and own Father's intitling of him *Governor of* Briſtol, in their Letters and Directions to him. Fourthly, by his exerciſing all the Authority, and receiving the Pay of a Governor. Fifthly, by the full Declaration concerning his March to *Briſtol*, ſet forth by his Major *Langriſh*; who, in his Letter from *Briſtol*, *March* 6, 1643. pag. 3, 4, 6. ſtiles Colonel *Fiennes our Governor*, and *now Governor of* Briſtol, three ſeveral Times, long before he had a Commiſſion to be Governor there. Sixthly, by *his own Draught of an Ordinance preſented to the Houſe of Commons by the Lord* Say, for the ſettling of a ſufficient *Garriſon at* Briſtol; printed by himſelf, in his *Relation made to the Houſe of Commons concerning the Surrender of the City of* Briſtol, *pag.* 17 to 22, in which we find this Gentleman no leſs than eight ſeveral times expreſly ſtiled, *Colonel* Fiennes *Governor of* Briſtol. And are you not aſhamed ſo confidently to deny that here in the Preſence of this honourable Council, which yourſelf have ſo lately publiſhed to all the World? *Oportet mendacem eſſe memorem.* Seventhly, in the very Articles of the Surrender of the City and Caſtle of *Briſtol* to the Enemy he intitled himſelf *Governor*, witneſs the Title of them: *Articles agreed on at the City of* Briſtol, *between Colonel* Nathanael Fiennes *Governor of the ſaid City on the one Party, and Colonel* Charles Gerard *and Captain* William Teringham, *for and on the Behalf of Prince* Rupert, *on the other Party*, July 26, 1643. And Article 1. *That the Governor Colonel* Nathanael Fiennes, *&c.* Certainly if he were not Governor before to keep, yet theſe very Articles prove he was then Governor to ſurrender it. And now, Sir, take your Choice; If you were not Governor, then you had no Power to treat or ſurrender the City or Caſtle, and ſo muſt be condemned (by your own Confeſſion) as a Betrayer of them: If you were Governor of them, then you ſhew yourſelf moſt unworthy your Birth and Breeding in denying it now; eſpecially ſince you have given an Account in a printed *Relation*, of your Proceedings and Surrender of *Briſtol*, which is in Law a Confeſſion of this Truſt. To conclude: His Excellency's own Proclamation, poſted up at *Weſtminſter* by the Defendant's Procurement, and ſummoning us to give Information againſt him, doth no leſs than three ſeveral times together ſtile him, Colonel *Nathanael Fiennes*, *late Governor of* Briſtol; and therefore eternally concludes him to deny it.

The Colonel confeſſed at laſt, *that he was Governor of* Briſtol; but he next denied, in the fourth Place, *That he was ever Governor of the Caſtle of* Briſtol, *tho' he was of the Town.*

And Fifthly, *That he had ever any Commiſſion to be Governor of* Briſtol.

To the firſt whereof Mr. *Prynn* replied, Firſt, That he had the chief Command of the Caſtle, and none elſe. Secondly, That he placed his own Brother, Colonel *John Fiennes*, as Commander in Chief, and all other Officers under him, in the Caſtle. Thirdly, That he only gave Order for the fortifying, victualing, and garriſoning of it. Fourthly, That he laid up the Stores and Magazines of the City there, diſpoſed of all the Lodgings in it, intending to make it the Place of his laſt Retreat: therefore certainly he was Governor of it. Fifthly, That tho' *Briſtol* Caſtle and the City were divided heretofore, the Caſtle lying in *Glouceſterſhire*, and being no part of the City, yet ſince Queen *Anne*'s Entertainment at *Briſtol*, King *James* at her Requeſt gave and united the Caſtle to the City, making it part thereof, and ſo it continueth to this Day: Wherefore ſince he confeſſeth he was Governor of the City, he muſt neceſſarily be Governor of the Caſtle too, it being no parcel of the City, and having no other Governor that had charge of it in chief but himſelf alone, and his Brother under him.

To this the Defendant, in the ſixth Place, replied, That he had no Charge of it as a Fort, no more of any one Houſe in the City.

To which Mr. *Prynn* rejoined, Firſt, That the Caſtle was never reputed a Houſe, but always a Fort, a Caſtle, and a very ſtrong one too; therefore he muſt needs have the Government of it as a Fort, not as a Houſe. Secondly, Himſelf eſteemed it the ſtrongeſt Fort in and about the City, beſtowed much Coſt in fortifying it, laid up his Magazines in it, kept a ſpecial Garriſon there, made it the Place of his laſt Retreat, promiſed to hold it out till the laſt, if the City were taken, and to lay his own Bones there rather than yield it up; therefore certainly he took charge of it as a Fort, and muſt anſwer for ſurrendering it as a Fort.

Upon this Colonel *Fiennes* replied, *That the Caſtle was not mentioned in his Commiſſion, and ſo he was not chargeable with it as a Fort.*

Which Mr. *Prynn* preſently laying hold of, rejoined, Firſt, my Lords, We have now a clear Confeſſion that Col. *Fiennes* had a Commiſſion to be Governor of *Briſtol*, the fifth Thing he even now denied. Secondly, Tho' the Caſtle be not particularly named as a Fort in his Commiſſion, yet this will not help him, for it is therein included as part of *Briſtol.* This I ſhall undeniably evidence by a Caſe or two: Colonel *Fiennes*, by Virtue of his Commiſſion, hath built ſeveral Forts and Sconces about *Briſtol*, without, not within the City-Limits, tho' adjoining to it, as we have done the like about *London*; theſe Forts are properly no part of the City, as the Caſtle is, nor are they mentioned or included within his Commiſſion, being built for the moſt part ſince the Commiſſion was granted; yet no Man will doubt but if Col. *Fiennes*, or any other Officer, had treacherouſly or cowardly delivered up any of theſe Out-Forts to the Enemy, tho' no part of the City, it had been Treaſon in him, and he ſhould have ſuffered for it: So had he in like manner yielded up or betrayed any one Houſe in the City or Caſtle, were it fortified or not fortified, to the Loſs or Hazard of the City, it had been Treaſon by the Laws of War; many Cities and Caſtles having been loſt, by the loſs or yielding of one Houſe or Poſtern; much more then muſt he ſuffer for ſurrendering ſuch a conſiderable Fort as *Briſtol* Caſtle to the Enemy, without any Battery, Aſſault, or Neceſſity, tho' he found it not ſpecified in his Commiſſion, which extends to the whole City, and ſo to every Houſe, Fort, and Parcel of it, tho' not particularly mentioned in it.

The Colonel then ſaid, *That he had no Commiſſion to be Governor of* Briſtol, *and by Conſequence was not Governor of it.*

To which Mr. *Prynn* replied: Firſt, That ſince he undertook the Charge of the Town and Caſtle, as Governor, it mattered not much whether he had a Commiſſion or not; for he writ, and carried himſelf as Governor, even from the ſending away of Colonel *Eſſex*, till the Surrender of the Town and Caſtle, which he ſurrendered as Governor.

Secondly, That himſelf had formerly unawares confeſſed, That he had a Commiſſion to be Governor, and that he was ſtiled Governor by *Langriſh*, and others, even in Print, before he had his Commiſſion to the Governor.

Thirdly, he ſhould prove hereafter, That himſelf ſent one Captain *Bagnall* twice up to *London* to procure not only a Commiſſion, but *an independent Commiſſion*, from his Excellency, that ſo he and his Garriſon might not be ſubject to Sir *William Waller*'s Commands, (which Captain *Bagnall* afterwards atteſted upon Oath, and that he ſpent ſixteen Pounds in theſe two Journeys, to obtain this Commiſſion, which the Colonel out of his Liberality never yet paid him) and the Colonel himſelf confeſſed afterwards to the Council upon *Bagnall*'s Teſtimony, he ſent for and received *an independent Commiſſion*; that ſo *he and his Garriſon-Soldiers might not be liable to Sir* William Waller'*s Commands, as they formerly were.*

The Colonel hereupon told the Council, *That he ſent for this Commiſſion, not to guard the City againſt the Enemy, as Governor of it, but only to keep his Soldiers in Order, who when they were commanded on any Service, grew Mutinous, and would ſtill be calling on him to ſee his Commiſſion: for which he gave an Inſtance in Col.* Popham'*s Regiment; who diſobeyed him when they returned from the taking of* Sherborne: And this made him to ſend for a *Commiſſion, only to order his Soldiers, and keep them in Obedience; but he never had nor ſent for any Commiſſion to keep the Town or Caſtle.*

To which Mr. *Prynn* replied, That this was the moſt abſurd, irrational, if not unſoldierly Diſtinction, that ever was heard of in the World, and that he might be aſhamed to propound it before Soldiers, in ſuch an honourable Council of War as this: for what need was there either of a Garriſon or Governor of *Briſtol*, or of ſuch a Commiſſion to keep his Soldiers there in Obedience and Order, but only to preſerve the City? This was the only End why he and his Garriſon were there placed, maintained by the Parliament and his Excellency to keep the City, which elſe would have as well or better kept itſelf without them.

Secondly, That he was confident his Excellency never granted any ſuch Commiſſion to any Governor (nor any other Prince or General in the World) only to keep his Garriſon in Order, but not to defend the garriſoned Place, whereof he was Governor: ſuch an abſurd Commiſſion was never yet heard of, nor ſuch a nonſence Diſtinction made by any Soldier. And thereupon he deſired the Commiſſion might be produced, to the End it might appear whether it warranted this Diſtinction, That it was only to diſcipline his Soldiers, but not to hold the Town againſt the Enemy.

Thirdly, That their Lordſhips now ſaw the true Reaſon why Colonel *Fiennes* ſo ſoon delivered up *Briſtol* to the Enemy: he pleads, he had (or would have) no Commiſſion to keep it, therefore it was he thus Surrendred it up to the Enemies almoſt as ſoon as they came before it: who doubtleſs would keep it better, defend it longer than he, tho' they wanted a Commiſſion for it.

Fourthly, That this pretended Diſobedience of Col. *Popham*'s Regiment was long after his Commiſſion received, and that upon this Occaſion: Col. *Fiennes*, and his Major *Langriſh*, would have taken from Col. *Popham*'s Regiment that little Plunder they had gained at *Sherborne*, with the Hazard of their Lives, at the Country's Charge, without any Direction from *Fiennes*, who ſent them not on that Service; which injurious, avaritious Act of his they juſtly oppoſed by ſtanding on their guard, and ſo kept that Booty he would have carry'd from them into *Briſtol* Caſtle. This occaſion then being ſubſequent to his Commiſſion, could not be the Ground of its procuring, but rather that which himſelf unawares confeſſed; his deſire of Independency and Exemption from Sir *William Waller*'s Commands.

The Colonel then inſiſted: Firſt, *That he received his Commiſſion only upon this Condition, and with this Intention, to keep his Soldiers in order, but not to make good the Town and Caſtle: therefore he could be no further chargeable by it than as he received it.*

To which Mr. *Prynn* replied: (1.) That every Governor muſt receive his Commiſſion at his Peril, as it is granted and intended by him that granted it, (as Tenants do their Leaſes, and Donees in tail their Lands) and hath no Power to annex any Conditions thereunto: his Commiſſion then being abſolute, to keep the Town for the Parliament, that being the ſole uſe and end thereof, his conditional accepting of it being repugnant to it, was void and idle.

(2.) That the * Common and Martial Law of the Realm annex this Condition to every Governor and Officer of Truſt, that he ought to diſcharge his Truſt and Government, and keep that ſafe which is committed to his Cuſtody to his utmoſt Power, tho' it be not expreſſed in his Commiſſion; and therefore this pretended conditional Acceptance, directly againſt his Truſt and Government, was moſt ridiculous.

Secondly, he alledged, *That he never ſought after the Governorſhip of* Briſtol, but really deſired not to accept it, and to be acquitted from it: to which end he produced and read divers Letters of his own to the Lord *Say* his Father, and one or two to his Excellency, which took up near two hours time in reading. In the reading of theſe Letters, the Colonel caſually deſired the Council to obſerve, that many of them were written before he had his Commiſſion for *Briſtol*, which was not till the firſt of *May* 1643.

This Mr. *Prynn* taking preſent hold of, deſired their Lordſhips in the firſt place, to obſerve his voluntary Confeſſion of that Commiſſion which at firſt he ſo obſtinately denied.

To theſe Letters read, Mr. *Prynn* gave theſe ſhort Anſwers:

Firſt, That all theſe Letters were either his own or his Father's, and not above two or three of them proved true Copies, and that by Mr. *Sprig* the Lord *Say*'s Secretary; therefore no Evidence at all to juſtify or excuſe him, himſelf and his own Letters being no competent Witneſſes in his own Cauſe; and his Father but *Teſtis Domeſticus* at the beſt, if preſent.

Secondly, That the ſubſtance of the chief Letter to his Excellency, was only a modeſt excuſe of his own inſufficiency for that Charge; a common Compliment in every ingenuous Man's Mouth, that is preferr'd to any great Place of truſt; who in words at leaſt pretends Inſufficiency for that Place which he perchance deſires: juſt like our Biſhops uſual Anſwer, *Nolo*, *nolo*, to *vis Epiſcopari?* now uſed as a Formality, for faſhion ſake only, even when they come to be conſecrated; when in truth they make all the Friends and Means they can to compaſs that Biſhoprick, which (for faſhion ſake, out of a diſſembling Modeſty) they pretend, and twice together anſwer ſolemnly (when demanded openly before the Congregation) that they deſire by no means to accept of. Therefore this Letter of his can be no proof, that he was unwilling to undertake this Government, ſince his ſubſequent Acceptance and Actions diſprove this pretended Refuſal.

Thirdly, He obſerv'd, that in one of his Letters dated the 4th of *April*, he writ earneſtly to his Father, to procure and ſend him his Commiſſion: Therefore he was ſo far from refuſing, that he ſought the Government, and ſent Captain *Bagnall* twice to his Excellency to procure his Commiſſion: as was after atteſted upon Oath.

Fourthly, That by divers of his Letters then read, it clearly appeared, himſelf was the chief Informer againſt Col. *Eſſex*, and the chief Actor in his Removal, to intrude himſelf into his Place; for that we had now his own Hand againſt his Words and Anſwer.

Fifthly, That the Scope of all his Letters was only to complain and cry out to the Parliament for more Monies from *London*, or to get more Authority to raiſe Monies in the Country, to pay the Garriſon, without which Monies, he writ, he could not long hold the Town; but there is not one Clauſe in all the Letters, that he wanted Arms, Ammunition, Powder, Men, Proviſion, or that the Town or Caſtle was not tenable. If then he complained only of Default of Monies, with which if he were furniſhed, he made no doubt of keeping the Town; and it is clear he loſt not the Town for want of Money, (for he hath not hitherto either in his printed Relation, Letters, or Anſwer, affirmed, that he ſurrender'd the City or Caſtle for want of Money) then by his own Confeſſion, he muſt ſurrender them either out of Treachery or Cowardice, they being tenable, and furniſh'd with all other Neceſſaries for a Siege but Money.

Sixthly, He obſerv'd that Col. *Fiennes* did never refuſe the Place of Governor, as he ſhould have done had he been unwilling or unable to diſcharge it: that his Importunity to quit it, in caſe he could get no Monies, was with no intent to leave the Place, but only to haſten the ſupply of Monies; it being the Argument and Rhetorick of moſt other Commanders in their Letters to the Parliament, to cry out for Monies, elſe all would ſoon be loſt, and they muſt diſband.

Seventhly, That he took on him the Power and Place of a Governor long before he had a Commiſſion; that he drew and ſent up Ordinances to paſs the Houſe to enlarge his Power and Territories for twenty Miles ſpace round *Briſtol*, and to ſettle himſelf in an abſolute Government there. That he both earneſtly writ and ſent up twice to his Excellency for a Commiſſion by a ſpecial Agent, that ſo he might be Independent; that he accepted of the Commiſſion when it came; yet never acquainted the City or Committee of Parliament with it, doing all things in a high imperious manner for the moſt part, of his own Head, without their Privity or Advice; that he held his Commiſſion without ſurrendring it till he ſurrender'd the Town and Caſtle to the Enemy, ſo unwilling was he to depart with his Governorſhip. From all which he concluded, it was apparent he was ſo far from refuſing, that he did ambitiouſly affect, if not injuriouſly uſurp, this Government, for his own private Lucre, to the Prejudice of the former Governor, and irreparable Damage of the whole Realm.

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* *Littleton.* Sect. 378, 379. See *Coke*'s Inſtitutes on it, fol. 232, 233, 234.

In fine, Col. *Fiennes* deſired Mr. *Prynn* to prove. Firſt, *That he ever undertook to his Excellency or the Parliament to make good the City or Caſtle, and not to ſurrender the ſame to the Enemy without their Conſents.*

To which Mr. *Prynn* anſwer'd, That the very Law itſelf and common Reaſon informs us, that every Governor of a Town, or Fort is to make them good, and not to ſurrender them to the Enemy without the conſent of thoſe who committed their Cuſtody to them, elſe every Governor might betray his Truſt at pleaſure. This therefore being a Condition in Law annexed to all Governors and Officers, and he confeſſing himſelf to be Governor, (and that by a Commiſſion which no doubt enjoyned him to make good and keep the Place in manner aforeſaid) needs no other Proof at all; the Law reſolves it, and therefore none muſt doubt or contradict it.

With this Debate the Proof of the firſt Article was concluded.

Article 2. The ſecond Article was proved by his own printed Proceedings mentioned in *A full Declaration*, &c. *p.* 5, 6, 7, 8, 15. by his Anſwer to the Article, and Relation to the Houſe of Commons, *p.* 15. And Mr. *Prynn* informing the Council, that he did not charge it criminally, being a lawful Action done by direction of Parliament, but only by way of introduction and aggravation of the ſubſequent Articles, and Crime in ſurrendring the Town ſo treacherouſly and cowardly, after this his Sentence againſt, and Execution of thoſe Conſpirators, it was paſſed over without further Preſſing.

Article 3. The third Article being likewiſe introductive, to aggravate his Offence in the fourth, fifth, ſixth and eighth Articles, was briefly proved by his own printed Relation, *p.* 4, 5, 6, 23. by his printed Letter to his Excellency, confeſſed in part in his Anſwer, and to be further proved in the Proof of the enſuing Articles, was thereupon briefly run over: and ſo the firſt day's Hearing ended.

The ſecond Day's Hearing, together with the third, fourth, fifth, ſixth and ſeventh, ſpent wholly in the Proof and Defence of the fourth Article, to which moſt of the others in the Reply and Rejoinder were reduced.

THE three firſt introductive Articles being run over the firſt Day, the Proſecutors, the next Seſſion, proceeded to the fourth, where the criminal and capital charge of the Impeachment began: The Defendant firſt demurred to the Depoſitions taken upon Oath againſt him, both before the Judge-Advocate himſelf, and by Sir *William Waller* and Col. *Carre*, by Commiſſion from his Excellency; alledging,

Firſt, That no Paper-Depoſition ought to be allowed by the Law, in Caſes of Life and Death, but the Witneſſes ought to be all preſent and teſtify *viva Voce*, elſe the Teſtimony ought not to be received.

Secondly, That Sir *William Waller* was his Enemy, and by Confederacy with the Proſecutors, had been the chiefeſt Inſtrument of proſecuting this Impeachment againſt him; to which end he produced one Major *Dowet* a *Frenchman* (whom Sir *William Waller* had diſplaced, and ſo diſguſted) to atteſt, *That Maſter* Walker'*s Reply to Col.* Fiennes'*s Relation, was ſhewed to Sir* William *and his Lady before it was printed, and that Sir* William *had ſpoken to his Officers to acquaint Mr.* Walker *with all ſuch Paſſages as they knew concerning Col.* Fiennes, *touching the Siege and Surrender of* Briſtol: therefore he was neither a fit Commiſſioner nor Witneſs in this Cauſe, nor yet any of his Officers under him.

Thirdly, That he had not joyned with the Proſecutors in Commiſſion, neither had he notice thereof, that ſo he might croſs-examine the Witneſſes. Therefore for theſe Reaſons, he deſired, that all the Paper-Depoſitions might be ſuppreſſed, and not given in evidence againſt him.

To the firſt of theſe Objections Mr. *Prynn* returned this Anſwer: Firſt, that himſelf had formerly uſed this kind of Proceeding in the Caſe of Col. *Eſſex*, againſt whom he had not only taken, but printed divers Paper-Teſtimonies, in things which might have proved Capital if the Proof had been full. That himſelf in this very Caſe had ſued forth a Commiſſion to examine Witneſſes on his behalf, without our Privity, before we took forth any Commiſſion, who did but imitate him therein, and that by the Judge-Advocate's own advice, who directed us to this Courſe, which he affirmed to be both legal and uſual: That in the Civil Law (eſpecially in Courts Martial) Trials were as uſual *Teſtimoniis*, as *Teſtibus viva voce*: That in the Admiralty, (a Civil Law Court) as likewiſe in the Chancery, Star-Chamber and *Engliſh* Courts, formed after the Civil Law, they proceed uſually by way of Depoſition: That even at the Common Law in ſome caſes, Depoſitions taken before the Coroner, and Examinations upon Oath before the Chief Juſtice, or other Juſtices, are uſually given in evidence even in capital Crimes: That the high Court of Parliament hath upon juſt occaſion allowed of Paper-Depoſitions in ſuch caſes: That in all Courts Martial, both in *England* and elſewhere, they have been conſtantly allowed, and particularly in the late famous Caſe of *Tomkins*, *Challoner*, and other *London* Conſpirators, whoſe Examinations were read, and given in as evidence one againſt the other, upon which they were condemned and executed. Beſides, there was both very great reaſon and neceſſity that ſuch Depoſitions ſhould be admitted in this Caſe, and in all martial Proceedings of this nature, becauſe divers of our material Witneſſes, being Officers or Soldiers now in actual Service, and diſperſed upon ſeveral occaſions into divers Brigades, and parts of the Kingdom remote from St. *Albans*, could not without great danger, diſſervice to the State, inconvenience to themſelves, and exceſſive Coſts, be drawn together perſonally to attend this Trial, which had been ſo frequently adjourned, not only from Week to Week, but Place to Place: That we ſeveral times petitioned both the Commons Houſe and his Excellency, that the Council appointed for this Trial might be held at a certain Day and Place, within *London* or *Weſtminſter*, before our Witneſſes were diſperſed, and where we could with leſs trouble and expence to ourſelves and them, have produced all or moſt of them *viva voce*; but yet we could not (thro' the Defendant's Procurement, as we conceive) obtain this reaſonable requeſt: Therefore himſelf being both the Cauſe and Precedent of theſe our Depoſitions, and of removing the Trial to this Place, for our greater Incommodation and Expence, ought not to take advantage of his own wrong, againſt a Maxim of Law, the conſtant Practice of the Court-martial, and his own leading Example, which we did but imitate. Which Point the Council did upon ſolemn Debate among themſelves clearly over-rule againſt the Defendant, upon the premiſed Reaſons.

To the ſecond Exception, concerning Sir *William Waller*, Mr. *Prynn* moſt ſolemnly proteſted for himſelf to the Council, that it was a moſt falſe and malicious Slander; that neither Sir *William Waller*, nor his *Lady*, nor any other in their behalf, did ever directly or indirectly excite, adviſe, or incourage him in this Proſecution; that the Delinquent himſelf was the only man who unadviſedly put himſelf upon this Trial, as appears moſt evidently to all the World by the Cloſe of his printed Relation in the Parliament Houſe, where pag. 13. *He deſires the Houſe of Commons, that they would be pleaſed to let the Truth of what he had then affirmed to them (concerning the Surrender of* Briſtol) *be examined at a Council of War, that ſo he might be cleared or condemned, as they ſhould find the Truth or Falſhood of what he had delivered:* by his, and his Officers Petition to his Excellency, and his Excellency's Proclamation upon their Petition, poſted up at *Weſtminſter* and the *Exchange*, wherein he ſummoned Mr. *Walker* and Mr. *Prynn* by Name, in the moſt publick manner that might be, and after that by private Notes, and ſundry other publick Adjournments, to be his Proſecutors: Which thankleſs Office he was not altogether unwilling to undertake, when thus openly engaged by the Defendant; not out of any private Malice to the Delinquent, whom he formerly honour'd, and to whom he never bore any particular Spleen, having never received the leaſt Injury from him; much leſs out of any degenerous Reſpects, inſtrumentally to wreck the private Malice or Revenge of any others upon him, (it being below his Spirit, and moſt averſe to his Genius, his Conſcience, to be ſubſervient or inſtrumental to any Man's Malice or Revenge whatſoever) but merely out of a real deſire to do his Country faithful Service, and vindicate the Truth of this unworthy State-ruining Action, under which the whole Kingdom now lay languiſhing, from thoſe falſe Diſguiſes which the Defendant in ſundry printed Papers had obtruded on the World, to ſalve his own irreparable Diſhonour. The Proſecution therefore proceeding thus merely from himſelf, as all the Premiſes infallibly demonſtrate, he had laid a moſt ſcandalous Imputation upon Sir *William Waller* (a noble well-deſerving Gentleman then abſent,) and on himſelf, in the fore-mentioned Exception, for which he demanded Juſtice againſt him from that honourable Council, unleſs he could make good this Calumny, for which he was moſt certain the Defendant had not the leaſt ſhadow of Proof; the Teſtimony of *Dowet* (the ground of this Aſperſion) not referring to him, but only to Mr. *Walker*'s Relation, publiſhed long before any Impeachment of, or Proſecution againſt the Defendant: which Charge Mr. *Walker* himſelf there preſent was ready to anſwer, as to that Particular.

Hereupon Mr. *Walker* informed the Council, that he acknowledged in the *Epiſtle to his Anſwer to the Defendant's Relation, that it was but a Collection out of the ſeveral Reports of divers Gentlemen and Commanders in that Service, before and when* Briſtol *was beſieged:* which when he had drawn up, having occaſion to go to *Southampton*, he left in the Hand of a Friend, deſiring him to ſhew it to whomſoever he ſhould think fit, (and eſpecially to thoſe Gentlemen out of whoſe Mouths he compiled it) to ſee if he had hit their Senſe aright; and that this Party (as he was ſince informed) ſhewed it to Sir *William Waller*. He ſaid further, that the written Copy was ſhewed to the Defendant himſelf, and therefore he doth not wonder if it were ſhewed to Sir *William Waller:* and that Sir *William*'s ſpeaking to his Officers, *only to declare what they knew touching that Buſineſs, with reference ſimply to his Anſwer*, could not be intended either Malice, or Combination, or Proſecution of this Impeachment, not then ſo much as thought of, nor any Prejudice to the Truth, ſince no man can know a Falſhood, becauſe it is a *Non-entity*, and can be no Object of Man's knowledge: That therefore this could be no juſt Exception to Sir *William* as a Commiſſioner, the rather becauſe Col. *Carre* (a Man indifferent) was joined with him; much leſs any legal Exception to any Officers or Soldiers Teſtimony then under his Command, who did but teſtify what they knew for Truth. Beſides, Mr. *Prynn* added, that Col. *Fiennes* himſelf had examined divers of Sir *William Waller*'s Officers by Commiſſion, before we examined any of them, and ſome of thoſe whom we examined; and why we ſhould be deprived of the Benefit of their Examinations for the Kingdom's Advantage, when himſelf had examined them only for his private Defence, there could be neither Reaſon nor Equity alledged, it being a mere Artifice, to deprive us of our moſt material Witneſſes, and to ſuffocate the Truth.

To the third, of his wanting notice to join in Commiſſion, and croſs-examine the Witneſſes on the other ſide, Mr. *Prynn* anſwered:

Firſt, That himſelf had begun the Precedent, in taking forth ſeveral Commiſſions to Sir *William Waller*'s, and the Earl of *Mancheſter*'s Army, to examine Witneſſes there, without our Privity or Conſent, who neither had any the leaſt notice of the Commiſſions to join in them, nor of any the Witneſſes Names, till the Hearing, nor had not, nor could not croſs-examine them, nor ever yet ſaw their Depoſitions: And why our Depoſitions, being Proſecutors, ſhould not be admitted as well as his, being not taken ſo publickly before the Judge-Advocate, as moſt of ours were, he ſaw no reaſon.

Secondly, That we could not enforce Colonel *Fiennes* to croſs-examine any Witneſſes, or to join with us in their Examination; therefore if he neglected to do it, or went before us in his Commiſſions, as he did, by virtue of which he might have examined all our Witneſſes if he would, before we had taken their Teſtimonies againſt him, the Default was his, not ours.

That we left all our Depoſitions, and the Witneſſes Names, with the Judge-Advocate, to whom he oft repaired, and from whom he might have received the Catalogue of them, to croſs-examine them, if he pleaſed; which ſince he neglected to do, after ſo many Adjournments, and taking no Exceptions till now he came before the Council, of purpoſe to evade his Trial, and to elude both them, us, the Parliament, and People, whoſe Eyes are on the Iſſue of this Buſineſs, there was no reaſon to allow theſe frivolous Exceptions. All which the Council, upon ſhort Debate, over-ruled againſt the Defendant, reſolving, that the Teſtimonies ought to be uſed, unleſs ſome particular juſt Exception could be alledged againſt any of them.

Theſe Obſtacles being removed, Mr. *Prynn* then proceeded to prove the fourth Article; which he did, Firſt, By the Defendant's own Anſwer thereunto, wherein he doth confeſs the whole Article in ſubſtance; yea, more than it chargeth him withal, as namely,

Firſt, *That he never undertook to make good the City or Caſtle, or either of them, againſt the Enemy*; *declaring that he would not, nor could not undertake it:* Which is in plain *Engliſh* as much as to confeſs, that he had never any Thought or Reſolution to hold them out to the utmoſt Extremity, as he ought to have done in Honour and Duty; but a profeſſed Purpoſe to ſurrender them to the Enemies, traiterouſly or cowardly, as ſoon almoſt as they came before it.

Secondly, *That ſoon after the Enemy entred the Line* (with a very inconſiderable Number, not above a hundred and fifty at firſt, and three or four hundred in all at laſt, as the Witneſſes atteſt) *he did ſurrender the Town and Caſtle, with all the Priſoners, Cannons, Ammunition, Artillery, Military Proviſions, Magazines, Victuals, and part of the Arms,* (all but the Horſemens Swords, moſt of which were likewiſe taken from them ere they departed the Town) *before the Enemy had taken any of the Out-Forts about the ſame, or had made the leaſt Aſſault or Battery upon the Walls of the City, or of the Caſtle, or any Mine or Breach into the chief Fort thereof, (and that before the Town had been three whole Days beſieged*, which he denieth not, and therefore granteth by his Anſwer:) Which whether it were not a moſt clear Confeſſion and Demonſtration of a treacherous and cowardly Surrender, in the ſuperlative degree, he humbly ſubmitted to the honourable Council's Judgment, and the Determination of all Men endued with common Reaſon; and yet the Defendant hath the Confidence, in the ſame Branch of his Anſwer, to deny *that he did deliver them up traiterouſly, cowardly, or diſhonourably, or contrary to his former Promiſes,* (which were to diſpute every Inch of the Town, from the Line to the City-Gates, and from thence to the Caſtle-walls, which he would defend to the utmoſt, and there lay his Bones if he could not keep it, and make his Flag of Truce his Winding-ſheet, as is proved by [*] divers Witneſſes,) *or contrary to his Truſt and Duty*; and the Impudence to affirm, *that he did defend the Town and Caſtle to the utmoſt Point, not only of Duty, but alſo of Honour, that any Soldier could or might have maintained the ſame.* Which whether it were not the greateſt Paradox and Contradiction, that any Military Man in his right Senſes durſt ever affirm before a Council of experienced, valiant Commanders, he referred to the Reſolution of all there preſent.

Thirdly, He confeſſeth, that tho' *neither any of the Out-works were taken, nor the Town Walls once battered or aſſaulted, when the Enemy entred the Line, yet as Things then ſtood, neither the Forts nor Caſtle ought to have been kept, to the Prejudice of the City and Garriſon, but ought to have been ſurrendred together with the City, as they were, by the conſtant Practice and Policy of War in all Places, the Principles of Juſtice and Honeſty, and the Rules of Wiſdom and Diſcretion.* And he further adds in the Clauſe of his Anſwer to the eighth Article, *That he doth affirm and will juſtify, that if the Caſtle had been tenable, yet neither by the conſtant Practice and Maxims of War in all Places, nor by the Rules of Honeſty and Chriſtianity, he ought to have held the ſame.* A Riddle which Mr. *Prynn* profeſſeth tranſcended the Limits of his Underſtanding to enucleat, if not of all Mens elſe, but the Defendant's; and a Paſſage which carried *Treachery and Cowardice* engraven with Capitals in its very Front, proclaiming openly to all Men, that had the Out-Forts and Caſtle been never ſo ſtrong and tenable againſt the Enemy, yet he was ſo far from reſolving to keep them for the Kingdom's and Parliament's Security, that he profeſſeth, *he ought not to have held the ſame, neither by the conſtant Practice and Policy of War, nor Rules of Piety or Chriſtianity, but ought to have ſurrendred the ſame with the Town.* Certainly this Gentleman was either reſolved to loſe his Head when he penned this Anſwer, or elſe was intoxicated with the panick Fear that ſurprized him at *Briſtol*, (which hath made his Pen and Brains to ſtagger ever ſince) elſe he durſt not put in ſuch an Anſwer in Writing to this Impeachment.

Fourthly, He ſaith, *that this Surrender of the City, Caſtle, Forts, with all the Ammunition, Cannon, Magazines, Arms,* (but Troopers Swords) *Priſoners, Ships, and his very Colours, before any Out-fort taken, or Battery made againſt City or Caſtle, was upon good and honourable Conditions, in reſpect to the Eſtate he was in.* I think he means himſelf was in an ill Condition, ſhould the King's Forces have forcibly taken him Priſoner, for that the King had excepted him out of the Pardon mentioned in his Anſwer to the third Article: And therefore out of baſe Fear and Self-reſpects he would rather redeem his Head, and buy his Peace with the voluntary Surrender of a Place of ſuch Conſequence to his Majeſty, than hazard his Life in defending it to the utmoſt. And withal he adds, *that this Surrender was for the Honour, Profit, and beſt Advantage of the Kingdom, and Parliament, by whom he was intruſted:* which when he ſhall be able to demonſtrate, or make the Parliament and Kingdom believe, I ſhall profeſs this honourable Council may in Juſtice acquit him; till then (I hope) you cannot but condemn him, even out of theſe ſeveral Paſſages of his own Anſwer.

Secondly, From his Anſwer I ſhall deſcend to our Proofs, which extend to all the enſuing Articles as well as this: by which it appears,

Firſt, That the Defendant wanted neither Men nor Ammunition, nor any manner of Proviſion, to defend the City and Caſtle againſt the Enemy: Not Men, for he had near 2000 Foot, and 300 Horſe, beſide Voluntiers, to defend the Town; and he might have raiſed at leaſt 6 or 8000 able Men more in the City, if he had wanted Men, which were as many, or more, as beſieged it. Proved by the Depoſitions of Colonel *Stevens*, *Anthony Gale*, *Arthur Williams*, *Able Kelly*, *James Powel*, and others.

Secondly, That they wanted not Ammunition, for we proved there were 60 (nay 70 double) Barrels of Powder in the Caſtle, with Match and Bullet proportionable, beſides what was in the City and Forts, and might have been made weekly in the Town, if held out againſt the Enemy; and that by the Depoſitions of Mr. *Edward Bainton*, *Arthur Williams*, *Joan Batten*, Major *Wood*, and others: Beſides, himſelf confeſſeth in his Relation 50 Barrels in the Caſtle only, when ſurrender'd; Mr. *Haſſard* depoſeth 50 at leaſt.

Thirdly, That they had all manner of Proviſion both in the City and Caſtle, for three Months ſpace or more; the Particulars whereof will appear in the Depoſition of *Nicholas Cowling*, *Able Kelly*, *James Powel*, *Dorothy Haſſard*, *Mary Smith*, and others: That himſelf and [†]others deemed the City and Caſtle ſtrong and tenable; that he promiſed to hold the ſame to the utmoſt; to diſpute every Inch of Ground with the Enemy; to retire into the Caſtle when he could hold the City no longer; to lay his Bones there rather than yield it, and make his Flag of Truce his Winding-ſheet. If then the Place were ſo ſtrong and tenable, and he wanted neither Men, nor Ammunition, nor Victuals, to defend the City and Caſtle, his Surrender of them muſt of Neceſſity be adjudged *Traitorly*, or *Cowardly* at leaſt, if not both: for what elſe but *Treachery*, or *Cowardice*, or both conjoyned, could move him to this Surrender, in leſs than three Days Siege, before the utmoſt extremity, contrary to the Laws and Ordinances of War, whenas he wanted nothing neceſſary for a brave Defence?

Secondly, We have proved that the Town and Caſtle were not beſieged three whole Days; for the Siege it ſelf began but the *Monday* Morning, and the Articles of Surrender were agreed on before *Wedneſday* Night, and the Surrender executed before 9 of the Clock the *Thurſday* Morning: as Col. *Stephens*, Col. *Strode*, *Able Kelly*, and others teſtify.

Thirdly, That the Enemies were generally repulſed on all quarters of the City, with extraordinary great loſs of Men, near 700 of them being ſlain, and as many wounded, with the loſs only of ſix or eight of our Men: and that but 150 of them, or 200 at moſt, entered the Line the *Wedneſday* Morning before Sun-riſing (near three of the Clock) and were ſo afraid of being cut off, that they gave themſelves all for dead Men, and might have eaſily been cut off, none of their own Party knowing of their entry till two Hours after they entred, nor ſending them any Relief. Atteſted by *Arthur Williams*, *Joſeph Proud*, *James Coles*, *Mary Smith*, Serjeant *William Hill*, *Stephen Radford*, *Michael Sparks*, and others.

Fourthly, That Major *Langriſh* and his Horſe-Troops, which had the Guard of that Place, and two other Captains of Horſe under him, never once offered to charge the Enemy, whom they might eaſily have cut off, but retired into the City without charging them: That *Langriſh* (very intimate with the Defendant) had been formerly complained of to him, by Lieutenant *Clifton*, Col. *Stephens*, and others, for his extraordinary Cowardice and Negligence, who deſired he might be caſhiered to walk the Street, as unfit for any Charge; yet the Defendant continued him in his Place, and ſet him to guard that very weak Place, where the Enemy was likelieſt to enter. Proved by *Joan Battin*, Col. *Popham*, Col. *Stephens*, and Captain *Nevil*, Lieutenant *Clifton*, Captain *Huſbands*, and Captain *Vaughan*, (*Fiennes*'s own Witneſſes) upon Croſs-Examinations before the Council.

Fifthly, That the day before the Enemy entred, one *Thomas Munday*, a Soldier under Captain *Henry Lloyd* (as both their Depoſitions witneſs) pointing with his Finger to the very Place where the Enemy entred the next Morning, told Major *Langriſh* in the hearing of Colonel *Fiennes*; Captain, *Yonder is a very ſuſpicious Place not fully fortified, and it is very doubtful; unleſs you ſet an hundred Muſketeers more there, it being weakly manned, the Enemies will there make their firſt Breach.* Whereupon Colonel *Fiennes* for this his good Advice, in an angry manner aſked him, *What, doth he prate?* and called him *Saucy Knave.* And *Langriſh* having the Guard thereof, ſuffered the Enemy the very next Morning to enter that Line at the ſame Place, from which he retired with his Horſe without any Charge or Reſiſtance; whenas he might eaſily have repulſed and beat them off. Yet the Defendant never queſtioned nor complained againſt *Langriſh* for this his Cowardice and Treachery, which was the only real Occaſion of Surrendring the City, but countenanced and juſtified him all he could, affirming in Print, that he was acquitted by a Council of War of Cowardice, (which was falſe;) and endeavoured to lay the Blame of not Charging upon one Lieutenant *Rouſwell*, who was ſo far from being guilty of this Fact, that ſeeing *Langriſh* with his Troop quit the Breach without Charging, he called him Coward, and with three or four Muſketeers only marched up to the Enemy, and made good the Breach for a Time, till he received ſo many Wounds (whereof he after died) as forced him to retreat for want of Seconding; he affirming, that if he had been ſeconded by the Horſe, or with 20 Muſketeers more, he could eaſily have repulſed the Enemy, and made good the Breach. Yet this dead Man muſt be thus traduced to ſave *Langriſh*'s Credit, tho' Captain *Huſbands* (one of the Defendant's own Witneſſes) confeſſed, that *Langriſh*'s Cowardice, in not Charging, was the Loſs of *Briſtol*, and that he told him ſo openly to his Face, at a meeting in *London*, ſince the Surrender.

Sixthly, That for two or three Hours ſpace at leaſt, the few Enemies who firſt entred had no Relief nor Supplies ſent to them, neither indeed could have, the Enemy being bravely repulſed with great loſs in all other Places, ſo as they retired in diſorder to their Quarters; and one whole Regiment of their Horſe retreated as far as *White-Church*, four Miles from *Briſtol*, with a Reſolution never to come on again, had not the Meſſage of the unexpected Parley, and Hopes of the City's Surrender thereupon, drawn them back to their Quarters: And that divers of the Enemies confeſſed, if they had then been repulſed or beaten out of this Breach, they had raiſed their Siege, and never come on again. Serjeant *Hill*, Major *Wood*, *James Coles*, depoſe all this, and the Defendant's Witneſſes confeſſed it.

Seventhly, That from three in the Morning, when the Enemy entred, till about 10 or 11 a-Clock at leaſt, there was no Charge at all made, except only with *Rouſwell*, and after by Capt. *Nevill*, who charged them down-hill only with twenty Horſe, an Hour or more after their entry, and could have then beaten them out, as he verily believed, and atteſted upon Oath, had he been ſeconded with 30 or 40 Horſe or Muſketeers. A very ſtrange neglect, to ſuffer the Enemy to lodge ſo long within the Line, ere they were encountred.

Eighthly, That upon the Enemies Entry Col. *Fiennes*, inſtead of commanding the next Guards and Companies then at the Out-works, to fall upon and beat them out, as he was preſſed to do by Lieutenant *Daviſon*, Major *Wood*, Capt. *Bagnal*, Mr. *Deane*, Serjeant *Hill*, and others, commanded upon pain of Death by his Lieutenant *Clifton*, to draw off the Line and Works on that Side of the City the Enemy entred, and to retire into the City with all Speed to the Market-place, full ſore againſt their Wills: whereat divers of the Soldiers [a] *were very much diſcontented and diſcouraged*, and many of them ſaid, *They were betrayed.* Whereupon they retreated from the Line and Out-works in great Diſorder, many of them leaving not only their Swords, Muſkets, Powder, Bullets, but their very Cannons behind them, which might have been eaſily drawn off, being down the Hill, and many Colliers Horſes ready at Hand for that Service; at which the Gunners were ſo diſcontented, that ſome of them ſpiked and nailed up their Touch-holes, to make their Cannons unſerviceable to the Enemy, and the City-Garriſon too, in caſe they had returned to the Works and Line; which by this ſtrange Soldiery, were left naked of all Defence near two Miles Space together, ſo as the Enemy might have entered the Line where they pleaſed, in ſundry Places of greater Advantage, nearer to the City, Caſtle, and Suburbs, by much, than where they had made their firſt Entry. Which ſtrange Device and unmilitary Policy, if it ſavoured not of apparent Treachery, yet at leaſt it cannot be excuſed from extreme Folly, and want of Skill in Martial Affairs; which made Major *Lewis*, and other of the beſt experienced Soldiers (who adviſed not to draw off the Line into the City, but to fall preſently on the Enemy from the Line itſelf, which was the nearer, beſt, and ſpeedieſt Way) exceedingly diſcontented.

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[*] *Mr.* Powel, *Col.* Strode, *Col.* Stephens, *Mr.* Haſſard, *Capt.* Bagnal.

[†] *Col.* Strode, *Col.* Stephens, *Captain* Bagnal, *Mr.* Powel, *Mr.* Cowling, *Major* Wood, Richard Lindon, Edward Watlin, *Mr.* Haſſard.

Ninthly, That when the Soldiers were thus haſtily and confuſedly called from the Line into the Market-place, they there ſtood idle, looking one upon another, without any Command to make a Sally, or do any other Service to ſecure the City [b]; whereupon, for want of Command and Imployment, divers of the Soldiers who had been upon Duty at the Line four or five Days and Nights together, departed from their Colours, ſome to the Tavern, ſome to the Ale-Houſe to drink, others to their Beds to ſleep, ſo as their Companies were broken, and not half full: Whereas if they had marched orderly from the Line, againſt the Enemies, when they firſt entered it, which was far the beſt and ſhorteſt Way; or made a Sally as ſoon as they retreated from the Line, theſe Inconveniences had been prevented, the Soldiers kept in Heart, the Enemies cut off, or beaten out, the Breach made up, and the City preſerved.

Tenthly, That when the Sally was made [c], not before, but much about eleven of the Clock, it conſiſted not of above 200 Men, and that of thoſe called off the Line, the Freſh Men at the main Guard, and Captain *Stokes*'s Company purpoſely kept for a Reſerve, with the Garriſon-Soldiers in the Caſtle, (who were not in the Fight at the Line, and might have made a preſent Sally, without calling any from the Line) being not imployed on this Service.

Eleventhly, That when the Enemies upon the Sally, tho' late, were driven from Houſe to Houſe, and ſo beaten that they let fall their Arms, and cried for Quarter; and when the Women were ſo couragious, that they proferred to go with their Children unto the Cannons Mouth, to dead the Bullets, in caſe the Soldiers were afraid, rather than the City ſhould be yielded, and thereupon encouraged both the Gunners and Soldiers to fight, working in the very Face of the Enemy, and ſtopping up *Froom-Gate* with a very thick Work (made with Earth and Wool-Sacks) where the Enemy ſhould have entered the City; yet ſuch was the Defendant's extraordinary Cowardice, that he even then ſent twice out to the Enemy for a Parley, whereas the Soldiers generally deſired and offered to fight it out to the utmoſt [d]: which ſo much diſcontented divers Soldiers, that they ſaid they were betrayed, and in very anger brake their Muſkets, Swords, Pikes, leſt the Enemy ſhould gain them, ſwearing that they ſhould never ſerve the Parliament more, and taxing the Governor for his Parley and Cowardice.

Twelfthly, That the Caſtle was ſurrendred, the Priſoners releaſed [e], the Enemy admitted into the Town, long before the Hour agreed on, thro' the Defendant's Haſtineſs; yea the Soldiers, and Townſmen pillaged before his Face: yet he took no Care to ſee them righted, but left them to the Spoil, neglecting to take Hoſtages to ſee the Articles performed; which (contrary to the Rules of War) were not made between Prince *Rupert*, the King's General [f], and the Governor, but between him and the Prince's Commiſſioners only: and that he made ſuch Haſte to quit the Town, that he left Captain *Blake*, and Captain *Huſbands*, in *Brandon-Hill* and *Prior-Hill* Forts behind him, never giving them notice of the Articles, nor any Warrant under his Hand to ſurrender them to the Enemy, to the endangering of their Lives and Liberties.

Thirteenthly, That Col. *Fiennes* being moved to ſend away the Priſoners before the Siege, refuſed, ſaying, *He would keep them there to make his own Conditions the better*; thinking of nothing before-hand, but to ſurrender the City, to ſave himſelf: That he told [g] Mr. *Tolboies*, that he ſhould not be in *Briſtol* for ought he knew at Saint *James-Tide* then next enſuing; and uſed ſuch Expreſſions to him, as made him believe he meant to ſurrender the Town by that Time, (as he did the very next Day after Saint *James*'s Feaſt) who thereupon left the City, as intended to be ſurrendred by the Governor. That he commanded Mr. *Haſſard* to lay by a Reſerve of 30 Barrels of Powder, with Match and Bullets proportionable, to which when he was reduced he would treat [h]: That there were about 140 Granadoes in the Caſtle, and one new Mortar-piece, and that *John Warden* one of the Gunners of the Caſtle did often importune the Defendant to give him leave to make a Shot at the Enemy out the ſaid Mortar-piece, but the Defendant commanded him under Pain of Death not to make any Shot at them: whereat the ſaid Gunner was ſo grieved, that he oft complained the Town was betrayed. All which Granadoes with the Mortar-piece were ſurrendred to the Enemies, and not one of them ſhot againſt them, tho' they ſhot many Granadoes at the Town and Garriſon.

Fourteenthly, That the Caſtle and Forts were very ſtrong and tenable, if not the Town; that the Defendant himſelf, the [i] Townſmen and Soldiers reputed them ſo; that they might have been held divers Months, yea to this very Time, had not they been ſurrendred; that the Enemy could not have taken them by force, even by their own Confeſſions, nor all the Devils in Hell have taken the Caſtle, had not the Defendant, beyond their Expectation, ſurrendred them baſely into their Hands, and beſtowed them upon him; for which Surrender the very Enemy called him a *baſe Coward*, and ſaid he deſerved to be hanged for delivering up ſuch a Town and Caſtle as that to them ſo eaſily, for which they might thank *Fiennes*, elſe they could not have won them by Force, had not he beſtowed them on them beyond their Hopes. From all which Particulars (fully proved) we conclude, *That the Town, Caſtle, Ammunition, Cannons, Arms,* &c. *were moſt Diſhonourably, Cowardly, and Treacherouſly delivered up to the Enemy, and that without and againſt the Parliament's or his Excellency's previous Conſents, who abhorred the Fact, and never gave the leaſt way thereunto, being executed before they had any Thought or Tidings of it, and before the City and Caſtle was reduced to any Extremity.* And thus was concluded the ſecond Day's Work.

The Sum of the Defendant's tedious Defence, conſiſted of the enſuing Particulars, to every of which, for Brevity and Perſpicuity ſake, we ſhall ſubjoin the diſtinct Replies then given, not in a continued Speech, as they were uttered, but in Parcels, as each part of the *Reply*, *Rejoinder*, and *Surrejoinder* was applied to each Part of the Defence.

Firſt, The Defendant denied, *That all the Arms were ſurrendred to the Enemy; for it appeareth, by the firſt Article of the Surrender, that all the Officers of Horſe and Foot, were to march out with their full Arms, and the Troopers with their Swords.*

To which Mr. *Prynn* anſwered, *That by the firſt and tenth Articles of Surrender, all the common Foot-Soldiers were to march out without Arms, and the Troopers only with their Swords, leaving their other Arms, together with all their Cannons, Ammunition, and Colours, behind them*; therefore ſince all the Arms of the Foot, all the Troopers Arms but their Swords, (which were not many nor conſiderable) with all the Cannons, Ammunition, Colours, were thus ſurrendred, the Words of the Article of Impeachment, *that all the Cannons, Ammunition, Arms,* &c. *were ſurrendred*, were ſufficiently and literally proved.

2. That *all*, both in Scripture, Law, and common Parlance, is frequently taken for the *greateſt part*, or *well nigh all:* as Mat. 2. *Herod was troubled and all Hieruſalem with him.* Mat. 21. 10. *All the City was moved, ſaying, Who is this?* All *Men think ſo*, All *affirm it*; *They have taken* all *their Arms, Baggage*, and the like: where *all* is taken for the *greateſt part*, or *all in effect*. And in this Senſe the Article is true, ſince the Officers Arms, and Troopers Swords, in reſpect of all the other Arms there left, were not conſiderable.

3. Moſt of all the Officers Arms, and Troopers Swords were taken from them by the Enemy, as the Defendant confeſſeth in his Anſwer, and we have proved; and if any eſcaped with their Arms by chance, yet all their Arms were quite loſt as to the State, which had no Benefit by, nor Account of them: therefore in this Regard the Article is moſt true.

Secondly, He denied *he ſurrendred the City and Caſtle againſt the Parliament's and his Excellency's Conſents*, tho' it is true *he did it without their previous Conſents.*

To which Mr. *Prynn* replied, That this was a very frivolous Diſtinction: For 1. Chriſt himſelf by this Speech, *He that is not with me is againſt me*, reſolves, that what is done without the Parliament's and his Excellency's Conſents (eſpecially if they diſlike and diſavow it afterwards) is done *againſt their Conſents*, and that in ſtrict Propriety of Speech: Hence, if a Man's Servant, Cattle, without his Privity or Approbation, commit a Treſpaſs, in his Neighbour's Ground, or if one caſually tread upon another's Toe, he uſually ſaith in theſe and ſuch like Caſes, *It was againſt my Will, or againſt my Liking and Conſent. Briſtol* therefore being undoubtedly ſurrendred not only beyond, but contrary to the Parliament's and his Excellency's Expectations and Deſires, was certainly ſurrendred againſt their Wills and Conſents, as well as without them.

2. The Parliament's and his Excellency's expreſs Will and Intention was, that *Briſtol* ſhould be kept to the utmoſt Extremity, and not ſurrendred to the Enemy, this being the end wherefore they placed a Governor and Garriſon there, and made Works about it: the Surrendring therefore of it, contrary to both their expreſs Wills and Directions, muſt needs be not only without, but againſt their Wills and Conſents. This all the World knows, unleſs the Defendant can ſhew their expreſs Conſents thereto.

3. The Houſe's and his Excellency's former Opinions of, and calling him to an Account heretofore, and now into Judgment for this Surrender, as directly contrary to his Truſt, and their Directions, is a ſufficient Proof it was not only beſides, but againſt their Conſents: and to think or ſpeak otherwiſe, is but to lay a grand Imputation on the Parliament and his Excellency, in making them Acceſſaries to this diſhonourable, traytorly Action, which hath almoſt loſt the Kingdom.

Thirdly, He alledged that four Days before the Siege he ſent one *Scotten* with a Letter to his Excellency, to acquaint him with the Weakneſs of the Garriſon, that he had not above 900 Men beſides Citizens, as likewiſe to ſee the Eſtate of his Army, and crave ſpeedy Succours from him: That he found his Excellency had but 4000 Foot able to march, many of his Men being then ſick, and not in a marching Condition to relieve him; *that it was clear, they could not expect, nor have had any Relief in ſix or eight Weeks time.* And to juſtify this Deſpair of timely Succours, he produced a Letter written by his Excellency to the Lord *Say*, his Father, to this effect; *That he was ſorry* Briſtol *was in ſo much Danger, as by Col.* Fiennes's *Letter to him it ſeemed to be; and that himſelf at that preſent was not in a fitting Poſture to relieve it, which troubled him the more, for that his Lordſhip's Son was ingaged there:* (which Letter being read, Mr. *Prynn* inquiring the Date thereof, found it dated the 28 of *July*, two Days after the Surrender of *Briſtol*, which was on the 26 of that *July*.) From all which the Defendant inferred the Neceſſity of ſurrendring the Town and Caſtle, for want of Succours: which had they been near, he could have made a ſhift to have held out three or four Days longer, and would have done it; but being hopeleſs of Relief, he could not in point of Soldiery or Policy have held it longer than he did.

To which Mr. *Prynn* replied, 1. That he did but his Duty in ſending thus to his Excellency, and that this would no more excuſe his Treachery and

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[a] Joan Battin, William Whitehorn, *Serjeant* Gale, *Captain* Bagnall, Thomas Munday. [b] *Captain* Bagnall. [c] *Major* Wood, William Whitehorn. [d] *Serjeant* Gale, Joan Battin, *Mrs.* Haſſard, Thomas Munday. [e] *Major* Wood, *Colonel* Strode, *and others.* [f] Richard Winſtone, *Captain* Huſbands, *and others.* [g] *Mr.* Talboy's *Depoſition.* [h] Richard Butler's *Teſtimony.* [i] *Colonel* Stephens, *Colonel* Strode, *Mr.* Powel, *Major* Wood, *Captain* Bagnal, Thomas Munday, Richard Lindon, Edward Watlin, Nicholas Cowling, Joan Battin, Nicholas Coles, Mary Smith, Ethelred Huddy, Michael Sparks, *and others, atteſt this.*

Cowardice in Surrendring the Town, than *Weſton*, *Gomineys*, and the *Biſhop of Norwich*, their ſending to the Governor of *Calais*, and the *Lords of the Council for timely Relief*, did excuſe them.

2. That in this Meſſage and Letter to my Lord General, but four Days before the Siege, he complained neither of want of Ammunition, Victuals, Monies, nor of the Weakneſs or Intenability of the Works, Town, Caſtle, (which doubtleſs he would have done had there been real Cauſe) but of the Smallneſs of the Garriſon, which he ſaid were then but 900, beſides Citizens. But our [*] Witneſſes prove expreſly, that at the Time of the Siege he had at leaſt 2000 Foot and 300 Horſe, beſides Voluntiers, which were near 200 more: and Major *Allen* atteſted, that he brought near 200 Men well armed from *Malmſbury*, but a Day or two before the Siege; ſo as his 900 were increaſed to 2500 Men, or more: and he might have raiſed (as Mr. *Powel*, his own Witneſs atteſted) at leaſt ſix or eight thouſand able Men more, to bear Arms in the City, had he wanted Men: Therefore the want of Men was but a Pretence. Beſides, had he needed only Men, why did he adviſe Sir *William Waller to march out with at leaſt* 500 *Horſemen, leſt they ſhould have helped to have ſpent the Proviſion of Briſtol?* as he confeſſeth in this *Relation*, Page 12. Certainly, either he thought the Town tenable with the Men he had, till all the Proviſions in it were ſpent, and ſo the Garriſon ſtrong enough to defend it whilſt they had Victuals, or elſe he deſired rather to ſpare the Victuals for the Enemy, (to whom they were ſurrendred) than for Sir *William Waller*'s Men who (had they ſtaid in the City) would have made up his Garriſon 800 Horſe, beſides 2000 Foot, and in all Probability have preſerved the City, which was partly loſt (as himſelf confeſſeth) by the Cowardice of the Horſe, who refuſed to charge the Enemy when they entred, whom they might eaſily have cut off, had they but charged them, as they might and ſhould have done. In brief, the Defendant's own *Relation* and *Letter to his Excellency* inform us, that his Garriſon conſiſted of at leaſt 2000 Foot, and 300 Horſe, and was ſo ſtrong and ſufficient, that when the Enemy ſtormed the Town on every Side with all their Forces, they were valiantly repulſed, with the Loſs of near a Thouſand of their beſt Men, beſides 700 wounded; whereas he loſt not above ſix or eight Men at moſt, and had very few or none wounded. If then the Garriſon were thus ſufficiently ſtrong to repulſe the Enemy with ſo great Loſs, when their Army was ſtrongeſt and beſt in Heart, much more muſt it be ſufficient to repulſe them, and keep the Town, when near a Thouſand of their beſt Men were ſlain, and 700 more wounded, with the Loſs of ſix or eight only of the Garriſon, the Aſſailants being much weakned, and Defendants as ſtrong or ſtronger, and more courageous, by Reaſon of their good Succeſs, than they were at firſt.

3. To his Deſpair of Succours in ſix or eight Weeks time, by Reaſon of the Weakneſs or Sickneſs of the Army, it was anſwered, (1.) That as Hope is the laſt Thing that forſakes a valiant Man, ſo it is the firſt that deſerts a Coward, who placeth his Confidence any where rather than at home in his own Boſom.

(2.) That no Man, much leſs a Chriſtian and Soldier too, ought to deſpair of God's Providence and Protection in a juſt Cauſe, even where he can ſee no human Probability of Succours; but ought to *wait and truſt on God to the utmoſt Extremity*, who many times ſends Relief, *exceeding abundantly, beyond all Men can aſk or think*, as he did to *Jeruſalem*, *Samaria* of old, and to *Rachael* of late. *Audaces fortuna juvat*, was the Heathen Obſervation: *Fortes Deus adjuvat*, the Chriſtians. His cauſeleſs Deſpair then of timely Relief from God or Man, the Parliament or his Excellency, argued not only want of Courage, but Faith too, both in God and Man.

(3.) Valiant *Maſſey* (if this Plea might be admitted) had far more Cauſe to deſpair of timely Relief than the Defendant: for both *Fiennes* and *Clifton* his Lieutenant profeſſed openly, after the Surrender of *Briſtol*, *that they would be hanged if* Gloceſter *could hold out two Days, if the Enemy came before it:* and Colonel *Pury* and Captain *Parry* depoſed, *that the Walls and Works about it were weaker than* Briſtol'*s*, *their Garriſon not above* 1500, *Club Men and all, their Powder not above* 32 *ſingle Barrels, beſides what they made during the Siege, their Proviſions not ſo plentiful as* Briſtol'*s*, *their Cannon but ſeven or eight*; whereas *Briſtol* had 55 Cannon, beſides Sir *Francis Popham*'s Pieces; the Enemies before *Gloceſter* almoſt 10,000 more than thoſe that beſieged *Briſtol*, and likewiſe accompanied with the King's perſonal Preſence. Beſides, his Excellency's Army, by Reaſon of Sickneſs, was now far weaker, and more unable to relieve *Gloceſter*, than it was when it ſhould have marched for *Briſtol*'s Relief; yet notwithſtanding all theſe Diſcouragements, and the great Damage and Diſcouragement the ſudden unexpected Loſs of *Briſtol* ſtruck into all Mens Spirits, *Maſſey* and *Gloceſter* Men did not baſely yield up the Town to the Enemy, as ſoon almoſt as they came before it; but relying on God's Providence, and the Parliament's Care to the uttermoſt, received timely Relief from both, in leſs than three Weeks after they ſent for Succours; as *Briſtol* doubtleſs would have done, had Colonel *Fiennes* had ſo much true Faith and Valour as *Maſſey* had. Now that *Briſtol* would have been relieved far ſooner than *Gloceſter*, Mr. *Prynn* proved by theſe Arguments.

1. Becauſe my Lord General's Army was in a far better Condition almoſt by half to march when *Briſtol* was beſieged, than it was at the Siege of *Gloceſter*, the Number of it being much decreaſed by Sickneſs in the Interim, and their Courage and Spirits much daunted by *Briſtol*'s unexpected Surrender in ſo ſhort a Time, upon ſuch diſhonourable Terms, which he doubted not all the whole Council preſent could experimentally atteſt.

2. The Parliament, his Excellency, *London*, and the whole Kingdom, looked upon *Briſtol* as a Place of the greateſt Conſequence of any in *England*, next to *London*, as the *Metropolis*, Key, Magazine of the Weſt, which would be all indangered, and the Kingdom too by its Loſs: as a Town of infinite more Conſequence than *Gloceſter*; by the gaining whereof the Enemy would be furniſhed with all manner of Proviſions and Ammunition by Land, with a Navy and all Merchandize by Sea, and enabled to bring in the Strength of *Wales* and *Ireland* for their Aſſiſtance: Therefore being of ſo great Concernment, the Parliament, his Excellency, *London*, and the Kingdom, would have been far more careful to relieve it in due Time, than they were or would have been to relieve *Gloceſter*, of which they had yet a ſpecial Care.

3. *Briſtol* was a Town of far greater Commerce with *London* than *Gloceſter*, many *Londoners* having a great part of their Trading and Eſtates too in it: Therefore this particular Intereſt would have made the *Londoners* more forward to march to relieve *Briſtol* than *Gloceſter*.

4. Colonel *Fiennes* and the Citizens of *Briſtol* had more powerful active Friends in both Houſes, and about his Excellency, (as his Letter to the Lord *Say* imports) to ſolicit and expedite their Relief, than *Maſſey* or *Gloceſter* had; therefore tho' the Parliament and his Excellency were very ready to have ſent timely Relief to both, yet, in all probability, *Briſtol*, in theſe Reſpects, had been ſooner relieved (had it held out) than *Gloceſter* was or could have been; the rather, becauſe the Loſs of *Briſtol* made many Men fall off from the Parliament, more to ſtand as Neuters, and damped the Activity and Spirits of moſt Men.

(4.) It was anſwer'd, that the Defendant produced no Proof of his Deſpair, but only his Excellency's Letter, written and ſent to the Lord *Say*, not to him, and dated two Days after the Surrender made. This therefore could be no Ground, no Cauſe at all of the Surrender, which ſo long preceded it.

To ſupply this Overſight and Defect, Colonel *Fiennes* next Day produced a Witneſs, to prove, that the Day before the Surrender there came one into *Briſtol*, who reported that the Lord General's Army was very weak, and in no poſture to march. But who it was, or whence he came, or how he came in thither, the Town being beleaguered, or whether the Governor ever had any certain Information of this Report, there was not the leaſt ſhadow of Proof.

(5.) It was reply'd, That if a Governor's groundleſs Surmiſe of an Improbability of timely Supplies, might be a good Excuſe to ſurrender a Town, the ſtrongeſt, beſt furniſh'd Towns and Forts in the Kingdom might be betray'd, ſurrendred to the Enemy in a Moment under this Pretence. Col. *Maſſey* might then upon far better Grounds have ſurrendred *Gloceſter* to the King the firſt Day; the Earl of *Stamford*, *Exeter*; and Col. *Warnlow*, *Plymouth*, the ſecond Day they were beſieged; than the Defendant *Briſtol* on the third Day, ſince there was a far greater Improbability of relieving any of theſe in time, than of *Briſtol*. And by this reaſon, had Col. *Fiennes* been furniſhed with Men, Ammunition, Victuals, to have kept the Town five or ſeven Weeks longer, yet, by this way of arguing, he would certainly have ſurrender'd it when he did, (in leſs than three Day's ſpace) and not have kept it to the fifth or ſeventh Week's end; becauſe he conceived an Improbability of Relief in eight Weeks time, out of a panick Fear, or out of a mere Deſign to colour his Surrender. He ſhould have therefore held it to the uttermoſt Extremity, and God, or our vigilant Parliament (no doubt) by that time would have ſent Relief, as they did to *Gloceſter*; or if none had come, he had then diſcharged his Duty, and been excuſed: But ſince he kept it not to the laſt, but prejudged God's, the Parliament's, and his Excellency's care to relieve him in due Seaſon, his Fault is inexcuſable and capital.

Fourthly, He alledgeth, *That he did not ſurrender the City*, *Caſtle*, *Arms*, &c. *traiterouſly*, and that no Treachery was proved againſt him.

To which Mr. *Prynn* anſwer'd: 1. That tho' there were no direct Proof of any Correſpondency or Intelligence with the Enemy; yet if they were ſurrender'd before uttermoſt Extremity, the very Law itſelf, and the Letter of the Ordinances for War, *reſolve this to be Treaſon.* And being thus *Treaſon*, even in point of Law, he needed no other Proof that it was traiterouſly ſurrender'd, but the Law and Fact itſelf: And we ought to charge it in the Impeachment, that it *was traiterouſly ſurrender'd*, as the Law reſolves it to be, elſe the Impeachment was not good in Law, neither could Judgment be given on it. Hence, by the Rules of the Common Law, if a Man be indicted of any Crime which is Treaſon, Felony, or Burglary by the Law, the Indictment muſt run, that he committed the Crime, *Proditorie*, *Felonice*, or *Burglariter*, elſe the Indictment is vicious and defective. Therefore, by like reaſon, the Surrendring of any Fort, before utmoſt Extremity, being Treaſon, it ought to be charged in the Articles, *That it was treaſonably ſurrender'd*, and for this end was inſerted the Word *Treaſonably* in the Articles.

2. It was anſwer'd, That Fear and Cowardice were the moſt traytorly Paſſions of all others: Theſe have cauſed many to betray their own Reaſon, Senſes, Liberties, Laws, Eſtates, Truſts, Friends, Countries, Kingdoms, Souls; whence we find the Fearful, marſhalled in the very Front of thoſe, *Who ſhall have their part in the Lake that ſhall burn with Fire and Brimſtone*; and quite *exploded out of God's temporal and ſpiritual Militia.* Therefore if he ſurrender'd them out of Fear or Cowardice only, though without any traytorly Compact with the Enemy, the Surrender is properly ſtyled *Traiterous*, as well as *Cowardly*, even in Reality and Law.

3. It was anſwer'd, That tho' there were no direct Treachery charged or proved in the fourth Article, yet there were vehement Preſumptions, Suſpicions of it (which oft-times caſt and condemn Perſons, Murderers, Traytors, as Experience manifeſts, as well as poſitive Proofs) directly charged, and ſhould be proved againſt him in the ſeventh; which we would here make uſe of and bundle up together. Firſt then, his own frequent Confeſſions in his Anſwers, *That he never undertook to keep or not deliver the City or Caſtle to the Enemy without the Parliament's and his Excellency's previous Conſents: That they neither in Honour nor Juſtice could expect ſuch a Promiſe from him: That he ought not to have kept the Caſtle when the Enemy had enter'd the Line, but ought to have ſurrender'd the ſame (although tenable) to the Enemy, together with the City, by the Principles of Honeſty and Juſtice, the Rules of Wiſdom and Diſcretion*, &c. coupled with this wilful *Miſinforming of the Council of War*, when they met about a Parley, *that there were not above twenty Barrels of Powder left in the Caſtle* (whenas they were ſeventy *French* Barrels, beſides what was in the Forts and City) *and not above three or four hundred weight of Match*; and commanding Mr. *Haſſard* the Store-keeper to ſay there was no more (as he confeſſed to Capt. *Birch*) whenas Mr. *Haſſard* depoſeth there were fifty Barrels of Powder, and at leaſt fourteen hundred Weight of Match, beſides as much more as four Horſes could draw, brought into the Caſtle that Morning (as *Arthur Williams* and *Joan Batten* depoſed) and a hundred and forty Bundles, as Capt. *Buſhel* affirmed, of purpoſe to draw the

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[*] *Col.* Stevens, Arthur Williams, Able Kelly, *Major* Wood, *and others.*

Council to a preſent Parley and Surrender, were vehement Preſumptions, and circumſtantial Proofs of Treachery and indirect Dealing: All which being compared with the Depoſitions of Capt. *Lloyd* and *Thomas Munday*, That the Defendant called Munday *ſaucy Knave, when he informed him and* Langriſh *of the Danger and Weakneſs of the very Place where the Enemy the next Morning entred, refuſing to ſtrengthen the Guards there as he was adviſed by him*, and appointing Major *Langriſh* (a noted Coward, formerly complained of to him for his Cowardice and Negligence) to guard this weakeſt Place, who never once offered to charge the Enemy, but gave them leave to enter, and yet he never queſtioned him for this Treachery, but countenanced him by his Favour, juſtified him in print, and produced him before the Council as a competent Witneſs: With his refuſing to ſend away the Priſoners in the Caſtle before the Siege, upon Sir *William Waller*'s Advice; ſaying, *That he would detain them there to make his Conditions the better if the Enemy came before* Briſtol (atteſted by Sir *William*, Col. *Cook*, and confeſſed by himſelf) with his Speeches to Mr. *Talboyes* (who moved him to reſpite a Delinquent's Payment of a Sum of Money till *St. James-tide* then enſuing;) That *he knew not whether he ſhould be at* Briſtol at *St. James-tide*, &c. which made Mr. *Talboyes* then preſently conceive he intended to ſurrender the City about that time, (as he did the next Day after St. *James*'s Day, *viz. July* 26, 1643.) whereupon Mr. *Talboyes* preſently removed and left the City; with his prohibiting *John Warden* the Gunner, (as *Richard Butler* depoſeth) *under pain of death, to ſhoot any Granadoes at the Enemy, when he preſſed him that he might do it*, which made him ſay *they were betrayed.* All theſe Particulars laid together, and coupled with Capt. *Roper*'s Depoſition, that the Lady *Newport* told this as a ſpecial Secret to the Counteſs of *Deſmond*, at her being in *Oxford*, a little before *Briſtol* was beſieged, that this City would be ſurrender'd to the King as ſoon as his Forces came before it; (which Capt. *Roper* further atteſted from the Mouth of the Right honourable the Earl of *Denbigh*, that there were divers Wagers laid at *Oxford*, and offer'd to be laid in and near *London*, as ſoon as the Siege of *Briſtol* was ſpoken of, that this Town would be ſurrender'd the 26th of *July*, the very Day it was afterwards yielded up;) the calling his Men off the Line under pain of death, and not ſuffering them to fall on the Enemy, which made many then ſay, *they were betrayed*, with his late and ſlender Salley. All theſe particular Circumſtances annexed to the Premiſſes, and ſubſequent Matters ſeriouſly ponder'd, are ſufficient to make a vehement Suſpicion, if not a punctual Evidence, that *Briſtol* was not only cowardly, but traiterouſly deliver'd, as well in a proper as a legal Senſe, notwithſtanding the Defendant's Flouriſhes to the contrary, till Time ſhall diſcover the obſcured Secrets of this Myſtery more apparently to the World.

His Fifth Allegation was, *That the Town and Caſtle were not cowardly ſurrendred.*

Before he came to make this good by Proofs and Arguments, he firſt excepted againſt our Witneſſes to prove the Surrender cowardly, becauſe ſome of them were Women, others Enemies, who were not competent Witneſſes, and were ready to ſlander their Oppoſites.

To which Mr. *Prynn* reply'd, 1. That ſome of the Witneſſes only were Women, and thoſe ſeconded by Men. 2. That they declared not their own weak Opinions, but the Judgments of Men; yea of the Enemies own Commanders, in private ſerious Conference among themſelves, as well as in open Diſcourſe to others. 3. That theſe Women-Witneſſes, and other Females in the City, ſhewed more true Courage and Undauntedneſs than the Defendant and ſome of his Officers, working boldly in the Face of the Enemy, where they durſt not appear; oppoſing a Parley when he ſent out twice for it, and offering to go in Perſon with their Children into the very Mouth of the Cannon to dead the Bullets, if the Soldiers were afraid, rather than the City ſhould be ſurrendred: Being then ſuch maſculine Females as theſe, he thought them meet Witneſſes to prove the Surrender cowardly. 4. To the Teſtimonies of the Enemies he anſwer'd, that it was in this caſe the beſt and ſtrongeſt of any other, it being the natural Diſpoſition of every Soldier that takes any ſtrong Fort or City, to extol the Enemies Valour, and Difficulties of winning it as much as poſſible, the more to advance their own Proweſs. It's no great Honour, in any Man's Judgment to conquer a Coward, or Place not tenable; therefore thoſe who detract from their Enemies Valour or Strength, derogate moſt from their own Honour, Conqueſt, Proweſs, and as much diſparage themſelves as their Enemies thereby. Since then the Enemies, both in private Diſcourſes among themſelves, and in Conference with others, ſo frequently cenſured this Surrender as cowardly, taxed the Defendant for a Coward, and confeſſed they could not have taken the Town, nor all the Devils in Hell the Caſtle, had the Defendant held them valiantly out againſt them, and not cowardly ſurrendred them beyond their Expectation; their Teſtimonies back'd with the Premiſſes *, muſt be a moſt convincing Evidence in this Particular.

Secondly, he objected, that Mr. *Prynn* had been tampering with ſome Witneſſes, and urging them to teſtify againſt him; for which he produced two Inſtances: The firſt was, that Mr. *Prynn* urged Mr. *Haſſard*, who kept the Stores in *Briſtol* Caſtle, to atteſt there were no more than fifty Barrels of Powder therein when it was ſurrendred; inſomuch that Mr. *Haſſard* told him, he would not go againſt his Conſcience. Secondly, that he meeting with Lieutenant Colonel *Daviſon* in the Street, offer'd him a Quart of Wine, preſſing him to go to a Tavern, and to ſet down what he could atteſt touching his adviſing Col. *Fiennes* to ſally out upon the Enemy as ſoon as they entred, and his Diſlike of drawing his Men from the Line, and his refuſing to follow this Advice: which he denying to do, Mr. *Prynn* told him that he was engaged to give in his Teſtimony, becauſe Colonel *Fiennes* had given him the Lye in Print, in his Reply to Mr. *Walker*. And for Proof hereof he produced two Witneſſes, that *Daviſon* told him this Story in his Chamber in *Arundel* Houſe, in the Preſence of the Lord *Say* his Father.

To which unexpected falſe Calumny, Mr. *Prynn* returned this Anſwer, which he was ready to atteſt on his Oath: Firſt, That being ſummoned by the Defendant himſelf to appear before a Council of War, to make good what he had written concerning the Surrender of *Briſtol*, he did thereupon repair to Mr. *Haſſard*, and other Witneſſes preſent at the Siege, to deſire them to witneſs the Truth only of what they knew touching that Action, which he might lawfully do: and becauſe Mr. *Haſſard* kept the Magazine, he deſired him to inform him how many Barrels of Powder there were in the Caſtle when it was ſurrendred; who thereupon anſwer'd, there were fifty: upon which he demanded, whether there were no more than fifty? for he had ſundry Witneſſes to prove that he confeſſed to Capt. *Birch* and *Arthur Williams*, that there were ſixty; and to Major *Wood*, that there were ſeventy Barrels left when it was ſurrendred; and Capt. *Buſhel* (then Priſoner) affirmed he found no leſs than ſeventy Barrels there: if then there were no more than fifty, he ſhould do well to declare the utmoſt Number which he certainly knew to be there. To which he anſwer'd, he did think there were more than fifty Barrels, but how many more he could not certainly depoſe; and therefore he would rather teſtify leſs than there were, in ſetting down fifty generally, without adding this Negative to it, and no more, which he durſt not ſwear, for then he was ſure not to wrong his Conſcience. To which Maſter *Prynn* reply'd, that he deſir'd him by no means to wrong his Conſcience in teſtifying more than the Truth, but to keep a good Conſcience in witneſſing the full Truth, and not concealing any thing to ſmother Truth. At laſt *Haſſard* ſaid, that he was not willing to appear againſt Col. *Fiennes*, for he had loſt moſt of his Eſtate in *Briſtol*, and that there were Arrears of Pay due unto him, for Payment whereof the Colonel had lately given him a Bill under his Hand, and if he ſhould loſe his Arrears, it would go hard with him. Whereupon Maſter *Prynn* then anſwered, he would not preſs him to any thing to his Prejudice, and ſo left him, he promiſing to give in his Depoſition in Writing to the Advocate, which he never did. And whether this were tampering with Witneſſes, or who had tampered moſt with *Haſſard*, he or the Defendant, againſt whom he was unwilling to teſtify the Truth, or all the Truth, he humbly ſubmitted to their honourable Judgments.

Secondly, For Lieut. *Daviſon*, Mr. *Prynn* proteſted, he never ſaw the Man till he came voluntarily to him in *Weſtminſter-Hall*, and told him freely, without any Inducement on his Part, that he was in the Siege of *Briſtol* under Col. *Fiennes*, and after that in the Siege of *Gloceſter*; from whence coming lately to *London*, he met with a printed Book writ by Col. *Fiennes* in Diſgrace of Mr. *Walker*, wherein he had given him the Lye, and a baſe Lye in the Margin, to his Diſhonour; whereupon being ſenſible of this open Injury, he repaired to Col. *Fiennes* to *Arundel* Houſe, and there in the Lord *Say*'s Preſence, challenged him for giving him the Lye in Print without cauſe, deſiring him to give him publick Satisfaction, or elſe he would take Satisfaction himſelf, for he would not take the Lye from any Man in *England:* and withal told him to his Face, that he did adviſe him not to draw the Soldiers from the Line, but to fall upon the Enemies preſently, and cut them off, as they might have done with eaſe; but he rejecting his Advice, called off the Men, and ſo not making a timely Salley, loſt the Town. Whereupon the Lord *Say* anſwer'd, Son, you muſt take heed how you wrong any Gentleman of Quality, eſpecially in Print; and if you have wronged this Gentleman, you may do well to right him: Upon which Col. *Fiennes* confeſſed before his Father, he did give him ſuch Advice, and that he had done him wrong in putting the Lye over againſt his Name: but it was much againſt his Will, thro' his Boy's Negligence; for after he had ſent the Copy of his Reply to the Preſs, wherein the Lye was written in the Margin againſt his Name, he remembring this Miſtake, ſent his Boy purpoſely to the Printer to charge him to blot it out and not print it, which it ſeems his Boy then neglected; but he would ſee it put out in the next Edition. Whereupon I ſeeing his Freeneſs with me, and thinking his Teſtimony material, told him that the Surrender of *Briſtol* was now brought into Queſtion before a Council of War by Mr. *Fiennes* himſelf, whom I and Mr. *Walker* were ſummoned to proſecute; and therefore we ſhould deſire his Preſence as a Witneſs there, and ſo we parted then. Soon after the Council of War was adjourned; and then meeting with Lieut. *Daviſon* (who made the ſame Relation to above Twenty more in *Weſtminſter-Hall*, as he had done to me) he told me he was going ſuddenly out of Town to *Gloceſter:* I deſired him to teſtify his Knowledge touching the Premiſes before the Advocate ere he departed; whereupon he told me, that the Lord *Say* was his very good Friend, and had promiſed to help him to his Arrears, and therefore he was loth to appear in the Buſineſs, there being other Witneſſes ſufficient. To which I anſwer'd, I would have the Judge-Advocate's Warrant to bring him in as a Witneſs, and then no Exceptions could be taken; which Warrant when I had procured, I coming from the Advocate's, caſually met *Daviſon* on Horſeback above *Ludgate*, near the Advocate's Lodging in *Paul*'s *Church-yard*, where aſking of him how long he ſtayed in Town, he anſwer'd, that he was to depart to *Gloceſter* the next Morning: Whereupon I told him, I had a Warrant to bring him in as a Witneſs from the Advocate, who was then in his Lodging, which was cloſe by; and therefore ſince he was to depart ſo ſoon, I deſir'd him to go with me then to the Advocate to ſet down his Teſtimony upon Oath; which he excuſed, ſaying, he had promiſed to meet ſome Friends to drink a Quart or two of Wine with them before his Departure, and ſo we parted without more Diſcourſe. And was this a tampering, only to deſire a Witneſs to ſet down what he voluntarily informed me, before the Advocate, when I had a Warrant to examine him? As for offering him a Quart of Wine, or inviting him to a Tavern to drink, I proteſt I never did it; and am ſo averſe from ſuch a Courteſy, that, to my remembrance, I have never theſe eighteen Years ſpace, gone into any one Tavern in *London*, or elſewhere, to give or receive one Quart of Wine, but only to eat a Breakfaſt or Dinner; and therefore it is very improbable I ſhould proffer this Courteſy, unto him, who, as I diſcovered then by his Diſcourſe, had drank ſufficiently before, and was going (as he told me) to drink more. But admit I proffered him a Quart of Wine, and that in the open Street, was a Quart of Wine, think you, ſo conſiderable a Thing as to tempt or corrupt a Witneſs of that Quality? or the open Street a fit Place for ſuch a Purpoſe, where ſo many ſaw and over-heard us? Certainly if this Gentleman were ſo ignoble as to be corrupted with ſo poor a Courteſy as a Quart of Wine in the open Street, I am certain his Arrears of Pay, in Col. *Fiennes*'s own private Chamber in *Arundel* Houſe, where he had fair Promiſes to receive them, are far more prevalent Temptations to corrupt, and keep him back from appearing here in Perſon, whither the Defendant might have brought him to teſtify my tampering with him, had he pleaſed, he being ſtill in *London*, and under his command, tho' he will not appear upon our Summons to teſtify the Truth. But if he be ſuch a one as Col. *Fiennes* would intimate him, (tho' I have a better Opinion of the Gentleman's Honeſty) that a Quart of Wine will biaſs him more than Truth, I ſhould rather want his Teſtimony, than put him to his Oath, were he now preſent: But being neither examined by us, nor yet intended to be, this impertinent Cavil ſounds more of Calumny than Judgment.

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* Mary Smith, Ethelred Huddy, Joan Battin, Joſeph Proud, Mich. Sparkes, Nich. Collins.

But becauſe Colonel *Fiennes* hath now given me this juſt Occaſion, I ſhall in the third Place (which otherwiſe I ſhould have concealed, but that his Aſperſions have provoked me to alledge it by way of juſt Defence) truly inform your Lordſhips: Firſt, What Advantages, Obligations, and Engagements he hath upon his own Witneſſes, which may probably ſway them to over-much Partiality in their Teſtimonies, of which we are wholly deſtitute in reſpect of ours. Secondly, How the Colonel and his Agents have tamper'd with, affronted, threatned and abuſed our Witneſſes. 1. Moſt of the material Witneſſes in this Cauſe were the Defendant's own Officers and Soldiers, from whom they expect not only future Preferments, but their Arrears of Pay, which they were in danger to loſe if they ſhould either appear againſt him, or he miſcarry in this Caſe. Upon this Ground not only Mr. *Haſſard*, as you heard, was unwilling, and *Daviſon* refuſed to give in his Teſtimony, but one Capt. *Oland* (as appears by Capt. *Harrington*'s Depoſition) with ſundry other material Witneſſes, denied to ſpeak what they knew: and ſome of his Officers, ſince they came hither to witneſs for him, have ſaid, that if the Cauſe went with him, (as they made little queſtion but it would) they ſhould have all their Arrears paid, elſe they ſhould loſe them. Now whether the Promiſe of Arrears be not a tampering with, and the Loſs of them a threatning or terrifying of Witneſſes, we leave your Lordſhips to reſolve. Beſides, Mr. *Sprig* (Secretary to the Lord *Say)* went to a noble Knight's Lodging at St. *Albans*, produced as a Witneſs by the Defendant, that ſame Morning he was to give in his Teſtimony, with this ſtrange Prologue to an Evidence, that Col. *Fiennes* preſented his Reſpects to him, and deſired him to come that Morning to the Council of War to give in his Teſtimony for him; and that his Lord likewiſe deſired to be remembred to him, and to let him know that two hundred Pounds (of the five hundred) due unto him, was ready for him at *London* upon his return, and the reſt of the Money ſhould be ready for him as ſoon as it could be provided, which Capt. *Harrington*, then preſent in the Knight's Chamber, heard and depoſed; nor could, nor did *Sprig* deny he deliver'd ſuch a Meſſage, but ſaid he had no ill Intentions in it. To which I reply'd, that whatever his Intentions were, the Words ſpoken at that Seaſon, and upon that Occaſion, tended more to corrupt a Witneſs, than my offering a Quart of Wine in the open Street did (had I offer'd it, as I did not) which was ſo much inſiſted on. And tho' I knew the Knight ſo well, that no Offers whatever could corrupt him; yet how ſuch Speeches might work on other Witneſſes who expected Debts and Arrears from the Colonel, I could not divine; and thoſe who durſt uſe ſuch tempting Speeches ſo openly in St. *Albans* during the Trial, would probably make uſe of the like, or worſe Temptations in private to Witneſſes, to corrupt or take off their Teſtimony. However the Court by this might clearly diſcern, which Side was moſt guilty of tampering with Witneſſes. 2. That ſome of our Witneſſes ſent for thither by the Defendant, had been openly abuſed, affronted, quarelled with by the Defendant and his Witneſſes, even in the Council's Preſence, and elſewhere: as namely Captain *Bagnal*, who, tho' an extraordinary Friend to the Defendant, (for whom he took two Journies to *London* for a Commiſſion at his own Charge, and raiſed a Company to defend the Town) yet merely for teſtifying the Truth impartially, was ſtrangely queſtioned and affronted by the Defendant himſelf, abuſed with ill Language, taxed with Perjury, quarrelled with by *Scotten*, who gave him the Lye in the Council-Chamber, before your Honours were departed thence) challenged, ſcorned, reviled, threatned to be miſchieved, (for all which Affronts we crave your Juſtice.) And if our Witneſſes be thus affronted, menaced, abuſed in your very Preſence, how think you were others dealt with behind your Honours and our Backs, to ſtrangle Truth? A vehement Argument all hath not been rightly carried on that Side.

I ſhall next conſider the great Difficulties on our Parts to procure, and the Impoſſibility to ſuborn the Witneſſes we produce. Firſt, All our Witneſſes for the moſt part, are Strangers to us, all of them better known and more obliged to the Defendant than to us: they are Perſons diſintereſted, diſingaged, who neither gain nor loſe by the Trial, however the Sentence go; they were never under our Service, Power, or Commands, moſt of them were ſuch who ſerved the State *gratis*, and were no Mercenaries in that Service. We are no ways ally'd to them, have no Command over them, no Arrears or Debts to pay them, no Rewards or Preferments to beſtow upon them, no Engagement to allure or enforce them; whereas, on the contrary, the Defendant hath all the Advantages and Bonds that can be, tending to Partiality over his Witneſſes. Many of them are *teſtes domeſtici*, as his Brother, Kinſmen, Servants, Footboys; moſt of the reſt his Officers and Soldiers, againſt whom we excepted as incompetent. Firſt, Becauſe they were Parties in this caſe, joining with the Defendant in a Petition to his Excellency for this Trial, which was granted at their Requeſt, as the Proclamation of his Excellency atteſts. Secondly, Becauſe they were Confederates, and equally guilty with him in this Treaſon of ſurrendring *Briſtol*, moſt of them being of his Council of War, and conſenting to this Act; which if it prove capital and criminal in him, will likewiſe be ſo in them: in ſwearing therefore to acquit him of this Treaſon in which themſelves are involved, they do in verity ſwear to acquit themſelves, and one to juſtify and excuſe the other, which ought not to be admitted; for then the fouleſt Treachery that is might and would be excuſed, yea, the greateſt Traytors acquitted, if one might teſtify for the other in that particular crime whereof they all ſtand guilty.

3. Becauſe they all depoſe, as for their own Lives and Safeties, ſo likewiſe for their own Honour, Reputation and Reparation; ſome of them in their Speeches now, and moſt of them in their Petition to his Excellency, demanding Reparation in their Honour from us by this very Trial: and ſo are both Parties and Witneſſes in this reſpect, very unequal to be admitted.

4. Some of them have carried themſelves as paſſionately in this Caſe as Parties, in menacing and abuſing our Witneſſes, and ourſelves too, threatning no leſs than Hanging to us for queſtioning this Surrender, if the Defendant be acquitted; and can ſuch be competent Witneſſes?

5. He hath very ſtrong Obligations upon moſt of them, the Bond of Conſanguinity and Alliance; they are his Kinſmen: of Superiority and Command; they were his Officers, Soldiers, Servants, advanced by him at firſt, and preferred or promiſed Preferment by him ſince: the Bond of ſundry Debts and Arrears due to them from him, which they are promiſed to receive if he be acquitted, and expect to loſe if once condemned. And what ſtrong Engagements, what great Advantages all theſe are to tempt or corrupt Witneſſes on his part, and ſilence them from teſtifying ought againſt him on our part; and how far forth ſuch Witneſſes, who appear thus to be Parties, ſhall be allowed of in this Caſe, eſpecially ſuch as are *Participes criminis* (adjudged incompetent by all Laws) and guilty of the ſame Surrender, we ſhall humbly refer to your juſt Conſiderations.

3*dly*. The Defendant anſwer'd to an Objection made by Mr. *Prynn*; To wit, that it muſt needs be cowardly ſurrendred, becauſe the Enemies that very Morning were valiantly repulſed in all Places (but that one, where only an hundred and fifty of them entred) with the loſs of 700 Mens Lives, and as many more wounded, whereas the Garriſon then loſt not above 3 or 4, and had ſcarce any one Man dangerouſly hurt in the Aſſault; ſo as the Enemy by this great Loſs was far weaker, the Garriſon much ſtronger, and more courageous than before: Whereto he briefly anſwered, that the Slaying of 700, and Wounding 700 more, was not ſo great a Loſs and Diſcouragement to the Enemy, as the Entry of the Line was an Encouragement.

To which Mr. *Prynn* replied, Firſt, That thoſe who entred the Line, by their own Confeſſions, were ſo far from receiving Encouragement by it, that they gave themſelves all for dead Men, and had no other hopes but to be quite cut off. Secondly, Their Companions diſcouraged with the general Repulſe in all other Places, knew not of their Entry in two full Hours Space, during which Time their Powder was quite ſpent, that they might have been all cut in Pieces, had the Defendant done his Duty. Thirdly, A whole Regiment of their Horſe retreated four Miles off, with a Reſolution never to come on again. Therefore the Entry of ſo ſmall a Party, compared with their great Loſs, could be but a very poor Encouragement, ſince they might have been ſo eaſily repulſed at the firſt, and ſent back by weeping-croſs unto their retreated Companies.

After this he deſcended to his Arguments, to prove the Surrender not cowardly.

His firſt Argument was this, That he was no Coward, as appeared; Firſt, by his Apprehending and ſending away Col. *Eſſex:* Secondly, By his Apprehending and Executing the Conſpirators at *Briſtol* in the midſt of the City, even at Noon-Day: Thirdly, By quelling the Malignants, and diſarming the Train-Bands of the City! Fourthly, By his valiant Behaviour at *Worceſter*, where he and his Brother, when the Forces were there routed, were ſome of the laſt Officers that came off the Field: Fifthly, By his charging at *Keinton* Battle, one of the next to Sir *William Balfour*, up to the Cannon of the Enemy, when the Horſe killed the Cannoneers, as they lay under the Carriages; and by other following Particulars: *Ergo*, he did not cowardly ſurrender *Briſtol*.

To which Argument, Mr. *Prynn* replied: 1. In general, That they did not charge him in the Articles to be a Coward, which was not now in iſſue; nor yet, that he had ſhewed himſelf cowardly in all Actions ſince he was Governor of *Briſtol*; but only, *That he had cowardly ſurrendred Briſtol*; And, *in hoc individuo* he did and might deal cowardly, tho' he might be valiant in other Particulars.

2. That the Argument was a groſs *Non ſequitur*; for as a very Coward may now and then do valiantly upon occaſion, and yet be no valiant Man; (as ſometimes *deſperatio timidos fortes facit*, an experimental Proof whereof we find in *timorous Stags*, who run away at the Barking of the ſmalleſt Cur, yet will encounter both Dogs, Horſes, and Men in Extremity, when they are at a Bay, and can run no farther;) ſo a valiant Man may ſometimes commit a cowardly Action, aud yet be no habitual Coward. To put this out of queſtion, We have a memorable Example in the Apoſtle *Peter*, who tho' he were of a bold reſolute Spirit, and no doubt the ſtouteſt of the Apoſtles; as appears by his adventuring (as Chriſt's Command) *to walk out of the Ship upon the Sea itſelf in the midſt of a Storm*; his reſolute telling our Saviour, *That tho' all elſe ſhould be offended and forſake him, yet he would not*; *and tho' he ſhould die with him, yet he would not deny him, (which all the other Apoſtles likewiſe proteſted, each for himſelf;) by his reſolute drawing out his Sword to reſcue Chriſt when he was apprehended by the High-Prieſt's Servants, his cutting off* Malchus's *Ear therewith, his not putting up his Sword, nor giving over fighting till Chriſt commanded him*; *and by his following our Saviour into the very High-Prieſt's Hall, when the other Diſciples forſook him and fled:* (all Acts and Arguments of extraordinary Courage) yet after he ſaw Chriſt brought into queſtion for his Life, he ſuddenly degenerates ſo far from his former Magnanimity, thro' a puſillanimous Fear then ſeizing on him, that at the very *Voice of a ſilly Maid, and a High-Prieſt's Servant, he no leſs than thrice denied the Knowledge of his Maſter Chriſt, and that with bitter Oaths and Execrations:* Should *Peter* in this Caſe argue, *I was valiant when I walked on the Sea, in the Chamber when I told Chriſt I would rather die than deny him, in the Garden where I fought for him, and in following him into the High-Prieſt's Hall, whither the other Diſciples durſt not accompany me: Ergo*, I did not cowardly nor unworthily, in thus denying him thrice with Oaths and Curſes in the High-Prieſt's Hall?

Certainly, this were a moſt irrational, falſe Argument; becauſe Courage in ſome Actions, is no Negation or Extenuation of Cowardice in others, almoſt in the ſelf-ſame nick of Time. Yet this is Col. *Fiennes*'s objected Argument; I have ſhewed myſelf courageous, (as well as *Peter*) in ſome Actions; in removing Col. *Eſſex*, executing the Delinquents, diſarming the Malignants of *Briſtol*, in the Fights at *Worceſter* and *Edgehill*; yea, altogether as valiant as *Peter*, in my vaunting Words and Promiſes, * *That I would diſpute every Foot of Ground with the Enemy to the utmoſt, who ſhould*

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* *See the Depoſitions of Col.* Strode, Ja. Powel, *Captain* Bagnal, *Mr*, Haſſard, *and others*.

win it from me by Inches; that my Flag of Truce ſhould be my Winding ſheet: that I would keep the City, or it ſhould keep me, or I would lay my bones therein? (O brave vaunting *Peter!*) yea, I was pretty full of Courage during the Siege, till the Enemy entred the Line, and then I was juſt like *Peter* entring the High-Prieſt's Hall; I *followed the Enemy* a far off, and fell from *fighting* to *parling*; from *defending* to *ſurrendring* the City and Caſtle; before any Out-Fort taken, or one Shot or Aſſault made againſt City or Caſtle; *Ergo*, I did not cowardly or unworthily ſurrender them now, having ſhewed myſelf ſo valiant in Deeds before.

But ſince *Peter*'s priſtine valorous Acts, and Speeches, did no ways mitigate nor extenuate, but aggravate his ſubſequent cowardly denials of Chriſt, ſo will the Defendant's his Surrender.

3. His forementioned valorous Exploits have no relation at all to the Surrender of *Briſtol*, being of a different Nature from them; his Prowefs therefore in the one, can never expiate, nor diſaffirm his Cowardice in the other, the only thing we now charge and prove, theſe other objected Actions not being here in Queſtion.

4. He gave this Anſwer to the objected Particulars; ſo far forth only as they were applied to *Briſtol*'s Surrender, (1.) That the ſudden Surprizal of Col. *Eſſex*, being done at a private Houſe out of *Briſtol*, when the Defendant had his Troops about him, and Col. *Eſſex* only three or four Servants near him; was a greater Act of Prudence than Courage, and a Man not really valiant would have done as much: (2.) That when he apprehended the Conſpirators, he had the abſolute Command of the City and Caſtle, a ſtrong Garriſon in both, and the major Part of the City and Country ſiding with him: It was therefore no great Argument of extraordinary Valour, to apprehend them being but few in Number, weak in Power, and ſuddenly ſurprized at unawares. And when he executed them, all the Malignants were diſarmed, the whole City, and Country generally incenſed againſt them for their horrid Treachery, and their Party unable to make the leaſt reſiſtance, ſo as a Child might have put them to death as ſecurely as the Defendant. Therefore this could be no convincing Evidence of his Courage. (3.) That the Malignants were quelled by the Diſcovery of the Plot; and the diſarming of the Train-Bands, to arm his own Soldiers and beſt affected Citizens, was by the general Conſent of the Mayor, Sheriffs, and moſt part of the Citizens, after the Conſpiracy detected without any the leaſt Reſiſtance; *Ergo*, no Act of Courage, but rather of Diſcretion or Diſtruſt. (4.) That at *Worceſter*, all the Horſe were routed and fled, and his own and Brother's Troops among the reſt, is no great Argument of their Valours, which received ſome Blemiſh by that Action: and that he and his Brother were ſome of the laſt Officers of Horſe, who there came off the Field, it might be, as well becauſe they were in the rear of all the Horſe and ſo could not poſſibly fly out of the Field before the reſt, as by Reaſon of any extraordinary Valour in them more than others, and ſo no convincing Proof of Valour in them. (5.) That his valiant charging in Sir *William Balfour*'s Regiment at *Edgehill* where every Man did valiantly, and none turned their Backs in all that Brigade, can be no ſpecial Proof of his Courage, ſince every Coward will charge in Company where no Man turneth his Back, and where there is greater Danger in flying than charging: However admit it were good Evidence, yet this is a very ill Sequel, if put into a logical Form.

Col. Fiennes *charged valiantly with Sir* William Balfour *at* Edgehill; Ergo, *he did not cowardly ſurrender* Briſtol.

His ſecond Argument to prove the Surrender not cowardly, was his not quitting *Briſtol* immediately upon Sir *William Waller*'s Defeat at the *Deviſes*, and his raiſing of Men, Arms, and perfecting the Works even after that to defend it, when many of the Country-Gentlemen left the Town, and marched to *London*, with Sir *William Waller*.

To which Mr. *Prynn* anſwered: 1. That he did but his Duty in all this, which was rather an Argument of his Diligence than Courage.

2. That it had been the greateſt Treachery and Cowardice in the World upon Sir *William*'s bare Defeat, to quit a City of ſo great Conſequence, which he was charged to keep by his Commiſſion, and in fortifying whereof he had ſpent ſo great Coſts, before the Enemy came before it: who might probably, as things then ſtood, have no real Intention preſently to beſiege it, upon that Defeat.

3. Extraordinary Diligence in fortifying, is the greateſt Argument of Fear and Cowardice, if not ſeconded with anſwerable Prowefs in defending what is fortified. A Coward will ſooner provide Armour of Proof, than a truly valiant Man; ſince therefore the City was no longer defended, fortified and manned, this Reaſon will rather convict than acquit him of Cowardice.

4. The true Reaſon why ſo many Gentlemen then deſerted the City, was (as themſelves have confeſſed) not for that they deemed it untenable; but becauſe they feared and diſcerned, the Defendant intended not to keep it to the laſt, but to ſurrender it to the Enemy's Hand; which he hath clearly enough confeſſed in his Anſwer.

5. This Argument in verity, is no more in Effect, but a Governor provides Arms, Soldiers, Cannons, Ammunition, to defend a Town of Importance, or to encounter the Enemy, and then ſurrenders (as he hath done) in leſs than three Days Siege; or runs away after he hath ſtood a Charge or two; *Ergo*, he did not cowardly herein; becauſe he provided Men and Arms, whoſe valiant Uſe, not diligent Preparation, is the only proof of Valour.

His third Argument was, No Man could have expected leſs Safety of Conditions than himſelf, he only being excepted out of the general Pardon offered to the Soldiers and Citizens; *Ergo*, he ſurrender'd it not cowardly.

To which was anſwer'd: 1. That it is probable his ſpeedy, unexpected Surrender of the Town and Caſtle, before Extremity, proceeded either from a Fear to loſe his Life in holding them out till the laſt, or a Deſire to purchaſe his Peace and Pardon out of which he was formerly excepted from the King, with ſo rich a Prize of Conſequence as *Briſtol* was, which would moſt certainly procure it, with infinite Advantage to the King, and greateſt Prejudice to the Parliament. 2. That if he could have expected leſs Safety of Conditions than any other, for the Reaſon alledged, this ſhould have rather engaged him to hazard his Life in defending it to the utmoſt Extremity, than to yield it upon any Terms prejudicial to his own Security, which is firſt provided for in the Articles.

His fourth was, That he could never have undergone more Danger in the Caſtle had he held it, than he did in the Guards, which he diligently viſited; *Ergo*, he ſurrender'd it not cowardly.

To which was anſwered, he received no hurt at the Guards, and loſt but ſix or eight Men at moſt in the Siege. *Ergo*, if he might with as little Danger and Loſs have held out the Caſtle, his Crime and Cowardice was the greater in Surrendring it ſo diſhonourably without Stroke, or once retiring to it.

His fifth was, from his Carriage when the Enemies entred, to prevent whoſe taking the City, he had only two means left. The firſt was, to fire the Suburbs, for which he iſſued out a Warrant, which Warrant was not executed, but revoked for want of Men to fire them: The ſecond was, to fire the City behind them, and ſo to retreat into the Caſtle; which he could not poſſibly do without the Death of many Innocents, Men, Women, Children, and ruining of many Men's Eſtates: A Fact ſo horrid, that his Conſcience would no ways permit its Execution, he being loth to begin ſo ill a Precedent, which would have infinitely redounded to the Parliament's Diſhonour. Beſides, the Caſtle being not large enough to contain half his Horſe and Foot, and the Streets very narrow, he could not have retired into it, without great Difficulty and Danger of being cut off by the Enemy, and thoſe Horſe and Foot which could not be received would have been utterly loſt, and expoſed to the Enemy's Cruelty. Upon which Conſiderations only, not out of any Cowardice, he did by *Clifton's* Advice call a Council of War, and propound a Parley, whereupon the Surrender enſued: Therefore it was not cowardly.

To which Mr. *Prynn* replied, 1. That it is apparent by this Argument, that if the Suburbs had been fired, the City and Caſtle, might have been ſaved, and the Enemies beaten out when lodged in the Suburbs; therefore he ought in this Caſe, both by the Common and Martial Law, to have fired the Suburbs to preſerve the City and Caſtle, and muſt anſwer his Negligence in not doing it; his want of Men to fire the Suburbs being a frivolous Excuſe, ſince he had at leaſt two thouſand three hundred Garriſon Soldiers; and Mr. *Haſſard* the Gunner (as he acknowledged to divers) and Major *Wood*, with others, offer'd to beat, or fire them out of the Suburbs, but could not be permitted, tho' it might have been done with eaſe, the Houſes being combuſtible, moſt of them built with Timber, and that Part of the Suburbs not very large.

2. That between that Part of the Suburbs and Body of the City, there was a Key on the Weſtſide of *Froom-bridge*, unfordable by Horſe or Foot every Tide, by Reaſon of the Waters, and at low Water too, thro' the Deepneſs of the Mud, being ſo deep in moſt Places, that Men muſt ſtick faſt in it (as ſome of the Conſpirators did upon the Diſcovery of the Conſpiracy, who were taken ſticking in the * Mud:) That there is no marching over the Key in File or Rank, but only one by one, in confuſed Order. That on the Key-ſide next the City, there is a Wall of Stone near eight or nine Foot high above the Mud, which no Horſe can enter, nor no Foot ſcale, unleſs at a Slip or two, which are but narrow, and ſtand four or five Foot above the Water: That there are Houſes all along the Key, which commanded the College-ſide, where the Enemy entred in ſuch ſort, that none of them could offer to wade over the Key, but they might be cut off with eaſe; that two or three Pieces of Ordnance planted at the head and lower-end of the Key, would ſo ſcour all that Paſſage, that none could have paſſed over without loſs of Life, and the Paſſage there would have been ſo difficult, that one hundred Men would eaſily have kept out ten thouſand, all which was atteſted by Col. *Popham*, Lieut. Col. *Paleologus*, Major *Wood*, Lieut. Col. *Andrews*, Capt. *Bagnal*, and ſome of his own Witneſſes upon croſs Examinations; therefore there was no Danger of the Enemies Entry there. For *Froom-gate* itſelf, it had a new *Portcullis*, and after the Enemies entring the Line, and late Sally on them, the very Maids and Women, in the Face of the Enemy, made a Barricado and Bulwark againſt it fifteen or ſixteen Foot thick, with Earth and Sacks of Wool, to keep them from entring there, being their only Paſſage into the City from that Suburbs; that above the Gate was the River *Froom* (which runs under it) with a Wall and Houſes between the City and it, ſo as the Enemy might eaſily have been kept from entring the Body of the Town, and could not have entred it without infinite Loſs and Diſadvantage.

3. That had they gotten over the Key, or *Froom* River into the Body of the City, yet the Streets were ſo narrow and diſadvantageous to the Enemy, that their Paſſage might have eaſily been hinder'd, the Streets block'd up with Caſks, Carts, Sleids, Stools, and a Piece of Ordnance or two placed at the Head of every Street, and the Houſes lined with Muſketeers would have ſcoured and ſecured it, that the Enemy muſt have ſuſtained extraordinary Loſs, at leaſt fifty or an hundred Men for one of ours, as they loſt before in the Storming. Beſides, they muſt have all marched up the Hill, in paved Streets, which are ſo ſlippery that the Foot could have hardly ſtood to charge, and the Horſe would certainly have ſlipt and fallen: in regard of which Diſadvantages, our Men having the Hill, Flankers, the Shelter of Houſes, and charging downwards, muſt needs have repulſed them with extraordinary Loſs had they forcibly entred, and made a moſt ſafe Retreat into the Caſtle at any time when they ſaw juſt Cauſe, without any ſuch Difficulty or Danger as was ſuggeſted.

4. Admit they had taken the Body of the Town beyond the Key, adjoining to the Caſtle, which they could not have done without exceſſive Loſs and great Difficulty; yet all that part of the Town being commanded either by the Caſtle, or other Forts and Outworks all in our Poſſeſſion (as *Clifton* himſelf with other of the Defendant's Witneſſes confeſſed, and Major *Wood* proved) they could not poſſibly have held it long, and would have been in worſe Condition within it than before, and ſo no abſolute Neceſſity of Firing it, had not his Courage and Conſcience ſerved him to do it.

5. For his Horſe and Foot, Incontainability in the Caſtle, in caſe he had been forced to retire into it, there were ſundry other Places to beſtow them in beſides the Caſtle: As, (1.) The Body of the City adjoining to the Caſtle, which would have billeted them all till the Enemy had forced it. (2.) That part of the Suburbs, under the Command of the Caſtle next to *Lawford's* Gate, diſtinct from the Body of the City if

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* *Atteſted by Col.* Popham, *and others.*

taken, and very defenſible, the Caſtle and Outworks then remaining ours. (3.) The Out-Forts, where the Guards might have been doubled or trebled as there was Cauſe, eſpecially now when he had an Overplus of Men that he knew not how to beſtow. (4.) That part of the City beyond the Bridge in *Somerſetſhire* Side, which was very capacious, able to contain all his ſupernumerary Foot and Horſe, tho' the other Suburbs and Body had been taken; which part (the Bridge being broken down or defended) had been inacceſſible, ſtrong, and tenable for a long Time againſt all his Majeſty's Forces, we having then all the Out-Forts in Poſſeſſion which commanded other Parts of the Town, and *Ratcliff* Church, *Tower-Harris*, and the Caſtle (three extraordinary ſtrong Forts) commanding and ſecuring that Part beyond the Bridge; which being fenced with extraordinary ſtrong Outworks, and deep watery Dikes, *Tower-Harris* and *Ratcliff* Church on the one Side, with the River and Caſtle on the other Side, and ſtrongly garriſon'd with the Soldiers retir'd from other Parts, had been almoſt impregnable, and might have held the Enemies Play for ſundry Months, had the Defendant reſolved to hold it to the utmoſt. Having therefore ſo many ſeveral ſafe Retreats and Receptacles for his Horſe, Foot, and not making uſe of any of them, tho' he promiſed to diſpute every Inch of Ground with the Enemy (as he might have done with Honour and great Advantage) his Pretence is falſe, his Surrender cowardly beyond all Excuſe.

6. He hath oft inculcated this to your Honours, that the Citizens were generally very malignant, and diſaffected to the Parliament; and we have proved, that the moſt of the beſt affected, had carried their Eſtates and three Months Proviſion into the Caſtle, where their Perſons and Goods were by the Defendant promiſed to be ſecured. His forbearing therefore to fire the City in caſe he had been neceſſitated to it, proceeded not from any publick Care he had of the Parliament's Friends or Kingdom's Safety, but from his private Reſpects to the Perſons and Eſtates of Malignants, which he would rather carefully preſerve, to enrich, encourage, and ſtrengthen the Enemies, than fire or endanger to preſerve the Parliament and Kingdom. Mercy and Compaſſion are doubtleſs commendable Virtues in a Governor, who ſhould not uſe Cauteries or Firing till the utmoſt Extremity: But when ſuch an Exigency happens, that a City muſt be fired, or both it and the Kingdom loſt or hazarded, it is fooliſh Cruelty, not Chriſtian Mercy, to be over-pitiful in ſuch a Caſe. It is a cruel deſtructive Mercy to ſave a City (eſpecially a malignant one, as this is averred then to have been) to deſtroy a Kingdom, yea, our Religion, Laws, and Liberties with it: Better the greateſt Part of the City had been turned into Aſhes to preſerve the Caſtle and other Parts of it to the Parliament, and ſecure the Realm, than to ſurrender the whole ſo cowardly, ſo unexpectedly, to the Loſs of the Weſt, and Kingdom in all Probability.

7. The Defendant well knew of what extraordinary Concernment the Loſs of *Briſtol* would be to the Kingdom, of what infinite Advantage to the Enemy, as is evident by his own Letter to my Lord *Say* (dated *March* 20, 1643, before it was fortified or fully garriſon'd) publiſhed in his printed Relation, Page 13, where thus he writes:

May it pleaſe your Lordſhip to underſtand firſt the Importance of this City of Briſtol, &c. *The Enemy hath lately caſt his Eye upon it, prompted by the witty Malice of our Malignants, to eſpy his Advantage: If he poſſeſſeth this City, he will reap theſe Benefits by our Loſs.* 1. *He will get much Money, Arms, and Ammunition, in a more cheap and leſs hazardous way, than he can have them out of the* Low Countries; *all which he will pay for with Monopolies, and Engroſſments of Trade, Things with which the great ones of this Town have been well acquainted, and are therefore Malignant.* 2. *If he gain this Town, he will ſoon ſubdue* Gloceſter, *and become Maſter of all the Tract between* Shrewſbury *and the* Lyzards-Point *in* Cornwal, *a Quarter ſo plentiful as his plundering Army yet never ſaw.* 3. *He will become Maſter of all the Traffick of that Inland Sea the* Severn, *and make all the Shipping both of the* Welſh *and* Engliſh *Coaſt his own.* 4. *His Neighbourhood to* Wales *will from time to time ſupply him with a Body of Foot.* 5. *We ſhall loſe a great Port-Town very Important for the Service of* Ireland, *and fit to give Landing to the Rebels of that Place, or any other Enemy.* Since therefore he knew this City to be of ſo great Importance to the Kingdom, and the Loſs of it ſo extraordinarily advantageous to the Enemy, he ſhould in this Reſpect have held it out to the utmoſt Extremity, and rather hazarded the Firing of it by the Enemy, which would not have done it, (eſpecially being Malignant) or by himſelf, than quitted both it and the Caſtle too, with all the Ammunition, Cannon, Arms, Proviſions, Colours, Ships, Merchandize, Wealth therein, upon ſuch poor diſhonourable Terms, before any Out-Fort taken, or one Shot made againſt the City or Caſtle Walls, he wanted nothing but Courage to defend them, the Enemy having loſt ſo many, and himſelf ſo few in the former Stormings.

His ſixth Argument was, that he ſtood in Places of greateſt Danger with his Troop, near Alderman *Jones*'s Houſe, where a Granado falling into the midſt of his Troop, and hurting no Man, he thereupon encouraged his Soldiers, ſaying, *That God did protect them.*

To which was anſwered, 1. That not one of his Troop (for ought appears) was ever hurt in that or any other Place where he ſtood with them; therefore the Danger was not very great. 2. That this Place under Alderman *Jones*'s Houſe, was more than Cannon-Proof, and moſt ſecure againſt the Enemies Shot, which the Houſe and Garden-Walls guarded off being between the Enemy and his Troop; therefore no Place of Danger but Security. 3. That this Granado's falling in among the Troop at that time, was merely caſual, and hurt not any, tho' it frighted many, and made the Defendant and his Troop preſently to remove from thence, as his own Witneſſes depoſed. 4. Himſelf never charged the Enemy in Perſon with his Troop after their Entry within the Line; his ſtanding therefore with them in this ſecure Place before the Entry, was no great Proof of his Valour, much leſs that the Surrender was not cowardly.

His ſeventh Argument, to prove the Surrender not cowardly, was, That the Parley and Surrender were both agreed on by the Council of War; *Ergo* not cowardly.

To which was anſwered, 1. That himſelf was both the firſt Mover, Perſuader of this Parley, this Surrender, and the principal Man that advanced it, drawing on the reſt to conſent to it, and not making the leaſt Oppoſition againſt it. 2. That the Council of War wherein the Parley was firſt propounded, was not general, as it ought to have been, but private, few of his Officers or the Gentlemen there, having notice of it, till a Parley was concluded, and a Drummer diſpatch'd twice to the Enemy before they would take notice of it. At this Council no Country Gentlemen were preſent, but Sir *John Horner*, who gave no Vote, and Col. *Strode* who voted againſt it, and not above ſix or ſeven Officers, of which Lieut. Col. *Daviſon*, and Major *Holmes*, were two who oppoſed the Parley; as for Mr. *Edward Stephens* (whom Col. *Fiennes* averred in Print to be preſent at it) he denies upon Oath, that he had ever any Notice of it, and ſo doth Col. *Stephens* too. Being therefore ſuch a private Conventicle and no general Council, and theſe thus voting againſt the Parley, it is a greater Evidence than Diſproof of a cowardly Surrender. 3. The Defendant, and his Brother *John*, to circumvent the Council, and draw them on both to a Parley and Surrender, miſinformed them that there were but twenty Barrels of Powder, and four hundred Weight of Match left; as he confeſſeth in his Anſwer to the eighth Article, commanding Mr. *Haſſard* (who kept the Stores) to affirm there was no more, when as you have heard it proved there was above three times as much more then in the Caſtle. His Miſinformation therefore being the chief Motive to ſway the Council to this Parley and Surrender, their Conſents will not excuſe but aggravate his Cowardice and Treachery in ſeducing them. 4. If the Town and Caſtle were tenable, ſufficiently provided with all Neceſſaries for a Defence, and not reduced to Extremity, as we have proved, the Surrender by a Council of War will not make the Cowardlineſs and Treachery leſs but greater, and ſubject the whole Council to Cenſure, as appears by the Caſes of *Weſton*, *Gomineys*, and others adjudged in Parliament: Otherwiſe, if this Plea ſhould be admitted for a Juſtification, a Governor and his Officers might ſafely without Danger betray any Fort or Place thro' Cowardice or Treachery, by voting it in a Council firſt, and then putting it in execution.

His eighth Argument was, That when he ſent to the Enemy for a Parley, and their Hoſtages came to *Froom-Gate*, which was barricadoed up, they ſwore, *God damn us we will come in at* Froom-Gate (which was the neareſt way) *or have no Parley at all:* whereupon he ſent them this reſolute Anſwer, *That they ſhould not come in there, but at Newgate*, which they were enforced to do after much Conteſt: *Ergo* the Surrender was not cowardly.

To which Mr. *Prynn* anſwer'd; 1. That at that time *Froom-Gate* was barricadoed up with a Bulwark of Earth and Wool-Sacks fifteen or ſixteen Foot thick to keep out the Enemy, made by the very Women and Maids, with the help of a few Men in a ſhort Space; and when the Hoſtages came to that Gate, the Work was raiſed ſo high, that Capt. *Taylor*, the Defendant's own Witneſs, confeſſed, *He could not ſee nor confer with them over it, but was enforced to go to ſpeak with them thro' a Window, when he received their God-damn-me Meſſage, that they would come in at that Gate, or elſe return*; from which Window likewiſe he return'd the Governor's Anſwer to them. Now to demoliſh ſuch a Barricado as this, to let in theſe peremptory Hoſtages, and the Enemy too, who might then have clear Paſſage into the City, had been ſuch an indiſcreet and cowardly Act, as was not only below the Spirit of a Governor, or Soldier, but of a ſucking Child; and would have argued the Defendant (if condeſcended to) a Man utterly deſtitute, not only of Courage but common Diſcretion. 2. This braving unreaſonable Requeſt argues plainly, that the Enemies had a very mean Conceit of the Defendant's Valour, elſe they would never have preſumed to ſend him ſuch a diſdainful Meſſage, which an heroick Spirit would have ſo far reſented, as not to brook a Parley upon any Terms; and his not yielding to it, is no greater Evidence that the Surrender following was not cowardly, than that the Building of *Tinterton* Steeple was the Cauſe of the Encreaſe of *Goodwin Sands*.

His ninth Argument, was his Courage and Speeches at the Parley, wherein he confeſſed, 1. That the Motion of the Parley proceeded merely from himſelf. 2. That the Parley was concluded on before ever the Mayor repaired to the Council. 3. He ſaid, *The Mayor was extraordinary fearful, and preſſed earneſtly for an Argreement with the Enemy.* 4. That when the Enemy's Commiſſioners at the Parley, upon the Motion of Capt. *Birch*, that the Citizens might have Liberty to carry away their Eſtates if they pleaſed, ſtuck at this Demand, he thereupon roſe up, and with great Earneſtneſs proteſted, that he would break off the Parley, and rather loſe his Life, and hold and put it to the utmoſt Extremity, than not provide for the Security of the Citizens Eſtates: which Speeches he proved by the Teſtimonies of Capt. *Birch* and Mr. *Prickman*. *Ergo* he did not cowardly ſurrender the Town and Caſtle.

To which Mr. *Prynn* reply'd, 1. That the Motion of the Parley proceeding originally from himſelf before any Sollicitation from the Mayor or Citizens, argued that himſelf was more fearful than the Mayor, tho' thus extraordinary timorous; and that both the Parley and Surrender proceeded from his exceſſive Fear. 2. That he had here *confitentem reum*, that he held not the Town till utmoſt Extremity, as his Duty bound him: For he told the Commiſſioners, if they would not yield to ſecure the Citizens Goods (whom he frequently brands for deſperate Malignants) he would then venture his Life, and put and hold it to the utmoſt Extremity; therefore he held it not by his own Confeſſion till ſuch Extremity: and ſo by the very Articles of War, and Conſtruction of Law, is guilty of a cowardly and traitorly Surrender, for which he ought to die. And here obſerve the ſtrange Temper and Guilt of the Defendant: My Lords, he was conſtituted Governor of *Briſtol*, not by the Mayor and Citizens, but his Excllency and the Parliament, to preſerve it from the Enemy's Hands, rather for the Kingdom's Safety, than Security of the malignant Citizens Goods. He had formerly oft proteſted to the beſt affected * Soldiers and Citizens, that *he would diſpute every Inch of Ground with the Enemy, from the Out-works to the Gates, from thence to the Caſtle, whither he would make his laſt Retreat, and there lay his Bones, making his Winding-ſheet his Flag of Truce*, and the like, for the common Good and Security of them and the Realm. But now alas, as ſoon as the Enemy entred the Line, *Heu quantum mutatus ab illo?* he became a quite other Man; and forgetting all former valiant Promiſes, heroick Reſolutions for the Republick, he preſently ſent for a Parley, and diſputes not ſo much as one Inch of Ground with the Enemy near the Gates or Body of the City, retires not one Foot towards the Caſtle; and inſtead of adventuring his Life to preſerve the City for the Parliament's and Kingdom's Safety, againſt the *Iriſh* Rebels, and *Welſh* Malignants Incurſions, he hath not ſo much as one Word or Thought tending that way: but all public Engagements ſet aſide, he now only looks after the Security of his own Perſon, and of the malignant Citizens Perſons and Eſtates, for the Enemies future Advantage, and rather than theſe ſhall not be ſaved, he now proteſts he will loſe his Life, and put all to utmoſt Extremity. Had he really intended to make good this his Proteſtation for the Citizens Benefit and Safety, in caſe the Enemies had deny'd his Demand in their behalf, (which I much doubt of ſince notwithſtanding his foreſaid Proteſtations, he would not do it for the Publick;) I humbly conceive he ought much more in point of Honour and Duty to have executed it for the whole Kingdom's Preſervation and Utility; which ſince he did not really perform nor intend to do it, you have here *confitentem reum* an Evidence dropping from his own Mouth ſufficient to condemn him: And therefore my humble Motion to your Honours is, that his Perſon may preſently be ſecured as by Law it ought. The rather, becauſe it plainly appears by all the Carriages of the Defendant, from the Enemy's firſt Entry till his Return to *London*, that this Surrender proceeded merely from Timidity and Cowardice at the beſt, as I ſhall evidence by theſe Particulars.

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* James Powell, *Col.* Strode, *Capt.* Bagnal, Abel Kelly

1ſt. By his [1] calling the Soldiers from the Line under pain of Death, and not permitting them preſently to encounter the Enemy, as he was importuned by divers; and bringing them off in ſuch Confuſion, that many of them left their Arms, Ammunition, and Ordnance behind them, which might have been eaſily drawn off, there being ſo many Colliers Horſes in the City for that Purpoſe.

2*dly.* By giving no Order nor Direction to the Soldiers drawn off, for any preſent Service or Salley in divers Hours, by Means whereof, many of them deſerted their Colours [2].

3*dly.* By not imploying his Reſerve under Capt. *Stokes*, nor his Main-guard, nor Soldiers in the Caſtle (conſiſting of at leaſt five hundred Men) who were freſh and had been upon no Service, to make a preſent Salley on the Enemy, who might with eaſe have been cut off by them without calling any from the Line [3].

4*thly.* By his contradictory Commands, and pale Looks, atteſted by *William Deane*, *Mary Smith*, Capt. *Buſhel*, *Thomas Thomas*, and generally taken notice of by the Soldiers.

5*thly.* By his Haſtineſs to propound and ſend for a Parley to the Enemy, even before the Salley made, as Col. *Strode* depoſeth, contrary to his Advice; and then again preſently after the Salley.

6*thly.* By the Forgetfulneſs of all his former Promiſes, and of the very Caſtle itſelf, formerly accounted by him the ſtrongeſt Rampart and laſt Retreat, where he would lay his Bones[4]; which was not now ſo much as thought on, altho' the Magazine, Ammunition, and Proviſions lay therein, whereby he betrayed, cheated, and undid the beſt affected Citizens.

7*thly.* By his own Confeſſion in his *Relation*, p. 10, he writes, *That all the Conditions they deſired were yielded to*; yet had he not then ſo much Heart or Brain left within him, as to demand or make more honourable Conditions, than to *deliver up the Town and Caſtle, with all Artillery, Arms, Ammunition, Cannon, Victuals, Priſoners, and Colours too* (which was all that could be loſt or given away from the State) *or to demand convenient Time or Carriages to convey away their Goods from thence.*

8*thly.* By accepting Articles in the Commiſſioners Names, when as they ſhould have been in Prince *Rupert*'s then preſent, who elſe was not obliged to obſerve them; and not exacting an Oath or due ſufficient Caution for performing them, after ſo many Experiences of their Treachery and Truce-breaking.

9*thly.* By ſuffering one of the Enemy's Hoſtages to depart the Town as ſoon as the Articles were concluded, and giving Liberty to the other to do the like; but that Major *Allen* coming caſually into the Room withſtood it; by Means whereof they had all been wholly expoſed to the Enemies Mercy and ſudden Aſſaults, having no Security for himſelf, his Soldiers or the City; whereas both his Hoſtages continued ſtill in the Enemies Hands [5].

10*thly.* By his not publiſhing the Articles after they were concluded, till Capt. *Buſhel* (a Priſoner of the Enemy's Party) put him in mind thereof and publiſhed them at his Requeſt [6].

11*thly.* By ſuffering his Men to fall off their Guards, the Priſoners to get looſe, the Enemies to enter the Town and Caſtle before the time appointed for the Surrender [7], *Whereby many Rapines and Violences were committed both on the Soldiers and Townſmen in the very Streets and Caſtle, which the Enemy could not prevent, and the Colonel, never endeavoured to ſee righted*; which cauſed Col. *Gerrard* (foreſeeing ſome Complaints would be made) to deſire Major *Wood* (who in theſe Diſorders ſuffer'd three days Impriſonment there) to carry a Letter from him to Nath. *Fiennes* (which he ſhewed to Major *Wood*) to this Purpoſe: *That whereas many Outrages had been committed contrary to the Tenor of the Articles, which might haply be imputed to the King's Grace, he gave him to underſtand that the Fault was in himſelf, who had moſt unſoldierly neglected to look to the Performance of them upon his Party: and if this Declaration did not give him Satisfaction, he ſhould be ready for further clearing of himſelf to wait upon him with his Sword in his Hand.*

Your Friend whom you call Cavalier,
Charles Gerrard.

Which Letter Major *Wood* deliver'd.

12*thly.* By his leaving Capt. *Blake*, and Capt. *Huſbands* with their Soldiers in *Windmill-Hill* and *Brandon-Hill* Forts [8], when he marched out of *Briſtol*, and given them no Notice of the Articles of Surrender, no Warrant under his Hand to deliver up theſe Forts according to the Articles; the firſt Notice they had both of the Articles and the Defendants leaving the Town, being given them by the Enemy, who demanded the Forts which they held after the Governor's Departure, from whom they received no Order to quit them, which might have endanger'd their Lives.

13*thly.* By his taking no [9] care to march away with his Men in a Body (which they could not well do becauſe their Colours and Drummers were ſurrender'd by Agreement) whereby they might have been kept together for the Service of the Parliament: And yet the *Preſervation of his Men and Horſe in a Body for their preſent Service*, is the beſt and only Reaſon he gives for the Surrender of the City and Caſtle, both in his *Relation*, *Letter*, *and Anſwer to the Articles.*

14*thly.* By his cowardly and unadviſed Speeches concerning the Intenability of *Glouceſter* for three Day's Space, if the King's Forces came before it, and his Diſcourſe to Mr.[10] *Pury* after its Relief; his Fear tranſporting him into ſuch an uncharitable Opinion, as to judge brave Col. *Maſſey* as puſillanimous and cowardly as himſelf.

15*thly.* By his very printed *Relation*, *Letter*, *Replies*, *and Anſwer to the Articles*; in all which the intelligent Reader may palpably diſcern a Spirit of Trepidation and Cowardice to have ſeized both on his Brain and Pen, which made him invent ſo many unworthy Shifts, untrue Surmiſes, *(as of cloſe deck'd Boats prepar'd by the Enemy, a Reſolution to ſtorm the Caſtle, and to take it in two Days at moſt, &c.)* And utter ſo many ſtrange Paradoxes, yea Contradictions, unworthy a Man of Honour; and deny, not only Colonel *Eſſex*, but himſelf to be Governor of *Briſtol*, or of the Caſtle there; of which before. If all theſe Evidences may be credited againſt his bare proofleſs Allegation, the Surrender muſt needs be cowardly and unworthy at the beſt.

Upon this Col. *Fiennes* affirmed, that the Report that *Briſtol* was cowardly and unworthily ſurrendred, was firſt raiſed by Mr. *Prynn*, the Proſecutor, in his Book intituled *Rome's Maſter-Piece*, Pag. 35. publiſhed the firſt of *Auguſt* 1643. within five Days after the Surrender of *Briſtol*; and that before the publiſhing of this Book, it was not ſo reported, nor reputed by any.

To which Mr. *Prynn* reply'd: That this was a moſt falſe Calumny without the leaſt Shadow of Truth; for firſt, though the title of his *Rome's Maſter-Piece* was written and licenſed for the Preſs by a Committee of the Commons Houſe (who earneſtly deſired him to tranſlate and publiſh the Letters and Plot therein comprized, with ſuch Obſervations as he thought meet, and they ſhould approve) on *Auguſt* 1, 1643. yet the Book itſelf was not compiled, nor fully printed off till the end of *Auguſt* or after; the Publication being near a Month's Space after the Licenſe; before which time, not only *Mercurius Aulicus* had informed the World in Print, *That Nathanael Fiennes* (by name, whom I named not) *had beſtowed* Briſtol *on the King, &c.* which Words were read out of *Aulicus*;) but likewiſe many *London Mercuries* (and namely, that from *Monday* the 31ſt of *July*, till *Aug.* 7. *p.* 17.) had divulged in Print, *That* Briſtol *was cowardly deliver'd to the Enemy*; *that if Col.* Maſſey *had been Governor in his Place it had not been ſurrender'd at all, but held out ſtill*, &c. And, in truth, the Surrender thereof to the Enemy in ſo ſhort a Space, was ſo far beyond all Mens Thoughts or Apprehenſion, that the very firſt Tidings of it made moſt Men openly aver in every Place, it was moſt cowardly and unworthily at leaſt, if not treacherouſly ſurrendred to the Enemies. This was not only *Vox Populi* in *London*, *Weſtminſter*, and elſewhere, but *Vox Parliamenti*, the Opinion of the Commons Houſe (if not the Lords too) who were much dejected at the News; which the Defendant himſelf took notice of upon his very firſt Entry into the Houſe, after his return from his noble Exploit; where every one look'd ſtrangely on him with a diſcontented Aſpect, and few or none of his deareſt Friends once moved their Hats unto him, (as they uſually do to all other Members upon their Arrival from any publick Service after ſome time of Abſence;) and ſome of them minded him of *Gominey*'s and *Weſton*'s Caſe. Whereupon he, conſcious to himſelf of the Commons general ill Opinion of this Action, to avoid their Examination and Cenſure, was enforced to make his Apology for it openly in the Houſe, *Auguſt* 5, 1643. in the Cloſe whereof (containing his bare Relation, no ways ſatisfactory) he deſired, *That what he had affirmed might be examined at a Council of War, that ſo he might be cleared or condemned according as they ſhould find the Truth or Falſhood of what he had declared.* Which Paſſage of his, publiſhed in Print long before *Rome's Maſter-Piece*, is a pregnant Evidence and Acknowledgment, that the very Houſe of Commons conceived this Surrender proceeded either from his Cowardice or Treachery; elſe there had been no need of any long Apology, or ſuch a Reference as this to a Council of War. And indeed, his own printed Relation is ſo full of palpable Shifts, and Expreſſions of a timorous Spirit, that the very reading of it confirmed me and others in this Opinion, that the Surrender was cowardly or treacherous; and my Paſſage in *Rome's Maſter-Piece* concerning the Inconveniencies of *Briſtol*'s Surrender, with reference to the *Welch* and *Iriſh* Rebels, were taken *verbatim* out of his own printed *Relation*, p. 13. where thus he writes, *If the Enemy poſſeſſed* Briſtol, *his Neighbourhood of* Wales *will from time to time ſupply him with a Body of Foot. We ſhall loſe a Port-Town very important for the Service of* Ireland, *and fit to give Landing to the Rebels of that Place, or any other.* By all which it is clear, that I was not the firſt Raiſer of the Report of its cowardly Surrender, but that himſelf, and others then in Print, had raiſed this Report, before I publiſhed any thing to this purpoſe. Secondly, to put this out of queſtion; 1*ſt.* It evidently appears by the Depoſition of Mr. *Edward Stephens*, *Thomas Monday*, *William Deane*, *John Battin*, *Abel Kelley*, *Arthur Williams*, Mrs. *Haſſard*, *Richard Butler*, *Mary Smith*, *Ethelred Huddy*, *Joſeph Proud*, *Jeremy Holway*, *Anthony Gale*, and others, that *both the Soldiers and Citizens of* Briſtol *were much diſcontented with the Governor's Parley and Surrender, when it was but in Agitation, and openly ſaid they were betrayed*; and that not they only, but the very Enemies, *concluded the Surrender to be cowardly, before we had any Tidings of it.* 2*dly*, Sir *John Horner* (his own Witneſs) depoſeth, that in their coming up to *London*, before we had any Notice of it, (they being the firſt who came thence and brought Tidings of it) two or three Miniſters ſpake againſt it, *as cowardly and unworthy.* 3*dly*, Major *Allen* atteſteth, that he and ſome other Officers preſent in the Siege, concluded it ſo in their private Diſcourſe, as they retreated from *Briſtol* before they came to *London.* 4*thly.* It was generally reported cowardly or traytorly both in *London* and *Weſtminſter*

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[1] *Capt.* Bagnal, William Deane, William Whithorn.

[2] *Capt.* Bagnal.

[3] *Major* Wood, William Whithorn.

[4] James Powel, *Mr.* Haſſard, *Capt.* Bagnal, *Col.* Strode.

[5] *Major* Allen.

[6] *Mr.* Baynton.

[7] *Major* Wood, *Mr.* Powel, *Captain* Bagnal.

[8] *Captain* Huſbands, Richard Winſton.

[9] *Major* Wood.

[10] *Mr.* Brown, *Mr.* Pury.

ſter upon the firſt notice of it; and ſome Women in the Streets openly called the Defendant a Coward, for this unworthy Action; which his own Lady-Mother condemned, and would not believe at firſt (affirming, that her Son was of a more valorous Spirit, and honourable Extraction, than to deliver up a Place of ſuch Conſequence as *Briſtol* in ſo ſhort a time, where he had promiſed to ſpend his Life, and lay his Bones, rather than quit it;) and all this before I took any ſpecial Notice of it. Whereupon having ſome relation to *Briſtol*, in and near which I had divers Friends, I made a more particular Enquiry into this Action, from ſuch Soldiers and Citizens preſent in the Siege, who could give me the beſt Information; and upon due Examination of what was alledged on either Part, I found the Surrender ſuch as I publiſhed it to be in *Rome's Maſter-Piece*, by Approbation of a Committee of the Commons Houſe; who both authorized the Book, and concurred with me in this Opinion. From all which it will appear, that I was not the Raiſer, nor firſt Inventor of this Bruit, *That* Briſtol *was cowardly and unworthily ſurrendred*, it being publiſhed in Print by divers, and the common received Opinion of all Men in City and Country, before I gave my Cenſure of it, which I have here made good.

His tenth Argument was, That both the City and Caſtle were untenable againſt the Enemy; Therefore the Surrender not cowardly, nor unworthy. Their Intenability he endeavoured to prove.

Firſt, From the Weakneſs and Inſufficiency of the Line, Outworks, Walls, Fortifications both of the City and Caſtle.

Secondly, From the want of a ſufficient Garriſon to defend the Town; to manifeſt which, he alledged, that he had not above two thouſand Foot and Horſe to guard the Place, which were not half enough, the Works being near five Miles in compaſs, and divided by a River, ſo as his Men ſtood very thin upon the Line, and had no Reſerves at all, unleſs for ſome particular Places; by means whereof his Soldiers, in moſt Places, continued four or five Days and Nights together upon Duty without Relief. And to prove the Garriſon inſufficient, he inſiſted, (1.) On the Letter printed in his Relation, *Pag.* 14. complaining of the *weakneſs of the Garriſon of* Briſtol, *and deſiring an Augmentation of it.* (2.) On his Excellency's Opinion, ibid *Pag.* 16. *who thought it neceſſary this Garriſon ſhould conſiſt of three Regiments of Foot, two Troops of Horſe, and one Company of Dragoons.* (3.) On a *draught of an Ordinance* preſented to the Houſe of Commons by the Lord *Say*; for *the ſettling of a ſufficient Garriſon at* Briſtol (ibid. *Pag.* 17.) wherein *he propounded, that the Garriſon might conſiſt of three Regiments of Foot, the firſt conſiſting of* 1200, *the ſecond of* 1000, *the third of* 800 *Men, and of two Troops of Horſe, and one Company of Dragoons*; with leſs than which he could not poſſibly (as he ſaid) maintain the City againſt the Enemies Forces that came then againſt it, who had few leſs than ſeventy Colours of Foot (Lieutenant *Clifton* affirmed, who told them) on *Glouceſterſhire* Side, which Captain *Huſbands*, telling them with his Proſpective-Glaſs, multiplied the Colours to one hundred.

Thirdly, From his want of Powder and Ammunition, *he having no Match at all, and but fifty Barrels of Powder left, which would not have ſerved them above two Days*; which he endeavoured to prove by the Proportion of Powder they ſpent in two Days before, and by a Letter from Colonel *Warnloe* from *Plymouth* (atteſted by Maſter *Nichols*) who writ, that they ſpent forty Barrels of Powder there in one Day, when they beat the Enemy out of their Works.

The City and Caſtle being therefore untenable in all theſe Reſpects; and no Succours near to relieve them in due Seaſon, his Surrender could not be deemed cowardly, but diſcreet and honourable to preſerve the Citizens Goods, and the Garriſon (conſiſting of above 1500 Foot, and Horſe) to ſerve the Parliament (which then wanted Men) in other Places of Advantage.

To which Particulars Mr. *Prynn* gave theſe enſuing Anſwers, Firſt, That the Works about the City and Caſtle were very ſtrong, defenſible, tenable, againſt all the Enemies Power, which he proved; 1. By the Judgment and Opinion of the Defendant himſelf, who never once complained of the Weakneſs or Inſufficiency of the Works or Caſtle till the Surrender, but oft affirmed the Works to be very ſtrong, ſufficient, and tenable, before the Siege, and that he doubted not to make them good againſt all the Enemy's Power, as Col. *Stephens*, Col. *Strode*, Capt. *Bagnal*, Maſter *Powel*, with others depoſe. And he publickly confeſſeth in his printed *Relation*, *Pag.* 10. that *himſelf (and ſome others too) had a great Opinion of the Strength of the Caſtle*, before it was ſurrendred; tho' now upon a ſudden, he would make your Honours believe, and endeavours to prove it, the weakeſt moſt untenable Piece in the World, having ſpent one whole Day's time in demonſtrating its ſeveral Weakneſſes, or rather in them his own, who, notwithſtanding all theſe Imbecilities, had ſo *great an Opinion of its Strength:* And indeed did not the Defendant deem the Works ſufficient, the City and Caſtle ſtrong, he muſt diſcover himſelf Guilty, either of extraordinary Folly, in putting the Parliament, Country, City, to ſo great Coſts to fortify, garriſon, furniſh the City and Caſtle with all Neceſſaries to hold out a Siege, if it were not really tenable, and of no conſiderable Strength at all in the upſhot; or elſe of extraordinary Treachery, if he knew it not tenable, and yet gave it out to be very defenſible, on purpoſe to induce the Gentry and Country in thoſe Parts to bring their Money, Plate, Eſtates, Proviſions thither, as to Places of Strength and Security, as we know they did, upon his Promiſes to defend them to the laſt, that ſo they might become a Prey to the Enemies, who had all the Ammunition, Proviſions, Arms of thoſe Parts delivered into their Hands at once, which they could have never gained, had not the Defendant fortified the Town and Caſtle, and affirmed them to be ſtrong and tenable. Beſides, his own many liberal Promiſes to defend the Caſtle to the utmoſt, in caſe he was forced to retreat into it, and there to ſecure the beſt affected Citizens and their Goods, argues its Tenability in his own Apprehenſion. 2. As the Town, but Caſtle eſpecially, was tenable in his own Judgment, ſo likewiſe in the Opinion of others. (1.) Of the Gentry and Country who repaired thither, as to a moſt ſecure Sanctuary againſt the Enemy, towards whoſe Fortification and Defence they liberally contributed. (2.) Of the Citizens, who all deemed the Town, but the Caſtle eſpecially (to which they carried their Eſtates, and above three Months Proviſions) to be defenſible againſt all the Enemies Power, as appears by the Depoſitions of *James Powel*, *Abel Kelly*, *William Deane*, Miſtreſs *Haſſard*, and others, and by the *Tragedy of Briſtol*, lately publiſhed by Capt. *Birch*, Mr. *Powel* and other Citizens of it; who writ thus of the Caſtle, *Pag.* 5. *The Caſtle being ſtrongly fortified and victualled, as being the laſt Place to retreat unto, if the Town ſhould be taken; being aſſured we ſhould be able to keep it (till Relief came) as a Sanctuary for the Perſons and Eſtates of ſuch as were moſt active for the Parliament; divers of us accordingly brought in our Goods, with Proviſions for ourſelves, and to help victual the Soldiers that were to be entertained in it*, &c. (3.) By the Opinion of divers Soldiers of our own Party, as Col. *Stephens*, Col. *Strode*, Lieutenant Cols. *Paleologus* and *Andrews*, Major *Wood*, Major *Allen*, Captain *Bagnal*, *Nicholas Cowling*, Mr. *Haſſard*, *Richard Linden*, *Edmund Warthorne*, *Thomas Munday*, and *Richard Butler* atteſt. (4.) By the Speech of the Enemy's own Commanders, who viewing the Works of the ſaid Caſtle ſoon after its Surrender, *ſwore, God damn them, all the Devils in Hell could not have taken the Caſtle, it was ſo fortify'd, had not the Governor cowardly ſurrender'd it; that they might thank* Fiennes *for it; and that they could not have taken the Caſtle, had it not been yielded up to them beyond Expectation:* as *Mary Smith*, *Ethelred Huddy*, *Joan Battin*, *Thomas Thomas*, and *Michael Spark ſenior*, witneſs.

And whereas he alledged, that Sir *William Waller*, and Sir *Arthur Haſlerig*, deemed *Briſtol* not tenable, which he endeavoured to prove by this Paſſage in their Letter to him, dated *July* 1. 1643.—(atteſted by Mr. *John Aſh*, and printed in his *Relation*, *Pag.* 27.) *We think the Enemy will fall on this Night, if not, to morrow Morning; and if ſo, what good will this Regiment do* Briſtol *if we periſh? It is a wonder to us, to ſee our Friends delay Help where there is Safety*, &c.

Mr. *Prynn* anſwered, 1. That this Letter declares not their Opinion concerning the Intenability of *Briſtol*, but their Importunity to have ſpeedy Supplies from thence. 2. It expreſſeth that *Briſtol*'s greateſt Security conſiſted in their Army's Succeſs, there being no Danger of a Siege as long as their Army were Maſters of the Field. 3. It proves nothing, that either the City or Caſtle might not have held out till Relief ſhould arrive from his Excellency, or that it could not hold out above three Days longer. 4. The Defendant confeſſeth that had Col. *Popham*'s Regiment continued in the Town, it had not been loſt, and that his ſending of them to Sir *William Waller*, was the Loſs of the Town: therefore the Caſtle and Town in reſpect of the Fortifications were both tenable, and had no want at all but of Col. *Popham*'s Men, which he ſupplied by his new-raiſed Regiments before the Siege.

2. Whereas he alledged, that divers Gentlemen left the Town, and went away with Sir *William Waller*, and Sir *Arthur Haſlerig*, becauſe they deemed it not tenable:

It was anſwered, That the Reaſon of their Departure (as themſelves have confeſſed) was, the Fear and Aſſurance they had, the Defendant would not hold it out to the laſt; whereas Col. *Strode*, Col. *Stephens*, and others, who had his Promiſe to hold it out to the utmoſt, continued with him ſtill.

Fourthly, It was anſwered, That the objected Weakneſſes and Defects of the Works and Caſtle, were mere Inventions of the Defendant ſince the Surrender, not thought or ſpoken of before, nor once propounded at the Council of War when the Parley was in Agitation; where the Debate of this Particular of the Tenability of the Town and Caſtle was never diſputed, for if it had, the Town would have been held ſome four Days longer, while this point had been debated, which hath taken up four Days here. As for the Caſtle, the Defendant himſelf confeſſeth, and his Lieutenant *Clifton* with Major *Holmes* depoſe, *that in the whole Debate of the Parley and Surrender, the Caſtle was never mentioned nor thought on:* therefore the Weakneſs and Untenability of it was no Ground of its Surrender, as is now pretended. Finally, the Defendant in his printed Relation, *Pag.* 9, 10. and in his *Anſwer*, affirms; *that the Cauſe why the Caſtle was not tenable againſt the Enemy, was for want of Match and Powder*, not in regard of its inconvenient Situation and weak Fortification, the only Cauſes now inſiſted on; therefore this is but a mere Pretence invented ſince the Surrender.

To the ſecond Pretence of wanting a ſufficient Garriſon to hold it; Maſter *Prynn* anſwered, 1. That the Defendant had two thouſand Foot, beſides two hundred Voluntiers, and three hundred Horſe and Dragoons at leaſt; which were ſufficient to defend the Town againſt all the Enemy's Power, as is infallibly evident by the Repulſes every where given to the Enemies when they ſtormed it, and the great ſlaughter of hundreds of their Men, with the loſs but of three or four of ours, atteſted by his own Witneſs, and publiſhed in his own *Relation* and *Letter to his Excellency.* And if the Garriſon were ſufficient thus to repulſe the Enemy in his greateſt Strength and Aſſault at the very Outworks, then certainly they were abundantly able to defend the Town and Caſtle after the Slaughter and wounding of above 1700 of the Enemies, had they been diſcreetly and courageouſly commanded by him; but doubtleſs they were more than enough to have defended the Caſtle, the Body of the City, and that Part beyond the Bridge, after the Suburbs entred, and the Line wholly quitted on *Glouceſterſhire* Side. 2. If the Garriſon had been too weak, he might have raiſed ſix or eight thouſand able Men more in the City, or retained five hundred of Sir *William Waller*'s Soldiers, whom he ſent out of the *Town to ſave the Expence of Proviſions.* 3. The Garriſon Soldiers that were in it, would have fought, and held the City and Caſtle out againſt the Enemy, thinking themſelves ſtrong enough to do it, but the Defendant would not permit them, as ſundry Witneſſes atteſt; the want therefore of a ſufficient Garriſon is but a mere Pretence. 4. A Garriſon muſt be judged to be ſufficient or inſufficient to defend a Place, only in regard of the Enemy's Strength that comes before it; that Garriſon being ſufficient to defend a Town againſt ſeven or eight thouſand Beſiegers, which perchance is inſufficient to guard it againſt twenty Thouſand. Now we confidently affirm, that the Garriſon then in it, was ſufficient to guard it againſt all the Power then before it, as appears by the Enemy's ſeveral general Repulſes with extraordinary Loſs to them and none to the Garriſon; by the Enemy's Paucity, not being above ſeven or eight thouſand at moſt, (moſt of them Horſe) and their Quarters divided with an unfordable River, ſo as they could not come to reſcue or relieve one the other. And whereas he pretended the Enemy was near fourteen thouſand ſtrong, becauſe they had about ſeventy or one hundred Foot Colours only upon *Durdham Down*; this is a moſt fallacious Argument: becauſe every puny Soldier knows it is a common Policy in Wars, to carry and diſplay a Multitude of Colours more than there are Companies, afar off, at a diſtance, of purpoſe to amaze or terrify the Oppoſites, and make themſelves appear more numerous than in truth they are; which Policy was now uſed. And whereas Captain *Huſbands* affirmed, that he told one hundred Foot Colours on *Durdham Down*; he ſaith, that it was but with his Proſpective-Glaſs (an uncertain Inſtrument to tell Colours with) which multiplied the Colours more than they were, Lieutenant *Clifton* telling not ſeventy at moſt. And how full theſe Companies under thoſe Colours were, we ſhall produce only the Teſtimony of Mr. *Savidge*, a late Soldier in *Ireland*, who depoſed *viva voce*, *That he was in* Briſtol *within two Days after its Surrender, when there was a general Muſter of Prince* Rupert'*s Foot in the Marſh there, at which both Prince* Rupert *and* Maurice *were preſent, where he told (to his beſt remembrance) fifty-two, but for certain above forty-two, of the Enemies Colours, which had not above* 1400 *Soldiers at the moſt belonging to them, for he particularly told, and took ſpecial Notice of them: Whereupon he demanded of one of the Officers on the Place, why they had ſo many Colours, and ſo few Men? who anſwered, that they had many of their Men ſlain and wounded in the Siege.* So as by this Account, they had more Foot in the City, by ſeven or eight hundred, when it was ſurrendred, than Prince *Rupert* had without it, whoſe Forces were moſt Horſe; and therefore a ſufficient Garriſon to defend it againſt ſo ſmall a Force. Beſides, it appears *by the Relation of* Gloceſter *Siege*, *Pag*. 1. (atteſted by Mr. *Pury* to be true) that *there were about nine thouſand Men more before* Gloceſter *than there were at* Briſtol *Siege.* If then *Gloceſter* Garriſon, conſiſting at the moſt but of 1500 Men, were ſufficient to guard it againſt 9000 more than were before *Briſtol*, then *Briſtol* Garriſon of above 2000 Foot, and 300 Horſe, muſt needs be abundantly ſufficient to defend it againſt 9000 Enemies leſs than were before *Gloceſter*. And whereas the Defendant alledged his Letter of Complaint for want of a ſufficient Garriſon; this was in *March* 20, 1643. when he had but *one complete Regiment of Foot, and but two Troops of Horſe, not at the Siege*, when he had above twice double the Number. 5. For his Excellency's Opinion, and his own Propoſitions, *that the Garriſon ſhould conſiſt of three Regiments of Foot, and three Troops of Horſe and Dragoons:* It was anſwered, that he had above that Number of Horſe, and almoſt his full Number of Foot at the Siege, and might have raiſed more had he pleaſed; therefore a competent Garriſon, according to his own Deſire. But that which quite takes off this Objection, is, That ſuch a large Garriſon as this, was not deſired by him, or thought meet by his Excellency, only to defend *Briſtol* againſt a Siege, *but likewiſe to defend* Bath, Berkley-Caſtle, *and the Country round about for twenty Miles ſpace, and to ſuppreſs Inſurrections, if any ſhould happen in the Weſtern Parts*; as appears by his Excellency's Letter, and his own Propoſitions. Therefore this Pretence, that he had not a full Garriſon to defend the Town, becauſe he wanted ſome of his number of Foot, which ſhould have defended *Bath, and the Country twenty Miles round about*, is but an impertinent Plea. 6. For his want of Reſerves to relieve his Men, himſelf confeſſed, that Reſerves might have well been drawn from the main Guard and Caſtle Garriſon, who were not in any Fight or Action during the Siege; that he had ſome few Reſerves for ſome particular Places, as there was Occaſion; that Captain *Stokes*, whoſe Company was a mere Reſerve, ſtood in St. *James's* Church-yard, when the Enemy entred, tho' not employed to repulſe them at the firſt, nor afterwards in the Sally. If then he had Reſerve for ſome ſpecial Services, he had, no doubt, a competent Garriſon; it being unuſual to have a whole Reſerve, and a vaſt unneceſſary Expence to maintain a double Garriſon in any Place. 7. Whereas he alledged that his Men, for want of Relief and Reſerves, would have quite been tired out in three or four Days more, having been near five Days on Duty without Relief; and that a Man might die of a lingring Conſumption as well as of a Fever. It was anſwered, That the Garriſon of *Gloceſter* had no Reſerves at all, and were conſtantly upon Duty without Relief, above thirty-five Days and Nights together, yet held it out courageouſly, without dying of a Conſumption; and why *Briſtol* Garriſon might not have done the like (being furniſhed with good Store of *Briſtol* Milk, ſtrong Wines and Waters) with as good Succeſs, had the Defendant put them to it, (eſpecially having ſome Reſerves to relieve one another) he could ſee no Reaſon, but only his willingneſs to yield up the Town to the Enemy, for fear of a Conſumption, of which none are willing, or uſe to die, till Nature be totally ſpent. 8. There was then no Sickneſs at all in the City, no want of Proviſions, or Neceſſaries; no Loſs but of eight Men at the moſt when yielded: how then the City and Caſtle could be ſurrendred upon this Pretence of an Impoſſibility to keep them longer, for want of a ſufficient Garriſon, we cannot conceive; eſpecially ſince the Women with their Children profferred to go unto the Cannons Mouth to dead the Bullets.

Thirdly, To the pretended want of Match, Powder, Ammunition, (for a Sufficiency of all other Proviſions and Victuals was acknowledged) it was anſwered, 1. That we had proved * there were 1400 weight of Match (beſides a Dray-load more of Match in the Caſtle itſelf, when ſurrendred; and a Match-Maker with Materials to make more Match in the Caſtle as faſt as they could ſpend it, beſides much Match in the City: and he might as ſoon have alledged want of Water in the River *Avon*, as of Match in *Briſtol*, which makes Match and Cordage for all the *Weſt of England*, and other Parts. 2. For Powder, we have proved by ſome Witneſſes, that there were at leaſt ſixty Barrels in the Caſtle only, beſides as many more in the City, Forts, and what was weekly made in the Town: yea ſome Witneſſes prove there were ſeventy double Barrels in the Caſtle, left to the Enemy. Captain *Huſbands* confeſſeth he had two Barrels of Powder in his Fort, *Arthur Williams* atteſteth there were ſixty Barrels in the Town, and Major *Allen* brought nine Barrels more from *Malmeſbury:* And by his own printed *Relation*, there muſt be at leaſt 90 Barrels left; *For he therein confeſſeth that he found* 45 *Barrels of Powder in the Town, when he firſt entred upon the Charge thereof; after which he received* 30 *Barrels more from* London, 126 Barrels from *France*, beſides ſix or ſeven Barrels weekly made in the City, all the Powder taken out of Shops, Ships, and the nine Barrels from *Malmeſbury*: all which (admit the Barrels out of *France* ſingle) amount to 210 Barrels; but to 336 Barrels, if thoſe from *France* were double, as they were: Of theſe he ſaith, Sir *William Waller* had about 60 Barrels, and that he ſpent about 60 more in the Siege: deduct then 120 Barrels out of 336, there remained no leſs than 216; or 120 out of 210, there were left 90 Barrels at leaſt by his own Confeſſion, allowing him all that was made or found in the City and Ships merely for Waſte and Muſters. And whether there were a Neceſſity of ſurrendring the Town for want of Powder, when ſo many Barrels remained only in the Caſtle, beſides what was in the Forts and City, let all Men judge: there being 60 Barrels more than Col. *Maſſey* had when *Gloceſter* was firſt beſieged.

But his grand Pretence is, That this Powder would have laſted them only two or three Days at moſt; whence this Prodigal of his Powder, not Blood or Coin, writes thus in his *Relation*, *Pag*. 9, 10. *That which made it evident, we could not hold out the Caſtle above two or three Days*, was, *becauſe we had Ammunition for no longer Time, having only* 50 *Barrels of Powder, and no Match, at all, (No Match for himſelf, he means* for Cowardice, elſe there was Match enough) *and according to the Proportion of Powder, we had ſpent the Days before, would not have ſerved us above two Days, and it is clear we ſhould not have had any Relief in ſix or eight Weeks.* A pretty prejudicating Fancy, not to be admitted on any Terms: For by the ſame Argument he ſurrendred it up now when he had 90, or admit but 50 Barrels left; he would have then yielded it had he 500 remaining: For thus he would have argued, 500 Barrels after the rate of 50 Barrels we ſpent the two firſt Days, would have laſted us but twenty Days at moſt; and we could have no Succour in ſix or eight Weeks, therefore I was neceſſitated to render the Town for want of Powder to hold out till Relief might come: Nay, if he had 1000 Barrels then left, he would by this Reaſon have yielded the Town up, for want of Powder: for he argued thus; Col. *Warnſlow* at *Plymouth* ſpent 40 Barrels in one Day; *Ergo*, I ſhould have ſpent ſo many every Day at *Briſtol*, and by this Computation a 1000 Barrels would have laſted me but 30 Days: and I had no hopes of Relief in forty or fifty Days at neareſt; *Ergo*, I was neceſſitated to yield for want of Powder to ſerve me till Relief might come. Had valiant *Maſſey* argued thus at *Gloceſter*, he might have ſurrendred it to the King on this Pretence the very firſt Day and Hour he came before it. He might have alledged (with better Reaſon than Col. *Fiennes)* we have but 30 Barrels of Powder in all to defend the Town with, and theſe will not laſt above one Day, for Col. *Fiennes* ſpent thirty Barrels a Day at *Briſtol*, and Col. *Warnſlow* 40 in one Day at *Plymouth:* Therefore 30 Barrels againſt a far greater Army of Enemies, will not laſt above one Day, and we lawfully may and ought, in true Military Policy, to ſurrender *Gloceſter* to the Enemy the firſt Hour they come before it, for want of Powder, ſince Col. *Fiennes* ſurrendred *Briſtol* for this very Cauſe, when he had twice as much Powder as we. Had *Maſſey* done or argued thus, what had become of *Gloceſter* and the Kingdom ere this? But ſince he made no ſuch anticipating Argument, but with his little Store of Powder (far leſs than was in the Caſtle of *Briſtol* only) maintained the Siege for 31 Days, and preſerved the Town when he had more Cauſe to deſpair of Relief than Col. *Fiennes*, Why the Defendant might not, ſhould not have done the like at *Briſtol*, I cannot yet conjecture. Indeed, he ſaith, in his Anſwer to the eighth Article, *That he was leſs able to defend the Town four, or the Caſtle fourteen Days, than* Maſſey *was to defend* Gloceſter 24 *Days with the ſame Proportion of Powder.* Certainly, if it were poſſible for *Maſſey* to defend *Gloceſter* againſt a far greater Force than was at *Briſtol* with 50 Barrels of Powder for 31 Days, it was more poſſible for the Defendant to have defended the Caſtle of *Briſtol* of leſs Circumference by three Parts than it, with 90 ſingle or 70 double Barrels (which he ſurrendred) for three times 30 Days, and till Succours had arrived. But to exclude all Pretences, Mr. *Prynn* affirmed, that there muſt the ſame Rule and Law be obſerved in caſe of Powder, Ammunition, and Men, as there is in caſe of Victuals: And what that is, the King of *Sweden*'s and his Excellency's Articles of War (newly reprinted) define, *to wit, a preſent and abſolute want of Victuals, and all edible things to ſuſtain Nature:* And ſo a preſent abſolute Want and Expence of all Powder and Ammunition; elſe any Fort may be betrayed upon remote pretended Neceſſities. A Governor muſt not argue thus, It may be I may ſpend 50 Barrels of Powder in two Days: *Ergo*, 50 being all my Store, I will preſently ſurrender before I put it to the Hazard, and yield up my preſent Stores to the Enemy before the two Days expire: for then what Place can be ſecure, or will hold out to real Extremity? But on the contrary, he muſt thus reſolve, I have thus much Powder yet left, and by good Huſbandry it may laſt much longer than I apprehend; the Enemy's Ammunition, for ought I know, may fail before it, who knows not how ſmall our Stores now are; however it is better I ſhould ſpend that little I have left againſt the Enemy, rather than yield it up to ſupply their Wants and annoy our Friends: Therefore I will, yea, I ought in Reaſon and Duty to be reduced to a preſent real, not a ſurmiſed poſſible Want of Powder, before I would yield up the Fort, committed to my Truſt, to the whole Kingdom's Prejudice. This was Col. *Maſſey*'s Reſolution, this ought to be the Concluſion of every Governor whatſoever, and of the Defendant at *Briſtol*, which wanted neither Fortifications, Men, Victuals, Ammunition, Cannon, Powder, Wine, Beer, Match, Water, nor any Neceſſaries when it was ſurrendred, to defend it till Supplies might have arrived. Therefore it was yielded up before any the leaſt Extremity, and ſo *unworthily*, and *cowardly*, both in Law and real Verity.

Fourthly, as to his beſt and moſt ſpecial Plea or Inducement, That he *ſurrendred the City and Caſtle ſo ſpeedily as he did, of Purpoſe to preſerve a Body of* 1500 *Foot and Horſe for the Service of the State, then wanting Men; and the Lives and Eſtates of divers of our Friends.*

Mr. *Prynn* anſwered, 1. That he might be aſhamed of ſuch a poor abſurd Pretence as this, to veil his Cowardice: his Surrender in Truth being but to ſave his own Life and Eſtate, not the Garriſon's, who were ſafer in the Town and Caſtle, than in any other Place whatſoever, and loſt both themſelves and their Eſtates by ſurrendring them, which they had preſerved (as *Gloceſter* Men did their City and Eſtates) had they manfully held them out to the laſt.

2. The Parliament had no leſs than Two Thouſand armed Foot, and Three Hundred Horſe in the City to ſerve them

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* Joan Battin, Arthur Williams, *Major* Wood.

there immediately before the Surrender: yet this thrifty Governor would for their Service and Advantage ſurrender both City and Caſtle, with all the Cannon, Ammunition, Arms, Magazines, Proviſions, Wealth, Ships, Priſoners, Colours in it, to preſerve them only 1500 diſarmed, plundered, diſmounted Men, to ſerve them God knows where or how. A very frugal Steward ſurely for the Republick, to loſe them no leſs than 800 Men in the very Bargain, with the City, Caſtle, Arms, and Premiſes to boot.

3. Neither did he ſave thoſe 1500 naked Men, as he pretended, nor yet a Body of three hundred to ſerve them elſewhere, he bringing ſcarce one hundred of them with him into *London*. He loſt the City, Caſtle, Arms, all elſe in them before, only to ſave the Men, and their Eſtates; and after loſt both the Men and their Eſtates, to ſave himſelf, never reſerving ſo much as one Enſign, Drum, Trumpet, upon the Parley, to call or keep his Men together, nor yet muſtering them into Order, nor marching away with them in a Body, nor relieving them when diſmounted, plundered, abuſed in his Sight, leaving every Man to ſhift for himſelf the beſt he might. And was not this a pretty Saving of Men to ſerve the Parliament elſewhere, thus careleſly to loſe them, and of twenty-three hundred Men compleatly armed to ſerve them, to preſerve ſcarce two hundred, ſtript of all their Arms, and quite diſbanded? God preſerve the Republick from ſuch frugal Stewards, ſuch pernicious Bargains!

4. Admit he had ſaved full fifteen hundred unarmed Men to ſerve the State, was not this a ſweet Purchaſe (think you) to ſave ſo many Mens Perſons with the Loſs of ſuch a Place of Conſequence, Strength, Shipping, Trade, Command by Sea and Land, with the Hazard of the whole Kingdom? Better himſelf, and all thoſe fifteen hundred, nay, better ten thouſand Men had bravely loſt their Lives in Defence thereof; yea, better the whole City had been ruined, if not poſſible otherwiſe to be ſecured to the State, than that the Enemy ſhould have ſo eaſily poſſeſſed it, to the City's, Country's, and whole Kingdom's infinite Prejudice.

5. The Parliament needed no Man at that time to ſerve them elſewhere, but they would extremely want *Briſtol* were it loſt, far more than they wanted Men. It was a bootleſs Service, then, to loſe what they ſhould certainly moſt of all want, to preſerve only what they needed not.

6. Theſe Mens Service was uſeful no where but in *Briſtol*, where the State only needed and expected it; and thoſe who would not do them the beſt, the uttermoſt Service there where they moſt needed it, with the Hazard of their Lives, would hardly do them Service elſewhere, unleſs they might have Victory in a Bag, (as *Ulyſſes* had the Winds) and might fight only where they were ſure of no Reſiſtance, to gain *Sarmacida ſpolia, ſine ſanguine & ſudore.*

7. They could do the Parliament no ſuch good Service any where as there, in keeping *Briſtol*; there moſt of them were in their proper Center, their Native Soil, where they fought for their Lives, Eſtates, Lands, Houſes, Wives, Children, Liberties, in the very Height and Strength of their Spirits; there they were intrenched in ſtrong Forts and Bulwarks, well mann'd, victuall'd, ammunition'd; where, in reſpect of the Enemy's Diſadvantage in aſſailing, and their own Conveniency in defending, they might have ſlain one hundred Enemies for one of ours, as they had done before, killing and wounding above fifteen hundred of the Enemies, with the loſs only of eight of the Garriſon; after which Rate they might have ſlain the Enemy's whole Army with the Loſs only of one hundred Men, (a Service they could never hope to attain to in the open Fields) and alſo have ſaved not only fifteen hundred, but two thouſand two hundred of their own Men, to ſerve the State, together with the City, Caſtle, Ships, Arms, Magazines, and Weſtern Parts, all depending on them; and that with the total Ruin of the Enemies Forces.

8. It is very improbable that theſe Garriſon Soldiers and Citizens would adventure their Lives to ſerve the State in any Place elſe, who would not do it on their own Dunghill, and in their proper Charges, where they were moſt concerned; thoſe that will not fight it out to the utmoſt in a Fort where they have all Advantages, will certainly not do it in the open Fields, where the Enemy and they are upon equal Ground. And it is not very likely, that Men diſarmed, diſcouraged, left to the Scorn and Plunder of the Enemies, ſtript of all their Fortunes, driven from their native Habitations, and brought to truſt to the Enemy for their Lives, rather than to God and their own Swords for Victory and Security, ſhould fight for the Parliament without Arms, or any other Encouragement in the open Fields.

9. Admit he ſecured the Parliament fifteen hundred pillaged, naked Friends to ſerve them elſewhere; yet ſure I am, he hath truly gained them fifteen, nay, fifty thouſand Enemies, with all the Arms, Strength, Ports, Forts, Traffick, Proviſions, Wealth, that the Weſt of *England*, *Wales*, or *Ireland* can afford, whence divers Thouſands of Enemies and Rebels are lately arrived in *Briſtol* Ships, to cut our Throats, poſſeſs our Eſtates, yea, lay our Kingdom waſte. And was not this a good Piece of publick Service worthy our higheſt Applauſe?

10. The very Loſs of *Briſtol* (for aught any wiſe Man can yet perceive) is like to coſt the Parliament and Kingdom the Lives of above fifteen thouſand, nay, thirty thouſand Men, (as it hath coſt them ſome thouſands already) ere *Briſtol* and the Weſt be reduced to that Condition they were when the City was ſurrender'd. And is not this a ſweet Piece of good Huſbandry, to endanger the Loſs of thirty thouſand Mens Lives, but to ſave the Lives of fifteen hundred only, and that when they were in greateſt Security, and no Danger at all of being loſt, had they ſtood it out?

11. The Defendant and his Men were purpoſely placed in the City and Caſtle (to the Kingdom's vaſt Expence) to this very end, that they might preſerve them from the Enemy, even with the Loſs of their Lives, rather than the Enemy ſhould poſſeſs them to the Publick Prejudice: And yet this valiant Gentleman is ſo diſcreetly ſparing (at leaſtwiſe of his own, if not of their Lives) as rather certainly to loſe the Town and Caſtle, than to hazard the Loſs of all or any of their Lives, contrary to his very Truſt and Duty.

12. Might not every Governor and General upon this Pretence deliver up any Fort, City, Town, Country to the Enemy, without Shot or Stroke, to preſerve the Lives of their Men to ſerve the Parliament elſewhere? Had Colonel *Maſſey* at *Gloceſter*, or Col. *Warnſlow* at *Plymouth*, made this Plea of ſaving their own and their Garriſons Lives, to ſerve the Parliament elſewhere, theſe Towns might have been yielded up upon better Articles than *Briſtol* long ago. Had his Excellency been acquainted with this frugal State-Policy by Col. *Fiennes*, at the famous Battles of *Edge-Hill* and *Newbury*, he might eaſily before the Fights began, have ſounded a Parley, and yielded up all his Ammunition, Cannons, Arms, Carriages, Colours, Drums, Cornets, Priſoners to the Enemy, and given them the Honour of the Field, of purpoſe to ſave the Effuſion of Chriſtian Blood, and preſerve the Lives of his Soldiers to ſerve the Commonwealth in other Places (there being the ſame Pretence of Reaſon in theſe Caſes as in *Briſtol)*: And then I pray, what had become of our Parliament, Religion, Laws, Liberties, Eſtates, and Lives too ere this? I doubt they had all been loſt by this new kind of Saving. And then what Service could theſe Men do the Parliament or State when all was certainly loſt? We owe our Lives, Limbs, Fortunes, all we have, to our dear Country; delete this Principle out of Mens Hearts, and you diſſolve, yea ruin all civil Society. It is therefore no Excuſe at all for the Defendant to loſe this Place of Conſequence to ſave a few Mens Lives, or Eſtates, together with his own.

13. It is the greateſt Honour of a Governor, and a Soldier, to die fighting; to loſe his Life to ſave his Country. The very Heathen *Romans*, and *Tully*, teach us thus much Martial Divinity: *Dulce & decorum eſt pro patria mori.* But this unmanly Governor was clear of another Mind; he will neither hazard his own nor other Mens Lives to ſave a City, a Parliament, a Kingdom. Better all theſe were loſt than his Life or Garriſon endangered by any bloody Aſſaults. And is not then this his principal Excuſe the higheſt Manifeſtation of a degenerous cowardly Spirit? Our Saviour Chriſt informs us, *He that loſeth his Life* (by adventuring it for his Religion, God, and Country) *ſhall ſave it*; yea, and the Place committed to his Truſt, as *Maſſey* and others have done: *but he that will ſave his Life* (or others) by a cowardly and unworthy Surrender, as this Gentleman did, *ſhall loſe it*, and that deſervedly, by the Ax of Juſtice, for ſuch unmanly Cowardice. It was *Caiaphas*'s Divinity concerning Chriſt himſelf, *It is expedient for us that one Man ſhould die for the People, that the whole Nation periſh not*: And it ſhould have been the Defendant's Honour and Integrity to have ſaid the like; Better that I, being but one Man, yea, better my whole Garriſon had died in defending this noble City, than that the whole Nation ſhould periſh thro' its Surrender, to preſerve our Lives. It was the Defendant's Promiſe before the Siege, *to die in* Briſtol'*s Defence, and lay his Bones therein*; but this he now profeſſeth, was ſpoken only in Policy, to incourage and keep the Soldiers in heart, not in reality with any Intent to perform it. Certainly if it be a ſign of a *good Shepherd* or Governor *to lay down his Life for his Sheep*, his Country, it is an undoubted Badge of an evil and timorous one, to refuſe to do it after ſo many Promiſes. This is the Defendant's Caſe, who would rather adventure his Head in a martial Trial, than his Life in a Breach, and for this deſerves the Loſs of both.

The next Debate was of a Point of principal Concernment; namely, *What ſhould be judged uttermoſt Extremity in regard of Men, Ammunition, Victuals, or Intenability of any Fort, to juſtify the Governor's Surrender of it to the Enemy? And whether the Defendant were reduced to any ſuch Extremity ere he ſurrender'd* Briſtol?

For reſolving of this grand Queſtion, Mr. *Prynn* alledged, that his *Excellency's Ordinances of War* determined, *That whoſoever yieldeth up any Town, Fort, Magazine, Victuals, Ammunition, Arms, or that moveth any ſuch thing but upon Extremity, and that to the Governor, or in Council, ſhall be executed as a Traitor.* This is the general Law. Now what this Extremity is, will be the ſole Queſtion; for Reſolution whereof we need go no further than to the ſeveral Caſes of *Gomineys*, *Weſton*, *Creſſingham*, *Elmham*, and the Biſhop of *Norwich*, antiently reſolved in Parliament, to the late King of *Sweden*'s Military Laws, and his Excellency's own Explanation of this Point (taken out of them) in the ſecond *Edition of his Laws and Ordinances of War*, which reduce Extremity to theſe three Heads (where there is no abſolute preſent want of Men thro' Slaughter or Mortality to defend the Place.)

1. *If the Garriſon be reduced to an utter Extremity of all eatable Things whatſoever, ſo as they have no kind of Food whereby to ſubſiſt, but muſt neceſſarily periſh by Famine, if they yield not preſently.*

2. *If there be no hope at all left them in ſuch a Caſe of any Succour or Relief.*

3. *If without parleying at the very Inſtant, both the Forts, Men, and Arms, muſt of Neceſſity fall into the Hands of the Enemy.* If the Governor can prove by pregnant Witneſſes that he was really reduced to all theſe Extremities, then he is to be acquitted; but if he fail in real Proof of any one of theſe, then he is to be condemned and executed as a Traitor, both by the King of *Sweden*'s and his Excellency's Martial Laws: and this is the general Law-Martial of all Nations, approved by our own Common Law, of purpoſe to eſtabliſh Military Diſcipline againſt Cowardice, Negligence, and Treachery, which are apt to be varniſh'd over with ſpecious tho' falſe Pretences.

To prove this Definition of Extremity, Mr. *Prynn* produced the laſt Edition of his Excellency's Ordinances of War, printed by his ſpecial Command, and the Judge-Advocate's Licenſe. But the Judge-Advocate oppoſed the reading of them, pretending they were not yet approved by his Excellency ſo far as to be uſed at a Council of War, and that they were made ſince the Loſs of *Briſtol*.

To which Mr. *Prynn* reply'd, that they were printed by his *Excellency's ſpecial Direction, and enjoined to be obſerved by all*, (as appears by the Title) having been firſt voted and agreed on at a Council of War; that the publiſhing of them in Print, by ſpecial Command, was the higheſt Approbation that might be; and it were in vain to ratify and publiſh them, if we might not make uſe of them at this Council of War, in a Caſe which falls punctually within their Reſolution: and tho' *Briſtol* was ſurrender'd before the laſt Edition of theſe Ordinances, yet this Clauſe which defines Extremity being only an Expoſition of the former Laws, and no new additional Law not formerly publiſhed, we might and ought to read it of right, to determine this Difficulty, for which it was purpoſely added. But the Advocate being very earneſt againſt the reading thereof, the Council referr'd it to my Lord General, whether the *Explanation in the new printed Ordinances and Laws of War ſhould be uſed at this Trial?* Who declared his Judgment, they ſhould not now be read, or uſed.

Whereupon Mr. *Prynn* laid down this Concluſion for a poſitive and neceſſary Principle in War, that *utmoſt Extremity* to juſtify the Surrender of any *Garriſon*, *Town*, *Fort*, *or Place of Conſequence*, *muſt not be an imaginary*, *or poſſible Extremity*, *or a conjectural Improbability of holding out any long time*, *but a real*, *neceſſary*, *and preſent Impoſſibility of holding out any longer againſt the Enemy:* affirming, *that no Governor of any fortify'd Town or Caſtle ought to ſurrender the ſame upon any pretence of Extremity*, *but where there is an abſolute*, *real*, *and preſent Impoſſibility of holding out any longer than that very inſtant time wherein he makes the Surrender*. The Reaſons whereof (he ſaid) were very obſervable, grounded upon the higheſt Principles of Policy and War; as namely,

1. To retard the Enemy's Progreſs and Conqueſts, leſt a whole Kingdom ſhould be loſt in a Moment, as all *England* would have been long ere this, had *Gloceſter*, *Hull*, *Plymouth*, *Exeter*, and other Places, made no longer nor better Reſiſtance than *Briſtol*, tho' not of ſuch importance to the Realm, nor ſo well furniſh'd as *Briſtol* with all manner of Proviſions for a Siege. A General of an Army, Governor of a Town, muſt defend his Part with reſpect to the whole Kingdom; and therefore tho' he cannot hold his Ground, or guard his Fort abſolutely, or for any long Space againſt the Enemy, yet he muſt loſe Ground but by Inches, not give it away by whole Towns or Countries; and tho' he cannot defend his Charge ſtill, yet he muſt hold out till the laſt Minute to ſtay the Enemies Progreſs, and prevent a ſudden total Conqueſt of the Realm.

2. To ſpend the Enemies Men, Ammunition, Proviſions, a long Siege being the uſual Bane of any Army; an infinite Charge, Diſadvantage, Diſcouragement to the Beſiegers, but great Advantage, Encouragement to the oppoſite Party.

3. To give a good Precedent and Encouragement to other Governors, Garriſons, Forts, adjacent Counties, and to uphold Martial Diſcipline thereby; the holding out of a Place of Conſequence (as is evident by the late Example of *Gloceſter)* giving great Encouragement to the adjoining Places to hold out ſtrenuouſly to the laſt, and animating all the Party adhering to them: whereas the ſudden Loſs or yielding up of any eminent City, ſtrikes Terror into all adjoining Towns, Forts, Counties, who preſently wheel about to the conquering Enemy, as appears by the Example of *Briſtol*; whoſe unexpected Surrender drew on the Loſs of *Dorcheſter*, *Barnſtaple*, *Exeter*, *Dartmouth*, with moſt of the Weſtern Parts; and it had hazarded the Loſs of *London*, yea of the whole Kingdom, had the Enemies purſued their Victory to *London* Walls, and not been unexpectedly beaten off at *Gloceſter*, endanger'd by *Briſtol*'s Surrender, and quite given for loſt by Col. *Fiennes* and his Officers.

4. To give Advantage of ſurprizing other Places, or Quarters of the Enemies, to cauſe either a Raiſing of the Siege by ſuch Diverſions, or to get ſomething equivalent to the Place beſieged, in caſe it ſhould be loſt, or not relievable: whereas a ſudden unexpected Surrender foreſtals all ſuch Diverſions and Compenſations of Loſſes. Had *Briſtol* been held out to the utmoſt, in caſe his Excellency could not have timely relieved it; yet he might have carry'd *Oxford*, or ſurprized divers of the Enemy's Garriſons, Forts, Men, Arms, Horſe, in other Quarters, whilſt they were occupied at *Briſtol*; whenas its ſudden Surrender before three full days Siege, anticipated all Diverſions, and Recoveries in Value, to help ballance *Briſtol*'s Loſs.

5. To deprive the Enemy of the Ammunition, Proviſion, Victuals, and Magazines in the Town and Caſtle; which if ſpent in their Defence, to the Enemy's Loſs and Slaughter, the Cannons cloyed, the Arms made unſerviceable to the Enemy, they could not have readily been ſupply'd from other Parts, and ſo the Town and Caſtle might have been eaſily regained by a preſent Siege, in caſe they had not been ſeaſonably relieved: however, the Victory at leaſt had been leſs honourable, leſs advantageous to the Enemy; who by an unworthy ſpeedy Surrender gained a City and Caſtle ready fortify'd, victualled, ammunition'd, provided with all Neceſſaries to their Hands, fit for preſent Defence, without any Coſt or Labour; with Cannon and Arms almoſt ſufficient to furniſh an Army by Land, and Shipping enough to ſet out a ſtrong Fleet by Sea.

6. To preſerve the adjacent Towns, Forts, Counties, depending upon the holding out of the Place beſieged, who by a cowardly preſent Surrender may be in danger to be ſurprized on a ſudden, and taken unprovided of Ammunition, Men, Arms, Victuals, or ſufficient Fortifications. If a Town well fortified, manned, victualled to hold out three Months Siege in moſt Mens Opinions, ſhall be cowardly yielded up before Extremity, in three Days ſpace, as *Briſtol* was; all the neighbouring Garriſons, Counties, Cities, Caſtles, who depend upon its three Months Defence, are in danger of Surpriſal, and being taken unfurniſhed at unawares, as infinite hiſtorical Examples evidence; and the *unexpected Surrender of* Briſtol (as the *Relation of* Gloceſter Siege truly ſtyles it) was likely to have indangered *Gloceſter*, whoſe vigilant Governor would doubtleſs have been better furniſhed with Men, Ammunition, Victuals, had not *Briſtol*'s over-haſty Surrender foreſtalled his Intentions. And who knoweth not, that this Surrender might have indangered the Loſs of *London* thro' an unexpected Surprize, had the Enemy preſently advanced towards it, as ſome adviſed?

7. If any Town be yielded up before abſolute Extremity and Neceſſity of holding out longer, there is a moſt certain preſent Loſs to the State, (perchance irrecuperable for the future too) but if held out till Extremity, there is ſtill either a probability or poſſibility of ſecuring and preſerving it left, even to the utmoſt minute of its Tenability, and that by infinite Caſualties, Contingencies, and Paſſages of Divine Providence, tranſcending all human Apprehenſions. As, (1.) By unexpected Supplies from other Parts. (2.) By Diverſions or Invaſions of the Enemies Quarters elſewhere, ingaging them to raiſe their Siege. (3.) By ſucceſsful Sallies. (4.) By extraordinary Slaughters of the Enemies upon diſadvantageous Aſſaults, of which they of *Briſtol* had former Experiences, where the Enemy loſt an hundred Men to one of ours, and had near 1700 ſlain and hurt in leſs than three Days, with the loſs only of ſeven or eight. (5.) By ſudden Sickneſs in the Enemies Camp. His Excellency (as this Defendant affirmed) had two or three hundred Men that fell ſick about this time in his Army in one Day, and one thouſand or more in one Week's ſpace, and the Enemies (for aught he knew) might have undergone the like Mortality. We read that God's *Angel in one Night ſlew in the King of* Aſſyria *his Hoſt*, *an hundred fourſcore and five thouſand Men*, *and thereby raiſed* Jeruſalem'*s Siege:* And for aught the Defendant knew, God might have ſent an equivalent deſtroying Plague among the *God-damn-me Army of Cavaliers*, who beſieged *Briſtol*. (6.) By unſeaſonable tempeſtuous Weather, which had broke up many Leaguers. (7.) By the Death or Slaughter of ſome principal Officers or Commanders. (8.) By ſudden pannick Fears and Apprehenſions of approaching Reſcues, of which we have *an eminent Scripture-Precedent in the Beſiegers of* Samaria; to omit profane Hiſtories. (9.) By ſudden *Mutinies and Diſcords among themſelves*, which in *Scripture*, and Stories, are copious. (10.) By Scarcity of Proviſions, with which the Enemy before *Briſtol* was very much pinched, as Mr. *Savidge* depoſeth. (11.) By want of Ammunition, the Enemies condition at *Briſtol*, who had ſpent moſt of their Powder and Shot, of which they had far leſs in their Camp than the Defendant ſurrender'd to them in the Caſtle. (12.) By Deſpair of Succeſs, for which very reaſon the Enemies had retreated from *Briſtol* in two or three Days more, had thoſe who entred the Lines at firſt been repulſed, as they might have been with eaſe, tho' the Defendant alledged they had taken a ſolemn Oath not to raiſe the Siege till they had taken the Town; which might have been as eaſily fruſtrated as the Oath of the *Jewiſh* Conſpirators, *Who vowed they would neither eat nor drink till they had murdered Paul*; yet miſſed of their Deſign. Beſides all theſe (whereof Hiſtories afford plenty of Examples), there are infinite other Contingencies frequent in Story, whereby God, out of his Divine Providence, hath many times miraculouſly preſerved Forts and Cities, even in their utmoſt Extremities, againſt their potent Enemies; when they have been reſolute to ſtand out to the laſt, eſpecially in the Cauſe of God, Religion, or their Country. And in ſuch a Caſe as this is, where we may with Confidence expect the beſt and ſpeedieſt Aſſiſtance the Lord of Hoſts, and God of Heaven can provide for us, (if we dare rely upon his Promiſes or Providence without diſtruſt) he deſerves not the Title of a Soldier, much leſs of a *Chriſtian Soldier*, *Governor*, or *Commander*, who will not truſt God to the utmoſt Exigency, and rely upon his Power, Wiſdom, Faithfulneſs for ſeaſonable Deliverance and Relief; which the Defendant (for want of Faith as well as Courage) durſt not do, and ſo yielded up all.

8. If abſolute and preſent Impoſſibility of longer Defence be not made the only Rule of utmoſt Extremity, we ſhall open a wide Gap to the Treachery, Cowardice, Negligence, Indiſcretion, Avarice, Ambition, Diſcontent of every Governor and Commander, to the Overthrow of all Martial Diſcipline, and expoſe the whole Kingdom to ſpeedy Loſs and Ruin; it being an eaſy matter for any Governor or Commander, how cowardly, falſe or treacherous ſoever, to invent many plauſible Excuſes, many forged, ſuppoſed, probable Extremities, and to find Witneſſes under his Command to atteſt them; and by Pretext thereof to betray and yield up the moſt conſiderable Towns, Caſtles, Forts, thro'out the Realm, to the Enemy, without any Stroke at all, or after a few Days counterfeit Siege, the better to palliate his treacherous Deſigns. And therefore upon all theſe Grounds, as likewiſe to reduce Extremity to a Certainty, no other Extremity ought to be admitted, but only a preſent abſolute Impoſſibility of holding out any longer; to which the Defendant was no ways reduced, as we have already proved.

In Oppoſition to theſe Reaſons, Col. *Fiennes* maintained theſe three Things.

The firſt was this, That whenever the principal Rampart of any Town was once entred by the Enemy, this was a ſufficient Extremity to juſtify both a Parley and Surrender. But the Line of Communication which the Enemies entred at *Briſtol* was the principal Rampart, as he pretended: Therefore his Surrender of it upon their entring the Line, was juſtifiable.

To which was anſwered: 1. That the Enemies entring the principal Rampart, is no lawful ſufficient Ground of a Parley or Surrender, no, nor yet the taking of the principal Fort (for the Reaſons aforeſaid), as long as the other Forts or Towns are tenable; by holding whereof the Enemy may in time be repulſed out of the Works they have entred. If this were true military Doctrine, then *London* ſhould by like reaſon be ſurrender'd to the King, in caſe he came before it, together with the *Tower*, as ſoon as the Line of Communication (the chief Rampart) were enter'd, or any Out-Fort taken; and an whole Army ſhould yield the Field, if one Troop or Company of the forlorn Hope were routed. 2. Tho' the Line of Communication of *Briſtol* were enter'd in only one Place, yet not one of the Out-Forts was taken; the Body of the City defended by the Key, and all that Part beyond the Bridge, together with the Caſtle (the chiefeſt Fort, Rampart, Sconce), and every Street in the Town both tenable and defenſible, as we have formerly proved; therefore the Enemies bare Entry within the Line of Communication only, was no Extremity at all to juſtify its Surrender, in the Judgment of any but extreme Cowards. 3. That the maintaining of ſuch a cowardly Paradox to excuſe this Surrender, was an Argument it proceeded from Cowardice, and a ſufficient Proof of a timorous Spirit.

The Second was, That if the Enemy had once enter'd or poſſeſſed the Town, the Caſtle ought not to be kept to the Prejudice of the Citizens, but ought to be ſurrender'd together with the Town, by the conſtant Practice and Policy of War in all Places, all Ages. In which he was ſo confident, that he challenged Mr. *Prynn* to ſhew one Precedent to the contrary, and produced divers Examples in foreign Parts, out of *French Mercuries* and *Gallobelgicuſſes*, with ſome late Examples at home to juſtify this Aſſertion: As namely, the Example of *Leipſick*, *Mentz*, *Philipſburgh*, *Prague*, *Augſburg*, the *Burſe*, *Breda*, and other Towns abroad; of *Portſmouth*, *Exeter*, *Lincoln*, *Worceſter*, *Wincheſter*, *Chicheſter*, *Malmeſbury*, *Hereford*, *Taunton Town* and *Caſtle*, *Bridgwater*, *Dorcheſter*, *Dartmouth*, *Lime*, *Reading*; where he ſaith, the Towns and Caſtles were both ſurrender'd together, and not the Caſtles held out when the Towns were taken; yet none of theſe Governors were ever queſtioned by the King or Parliament. And he gave this Reaſon to prove this Paradox, that if Caſtles ſhould hold out when the Towns were taken or yielded, it would much diſhearten the Citizens, and make them unwilling to entertain or aſſiſt any Garriſons in the Caſtles.

To which Mr. *Prynn* retorted, That this was the groſſeſt Abſurdity that ever was broached by any Man in his right Senſes; and had he not been intoxicated with a Spirit of Puſillanimity, he would never have invented ſuch a poor Subterfuge, or made ſuch an ignorant Challenge as this to ſave his endangered Life. For, 1. Caſtles and Citadels, in moſt Towns, are uſually the ſtrongeſt, moſt tenable, moſt impregnable Places of all others, beſt able to reſiſt and annoy the Enemies; the Out-works, Line, and Towns themſelves leſs tenable and reſiſtible than they: to argue therefore, that the Caſtle ought to be ſurrender'd as ſoon as the Town is enter'd or taken by the Enemy, is in effect to aver, That the ſtrongeſt Fort of all muſt be yielded, becauſe the weakeſt part of all is enter'd. If this were a good ſoldiery Argument, then, by the ſelf-ſame Reaſon, if there were twenty ſtrong Forts or Caſtles about a Town, and but one weak one, the whole twenty ſtrong ones, tho' tenable, muſt be yielded, becauſe only the weakeſt one was forced; and the Lord Mayor of *London* (in caſe that City were beſieged) might yield up both the *Tower*, Town, and all the other Forts to the King, if the weakeſt part of the Line were but enter'd, or *Hide-Park* or *Iſlington* Fort once enter'd by the Enemy; yea, by this kind of Soldiery, if the weakeſt Troop or Company in an whole Army be routed, the main Body and Battalion of it muſt preſently yield up themſelves and the Field too, becauſe this weak Party thereof is defeated: and his Excellency at *Edge-hill* Fight, where ſome of his Horſe and Foot ran ſhamefully away upon the firſt Charge, ſhould by this ſenſeleſs Policy have fled or yielded, and not won the Day, (as he did with greater Honour) becauſe the worſt and weakeſt part of his Army was routed. But ſince all Men know, that the ſtrongeſt Forts and Parties are to defend the weakeſt, not the feebleſt them; and the Caſtles in Cities made more ſtrong and tenable than other Parts, for this very purpoſe, that they might hold out when the weaker Parts are taken, (this being the only Uſe for which they were built and made ſo ſtrong) the Reaſon holds good on the contrary Part; that becauſe the Town which is the weakeſt is taken, therefore, for this very Reaſon, the Caſtle, which is the ſtrongeſt Part, ought to be held out, and not ſurrender'd.

2. Caſtles in moſt Towns command the whole Towns where they are, and thoſe who are Maſters of them are ſtill Maſters of the Places, and will ſoon regain the Towns; but if once ſurrender'd, the Enemies become preſently abſolutely Maſters of both; and no Hope is left of regaining either Town or Caſtle again, without a Siege, or infinite Expence and Danger. Therefore there is all the Reaſon in the World to maintain the Caſtles to the utmoſt, when the Towns are enter'd, and not to yield them up together, both to preſerve the Dominion of the Place, and regain the Towns with Eaſe and Speed.

3. As long as the Caſtles hold out, the Enemy can enjoy little Benefit by the Towns, and have leſs Security in them. Beſides, their Conqueſt is incomplete, leſs terrible, not advantageous; their Progreſs from thence to other Places retarded, unleſs they leave the Caſtles unbeſieged. And their forcing of the Caſtles will conſume them far more Men, Ammunition, Money, than the entering of the Towns, which, without the Caſtles commanding them, are little worth. Therefore for all theſe Reaſons it is apparent, that Caſtles ought to be kept by the conſtant exquiſiteſt Grounds and Policy of War, whenas the Towns themſelves are taken or ſurrender'd.

4. Neither will this be a Diſcouragement, but the greateſt Incouragement that may be to the Citizens, that the Caſtles muſt thus hold out to utmoſt Extremity: (1.) Becauſe the Perſons and Eſtates of the wealthieſt Citizens will be there ſecured againſt the Enemy's Rage and Plunder, (as the honeſt *Briſtolians* thought to have ſaved their Perſons and Eſtates, by retiring into the Caſtle when the Town had been forced, which were loſt by ſurrendering it). (2.) Becauſe by keeping the Caſtles the Towns are certain to be preſerved or regained in a ſhort time, and thereby their Liberties and Privileges. (3.) Becauſe by this means they ſhall not be long under the abſolute Power of the Enemy, and new Lords to controul them; whereas if the Caſtles be yielded, their Perſons, Eſtates, Laws, Liberties, will be wholly expoſed to the Enemies Will and Pleaſure, and ſubjected to their Tyranny. Therefore, upon all theſe Grounds, the Defendant ought to have kept the Caſtle of *Briſtol*, being ſtrong and tenable, to the utmoſt Extremity, and not to have ſurrender'd it with the Town, tho' the City had been taken, or yielded by Compoſition.

5. For Example, Mr. *Prynn* anſwered, That if he had his Books about him, he could ſhew him at leaſt one thouſand Examples in Story to one of his, where Caſtles have held out when the Towns were taken or yielded; but ſince his Challenge was to produce but one Example to the contrary, he ſhould out of preſent Memory furniſh him with divers. The firſt was a very antient and memorable one recorded in Scripture, (which he wondred the Defendant, who had read the Scriptures, could forget) to wit, that of *Thebez*, *Judg*. ix. where we read, *That* Abimelech *went to* Thebez, *and encamped againſt it, and took it. But there was a ſtrong Tower* (*or Caſtle*) *within the City, and thither fled all the Men and Women, and all they of the City, and ſhut it to them*; *and got them up to the* Tower; but did not yield it up, tho' the City was taken. *And* Abimelech *came to the Tower, and fought againſt it, and went hard to the Door of the Tower to burn it with Fire: And a certain Woman caſt a piece of a Millſtone upon* Abimelech*'s Head, and all to break his Skull: Then he called haſtily to his Armour-bearer, and ſaid unto him, Draw thy Sword, and ſlay me, that Men ſay not of me, a Woman ſlew him*; *and he thruſt him thro', and he died: and when the Men of* Iſrael *ſaw that* Abimelech *was dead, they departed every Man to his place.* Thus the Siege was raiſed, the Town preſerved, regained, and that by a Woman. Had Col. *Fiennes*, in caſe the City of *Briſtol* had been taken, retired to the Caſtle, according to his Promiſe, and there ſtood upon his Guard, perchance Prince *Rupert* coming for to aſſail it, as *Abimelech* did the Tower of *Thebez*, might have been ſlain with a Millſtone by one of thoſe valiant Women who offered to go up to the Cannons-mouth to dead the Bullets, in caſe he or his Soldiers were afraid to charge; or at leaſt by ſome Muſket or Cannon-Bullet; and ſo the Siege might have been raiſed, and the Town regained: No Man could tell whether ſuch an Accident might not have happen'd, had the Defendant patiently expected the Iſſue of God's Providence in the Caſtle till utmoſt Extremity, which no Man ought to deſpair of, ſince (as the wiſe Man informs us) *Time and Chance happen alike to all Men.* Beſides, the Siege might by ſundry other forementioned Caſualties have been raiſed, and the City preſerved: But alas, the Defendant was ſo far from having the Faith and Courage of a Man, that he fell infinite ſhort of the Courage and Proweſs of this Woman of *Thebez*; ſtyling the holding out of the City and Caſtle, tho' but a Day or two longer, *a deſperate Reſolution*, &c. not ſtaying till they were aſſaulted, but preſently yielding up both without any Aſſault, contrary to this Scripture Precedent, which he had neither Heart nor Courage to imitate. But leſt he ſhould pretend this one Example to be ſingular, I ſhall furniſh him with ſundry others, which I wonder he could forget. If he had read the *Roman* Story, he ſhould have found the *Capitol* defended againſt the *Gauls when the City of* Rome *was taken*; *and preſerved from ſurprize only by the crying of a Gooſe.* In our unhappy antient Civil Wars, the *Tower* of *London* hath oft-times been held out when the City hath been yielded; the like we read of the Caſtles of *Edinburgh*, *Berwick*, *Northampton*, *Saliſbury*, *Devizes*, *Oxford* (in the time of *Maud* the Empreſs), *Rocheſter*, *Bedford*, *Nottingham*, *Pomfret*, frequently kept in former Times, when the Towns were yielded, or taken: and not to rove farther for Precedents; even *Briſtol-Caſtle* itſelf was held out by *King* Edward II. *and the younger* Spencer (in the laſt Year of this King's Reign) *againſt the Queen and her Son Prince* Edward, *after the Town was yielded up to them by Compoſition, to ſave their Lives and Goods*; *and in theſe Days* Briſtol *was ſtyled and reputed a good Town, and a ſtrong, well cloſed, ſtanding on a good Port of the Sea, having* a ſtrong Caſtle, *and the Sea beating round about it*, writes the Hiſtorian. Certainly had this Gentleman well ſtudied the Hiſtory of *Briſtol* while he was there, he might have found a Precedent for holding out this very Caſtle after the City ſurrendered, and then he would not have made ſuch a ſilly Challenge, to ſhew him one ſuch Example. But if theſe antient Examples had been forgotten, yet we have freſh Precedents enough of this kind, which we cannot but remember. The Caſtles of *Warwick* and *Nottingham* both held out lately againſt the King's Forces, when the Towns were taken. Nay, the very Cloſe at *Litchfield* (tho' no Caſtle, but a Cathedral) held out againſt the Lord *Brooks*, when the Town was yielded; and ſince the Parliament took it, againſt all Prince *Rupert*'s Forces, almoſt as many Weeks as *Briſtol* itſelf did Days, and againſt near as great an Army, tho' it had not above 160 Soldiers in it: Yea, when the Prince had drained the Mote about it, ſprung a Mine, blown up a great Part of the Wall, and enter'd the Breach with above 200 Men (being 50 more than firſt enter'd the Line at *Briſtol*), yet the Garriſon there was ſo far from yielding the Place by a Parley, that they encounter'd the Enemies, took 200 of them Priſoners, beat the reſt out, made good the Breach, till all their Powder within half a Barrel was ſpent; and then came off upon more honourable Terms by far than the Defendant at *Briſtol*, (which was not ſo much as aſſaulted, much leſs entered) even with their Colours diſplayed, their Bag, Baggage, Arms, and Reſtitution of their Priſoners taken by the Enemy: which Conditions were moſt punctually performed, becauſe they ſhewed themſelves Men of Valour, and had their Arms about them to defend themſelves from Violence; whenas the Defendant yielded up both Arms and Colours. To theſe I might add the Examples of *Limerick* and *Galloway* Caſtles in *Ireland*, who held out many Months againſt the *Iriſh* Rebels, after the Towns were yielded: Of *Stafford* Caſtle, defended long againſt the Parliament after the Town taken; and the freſh Example of *Lincoln*, where the Cloſe was kept againſt the Earl of *Mancheſter*, after the Town ſurrendered. But Examples of this kind are ſo frequent in all Stories, and ſo experimentally known to every one who hath been bred a Soldier, that I ſhall forbear to trouble this Honourable Council (ſo well verſed in Hiſtories and War) with any more Precedents of this kind.

6. To his objected Precedents, Mr. *Prynn* anſwered: (1.) That they were only alledged, not proved by Witneſſes or Records; *Gallo Belgicus* being neither a legal Teſtimony nor Record to be given in Evidence at a Trial. (2.) That many of his Precedents were foreign, and it did not legally appear what were the Grounds of thoſe Towns or Caſtles ſpeedy Surrenders; which in all Probability was want of Food, there being ſuch a Scarcity of it in *Germany* by Reaſon of the long continued Wars, that few Towns or Caſtles were victualled for one Fortnight's Siege: and perchance they wanted Ammunition as well as Food. (3.) It appears not whether thoſe Governors were not queſtioned, and capitally puniſhed for delivering up theſe Towns and Caſtles; ſince we find that in theſe late *German* Wars, ſome have been condemn'd and executed for yielding up Towns too ſuddenly. (4.) Many of our Towns he named had no Caſtles in them, at leaſt none fortified to keep out an Enemy. (5.) Although the ſurrendering and quitting of theſe Towns to the Enemy, was connived at, and never brought legally into queſtion, as the Surrender of *Briſtol* now is; yet they deſerved to be both queſtioned and puniſhed (as the quitting and yielding of *Taunton*, *Dorcheſter*, *Lincoln*, *Banbury*, *Oxford*, and other Places): And if ſo, theſe Examples can be no Juſtification or Extenuation of the Defendant's Crime. It is no Plea for a Thief, when taken and arraigned, to ſay, ſuch and ſuch Thieves have robbed others, and yet were never indicted nor puniſhed for their Robberies: *Ergo*, my Robbery is lawful, and I muſt not be condemned for it. Had they been apprehended and indicted, it had been no Plea for them, that ſome other Thieves eſcaped without queſtioning, therefore no Juſtification or Excuſe for him who is arraigned; yet this is the Sum of the Defendant's Argument: Other Governors in *Germany* and *England*, who have cowardly and treacherouſly ſurrender'd and quitted Garriſon-Towns, have not been queſtioned for it; *Ergo*, I muſt not be condemned or blamed for my cowardly, traitorouſly Surrendering of *Briſtol*, now I am actually impeached and convicted for it. If this be a good Plea, to what end are martial Laws? Every Coward and Traitor ſhall then 'ſcape ſcot-free, tho' he undo and betray a whole Kingdom.

7. Some of the Towns he inſtanced in, were cowardly quitted, or yielded up upon his Surrender of *Briſtol*, (as *Barnſtaple*, *Dorcheſter*, &c.) whoſe Loſs muſt be put upon the Defendant's Score. As for the Loſs of *Exeter*, which he inſtanced, it was anſwered: (1.) That *Exeter* was beſieged, and held out more Months than *Briſtol* did Days; being beleaguered above three Months Space ere it yielded: and had he held out *Briſtol* ſo long, as he eaſily might, it would have been relieved in half the time, and kept ſafe till now. (2.) That the yielding up *Briſtol* was the Loſs of

Exeter, which was much diſcouraged by its ill Precedent, and left deſtitute of all Hopes or Probabilities of Relief by its Surrender; being too remote for his Excellency to relieve it, without endangering the Loſs of *Kent*, *London*, and *Eſſex*, during his abſence hence; and there being no other Forces near, that could in any poſſibility or probability relieve it: yet tho' it were thus hopeleſs of all Succours, and much diſcouraged with the ill Examples of *Briſtol*, *Barnſtaple*, *Dorcheſter*, *Bridgwater*, *Taunton*, and other Weſtern Towns, it held out till the principal Fort was taken, and all their Powder ſpent; yea, the Garriſon and Citizens were all reſolved to have kept it with their Pikes and Swords, when their Ammunition was exhauſted, had they had but any probable Hopes of Succours from any part; of which being utterly hopeleſs, they did for want of Powder, after above three Months Siege, ſurrender the Town and Caſtle upon ſomewhat more honourable Terms than the Defendant did *Briſtol*. Wherefore this Precedent was ſo far from juſtifying his ignoble Act, that it was a pregnant Teſtimony and Conviction of his Guilt in not holding out *Briſtol* three Days, when *Exeter* held out above three Months Siege, and ſpent all their Ammunition before they fell to Parley.

The third Thing maintain'd by Col. *Fiennes* was, That ſome Generals had ſentenced Commanders to Death for being too obſtinate in Defence of Forts, and ſtanding it out over-long; and that a *French* Author (there produced) affirmed, it was a capital Offence to ſtout out a Place over-long.

To which Mr. *Prynn* anſwered, 1. That this new Doctrine was certainly calculated only for that Meridian where this great Soldier was born, and fit for none but it. 2. That the Defendant was ſo far from this Fault of ſtouting it out over-long, that he deſerves to loſe his Head for yielding *Briſtol* up too ſoon; which certainly, in all Mens Judgments, is the more capital Crime of the two. 3. That no one Precedent could be produced in Story, where ever any Governor of a Town or Fort was judicially condemned or executed by the Prince or State that intruſted him to keep them, for holding them againſt the Enemy over-long: And if the Defendant had been guilty of this Crime, we would have been ſo far from impeaching, that we and the whole Kingdom ſhould have honour'd him highly for it, tho' we have both juſt Cauſe to proſecute him for the contrary; for which ſundry Governors have legally been condemned. 4. That it was a moſt ingrate Requital to execute any Man for his over-much Valour and Fidelity; and if this were once allowed for Martial Law, it would quickly make all Governors and Soldiers Cowards or Traitors; therefore certainly the Defendant had much miſtaken his *French* Author, who writes only in general, that ſome have been put to death for ſtouting and holding out a Town over-long, without defining by whom this was done. He pretends it was done by thoſe who intruſted them with the Towns, of which no Example can be produced; but certainly the Author meant it only of the Enemies, who have ſometimes put a Governor to death when a Town hath been forced, for holding it over-obſtinately out againſt them, for which there are divers Precedents. And in this Senſe (which doubtleſs is the true) it ſuits very well to the Defendant's Caſe. The poor Man was excepted (as he tells us) out of the King's Pardon ſent to *Briſtol*, and ſo like to ſuffer if he held the Town or Caſtle till it were forced by the Enemy: Wherefore to prevent all Danger, and ſave his beſt-beloved Life, he thought good to avoid the Rigour of this Law, by purchaſing his Impunity with the over-haſty Surrender of them to the King; and ſo by this unworthy Shift,

Incidit in Scyllam qui vult vitare Charybdin:

Forfeiting his Head to the Parliament and Kingdom, to ſecure it from the King.

Mr. *Prynn* concluded his Reply to the Defence of the fourth Article, and thoſe that followed it, with Col. *Fiennes*'s Commiſſion for *Briſtol*, and ſome Precedents in point reſolved in Parliament; the Tranſcripts whereof out of the Parliament Rolls, proved upon Oath to be true Copies, he there delivered to the Council *.

Col. *Fiennes*'s Commiſſion (the Original whereof he there produced) was read as followeth:

ROBERT Earl of *Eſſex*, &c. *To Col.* Nathanael Fiennes. *By virtue of an Ordinance of the Lords and Commons in Parliament, I do conſtitute and appoint you* Governor of the City of *Briſtol*, *as alſo Commander in Chief of all the Forces raiſed, or to be raiſed and imployed* for the Defence of the ſaid City, and the Liberties of the ſame, and of the Garriſon there, to ſerve for the Defence of the King, Parliament, and Kingdom. *Theſe are therefore to will and require you by virtue of this Commiſſion, to take* the ſaid City and Forces into your Charge as Governor in Chief, and by all poſſible ways and means (*except in point of Civil Government*) to provide for the Defence and Security of the ſame, and to maintain the ſame againſt all Enemies and Oppoſition whatſoever: *and from time to time diligently to exerciſe the ſaid Forces within the ſaid City and Liberties, in Arms*; *commanding all Officers and Soldiers to obey you as their* Governor and Commander *in Chief, for the Service above-mentioned, according to this Commiſſion given you. And you are likewiſe* to obſerve and follow ſuch further Order and Direction *as you ſhall receive* from myſelf, or from both Houſes of Parliament. *Given under my Hand and Seal of Arms this firſt Day of* May, 1643.

ESSEX.

From this Commiſſion it appears, *1ſt*, That Col. *Fiennes* was conſtituted Governor of *Briſtol* by Commiſſion from his Excellency, under his Hand and Seal. *2dly*, That *he had the Command in Chief of all the Forces and Garriſons there, who were to be imployed for the Defence of the ſaid City, and the Liberties of the ſame; and to ſerve for the Defence of the King, Parliament, and Kingdom. 3dly*, That he was ſpecially charged by that Commiſſion, *to take the ſaid City and Forces into his Charge as Governor, and by all poſſible Ways and Means to provide for the Defence and Security of the ſame, and to maintain the ſame againſt all Enemies and Oppoſition whatſoever; and that all Officers and Soldiers were there to obey him as their Governor and Commander in Chief for this Service:* Therefore he and his Officers were expreſly injoined by this Commiſſion to defend and keep it againſt the Enemy, to the uttermoſt Extremity, and were there placed for that very Purpoſe: and that he ſent for and accepted this Commiſſion upon theſe very Terms, and not only to rule his Soldiers, not to keep the Town and Caſtle, as he falſely at firſt pretended. *4thly, That he was to obſerve and follow ſuch further Order and Direction from Time to Time, as he ſhould receive from his Excellency and both Houſes of Parliament*; therefore not to ſurrender the City and Caſtle without their ſpecial Order or Direction, which he never had to do it, as himſelf confeſſeth. His very Commiſſion therefore being expreſly violated in all theſe Particulars by this his Surrender, before he was reduced to utmoſt Extremity, is a ſufficient Evidence to declare and condemn him for a Traytor, by the very Ordinances of War, eſpecially, ſince he knew the grand Importance of the Place, for the Kingdom's Safety.

For Precedents adjudged in Point, I could produce many out of foreign † Hiſtories, which I ſhall pretermit, becauſe they are no binding Evidence in Law; wherefore I ſhall confine myſelf to ſuch domeſtick Examples of this Nature, as have been formerly adjudged in Parliament, (the ſupremeſt Council of War, whoſe Judgments muſt direct all others) regiſter'd amongſt our Parliamentary Records, which cannot be controlled, and are the beſt Evidence of any other. The Records themſelves (examined by the Parliament Rolls) are long, and written in Law *French*, which perchance ſome of this Honourable Council underſtand not; I ſhall therefore briefly open them in *Engliſh*, and apply them to the preſent Caſe, in order as they are opened.

The firſt ‡ Precedent is the Caſe of *John* Lord of *Gomineys*, who in the Parl. of 1 *R.* II. *n.* 38, 40. was indicted and arraigned before the Lords, 'for that he being made Governor of the Town and Caſtle of *Arde* (in *France*) by K. *Edward* III. to this Intent, *That he ſhould ſafely keep the ſame for the King and his Heirs, without ſurrendering them to any Perſon without their Command, did yet in K.* Richard II's *Reign deliver and ſurrender the ſame to the King's Enemies, without any Command from him, to the diſhonour and diſinheriting of the King and his Crown, and of the Realm of* England, *againſt his Undertaking aforeſaid, without any dureſs or default of Victuals or Artillery, or of any other things neceſſary for the Defence thereof. To which Indictment the Defendant pleaded, that the Town and Caſtle were ſo weak, that he could not well keep them againſt ſo great a Power of the Enemies as was then ready to aſſail them: Whereupon he aſſembled all the Knights, Eſquires, and others in the Town, and informed them of the Dangers the Town was in, and of the Enemies Forces; and by common Counſel and Conſent of them all, he enter'd into a Treaty with the Enemies, to ſave the Lieges of the King within the Town and Caſtle; and thereupon yielded up the ſame upon Terms of Compoſition, receiving no Reward at all for ſurrendering the Town or Caſtle. But becauſe one* Geoffery *of* Argentine, *Knt. affirmed in Parliament, that he was then in Perſon within the ſaid Town and Caſtle, in the Defence whereof he was always ready to live and die, never conſenting to the Surrender thereof; and becauſe Sir* Ralph de Ferrers, *Kt. had valiantly defended them in former Times againſt a great Force of the Enemy, when they were not ſo ſtrong as at the time they were ſurrender'd: And becauſe* de Gomineys *had undertaken to keep them, and if he could not have done it, he ought in no wiſe to have undertaken to keep them; and that another ſhould and would have undertaken the ſafe keeping of them, had he not undertaken it; and for that he yielded them up in this ſort before utmoſt Extremity, when he wanted neither Men, nor Victuals, nor Ammunition; he was adjudged to loſe his Head, notwithſtanding his Plea, that he did it by the Advice of a General Council of War, to ſave the King's Liege People's Lives and Eſtates, and that the Town and Caſtle were weak, unable to reſiſt the Enemies Power.*'

This Town was of far leſs Importance to the Realm of *England* than *Briſtol*; no Treachery at all appeared in the Surrender, made by the Vote of a General Council of War; yet we ſee the Governor adjudged to loſe his Head, for not holding it out to the utmoſt Extremity, according to his Duty. And if his Plea could not ſecure him from ſuch a Sentence, Col. *Fiennes*'s Plea being the very ſame with his, that he ſurrender'd the City and Caſtle of *Briſtol* to the Enemy before utmoſt Extremity, becauſe they were weak and untenable for any long time, to ſave the Lives and Eſtates of the Garriſon, and Parliament's Friends, and that by the Counſel and Aſſent of all the Knights, Eſquires, Soldiers, and Inhabitants thereof, muſt needs be frivolous, and can no way extenuate his Fault, nor ſave his Neck from the Block; the rather becauſe *Briſtol* was of far greater Conſequence to the Kingdom now, and better provided, fortified, manned, victualled, and more likely to be relieved, than *Arde* was then.

The ſecond Precedent was of *Pierce de Creſſingham*, and *John de Spikeſworth*, Eſquires, who were arreſted and arraigned in Parliament 7 *Rich.* II. *num.* 17. '*for yielding up the Caſtle of* Drinkham *in* Flanders *to the Enemies, from whom it was gained by the Biſhop of* Norwich, *tho' it were well and ſufficiently ſtored with Victuals and other Neceſſaries, and ſtrong enough to be held againſt the Enemies, without the Will or Command of the King or his Lieutenant. To which* Spikeſworth *pleaded, That he had never the Cuſtody of that Caſtle, or any thing to do therewith, but was chaſed into it by the Enemy, it being then in the Cuſtody of* Pierce de Creſſingham: *That ſoon after the Enemy aſſaulting the Barbican, he was unhappily routed, and one of his Varlets ſlain cloſe by him: That he had never any thing to do in the Caſtle, neither as a Soldier thereof, nor in any other manner whatſoever, but only continued in it in manner aforeſaid, till it was ſurrender'd by the ſaid* Pierce; *and therefore prayed, that it would pleaſe the King to have him excuſed. Whereupon it was ordered he ſhould be ſet at Liberty, if nothing elſe could be ſaid againſt him.* Pierce Creſſingham, *who had the Cuſtody of the Caſtle, alledged, That upon the yielding up of the Town and Caſtle of* Burburgh *to the Enemy, of all the Garriſon-Soldiers he had with him at* Drinkham, *none would continue with him for the Safeguard of that Caſtle but only five Perſons; by Reaſon of which great Neceſſity he was conſtrained, for the Safety of his own Perſon and People, to enter into a Treaty with the Enemies to deliver up that Fort; and thereupon he yielded it up, and not for any other Cauſe, nor in any other manner, but only by Conſtraint of the Power of the Enemies aforeſaid; denying that he ever received any thing from the Enemies by way of Gift, or in any other manner:*

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* *See theſe Records at large, with ſome others to the ſame purpoſe, at the end of this Trial.*

† *See* Grimſton's *Hiſtory of the* Netherlands, *p.* 827, 828.

‡ 1 R. II. num. 38, 40.

manner: Whereupon he conceived that no Man ought to impute any manner of Blame or Reproach unto his Perſon; but if it ſhould be thought he had done ill in any manner, he moſt humbly caſt himſelf upon the Grace of his Liege Lord. But becauſe this Excuſe was held inſufficient, he was committed to Priſon, till the King ſhould otherwiſe declare his Opinion concerning him.’

Here was a Caſe of far greater Extremity than *Briſtol*, without any apparent Mixture of Treachery; but only five of the Garriſon left to defend the Caſtle, whenas the Defendant had 2300 Soldiers at leaſt in *Briſtol*; and a Surrender by common Advice for the Governor's and Inhabitants Safety: yet becauſe *Creſſingham* the Governor, by Virtue of his Office, was bound to hold it till the utmoſt Extremity, he was for the preſent adjudged to Priſon, and to expect a farther Sentence afterwards; whereas *Spikeſworth* was acquitted, becauſe he came caſually into the Caſtle, as forced by the Enemy, and had no Charge of it, as a Governor, Officer, or Garriſon-Soldier; all which (as appears by this Reſolution) are anſwerable and puniſhable for delivering up the ſmalleſt Fort before utmoſt Extremity.

The third Precedent is the Caſe of the Biſhop of *Norwich*, accuſed in Parliament 7 *R.* II. *num.* 32. ‘*for ſurrendering the Town of* Gravelin *to the Enemy, before utmoſt Extremity, upon Condition that it ſhould be totally demoliſhed. To which the Biſhop pleaded, that by Reaſon of the Diſobedience of his Captains, who quitted the Field, and betook themſelves to their Forts, he was conſtrained to retire with his Forces to the Town of* Gravelin, *which he would have held out well enough againſt all Men, and did hold out till the other Captains had ſurrendered their Forts adjoining to the* French; *and after that, until ſpeedy Supplies might have arrived from* England: *But becauſe there were ſix or* 7000 Engliſhmen, *who came out of the Forts ſurrendered, lying on the Sands near* Calais, *who could not get into the Town, and were in danger to be ſlain by the* French *within two or three Days, (the Truce being then expired) whoſe Loſs would have been charged principally upon him; thereupon he was commanded by the King himſelf to render the Town to the Enemies, or elſe to demoliſh it, and then to march to ſuccour the ſaid* Engliſh, *and after that towards* England, *to ſave himſelf and others of his Army, in caſe they were in any great Want of Victuals, as in Truth they were: and becauſe it behoved him to abate and void the Town, as it was lawful for him to do at his Pleaſure, being gained by his proper Conqueſt from the Enemy; it ſeemed to him, that he ought to be well excuſed of whatever was ſurmiſed againſt him (for* [*] *compounding with the* French *to raze the Town to the Ground, and to depart whither he would with his Bag, Baggage, and Men). To which was anſwered by the Lord Chancellor, That there was ſufficient Victuals in the Town when the King's Letter came there; after which the King ſent other Victuals thither in great Plenty, with Letters importing, how he had appointed his Uncle to come ſpeedily to his Aid and Succour: yet notwithſtanding he departed thence, leaving the Town to the Enemies, againſt the Form of his Indenture, by which the King granted him whatſoever he ſhould conquer, not at all to ſurrender, ſell or leave the ſame to the Enemy, but to hold and poſſeſs it. And as for the Diſobedience and Defaults of his Officers, and their Surrender of the Fortreſſes, they neither could nor ought at all to excuſe him, ſeeing they were all named and choſen by himſelf, not by the King or his Council, and the Articles of the Surrenders ſealed between them and the Enemies, were made without the Authority and Conſent of the King: Wherefore by the Aſſent of the Earls, Barons, and other Lords temporal preſent in Parliament, it was aſſented and decreed, That the Biſhop ſhould be in the King's Mercy (who out of his Grace would forbear to lay Hands on his Body in regard of his Function, tho' he might juſtly have proceeded againſt him as a Lay-man); that he ſhould be put to a Fine and Ranſom, according to the Quantity and Quality of his Offence, for which his Temporalities ſhould be ſeized; and whatever Monies he had received from the King, and imploy'd to his own Uſe, he ſhould preſently make full Payment thereof into the King's Treaſury, without Delay or Difficulty.*’ Had he been a Lay-man, his Cenſure had proved capital, and more rigorous.

Here we have all Col. *Fiennes*'s Excuſes pleaded to juſtify this Action: 1. The ſaving not of a Body of 1500, but 7000 *Engliſhmen* to ſerve the State, whoſe Lives were all endangered, not in a Garriſon-Town or Caſtle well victualled, or ammunitioned, as thoſe in *Briſtol* were, but lying on the open Sands without Defence, and that not in their own native Soil, but beyond the Seas in an Enemy's Country. 2. Deſpair of timely Relief, and greater Want of Victuals than was in *Briſtol*, where there was too much Plenty. 3. A Letter from the King himſelf, injoining the Biſhop to quit the Town to the Enemy in caſe they wanted Victuals, as he alledged they did; whenas Col. *Fiennes* received no ſuch Letter from the Parliament or his Excellency, to quit or yield up *Briſtol*. 4. This Town was won from the Enemy by the Biſhop himſelf, not immediately committed to him to guard by the King or Parliament, as *Briſtol* was to the Defendant, who had leſs Right to ſurrender *Briſtol*, than this Biſhop *Gravelin*, being his own Conqueſt. 5. He did not yield up the Town, with all the Cannon, Arms, and Proviſions in it to the Enemy, as the Defendant did *Briſtol*; but only demoliſhed it and ſlighted the Fortifications, departing thence with Bag, Baggage, Cannon, and his Men: yet notwithſtanding all theſe Particulars, and the gallant Service this martial Biſhop had done in this Expedition, he incurred this heavy Cenſure, and had his Temporalities ſeized divers Years for his Fine and Ranſom. And if he deſerved ſuch a Cenſure, no doubt the Defendant deſerves a far greater, notwithſtanding his Excuſes.

The fourth Precedent is that of Sir *William de Elmham*, Sir *John Tryvet*, Sir *Henry de Ferrers*, and Sir *William de Farendon*, Knights, and *Robert Fitz-Ralph*, Eſquire, impeached in the Parliament of 7 *R.* II. *rot. Par. n.* 24. ‘*for Surrendering the Town and Caſtle of* Burburgh *to the Enemy, and receiving Monies for the Arms, Victuals, Priſoners, and Goods within the ſame. To the which Sir* William de Elmham *and moſt of the others pleaded, that they were enforced to ſurrender the Town and Caſtle to the Enemy of fine Force, for the Salvation of themſelves, the Garriſon and People therein; the Enemy having beſieged and aſſaulted it in very great Numbers, and ſet the Town on Fire within, who would have taken it by force, and taken or ſlain all thoſe within it, had they not yielded it by Agreement: And that the Monies they received, was only for the Priſoners, Victuals, and other Goods within the ſame, not for the Surrendering of the Town itſelf. Yet notwithſtanding, this Excuſe was adjudged inſufficient, and the Parties ordered to make full Payment to the King of all the Monies received from the Enemy, to ſtand committed to Priſon, to make Ranſom at the King's Will according to the Quantity of their ſeveral Offences; and Sir* William de Farendon *left to the King's Mercy, both for his Body and Goods, to do with them what he pleaſed.*’

Here we have a Town aſſaulted by a Multitude of Enemies, fired in Part, and thereupon a Surrender upon Compoſition, to ſave the Officers and Soldiers from being taken or ſlain by the Enemy; yea, a better Market than the Defendant made at *Briſtol*, even a Sale of the Priſoners, Victuals, and Goods in the Town to the Enemy for Money, when endangered to be all ſurprized by Force; yet this was judged no Excuſe: Therefore certainly the Defendant's pretended Neceſſity, and Danger of Forcing the Town by the Enemy, not half ſo real as this, cannot excuſe his Crime, nor extenuate his Guilt, nor yet his Pretence of ſaving his Officers and Garriſon's Lives and Eſtates, to do the Parliament Service elſewhere.

The fifth Precedent is that famous Caſe of *William de Weſton* in the Parliament of 1 *R.* II. *num.* 38, 39, 40. ‘*The Commons in this Parliament prayed, that all thoſe Captains who had render'd or loſt Caſtles or Towns thro' their Default, might be put to anſwer it in this preſent Parliament, and ſeverely puniſhed according to their Deſerts, by award of the Lords and Barons, to eſchew the evil Examples they had given to other Governors of Towns and Caſtles. Whereupon* John de Gomineys (whoſe Caſe I began with) *and* William de Weſton, *then detained Priſoners in the* Tower, *becauſe they had loſt and rendered the King's Towns and Caſtles to the Enemies, were brought by the Conſtable of the* Tower *before the Lords in full Parliament in the White-chamber; where* Weſton, *by the Lords Command, was arraigned by Sir* Richard Leſcrop, *Steward of the King's Houſe, in manner following:*

‘William de Weſton, *you took upon you from the moſt puiſſant Prince (whom God aſſoil)* Sir Edward *late King of* England, *Grandfather to our Lord the King that now is, ſafely to keep to him and his Heirs, Kings of* England, *the Caſtle of* Outhrewyke, *without Surrendring it to any one but to the ſaid Grandfather, or to his ſaid Heirs, or by Command from him, or from his ſaid Heirs: Have you,* William, *who are a Liege-Man of our Lord the King, in times of the ſame our Lord the King who now is, true Heir to the ſaid Grandfather, delivered and ſurrender'd the ſame to the Enemies of our Lord the King, without Command from him, to the Diſhonour for Damage) of him and his Crown, and of the Eſtate of his Realm of* England, *againſt your Allegiance and Undertaking aforeſaid? What will ye ſay hereunto?*’

Whereupon the ſaid William *put in his final Anſwer in this behalf:* ‘*To the moſt ſage Council of our Lord the King, and to the other Lords and Commons of the Parliament, ſupplicates and ſheweth* William de Weſton, *That albeit he be accuſed of this, that he hath maliciouſly render'd the Caſtle of* Outhrewyke, *of which he had the Cuſtody, by delivery and aſſignment of our Lord the King; may it pleaſe your ſage and juſt Diſcretion to have the ſaid* William *excuſed thereof, for theſe Cauſes enſuing: Firſt of all, May it pleaſe you to remember how that the ſaid* William *was lately informed by a Spy, that a great Power of the Enemies would come upon him to beſiege the ſaid Caſtle, with very great and very grievous Ordnances; whereupon he the ſaid* William *preſently by his Attorney, and by his Letters, required of the ſaid Council that it would pleaſe them to re-enforce the ſaid Caſtle with more Men, for the Defence and Safeguard thereof, in regard that the Garriſon of the ſaid Caſtle that then was, were not half ſufficient in reſpect of Multitude to reſiſt ſo great a Force in ſo large a Place; but in concluſion, for all this, he could not have any Succour from the ſaid Council: And ſo the ſaid* William, *not at all thro' his Default, was left without People ſufficient for to keep and defend the ſaid Caſtle any long Time; which he beſeecheth you to take into your juſt and benign Conſideration. Alſo pleaſe you to know, how upon a* Monday *about one of the Clock, the Enemies came to beſiege the ſaid Caſtle, to the Number of* 2600 *Men of Arms, and* 700 *Arblaſters* Genevoyes, *and with* 5000 *of the Commonalty of the Country, having nine great Cannons, divers Engines, and one great Mortar-piece, beyond all Meaſure greater than ever they had ſeen any before in thoſe Marches; and the ſame Hour preſently a great Number of the Men of Arms and Arblaſters aforeſaid came before the Gates for to aſſail the ſaid Caſtle, and at this Time a Knight of theirs was ſlain, who was Couſin to the Lord* de Clifton *as was reported, and many others were likewiſe then ſlain and wrecked. And within a ſhort Time after they began to ſhoot with their Ordnances and other Engines, and ſo continued their Aſſault from one Day to another, that is to ſay,* Tueſday, Wedneſday, Thurſday; *and then were the Walls and Houſes of the Caſtle battered down, and bruiſed in many Places; and they had likewiſe by Force trenched the Ditches of the ſaid Caſtle in three Places, ſo as the Water was drained out; and that Night came a great Party of them, and by fine Force made an Aſſault, and abated the Barricados; and the next Day (which was* Friday) *they came about Day-breaking with all their Forces to aſſault the ſaid Caſtle, but with God's Aſſiſtance they were yet repulſed with Force from their Aſſault, and of the one part and the other were ſome ſlain and wounded. And the ſame Day the Marſhal of* Burgoyne *ſent to the ſaid* William, *and others of the ſaid Caſtle, to render it; whereupon having conſideration that the ſaid Caſtle could not be kept, as well in regard of the ſmall Number of the People, as by reaſon that the Walls in many Places were enfeebled by their marvellous Ordnance, there was a Treaty with the Lords to this End: That the ſaid* William *and his Company might adviſe themſelves againſt the next Morning; and ſo they departed each to his own. Alſo this ſame Night the Enemies cauſed all their Ordnances, Engines, Mortar-piece, Cannons, and Faggots, with Scaling-Ladders, Galleries, and all other Neceſſaries, to be drawn up near to the very Ditch of the aforeſaid Caſtle; and the next Day (which was* Saturday) *they made all Things ready plainly for to aſſault the Place: And then firſt of all ſent an Herald to the ſaid* William, *to know if the ſaid Caſtle ſhould be render'd to them or not? Whereupon the ſaid* William, *by Advice of the wiſeſt of his Companions, taking conſideration how that the ſaid Place was deſtroyed and enfeebled with their Ordnance, and alſo that they were too few Men for its Defence, by reaſon that twelve of their Companions were in this Time ſlain, wounded and ſick, ſo as there remained of all the People in the Garriſon in Health, but only* 38 *Men to defend the ſame; hereupon by common Aſſent the ſaid Caſtle (which could be kept no longer) was by Force ſurrender'd, for to ſave their Lives granted to them, and their Goods. And that all theſe Things aforeſaid are true, the ſaid* William *puts himſelf upon his Proof, according to your moſt diſcreet Ordinances. Alſo it is to be remember'd,*

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[*] Walſingham *Hiſt..Ang. p.* 327. *to* 330. Holingſhed, Speed, Grafton *in an.* 6. Rich. II.

‘*that when the ſaid Caſtle was thus rendered as aforeſaid, certain* French *People bargained with the ſaid* William *for his Victuals, to buy them, together with certain Priſoners which the ſaid* William *held impriſoned within the ſaid Caſtle, for which things he received of them for his Payment* 1500 *Franks; of which he paid his Companions for part of their Wages which was behind unto them for one quarter of a Year and a half,* 78 *Franks; likewiſe after was paid at* Calais *for the Victuals of the ſaid Caſtle before that time due,* 442 *Franks; alſo for the Paſſage of the ſaid* William *and of his Companions into* England, *and likewiſe for the Expences of the ſaid* William *being at* Calais, 135 *Franks. And therefore the ſaid* William *prayeth in this Regard your Juſtice and Benignity, ſeeing, by envious Suggeſtion, he hath againſt all Reaſon been accuſed, whereby his Eſtate and Name, by the grievous Sin of Miſ-informers, and he alſo, is ruined; having likewiſe Conſideration, that out of his proper Goods he hath for the greater part paid his Companions their Wages which were due unto them as aforeſaid, and alſo for the great Coſts he hath been at before this time, for to victual the ſaid Caſtle, (for which he hath given his Obligations in divers Places, and oweth great Sums, by reaſon whereof he is on all ſides undone, if your juſt Benignities do not ſuccour him) that you would be pleaſed for God's ſake, and for Pity, to ordain likewiſe for him, that he may, by your diſcreet Nobleneſs, recover his Eſtate and Goods. Alſo the ſaid* William Weſton *ſheweth, how the firſt Day when the Enemies came before* Arde, *that he went in haſte to* Calais *unto the Captain, and deſired of him more Succour and Aid of Men, for the better guarding of his Fort of* Outhrewyke, *and to defend it if the Enemy ſhould come thither: and the Captain anſwered him briefly, that he would not deliver nor give him Aid nor Succour at the ſame time, becauſe he doubted that the ſaid Enemies would come before the Town of* Calais. *But notwithſtanding all theſe Pleas, the Lords in this Parliament, together with the moſt valiant and diſcreet Knights, and other Members thereof, after good and mature Deliberation hereupon, delivered their Judgment and Reſolution againſt* Weſton *in form following: It ſeemeth to the Lords aforeſaid, that you,* William, *who had taken upon you ſafely to keep the Caſtle of* Outhrewyke, *as before is ſaid, that you have without any Dureſs or Default of Victuals evilly delivered and ſurrendered the ſame to the Enemies of our Lord the King, by your own Default, againſt all apparent Right and Reaſon, and againſt your Allegiance and Undertaking aforeſaid: and having by due Information read the Caſe of the late Baron of* Grayſtock, *who was a Lord, and one of the Peers of the Realm, who had taken upon him ſafely to keep for the foreſaid Grandfather the Town of* Berwick; *the ſaid Baron perceiving afterwards that the ſaid Grandfather addreſſed himſelf to go into the Realm of* France, *the ſaid Baron (without Command of the ſaid Grandfather) committed the ſaid Town of* Berwick *to a valiant Eſquire,* Robert de Ogle, *as Lieutenant to the ſaid Baron, for to keep ſafe the ſaid Town of* Berwick *to the ſaid Grandfather; and the ſaid Baron went as an Horſeman to the Parts of* France *to the ſaid Grandfather, and there remained in his Company; during which time an Aſſault of War was made upon the ſaid Town of* Berwick *by the* Scots; *and the ſaid* Robert, *as Lieutenant of the ſaid Baron, valiantly defended the ſame; and at laſt by ſuch forcible Aſſaults the ſaid Town was taken upon the ſaid* Robert, *and two of the Sons of the ſaid* Robert *there ſlain in the Defence of the ſame. Notwithſtanding, becauſe that the ſaid Baron himſelf had taken upon him the Safeguard of the ſaid Town to the ſaid Grandfather, and departed himſelf from thence without Command of the ſaid Grandfather, and the ſaid Town of* Berwick *was loſt in the Abſence of the Baron, he being in the Company of the ſaid Grandfather in the Parts of* France, *as is aforeſaid; it was adjudged, by Advice of the ſaid Grandfather, the King of* Caſtile, *who is preſent, the Nobles, Dukes, and Counts,* Henry *late Duke of* Lancaſter, *the late Earl of* Northumberland *and* Strafford, *and Sir* Walter de Manny, *that the ſaid Town was loſt in default of the ſaid Baron: and for this Cauſe he had Judgment of Life and Member, and that he ſhould forfeit all that he had: and to render his Judgment in theſe Words, the ſaid Sir* Walter *had a Command from the ſaid Grandfather. Which Things conſider'd, and this alſo, that you,* William, *ſurrendered the Caſtle of* Outhrewyke *to the Enemies of our Lord the King aforeſaid, without any Dureſs or Want of Victuals, againſt your Allegiance and Undertaking aforeſaid, the Lords above-mentioned ſitting here in full Parliament adjudge you to Death, and that you ſhall be drawn and hanged. But becauſe that our Lord the King is not yet informed of the manner of this Judgment, the Execution thereof ſhall be reſpited until the King be informed thereof: Whereupon it was commanded to the ſaid Conſtable ſafely to keep the ſaid* William, *until he had other Command from our Lord the King.*’

This Caſe is very punctual, this Judgment fatal to the Defendant; wherein all his former Pleas, and far better than he could make, are over-ruled againſt him long ſince, even in full Parliament. (1.) This *Weſton*, as ſoon as he heard of the Enemy's Approaches and Intent to beſiege *Outhrewyke* Caſtle, ſent poſt to the Council, and to the Governor of *Calais*, acquainting them with the Weakneſs of the Garriſon, and craving preſent Aid, (as the Defendant pretended he ſent to his Excellency) yet could receive no Supplies from either. (2.) His Garriſon was not half enough to reſiſt the Enemies great Power, neither had he Means to increaſe it; whenas *Briſtol* Garriſon was abundantly ſufficient to reſiſt the Enemy, and the Defendant might have doubled it, had he pleaſed, there being ſix thouſand or eight thouſand able Men more in the Town, whom he might have employed in its Defence. (3.) There were eight thouſand four hundred Enemies before it, as many or more than were before *Briſtol*, and but fifty Men only in the Caſtle to defend it; whereas there were two thouſand Foot and three hundred Horſe at leaſt to guard *Briſtol*; a vaſt Diſproportion. (4.) They had nine great Pieces of Battery, a great Ram, or Mortar-piece, greater than ever were ſeen in thoſe Parts before, with many other Engines, as many or more than the Enemy had at *Briſtol*. (5.) The Siege, Battery, and Aſſault thereof, continued from *Monday* till *Saturday*; whereas *Briſtol* was beſieged only from *Monday* till *Wedneſday* Noon (not half ſo long), and then yielded upon Parley. (6.) All the Walls and Houſes of the Caſtle were beaten down and battered exceedingly, and the Ditches drain'd of the Water by Trenches, and all their Barricado's beaten down, yet they ſtill held it out; whereas not one Shot at all was ſo much as made againſt the Caſtle or Walls of *Briſtol*, but againſt the Out-works only. (7.) After the Walls and Barricado's were thus broken down, and the Ditch drained, they manfully repulſed the Enemy, who fiercely aſſaulted it, and ſlew divers of them, with the Loſs and Wounding of ſome of the Garriſon; whereas *Briſtol* Caſtle and the Body of the Town were yielded up before the leaſt Battery, Mine, or Aſſault. (8.) They made all things ready for an Aſſault, planting all their Ordnance, Engines, Galleries and Faggots cloſe to the Caſtle Ditch, and ſent two ſeveral Heralds and Meſſengers to him for a Parley ere he would treat; whereas the Defendant, before any Battery or Aſſault againſt the City or Caſtle, ſent out twice to the Enemy for a Parley, with ſo much haſte, that he would not hearken to any who would beat them out, or oppoſe or delay the Treaty. (9.) Twelve of his fifty Men were by this time ſlain, ſick and wounded; ſo that he had only thirty-eight left to make good the Caſtle, thus batter'd and aſſaulted with ſo great a Power; whereas the Defendant loſt but eight Men at moſt, and had at leaſt two thouſand three hundred Horſe and Foot when he fell to Parley. (10.) He ſurrender'd the Caſtle by the Advice of a general Council of War, upon better Grounds than the Defendant yielded up *Briſtol*; to wit, becauſe the Walls were beaten down, the Garriſon over-ſmall to defend it, the Enemy very likely to force it by the Aſſault, no preſent Relief near at hand, and to ſave his own, with the Soldiers Lives and Goods, which elſe were endanger'd to be loſt; none of which the Defendant can juſtly alledge, as we have manifeſted. (11.) He made the moſt of an ill Bargain, by ſelling the Victuals and Priſoners in it to the *French* for fifteen hundred Franks, with which he paid his Soldiers their Arrears of Wages, diſcharged the Debts of the Caſtle owing for Victuals, and defray'd the Charges of their Paſſage into *England*; whereas the Defendant yielded up all the Priſoners and Victuals to the Enemy *gratis*, with which Proviſions the Ships that brought over the *Iriſh* Soldiers were victualled, and left the State to pay the Soldiers Arrears and other Debts contracted by him there, amounting to many thouſand Pounds, which ought to be made good out of his own Eſtate. Therefore, in theſe Reſpects, he ought to undergo the ſelf-ſame Judgment of Death, and to be drawn and hanged, much more juſtly than he.

To theſe Precedents Colonel *Fiennes* anſwer'd, 1. That theſe Governors had all of them Commiſſions under the Great Seal of *England* to keep theſe Towns and Caſtles, and that made their Offence ſo great; but he had no ſuch Commiſſion under the Great Seal of *England* to be Governor of *Briſtol*: and this he conceived differenced the Caſes much.

To which Mr. *Prynn* reply'd, (1.) That the Defendant was much miſtaken in this Point; for theſe Towns and Caſtles lying in *France*, if the Commiſſions of their Governorſhips were under any Seal, it was under the Great Seal of *France*, not of *England*, as appears by the expreſs Statute of 14 *Ed.* III. *Stat.* 4. & 1 *H.* VI. *Rot. Parl. Num.* 14, 15. (2.) That the Great Seal being carry'd from the Parliament when his Commiſſion was granted, he could not expect any ſuch Commiſſion under the Great Seal, but from the King himſelf in oppoſition to the Parliament, to whom he ſurrender'd *Briſtol*, perchance for want of a Commiſſion under the Great Seal to keep it. (3.) If this were a good Plea, or warrantable Diſtinction, then all the Governors of Towns and Caſtles within the Parliament's Power might treacherouſly or cowardly ſurrender them forthwith to the King without Puniſhment or Danger, becauſe they wanted a Commiſſion under the Great Seal to keep them. (4.) He had a Commiſſion under his Excellency's Hand and Seal to keep the City; under whoſe Authority he took the Cuſtody of it for the Parliament's and Kingdom's Safety, in theſe diſtracted Times, by virtue of a Commiſſion of both Houſes granted to his Excellency: therefore his Offence, is as great and capital for ſurrendring it contrary to his Truſt, and his Excellency's Commiſſion to keep it, as if it had been under the Great Seal. (5.) When his Commiſſion was firſt granted, the Parliament had not made a new Great Seal to ſeal it, but ſince his Surrender of *Briſtol* they had made one: and he durſt aſſure the Defendant, had his Courage and Fidelity been ſuch as to hold out *Briſtol* till the new Seal was made, he would have procured him a Commiſſion under it to keep *Briſtol*, rather than he ſhould have yielded it up cowardly to the Enemy, for want of a Commiſſion under the Great Seal of *England*. But becauſe he held it not till ſuch Commiſſion might be obtained, he muſt be condemned for rendring it contrary to that Commiſſion, which he both ſent for and received from his Excellency under his Seal of Arms alone.

Col. *Fiennes*'s ſecond Anſwer was, That it appear'd not in theſe Records what other Matters and Proofs were produc'd againſt theſe Perſons, beſides thoſe mentioned in them; and therefore, for aught he knew, they might be condemned for ſomething elſe beſides what is alledged in theſe Records; elſe the Caſes might ſeem very hard, and the Sentences none of the juſteſt.

To which Mr. *Prynn* reply'd, That the Defendant by this ſtrange Anſwer betray'd his extraordinary Ignorance in Matters of Law and Records, into which no Depoſitions of Witneſſes are wont to be inſerted, but only the true State of the Caſe itſelf, and the Judgment given thereupon: and therefore to ſurmiſe they were condemned for any thing elſe than what is expreſly mentioned in the Records and Judgments themſelves, is to aver againſt the very Records, and the Judges that gave the Sentences, and ſo to falſify and nullify all Records. The Caſes therefore being admitted to be really ſuch as the Records relate, in nature of a Demurrer or Confeſſion, and the Judgments determining them to be ſuch; this Anſwer muſt rather be deemed an ignorant Miſtake than any ſolid Reply.

Col. *Fiennes*'s third Anſwer was, That the Caſtle of *Outhrewyke*, *Arde* and *Burburgh*, were Places of no great Conſequence or Wealth, and therefore ought to be held out to the utmoſt: but *Briſtol* being one of the richeſt, chiefeſt Cities in the Realm, and of great Importance, ought not to be endanger'd or ruinated by holding it to the utmoſt Extremity, as Caſtles and other ſuch Places of leſs Concernment might be.

To which Mr. *Prynn* anſwer'd, (1.) That if Places of ſmalleſt Concernment ought to hold out to Extremity, and if it be Death to yield them up before; then certainly *Briſtol*, and Places of greateſt Conſequence to the Ruin or Safety of the Realm, ought much more to be kept to Extremity, and the yielding of them up muſt be more capital; elſe he that betrayeth the greateſt Truſt, and doth moſt Miſchief to the State, ſhall be leſs culpable, and undergo a milder Cenſure, than he that betrays the ſmalleſt Fort: yea, if this were either good Juſtice, Law or Logick, the Defendant might argue, that he who ſteals ten thouſand Pounds, or murders a Man, deſerves not Death; but he who ſteals Thirteen Pence Half-penny, or ſtrikes a Man, ought to be hang'd without Pity. The Precedent and Argument thereof held *a minori ad majus:* If theſe were condemned for their cowardly Surrendring of thoſe inconſiderable Towns and Caſtles before utmoſt Extremity, which did but little Prejudice to the Republick; then much more ought the Defendant to loſe his Head for yielding *Briſtol* thus, a Place of higheſt Concernment to the Kingdom, which is almoſt loſt in and by its Loſs. And doubtleſs the Defendant, who would not adventure his Life to preſerve ſuch a conſiderable City as *Briſtol* to the utmoſt Exigence, would never adventure it to hold out any other inferior Places till the laſt, but yield them up without Reſiſtance. Since therefore it appeared by theſe Precedents, that the Parties impeached for ſurrendring up any Forts were always detained under Cuſtody during their Trial; he deſired the Council the ſecond time, that Col. *Fiennes* might preſently be put under ſafe Cuſtody, and Judgment given againſt him according to theſe Precedents and the Laws of War; the rather becauſe they were ſeconded by his own late Judgment againſt *Yeomans* and *Butcher*, whom he condemned and executed by Martial Law only for endeavouring to deliver up *Briſtol* to the Enemy before it was fully fortify'd, whenas himſelf thus cowardly and traitorouſly ſurrender'd it to them after it was fortify'd, and abundantly furniſh'd with all Neceſſaries to hold out a Siege; their intentional Surrender being not ſo criminal or fatal to the Republick as his actual.

When we had thus made good the ſeveral Articles of our Charge, and fixed the Loſs of *Briſtol* and the *Weſt* too on Col. *Fiennes*, who by his not denying it, in his Anſwer to the fourth Article, did thereby in point of Law confeſs it; the Colonel, to free himſelf from this heavy Charge, averr'd before the Council, *That* Briſtol *and the* Weſt *were not loſt by him, but Sir* William Waller: to prove this he produced ſeveral Allegations. Upon which Mr. *Prynn* humbly moved the Council, that a Gentleman of his Worth and Honour might not be thus publickly traduced, where he was neither preſent to make his Defence, nor a Party to the Articles; deſiring that either he might ſubſtantially prove this palpable Slander by pregnant Evidences, or elſe be exemplarily puniſhed for it.

Hereupon the Defendant firſt alledged, that he ſent Sir *William Waller* twelve hundred Foot out of *Briſtol* (to wit, Col. *Popham*'s whole Regiment) very well armed, who at the Rout of Sir *William* near the *Deviſes* loſt all their Arms (not many of theſe Men returning to *Briſtol*, and thoſe without Arms); the Loſs of which Regiment ſo weakened the Garriſon, that it loſt both *Briſtol* and the *Weſt*, which he could not defend for want of Men.

To which Mr. *Prynn* anſwer'd, (1.) That *Briſtol* was not loſt for want of Men; and that this Regiment was fully made up and ſupply'd, by the Defendant's own Confeſſion, with a great Over-plus; Sir *William Waller* not receiving above ſeven or eight hundred Foot out of *Briſtol*, in lieu whereof the Defendant raiſed 1100 or 1000 at the leaſt, beſides thoſe from *Malmeſbury*. (2.) That when he ſent forth that Regiment he had an independent Commiſſion, and could not be enforced to it, nor ought to have ſent them, if the City were thereby endanger'd, without ſpecial Command from the Parliament or his Excellency: His ſending out, then, of this Regiment being his own voluntary Act, (as his own Letter to Col. *Popham* atteſts, and he confeſſed) it is clear that himſelf only was the Loſs both of *Briſtol* and the *Weſt:* and if there were no other Evidence, this alone would endanger his Head; it being Capital by all Laws of War for any Governor to ſend out his Garriſon, or to abſent himſelf from his Charge, without ſpecial Command, if the Place be by this Means loſt or ſurprized, as was adjudged in Parliament in the Caſe of the Baron of *Greyſtock*, cited in *Weſton*'s Caſe; of the Earl of *Northumberland* *, *Henry Piercy*, in 7 *R.* II. and others. Upon which Ground we find the Governor of *Calais* refuſed to part with any of his Garriſon for the Defence of *Outhrewyke* Caſtle: And the reaſon is apparent, becauſe if Governors might draw out their Garriſons, or deſert their Charges at their Pleaſure, their Forts might be eaſily ſurprized, betrayed, and a Gap opened to infinite Treacheries.

2. He produced his Couſin Capt. *Temple* to teſtify, that a Gentlewoman of his Acquaintance, and of Kin to Col. *Fiennes*, overtook another Gentlewoman upon the Highway, newly come from *Oxford*; of whom aſking what News, ſhe anſwer'd, that the greateſt News now at *Oxford* was, that tho' Sir *William Waller* had occaſioned the Loſs of *Briſtol* and the *Weſt*, yet Col. *Fiennes* was like to ſuffer for it, and become his Sacrifice; who being the great *Diana* of the People, and ſo neceſſary a Man to the Parliament, now in the Field with an Army, they would forbear to queſtion him, and ſacrifice Colonel *Fiennes* to humour him and his Party.

To which Mr. *Prynn* anſwer'd, (1.) That this extravagant Report, teſtify'd only at the third or fourth hand, was no Evidence at all, and ſavoured rather of a direct Plot to traduce Sir *William Waller* than to juſtify Col. *Fiennes*. (2.) That all the Weſtern Gentlemen had a quite contrary Opinion of this Buſineſs, that *Briſtol* and the *Weſt* were loſt by the Defendant, not by Sir *William*, as appear'd both by their extraordinary Reſpects unto him, and preſent Employment of him to regain the *Weſt*. (3.) Admit this fabulous Report to be bruited in *Oxford*, (to aſperſe Sir *William* and the Parliament, and juſtify the Defendant) yet it ſignify'd no more, but that Col. *Fiennes* had better Friends and Reſpect at *Oxford* than Sir *William Waller*, perchance for his good Service in Surrendring up *Briſtol* to them at ſo eaſy a Rate in ſo ſhort a time (enough to purchaſe him both Friends and Favour at the Court); where Sir *William* was not ſo grateful, becauſe he never did them ſo great a Courteſy, or good Piece of Service, nor the Republick ſo grand a Miſchief.

3. Col. *Fiennes*, for a Concluſion of his Defence, informed the Council, *That this Trouble, Proſecution, and Diſgrace had never befallen him, but for that conſtant Affection and Service which he and his Family had always ſhewed to his Excellency and his Army, for which Sir* William Waller *and his Party did malign him.*

To which Mr. *Prynn* reply'd, That this was a moſt falſe, ſcandalous and ſeditious Speech, diſcovering who they were that raiſed and fomented the late unhappy Differences between his Excellency and Sir *William*, and to what ſiniſter end; that nothing could be utter'd more effectual to ſet all the Parliament's ſeveral Armies into a Faction againſt one another, inſtead of joining againſt the publick Enemy; and therefore having neither the leaſt Ground nor Proof to juſtify this Calumny, he deſired he might be exemplarily proceeded againſt for it.

In fine, after ſome hear-ſay Proofs, what Opinion the Enemies had of his valorous Defence of *Briſtol*, and the Intenability thereof, and a Recapitulation of all the Heads of his Defence, he concluded with this Peroration:

‘ My Lords, I have at laſt ended my Defence, and (as I hope) ſufficiently
‘ cleared both my Honour, Valour, and Fidelity to the State in the Defence
‘ of *Briſtol:* And now I beſeech you to conſider, whoſe Honour or Life
‘ can be in Safety, if Lawyers (fee'd by their own Malice) may ſift and
‘ turn up all his Actions, and ſnarl at his Words; if ſuch who are no Sol-
‘ diers may, upon the Information of Attorneys, and Teſtimony of Shop-
‘ keepers, Ale-Wives, Enemies, but of no Soldiers at all, (except ſuch
‘ who appear out of particular Spleen) be brought thus upon the Stage for
‘ their Lives, and the great Privileges of Parliament broken by ſuch an
‘ Impeachment of a Member of it, which could not be parallel'd but by
‘ that Accuſation of the five Members. Wherefore I deſire, that as I have
‘ ſerved my Country faithfully, and done many good Services for it, ſo I
‘ may by this Honourable Council be juſtified in my Faithfulneſs, and re-
‘ paired againſt the Proſecutors in my Honour, more dear unto me than my
‘ Life; that ſo after all my publick Services, I may not now be caſt behind
‘ the Door like a Diſhclout, unfit for any further Employment.’

To which Mr. *Prynn* reply'd, (1.) That he wonder'd much why the Defendant ſhould thus except againſt him as an unfitting Proſecutor, ſince himſelf (without his Privity or Deſire) had by a Proclamation under his Excellency's Hand and Seal, poſted up at *Weſtminſter* and the *Exchange*, ſelected him and Mr. *Walker* by Name to proſecute this Buſineſs againſt him: if then we were unmeet Proſecutors, it was his own, not our Error, and he muſt blame only his own Judgment in the Choice, not us. (2.) That tho' he were but a common Lawyer, yet he deemed one of that Profeſſion a very fit Proſecutor of him who had betrayed his Truſt, and in it the Kingdom, contrary to Law: And whereas the Defendant ſcandalouſly objected, that he was fee'd by his own private Malice, he proteſted that there was never any Malice, nor Cauſe thereof between them; that he formerly honour'd the Defendant for his Pen, but never for his Sword, and beſtowed ſome Courteſies on, tho' he never received any from him; that he was born not far from *Briſtol*, bred up ſome Years therein, had many Friends and Kindred in or near it, who loſt much, and himſelf not a little, by its Surrender; that nothing had engaged him in this Proſecution but the Defendant's own Summons, nor fee'd him but the publick Service of the Parliament, and Security of the Realm: and altho' he had loſt and ſuffer'd much for the Church and State, yet he never received nor expected the leaſt Recompence, much leſs Reward from either, nor ever had any Pay for publick Services; whereas the Defendant received good Wages for all his Services, and for loſing *Briſtol* too: that himſelf had never loſt any thing of the State's, as he had done, but only what was his own, (his Liberty, Calling, Eſtate, Members) and that only for doing the Church and Kingdom Service; none of all which the Defendant had parted with for the publick. And therefore whereas the Defendant boaſts of his publick Actions, he could without Vanity or Prejudice truly affirm, he had done ten times more Service for Church and State, and ſuffer'd a thouſand-fold more for both, not only *gratis*, but even with the Loſs of all his earthly Comforts, than this Boaſter had done upon Pay; and that he doubted not, thro' God's Aſſiſtance, he ſhould be able to do the Church and State as good or better Service for the future as he: wherefore he had little Reaſon to extol himſelf ſo much, or depreſs him ſo low, as not to be a fitting Proſecutor of ſuch an unworthy Action. That tho' he were no profeſſed Soldier, yet he doubted not but he had read as many or more Treatiſes of Military Affairs than himſelf; that he had for eight Years Space of his Reſtraint in the Tower of *London* and *Mount-Orguiell* Caſtle, converſed with old Soldiers (and by Name with Sir *William Balfour* for five Years in the *Tower*); from whom he gained ſo much Experience in Martial Affairs, as he would have undertaken to have kept the City and Caſtle of *Briſtol* till this Day, had he been Governor there as the Defendant was, notwithſtanding their pretended Intenability, and the Enemy's Power: That in the managing of this very Buſineſs before this Honourable Council, he had in ſundry Particulars manifeſted himſelf, if not a better, yet at leaſt as good a Soldier as the Defendant, (for which he appealed to the Council) and in regard of his long Suffering and Reſtraint in Caſtles, was the antienter Soldier of the two: That the Defendant had confeſſed to the Lieutenant-Colonels *Paleologus* and *Andrews*, when he firſt undertook the Government of *Briſtol*, *That he was no Soldier*; and his yielding it up in a ſhort Time, before Extremity, upon ſuch poor Conditions, manifeſted him in truth to be no Man at Arms; and therefore tho' he were no profeſſed Soldier, yet why he ſhould not be a Soldier ſufficient to proſecute him, who, by his own Confeſſion and Action, is no real Soldier, he could yet diſcern no Reaſon. For his Witneſſes, whom he here vilified and traduced, they were many of them Perſons of Quality and Honour, ſome of them Members of Parliament; others more expert Soldiers, and Perſons better verſed in martial Affairs, than any of the Defendant's Witneſſes; all of them Perſons of good Fame and Converſation, diſintereſted and diſingaged in the Cauſe, againſt whom no Exceptions can be taken: when all his material Witneſſes were his own Officers, Brother, Kinſmen, Servants, Creditors, and Parties in the Cauſe, moſt of them involved with him in the ſelf-ſame Guilt. That his Life and Honour were now drawn in queſtion only by himſelf, upon his own Motion and Engagement of us; and if he loſt them (as he loſt *Briſtol*), he might thank himſelf for intereſting us in this publick Service, for our Country's Honour and future Security, the only thing we aimed at in this preſent Proſecution. That his pretended Breach of Privilege of Parliament was but a Fancy, already anſwered and over-ruled in the Commons Houſe, who referred him to a Trial before a Council of War, by two ſeveral Orders, upon his own Motion and pretended voluntary waving of his Privilege, before any Impeachment put in againſt him; which Impeachment was firſt tendered to the Houſe of Commons; who, upon the reading of it, with one unanimous Vote referred it to his Excellency, to be proceeded on by a free and fair Hearing before this Honourable Council: and if the Proceedings on this Impeachment upon his own Motion, by the Commons Direction, be a Breach of Privilege, it is only in himſelf and the Parliament, not in us; and it hath no more Reſemblance to the Caſe of the five Members, than an Ape to a Lion. That he was now queſtioned, not for his faithful but unfaithful Service to the Republick and Parliament, in the Surrender of *Briſtol*, in which he preſumed he durſt not manifeſt himſelf ſo far a Papiſt as to plead a Juſtification by Works, or Abſolution by preceding Merits. That he needed not to crave Reparation of his Honour and Reputation from us or any other in this Caſe, ſince they were both impaired and ruined by himſelf thro' this ignoble Action: That he had given the whole Kingdom an incurable fatal Wound, and irreparable Loſs, (which the Loſs of his Head and Eſtate could no way recompenſe) by this Surrender, for which in the whole Kingdom's behalf we here demand Judgment againſt him according to the Quality of his Offence: That our Services for the Republick were every way equivalent to, if not tranſcending his, our Credits, our Reputations, as dear to us as his to him, which he hoped ſhould no ways ſuffer for our Zeal and Fidelity in this publick Proſecution upon our own Expences, without Thought of Recompence. That if the Defendant ſhould be pronounced Guiltleſs by this Honourable Council, after ſo full a Charge and Hearing, he was obliged to us for bringing him to ſuch a publick Vindication of his ſuſpected Fidelity, which elſe would have lain eclipſed under a black Cloud of Jealouſies: But if he were pronounced guilty of the Impeachment, (as we made no doubt he would, the Evidence being ſo clear, the Proofs and Precedents in point ſo punctual) we ſhould deſerve Thanks, if not from him, (who pretended a Deſire to be tried to the uttermoſt) yet at leaſt from the Parliament, Kingdom, and our native Country, for bringing ſuch a grand, politick, daring Delinquent to his Trial and condign Judgment; who by ſurrendring *Briſtol* hath endanger'd the Loſs of three whole Kingdoms, and of our Laws, Religion, Liberties, Lives, and preſent Parliament.

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* Walſing. *Hiſt. Angl.* p. 337. *See* 56 E. 3. *n.* 23.

And now (my Honoured Lords and Gentlemen) leſt we ſhould incur your juſt Cenſure (according to the Defendant's Doctrine) for ſtouting out this Cauſe over-long, which by the Defendant's Tedioufneſs hath laſted nine Days Diſpute, (tho' the City's Siege continued not three full Days) we ſhall cloſe up all in a Word or two: We render you many hearty Thanks, in our own and the Kingdom's Names, for your nine Days Pains, Patience, and that fair, honourable, impartial Hearing you have afforded both Parties in the Trial of this great publick Cauſe, in which the whole Realm is intereſted, and whereon their Eyes are fixed; not doubting but as you have granted us a moſt full, fair, indifferent Hearing, ſo you will in due Seaſon (after ſerious peruſal of your Notes and the Evidence on both ſides) give ſuch a juſt and equal Sentence as ſhall chronicle your Juſtice to, and make this Caſe a leading Precedent for, all future Times, to deter all Governors of Towns or Caſtles from cowardly, traitorly, or unworthy Surrenders of them.

Thus ended the long Debate of this great Cauſe, begun on *Thurſday* the 14th of *December* 1643, and concluded on *Saturday* the 23d of *December*. After which both Parties were ordered to attend the Council again on *Friday* following, being the 29th of *December*, to hear Sentence, the Council deſiring ſo much Reſpite to peruſe their Notes, and prepare their Judgment. Who ſitting again, and we attending them, on the deſigned Day, the Council firſt delivered their ſeveral Judgments of the Cauſe among themſelves in private; after which Colonel *Fiennes* was diſarmed at the Council-Chamber-door, (whereat he was much appalled) and then he and we being called in, the Judge-Advocate read his Sentence out of a Paper *in hæc verba:*

Colonel Nathanael Fiennes, *you have been arraigned and convicted before this Honourable Council, for Surrendring and Delivering up the Town and Caſtle of* Briſtol, *with the Forts, Magazines, Arms, Ammunition, Victuals, and other things thereunto belonging, and for not having held the ſame to the utmoſt Extremity, according as by your Duty you ought to have done: For which Offence this Honourable Council hath adjudged you to be executed according to the Tenor of the Articles of War, by having your Head cut off. God have Mercy on your Soul!*

The Defendant, aſtoniſhed at this Sentence, told the Council, that he little expected ſuch a Sentence from them; and demanded upon what Grounds and Reaſons they thus condemned him? and whether they did allow of our Paper-Witneſſes, or diſallow the Teſtimonies of his Officers? Whereupon all being commanded to withdraw for a ſhort Space, and then called in again, the Defendant was told, *it was againſt the Style and Honour of the Council, to be demanded the Reaſons of their Judgment after it was once pronounced.* Upon this the Defendant alledged, that he was a Parliament-Man, and claimed his Privilege; that he ought not to be condemned without the Privity of the Commons Houſe, to which he appealed againſt this Sentence, and deſired his Appeal might be entred.

To which Mr. *Prynn* anſwered, That he had formerly appealed from the Parliament (the antient proper Judge of his Cauſe) to a Council of War, and by his own voluntary Motion waves his Privilege to put himſelf upon this Trial, as appeared by two Orders of the Houſe; therefore he could not now appeal back again to the Houſe, or reſume or claim his waved Privilege after Judgment. Notwithſtanding, upon his Requeſt, his Appeal was entred; yet Guard was ſet upon his Perſon at his Lodging: and upon better Conſideration he ſent to withdraw his Appeal that Night. *He was afterwards pardon'd by the Lord General.*

Caſes *of* Cowardice, *referr'd to in the foregoing Trial, as ſtated from the Records by Mr.* Prynn.

BY the * Laws of King *Edward the Confeſſor, he who flieth from his Lord or Fellow-Soldier for fear of War, or Death, in the Conduct of the Heretock* (or Captain) *in any Expedition by Sea or Land, let him loſe all that is his, and his very Life, and the Lord may lay Hands on the Land which he had formerly given to him. And he who ſhall be ſlain in War before his Lord, be it in the Land or elſewhere, let his Reliefs be pardoned, and his Heirs enjoy his Money and Land without any Diminution, and divide it among themſelves.*

By the Statutes of 18 *Hen.* VI. *c.* 19. 7 *Hen.* VII. *c.* 1. 3 *Hen.* VIII. *c.* 5. 2 *Ed.* VI. *c.* 2. 4 & 5 *Phil.* & *Mary*, *c.* 2, 3. 5 *Eliz. c.* 15. *It is made no leſs than Felony and Death for any Soldiers to depart from their Captains without their Licence under Hand; for which many Soldiers have been condemned and executed.* Coke's 6 Rep. f. 27. in the Caſe of Soldiers: And before theſe Statutes, Thomas *Earl of* Lancaſter *was* † *proclaimed a Traitor by the whole Army, in the twelfth Year of King* Edward II. *for departing in Diſcontent from the Army at the Siege of* Berwick, *by means whereof it was not taken, and the Seige raiſed.*

Henry de Eſſex's Caſe, 2 *Hen.* II.

Henry de Eſſex ‡, *Standard-bearer to the Kings of* England *by Right of Inheritance, was accuſed of High-Treaſon in the ſecond Year of King* Henry II. *by* Robert de Montford *his near Kinſman, and vanquiſhed by him in a Duel at* Reading *for his cowardly abandoning and throwing down the Standard-Royal in* North-Wales, *in the Battle againſt Prince* Owen, *amidſt the Mountains, and flying when fiercely aſſaulted by the* Welſh, *whereby the King's Army was endanger'd to be routed: Whereupon tho' his Life was pardoned, yet his Lands were ſeized into the King's Hand, and he ſhorn and ſhut up a Monk in the Abbey of* Reading, *where he died.*

Thomas Katrington's Caſe, 50 *Ed.* III.

Sir § *John Anneſly*, Kt. in the Parliament of 50 *Ed.* III. (commonly ſtyled, *The good Parliament*) had accuſed *Thomas Katrington*, Eſq; of Treaſon for ſelling and delivering up the Caſtle of *St. Saviour*'s (built by the Lord *John Chaundois* within the Iſle of *Conſtantine*) to the *French*, for an ineſtimable Sum of Money, whenas he wanted neither Means of Defence, nor Victuals: which Caſtle, had it not been thus traitorouſly alienated, had deſcended to the ſaid Sir *John* in right of his Wife, being next Heir to the Lord *Chaundois*, offering to make good this Accuſation, and try it out by Duel: whereupon the ſaid *Thomas Katrington* was then apprehended and impriſoned; but ſoon after, by means of the Duke of *Lancaſter* and the Lord *Latimer*, (who then did what they pleaſed) releaſed, being formerly their Inſtrument and Creature in Peace and War, in all juſt and unjuſt, in true and falſe Things; neither could the ſaid Sir *John* obtain the Effect of his Suit till the Parliament of 3 *R.* II. *An.* 1380. ſome Men affirming, *That it was againſt the Laws of the Realm for any Man of the Realm to fight ſuch a Duel for ſuch a Cauſe; many who feared the like Tax and Accuſation did moſt of all hinder this Trial:* but at laſt, in this Parliament, *the antienteſt and Truth-ſpeaking Knights of the Realm being aſſembled, it was reſolved, that for a foreign Cauſe, ſuch as the preſent was, which aroſe not within the Limits of the Kingdom, and for the Poſſeſſion of tranſmarine Things, it was lawful for any Man to fight a Duel, if the Cauſe were before certified to the Conſtable and Marſhal of the Realm, and the Duel accepted by the Parties in their Preſence.* Whereupon a Day of Battle, and Liſts were appointed them in the Court at *Weſtminſter*, where this Duel being ſolemnly fought on the 7th of *June* between theſe two Champions, in the Preſence of the King, Nobles, and an infinite Multitude of People; the traitorous Eſquire was vanquiſhed by the Knight, to the Joy of the Common People, and to the Grief of Traitors: The Eſquire, who fainted in the Place, died the next Morning.

Gomeney's *and* Weſton's *Caſe*, 1 *Ric.* II.

In the Parliament Rolls of 1 *R.* II. Num. 38, 39, 40. The Record is thus: *Item*, ‘ Whereas *it was prayed by the Commons, that all thoſe who have rendered or loſt Caſtles or Towns thro' the very Default of the Captains, might be put to anſwer it to this Parliament, and ſeverely puniſhed according to their Deſert, by Award* of the Lords and Baronage to eſchew the evil Examples which they have given to others who are Governors of Towns and Caſtles, it was commanded to Sir *Alexander de Buxhall*, Conſtable of the Tower of *London*, that he ſhould cauſe to come before the Lords in Parliament at *Weſtminſter*, on *Friday* the 27th of *November*, in the Year aforeſaid, Sir *John de Gomeneys* and *William de Weſton*, apprehended and detained in the ſaid Tower by the Command of our Lord the King, becauſe they had loſt and rendered Caſtles and Towns to the Enemies of our Lord the King, to anſwer thereunto, upon the Articles which ſhall be ſurmized againſt them for the ſaid Cauſe, on the Behalf of our Lord the King. Upon which Day of *Friday* the ſaid *John* and *William*, being brought by the ſaid Conſtable before the Lords aforeſaid in full Parliament, ſitting in the White-Chamber, they were ſeverally arraigned at the Commandment of the ſaid Lords, by Sir *Richard Leſcrop*, Kt. Steward of the Houſe of our Lord the King, in manner as enſueth:

‘ *William de Weſton*, you took upon you from the moſt Puiſſant Prince, whom God aſſoil, Sir *Edward* late King of *England*, Grandfather of our Lord the King that now is, ſafely to keep to him and his Heirs, Kings of *England*, the Caſtle of *Outhrewyke*, without ſurrendering it to any one but to the ſaid Grandfather, or to his ſaid Heirs, or by Command from him or from his ſaid Heirs: Have you, *William*, who are a Liege-man of our Lord the King, in Times of the ſame our Lord the King who now is, true Heir to the ſaid Grandfather, deliver'd and ſurrender'd the ſame to the Enemies of our Lord the King, without Command from him, to the Diſhonour (or Damage) of him and his Crown, and of the Eſtate of his Realm of *England*, againſt your Allegiance and Undertaking aforeſaid? What will you ſay hereunto?

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* Lambard. Arch. fol. 1, 5. De Heretochiis.

† Walſingham Hiſt. p. 89. Holingſhed, Grafton, Stow, Speed, Truſſel, *in* 12 R. II.

‡ Dan. p. 18. Speed, p. 502. Holin. *and* Stow, *An.* 2 H. 2.

§ Walſing. Hiſt. *Ang.* p. 245 *to* 248.

‘ [*] Whereupon the ſaid *William* ſaid, that he had put his Anſwers in Writing, and produced before them a Schedule containing many things compriſed within the ſame, and came and read the ſaid Schedule in full Parliament. Whereupon it was demanded of him by the ſaid Steward, if he preſented before them this Schedule for a final Anſwer in this Behalf, or not? And hereupon the ſaid *William* prayed that this Schedule might be re-delivered to him, and that he might put in his final Anſwer; which Schedule, for the Cauſe aforeſaid, was re-delivered to him; and after the ſaid *William* deliver'd the ſaid Schedule, with an Addition put thereunto in full Parliament for his final Anſwer in this Behalf; the Tenor of which Schedule is ſuch as followeth: *To the moſt ſage Council of our Lord the King, and to the other Lords and Commons of the Parliament, ſupplicates and ſheweth* William de Weſton, *That albeit he be accuſed of this, that he hath maliciouſly rendered the Caſtle of* Outhrewyke, *of which he had the Cuſtody by Delivery and Aſſignment of our Lord the King; may it pleaſe your ſage and juſt Diſcretion to have the ſaid* William *excuſed thereof, for theſe Cauſes enſuing: Firſt of all, may it pleaſe you to remember, how that the ſaid* William *was lately informed by a Spy, that a great Power of the Enemies would come upon him to beſiege the ſaid Caſtle, with very great and very grievous Ordnances; whereupon he the ſaid* William *preſently by his Attorney and by his Letters, required of the ſaid Council, that it would pleaſe them to reinforce the ſaid Caſtle with more Men for the Defence and Safeguard thereof, in regard that the Garriſon of the ſaid Caſtle that then was, were not half ſufficient in reſpect of Multitude to reſiſt ſo great a Force in ſo large a Place; but in Concluſion for all this, he could not have any Succour from the ſaid Council. And ſo the ſaid* William, *not at all thro' his Default, was left without People ſufficient for to keep and defend the ſaid Caſtle any longer time, which he beſeecheth you to take into your juſt and benign Conſideration. Alſo, pleaſe you to know, how upon a* Monday *about One of the Clock the Enemy came to beſiege the ſaid Caſtle, to the number of about 2600 Men of Arms, and 700 Arblaſters* Genevoyes, *and with 5000 of the Commonalty of the Country, having nine great Cannons, divers Engines, and one* [†] *Mortar-piece, beyond all meaſure greater than ever they had ſeen any before in thoſe Marches; and the ſame Hour preſently a great Number of the Men of Arms, and Arblaſters aforeſaid, came before the Gates for to aſſail the ſaid Caſtle; and at this time a Knight of theirs was ſlain, who was Couſin to the Lord* de Cliſſon *as was reported, and many others were likewiſe then ſlain and wrecked; and within a ſhort time after they began to diſcharge and ſhoot with their Ordnances, and other Engines, and ſo continued their Aſſault from one Day to another, that is to ſay,* Tueſday, Wedneſday, *and* Thurſday, *and then were the Walls and Houſes of the Caſtle batter'd down and bruiſed in many Places; and they had likewiſe by force trenched the Ditches of the ſaid Caſtle in three Places, ſo as all the Water was drained out; and that Night came a great Party of them, and by fine Force made an Aſſault and abated the Barricadoes; and the next Day, which was* Friday, *they came about day-breaking with all their Forces to aſſault the ſaid Caſtle; but with God's Aſſiſtance they were yet repulſed with Force from their Aſſault, and of the one Part and other there were ſome ſlain and wounded. And the ſame Day the Mareſchal of* Burgoyne *ſent to the ſaid* William *and others of the ſaid Caſtle to render it. Whereupon having Conſideration that the ſaid Caſtle could not be kept, as well in regard of the ſmall Number of the People, as by reaſon that the Walls in many Places were enfeebled by their marvellous Ordnances, there was a Treaty with the Lords to this end, that the ſaid* William *and his Companions might adviſe themſelves againſt the next Morning; and ſo they departed each to their own.' Alſo this ſame Night the Enemies cauſed all their Ordnances, Engines, Mortar-piece, Cannons, and Faggots, with Scaling-Ladders, Galleries, and all other Neceſſaries, to be drawn up near to the very Ditch of the aforeſaid Caſtle; and the next Day, which was* Saturday, *they made all things ready plainly for to aſſault the Place; and then firſt of all they ſent an Herald to the ſaid* William, *to know if the ſaid Caſtle ſhould be rendered to them or not? Whereupon the ſaid* William *by Advice of the wiſeſt of his Companions, taking Conſideration how that the ſaid Place was deſtroyed and enfeebled with their Ordnances, and alſo that they were too few Men for its Defence, by reaſon that twelve of their Companions were in this time ſlain, wounded, and ſick, ſo as there remained of all the People of the Garriſon in Health but only thirty-eight Men to defend the ſame: Hereupon by common Aſſent the ſaid Caſtle, which could be kept no longer, was by Force ſurrendered for to ſave their Lives granted to them, and their Goods. And that all theſe things aforeſaid are true, the ſaid* William *puts himſelf upon his Proof, according to your diſcreet Ordinances. Alſo it is to be remembered, that when the ſaid Caſtle was thus rendered as aforeſaid, certain* French *People bargained with the ſaid* William *for his Victuals to buy them, together with certain Priſoners which the ſaid* William *held impriſoned within the ſaid Caſtle, for which things he received of them for his Payment fifteen hundred Franks; of which he paid to his Companions for part of their Wages which was behind unto them for one Quarter of a Year and an Half ſeventy-eight Franks; likewiſe after was paid at* Calais *for the Victuals of the ſaid Caſtle before that time due, four hundred forty-two Franks; alſo for the Paſſages of the ſaid* William *and of his Companions unto* England, *and likewiſe for the Expences of the ſaid* William *being at* Calais, *one hundred thirty-five Franks: And therefore the ſaid* William *prayeth, in this regard, your Juſtice and Benignity, ſeeing by envious Suggeſtion he hath againſt all Reaſon been accuſed, whereby his Eſtate and Name, by the grievous Sin of Miſinformers, and he alſo are ruined; having likewiſe Conſideration that out of his proper Goods he hath for the greater Part paid his Companions their Wages which were due unto them as aforeſaid, and alſo for the great Coſts he hath been at before this Time for to victual the ſaid Caſtle, (for which he hath given his Obligations in divers Places, and oweth great Sums, by reaſon whereof he is on all ſides undone, if your juſt Benignity does not ſuccour him; that you would be pleaſed for God's ſake, and for Pity, to ordain likewiſe for him, that he may, by your diſcreet Nobleneſs, recover his Eſtate and Goods. Alſo the ſaid* William Weſton *ſheweth, how the firſt Day when the Enemies came before* Arde, *that he went in haſte to* Calais *unto the Captain, and deſired of him more Succour and Aid of Men for the better guarding of his Fort of* Outhrewyke, *and to defend it if the Enemies ſhould come thither. And the Captain anſwer'd him briefly, That he would not deliver, nor give him Aid nor Succour at the ſaid time, becauſe he doubted that the ſaid Enemies would come before the Town of* Calais. *And the ſame Schedule being viewed and read in full Parliament, immediately after was the ſaid* John *brought thither by the ſaid Steward in the manner following:*

‘ *John* Lord of *Gomeneys*, you took upon you to the moſt Puiſſant Prince, whom God aſſoil, Sir *Edward* late King of *England*, Grandfather to our Lord the King that now is, ſafely to keep to him and his Heirs, Kings of *England*, the Town and Caſtle of *Arde*, without ſurrendring the ſame to any Perſon, except to the ſaid Grandfather and his Heirs, or by Commandment of him or of his Heirs. Theſe have you, Lord of *Gomeneys*, in time of our Lord the King that now is, true Heir to the ſaid Grandfather, deliver'd and ſurrender'd to the Enemies of our Lord the King without Commandment from him, to the Diſhonour of him and of his Crown, and of the Eſtate of the Realm of *England*, againſt your Undertaking aforeſaid: What will you ſay thereunto? Whereupon the ſaid *John* anſwered, That the ſaid Town and Caſtle of *Arde* were ſo weak, that he could not well keep them againſt ſo great a Power of the Enemies, which was then ready to aſſail the ſame Town and Caſtle; and therefore he cauſed to aſſemble all the Knights, Eſquires, and others, being in the ſaid Town, and informed them of the Perils of the ſaid Town, and Force of the ſaid Enemies; and by common Counſel and Aſſent of the ſaid Knights, Eſquires, and others, he iſſued out to the Enemies to treat with them for to ſave the Lieges of our Lord the King, being within the ſaid Town and Caſtle of *Arde*; without that, that he ever took any thing for to ſurrender the ſaid Town and Caſtle of *Arde*. Upon which one *Geoffry* of *Argenton* Kt. ſaid in full Parliament to the ſaid *John*, that he the ſaid *Geoffry* was at that time in the ſaid Town in company of the ſaid *John*, and that the Town and Caſtle of *Arde* were never deliver'd nor ſurrender'd by his Counſel nor Aſſent, but that he was always ready to die and live upon the Safeguard of the ſame; and the ſaid *Geoffry* offer'd to prove it, if any would deny it. And further, it was demanded of the ſaid *John*, if he would ſay any thing elſe? And he ſaid he would not. Whereupon the ſaid Conſtable was charged with the ſafe Cuſtody of the ſaid *John* and *William* until the next Day, the *Saturday* next enſuing, and to bring them again ſafe before the ſaid Lords in the ſaid Parliament, at the Place and Day aforeſaid. At which Day of *Saturday*, that is to ſay, on the 20th Day of *November* in the Year aforeſaid, it was ſhewed unto them ſeverally by the ſaid Steward on the ſame Day, by the Commandment of the Lords aforeſaid, how upon the Anſwers that the ſaid *John* and *William* had given in the ſaid Parliament, as before is ſaid, the Lords of the ſaid Parliament, that is to ſay, the King of *Caſtile* and of *Leon*, and Duke of *Lancaſter*, *Edmund* Earl of *Cambridge*, *Edmund* Earl of *March*, *Richard* Earl of *Arundel*, *Thomas* Earl of *Warwick*, *Hugh* Earl of *Stafford*, *William* Earl of *Suffolk*, *William* Earl of *Saliſbury*, *Henry* Earl of *Northumberland*, *John* Lord *Nevil*, *Roger* Lord *Clifford*, and many other Lords, Barons, and Bannerets being in the ſaid Parliament, who had aſſembled and adviſed together from the time that the ſaid Anſwers were given in Parliament the *Friday*, until this *Saturday* at three of the Clock, of Things touching the Anſwers aforeſaid, and came and examined diligently the ſaid Anſwers and other Articles touching thoſe Matters, and taking thereupon good and mature Deliberation, and due Information of the moſt valiant and moſt diſcreet Knights, and others, being in the ſaid Parliament, it was thus ſaid: Firſt of all, in manner as followeth, to the ſaid *William* by the Steward, reciting the Things aforeſaid touching the ſaid *William*: *It ſeemeth to the Lords aforeſaid, that you,* William, *who had taken upon you ſafely to keep the Caſtle of* Outhrewyke, *as before is ſaid, that you,* William, *have without any Dureſs or Default of Victuals, evilly deliver'd and ſurrender'd the ſame to the Enemies of our Lord the King by your own Default, againſt all apparent Right and Reaſon, and againſt your Allegiance and Undertaking aforeſaid: and having by due Information read the Caſe of the late Baron of* Graystock, *who was a Lord, and one of the Peers of the Realm, who had taken upon him ſafely to keep to the aforeſaid Grandfather the Town of* Berwick; *the ſaid Baron perceiving afterward, that the ſaid Grandfather addreſſed himſelf to ride into the Realm of* France, *the ſaid Baron (without Command of the ſaid Grandfather) committed the ſaid Town of* Berwick *to a valiant Eſquire* Robert de Ogle, *as Lieutenant to the ſaid Baron, for to keep ſafe the ſaid Town of* Berwick *to the ſaid Grandfather, and the ſaid Baron went as an Horſeman to the ſaid Parts of* France *to the ſaid Grandfather, and there remained in his Company. During which time, an aſſault of War was made upon the ſaid Town of* Berwick *by the ſaid* Scots, *and the ſaid* Robert, *as Lieutenant to the ſaid Baron, valiantly defended the ſame; and at laſt by ſuch forcible Aſſaults the ſaid Town was taken upon the ſaid* Robert, *and two of the Sons of the ſaid* Robert *there ſlain in the defence of the ſame. Notwithſtanding, becauſe that the ſaid Baron himſelf had taken upon him the Safeguard of the ſaid Town to the ſaid Grandfather, and departed himſelf from thence without Command of the ſaid Grandfather, and the ſaid Town of* Berwick *was loſt in the Abſence of the Baron, he being in the Company of the ſaid Grandfather in the Parts of* France, *as is aforeſaid:* It was adjudged by Advice of the ſaid Grandfather, the King of *Caſtile*, who is preſent, the Nobles, Dukes, and Counts, *whom God aſſoil,* Henry *late Duke of* Lancaſter, *the late Earls of* Northampton *and* Stafford, *and Sir* Walter de Manny, *that the ſaid Town was loſt in Default of the ſaid Baron; and for this Cauſe he had Judgment of Life and Member, and that he ſhould forfeit all that he had: And to render this Judgment in theſe Words, the ſaid Sir* Walter *had a Command from the ſaid Grandfather. Which things conſider'd, and this alſo, that you,* William, *ſurrender'd the ſaid Caſtle of* Outhrewyke *to the Enemies of our Lord the King aforeſaid, without any Dureſs or Want of Victuals, againſt your Allegiance*

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[*] *Num.* 39.

[‡] Trebuchet.

‘ *and Undertaking aforeſaid, the Lords above-named ſitting in Parliament, adjudge you to Death, and that you ſhall be drawn and hanged: But becauſe that our Lord the King is not yet informed of the manner of this Judgment, the Execution thereof ſhall be reſpited until the King be informed thereof.* Whereupon it was commanded to the ſaid Conſtable ſafely to keep the ſaid *William*, until he had other Command from our Lord the King. And as to the ſaid *John* Lord of *Gomeneys*, touching his Anſwers aforeſaid, it was ſhewed unto him by the ſaid Steward, how the ſaid Lords had aſſembled and conſider'd of the ſaid Anſwers as afore is ſaid; and moreover it was ſhewed to him, how that in the time that Sir *Ralph de Ferrers*, Knight, had the Cuſtody of the ſaid Town and Caſtle of *Arde*, the ſaid Town of *Arde* was not half ſo ſtrong as it was at the time the ſaid *John* ſurrender'd the ſame; and the ſaid *Ralph* had a Command from the ſaid Grandfather to ſurrender the ſame for the Feebleneſs thereof, before that the ſaid *Ralph* would put himſelf into very great Peril for Safeguard thereof; notwithſtanding the ſaid *Ralph* valiantly defended and maintained the ſame againſt a very great and ſtrong Aſſault of War. And thereupon, and the Things aforeſaid, and other Evidences touching the Anſwers of the ſaid *John* in this Behalf; it was ſaid in manner as followeth to the ſaid *John*, being in Parliament, by the ſaid Steward, reciting all things aforeſaid touching the aforeſaid *John*; and alſo the forecited Judgment of the ſaid Baron, and the Cauſe thereof in manner aboveſaid, *That it ſeemed to the Lords aforenamed, ſitting here in Parliament, conſidering your Anſwers in this Behalf, and the Examinations and Informations had thereupon as before, and having regard alſo to this, that there were lately ſent unto you to the ſaid Town and Caſtle of* Arde, *above the number of Men with which you had at another time undertaken the ſafeguarding of the ſaid Town and Caſtle, twenty Men of Arms, and twenty Archers to enforce the ſame, according to your Requeſt then made to certain Lords, late being upon a Meſſage at* Calais *on the Behalf of the ſaid Grandfather; and this alſo, that at that time it was ſaid unto you by the King of* Caſtile, *who is here preſent, that if you could not well keep them, you ought in no manner to undertake to keep the ſame, and that another ſhould have and keep them, who would take upon him ſafely to keep the ſame to the ſaid Grandfather and his Heirs aforeſaid; and thereupon you undertook to keep them ſafely without ſurrendering them to any, except in manner as aforeſaid; and now you,* John, *without Dureſs or Default of Victuals or Artillery, or of other things neceſſary for the Defence of the ſaid Town and Caſtle of* Arde, *without Command of our Lord the King, have evilly delivered and ſurrendered the ſame to the Enemies of our Lord the King, by your own Default, againſt all Appearance of Right or Reaſon, and againſt your Undertaking aforeſaid; wherefore the Lords aforeſaid, here in full Parliament, adjudge you to Death; and becauſe that you are a Gentleman and a Baronet, and have ſerved the ſaid Grandfather in his Wars, and are no Liege-man of our Lord the King, you ſhall be beheaded, without having other Judgment; and becauſe alſo that our Lord the King is not yet informed of the manner of this Judgment,* the Execution thereof ſhall be put in reſpite, until our Lord the King be informed thereof. Whereupon the aforeſaid Conſtable was commanded ſafely to keep the ſaid *John* until he had other Command from our Lord the King [*].’

Creſſingham *and* Spikeſworth's *Caſe*, 7 Ric. II.

In the Parliament-Rolls of 7 *R.* II. Num. 17. there is this Caſe: ‘ *Item*, Upon the Complaint which hath been made to the King, of *Pierce de Creſſingham* and *John de Spikeſworth* Eſqrs; concerning this, That whereas there were made in the ſaid Voyage (to wit, *of the Biſhop of* Norwich *into* Flanders *with an Army)* Captains and Guardians of the Caſtle of *Drinkham* in *Flanders*, which was gained from the Enemies, and after that well and ſufficiently ſtored with Victuals and other Neceſſaries, and ſtrong enough to be held againſt the Enemies, that they left and rendered the ſaid Caſtle to the ſaid Enemies, receiving of them for this Delivery and Surrender, by Treaties made with the Enemies, a Sum of Gold, and that by Covenant made with the King's Enemies, without the Will and Command of our Lord the King himſelf, or of his Lieutenant: for which the ſaid Eſquires were arreſted by command of the King, and after put to their Anſwer in Parliament. And the ſaid *John Spikeſworth* excuſed himſelf before the King in Parliament in this manner: *That he had never the Cuſtody of the ſaid Caſtle, nor any thing to do therewith, ſave only that as he was riding into the Country, ſomewhat near the ſaid Caſtle of* Drinkham, *to make his beſt Advantage upon the Enemy, by force of the ſaid Enemies he was there chaſed to the ſaid Caſtle, then being in the Cuſtody of the ſaid* Pierce de Creſſingham; *and ſoon after he ſaith, That upon an Aſſault made to the Barbican there, by the Enemies, he was unhappily routed, and one of his Varlets ſlain in the Garriſon very near him, where he remained continually until the ſaid* Pierce *render'd the ſame; and otherwiſe he had never any thing there to do, neither as a Soldier thereof, nor in any other manner whatſoever; praying, that therefore it would pleaſe our Lord the King to have him well excuſed.* To whom it was anſwered on the behalf of the King, That if any Man knoweth not to ſay more againſt the ſaid *John*, contrary to his ſaid Anſwer now made, that the King will hold him well excuſed, and wills that he ſhall be diſ-arreſted, and ſuffered to go at large. And the ſaid *Pierce* of *Creſſingham* well knowing that he had the Guard of the ſaid Caſtle ſaid, That as ſoon as the Enemies were come before *Burburgh*, in which were the Lord *Beamond*, Sir *William* of *Elingham*, Sir *Thomas Tryvet*, Sir *William Farrinden*, and many other *Engliſhmen*; and the Town and Caſtle of *Burburgh* being ſurrender'd to the Enemy, of all the Soldiers which he had with him at *Drinkham*, none would there continue with him upon the Safeguard of the ſaid Caſtle, but only five Perſons in all; by reaſon of which great Neceſſity he was forced, in Safeguard of his own Perſon and his People, to make a Treaty with the Enemies, for to deliver up the ſaid Fort; and thereupon he did it, and not for any other Cauſe, nor in any other Manner, but only by conſtraint of the Power of the ſaid Enemy as aforeſaid. And further he ſaith, That he never received any thing from the ſaid Enemies by way of Gift, or in any other manner; whereupon he conceiveth, that no Man ought to impute any manner of Blame, nor of Reproach unto his Perſon. But if it ſhall be thought that he hath done ill in any manner, he puts himſelf moſt humbly into the Grace of his Liege Lord. And becauſe that this Excuſe ſeemed not at all to be ſufficient, he was committed to Priſon, there to remain until the King our Lord had otherwiſe declared his Pleaſure concerning him.’

The Caſe of the Biſhop of Norwich, 7 Ric. II.

In the ſame Parliament of 7 *Ric.* II. *Num.* 22. The Biſhop of *Norwich*, General of the Forces ſent over into *Flanders*, having four Articles exhibited againſt him in this Parliament, touching that Expedition, and the Surrendering of *Graveling* to the Enemy, to which he had given ſome former Anſwer, (ſee *Num.* 15, 17, 20, 21.) upon his ſecond Arraignment had this Proceeding: ‘ At which Day the ſaid Biſhop rehearſing the four Articles ſurmiſed againſt him formerly in Parliament, and in preſence of the King himſelf, gave there his Anſwers, ſuch almoſt as before, concerning all the things aforeſaid; adjoining thereunto, that the time when he heard the News that the Vanguard of the Hoſt of *France* was entered the Country of *Flanders*, and that thereupon the ſaid Siege of *Ipre* was thereby removed, he took a Reſolution to have encountered the Vanguard, for to have fought with them; which Purpoſe of his he could not perform by reaſon that the Captains of his Hoſt would not aſſent thereunto, but thoſe Captains and others of his Hoſt contraried him, inſomuch that of Neceſſity, and for doubt of the Enemies they ought to depart, and betake themſelves to their Fortreſſes; and thereupon the ſaid Biſhop returned to the Town of *Graveling*, and the ſame would he have held out well enough againſt all Men, and did hold out until the other Captains had rendered their Forts to the *French*; and after that, until that ſome *Engliſh* might come unto him incontinently, altho' there were well-nigh about ſix or ſeven thouſand *Engliſh* lying upon the Sands near *Calais*, who were made to come out of the ſaid Forts rendered, to their great Miſchief and Prejudice, becauſe they had not wherewith to live, neither could they have Entrance into the Town of *Calais*. And foraſmuch as the Truce made before that time ought to ceaſe within two or three Days then next enſuing, the *French* had a Purpoſe to run upon them and ſlay them all, as ſoon as the ſaid Truce was ended; which Slaughter, if it had been made, would principally have turned upon the ſaid Biſhop, and after on the other Captains, to far greater Villany and Miſchief than any other thing could bring. The Biſhop was thereupon required and charged on the behalf of the King himſelf, that he ſhould render the Town to the Enemies, or elſe demoliſh it, and go his way to ſuccour the ſaid People, and after that towards *England*, in Salvation of himſelf and others of his Hoſt; for they ſaid, That if any thing elſe but Good had happen'd to the ſaid People lying on the Sands, they would have truly called the ſaid Biſhop to an Account before the King himſelf: Whereupon it behoved him the ſaid [†] Biſhop to abate and void the ſaid Town of *Graveling*, as it was lawful for him to do at his Pleaſure, being gained by his proper Conqueſt from the Enemy. And for this, and for the other Reaſons formerly alledged by him, as alſo becauſe that a Letter from our Lord the King came to him before, commanding him, that if there were great want of Victuals in the ſaid Town, as in verity there was, that then in Salvation of himſelf, and of the ſaid People, he ſhould void the Town and ſuccour the ſaid People, and after return into *England*; it ſeems to him, that he ought to be well excuſed of whatever is ſurmiſed againſt him.’ To which the ſaid [‡] Chancellor replied and ſaid: ‘ Maſter Biſhop, as to this your laſt Reaſon, it is true that you had ſufficient Victual when this Letter came unto you; and beſides this, the King ſent you other Victuals in great Plenty; and alſo with it other good Letters, containing, how he had appointed his Uncle of *Spain* to come ſpeedily to you for your Aid and Succour; and all this notwithſtanding, you departed thence, leaving the ſaid Town to the Enemies, againſt the Form of your Indenture, by the which the King hath given and granted you whatever you might conquer, not at all to render, ſell or leave the ſame to the Enemy, but to hold and poſſeſs. And alſo to that which you have ſaid in your firſt Anſwer, that by your ſaid Voyage Truces had been agreed between the Realms, and happy Offers of Peace made by the Adverſaries of *France*, which you ſay ſhall be an Introduction to a good and final Peace, which God grant, it contains no Truth at all: for true it is, that the News ſpread in the Army of *France* of the coming of our Lord the King, and of Monſieur of *Lancaſter*, who was at the Sea-ſide ready to paſs for your Succour, was the principal Cauſe of the Truce and Proffers aforeſaid, and of the Treaty to be commenced; for it is no probable thing at all, nor in any wiſe agreeable to Reaſon, that you who were with your People chaſed by Force of the Enemies out of the Field, and afterwards beſieged by them within your Fortreſſes, ſhould be the Cauſe of the ſaid Treaty by any way. And ſo as to this, nor yet as to any other of the Reaſons before alledged, nor for the Rebellion of your Captains or other of your Retinue, nor any other Defaults which you have or may ſurmiſe unto them, (conſidering that you had them all of your proper chooſing and Election, and not at all by the Nomination of our Lord the King, or of his Council) you neither can or ought to be at all excuſed of the Damages, Deceits, Villanies, Contempts, and the other Loſſes and Miſpriſions ſurmiſed to you, nor in eſpecial of the Treaty made with the Enemies upon the Deliverance of the ſaid Fortreſſes, of which there are certain Indentures made and drawn between you and your Captains on the one Part, and the Enemies of the King on the other Part, ſealed with their Seals, and the Seals of the other Captains, without the Authority or Conſent of the ſaid our Lord the King, as before is ſaid. And moreover the ſaid Chancellor ſaid in the behalf of the King, Sir Biſhop, altho' the King our Lord might clearly handle and judge you as a temporal Perſon of his Realm, becauſe you have behaved and carried yourſelf as a temporal Perſon; for you expreſly obliged yourſelf to the King our Lord by your Indentures, to be a Soldier of the King, to govern the Chriſtian People after the Term of your *Croſſado* ended, and you uſed commonly to have your Sword carried before you; and you did many other ſuch like things every Day publickly as a Lord Temporal, againſt the common Cuſtom of the Eſtate of a Prelate of *England:* Notwithſtanding, by reaſon of your Eſtate, the King our Lord, of his Grace, will forbear for the preſent to lay his Hands upon your Body. But foraſmuch as he is informed, that you yourſelf have complained to many Lords of the Realm, that Wrong hath been lately done you on the laſt Day, affirming by your Words, that that which was done paſſed not at all by Aſſent or Knowledge of your Peers of the Realm; this is greatly to be marvelled of you, and of theſe your Words, ſeeing the ill Succeſs touched nothing at all your Perality, but only certain Miſpriſions which you have made and perpetrated as a Soldier of the King, againſt the Form of your Indentures and Covenants which you have made with the King our Lord, to the great Damage of the King as before is ſaid, whereof the Conniſance and Puniſhment of common Right and antient Cuſtom of the Realm of *England*, only and totally appertaineth to our Lord the King, and to no other. And true it is, that you have not at all by this your laſt Anſwer any whit amended your Matter in Excuſe of yourſelf, upon the Things ſurmiſed againſt you, but as it ſeems have more greatly impaired the ſame. *Wherefore by the Aſſent of the Earls, Barons, and other Lords Temporal preſent in this Parliament*, it is aſſented and accorded, that *you ſhall be in the Mercy of the King, and put to a Fine and Ranſom for your Miſdoing, according to the Quality and Quantity thereof. And to do this you ſhall be compelled and conſtrained by the Seizure of the Temporalities of the Biſhoprick of* Norwich. *And the King commands you, that from henceforth you ſhall not cauſe nor ſuffer any Sword to be carried before you, as it hath been done, under the Peril which ſhall follow. And it is expreſly accorded in this Parliament, that whatſoever hath been expended on your Uſe of the ſaid Franks of Gold, you ſhall make full Payment thereof in the Treaſury of our Lord the King, without Delay or Difficulty.*’

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[*] Geoffrey Martin, *Clerk of the Crown, made this very Record, and delivered it written in this preſent Roll, with his own Hand.*

[†] *See the Hiſtory of this Treaty and Abatement of the Town in* Walſingham Hiſt. Angl. p. 327 *to* 330. *and in* Holinſhed, Speed, Grafton.

[‡] *Numb.* 27.

Upon this Judgment the Temporalities of this Biſhop were immediately ſeized into the King's Hands, and detained in them a long Time for this his Surrender of *Graveling*; as *Walſingham*, *Holingſhed*, *Grafton*, *Speed*, *Truſſel*, in their Hiſtories, and *Godwin* (in the Life of this Biſhop) atteſt.

The Earl of Northumberland'*s Caſe*, 7 Ric. II.

In the ſame * Parliament, 7 *R.* II. News came from the Northern Parts, that the Caſtle of *Berwick* was taken by the *Scots*, whoſe Cuſtody *Henry Piercy* Earl of *Northumberland* then poſſeſſed by antient Right; the *Scots*, for Money, fraudulently getting Entrance into the ſaid Caſtle by one who had the Cuſtody of it at the ſecond-hand, under the Earl. Hereupon, by Duke *John*'s Procurement (as was reported), the ſaid Earl on the fourth of *December*, for the Loſs of the ſaid Royal Caſtle, by the Judgment of the Lords, and of the King then preſent in the ſaid Parliament, had a Sentence of Condemnation publickly pronounced againſt him, notwithſtanding that the ſaid Earl had been ſummoned to the ſaid Parliament by the King's Writ, and would rather have tarried at home for the Defence of his Country. But the Execution of the ſaid Sentence was ſoon after releaſed by the King, and the Earl by his Indulgence reſtored to his Life and Poſſeſſions, which he was adjudged to loſe. Whereupon he poſted into the North, and calling his Forces and Friends together, ſtrongly beſieged the ſaid Caſtle, and in a few Days took it by Compoſition, he giving the beſieged their Lives, Moveables, and two thouſand Marks to ſurrender it.

The Caſe of Sir William de Elmham, *and others*, 7 Ric. II.

In the Parliament-Rolls of 7 *Rich.* II. *num.* 24. there is this Record: *Item*, Sir *William de Elmham*, Sir *Thomas Tryvet*, Sir *Henry de Ferriers*, and Sir *William de Farndon* Knights, and *Robert Fitz-Ralph* Eſq; who by the ſaid Charge formerly given in Parliament, had been with the Chancellor, and acknowledged and confeſſed to him, How that they had received certain Sums of Franks of Gold of the *French*, in lawful and due manner, and not otherwiſe. To which they ſaid, ‘ Firſt of all, that is to ſay, the ſaid Sir *William* of *Elmham*, *Thomas Tryvet*, and *William Farndon*, in one Parcel three thouſand Franks of Gold. *Item*, In another Parcel, *&c.* *Item*, the ſaid Sir *William Elmham* received another Parcel of the *French* for the Caſtle of *Burburgh*, whereof Maſter *William de Hoo* was then Captain; and for the Victuals of the ſaid Maſter *William de Hoo*, being in the ſaid Caſtle of *Burburgh*, two thouſand Franks; whereof the ſaid *William de Elmham* preſently paid, as he ſaid, one thouſand Franks to the ſaid Maſter *William de Hoo*, and the other thouſand Franks he promiſed to pay at a certain Term to the ſame Maſter *William de Hoo*, &c. *Item*, There is another great Miſpriſion that ſome Lieges of the King rendered and delivered to the ſaid Enemies of the King, Caſtles, Fortreſſes, Victual, Armour and other Refreſhment, without ſpecial Command and Authority of the King, or of his Lieutenant; but yet it is far worſe to ſell or alien to the ſaid Enemies any Fort, Victuals, Armour or other Refreſhment, by receiving Money or other Goods of the ſaid Enemies, without Authority of the King, or of the ſame his Lieutenant. And, Sirs, you know well, and cannot deny, That by certain Covenants made between the ſaid *French* Enemies, and you the ſaid Sir *William de Elmham*, *Thomas Tryvet*, *Henry de Ferriers*, and *William de Farndon*, and others, of which there are certain Indentures made and ſealed with your Seals, you lately made a Treaty with the ſaid Enemies, without the Will or Authority of the King, or of his Lieutenant; and by this Treaty, and your Sale of the ſaid Forts, Victuals and Arms, you received the ſaid Sums of Gold; and by this, and by other your Affairs, and Rebellions made to your General, the ſaid Hoſt was ſpoiled and deſtroyed, to the grievous Damage, Villany, and Contempt of the King our Lord, and very great Profit and Comfort of the ſaid Enemies, *for which you are worthy to undergo Reproach and grievous Puniſhment.* For you, Sir *William de Elmham*, received of the ſaid Enemies the ſaid two thouſand Franks, for the Sale and Surrender of the ſaid Caſtle of *Burburgh*, and of the Victuals, Arms, and other Goods therein, then being to a great Number and Value, without the Leave and Authority of the King our Lord, and the Conſent of the ſaid Maſter *William de Hoo*, Captain of the ſame, *although that the ſaid Caſtle was well able to have held out for a long time againſt all Men.* And alſo you the ſaid *William de Elmham*, *Thomas Tryvet*, and *William de Farndon*, received to your proper Uſe in common, the ſaid three thouſand Franks of the Gift of the ſaid Enemies, for your Conſent and Aid to the ſaid Treaty, made upon the Voydance of the *Engliſh* out of that Country, and the Deliverance of the Town of *Graveling*, and of the other Fortreſſes then occupied in thoſe Parts, *&c.* And you the ſaid Sir *William Farndon* are in another very great Default, becauſe you would not carry back to the ſaid Enemies the five thouſand Franks by you left at *Graveling*, againſt the Will and Command of the ſaid Biſhop your Chieftain, *&c.* And the ſaid Sir *William de Elmham* ſaith, That although he hath ſo received the Sums aforeſaid, yet it was done for Victuals, Priſoners, and other Goods which he had within the Fortreſs of *Burburgh*, and elſewhere in thoſe Parts, and which, with the ſaid Fortreſs, he rendered by the ſaid Treaty, as of fine Force he ought to do for the Salvation of himſelf and his People; for otherwiſe the Town of *Burburgh*, where the Lord *Beaumont*, Sir *Thomas Tryvet*, Sir *William Tryvet*, Sir *William de Elmham*, and a great Number of the People of their Army were beſieged, and aſſaulted by the Enemies in very great Number, and the Town within ſet on Fire had been taken by them by Force, and all thoſe within it taken or ſlain: And therefore he conceiveth, that in doing this he hath done nothing amiſs. But notwithſtanding, if it appears to the King our Lord that he hath done any thing amiſs, he puts himſelf upon his noble Grace, *&c.* And the ſaid Chancellor, in replying to the ſaid Sir *William de Farndon*, *Henry*, and *Robert*, ſaith, *&c.* And certainly as to this which you Sir *William de Farndon* ſay, That it had been better to caſt the ſaid Gold into the Sea, than to have ſent it back to the ſaid Enemies: This is not true; for it had been better that the Enemies had received their own Gold, than any Traitor of the King our Lord: and he who ſhall hereafter ſell the Fortreſſes of the King to the Enemies for Gold, or other Goods, may excuſe himſelf in ſuch manner as you would now excuſe yourſelf. And after theſe Matters, thus by the ſame Perſons alledged for their Excuſe, *being conſidered, and held and adjudged inſufficient for their Excuſe in this behalf*; the ſaid Chancellor, in behalf the King, ſpake thus: *It is accorded in Parliament, that you Sir* William de Elmham, Thomas Tryvet, Henry Ferriers, William de Farndon, *and* Robert Fitz-Rauf, *ſhall make Agreement and full Payment to our Lord the King of whatſoever you or any of you have ſo received and taken of the Enemies aforeſaid*; *and further, that all you the ſaid Sir* William de Elmham, Thomas, Henry, *and* Robert, *be committed to Priſon, and there ranſomed at the Will of the King for your Miſdeeds aforeſaid, having due Conſideration of the Quality and Quantity of that Deed which every one of you hath done. And that you Sir* William de Farndon, *becauſe that you have received of the ſaid Enemies divers Sums of Gold, and have given them Horſes to their great Refreſhment, for which you had no Licenſe of the King, nor of his Lieutenant, ſhall be in the Mercy of the King, Body and Goods, to do with them what he pleaſeth.*’

The Duke of Suffolk'*s Caſe*, 28 Hen. VI.

In the Parliament of 28 *Henry* VI. *Rot.* 50, 51, 52, the Commons preferred divers Articles of High-Treaſon to the King and Lords againſt the Duke of *Suffolk*; among others theſe enſuing: *That he being Ambaſſador for the King of* England *to* Charles, *calling himſelf* French *King, promiſed to* Reynor *King of* Sicily, *and to* Charles Dangers *his Brother, Enemies to the King, the Releaſe of* Angeou, *with the Deliverance of the County of* Main, *and the City of* Mault *or* Mauns; *which Promiſe, after his Return, he cauſed to be performed, to the King's Diſinheritance and Loſs irrecoverable, and to the ſtrengthning of his Enemies, and Feebliſhment of the Dutchy of* Normandy. To the which Article he anſwered, *That his Commiſſion was, to conclude and do all things according to his Diſcretion, for the obtaining of a Peace; and becauſe, without Delivery of thoſe Countries, he perceived the Truce could not be obtained, he agreed to the Releaſe and Deliverance of them.*

Item, *The ſaid Duke, within this your Realm, hath untruly counſelled you to grant fro you, without due Conſideration, the Caſtle of* Mawlyon de Sool, *and full many divers other great Lordſhips, Seignouries, Places, Offices, Profits, Revenues, Caſualties, and Commodities within your ſaid Dutchy of* Guyen, *whereby your Power there to ſupport your Wars and Arms, and to pay the Wages of your great Counſellors, Captains and Soldiers, hath been ſo enfeebled, that your People of the ſame Dutchy, neither your Land there, might in no wiſe be defended.*

Item, *The ſaid Duke of* Suffolk, *without Deliberation and Advice of your Council, hath cauſed your Highneſs to grant to divers Perſons, many Captains, Offices, Towns, Lordſhips, Places, Intereſts, Profits and Revenues within your Realm of* France, *and Dutchy of* Normandy, *to ſuch Perſons as were not to you profitable, nor able, nor convenient to have or govern any of the Premiſes, nor ever had deſerved to obtain of your Grace any ſuch Grant*; *which hath been done by him for his great Avail and Lucre, and hath been one of the greateſt Means of the Loſs of the ſaid Realm of France, and Dutchy of* Normandy.

The Duke upon theſe Articles was *committed to the* Tower *for one Month's Space, to pacify the People, and then releaſed by the Queen's Means, who entirely loved him: whereupon the Commons were ſo far from being pacified, that they were more enraged*; *openly denouncing, that it was a Shame to all the whole Realm to ſee ſuch a Perſon, guilty of ſo many Miſdeeds, either to rule about a Prince, or to be had in Honour, or ſuffered to go unpuniſhed. Upon this the* Commons riſing up in divers Places of the Realm in Companies under Captain *Blewbeard*, the Commons *in Parliament earneſtly beſeeched the King, that ſuch a Perſon as aſſented to the Releaſe of* Angeou, *and Deliverance of* France, *&c. might be extremely puniſhed and tormented*; *and to be privy to this*

* Walſing. *Hiſt. Angl.* p. 337.

Fact, they accuſed as Principal the ſaid Duke of Suffolk, *with* John *Biſhop of* Saliſbury, *Sir* James Fines, *Lord* Say, *and others. Whereupon, the King plainly* ſeeing, that *neither Gloſſing would ſave, nor Diſſimulation appeaſe the continual Clamour of the importunate Commons againſt the Queen's Darling and his Complices; to begin a ſhort Pacification of ſo long a Broil, Firſt,* he ſequeſtered the Lord *Say, being Treaſurer of* England, *from his Office* (who for the ſame Offence *was after committed to the* Tower, *and after that beheaded by* Jack Cade, *and the* Kentiſh *Mutineers, at the Standard in* Cheapſide, *who carried his Head about the Streets of* London *fixed on a Pole,* &c.) : and then by his own Authority, aſſembling all his Lords Spiritual and Temporal together, on the 17th Day of *March*, in a Chamber over the *Cloyſters* at *Weſtminſter*, he arraigned and baniſhed the ſaid Duke for five Years, againſt the Lords and Commons Conſent, who would have capitally proceeded againſt him; meaning by this Exile to appeaſe the preſent furious Rage of the People, and that pacified, to recal him to his old Eſtate, as the Queen's chief Friend and Counſellor. But Fortune would not that he ſhould ſo eſcape; for when he was ſhipped in *Suffolk*, intending to be tranſported into *France*, he was encounter'd by a Ship of War appertaining to the Duke of *Exeter*, of which the Conſtable of the *Tower* of *London* was Captain; who entring the Duke's Ship, with ſmall Fight brought him to *Dover* Road, and there on the Side of a Cockboat cut off his Head as a Traitor, and there left his Body and Head upon the Sands. Such was the End of theſe two ill Counſellors, only for adviſing this weak King himſelf thus diſhonourably and cowardly to ſurrender up theſe Towns, Forts, and Territories in *France*, to his Enemies, to purchaſe an unhappy Peace, to the King's and Kingdom's irreparable great Damage, Diſhonour, and Weakning, and the Enemy's extraordinary Advantage, Strengthning and Encouragement.

The Lord Wentworth's *Caſe*, 1 Eliz.

The Lord *Wentworth*, Governor of *Calais*, delivering up that Town to the *French*, (after they had taken the Caſtle by force, made a Breach in the Town-Walls, and ſlain above fourſcore of the Garriſon at one Aſſault when they took the Caſtle, together with Sir *Anthony Ager*, Marſhal of the Town, and his Son and Heir) and that *upon diſhonourable Terms, not without ſome Suſpicion of Treachery*; he was thereupon indicted in Queen *Mary*'s Days for his cowardly and treacherous Surrender of this Town, contrary to his Truſt; and after that was arraigned at *Weſtminſter* in the firſt year of Queen *Elizabeth*, the Marquis of *Northampton* being his Judge, and Lord Chief Steward of *England* for that Day. But that Nobleman ſo nobly defended himſelf, that he was acquitted by his Peers.

Van Hemert's *Caſe*, 29 Eliz.

Meteranus[*], *Grimſtone*[†], *Thuanus*, and others relate, *Anno* 1587: ‘*That* Van Hemert, *a very wiſe and brave young Nobleman, one of the chief Houſes of the* Netherlands, *and Governor of the Town of* Grave, *together with two of his Captains,* Du Banck *and* Corfe, *were impriſoned, condemned by a Council of War, and then beheaded and executed at* Bommel, *by Command of* Robert Dudley *Earl of* Leiceſter, *(Governor of the Low-Countries under Queen* Elizabeth *of famous Memory) for that they ſurrendered the ſaid Town of* Grave *to the Prince of* Parma, *when he had beſieged it above three Months Space, with a puiſſant Army, and beaten down the Walls of it level to the Ground, with perpetual Batteries and Aſſaults: And altho' there appeared no Treachery at all, nor any Intelligence held with the Enemy, in this Caſe; and that the Governor condeſcended to a Treaty, and ſurrendered the Town to the Enemy only upon the Citizens Importunity, who earneſtly intreated him upon their Knees with Tears in their Eyes to embrace a Parley, for the ſaving of their Lives, Eſtates, and Liberties, which were granted them upon the Articles of Agreement; and altho' the Garriſon-Soldiers likewiſe* marched away with their Arms [which they left behind them at *Briſtol*], *and had all the Articles punctually fulfilled; and altho' himſelf and his potent Friends earneſtly beſought the Earl of* Leiceſter, *that he might ſerve the Queen of* England *either by Sea or Land at his own Charges, and by his Valour and Fidelity make Recompence of his Fault committed only thro' want of Underſtanding and martial Policy, contrary to the Will and Intent of the Earl, then Governor-General under the Queen; yet the Earl, for upholding martial Diſcipline, and to prevent all future Surrenders of this kind, would on no wiſe diſpenſe with the Execution; whereupon they were all three openly beheaded at* Bommel, June 28, 1587.’

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[*] Belgica Hiſt. Univerſalis, l. 13. p. 402, 403, 404.

[†] Pag. 827, 828.

XLI. *The Trial of Dr.* WILLIAM LAUD, *Archbiſhop of* Canterbury, *for* High-Treaſon, *which began* March 12. 1643. 19 Car. I. *Wrote by himſelf during his Impriſonment in the* Tower [*].

[ON *the* 16*th of* December 1640, *upon the Condemnation of the new Canons in the Houſe of Commons, as being againſt the King's Prerogative, the fundamental Laws of the Realm, the Liberty and Property of the Subject; and containing divers things tending to Sedition, and of dangerous Conſequence; the Archbiſhop of* Canterbury *was there accuſed to be the Author of, and chief Actor in them, and was order'd to be impeach'd of High-Treaſon: whereupon a ſpecial Committee was appointed to enquire into all his Actions, and prepare a Charge againſt him, which is thus enter'd in the Journal of the Houſe of Commons:*

December 16, 1640. *This Committee is to prepare the ſeveral Votes concerning the new Canons, and to make them ready for this Houſe to preſent the ſame to the Lords, and to conſider and examine who were the Promoters of theſe new Canons, and who the principal Actors, and what Execution hath been made upon them, and by whom; and to conſider how far the Lord Archbiſhop of* Canterbury *hath been an Actor in all the Proceedings of them; and further, to examine how far he hath been an Actor in the great Deſign of the Subverſion of the Laws of the Realm, and of the Religion, and to prepare and draw up a Charge againſt him, and ſuch others as ſhall appear Offenders in theſe Particulars, and have Power to ſend for Parties, Witneſſes, Papers, Books, Records, and to do any other Act, which they in their Judgments ſhould think fit to conduce to the Buſineſs, and are to meet at four a-Clock this Afternoon in the* Star-Chamber.

On Friday *the* 18*th of the ſame* December, *the Archbiſhop was impeached in the Houſe of Commons of* High-Treaſon, *and voted by the whole Houſe to be a Traitor, thus enter'd in their Journal:*

December 18, 1640. Reſolved *upon the Queſtion, That a Meſſage ſhall be ſent from this Houſe to the Lords, to accuſe* William Laud, *Archbiſhop of* Canterbury, *of* High-Treaſon, *in the Name of this Houſe, and of all the Commons of* England, *and to deſire that he may be ſequeſter'd from Parliament, and committed; and that within ſome convenient time, this Houſe will reſort to their Lordſhips with particular Accuſations and Articles againſt him; and that Mr.* Hollis *go up with the ſame.*

Upon this Accuſation, divers remarkable Speeches were made againſt him in the Houſe of Commons; among others one by Mr. Harbottle Grimſtone, *as follows:*

Mr. Speaker, *There hath been preſented to the Houſe a moſt faithful and exact Report of the Conference we had with the Lords yeſterday, together with the Opinion of the Committees that we employed in the Service, That they conceived it fit that the Archbiſhop of* Canterbury *ſhould be ſequeſter'd; and I muſt ſecond the Motion. And with the Favour of this Houſe I ſhall be bold to offer my Reaſons, why I conceive it more neceſſary we ſhould proceed a little further than the Deſire of a bare Sequeſtration only.*

Mr. Speaker, *Long Introductions are not ſuitable to weighty Buſineſſes: We are now fallen upon the great Man, the Archbiſhop of* Canterbury: *Look upon him as he is in Highneſs, and he is the Sty of all peſtilential Filth, that hath infeſted the State and Government of this Commonwealth: Look upon him in his Dependencies, and he is the only Man, the only Man that hath raiſed and advanced all thoſe that, together with himſelf, have been the Authors and Cauſers of all our Ruins, Miſeries, and Calamities we now groan under. Who is it but he only that hath brought the Earl of* Strafford *to all his great Places and Imployments? A fit Spirit and Inſtrument to act and execute all his wicked and bloody Deſigns in theſe Kingdoms. Who is it but he only that brought in Secretary* Windebank *into this Place of Service, of Truſt, the very Broker and Pandar to the Whore of* Babylon?

Who is it, Mr. Speaker, *but he only that hath advanced all our Popiſh Biſhops? I ſhall name but ſome of them, Biſhop* Manwaring, *the Biſhop of* Bath *and* Wells, *the Biſhop of* Oxford, *and Biſhop* Wren, *the leaſt of all theſe Birds, but one of the moſt unclean ones. Theſe are the Men that ſhould have fed Chriſt's Flock; but they are the Wolves that have devour'd them: The Sheep ſhould have fed upon the Mountains; but the Mountains have eaten up the Sheep. It was the Happineſs of our Church, when the Zeal of God's Houſe eat up the Biſhops, glorious and brave Martyrs, that went to the Stake in Defence of the Proteſtant Religion; but the Zeal of our Biſhops have been only to perſecute and eat up the Church.*

Who is it, Mr. Speaker, *but this great Archbiſhop of* Canterbury, *that hath ſat at the Helm, to ſteer and manage all the Projects that have been ſet on foot in this Kingdom this ten Years laſt paſt? And rather than he would ſtand out, he hath moſt unworthily trucked and chaffered in the meaneſt of them.*

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[*] *See* Clar. *Hiſt.* Vol. I. p. 69, 118, 141. Vol. II. p. 440, *&c. To make this Trial the more complete, what was wanting is ſupplied out of* Ruſhworth's Collections, Vol. V. p. 763, *&c. and* Prynn's *Compl. Hiſtory of this Trial. The Additions are inſerted in their proper Places; but to preſerve the* Archbiſhop's *own Account entire, are diſtinguiſhed by a different Character within Crotchets.*

As, for Inſtance, that of Tobacco, whereby Thouſands of poor People have been ſtripp'd and turned out of their Trades, for which they have ſerved as Apprentices. We all know he was the Compounder and Contractor with them for the Licenſes, putting them to pay Fines and a Fee-farm Rent to uſe their Trade. Certainly, Mr. Speaker, he might have ſpent his Time much better, and more for his Grace in the Pulpit, than thus ſherking and raking in the Tobacco-Shops. Mr. Speaker, we know what he hath been charged withal in this Houſe, Crimes of a dangerous Conſequence, and of a tranſcendent Nature, no leſs than the Subverſion of the Government of this Kingdom, and the Alteration of the Proteſtant Religion; and this is not upon a bare Information only, but much of it is come before us already upon clear and manifeſt Proofs: And there is ſcarce any Grievance or Complaint come before us in this Place, wherein we do not find him intermentioned, and, as it were, twiſted into it; like a buſy angry Waſp, his Sting is in the Tail of every Thing. We have this Day likewiſe heard the Report of the Conference Yeſterday, and it is the Accuſation which the Scotch *Commiſſioners have charged him withal; and we do all know he is guilty of the ſame, if not more, here in this Kingdom.*

Mr. Speaker, He hath been the great and common Enemy of all Goodneſs and good Men; and it is not ſafe that ſuch a Viper ſhould be near his Majeſty's Perſon, to diſtil his Poiſon into his ſacred Ears; nor is it ſafe for the Commonwealth that he ſit in ſo eminent a Place of Government, being thus accuſed. We know what he did in the Earl of Strafford's *Caſe: This Man is the corrupt Fountain, that hath corrupted all the Streams; and till the Fountain be purged, we can never expect nor hope to have clear Channels. I ſhall be therefore bold to offer my Opinion; and if I err, it is the Error of my Judgment, and not my want of Zeal and Affection to the publick Good: I conceive it is moſt neceſſary and fit that we ſhould now take up a Reſolution to do ſomewhat, to ſtrike while the Iron is hot, and to go up to the Lords in the Names of the Commons of this Houſe, and in the Names of the Commons of* England, *and to accuſe him of High-Treaſon; and to deſire their Lordſhips, his Perſon may be ſequeſtred, and that in convenient Time we may bring up his Charge.*]

December, 18. 1640, being *Friday*. Upon this Day, Mr. *Denzil Hollis*, ſecond Son to *John* Earl of *Clare*, by Order from the Houſe of Commons, came up to the Lords, and accuſed me of High-Treaſon; and told the Lords, they would make proof thereof in convenient time: but deſired in the mean time, that I might be committed to ſafe Cuſtody. This was ſtrange News to my Innocency; for this I can ſay of myſelf, without Falſhood or Vanity, that to the uttermoſt of my Underſtanding I ſerved the King, my gracious Maſter, with all Duty and Faithfulneſs; and without any known or wilful Diſſervice to the State there-while. And this I did, with as true and free a Heart as ever any Man did that ſerved a King. And, I thank God, my Care was ſuch for the Publick, that it is well known I much neglected my own private Fortunes there-while. The more was I amazed at the firſt Apprehenſion of this heavy and undeſerved Charge.

Upon this Charge, I was commanded to withdraw. But I firſt deſired leave to ſpeak a few Words: and I ſpake to this effect, That I was heartily ſorry for the Offence taken againſt me; and that I was moſt unhappy, to have my Eyes open to ſee that Day, and mine Ears to hear ſuch a Charge: but humbly deſired their Lordſhips to look upon the whole Courſe of my Life, which was ſuch, as that I did verily perſuade myſelf, not one Man in the Houſe of Commons did believe in his Heart that I was a Traitor. Here my Lord the Earl of *Eſſex* interrupted me, and ſaid, *That Speech of mine was a Scandal put upon the whole Houſe of Commons, that they ſhould* * bring me up charged *with ſo high a Crime, which themſelves did not believe.* I humbly deſired then, that I might be proceeded with in the antient Parliamentary Way of *England*. This the Lord *Say* excepted againſt; as if I would preſcribe them how they ſhould proceed. So I withdrew, as I was commanded, and was preſently called in again to the Bar; and thence delivered to Mr. *James Maxwell*, the Officer of the Black Rod, to be kept in ſafe Cuſtody, till the Houſe of Commons ſhould farther impeach me.

* viz. *ſhould charge me.*

[December 18. 1640. *It is this Day* order'd, *that the Lord Archbiſhop of* Canterbury *(being accuſed of High-Treaſon by the Houſe of Commons in their own Names, and in the Name of the whole Kingdom of* England*) be committed to the ſafe Cuſtody of the Gentleman Uſher attending this high Court, and that he be ſequeſtred from the ſaid Houſe, until his Grace ſhall clear himſelf of the Accuſation that ſhall be laid againſt him by the ſaid Houſe.*

The Lords further order'd, that no Member of the Houſe ſhould viſit the Archbiſhop without leave of the Houſe.]

Here I humbly deſired leave, that I might go home to fetch ſome Papers neceſſary for my Defence. This was granted me with ſome Difficulty; and Mr. *Maxwell* was commanded to attend me all the while I ſhould ſtay. When I was gone to *Lambeth*, after ſome little Diſcourſe (and ſad enough) with my Steward, and ſome private Friends, I went into my Chapel to Evening-Prayer. The † Pſalms for that Day gave me much Comfort, and were obſerved by ſome Friends then preſent, as well as by myſelf. And upon the Comfort I then received, I have every Day ſince (unleſs ſome urgent Buſineſs prevented me) read over both theſe Pſalms; and God willing, purpoſe ſo to do every Day of my Life. Prayers being ended, I went with Mr. *Maxwell*, as I was commanded: Hundreds of my poor Neighbours ſtanding at my Gates to ſee me go, and praying heartily for my ſafe Return to my Houſe: for which I bleſſed God, and them.

† *Pſal.* lciii, & lciv. In vulgata Editione, *Pſal.* lcii, & lciii.

Upon *Friday*, *Feb.* 26. 1640. I had been full ten Weeks in reſtraint, at Mr. *Maxwell's* Houſe: and this Day, being St. *Auguſtine's* Day, my Charge in general Articles was brought up from the Houſe of Commons to the Lords, by Sir *Henry Vane* the Younger. It conſiſted of fourteen Articles. Theſe Generals they craved time to prove in particular; and that I in the mean time might be kept ſafe. Upon this I was preſently ſent for to the Houſe, and the Articles were read to me at the Bar. [*They were carried up by Mr.* Pym, *Mr.* Hampden, *and Mr.* Maynard.

And Mr. Pym *coming to the Lords Bar to preſent them, ſpake as followeth.*

Mr. *Pym's* Speech.

My Lords,

I *AM commanded by the Knights, Citizens, and Burgeſſes, now aſſembled for the Commons in Parliament, to deliver to your Lordſhips theſe Articles, in maintenance of their Charge againſt the Archbiſhop of* Canterbury. *Their Deſire is, That firſt your Lordſhips would be pleaſed to hear the Articles read; and then I ſhall endeavour to preſent to you the Senſe of the Commons concerning the Nature of the Charge, and the Order of their Proceedings.*

(The Articles being mentioned hereafter, are here omitted.)

The Articles being read, Mr. Pym *proceeded as follows:*

My Lords,

There is an Expreſſion in the Scripture which I will not preſume either to underſtand, or to interpret; yet to a vulgar Eye it ſeems to have an Aſpect ſomething ſuitable to the Perſon and Cauſe before you. It is a Deſcription of the evil Spirits, wherein they are ſaid to be Spiritual Wickedneſſes in high Places: *Crimes acted by the ſpiritual Faculties of the Soul, the Will and Underſtanding, exerciſed about ſpiritual Matters, concerning God's Worſhip and the Salvation of Man, ſeconded with Power, Authority, Learning, and many other Advantages, do make the Party who commits them very ſuitable to that Deſcription,* Spiritual Wickedneſſes in high Places. *Theſe Crimes, my Lords, are various in their Nature, heinous in their Quality, and univerſal in their Extent. If you examine them Theologically, as they ſtand in oppoſition to the Truth of God, they will be found to be againſt the Rule of Faith, againſt the Power of Godlineſs, againſt the Means of Salvation.*

If you examine them Morally, as they ſtand in oppoſition to the Light of Nature, to right Reaſon, and the Principles of human Society, you will then perceive Pride without any Moderation; ſuch a Pride as that is which exalts itſelf above all that is called God: Malice without any Provocation; Malice againſt Virtue, againſt Innocence, againſt Piety: Injuſtice, without any Means of Reſtitution; even ſuch Injuſtice as doth rob the preſent Times of their Poſſeſſions, the future of their Poſſibilities.

If they be examined, my Lords, by legal Rules in a Civil Way, as they ſtand in oppoſition to the publick Good, and to the Laws of the Land, he will be found to be a Traitor againſt his Majeſty's Crown, an Incendiary againſt the Peace of the State; he will be found to be the higheſt, the boldeſt, and moſt impudent Oppreſſor that ever was, an Oppreſſor both of King and People.

This Charge, my Lords, is diſtributed and conveyed into fourteen ſeveral Articles, as you have heard; and thoſe Articles are only general, it being the Intention of the Houſe of Commons (which they have commanded me to declare) to make them more certain and particular by preparatory Examinations, to be taken with the Help of your Lordſhips Houſe, as in the Caſe of my Lord of Strafford. *I ſhall now run thro' them with a light Touch, only marking in every of them ſome ſpecial Point of Venom, Virulency and Malignity.*

1. *The firſt Article, my Lords, doth contain his Endeavour to introduce into this Kingdom an arbitrary Power of Government, without any Limitations or Rules of Law. This (my Lords) is againſt the Safety of the King's Perſon, the Honour of his Crown, and moſt deſtructive to his People. Thoſe Cauſes which are moſt perfect, have not only a Power to produce Effects, but to conſerve and cheriſh them. The ſeminary Virtue and the nutritive Virtue in Vegetables do proceed from the ſame Principles. It was the Defect of Juſtice, and for the reſtraining of Oppreſſion and Violence, that firſt brought Government into the World, and ſet up Kings, the moſt excellent way of Government; and by the Maintenance of Juſtice all kinds of Government receive a ſure Foundation and Eſtabliſhment. It is this that hath in it an Ability to preſerve and ſecure the Royal Power of Kings, yea, to adorn and increaſe it.*

2. *In the ſecond Article, your Lordſhips may obſerve abſolute and unlimited Power defended by Preaching, by Sermons, and other Diſcourſes printed and publiſhed upon that Subject. And truly (my Lords) it ſeems to be a prodigious Crime, that the Truth of God and his Holy Law ſhould be perverted to defend the Lawleſſneſs of Men; that the holy and ſacred Function of the Miniſtry, which was ordained for Inſtruction of Mens Souls in the Ways of God, ſhould be ſo abuſed, that the Miniſters are become the Trumpets of Sedition, the Promoters and Defenders of Violence and Oppreſſion.*

3. *In the third Article, my Lords, you have the Judges, who under his Majeſty are the Diſpenſers and Diſtributers of Juſtice, frequently corrupted by Fear and Sollicitation: you have the Courſe of Juſtice, in the Execution of it, ſhamefully obſtructed. And, if a wilful Act of Injuſtice in a Judge be ſo high a Crime, in the Eſtimate of the Law, as to deſerve Death; under what Burden of Guilt doth this Man lie, who hath been the Cauſe of great Numbers of ſuch voluntary and wilful Acts of Injuſtice?*

4. *In the fourth Article he will be found in his own Perſon to have ſold Juſtice in Cauſes depending before him; and by his wicked Counſel endeavouring to make his Majeſty a Merchant of the ſame Commodity: only with this Difference, that the King by taking Money for Places of Judicature ſhould ſell it in groſs, whereas the Archbiſhop ſold it by retail.*

5. *In the fifth Article there appears a Power uſurped of making Canons, of laying Obligations on the Subjects in the nature of Law: And this Power abuſed to the making of ſuch Canons as are in the Matter of them very pernicious, being directly contrary to the Prerogative of the King, and the Liberty of the People. In the manner of preſſing them, may be found Fraud and Shuffling; in the Concluſion, Violence and Conſtraint, Men being forced by Terror and Threatning to ſubſcribe to all. Which Power thus wickedly gotten, they labour to eſtabliſh by Perjury, enjoining ſuch an Oath for the maintenance of it, as can neither be taken nor kept with a good Conſcience.*

6. *In the ſixth Article you have the King robbed of his Supremacy; you have a Papal Power exerciſed over his Majeſty's Subjects in their Conſciences, and in their Perſons; you have Eccleſiaſtical Juriſdiction claimed by an incident Right, which the Law declares to proceed from the Crown.*

And herein your Lordſhips may obſerve, That thoſe who labour in Civil Matters to ſet up the King above the Laws of the Kingdom, do yet in Eccleſiaſtical Matters endeavour to ſet up themſelves above the King. This was firſt procured by the Archbiſhop to be extra-judicially declared by the Judges, and then to be publiſhed in a Proclamation: In doing whereof, he hath made the King's Throne but a Footſtool for his own and their Pride.

7. *You have, my Lords, in the ſeventh Article, Religion undermined and ſubverted; you have Popery cheriſhed and defended; you have this ſeconded with Power*

and Violence, by ſevere Puniſhment upon thoſe which have oppoſed this miſchievous Intention: And by the ſubtle and eager Proſecution of theſe Men, hath the Power of Eccleſiaſtical Commiſſioners, of the Star-Chamber *and* Council-Table, *been often made ſubſervient to his wicked Deſigns.*

8. *My Lords, you may obſerve in the eighth Article, great Care taken to get into his own Hand the Power of nominating to Eccleſiaſtical Livings and Promotions: You have as much miſchievous, as much wicked Care taken in the diſpoſing of theſe Preferments, to the Hindrance and Corruption of Religion. And by this Means, my Lords, the King's ſacred Majeſty, inſtead of Sermons fit for Spiritual Inſtructors, hath often had Invectives againſt his People, Encouragement to Injuſtice, or to the Overthrow of the Laws. Such Chaplains have been brought into his Service as have, as much as may be, laboured to corrupt his own Houſhold, and been eminent Examples of Corruption to others; which hath ſo far prevailed, as that it hath exceedingly tainted the Univerſities, and been generally diſperſed to all the chief Cities, the greateſt Towns and Auditories of the Kingdom. The grievous Effects whereof are moſt manifeſt to the Commons Houſe, there being divers hundred Complaints there depending in the Houſe againſt ſcandalous Miniſters; and yet I believe the hundredth Part of them is not yet brought in.*

9. *The Ninth Article ſets out the like Care to have Chaplains of his own, that might be Promoters of this wicked and traitorous Deſign, Men of corrupt Judgments, of corrupt Practices, extremely addicted to Superſtition. And to ſuch Mens Care hath been committed the licenſing of Books to the Preſs: By means whereof, many have been publiſhed that are full of Falſhood, of Scandals, ſuch as have been more worthy to be burnt by the Hand of the Hangman in* Smithfield, *(as I think one of them was) than to be admitted to come into the Hands of the King's People.*

10. *In the tenth Article it will appear, how he having made theſe Approaches to Popery, comes now to cloſe and join more nearly with it: He confederates with Prieſts and Jeſuits; he, by his Inſtruments, negotiates with the Pope at* Rome, *and hath Correſpondence with them that he authoriſed from* Rome *here; he hath permitted a* Roman *Hierarchy to be ſet up in this Kingdom. And tho' he hath been ſo careful, that a poor Man could not go to the Neighbour-Pariſh to hear a Sermon, when he had none at home, could not have a Sermon repeated, nor Prayer uſed in his own Family, but he was a fit Subject for the High-Commiſſion Court; yet the other hath been done in all parts of the Realm, and no notice taken of it by any Eccleſiaſtical Judges or Courts.*

11. *My Lords, you may perceive Preaching ſuppreſs'd in the eleventh; divers godly and orthodox Miniſters oppreſſed in their Perſons and Eſtates. You have the King's loyal Subjects baniſhed out of the Kingdom; not as* Elimelech, *to ſeek for Bread in foreign Countries, by reaſon of the great Scarcity which was in* Iſrael; *but travelling abroad for the Bread of Life, becauſe they could not have it at home, by reaſon of the ſpiritual Famine of God's Word, cauſed by this Man and his Partakers. And by this Means you have had the Trade, the Manufactory, the Induſtry of many Thouſands of his Majeſty's Subjects carried out of the Land.*

It is a miſerable Abuſe of the Spiritual Keys, to ſhut up the Doors of Heaven, and to open the Gates of Hell; to let in Profaneneſs, Ignorance, Superſtition, and Error. I ſhall need ſay no more: Theſe Things are evident, and abundantly known to all.

12. *In the twelfth Article, my Lords, you have a Diviſion endeavour'd between this and the foreign Reform'd Churches. The Church of Chriſt is one Body; and the Members of Chriſt have a mutual Relation, as Members of the ſame Body. Unity with God's true Church every where, is not only the Beauty, but the Strength of Religion; of which Beauty and Strength he hath ſought to deprive this Church, by his manifold Attempts to break this Union. To which Purpoſe he hath ſuppreſſed the Privileges granted to the* Dutch *and* French *Churches: he hath denied them to be of the ſame Faith and Religion with us: and many other ways hath he declared his Malice to thoſe Churches.*

13. *In the thirteenth Article, as he hath ſought to make an Eccleſiaſtical Diviſion of Religious Difference between us and foreign Nations, ſo he hath ſought to make a Civil Difference between us and his Majeſty's Subjects of the Kingdom of* Scotland: *And theſe he hath promoted by many Innovations there, preſſed by himſelf and his own Authority. When they were uncapable of ſuch Alterations, he adviſed his Majeſty to uſe Violence. He hath made private and publick Collections towards the Maintenance of the War, which he might juſtly call his own War; and with an impudent Boldneſs hath ſtruck Tallies in the* Exchequer *for divers Sums of Money procured by himſelf,* pro Defenſione Regni; *when, by his Counſels, the King was drawn to undertake, not a Defenſive but an Offenſive War.*

14. *He hath, laſtly, thought to ſecure himſelf and his Party, by ſeeking to undermine Parliaments, and thereby hath laboured to bereave this Kingdom of the Legiſlative Power, which can only be uſed in Parliaments; and that we ſhould be left a Kingdom, without that which indeed makes and conſtitutes a Kingdom, and is the only Means to preſerve and reſtore it from Diſtempers and Decays. He hath hereby endeavoured to bereave us of the higheſt Judicatory; ſuch a Judicatory, as is neceſſary and eſſential to our Government, ſome for Caſes of Treaſon, and others concerning the Prerogative of the Crown, and Liberty of the People. It is the Supreme Judicatory, to which all difficult Caſes reſort from other Courts. He hath ſought to deprive the King of the Love and Counſel of his People, and of that Aſſiſtance which he might have from them; and likewiſe to deprive the People of that Relief of Grievances, which they moſt humbly expect from his Majeſty.*

My Lords, The Parliament is the Cabinet wherein the chiefeſt Jewels both of the Crown and Kingdom are depoſited. The great Prerogative of the King and Liberty of the People are moſt effectually exerciſed and maintained by Parliaments. Here, my Lords, you cannot paſs by this Occaſion of great Thanks to God and his Majeſty for paſſing the Bill, whereby the frequent Courſe of Parliaments is eſtabliſhed; which I aſſure myſelf he will by Experience find to be a ſtrong Foundation both of his Honour and of his Crown.

This is all, my Lords, I have to ſay to the Particulars of the Charge. The Commons deſire your Lordſhips, that they may have the ſame way of Examination that they had in the Caſe of the Earl of Strafford; *that is, to examine Members of all kinds, of your Lordſhips Houſe and their own, and others, as they ſhall ſee Cauſe: and thoſe Examinations to be kept ſecret and private, that they may with more advantage be made uſe of when the Matter comes to Trial. They have declared, That they reſerve to themſelves the Power of making Additional Articles; by which they intend to reduce his Charge to be more particular and certain, in reſpect of the ſeveral Times, Occaſion, and other Circumſtances of the Offences therein charged. And that your Lordſhips would be pleaſed to put this Cauſe in ſuch a quick way of Proceeding, that theſe great and dangerous Crimes, together with the Offenders, may be brought to a juſt Judgment.*

When the Clerk of the Parliament had done reading, I humbly craved leave of the Lords to ſpeak a few Words; which were to this effect:

‘My Lords, this is a great and a heavy Charge, and I muſt be unworthy to live, if it can be made good againſt me: For it makes me againſt God, in point of Religion; againſt the King, in point of Allegiance; and againſt the Publick, in point of Safety, under the Juſtice and Protection of Law. And tho' the King be little, if at all mentioned; yet I am bold to name him, becauſe I have ever been of Opinion, that the King and his People are ſo joined together in one Civil and Politick Body, as that it is not poſſible for any Man to be true to the King, as King, that ſhall be found treacherous to the State eſtabliſhed by Law, and work to the Subverſion of the People: Tho' perhaps every one, that is ſo, is not able to ſee through all the Conſequences, by which one depends upon the other. So my Charge, my Lords, is exceeding heavy in itſelf; tho' I, as yet, do not altogether feel the Weight of it. For 'tis yet (as your Lordſhips ſee) but in Generals; and Generals make a great Noiſe, but no Proof: Whereas 'tis Proof upon Particulars that makes the Weight of a Charge ſit cloſe upon any Man. Now, my Lords, 'tis an old and a true Rule, *Errare contingit deſcendendo*, Error doth moſt often happen, and beſt appear, when Men deſcend to Particulars: And with them when I ſhall be charged, I hope my Innocence will furniſh me with a ſufficient Anſwer to any Error of mine, that ſhall be thought criminal, or any way worthy the Cognizance of this High and Honourable Court. As for human Frailties, as I cannot acquit myſelf of them, ſo, I preſume, your Lordſhips will be favourable Judges of them: Since in the Tranſaction of ſo many Buſineſſes as paſſed my Hands, Men, far abler than ever I can be, have been ſubject to them; and, perhaps, to as many and as great. But for Corruption in the leaſt degree (I humbly praiſe God for it), I fear no Accuſer that will ſpeak Truth. But, my Lords, that which goes neareſt unto me among theſe Articles, is, That I ſhould be thought foul and falſe in the Profeſſion of my Religion: As if I ſhould profeſs with the Church of *England*, and have my Heart at *Rome*, and labour by all cunning Ways to bring *Romiſh* Superſtition in upon the Kingdom. This (my Lords) I confeſs, troubles me exceedingly: And if I ſhould forget myſelf, and fall into Paſſion upon it, I ſhould but be in that Caſe which St. *Jerome* confeſſed he was in, when he knew not how to be patient, when Falſhood in Religion was charged upon him. And yet that was nothing ſo high a Charge as this which is laid againſt me: Which is not only to be baſely falſe myſelf, but withal, to labour to ſpread the ſame Falſhood over the whole Kingdom.’

And here I humbly beſought their Lordſhips, that I might a little inlarge myſelf, and I did ſo. But becauſe I purpoſe here to ſet down the general Articles that were brought up againſt me, and that one of them comes home to this Point of Religion; I ſhall put it off till I come to [a] that Article, and there ſet it down at large, what I now ſaid. And this I do to avoid an uſeleſs and tedious Repetition. Here then follow the Articles themſelves, as they were that Day charged upon me.

[a] *'Tis Article* 10.

Articles of the Commons *aſſembled in Parliament, in Maintenance of their Accuſation againſt* William Laud, *Archbiſhop of* Canterbury, *whereby he ſtands charged with High-Treaſon, and other High Crimes and Miſdemeanours.*

I. THAT he hath traitorouſly endeavoured to ſubvert the Fundamental Laws and Government of [b] the Kingdom; and inſtead thereof, to introduce an Arbitrary and Tyrannical Government againſt Law: And to that end hath wickedly and traitorouſly adviſed his Majeſty, that he might, at his own Will and Pleaſure, levy and take Money of his Subjects without their Conſent in Parliament. And this, he affirmed, was warrantable by the Law of God.

[b] *This Kingdom of* England, Ruſh. & Prynn.

II. He hath, for the better Accompliſhment of that his traitorous Deſign, adviſed and procured divers Sermons, and other Diſcourſes, to be preached, printed and publiſhed, in which the Authority of Parliaments, and the Force of the Laws of this Kingdom are denied; and an abſolute and unlimited Power over the Perſons and Eſtates of his Majeſty's Subjects is maintained and defended, not only in the King, but alſo in himſelf, and other Biſhops, above and againſt the Law. And he hath been a great Protector, Favourer and Promoter of the Publiſhers of ſuch falſe and pernicious Opinions.

III. He hath by Letters, Meſſages, Threats, Promiſes, and divers other Ways, to Judges and other Miniſters of Juſtice, interrupted and perverted; and at other times, by the means aforeſaid, hath endeavoured to interrupt and pervert the Courſe of Juſtice in his Majeſty's Courts at *Weſtminſter*, and other Courts, to the Subverſion of the Laws of this Kingdom: whereby ſundry of his Majeſty's Subjects have been ſtopped in their juſt Suits, and deprived of their lawful Rights, and ſubjected to his tyrannical Will, to their utter Ruin and Deſtruction.

IV. That the ſaid Archbiſhop hath traitorouſly and corruptly ſold Juſtice to thoſe that have had Cauſes depending before him, by colour of his Eccleſiaſtical Juriſdicton, as Archbiſhop, High-Commiſſioner, Referee, or otherwiſe; and hath taken unlawful Gifts and Bribes of his Majeſty's Subjects: And hath, as much as in him lieth, endeavoured to corrupt other Courts of Juſtice, by adviſing [and procuring] his Majeſty to ſell Places of Judicature, and other Offices, [and procuring the Sale of them] contrary to the Laws and Statutes in that behalf.

Ruſh. & Prynn.

Deſunt in Ruſh. & Prynn.

V. He hath traitorouſly cauſed a Book of Canons to be compoſed and publiſhed, [and thoſe Canons to be put in execution] without any lawful Warrant and Authority in that behalf. In which pretended Canons many Matters are contained contrary to the King's Prerogative, to the Fundamental Laws and Statutes of this Realm, to the Right of Parliament, to the Propriety and Liberty of the Subjects; and Matters tending to Sedition, and of dangerous Conſequence; and to the Eſtabliſhment of a vaſt, unlawful, and preſumptuous Power in himſelf and his Succeſſors: Many of the which Canons, by the Practice of the ſaid Archbiſhop, were ſurreptitiouſly paſſed in the laſt Convocation, without due Conſideration and Debate; others by Fear and Compulſion were ſubſcribed to by the Prelates and Clerks there aſſembled, which had never been voted and paſſed in the Convocation, as they ought to have been. And the ſaid Archbiſhop hath contrived, and endeavoured to aſſure and confirm the unlawful and exorbitant Power which he hath uſurped and exerciſed over his Majeſty's Subjects, by a wicked and ungodly Oath, in one of the ſaid pretended Canons, enjoined to be taken by all the Clergy, and many of the Laity of this Kingdom.

Deſunt in Ruſh. & Prynn.

VI. He hath traitorouſly aſſumed to himſelf a papal and tyrannical Power, both in Eccleſiaſtical and Temporal Matters, over his Majeſty's Subjects in this Realm of *England*, and other Places, to the Diſinheriſon of the Crown, Diſhonour of his Majeſty, and Derogation of his ſupreme Authority in Eccleſiaſtical Matters. And the ſaid Archbiſhop claims the King's Eccleſiaſtical Juriſdiction, as incident to his Epiſcopal and Archiepiſcopal Office in this Kingdom; and doth deny the ſame to be derived from the Crown of *England:* which he hath accordingly exerciſed, to the high Contempt of his Royal Majeſty, and to the Deſtruction of [a divers of] the King's liege People in their Perſons and Eſtates.

[a] Ruſh. & Prynn.

VII. That he hath traitorouſly endeavoured to alter and ſubvert God's true Religion by Law eſtabliſhed in this Realm; and inſtead thereof, to ſet up Popiſh Superſtition and Idolatry: and to that end hath declared and maintained in Speeches and printed Books divers Popiſh Doctrines and Opinions, contrary to the Articles of Religion eſtabliſhed [b by Law.] He hath urged and enjoined divers popiſh and ſuperſtitious Ceremonies, without any warrant of Law; and hath cruelly perſecuted thoſe who have oppoſed the ſame, by corporal Puniſhment and Impriſonment; and moſt unjuſtly vexed others who refuſed to conform thereto, by Eccleſiaſtical Cenſures of Excommunication, Suſpenſion, Deprivation, and Degradation, contrary to the Law of the Kingdom.

[b] Ruſhw. & Prynn.

VIII. That for the better advancing of his Traitorous Purpoſe and Deſigns, he did abuſe the great Power and Truſt his Majeſty repoſed in him; and did intrude upon the Places of divers great Officers, and upon the Right of [c] divers of his Majeſty's Subjects: whereby he did procure to himſelf the Nomination of ſundry Perſons to Eccleſiaſtical Dignities, Promotions and Benefices, belonging to his Majeſty, and divers of the Nobility, Clergy, and others; and hath taken upon him the [d] Nomination of Chaplains to the King; by which means he hath preferred to his Majeſty's Service, and to other great Promotions in the Church, ſuch as have been popiſhly affected, or otherwiſe unſound and corrupt both in Doctrine and Manners.

[c] *Other*, Ruſh. & Prynn.

[d] *Commendation*, Ruſh. & Prynn.

IX. He hath for the ſame traitorous and wicked Intent, choſen and employed ſuch Men to be his [e own Domeſtical] Chaplains, whom he knew to be notoriouſly diſaffected to the Reformed Religion, groſly addicted to popiſh Superſtition, and erroneous and unſound both in Judgment and Practice. And to them, or ſome of them, he hath committed Licenſing of Books to be printed; by which means divers falſe and ſuperſtitious Books have been publiſhed, to the great Scandal of Religion, and to the ſeducing of many of his Majeſty's Subjects.

[e] Prynn & Ruſhworth.

X. He hath traitorouſly and wickedly endeavoured to reconcile the Church of *England* with the Church of *Rome:* And for the effecting thereof, hath conſorted and confederated with divers Popiſh Prieſts and Jeſuits; and hath kept ſecret Intelligence with the Pope of *Rome:* And by himſelf, his Agents and Inſtruments, treated with ſuch as have from thence received Authority and Inſtruction. He hath permitted and countenanced a Popiſh Hierarchy or Eccleſiaſtical Government to be eſtabliſhed in this Kingdom. By all which traitorous and malicious Practices this Church and Kingdom have been exceedingly indangered, and like to fall under the Tyranny of the *Roman* See.

XI. He in his own Perſon, and his Suffragans, Viſitors, Surrogates, Chancellors, or other Officers, by his Command, have cauſed divers learned, pious, and orthodox [f] Preachers of God's Word to be ſilenced, ſuſpended, deprived, degraded, excommunicated, or otherwiſe grieved and vexed, without any juſt and lawful Cauſe; whereby, and by divers other Means, he hath hindred the Preaching of God's Word, cauſed divers of his Majeſty's Loyal Subjects to forſake the Kingdom, and increaſed and cheriſhed Ignorance and Profaneneſs amongſt the People; that ſo he might the better facilitate the Way to the effecting of his own wicked and traitorous [g] Deſigns of altering and corrupting the true Religion here eſtabliſhed.

[f] *Miniſters*, Ruſh. & Prynn.

[g] *Deſign*, Ruſh. & Prynn.

XII. He hath traitorouſly endeavoured to cauſe Diviſion and Diſcord between the Church of *England* and other Reformed Churches; and to that end hath ſuppreſſed and abrogated the Privileges and Immunities which have been by his Majeſty and his Royal Anceſtors granted to the *French* and *Dutch* Churches in this Kingdom: And divers other Ways hath expreſſed his Malice and Diſaffection to theſe Churches, that ſo, by ſuch [h] Diſunion, the Papiſts might have more Advantage for the Overthrow and Extirpation of both.

[h] *Diſtinction*, Ruſhw. *Diſunion*, Prynn.

XIII. He hath maliciouſly and traitorouſly plotted and endeavoured to ſtir up War and Enmity betwixt his Majeſty's two Kingdoms of *England* and *Scotland*; and to that purpoſe hath laboured to introduce into the Kingdom of *Scotland* divers Innovations both in Religion and Government; all or the moſt part tending to Popery and Superſtition: to the great Grievance and Diſcontent of his Majeſty's Subjects of that Nation. And for their refuſing to ſubmit to ſuch Innovations, he did traitorouſly adviſe his Majeſty to ſubdue them by Force of Arms: And by his own Authority and Power, contrary to Law, did procure ſundry of his Majeſty's Subjects, and inforced the Clergy of this Kingdom, to contribute toward the Maintenance of that War. And when his Majeſty, with much Wiſdom and Juſtice, had made a Pacification betwixt the two Kingdoms, the ſaid Archbiſhop did preſumptuouſly cenſure that Pacification, as diſhonourable to his Majeſty; and [by his Counſel and Endeavours] ſo incenſed his Majeſty againſt his ſaid Subjects of *Scotland*, that he did thereupon, by Advice of the ſaid Archbiſhop, enter into an offenſive War againſt them, to the great Hazard of his Majeſty's Perſon, and his Subjects of both Kingdoms.

Theſe Words are added from Prynn & Ruſh.

XIV. That to preſerve himſelf from being queſtioned for theſe and other his traitorous Courſes, he hath laboured to ſubvert the Rights of Parliament, and the antient Courſe of Parliamentary Proceedings; and by falſe and malicious Slanders to incenſe his Majeſty againſt Parliaments. By which Words, Counſels, and Actions, he hath traitorouſly, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majeſty, to ſet a Diviſion between them, and to ruin and deſtroy his Majeſty's Kingdoms. For which they do impeach him of High-Treaſon againſt our Sovereign Lord the King, his Crown and Dignity.

The ſaid Commons do farther aver, that the ſaid *William* Archbiſhop of *Canterbury*, during the time in which the [a] Treaſons and Offences afore-named were committed, hath been a Biſhop or Archbiſhop in this Realm of *England*, one of the King's Commiſſioners for Eccleſiaſtical Matters, and [b] of his Majeſty's moſt Honourable Privy Council: And that he hath taken an Oath for his faithful Diſcharge of the ſaid Office of Counſellor, and hath likewiſe taken the Oath of Supremacy and Allegiance. And the ſaid Commons, by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any time hereafter any other Accuſation or Impeachment againſt the ſaid Archbiſhop, and alſo of replying to the Anſwers that the ſaid Archbiſhop ſhall make unto the ſaid Articles, or to any of them; and of offering farther Proof alſo of the Premiſes, or any of them, [c or of any other Impeachment or Accuſation that ſhall be exhibited by them] as the Caſe ſhall, according to the Courſe of Parliaments, require; do pray that the ſaid Archbiſhop may be put to anſwer to all and every the Premiſes; and that ſuch Proceedings, Examinations, Trial and Judgment, may be upon every of them had and uſed, as is agreeable to Law and Juſtice.

[a] *Aforementioned Crimes*, Ruſhworth. *Crimes aforementioned were done and committed*, Prynn.

[b] *One of*, Ruſh. & Prynn.

[c] *Theſe words are added from* Prynn & Ruſhworth.

When theſe Articles had been read unto me in the Upper Houſe, and I had ſpoken to the Lords, in a general Anſwer to them, what I thought fit, as is before expreſſed; I humbly deſired of the Lords (this being upon *Friday, Febr.* 26. 1640.) that my going to the *Tower* might be put off till the *Monday* after, that ſo I might have time to be the better fitted for my Lodging. This, I humbly thank their Lordſhips, was granted.

[February 20. 1640. *Ordered by the Lords in Parliament, that the Lord Archbiſhop of* Canterbury *his Grace, ſhall ſtand committed to the Tower of* London. *But the Pleaſure of this Houſe is, that he continue ſtill in the ſafe Cuſtody of the Gentleman Uſher of this Houſe, till* Monday *the firſt of* March 1640, *and then that the Lieutenant receive his Grace in his ſafeCuſtody, until the Pleaſure of this Houſe be further known; and in the mean time Mr.* Maxwell *is to be reſponſible for him, and not to permit him to go Abroad, and that the Archbiſhop of* Canterbury *and the Earl of* Strafford *ſhall not come together.*]

I returned to Mr. *Maxwell*'s Cuſtody, and that Afternoon ſent my Steward to Sir *William Balfore*, then Lieutenant, that a Lodging might be had for me with as much Convenience as might be. On Monday, *March* 1. 1640. Mr. *Maxwell* carried me in his Coach to the *Tower*. St. *George*'s Feaſt, having been formerly put off, was to begin that Evening. By this means Mr. *Maxwell* (whoſe Office tied him to Attendance upon that Solemnity) could not poſſibly go with me to the *Tower* at Evening, as I deſired. Therefore Noon, when the Citizens were at dinner, was choſen as the next fitteſt Time for Privateneſs. All was well till I paſſed thro' *Newgate* Shambles, and entred into *Cheapſide*. There ſome one Prentice firſt hollow'd out; and more follow'd the Coach, (the number ſtill increaſing as they went) till by that time I came to the *Exchange* the ſhouting was exceeding great. And ſo they follow'd me with Clamour and Revilings, even beyond Barbarity itſelf; not giving over, till the Coach was entred in at the *Tower*-Gate.

[*Afterwards the Lords made the following Orders.*

An Ordinance of the Lords and Commons, aſſembled in Parliament, concerning the Archbiſhop of *Canterbury*.

Die Martis, 16 *Maii* 1643.

' WHEREAS William Laud, *Archbiſhop of* Canterbury, *ſtandeth impeached in this preſent Parliament for High-Treaſon, and for divers other great Offences and Miſdemeanours; and by reaſon of many great and weighty Buſineſſes he cannot yet be brought to Trial for the ſaid Offences and Miſdemeanours; and he, in reſpect of his ſaid Archbiſhoprick of* Canterbury, *hath power to give and collate fit Clerks to divers Parſonages, Vicaridges, Prebends, and other Eccleſiaſtical Promotions and Preferments; and if any of them ſhould become void, and he left to prefer whom he pleaſe to the ſame, the*

‘ *ſame may prove very inconvenient, he beſtowing them upon unfit and unworthy Perſons.*

‘ *Be it therefore ordered and ordained, by the Lords and Commons in this preſent Parliament, That in caſe any of the aforeſaid Parſonages, Vicaridges, Prebends, or other Eccleſiaſtical Promotions or Preferments, now be, or ſhall hereafter, and before the Trial of the ſaid Lord Archbiſhop, become void; That the ſaid Lord Archbiſhop of* Canterbury *ſhall forbear to preſent or collate any Perſon or Perſons thereunto, without the Leave and Order of both Houſes of Parliament. And it is further ordered and ordained, That the ſaid Lord Archbiſhop ſhall, from time to time, until his ſaid Trial, preſent and collate ſuch fit Perſon or Perſons, to every ſuch Parſonage, Vicaridge, Prebend, and other Eccleſiaſtical Preferment, as aforeſaid, which now are, or hereafter before his ſaid Trial ſhall become void, as by both Houſes of Parliament ſhall be nominated and appointed. And it is further ordered by the ſaid Lords and Commons in Parliament, that all Archdeacons, Regiſters, and other Officers, Miniſters, and Perſons whatſoever, ſhall forbear to give or make any Admiſſion, Inſtitution, Collation, or Induction of any Perſon or Perſons whatſoever, which by the ſaid Archbiſhop ſhall be preſented in or to any ſuch Parſonage, Vicaridge, Prebend, or other Eccleſiaſtical Preferment, other than ſuch Perſon and Perſons as ſhall be nominated and appointed by both Houſes of Parliament, as aforeſaid. And it is laſtly ordered, That the Lord Archbiſhop, and the Churchwardens of every Pariſh, and other Officers of the Church, where any Parſonage, Vicaridge, Prebend, or other Eccleſiaſtical Promotions or Preferments in the Donation or Gift of the ſaid Archbiſhop, are; ſhall, within two Months after the reſpective Avoidance thereof, give notice of ſuch Avoidance to the Lord Speaker of the Houſe of Peers, for the time being.*’

Die Sabbati 10 *Junii*, 1643.

An Ordinance of the Lords and Commons aſſembled in Parliament, That all the Temporal Livings, Dignities, and Eccleſiaſtical Promotions, belonging unto William *Lord Archbiſhop of* Canterbury, *be forthwith ſequeſtred by and unto the Parliament.*

‘ W*HEREAS by an Ordinance of Parliament, of the* 16*th of* May 1643. *the Archbiſhop of* Canterbury *is required from time to time, until his Trial, to collate ſuch fit Perſons unto any Eccleſiaſtical Preferment in his Patronage, as ſhall by both Houſes be nominated unto him; and, in purſuance of the ſaid Ordinance, another Ordinance of the Lords and Commons paſt the* 20*th of the ſame Month requiring the ſaid Archbiſhop to collate upon* Edward Corbet, *Fellow of* Merton-College *in* Oxford, *the Rectory of* Chartham *in the County of* Kent, *void by the Death of Dr.* Bargrave, *the laſt Incumbent; and whereas the ſaid Archbiſhop of* Canterbury *refuſeth Obedience to the ſaid Ordinance; it is therefore ordered, and be it ſo ordained by the Lords and Commons in Parliament, That all the Temporalities of the Archbiſhop of* Canterbury *be hereby ſequeſter'd by and unto the Parliament, and* William *Lord Archbiſhop of* Canterbury *be ſuſpended* ab Officio & Beneficio, & omni & omnimoda Juriſdictione Archiepiſcopali, *until he be either convicted or acquitted of High-Treaſon, for which he ſtands now accuſed. And whatſoever Livings, Dignities, or Eccleſiaſtical Promotions, in the ſaid Archbiſhop's Gift or Collation, are, or hereafter ſhall be void, ſhall henceforth be inſtituted or inducted into by the Archbiſhop's Vicar-General, or any other having Authority in his behalf, upon the Nomination and Recommendation of both Houſes of Parliament, during the time of the Suſpenſion and Sequeſtration aforeſaid. And upon this Ordinance it is ordered, and be it ſo ordained by the Lords and Commons in Parliament, that the ſaid* Edward Corbet *be, and is hereby nominated and recommended forthwith, upon ſight hereof, to be admitted, inſtituted, and inducted by the Vicar-General aforeſaid, or any other having Authority in his behalf, into the ſaid Rectory of* Chartham, ratione Suſpenſionis Domini Gulielmi Archiepiſcopi Cantuarienſis, & Sequeſtrationis Temporalium Archiepiſcopatus in manibus ſupremæ Curiæ Parliamenti jam exiſtentium, *the ſame belonging unto their Gift. And it is hereby further ordained by the Lords and Commons in Parliament, that during the Suſpenſion and Sequeſtration aforeſaid, the Juriſdiction of the ſaid Archbiſhop ſhall be executed and exerciſed by his Vicar-General, and other his inferiour Judges and Officers, as formerly the ſame hath been.*’]

On *Tueſday, Octob.* 24. an Order was brought me from the Lords, dated *Octob.* 23. with a Copy of ten Additional Articles, brought up by the Commons againſt me. This Order required me to make my Anſwer in writing by the 30th of the ſame Month. Theſe Articles charged me not with Treaſon only, as the former did, but with Treaſon, and other high Crimes and Miſdemeanours.

[*Further Articles of Impeachment by the Commons aſſembled in Parliament, againſt* William Laud, *Archbiſhop of* Canterbury, *of High-Treaſon, and divers High Crimes and Miſdemeanours; as followeth.*

I. T*HAT the ſaid Archbiſhop of* Canterbury, *to introduce an Arbitrary Government within this Realm, and to deſtroy Parliaments, in the third and fourth Year of his Majeſty's Reign that now is, a Parliament being then called and ſitting at* Weſtminſter, *traitorouſly and maliciouſly cauſed the ſaid Parliament to be diſſolved, to the great Grievance of his Majeſty's Subjects, and Prejudice of this Commonwealth. And ſoon after the Diſſolution thereof, gave divers Propoſitions under his Hand to* George *then Duke of* Buckingham; *caſting therein many falſe Aſperſions upon the ſaid Parliament, calling it a factious Parliament, and falſly affirming that it had caſt many Scandals upon his Majeſty, and had uſed him like a Child in his Minority; ſtiling them Puritans, and commending the Papiſts for harmleſs and peaceable Subjects.*

II. *That within the ſpace of ten Years laſt paſt, the ſaid Archbiſhop hath treacherouſly endeavoured to ſubvert the Fundamental Laws of this Realm; and to that end hath in like manner endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the Laws and Statutes of the Realm. And for Manifeſtation thereof, about ſix Years laſt paſt, being then a Privy-Counſellor to his Majeſty, and ſitting at the Council-Table, he ſaid,* That as long as he ſat there, they ſhould know, that an Order of that Board ſhould be of equal force with a Law or Act of Parliament. *And at another time uſed theſe Words, That* he hoped ere long, that the Canons of the Church and the King's Prerogative ſhould be of as great power as an Act of Parliament. *And at another time ſaid,* That thoſe that would not yield to the King's Power, he would cruſh them to pieces.

III. *That the ſaid Archbiſhop, to advance the Canons of the Church, and Power Eccleſiaſtical, above the Law of the Land, and to pervert and hinder the Courſe of Juſtice, hath at divers times within the ſaid time, by his Letters, and other undue Means and Solicitations uſed to Judges, oppoſed and ſtopped the granting of his Majeſty's Writs of Prohibition, where the ſame ought to have been granted for ſtay of Proceedings in the Eccleſiaſtical Court: whereby Juſtice hath been delayed and hindred, and the Judges diverted from doing their Duties.*

IV. *That for the end and purpoſe aforeſaid, about ſeven Years laſt paſt, a Judgment being given in his Majeſty's Court of* King's-Bench *againſt one* Burley *a Parſon, being a Man of bad Life and Converſation, in an Information upon the Statute of* 21 Hen. VIII. *for wilful Non-Reſidency; the ſaid Archbiſhop, by Solicitations and other undue Means uſed to the Judges of that Court, cauſed Execution upon the ſaid Judgment to be ſtayed: and being moved therein, and made acquainted with the bad Life and Converſation of the ſaid Parſon, he ſaid,* That he had ſpoken to the Judges for him, and that he would never ſuffer a Judgment to paſs againſt any Clergyman by *Nihil dicit.*

V. *That the ſaid Archbiſhop about eight Years laſt paſt, being then alſo a Privy-Counſellor to his Majeſty, for the end and purpoſe aforeſaid, cauſed Sir* John Corbet *of* Stoke *in the County of* Salop *Baronet, then a Juſtice of Peace of the ſaid County, to be committed to the Priſon of the* Fleet, *where he continued Priſoner for the ſpace of half a year or more, for no other cauſe, but for calling for the* Petition of Right, *and cauſing it to be read at the Seſſions of the Peace for that County, upon a juſt and neceſſary Occaſion. And during the time of his ſaid Impriſonment, the ſaid Archbiſhop without any Colour of Right, by a Writing under the Seal of his Archbiſhoprick, granted away a parcel of the Glebe-Land of the Church of* Adderly *in the ſaid County, whereof the ſaid Sir* John Corbet *was then Patron, unto* Robert *Viſcount* Kilmurrey, *without the Conſent of the ſaid Sir* John, *or the then Incumbent of the ſaid Church: which ſaid Viſcount* Kilmurrey *built a Chapel upon the ſaid parcel of Glebe-Land, to the great Prejudice of the ſaid Sir* John Corbet, *which hath cauſed great Suits and Contentions between them. And whereas the ſaid Sir* John Corbet *had a Judgment againſt Sir* James Stonehouſe *Knight, in an Action of Waſte, in his Majeſty's Court of* Common-Pleas *at* Weſtminſter, *which was afterwards affirmed on a Writ of Error in the* King's-Bench, *and Execution thereupon awarded; yet the ſaid Sir* John *by means of the ſaid Archbiſhop could not have the effect thereof, but was committed to Priſon by the ſaid Archbiſhop and others at the Council-Table, until he had ſubmitted himſelf unto the Order of the ſaid Table, whereby he loſt the Benefit of the ſaid Judgment and Execution.*

VI. *That whereas divers Gifts and Diſpoſitions of divers Sums of Money were heretofore made by divers charitable and well-diſpoſed Perſons, for the buying in of divers Impropriations for the Maintenance of preaching the Word of God in ſeveral Churches; the ſaid Archbiſhop about eight Years laſt paſt wilfully and maliciouſly cauſed the ſaid Gifts, Feoffments, and Conveyances made to the Uſes aforeſaid, to be overthrown in his Majeſty's Court of* Exchequer, *contrary to Law, as things dangerous to the Church and State, under the ſpecious pretence of buying in Appropriations; whereby that pious Work was ſuppreſſed and trodden down, to the great Diſhonour of God, and Scandal of Religion.*

VII. *That the ſaid Archbiſhop at ſeveral times, within theſe ten Years laſt paſt, at* Weſtminſter, *and elſewhere within this Realm, contrary to the known Laws of this Land, hath endeavoured to advance Popery and Superſtition within the Realm: And for that end and purpoſe hath wittingly and willingly received, harboured, and relieved divers Popiſh Prieſts and Jeſuits; namely, one called* Sancta Clara, *alias* Damport, *a dangerous Perſon and* Franciſcan *Friar: who having written a Popiſh and Seditious Book, entitled,* Deus, Natura, Gratia, *wherein the Thirty-nine Articles of the Church of* England, *eſtabliſhed by Act of Parliament, were much traduced and ſcandalized; the ſaid Archbiſhop had divers Conferences with him, while he was writing the ſaid Book: and did alſo provide Maintenance and Entertainment for one Monſieur* S. Giles, *a Popiſh Prieſt, at* Oxford, *knowing him to be a Popiſh Prieſt.*

VIII. *That the ſaid Archbiſhop about four Years laſt paſt, at* Weſtminſter *aforeſaid, ſaid,* That there muſt be a Blow given to the Church, ſuch as had not been yet given, before it could be brought to Conformity; *declaring thereby his Intention to be, to ſhake and alter the true Proteſtant Religion eſtabliſhed in the Church of* England.

IX. *That in or about the Month of* May, 1640. *preſently after the Diſſolution of the laſt Parliament, the ſaid Archbiſhop, for the Ends and Purpoſes aforeſaid, cauſed a Synod or Convocation of the Clergy to be held for the ſeveral Provinces of* Canterbury *and* York, *wherein were made and eſtabliſhed by his means and procurement divers Canons and Conſtitutions Eccleſiaſtical; contrary to the Laws of this Realm, the Rights and Privileges of Parliament, the Liberty and Propriety of the Subject, tending alſo to Sedition, and of dangerous Conſequence. And among other things, the ſaid Archbiſhop cauſed a moſt dangerous and illegal Oath to be therein made and contrived, the Tenour whereof followeth in theſe words:*—That I *A. B.* do ſwear that I do approve the Doctrine and Diſcipline or Government eſtabliſhed in the Church of *England*, as containing all things neceſſary to Salvation; and that I will not endeavour by myſelf or any other, directly or indirectly, to bring in any Popiſh Doctrine, contrary to that which is ſo eſtabliſhed: Nor will I ever give my Conſent to alter the Government of this Church by Archbiſhops, Biſhops, Deans, and Archdeacons, *&c.* as it ſtands now eſtabliſhed, and as by Right it ought to ſtand: nor yet ever ſubject it to the Uſurpations and Superſtitions of the See of *Rome*. And all theſe things I do plainly and ſincerely acknowledge and ſwear, according to the plain and common Senſe and Underſtanding of the ſame Words, without any Equivocation, or mental Evaſion, or ſecret Reſervation whatſoever. And this I do heartily, willingly, and truly upon the Faith of a Chriſtian; ſo help me God in Jeſus Chriſt. *Which Oath the ſaid Archbiſhop himſelf did take, and cauſed divers other Miniſters of the Church to take the ſame, upon Pain of Suſpenſion and Deprivation of their Livings, and other ſevere Penalties; and did alſo cauſe* Godfrey, *then Biſhop of* Glouceſter, *to be committed to Priſon for* *refuſing to ſubſcribe to the ſaid Canons, and to take the ſaid Oath: and afterward the ſaid Biſhop ſubmitting himſelf to take the ſaid Oath, he was ſet at liberty.*

X. *That a little before the calling of the laſt Parliament,* Anno 1640. *a Vote being then paſſed, and a Reſolution taken at the Council-Table, by the Advice of the ſaid Archbiſhop, for aſſiſting of the King in extraordinary Ways, if the ſaid Parliament ſhould prove peeviſh, and refuſe to ſupply his Majeſty: the ſaid Archbiſhop wickedly and maliciouſly adviſed his Majeſty to diſſolve the ſaid Parliament, and accordingly the ſame was diſſolved: And preſently after the ſaid Archbiſhop told his Majeſty,* That now he was abſolved from all Rules of Government, and left free to uſe extraordinary Ways for his Supply.

For all which Matters and Things, the ſaid Commons aſſembled in Parliament, in the Name of themſelves and of all the Commons of England, *do impeach the ſaid Archbiſhop of* Canterbury *of High Treaſon, and other High Crimes and Miſdemeanours, tending to the Subverſion of our Religion, Laws, and Liberties, and to the utter Ruin of this Church and Commonwealth. And the ſaid Commons by Proteſtation ſaving to themſelves the liberty of exhibiting at any time hereafter any further or other Accuſation or Impeachment againſt the ſaid* William Laud, *Archbiſhop of* Canterbury, *and alſo of replying to the Anſwer that he ſhall make unto the ſaid Articles, or any of them; or offering Proof of the Premiſſes, or any other Impeachments or Accuſations, that ſhall be exhibited by them, as the Cauſe ſhall (according to the Courſe of Parliament) require: do pray that he the ſaid* William Laud, *Archbiſhop of* Canterbury, *may be called to anſwer the ſaid ſeveral Crimes and Miſdemeanours, and receive ſuch condign Puniſhment as the ſame ſhall deſerve; and that ſuch further Proceedings may be upon every of them had and uſed againſt him as is agreeable to Law and Juſtice.*

Die Lunæ, 23 *Octob.* 1643.

ORDERED, &c. *That the Lord Archbiſhop of* Canterbury *ſhall put in his Anſwer in writing into this Houſe by the 30th Day of this Inſtant* October, *unto the particular Articles in maintenance of their former Impeachment of High-Treaſon and divers High Crimes and Miſdemeanours, brought up from the Houſe of Commons againſt him, and remaining now before the Lords in Parliament.*]

I ſent inſtantly by the ſame Meſſenger a Petition for longer time; for Means out of my Eſtate to fee my Counſel, and bear the neceſſary Charge of my Trial; for Counſel, and for a Sollicitor and ſome Servants to attend my Buſineſs. The Lords, I humbly thank them, gave me longer time, and aſſigned me Mr. *Hearne*, Mr. *Chute*, Mr. *Hales*; and at my Petition added Mr. *Gerrard.* For Money, they referred me to the Committee of Sequeſtrations; but delayed their Anſwers concerning my Servants, and the Papers of my Defence, which Mr. *Prynn* took from me. For tho' he promiſed me a faithful Reſtitution of them within three or four Days, yet to this Day (being almoſt five Months after) I had received but three Bundles of the twenty, and one which he had from me.

[*To the Honourable the Lords aſſembled in the High Court of Parliament, the Humble Petition of* William Laud, *Archbiſhop of* Canterbury,

Humbly ſheweth,

THAT *he hath received your Lordſhips Order of* October 23. 1643. *with a Copy of the Articles charged againſt him, and requiring him to make anſwer.*

Moſt humbly prayeth, That according to an Order of that Honourable Houſe, he may have Counſel aſſigned him, and that Maſter Hearne *and Maſter* Chute *may be his Counſel, and may have free Liberty to come unto him; and that he may have ſome Money out of his Eſtate to fee his Counſel, and defray his other Charges, he having been for this laſt whole Year burdenſome to his Friends. And further, That he may have all his Papers and Books, moſt of which belong to his Defence, which Maſter* Prynn *took from him by Order of the Lords, delivered unto him, that he may be able to anſwer for himſelf. That alſo he may have Time and Means to ſend for his Witneſſes, which can hardly be done in the time limited: and that he may have his Servants about him, to ſend about his neceſſary Occaſions. And laſtly, That he may have longer time, the Articles being large and many.* And he ſhall ever pray, *&c.*

William Cant.

Which Petition being read in the Lords Houſe, October 24. 1643. *this Order was made:*

Die Martis, 24 *Octob.* 1643.

UPON *the reading of the Petition of the Lord Archbiſhop of* Canterbury *this Day in the Houſe, it is ordered,* &c. *That time is given him until Monday the ſixth of* November *for the putting in his Anſwer in writing into this Houſe unto the particular Articles brought up from the Houſe of Commons, in maintenance of their former Impeachment of High-Treaſon, and divers High Crimes and Miſdemeanours againſt him. That Maſter* Hearne *and Maſter* Chute *are hereby aſſigned of Counſel for the drawing up of his Anſwer, who are to be permitted to have free Acceſs in and out to him. That this Houſe doth hereby recommend to the Committee of Sequeſtrations, that the ſaid Lord Archbiſhop ſhall have ſuch Means afforded him out of his Eſtate, as will enable him to pay his Counſel, and defray his other Charges. That when his Lordſhip ſhall ſet down particularly what Papers and Writings are neceſſary for his Defence that ſhould be reſtored unto him, their Lordſhips will take it into their Conſideration. That upon his Lordſhip's nominating who ſhall be his Sollicitor, the Lords will return their Anſwer. And for the Witneſſes, when a Day ſhall be appointed for his Lordſhip's Trial, this Houſe will give ſuch Directions therein as ſhall be juſt.*]

Friday, *October* 27. I petitioned again, that the Papers of my Defence being (as I was informed) in the hands of the Cloſe Committee, might be delivered unto me; and ſent my Petition, with the Order of the Lords annexed, to the Committee for Sequeſtrations. There many were very favourable, till Mr. *Glyn* was pleaſed to ſay, They were not to allow me Means, and there was a known Courſe in Law, which was, that I might go on *in forma Pauperis*; and ſo was left without any Allowance out of my Eſtate, to fee my Counſel, or ſupply other Wants. This ſucceeding ſo ill with me, I petitioned the Lords again on *Saturday, October* 28. 1643. and then Mr. *Dell* my Secretary was aſſigned me for my Sollicitor; and I was allowed two Servants more to go about my Buſineſs.

[Die Sabbati, 28 *Octob.* 1643.

ORDERED, &c. *That Maſter* Hales *is hereby appointed to be of Counſel with the Lord Archbiſhop of* Canterbury, *with his other Counſel already appointed for the drawing of his Anſwer to the Charge of the Houſe of Commons againſt him. And that Maſter* W. Dell, Richard Cobb, *and Maſter* George Smith, *his Lordſhip's Servants, ſhall have liberty to attend the ſaid Archbiſhop's ſeveral Affairs, and be permitted to come in and out unto him, as there ſhall be occaſion.*]

And the Houſe of Commons, by their Order, agreed to the Lords, that I ſhould have Copies of any of the Papers taken from me, but it ſhould be at my own Charge. Wonderful Favour this, and as much Juſtice! My Eſtate all taken from me, and my Goods ſold, before ever I came to Hearing; and then I may take Copies of my Papers at my own Charge.

On *Tueſday, October* 31. I humbly petitioned the Lords for Direction of my Counſel, how to carry themſelves towards me and my Defence; and that they would honourably be pleaſed, in regard the Articles charged me with Treaſon and Miſdemeanour, and were intermixed one with another, to diſtinguiſh which were for Treaſon, and which for Miſdemeanour; as alſo for longer Time to put in my Anſwer. The Lords upon this gave an Order, that I ſhould have time till *Novemb.* 13. but would declare no Opinion touching the Diſtinguiſhment of the Articles, but left me to my Counſel to adviſe as they pleaſed.

[*To the Right Honourable the Lords aſſembled in Parliament, the Humble Petition of* William *Archbiſhop of* Canterbury,

Moſt humbly ſheweth,

THAT *your Petitioner having preſented againſt him, by the Honourable Houſe of Commons, to your Lordſhips, an Impeachment, intitled,* Further Articles of Impeachment by the Commons aſſembled in Parliament, of High-Treaſon and divers High Crimes and Miſdemeanours; *to which, by your Honourable Order of the 24th of* October *annexed, he is directed to put in his Anſwer in Writing by* Monday *the 6th of* November; *and hath thereby Counſel aſſigned him to draw up the ſame:*

That your Petitioner's Counſel, upon reading of the Articles, finding that as well in the Frame, as the Concluſion thereof, the Matters of Crime and Miſdemeanours are ſo interwoven with References to the Matters thereby charged as Treaſon, as they cannot take upon them to diſtinguiſh them: and conceiving it not to have been your Lordſhip's Intention, by their Aſſignments, that they ſhould adviſe an Anſwer to any part of the Impeachment charged againſt your Petitioner as Treaſon, do forbear to adviſe your Petitioner's Anſwer to the ſaid Articles, without ſome Declaration firſt had, which of the ſaid Articles are intended to be a Charge of High-Treaſon, and which of them of Crimes and Miſdemeanours; without which your Petitioner is like to be deprived of the Aſſiſtance of Counſel, granted by your Lordſhips Order.

Your Petitioner humbly beſeecheth your Lordſhips, in this ſo heavy a Charge on him, from ſo Great and Honourable a Body, in ſuch a Strait of Time, that it may be declared which of the ſaid Articles are intended to be Charges of Crimes and Miſdemeanours only, in which your Petitioner may have the Aſſiſtance of his Counſel aſſigned him, to adviſe him in his Anſwer thereunto: And that your Lordſhips will be further honourably pleaſed to inlarge your Petitioner in the Time allotted for his Anſwer. And your Petitioner ſhall pray, *&c.*

William Cant.

Upon which Petition, this Order was formed:

Die Martis, 31 *Octob.*

ORDERED, &c. *That the Lord Archbiſhop of* Canterbury *ſhall have time to put in his Anſwer to the Impeachment of the Houſe of Commons, until* Monday *the 13th of* November *next. And that this Houſe doth forbear to declare any Opinion concerning the ſeveral Articles of the ſaid Impeachment, but leaves it to his Counſel to do and adviſe as his Counſel ſhall think moſt fitting.*]

My Counſel told me plainly, I might as well have no Counſel, if the Articles were not diſtinguiſhed; for they were ſo woven one within another, and ſo knit up together in the Concluſion, that they might refer all to Treaſon, and ſo they be ſuffered to give me no Counſel at all in Matter of Fact. Hereupon they drew me another Petition to the ſame Effect, which I cauſed to be delivered *Novemb.* 6. but it received the ſame Anſwer. Then *Novemb.* 7. being *Wedneſday* I petition'd the Houſe of Commons to the ſame Purpoſe: And *Novemb.* 8. this my Petition was read in the Houſe of Commons; and after a ſhort Debate, the Reſolution was, That they being my Accuſers, would not meddle with any thing, but left all to the Order of the Lords before whom the Buſineſs was, and my Counſel's own Judgment thereupon. This ſeemed very hard, not only to myſelf and my Counſel, but to all indifferent Men that heard it. In the mean time, I could reſort no whither but to Patience and God's Mercy.

[Die Veneris, 10 *Novemb.* 1643.

ORDERED, *That the Lieutenant of the* Tower, *or his Deputies, ſhall bring in Safety the Lord Archbiſhop of* Canterbury *before their Lordſhips on* Monday *the 13th of this Inſtant* November, *by Ten of the Clock in the Morning, to put in his Anſwer into the Houſe to the Impeachment of the Houſe of Commons, remaining now before the Lords in Parliament; and this to be a ſufficient Warrant in that behalf.*

To the Gentleman-Uſher, *&c.*]

November 13. I appeared in the Parliament-Houſe according to the Order, and was at the Bar. That which I ſpake to the Lord, was this:
' That I had no Skill to judge of the Streights into which I might fall by
' my Plea which I had reſolved on, being left without all Aſſiſtance of
' my Counſel, in regard of the Nature and Form of the Impeachment that
' was againſt me. That yet my Innocency prompted me to a ready

‘ Obedience of their Lordſhips Order, caſting myſelf wholly upon God's ‘ Mercy, their Lordſhips Juſtice, and my own Innocency.’ Then I humbly deſired that their Lordſhips Order firſt, and the Impeachment after, might be read. This done, I put in my Anſwer in Writing, as I was ordered to do, and humbly prayed it might be entred. My Anſwer was: *All Advantages of Law againſt this Impeachment ſaved and reſerved to this Defendant, he pleads Not Guilty to all and every Part of the Impeachment, in Manner and Form as 'tis charged in the Articles:* And to this Anſwer I put my Hand.

[*The Humble Anſwer of* William *Archbiſhop of* Canterbury, *to the further Articles of Impeachment of High-Treaſon and divers High Crimes and Miſdemeanours exhibited againſt him by the Honourable Houſe of Commons, according to Direction of an Order of this Honourable Houſe of the* 13*th of* Octob. *laſt.*

A*LL Advantages of Exception to the ſaid Articles of Impeachment, to this Defendant ſaved and reſerved, this Defendant humbly ſaith, That he is* not guilty *of all or any the Matters by the ſaid Impeachment charged, in ſuch Manner and Form as the ſame are by the ſaid Articles of Impeachment charged.*]

My Anſwer being thus put in, I humbly beſought their Honourable Lordſhips, ‘ To take into their Conſideration my great Years, being ‘ Threeſcore and Ten compleat, and my Memory, and other Faculties, ‘ by Age and Affliction much decayed: my long Impriſonment, wanting very little of three whole Years, and this laſt Year little better ‘ than cloſe Impriſonment: my want of Skill and Knowledge in the Laws ‘ to defend myſelf: the Generality and Incertainty of almoſt all the Articles, ſo that I cannot ſee any Particulars againſt which I may provide ‘ myſelf. In the next place, I did thankfully acknowledge their Lordſhips ‘ honourable Favour, in aſſigning me ſuch Counſel as I deſired: But I ‘ told their Lordſhips withal, that as my Counſel were moſt ready to obey ‘ their Lordſhips in all the Commands laid upon them, ſo there were certain Doubts ariſen in them, how far they might adviſe me without offence; conſidering the Charges againſt me were ſo interwoven, and left ‘ without all Diſtinguiſhment, what is intended as a Charge of Treaſon, ‘ and what of Crime and Miſdemeanour: That to remove theſe Doubts, I ‘ had humbly beſought their Lordſhips twice for Diſtinguiſhment, by ‘ ſeveral Petitions: That their Lordſhips not thinking it fit to diſtinguiſh, ‘ I have without Advice of Counſel put in my Plea, as their Lordſhips ‘ ſee: But do moſt humbly pray, that their Lordſhips will take me ſo far ‘ into Conſideration, as that I may not loſe the benefit of my Counſel ‘ for Law in all, or any; and for Law and Fact, in whatſoever is not ‘ charged as Treaſon, when it ſhall be diſtinguiſhed: As ſtill my Prayers ‘ were, that by their Lordſhips Wiſdom and honourable Direction, ſome ‘ way might be found to diſtinguiſh them; and that having (not without ‘ much difficulty) prevailed with my Counſel to attend, their Lordſhips ‘ would be pleaſed to hear them ſpeak in this perplexed Buſineſs.’ While I was ſpeaking this, the Lords were very attentive, and two of them took Pen and Paper at the Table, and took Notes: And it was unanimouſly granted, that my Counſel ſhould be heard; and ſo they were. And the Order then made upon their Hearing was, that they ſhould adviſe me, and be heard themſelves in all things concerning Matter of Law, and in all things, whether of Law or Fact, that were not charged as Treaſon; and that they would think upon the Diſtinguiſhment in time convenient.

[Die Lunæ, 13 *Novemb.* 1643.

O*RDERED by the Lords in Parliament, That the Lord Archbiſhop of* Canterbury'*s Counſel ſhall provide themſelves to adviſe him in Point of Law, in all the Articles of the whole Charge; and for the Matter of Fact, when the Cauſe comes to be proſecuted by the Houſe of Commons, as there ſhall be need, their Lordſhips will give further Directions in due time.*

On the 11*th of* December 1643, *the Houſe of Commons made this enſuing Order:*

11 December 1643.

O*RDERED, That the Committee for the Trial of the Archbiſhop of* Canterbury *do meet this Afternoon at Two of the Clock in the* Star-Chamber, *to prepare the Evidence againſt the Archbiſhop of* Canterbury; *and to ſummon ſuch Witneſſes as are needful, and prepare the Buſineſs fit for Trial, and to acquaint the Houſe when they are ready; and this they are to do with all convenient Speed they can, and to have Power to ſend for Parties, Witneſſes, Papers, Records,* &c. *And the Care thereof is particularly committed unto Serjeant* Wilde.]

Wedneſday at Night, *Jan* 3. 1643. I received an Order for my Appearance, and to anſwer to the Impeachment againſt me, on the *Monday* following, *Jan.* 8.

[Die Mercurii, 3 *Jan.* 1643.

I*T is this Day ordered by the Lords in Parliament, That this Houſe will proceed againſt* William Laud *Archbiſhop of* Canterbury, *upon the Impeachment brought up from the Houſe of Commons for High Crimes and Miſdemeanours, on* Monday *Morning next at Ten of the Clock, being the Eighth of this Inſtant* January 1643. *At which time the ſaid Archbiſhop is to prepare himſelf for his Defence.*

To the Gentleman-Uſher attending this Houſe, or his Deputy, to be delivered to the Lieutenant of the *Tower*, or his Deputy, for the Archbiſhop.

Jan. 3. 1643. *A Meſſage ſent from the Lords by Sir* Robert Rich, *and Mr.* Page, The Lords commanded us to put you in Mind, That the Archbiſhop of *Canterbury* hath put in his Plea to the Impeachment of this Houſe ſent up to the Lords ſome time ſince, which they deſire you to take into Conſideration what is fit to be done in it.

Jan. 5. *The Houſe of Commons deſired the Lords to appoint a Committee to examine ſome Witneſſes upon Oath, againſt the Archbiſhop, in the Preſence of the Committee of the Commons; which was granted.*]

This Summons ſeemed ſudden, after ſo great an Intermiſſion; yet I could not petition for more Time, till *Saturday*, *Jan.* 6. becauſe (as the Meſſenger told me) the Houſe ſat not again till then. Then I petitioned for more Time, in regard my Counſel were not in Town: and I had time given till *Tueſday*, *Jan.* 16. and that Day ſet peremptorily.

[*To the Right Honourable the Lords aſſembled in the High Court of Parliament, the humble Petition of* William Laud *Archbiſhop of* Canterbury, *Priſoner in the* Tower,

Humbly ſheweth,

T*HAT your Petitioner having received your Lordſhips Command, by your Honourable Order of the 3d of this Inſtant* January, *annexed, to attend and anſwer the Impeachments againſt your Petitioner, from the Honourable Houſe of Commons, on* Monday *the 8th of this Inſtant* January, *which is but five Days Diſtance, and at a time when two of his three Counſel aſſigned are out of Town, and your Petitioner's Witneſſes reſiding in ſeveral remote Places, cannot be ſummoned in ſo ſhort a time, nor willing happily to come upon their Summons, without Warrant from your Lordſhips:*

Your Petitioner's moſt humble Suit to your Lordſhips is, That you will honourably vouchſafe him ſome more convenient time to ſend for his Counſel and Witneſſes, to teſtify in the Matters of Fact charged againſt him; and withal, to grant the Petitioner your Honourable Order, to command the Witneſſes ſummoned to attend at the time by your Lordſhips to be appointed. Which his humble Requeſt your Petitioner had ſooner preſented to your Lordſhips, but that no Sitting hath been (as your Petitioner is informed) until this Day, ſithence your Honourable Order in this behalf made known to him. And your Petitioner ſhall pray, *&c.*

William Cant.

Sabbati, 6 *Jan.* 1643.

W*Hereas the Houſe formerly appointed* Monday, *being the 8th of this Inſtant* January, 1643, *to proceed againſt* William Laud, *Archbiſhop of* Canterbury, *upon the Impeachment brought up againſt him from the Houſe of Commons for High-Treaſon, and High Crimes and Miſdemeanours; upon reading the Petition of the ſaid Archbiſhop, it is this Day ordered by the Lords in Parliament, to the End that the Counſel and Witneſſes of the ſaid Archbiſhop may have competent time to attend the Hearing of the Cauſe, That this Houſe will reſpite the Proceedings againſt the ſaid Archbiſhop, upon the ſaid Impeachment, until* Tueſday *the 16th of this Inſtant* January, 1643. *at Ten of the Clock in the Morning. At which Time the ſaid Archbiſhop is peremptorily appointed to provide his Witneſſes, and prepare his Defence unto the ſaid Impeachment.*

To the Gentleman-Uſher, *&c.*]

Notwithſtanding the ſhortneſs of this Time, my Counſel being out of Town, as not expecting it, I was on *Sunday*, *Jan.* 7. ordered again to appear in Mr. *Smart*'s Suit the next Day. The Warrant bare date a Fortnight before; yet partly to ſanctify the *Sabbath*, and partly to ſhew his great Civility to me in giving me warning, I was not ſerved with it till *Sunday* Night at Seven of the Clock. The next Morning I went to *Weſtminſter*, as I was commanded: but I was ſent back, and not ſo much as called upon. So, beſide the Charge I was at, that Day was loſt and taken from me and my Buſineſs, as ſhort time as I had given me.

Then *Tueſday* came on *Jan.* 16. And whereas I was ordered to appear at the Lords Houſe at Nine in the Morning, I was by another Order put off till One of the Clock in the Afternoon.

[Die Lunæ, 15 Jan. 1643.

I*T is this Day* ordered *by the Lords in Parliament, that the Lieutenant of the* Tower *of* London, *or his Deputy, ſhall bring in Safety the Archbiſhop of* Canterbury *before their Lordſhips, on* Tueſday *the 16th this Inſtant* January, *by One of the Clock in the Afternoon; at which time this Houſe will proceed againſt the ſaid Archbiſhop upon the Impeachment brought up from the Houſe of Commons againſt him for High-Treaſon, and high Crimes and Miſdemeanours, and this to be a ſufficient Warrant in that behalf.*] Then I appear'd.

[*About Three a-Clock that Afternoon the Lords ſent down this Meſſage to the Houſe of Commons.*

16 Jan. 1643.

A *Meſſage from the Lords, by Sir* Robert Rich *and Mr.* Page, *to acquaint the Houſe, that they are ready to hear the Charge upon the Impeachment againſt the Biſhop of* Canterbury.

Upon this Meſſage, the Committee of the Houſe of Commons, appointed to manage the Evidence againſt him, went up to the Lords Houſe. And then the Archbiſhop being brought to the Bar, after he had there kneeled a little Space, was commanded to ſtand up. Which Ceremony ended,]

The Committee, that were to preſs the Evidence againſt me, began to proceed upon the former general Articles, as well as upon the latter. But to the firſt Articles I had never been called to anſwer, nor ever joined Iſſue. Upon this, there was much looking one upon another, as if they meant to aſk where the Failure was.

[*Hereupon Mr.* Maynard *ſpake to the Lords to this Effect.*

Mr. *Maynard*'s Speech on this Occaſion.

My Lords,

I*T now appears to your Lordſhips, how unwilling the Archbiſhop is (out of Conſciouſneſs of his own Guilt) to come to his Trial, that in all this Space, from his firſt Impeachment, he hath not ſo much as put in any Anſwer to the original Articles, though he had long ſince Counſel aſſigned him for that Purpoſe. My Lords, this is none of the Commons Fault, but his own: For your Lordſhips well know, that the Commons can take no Notice what is done in the Houſe of Peers in a Parliamentary Way, but by a Meſſage from your Lordſhips, who, after our Articles exhibited, were to call upon the Archbiſhop for an Anſwer to them. And your Lordſhips ſending us ſeveral Meſſages heretofore, that the Archbiſhop had put in his Anſwer to the Articles, and that you were ready to hear our Charge againſt him, and appointing this Day for his Trial, the Commons thereupon conceived that he had formerly put in his Plea and Anſwer, in due Form, to all their Articles: But the contrary now appearing both to your Lordſhips and us, it is impoſſible for us to proceed at this time on his Trial,* *there being no Iſſue joined upon the Original Articles, for want of an Anſwer to them; and to proceed upon the Additionals before any Anſwer given to the Originals, will be very prepoſterous. Wherefore we humbly pray your Lordſhips, to order that the Archbiſhop may forthwith put in his Anſwer both to the Original and Additional Articles, by the Advice of his Counſel, or otherwiſe, in ſuch a Sort as he will ſtand to it: And then we ſhall without any Delay join Iſſue with him, proceed on in his Trial and Evidence againſt him, when your Lordſhips ſhall appoint.*]

But by this Means there could not then be any Proceeding. So I was there peremptorily ordered to put in my Anſwer on *Monday*, *Jan.* 22. both to the original and additional Articles, and in Writing.

[*The Archbiſhop deſired the Lords that he might adviſe with his Counſel, whether the Articles were certain and particular enough to be anſwered unto; and that if their Lordſhips ſhould over-rule him to put in his Anſwer to them, he might have convenient Time to do it.*

Upon this all being commanded to withdraw, the Lords, after ſome ſhort Debate among themſelves, and upon reading the Archbiſhop's Petition to have Mr. Gerrard *of* Grays-Inn *aſſigned for his Counſel, to join with thoſe formerly aſſigned him, made this enſuing Order:*

Die Martis, 16 Jan. 1643.

UPON *the reading the Petition of* William *Archbiſhop of* Canterbury, *it is this Day ordered by the Lords in Parliament, That Mr.* Richard Gerrard *of* Grays-Inn *be added to the former Counſel aſſigned to the ſaid Archbiſhop, to be likewiſe of his Counſel.*

It is alſo ordered by the Lords in Parliament, That William *Archbiſhop of* Canterbury *ſhall put in his Anſwer in Writing into this Houſe, to the firſt and further Articles of Impeachment brought up from the Houſe of Commons againſt him, by* Monday *Morning next peremptorily; and that the ſame Counſel formerly aſſigned him ſhall be of Counſel with him.*

On the 19*th of* January *the Archbiſhop ſent this Petition to the Lords.*

To the Right Honourable the Lords aſſembled in Parliament, the humble Petition of William *Archbiſhop of* Canterbury, *Priſoner in the* Tower,

Sheweth,

THAT *whereas your Petitioner having formerly anſwered the particular Articles exhibited againſt him by the Honourable Houſe of Commons; and now by your Lordſhips Order of the* 16*th of this Inſtant, is commanded to put in his Anſwer to the firſt and further Articles of Impeachment brought up againſt him by* Monday *Morning next; for the doing whereof his former Counſel is aſſigned him:*

That your Petitioner having adviſed with his Counſel concerning the firſt Articles, which were exhibited now almoſt three Years ſithence, finding upon Peruſal and Debate of the ſame, that the ſaid former Articles are ſuch that no Anſwer can be made thereunto, nor your Petitioner in any wiſe enabled to prepare for his Defence of the ſame, as they now ſtand:

That foraſmuch as the ſaid Articles of Impeachment import no leſs than a Charge of High-Treaſon; and foraſmuch as your Petitioner is by his Counſel informed, that (eſpecially in Caſes of Life) the Defendant is allowed to offer to the Court, where the ſame depends, his Exceptions by his Counſel before any Plea pleaded:

Your Petitioner moſt humbly beſeecheth your Lordſhips to appoint a Day for the hearing of your Petitioner's Counſel concerning the ſame. And your Petitioner ſhall pray, *&c.*

William Cant.]

At this Day and Time I appeared, as I was ordered to do; but could not obtain of the Lords either to take my former Anſwer off from the File, if I muſt put in another; nor to diſtinguiſh the Articles, which were Treaſon, and which Miſdemeanour; nor leave for my Counſel to ſpeak to the Generality and Uncertainty of the original Articles; which they profeſſed were ſuch, as no man living could prepare Anſwer for. But I muſt put in my Anſwer preſently, or be taken *prò Confeſſo.* So in theſe Streights I put in my Anſwer to both Articles;

The humble Anſwer of William *Archbiſhop of* Canterbury, *to the firſt and farther Articles of Impeachment brought up by the Honourable Houſe of Commons againſt him, and by Order of the Right Honourable the Lords in Parliament of the* 16*th of this Inſtant directed to be put in.*

AS to the 13th Article of the ſaid firſt Articles, and the Matters therein charged, and all Matters or Things in the ſame, or any of the reſt of the ſaid Articles contained, which concern any Act of Hoſtility, whether between the King and his Subjects, or between Subject and Subject, or which may be conceived to ariſe upon the coming of any *Engliſh* Army againſt *Scotland*, or the coming of the *Scotiſh* Army into *England*; or upon any Action, Attempt, Aſſiſtance, Counſel, or Device, having relation thereunto, and falling out by the occaſion of the late Troubles, preceding the late Concluſion of the Treaty, and Return of the *Scotiſh* Army into *Scotland:* This Defendant ſaith, That it is enacted by an Act made during the Sitting of this preſent Parliament, that the ſame, and whatſoever hath enſued thereupon, whether trenching upon the Laws and Liberties of the Church and Kingdom, or upon his Majeſty's Honour and Authority, in no time hereafter may be called in queſtion, or reſented as a Wrong, national or perſonal; and that no mention be made thereof in time coming, neither in Judgment, nor out of Judgment: but that it be held and reputed as tho' never ſuch Things had been thought or wrought; as by the ſaid Act may more at large appear: With this, That this Defendant doth aver that he is none of the Perſons excepted by the ſaid Act, or the ſaid Offences charged upon this Defendant any of the Offences excepted by the ſaid Act.

And as to all the reſt of the ſaid firſt and farther Articles, this Defendant, ſaving to himſelf all Advantages of Exception to the ſaid Articles, humbly ſaith, He is not guilty of all, or any of the Matters by the ſaid Articles charged, in ſuch Manner and Form as the ſame are by the ſaid Articles charged againſt him.

[*The ſame Day the Lords, by Sir* Robert Rich *and Mr.* Page, *ſent down this Anſwer of the Archbiſhop's to the Houſe of Commons; which was read, and ordered to be referred to the Committee appointed to manage the Evidence againſt the ſaid Archbiſhop, and accordingly delivered to Serjeant* Wilde.

And it was further, the ſame Day, ordered by the Commons, That the ſaid Committee appointed to manage the Evidence at the Trial of the Archbiſhop of Canterbury, *do peremptorily meet this Afternoon, at three of the Clock, in the* Court of Wards, *upon the Diſtribution of the Parts of the Evidence.*]

All *February* paſſed over, and Mr. *Prynn* not yet ready; he had not yet ſufficiently prepared his Witneſſes. But on *Monday*, *March* 4. an Order paſſed to call me to the Houſe, to anſwer my Charge of High-Treaſon, on *Tueſday March* 12. following.

[Die Lunæ, 4 Martii, 1643.

A *Meſſage to be ſent to the Lords to deſire them to appoint a Day for the Trial of the Archbiſhop of* Canterbury. *Mr. Serjeant* Wilde *went up to the Lords, to appoint a Day for the Trial of the Archbiſhop of* Canterbury. *Serjeant* Wilde *brings Anſwer, That the Lords have appoiuted To-morrow ſeven-night for the Trial of the Archbiſhop of* Canterbury.

For which Purpoſe the Lords made the following Order:

Die Lunæ, 4 Martii, 1643.

ORDERED, *That the Archbiſhop of* Canterbury *ſhall appear before their Lordſhips on* Tueſday *the* 12*th of this Inſtant* March, *at Nine of the Clock in the Morning. At which time this Houſe will proceed againſt the Archbiſhop upon the firſt and further Articles of Impeachment, brought up from the Houſe of Commons againſt him, for High-Treaſon, and High Crimes and Miſdemeanours: whereof the ſaid Archbiſhop is hereby to take Notice, and provide himſelf accordingly.*]

And on *Saturday March* 9. I received a Note from the Committee which were to preſs the Evidence againſt me, what Articles they meant to begin with; which had a Shew of ſome fair Reſpect. But the Generality and Uncertainty of the Articles was ſuch, as render'd it a bare Shew only; no Particular being charged, concerning which I might provide for any Witneſſes or Counter-proof.

[*After this, the Archbiſhop petitioning the Commons Houſe, That Sir* Henry Mildmay, *a Member thereof, might be examined as a Witneſs for him at his Trial; this Order was thereupon conceived.*

9 Martii, 1644.

THE *humble Petition of* William *Archbiſhop of* Canterbury, *deſiring that Sir* Henry Mildmay *may be examined as a Witneſs in his Buſineſs, he being to come to his Trial on* Tueſday *next, was this Day read; and it is ordered according to his Petition, That he ſhall be examined as a Witneſs at the Trial of the ſaid Biſhop accordingly. It was likewiſe then ordered, That divers Members of the Houſe of Commons ſhall be examined as Witneſſes againſt him; and that the Lords be moved by Serjeant* Wilde, *that ſome Members and Attendants of the Lords Houſe be examined at the Archbiſhop's Trial. And that it be referred to the Committee of Sequeſtrations, to conſider of ſome convenient Recompence for ſuch Clerks, Sollicitors, and others, as have been or ſhall be employed in the tranſcribing of Breviats, and other Services done by them to the Committee for the Biſhop of* Canterbury's *Trial.*]

And now being ready to enter upon the Hearing and the Trial itſelf, I hold it neceſſary for me to acquaint the Reader with ſome general Things before that begin: partly to the end he may ſee the Courſe of this Trial, and the Carriage which hath been in it; and partly to avoid the often and tedious Repetition, which elſe muſt neceſſarily be of ſome of them; and eſpecially, that they may not be mingled either with the Evidence, or my Anſwers; to wit, to interrupt the Current, or make any thing more obſcure.

1. The Committee appointed by the Houſe of Commons to manage and preſs the Evidence againſt me were, Serjeant *Wilde*, Mr. *Browne*, Mr. *Maynard*, Mr. *Nichols*, Mr. *Hill*. But none ſpake at the Bar but the firſt four. Mr. *Hill* was Conſul *Bibulus*; Mr. *Prynn* was truſted with the providing of all the Evidence.

2. Mr. *Prynn* took to him two young Men to help to turn his Papers, and aſſiſt him; Mr. *Grice* and Mr. *Beck*. Mr. *Grice* was Son to Mr. *Thomas Grice*, Fellow of *St. John Bapt. College* in my Time, and after beneficed near *Stanes*.

3. And tho' my Hopes, under God, were upon the Lords; yet when my Trial did come on, it did ſomewhat trouble me to ſee ſo few Lords in that great Houſe: For at the greateſt Preſence that was any Day of my Hearing, there were not above fourteen, and uſually not above eleven or twelve. Of theſe one third part, at leaſt, each Day took, or had occaſion to be gone before the Charge of the Day was half given. I never had any one Day the ſame Lords all preſent at my Defence in the Afternoon, that were at my Charge in the Morning; ſome leading Lords ſcarce preſent at my Charge four Days of all my long Trial, nor three at my Defence; and which is moſt, no one Lord preſent at my whole Trial but the Right Honourable the Lord *Gray* of *Werk*, the Speaker, without whoſe Preſence it could not be a Houſe. In this caſe I ſtood in regard of my Honourable Judges.

4. When my Hearing came on, uſually my Charge was in giving till almoſt Two of the Clock. Then I was commanded to withdraw: And upon my humble Petition for Time to anſwer, I had no more given me than till Four the ſame Afternoon; ſcarce Time enough adviſedly to peruſe the Evidence: My Counſel not ſuffered to come to me till I had made my Anſwer, nor any Friend elſe, but my Sollicitor Mr. *Dell*, to help to turn my Papers; and my Warder of the *Tower* to ſit by to look to this. And this was not the leaſt Cauſe why I was at firſt accuſed of no leſs than Treaſon,[a] *Ne quis neceſſariorum juvaret periclitantem, Majeſtatis Crimina ſubdebantur*; as it fell out in *Silanus*'s Caſe, who had more Guilt about him (yet not of Treaſon) than (God be thanked) I have, but was

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[a] *Tacit. L.* 3. *Annal.*

proſecuted with like Malice, as appears in that Story. At Four a-clock, or after, the Houſe ſat again, and I made my Anſwer: And if I produced any Witneſs, he was not ſuffered to be ſworn; ſo it was but like a Teſtimony at large, which the Lords might the more freely believe, or not believe, as they pleaſed. After my Anſwer, one or more of the Committee replied upon me. By that Time all was done, it was uſually half an Hour paſt Seven. Then in the Heat of the Year (when it overtook me) I was preſently to go by Water to the *Tower*, full of Wearineſs, and with a Shirt as wet to my Back with Sweat, as the Water could have made it, had I fallen in. Yet I humbly thank God for it, he ſo preſerved my Health, as that tho' I were weary and faint the Day after, yet I never had ſo much as half an hour's Head-ach, or other Infirmity, all the time of this comfortleſs and tedious Trial.

5. Now for the Method which I ſhall hold in this Hiſtory of my Trial, it ſhall be this: I will ſet down the Evidence given on each Day by it ſelf, and my Anſwer to it. But whereas all the Evidence was given together, and ſo my whole Anſwer after; to avoid all looking back and trouble of turning Leaves to compare the Anſwer with the Evidence, I will ſet down each particular Evidence and my Anſwer to it, and ſo all along, that the indifferent Reader may, without farther Trouble, ſee the Force of the one, and the Satisfaction given in the other, and how far every Particular is from Treaſon. And if I add any thing to my Anſwers in any place, either it is becauſe in the Shortneſs of time then given me to make my Anſwer, it came not to my preſent Thoughts; or if it did, yet I forbare to ſpeak it with that Sharpneſs, holding it neither fit nor ſafe, in my Condition, to provoke either my Accuſers, or my Judges.
a ‘ And whatſoever is ſo added by me in either of theſe reſpects,
‘ the Reader ſhall find it thus a marked in the Margin, as here
‘ it ſtands in this *.

6. Nor did I wrong Mr. *Prynn*, where I ſay, *That for all the haſte to put in my Anſwer* Jan. 22. *he could not make this broken Buſineſs ſo ſoon ready againſt me:* For 'tis well known he kept a kind of School of Inſtruction for ſuch of the Witneſſes as he durſt truſt, that they might be ſure to ſpeak home to the Purpoſe he would have them. And this an *Utter Barriſter*, a Man of good Credit, knows; who, in the hearing of Men beyond Exception, ſaid, *The Archbiſhop is a Stranger to me; but Mr.* Prynn'*s tampering about the Witneſſes is ſo palpable and foul, that I cannot but pity him, and cry ſhame of it.* When I heard this, I ſent to this Gentleman, to know if he tendered my Caſe ſo far as to witneſs it before the Lords. The Anſwer I received was, That the Thing was true, and that very Indignation of it made him ſpeak; but heartily prayed me I would not produce him as a Witneſs; for if I did, the Times were ſuch, he ſhould be utterly undone: And 'tis not hard to gueſs by whom. Upon this I conſulted ſome Friends; and upon regard of his Safety on the one ſide, and my own Doubt, leſt it forced to his undoing, he might thro' Fear blanch and mince the Truth to my own prejudice who produced him, I forbare the Buſineſs, and left Mr. *Prynn* to the Bar of Chriſt, whoſe Mercy give him Repentance, and amend him. But upon my Chriſtianity this Story is Truth.

The Firſt Day of my Hearing.

AND now I come to Tueſday, *March* 12. 1643. the Day appointed for my Trial to begin: And begin it did.

[*The Archbiſhop about Three of the Clock in the Afternoon was brought by the Lieutenant of the* Tower *and Uſher of the Black Rod to the Bar in the Lords Houſe; where after he had kneeled a little Space, the Lord* Gray *of* Werk, *Speaker* pro tempore, *commanded him to riſe up. And the Committee of the Houſe of Commons, appointed to manage the Evidence at his Trial, demanded that the ſeveral Articles of their Impeachment againſt him might be read. Whereupon one of the Clerks of the Lords Houſe read both the Original and Additional Articles before mentioned, and after that his Anſwer, Plea, and Demurrer thereunto.*

The Archbiſhop then deſired the Lords, that the Houſe of Commons might give in all their Charge and Evidence to all the Articles againſt him together, before he ſhould be put to give his anſwer to any particular Charge, becauſe he was ancient, his Memory very ſhort, and the Articles general; and that he might anſwer all his Charge together, and not each Day's Evidence by piecemeal. To which, on the behalf of the Commons, it was anſwered by Mr. Maynard,

I. *That if the Archbiſhop's Memory was ſo bad, it would be far worſe for him to charge it with anſwering many Particulars, and the whole Evidence againſt him together, than to anſwer every Particular Charge each Day, as it ſhould be given in againſt him, whilſt it was freſh in Memory.*

II. *That it might and would be a great Inconvenience to have Witneſſes croſs-examined upon other Days than thoſe whereon they gave in their Teſtimony againſt the Priſoner.*

III. *That the Lords themſelves would find it difficult to paſs their Judgment upon all the Charge together, without hearing his punctual Anſwer to every particular Proof as it ſhould be given in Evidence, whilſt it was freſh in their Memories.*

IV. *Becauſe elſe all the Witneſſes, which were very many, muſt of neceſſity attend, and be kept in Town from the firſt to the laſt Day of his Trial; which would be a very great Charge and Inconvenience.*

V. *In the Earl of* Strafford'*s Caſe, this very Parliament, he was put to anſwer every Day to the Particular Evidence given againſt him on the ſame Day.*

Upon which Reaſons the Houſe of Peers ordered, that the Archbiſhop ſhould make his particular Anſwer to every particular Charge on the ſame Day it was given in againſt him.

Then the Archbiſhop deſired, that the Houſe of Commons would ſever the Articles which were Treaſon from thoſe other Articles which were matter of Crime and Miſdemeanour only; that ſo he might know which of them were Treaſon, and which not. Hereto Mr. Maynard *anſwered, That this they might not do, becauſe they were now only to try the Matter of Fact, not Law; and becauſe all the Articles taken together, not each or any particular Article by itſelf, made up the Treaſon wherewith he was charged; to wit, His Endeavours to ſubvert and deſtroy Religion, the fundamental Laws of the Land, and Government of the Realm, and to bring in Popery and an arbitrary Tyrannical Government againſt Law.*]

When I was come, and ſettled at the Bar, Serjeant *Wilde* made a ſolemn Speech for Introduction. I had a Character given me before of this Gentleman, which I will forbear to expreſs; but in this Speech of his, and his future Proceedings with me, I found it exactly true. His Speech my decayed Memory cannot give you at large; but a Skeleton of it I here preſent, according to ſuch Limbs as my brief Notes then taken can now call to my Memory.

He began, and told the Lords, That the Children which I had travailed with, were now come to the Birth; and that my Actions were ſo foul, and my Treaſon ſo great, as that the like could not be read in any Hiſtory; nay, ſo great, as that *nullus Poeta fingere*, no Poet could ever feign the like. And that if all Treaſon were loſt, and not to be found in any Author what it is, it might be recovered and found out in me and my Actions: with divers Pieces of *Latin* Sentences to this effect. [And tho' theſe high and loud Expreſſions troubled me much at the preſent, yet I could not but think, that in this *Canto* of his he was much like one of them which cry up and down the City, *Have you any old Ends of Gold and Silver?*]

After this, he proceeded to give Reaſons why I was not ſooner proceeded againſt, having now lain by it above three Years. The firſt Reaſon he gave was the Diſtractions of the Time. [And they indeed were now grown great; but the Diſtractions which were now, can be no Argument why I was not proceeded againſt at the Beginning of the Parliament, when Things were in ſome better Quiet.] His ſecond Reaſon was the a Death of ſome Perſons. [But this could be no Reaſon at all: For if the Perſons he ſpeaks of were Witneſſes againſt me, more might die, but the dead could not be made alive again by this Delay; unleſs Mr. Serjeant had ſome hope the Reſurrection might have been by this time, that ſo he might have produced them. And if the Perſons were Members of the Houſe of Commons, as all Men know Mr. *Pym* was in the Chair for Preparation of my Tryal; then this is known too, That Mr. *Pym* came up to the Committee of Lords full of great hopes to prove God knows what againſt me. The perſons to be examined were *William* Lord Biſhop of *London*, and *Matthew* Lord Biſhop of *Ely*, my very worthy Friends, and Men like to know as much of me as any Men. A Lord then preſent told me, there were ſome eighteen or nineteen Interrogatories, upon which theſe Biſhops were to be examined againſt me, concerning my Intercourſe with *Rome*; but all were built upon the firſt, which was their Knowledge of the Man who (it ſeems) was thought to be my chief Agent in that Secret. But both the Biſhops denying upon their Oaths that they, or either of them, ever knew any ſuch Man, all the reſt of the Interrogatories, what relations he had to me, and the like, muſt needs fall to nothing, as they did. And the Lord told me farther, he never ſaw Mr. *Pym*, and the reſt, ſo abaſhed at any thing in his Life. After this Mr. *Pym* (as 'tis well known) gave over that Chair, deſpairing to do that againſt me which was deſired.]

a *The Death and Diſperſion of our Witneſſes, the Loſs of ſome of our Members, who have been employed and taken pains in this Buſineſs. So* Wilde'*s Speech* apud Prynn, *p.* 51.

His third Reaſon was a good large one, and that was b other Impediments. [And that's true; ſome Impediments there were, no doubt, or elſe I had come ſooner to hearing. And, as I conceive, a chief Impediment was, that there was not a Man whoſe Malice would make him diligent enough to ſearch into ſuch a forſaken Buſineſs, till Mr. *Prynn* offered himſelf to that Service. For I think I may be confident, that that honourable and great Houſe would not ſeek any Man out of their own Body for any ſuch Imployment, had not Suit ſome way or other been made for it.]

b *The Multitude of Diverſions which we have had, and have daily. So* Wilde'*s Speech,* Ibid.

After theſe Reaſons given for the Delay of my Trial, he fell upon me again as foul as at firſt; as that I was the Author of all the Extravagancies in the Government, and of all the Concuſſions in the State; That the Quality of my Perſon aggravated my Crime; That my Abilities and Gifts were great, but that I perverted them all; and that I was guilty of c Treaſon in the higheſt Altitude. [Theſe were the Liveries which he liberally gave me; but I had no mind to wear them: And yet I might not deſire him to wear this Cloth himſelf, conſidering where I then ſtood, and in what Condition.]

c *Treaſon in the higheſt Pitch and Altitude. So* Wilde'*s Speech, p.* 52.

This Treaſon in the Altitude, he ſaid, was in my Endeavour to alter the Religion eſtabliſhed by Law, and to ſubvert the Laws themſelves: And that to effect theſe, I left no way unattempted. For Religion, he told the Lords, That I laboured a Reconciliation with *Rome*; That I maintained Popiſh and *Arminian* Opinions; That I ſuffered d Tranſubſtantiation, Juſtification by Merits, Purgatory, and what not, to be openly preached all over the Kingdom; That I induced ſuperſtitious Ceremonies, as e Conſecrations of Churches, and Chalices, and Pictures of Chriſt in Glaſs-Windows; That I gave liberty to the Prophanation of the Lord's-Day; That I held Intelligence with Cardinals and Prieſts, and endeavoured to aſcend to Papal Dignity; Offers being made me to be a Cardinal. [And for the Laws, he was altogether as wild in his Aſſertions, as he was before for Religion: And if he have no more true Senſe of Religion, than he hath Knowledge in the Law (tho' it be his Profeſſion), I think he may offer both long enough to Sale, before he find a Chapman for either.] And here he told the Lords, That I held the ſame Method for this, which I did for Religion. [And ſurely that was to uphold both, had the Kingdom been ſo happy as to believe me.]

d *Tranſubſtantiation is not mentioned in* Wildes *Speech* apud Prynn, *p.* 52.

e *The particular Ceremonies, charged with Popery and Superſtition, are not named in* Wilde'*s Speech.* Ibid.

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* Note, *That where entire ſet Speeches were made by the Archbiſhop, altho' ſpoken by him at the Bar, the ſame Marks are put to them. But whereſoever thoſe Marks are found in the Hiſtory, from the ſecond to the laſt Day of the Trial incluſive, the Words to which they are affixed were not ſpoken at the Bar at that time, but either added afterwards by the Archbiſhop at the Recapitulation, of his Anſwer, or inſerted in writing the Hiſtory.* H. W.

But he affirmed (with great Confidence) [a] That I cauſed Sermons to be preached in Court to ſet the King's Prerogative above the Law, and Books to be printed to the ſame Effect; That my Actions were according to theſe. Then he fell upon the Canons, and diſcharged them upon me. Then, that I might be guilty enough, (if his bare Word could make me ſo) he charged upon me the Benevolence, the Loan, the Ship-Money, the illegal pulling down of Buildings, Incloſures; ſaying, That as Antichriſt ſets himſelf above all that is called God; ſo I laboured to ſet the King above all that is called Law. And after a tedious Stir, he concluded his Speech with this, That I was like *Naaman* the *Syrian*, a great Perſon (he confeſſed), but a Leper. [So ended this Noble *Celeuſtes.*]

[a] *None of the Particulars, which follow to the end (ſave the concluſive Sentence), are to be found in* Wilde's *Speech* apud Prynn; *but only ſome general Invectives and Accuſations to this purpoſe.* H. W.

[*Here follows Serjeant* Wilde's *Speech entire.*

My Lords,

THIS *great Cauſe of the Archbiſhop of* Canterbury, *after a long and painful Travail, is now come to the Birth; of which it may be truly ſaid, as it was in a like Caſe,* Repertum eſt hodierno die facinus, quod nec Poeta fingere, nec Hiſtrio ſonare, nec Mimus imitari potuerit.

For if all the Oppreſſions, all the pernicious Practices and Machinations, which have been in each Time to ruinate our Religion, Laws, and Liberties, were loſt, I think here they might have been found and drawn out again to the Life. So that your Lordſhips, who have been the great Aſſertors of our Liberties, and ſtood ſo faſt to the Rules and Principles of your noble Progenitors, (which others have ignobly deſerted) may, after a long Conflict with ſo many great and matchleſs Difficulties, ſay now as a great Commander once did upon an extraordinary Danger, Tandem par animo meo periculum video. *Here is a Cauſe proportionable to your ſelves, apt and proper for the Juſtice and Power of this Honourable Court.*

Had they been Faults of common Frailty, Error, or Incogitancy, which this Man hath committed, we ſhould gladly have ſtepped back, and caſt a Cloke over them; but being ſo wilful, ſo univerſal, ſo deſtructive to the Laws of God and Man, ſo comprehenſive of all the Evils and Miſeries which now we ſuffer, the Sin would lie upon our own Heads, if we ſhould not call for Juſtice. Which that it hath been ſo long uncalled for, (not deferred or delayed) I ſuppoſe no Man will think ſtrange, who conſiders the preſent Diſtractions, the Death and Diſperſion of our Witneſſes, the Loſs of ſome of our Members who have been imployed and taken Pains in this Buſineſs, the Multitude of Diverſions we have had, and have daily, occaſioned by the Acts and Influences of this Meteor.

But the Truth ſurvives, and Matter enough ſurvives; ſo copious and ſo full of Variety, that if all the Particulars ſhould be examined, for his three Years Impriſonment, which he complains of, there would be three Years Time of Trial and Hearing of the heavy Charge that lies againſt him. A Charge of High-Treaſon: Treaſon in all and every Part: Treaſon in the higheſt Pitch and Altitude. For what greater Treaſon can there be, than to betray the whole Realm, and to ſubvert the very Foundations, leaving nothing for Poſterity but a Curſe upon him that ſhall go about to build again?

That which of itſelf is ſo heinous, is much more enhanced and aggravated by the Quality of the Perſon, a Churchman, a great Prelate, a Man in great Truſt, Place, and Authority in Church and Common-wealth.

A Man indued with ſo great Gifts of Nature, and ſo many of Grace and Favour from his Majeſty; and for all theſe to be perverted to a contrary End, even to the Deſtruction of the Publick, and the Ruin of the Womb that bare him, how deep a Dye do theſe impoſe upon this foul Crime!

How Churchmen in all Ages (as hath been often obſerved) ſhould come to be the archeſt Seedſmen of Miſchief, and principal Actors in all the great Diſtractions and Alterations that have happened, is a Deſtiny that may ſeem ſtrange. But the Reaſon is, (Ex bono Theologo malus Medicus) *their intermeddling with temporal Things and Matters heterogeneal to their Calling, wherein God is pleaſed to ſmite them with Blindneſs, and to infatuate their Counſel. Whereof a perfect Pattern we have in this great Prelate; who, by abuſing his Profeſſion, and making the Buſineſs of State the cuſtomary Subject of all his Endeavours, became the Author of all the illegal and tyrannical Proceedings in the Star-Chamber, High-Commiſſion Court, and other Courts; of all the Innovations in Doctrine and Diſcipline; of the ſuppreſſing of godly Miniſters and Preaching; of the advancing of others, who were the Promoters of Popery and Arbitrary Power: and indeed, of all the Concuſſions and Diſtractions in Church and State, whereby Religion hath been joſtled out, Laws and Parliaments trodden down with Contempt.*

For Matter of Religion, ſurely thoſe Times were happy, when by the Magnanimity of Princes, and the Wiſdom and Piety of our Predeceſſors, the Antichriſtian Yoke of Popery was ſhaken off.

And now after ſo many bloody Maſſacres in France, *ſuch fiery Perſecutions here in Queen* Mary's *Days, ſo many treacherous Conſpiracies in time of Queen* Elizabeth, *that execrable and horrid Powder-Plot in the Time of the late King* James, *ſuch Streams and Rivers of Blood in* Germany *and* Ireland, *and other Parts of the Chriſtian World ever ſince, by thoſe reſtleſs and cruel Firebrands of all Miſchief: for any Man now to go about to rebuild theſe Walls of* Jericho, *and to reduce us to thoſe rotten Principles of Error and Darkneſs, how can it be expected better than that the People ſhould be even ready to ſtone him, as they did him that did but act the Part of* Bellerophon *in* Rome?

But to avoid this Danger, he conveys this Poiſon in a gilded Pill, with Baits and Pretences of Reconciliation; a pleaſing Snare, Laqueus Diaboli ad miſerorum animas ad infernum detrudendas.

A Bead-Roll of Particulars might be recited, wherein this Reconcilement was to be wrought in Points of Free-Will, Merits, Juſtification, Univerſal Grace, Purgatory; and, in effect, all the reſt.

To draw on theſe, there muſt be an introducing of Popiſh Ceremonies in all the Particulars contained in the Maſs-Books, and Pontificals themſelves: And to make way for theſe, the Book of Sports muſt be publiſhed, and preſſed beyond the King's Intention or Declaration, which was but a civil Command: But he ſubjoins Eccleſiaſtical Penalties, even the ſharpeſt, Suſpenſion, Deprivation, and the like; theſe executed on divers good and godly Men with a high Hand. Thus a Liberty proclaimed not to Captives, but to profane Caitiffs; this Day ſet apart by God ab æterno, *expoſed and proſtituted to all Looſeneſs and Irreligion, and that by a Law; This Lamb taken out of his Boſom.*

Jehoſaphat *ſends Prieſts and Levites into all the Cities and Tribes to inſtruct them: This Prelate ſends Declarations and Injunctions to corrupt them, and to extinguiſh the Lamp and Light of Religion. In the former Acts, he deſtroys the Proteſtants; in this, Religion itſelf. In the one, he leaves Superſtition; in the other, nothing but Atheiſm and Profaneneſs: In the one, he deſtroys Preſbyters, as did* Diocleſian; *in the other,* Preſbyterium; *as did the Apoſtate* Julian. *Yet to ſhew his Love to Religion, (the Pope's only) he holds Correſpondency with thoſe of* Rome, *Cardinal* Barberino, Panzani, Con, Roſetti, *the Pope's* Nuncios, *Sir* Toby Matthews, Saint Clara, Saint Giles, *the moſt dangerous and deſperate Jeſuits, and many others* ejuſdem Farinæ. *And by all theſe Steps and Rounds he makes a Ladder for himſelf to climb up to Papal Dignity; in example of* Anſelme, *whom (tho' famous for his Contumacy and Rebellion) yet he calls him his worthy Predeceſſor, (as was* Becket *alſo) and is contented to take upon him the Plenitude of Power, the Title of* Holineſs, *of* Archangel *of this Church, the Lineal Succeſſor of* Gregory *the Firſt, rather of* Gregory *the Seventh; and for all this was well worthy to have theſe great Offers made him, recorded in his own Memorials, by thoſe that had Ability to perform it* (viz.) *a Cardinal's Cap. But ſuch was his Modeſty to forbear it; becauſe, tho'* Rome *be a true viſible Church in his Opinion, yet ſomething dwelt with him that hindered it for a time, to wit, I ſuppoſe his dwelling here.*

For his Attempts againſt the Laws, the Subjects' Birth-right, and the Rights of Parliaments, their chief Support and Refuge, how little Regard he had to them, how much he did deſpiſe and abhor them, making it his Ambition to prefer the Contemners and Abuſers of them, and to ſet up his Canons and Conſtitutions above them, impoſing of unjuſt and unlawful Oaths, Exactions, Monopolies, all ſorts of Oppreſſions, ſtopping of Prohibitions and Courſe of Juſtice, reſcinding of Acts of Parliament, advancing of Proclamations, and all kind of Arbitrary Power above the Laws of God or Man; is fully expreſſed in the Articles, and will more fully appear in the Evidence. To conclude, Naaman *was a great Man; but he was a Leper. This Man's Leproſy hath ſo infected all, as there remains no other Cure but the Sword of Juſtice; which we doubt not but your Lordſhips will ſo apply, that the Commonwealth ſhall yet live again and flouriſh.*]

I was much troubled to ſee myſelf, in ſuch an Honourable Aſſembly, made ſo vile: Yet ſeeing all Mens Eyes upon me, I recollected myſelf, and humbly deſired of the Lords two Things: ‘ One, That they would expect Proof, before they give up their Belief to theſe loud, but looſe Aſſertions: Eſpecially ſince it is an eaſy thing for Men ſo reſolved, to conviciate, inſtead of accuſing; whenas the Rule given by *Optatus* holds firm, *Quum intenditur Crimen,* when a Crime is objected, (eſpecially ſo high a Crime as this charged on me) 'tis neceſſary that the Proof be manifeſt, which yet againſt me is none at all. The other, That their Lordſhips would give me leave, not to anſwer this Gentleman's Particulars, (for that I ſhall defer till I hear his Proofs) but to ſpeak ſome few things concerning myſelf, and this grievous Impeachment brought up againſt me.’

Optat. *l.* 6. cont. Parmenianum.

Which being yielded unto, I then ſpake as follows:

‘ My Lords, my being in this Place, and in this Condition, recalls to my Memory, that which I long ſince read in *Seneca: Tormentum eſt, etiamſi abſolutus quis fuerit, Cauſam dixiſſe:* 'Tis not a Grief only, no, 'tis no leſs than a Torment, for an ingenuous Man to plead [a] Criminally, much more Capitally, at ſuch a Bar as this; yea, tho' it ſhould ſo fall out, that he be abſolved. The great Truth of this I find at preſent in myſelf: And ſo much the more, becauſe I am a Chriſtian; and not that only, but in Holy Orders; and not ſo only, but by God's Grace and Goodneſs preferred to the greateſt Place this Church affords: and yet now brought, *Cauſam dicere,* to plead, and for no leſs than Life, at this great Bar. And whatſoever the World thinks of me, (and they have been taught to think [b] more ill than, I humbly thank Chriſt for it, I was ever acquainted with;) yet, my Lords, this I find *Tormentum eſt*; 'tis no leſs than Torment to me to appear in this Place to ſuch an Accuſation. Nay, my Lords, give me leave, I beſeech you, to ſpeak plain Truth: No Sentence that can juſtly paſs upon me, (and other I will never fear from your Lordſhips) can go ſo near me as *Cauſam dixiſſe,* to have pleaded for myſelf, upon this Occaſion, and in this Place. For, as for the Sentence (I thank God for it), I am at St. *Paul*'s Ward; *If I have committed any thing worthy of death, I refuſe not to die,* Acts xxv. 11. For, I bleſs God, I have ſo ſpent my Time, as that I am neither aſham'd to live, nor afraid to die. Nor can the World be more weary of me, than I of it: For ſeeing the Malignity which hath been raiſed againſt me by ſome Men, I have carried my Life in my Hands theſe divers Years paſt. But yet, my Lords, if none of theſe Things, whereof theſe Men accuſe me, merit Death by Law; tho' I may not in this Caſe, and from this Bar appeal unto *Cæſar,* yet to your Lordſhips Juſtice and Integrity I both may and do appeal; not doubting but that God of his Goodneſs will preſerve my Innocency. And as *Job,* in the midſt of his Affliction, ſaid to his miſtaken Friends, ſo ſhall I to my Accuſers; *God forbid I ſhould juſtify you; till I die I will not remove my Integrity from me; I will hold it faſt, and not let it go: my Heart ſhall not reproach me as long as I live.* Job xxvii. 5.

Sen. *l.* 6. de Benef. *c.* 28.

[a] *Capitally or Criminally,* Ruſhworth & Prynn.

[b] *Much more,* Ruſhw. & Prynn.

‘ My Lords, I ſee by the Articles, and have now heard from this Gentleman, that the Charge againſt me is divided into two main Heads; [c] the Laws of the Land, and the Religion by thoſe Laws eſtabliſhed.

[c] *An Endeavour to ſubvert,* Ruſh. & Prynn.

‘ For the Laws firſt; I think I may ſafely ſay, I have been, to my Underſtanding, as ſtrict an Obſerver of them all the Days of my Life, ſo far as they concern me, as any Man hath; and ſince I came into Place, I have followed them, and been as much guided by them, as any Man that ſat where I had the Honour to ſit. And for this I am ſorry I have loſt the [a] Witneſs of the Lord Keeper *Coventry*, and of ſome other Perſons of Honour, ſince dead. And the Learned Counſel at Law, which attended frequently at the Council-Table, can witneſs (ſome of them [b]) that in References to that Board, and in Debates ariſing at the Board, I was uſually for that Part of the Cauſe where I found Law to be: And if the Counſel deſired to have their Clients Cauſe referred to the Law, (well I might move in ſome Caſes for Charity or Conſcience to have Admittance, but) to the Law I left them, if thither they would go. And how ſuch a Carriage as this thro' the whole Courſe of my Life, in private and publick, can ſtand with an Intention, nay, a Practice to overthrow the Law, and to introduce an Arbitrary Government, which my Soul hath always hated, I cannot yet ſee. And 'tis now many Years ſince I learned of my great Maſter *(in humanis)* [c] *Ariſtotle*, *Periculoſum eſſe*; that it is *a very dangerous thing to truſt to the Will of the Judge, rather than the written Law.* And all Kingdoms and Commonwealths have followed his Judgment ever ſince; and the [d] School-Diſputes have not diſſented from it. Nay more, I have ever been of Opinion, that human Laws bind the Conſcience; and have accordingly made Conſcience of obſerving them. And this Doctrine I have conſtantly preached, as Occaſion hath been offered me. And how is it poſſible I ſhould ſeek to overthrow thoſe Laws, which I held myſelf bound in Conſcience to keep and obſerve? Eſpecially, ſince an Endeavour to overthrow Law, is a far greater Crime than to break or diſobey any particular Law whatſoever; all Particulars being ſwept away in that General. And, my Lords, that this is my Judgment, both of Parliaments and Laws, I beſeech your Lordſhips that I may read a ſhort Paſſage in my Book againſt *Fiſher* the Jeſuit, which was printed and publiſhed to the World before theſe Troubles fell on me, and before I could ſo much as ſuſpect this Charge could come againſt me; and therefore could not be purpoſely written to ſerve any Turn.' [e] *I had leave, and did read it; but, for Brevity-ſake, refer the Reader to the Book itſelf.*

[a] *Teſtimony*, Ruſh. & Prynn.

[b] *here preſent*, Heylin & Ruſh. & Prynn.

[c] Ariſt. 2. *Polit.* c. 7, 8.

[d] Tho. 2. 2æ. q. 60. *Ar.* 5.

[e] *Confer. with* Fiſher, §. 26. *Num.* 14. *p.* 211.

‘ As for Religion, I was born and bred up in and under the Church of *England*, as it yet ſtands eſtabliſhed by Law. I have, by God's Bleſſing, and the Favour of my Prince, grown up in it to the Years which are now upon me, and to the Place of Preferment which I [f] yet bear: And in this Church, by the Grace and Goodneſs of God, I reſolve to die. I have ever ſince I underſtood aught in Divinity, kept one conſtant Tenor in this my Profeſſion, without variation or ſhifting from one Opinion to another, for any worldly Ends: And if my Conſcience would have ſuffered me to ſhift Tenets in Religion with Time and Occaſion, I could eaſily have ſlid thro' all the Difficulties which have preſſed upon me in this kind. But, of all Diſeaſes, I have ever [g] hated a Palſy in Religion; well knowing that too often a Dead-Palſy ends that Diſeaſe in the fearful Forgetfulneſs of God and his Judgments. Ever ſince I came in place, I laboured nothing more, than that the external publick Worſhip of God ([h] too much ſlighted in moſt Parts of this Kingdom) might be preſerved, and that with as much Decency and Uniformity as might; being ſtill of Opinion, that Unity cannot long continue in the Church, where Uniformity is ſhut out at the Church-Door. And I evidently ſaw, that the publick Neglect of God's Service in the outward Face of it, and the naſty lying of many Places dedicated to that Service, had almoſt caſt a Damp upon the true and inward Worſhip of God; which while we live in the Body needs external Helps, and all little enough to keep it in any Vigour. And this I did to the uttermoſt of my Knowledge, according both to Law and Canon, and with the Conſent and Liking of the People: Nor did any Command iſſue out from me againſt the one, or without the other, that I know of.

[f] *now*, Ruſh. & Prynn.

[g] *held a Palſy*, &c. *moſt dangerous*, Ruſh.

[h] *ſo*, Ruſh. & Prynn.

‘ Farther, my Lords, give me leave, I beſeech you, to tell [i] you this alſo: That I have as little Acquaintance with Recuſants of any ſort, as I believe any Man of [k] Place in *England* hath: And for my Kindred, no one of them was ever a Recuſant, but Sir *William Webb*, Grandchild to my Uncle Sir *William Webb*, ſometime Lord-Mayor of *London*; and [l] him, with ſome of his Children, I reduced back again to the Church of *England*, as is well known, and I as able to prove.

[i] *acquaint you with*, Ruſh. & Prynn.

[k] *my Place hath or ever had ſince the Reformation*, Ruſh. & Prynn.

[l] *ſince which*, Ruſh. & Prynn.

‘ One thing more I humbly deſire may be thought on; 'tis this: I am fallen into a great deal of Obloquy in Matter of Religion, and that ſo far as that 'tis charged in the Articles, That I have endeavoured to advance and bring in Popery. Perhaps, my Lords, I am not ignorant what Party of Men have raiſed this Scandal upon me, nor for what End, nor perhaps by whom ſet on: But howſoever, I would fain have a good Reaſon given me (if my Conſcience [m] led me that way, and that with my Conſcience I could ſubſcribe to the Church of *Rome)*, what ſhould have kept me here (before my Impriſonment) to endure the [n] Libels and the Slanders, and the baſe Uſage in all kinds, which have been put upon me, and theſe to end in this Queſtion for my Life: I ſay, I would fain know a good Reaſon of this.

[m] *ſtood*, Ruſh. & Prynn.

[n] *Libelling*, Ruſh. & Prynn.

‘ For, Firſt, my Lords, Is it becauſe of any Pledges I have in the World to ſway me againſt my Conſcience? No, ſure. For I have nor Wife nor Children, to cry out upon me to ſtay with them; and if I had, I hope the Call of my Conſcience ſhould be heard above them.

‘ Or Secondly, Is it becauſe I was loth to leave the Honour and the Profit of the Place I was riſen unto? Surely no: for I deſire your Lordſhips and all the World elſe ſhould know, I do much ſcorn Honour and Profit, both the one and the other, in compariſon of my Conſcience. Beſides, it cannot be imagined by any reaſonable Man, but that if I could have complied with *Rome*, I ſhould not have wanted either Honour or Profit. And ſuppoſe I could not have ſo much of either, as here I had; yet ſure, would my Conſcience have ſerved me that way, leſs of either with my Conſcience would have prevailed with me, more than greater againſt my Conſcience.

‘ Or Thirdly, Is it becauſe I lived here at eaſe, and was loth to venture the Loſs of that? Not ſo neither: for whatſoever the World may be pleaſed to think of me, I have led a very painful Life, and ſuch as I could have been very well content to change, had I well known how. And had my Conſcience [o] led me that way, I am ſure I might have lived at far more Eaſe; and either have avoided the barbarous Libellings, and other bitter and grievous Scorns, which I have here endured, or at the leaſt been out of the hearing of them. Nay, my Lords, I am as innocent in this Buſineſs of Religion, as free from all Practice, or ſo much as Thought of Practice for any Alteration to Popery, or any way blemiſhing the true Proteſtant Religion eſtabliſhed in the Church of *England*, as I was when my Mother firſt bare me into the World. And let nothing be ſpoken againſt me but Truth, and I do here challenge whatſoever is between Heaven and Hell, to ſay the worſt againſt me in Point of my Religion: in which, by God's Grace, I have ever hated Diſſimulation; and had I not hated it, perhaps it might have been better with me for worldly Safety, than now it is. But it can no way become a Chriſtian Biſhop to halt with God.

[o] *ſerved*, Ruſh. & Prynn.

‘ Laſtly, If I had any Purpoſe to blaſt the true Religion eſtabliſhed in the Church of *England*, and to introduce Popery, ſure I took a very wrong Way to it. For, my Lords, I have ſtaid [p] as many that were going to *Rome*, and reduced [q] as many that were already gone, as (I believe) any Biſhop or other Miniſter in this Kingdom hath done; and ſome of them Men of great Abilities, and ſome of them [r] Perſons of great Place. And is this the way, my Lords, to introduce Popery? I beſeech your Lordſhips conſider it well. For ſurely, if I had blemiſhed the true Proteſtant Religion, I could not have ſettled ſuch Men in it; and if I had [s] purpoſed to introduce Popery, I would never have reduced ſuch Men from it. And tho' it pleaſe the Author of the *Popiſh Royal Favourite* to ſay, *That ſcarce one of the ſwaying Lord Prelates is able to ſay, that ever he converted one Papiſt to our Religion*; yet how void of Charity this Speech of his is, and how full of Falſhood, ſhall appear by the Number of thoſe Perſons, whom by God's Bleſſing upon my Labours I have ſettled in the true Proteſtant Religion eſtabliſhed in *England:* And with your Lordſhips Leave, I ſhall name them, that you may ſee both their Number and their Condition; tho' I cannot ſet them down in that order of Time in which I either converted or ſettled them.

[p] *more*, Ruſh. & Prynn.

[q] *more*, Ruſh. & Prynn.

[r] *Men of great Abilities, and ſome*, Ruſh. & Prynn.

[s] *promiſed*, Ruſh. & Prynn.

W. Prynn *in his* Popiſh Royal Favour. *p.* 71. Prynn *in printing the Archbiſhop's Speech, omitteth this whole Paſſage concerning himſelf.* H. W.

‘ 1. And firſt, *Henry Birkhead* of *Trinity-College* in *Oxford* was ſeduced by a Jeſuit, and brought up to *London* to be conveyed beyond the Seas. His Friends complained to me: I had the Happineſs to find him out, and the Bleſſing from God to ſettle his Conſcience. So he returned to *Oxford*, and there continued *.

‘ 2, 3. Two Daughters of Sir *Rich. Lechford* in *Surrey* were ſent to Sea, to be carried to a Nunnery. I heard of it, and cauſed them to be brought back, before they were got out of the *Thames*. I ſettled their Conſciences, and both of them ſent me great Thanks ſince I was a Priſoner in the *Tower*.

‘ 4, 5. Two Scholars of *St. John*'s-*College* in *Cambridge*, *Topping* and *Aſhton*, had ſlipped away from the College, and here at *London* had got the *French* Ambaſſador's Paſs (I have the Paſs to ſhew): I found Means to get them to me, and I thank God ſettled both their Minds, ſent them back to their College. Afterwards hearing of *Topping*'s Wants, I allowed him Means till I procured him a Fellowſhip [t]: And he is at this Time a very hopeful young Man, as moſt of his Time in that Univerſity, a Miniſter, and Chaplain in Houſe at this preſent to the Right Honourable the Earl of *Weſtmorland*.

[t] *in* St. John's, Ruſh. & Prynn.

‘ 6, 7, 8. Sir *William Webb*, my Kinſman, and two of his Daughters; and the better to ſecure them in Religion, I was at the Charge (their Father being utterly decay'd) to marry them to two Religious Proteſtants; and they both continued very conſtant. 9. And his eldeſt Son I took from him, placed him with a careful Divine, maintained him divers Years, and then ſettled him with a Gentleman of good Worth.

‘ 10, 11. The next, in my Remembrance, was the Lord *Maio* of *Ireland*, who with another Gentleman (whoſe Name I cannot recal) was brought to me to *Fulham*, by [u] Mr. *Jefford*, a Servant of his Majeſty's, and well known to divers of your Lordſhips.

[u] *Chesford*, Ruſh. & Prynn.

‘ 12. The Right Honourable the Lord Duke of *Buckingham* was almoſt loſt from the Church of *England*, between the continual cunning Labours of *Fiſher* the Jeſuit, and the Perſuaſions of the Lady his Mother [w]. After ſome Miſcarriages, K. *James*, of ever-bleſſed Memory, commanded me to that Service. I had God's Bleſſing upon me ſo far as to ſettle my Lord Duke to his Death. 13. And I brought the [x] Lady his Mother to the Church again; but ſhe was not ſo happy as to continue with us.

[w] *and Siſter*, Ruſh. & Prynn.

[x] *Right Honourable the Counteſs of* Buckingham, Ruſh. & Prynn.

‘ 14. The Lady Marchioneſs *Hamilton* was much ſollicited by ſome Prieſt, and much troubled in Mind about it. My Lord ſpake with me of it; and tho' at that preſent I was overlaid with Buſineſs, that I could not (as I much deſired) wait upon that Ho-

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* *See* Ruſhworth, *Vol.* 5. *p.* 778. *who relateth, that when ſome of the Lords hearing of the Name of* Birkenhead, *and imagining him to be the Author of the* Oxford Aulicus, *ſmiled at it; the Archbiſhop, taking notice of it, ſtopped, and aſſured the Lords that he meant not him, but another Perſon of like Name. Yet after all* Prynn, *in publiſhing this Speech, hath the Impudence to affirm in the Margin of his Book, That this Convert of the Archbiſhop's was the Author of all the libellous Popiſh* Oxford Aulicus's; *altho' he knew full well, that his Name was* John Birkenhead: *and adds, that at the naming of this Convert, moſt of the Lords and Auditors ſmiled; but ſaith not one Word of the Archbiſhop's Correction of their Miſtake.* H. Wharton.

'nourable Perſon myſelf, yet I told my Lord I would ſend one to his Lordſhip, that ſhould diligently attend that Service, and that I would give him the beſt direction I could. And this I did, and God be thanked ſhe died very quietly and very religiouſly, and a good Proteſtant: And my Lord Marquis told me, he had acknowledged this Service of mine to an Honourable Lord, whom I now ſee preſent.

'15. Mr. *Chillingworth*'s Learning and Abilities are ſufficiently known to all your Lordſhips. He was gone and ſettled at *Doway*. My Letters brought him back; and he lived and died a Defender of the Church of *England*. And that this is ſo, your Lordſhips cannot but know: For Mr. *Prynn* took away my Letters and all the Papers which concerned him, and they were examined at the Committee.

'16, 17. Mr. *Digby* was a Prieſt; and Mr *James* [a] *Gentleman*, a School-Maſter in a Recuſant's Houſe. This latter was brought to me by a Miniſter (as far as I remember) in *Buckinghamſhire*. I converted both of them, and they remained ſettled.

'18. Dr. *Hart* a Civilian, Son to a Neighbour of mine at *Fulham*. He was ſo far gone, that he had written part of his Motives which wrought (as he ſaid) that Change in him. I got ſight of them, ſhew'd him wherein he was deceived, had God's Bleſſing to ſettle his Conſcience, and then cauſed an able Divine to anſwer his Motives, and gave him the Copy.

'19. There were, beſide theſe, Mr. *Chriſtopher Seburne*, a Gentleman of an antient Family in *Herefordſhire*; and 20. Sir *William Spencer*, of *Yarnton* in *Oxfordſhire*. 21. The Sons and Heirs of [b] Mr. *Wintch me* and [c] Mr. *Williſcot*, whom I ſent with their Friends good-liking to *Wadham College* in *Oxford*; and I received a Certificate, *Anno* 1638, of their continuing in conformity to the Church of *England*: nor did ever any of theſe relapſe again to *Rome*, but only the old Counteſs of *Buckingham* and Sir *William Spencer*, that ever I heard of [d]. And if any of your Lordſhips doubt of the Truth of any of theſe Particulars, I am able and ready to bring full Proof of them all. And by this time I hope it appears, *that one of the ſwaying Prelates of the Time is able to ſay, he hath converted one Papiſt to the Proteſtant Religion*. And let any Clergyman of *England* come forth, and give a better Account of his Zeal to this preſent Church.

'And now, my Lords, with my moſt humble Thanks for your Lordſhips Favour and Patience in hearing me, I ſhall ceaſe to be farther troubleſome for the preſent; not doubting but I ſhall be able to anſwer whatever ſhall be particularly objected againſt me.'

After I had ended this Speech, I was commanded to withdraw. As I went from the Bar, there was Alderman *Hoyle* of *York*, and ſome other which I knew not, very angry, and ſaying, it was a very ſtrange Converſion that I was like to make of them; with other Terms of Scorn. I went patiently into the little Committee-Chamber, at the entering into the Houſe. Thither Mr. *Peters* followed me in great haſte, and began to give me ill Language, and told me that he and other Miniſters were able to name Thouſands [e] that they had converted. I knew him not, as having never ſeen him (to my remembrance) in my Life, tho' I had heard enough of him. And as I was going to anſwer him, one of my Counſel, Mr. *Hearn*, ſeeing how violently he began, ſtept between us, and told him of his uncivil Carriage towards me in my Affliction: and indeed he came as if he would have ſtruck me. By this time, ſome Occaſion brought the Earl of *Eſſex* into that Room, and Mr. *Hearn* complained to him of Mr. *Peters*'s Uſage of me; who very honourably checked him for it, and ſent him forth. Not long after, Mr. *Hearn* was ſet upon by Alderman *Hoyle*, and uſed as coarſely as *Peters* had uſed me, and (as far as I remember) only for being of Counſel with ſuch a one as I; tho' he was aſſigned to that Office by the Lords.

What put them into this Choler, I know not; unleſs they were angry to hear me ſay ſo much in my own defence: eſpecially for the Converſion of ſo many, which I think they little expected. For the next Day a great Lord met a Friend of mine, and grew very angry with him about me; not forbearing to aſk what I meant, to name the Particulars which I had mentioned in the end of my Speech, ſaying many godly Miniſters had done more. And not long after this (the Day I now remember not) Mr. *Peters* came and preached at *Lambeth*, and there told them in the Pulpit that a great Prelate, their Neighbour (or in Words to that Effect), had bragged in the Parliament-Houſe, that he had converted two-and-twenty; but that he had Wiſdom enough not to tell how many thouſands he had perverted: with much more Abuſe. God of his Mercy relieve me from Reproaches, and lay not theſe Mens cauſeleſs Malice to their Charge!

After a little ſtay, I received my diſmiſſion for that time, and a Command to appear again the next Day at Nine in the Morning: which was my uſual Hour to attend, tho' I was ſeldom called into the Houſe in two Hours after.

The Second Day of my Hearing.

I Came as commanded, *March* 13. 1643. But here before the Charge begins, I ſhall ſet down the Articles upon which, according to the Order of *March* 9. they which were intruſted with the Evidence meant this Day to proceed. They were the firſt and ſecond original Articles, and the ſecond additional Article: which follow in theſe Words:

I. That he hath traitorouſly endeavoured to ſubvert the Fundamental Laws and Government of the Kingdom; and inſtead thereof to introduce an Arbitrary and Tyrannical Government againſt Law: And to that end hath wickedly and traitorouſly adviſed his Majeſty, that he might, at his own Will and Pleaſure, levy and take Money of his Subjects without their Conſent in Parliament. And this, he affirmed, was warrantable by the Law of God.

II. He hath, for the better Accompliſhment of that his traitorous Deſign, adviſed and procured divers Sermons and other Diſcourſes to be preached, printed and publiſhed, in which the Authority of Parliaments, and the Force of the Laws of the Kingdom are denied; and an abſolute and unlimited Power over the Perſons and Eſtates of his Majeſty's Subjects is maintained and defended, not only in the King, but alſo in himſelf and other Biſhops, above and againſt the Law. And he hath been a great Protector, Favourer and Promoter of the Publiſhers of ſuch falſe and pernicious Opinions.

Second additional Article.

II. That within the ſpace of ten Years laſt paſt, the ſaid Archbiſhop hath treacherouſly endeavoured to ſubvert the Fundamental Laws of this Realm; and to that end hath in like manner endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the Laws and Statutes of the Realm. And for manifeſtation thereof, about ſix Years laſt paſt, being then a Privy-Counſellor to his Majeſty, and ſitting at the Council-Table, he ſaid, *That as long as he ſat there, they ſhould know that an Order of that Board ſhould be of equal force with a Law or Act of Parliament.* And at another time uſed theſe Words, *That he hoped ere long, that the Canons of the Church and the King's Prerogative ſhould be of as great Power as an Act of Parliament.* And at another time ſaid, *That thoſe which would not yield to the King's Power, he would cruſh them to pieces.*

Theſe three Articles they begun with; and the firſt Man appointed to begin was Mr. *Maynard*: And after ſome general things againſt me, as if I were the moſt violent Man for all illegal Ways;

I. The Firſt Particular charged againſt me, was out of my Diary: the Words theſe: *The King declared his Reſolution for a Parliament in caſe of the* Scotiſh *Rebellion. The firſt Movers of it were my Lord Deputy of* Ireland, *the Lord Marquiſs* Hamilton, *and myſelf*; *and a Reſolution voted at the Board, to aſſiſt the King in Extraordinary Ways, if Parliament ſhould prove peeviſh, and refuſe*, &c. The Time was *December* 5. 1639. That which was inforced from theſe Words was, Firſt, that I beſtowed the Epithet *Peeviſh* upon the Parliament; and the ſecond, that this voting to aſſiſt the King in extraordinary Ways, in caſe the Parliament refuſed, proceeded from my Counſel.

1. To this I replied: And firſt I humbly deſired once for all, that all things concerning Law may be ſaved intire unto me, and my Counſel to be heard in every ſuch Particular.

2. Secondly, That the Epithet *Peeviſh* was a very peeviſh Word, 'if written by me. I ſay, *if*: For I know into whoſe Hands my Book is fallen; but what hath been done with it, I know not. This is to be ſeen, ſome Paſſages in that Book are half burnt out, whether purpoſely or by chance, God knows: and ſome other Papers taken by the ſame hand from me, are now wanting. Is it not poſſible, therefore, ſome Art may be uſed in this?' Beſides, if I did uſe the Word *Peeviſh*, it was in my private Pocket-Book, which I well hoped ſhould never be made publick; and then no Diſgrace thereby affix'd to the Parliament. And I hope, ſhould a Man forget himſelf in ſuch an Expreſſion of ſome Paſſage in ſome one Parliament (and this was no more), it is far ſhort of any thing that can be called Treaſon. And yet farther, moſt manifeſt it is in the very Words themſelves, that I do not beſtow the Title upon that Parliament, in that Caſe; but ſay only, '*If it ſhould prove peeviſh*: which is poſſible, doubtleſs, that in ſome Particulars a Parliament may; tho' for the Happineſs of this Kingdom, I would to God it were impoſſible. But ſuppoſe the Word *peeviſh* had been abſolutely ſpoken by me, is it lawful upon Record to ſay the Parliament *An.* 42 *Hen.* III. was *Inſanum Parliamentum*. a mad Parliament; and that in the 6 *Hen.* IV. *Indoctum*, an unlearned Parliament; and that in the 4 *Hen.* VI. a Parliament of Clubs? And ſhall it be High-Treaſon in me, to ſay a Parliament in ſome one Particular was peeviſh? or but to ſuppoſe if it were? Can any Man think, that an unlearned, or a mad Parliament, or one of Clubs, did not do ſomething peeviſhly? Might my Predeceſſor, [f] *Tho. Arundel*, tell the Commons openly in Parliament that their Petitions were ſacrilegious? And may not I ſo much as ſuppoſe ſome one Action of a Parliament to be *peeviſh*, but it ſhall be Treaſon? May an ordinary Hiſtorian ſay of that unlearned Parliament, [g] That the Commons were fit to enter Common with their Cattle, for any Virtue they had more than Brute-Beaſts? And may not I in my private Notes write the Word *Peeviſh* of them without Treaſon?'

3. Thirdly, Whereas 'tis ſaid, That the *voting at the Council-Table to aſſiſt the King in extraordinary Ways, if*, &c. *was by my Counſel*; there is no ſuch thing in my Diary. There is, that I, with others, adviſed a Parliament; but there is not one Word, that the Voting mentioned at the Council-Table proceeded from any Advice of mine. 'So there is no Proof from my Diary, and other Proof beſide that was not ſo much as urged; which was not in favour, but becauſe they had it not: For had they had any other Proof, I ſee already it ſhould not have been loſt for want of urging.' Where I deſired their Lordſhips alſo to obſerve in what a Difficulty I have lived with ſome Men, who will needs make me a great Enemy to Parliaments, and yet are angry with me, that I was one, with others, who moved for that Parliament. So it ſeems nothing that I do can content ſome Men: For a Parliament, or againſt it; nothing muſt be well, if the Counſel be mine.

4. Fourthly, For *the voting of Aſſiſtance in extraordinary Ways*, I was included in the general Vote of the Table; and therefore that cannot be called or accounted my Counſel.

5. Fifthly, It is expreſſed in my *Diary*, whence all this Proof is taken, that it was in and for the *Scotiſh* Buſineſs; and ſo is within the Act of Oblivion. 'And theſe Anſwers I gave to Mr. *Browne*, when in the ſumming up of the Charge againſt me in the Honourable Houſe of Commons, he made this to be my Counſel to the King; and he began with it in his charging of the Points againſt Law.'

II. The ſecond Particular this Day charged againſt me was, That after the ending of the late Parliament I did uſe theſe Words to the King, *That now he might uſe his own Power*, or Words to that effect. This was atteſted by Sir *Henry Vane* the elder, then a Counſellor, and preſent.

1. To this my Anſwer was, That I ſpake not theſe Words, either in Terms or in Senſe, to the uttermoſt of my Knowledge.

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[a] *a Gentleman*, Ruſh. & Prynn.

[b] *Winchcomb*, Ruſh. & Prynn.

[c] *Wolleſcot*, Ruſh. & Prynn.

[d] *It being only in God's power, not mine, to preſerve them from Relapſe*; Ruſh. & Prynn.

Note, *That the vulgar Copies of this Speech, printed in* Ruſh. *&c. are very different from this, being taken from the Archbiſhop's Mouth as he ſpoke; this from the Original, as he wrote it.* H. W.

[e] *Hundreds of real Converts to Chriſt, for every one of his pretended ones, and that himſelf had converted above* 120 *Papiſts.* Prynn. *p.* 56.

Sir Ed. Coke, *Inſt. p.* 3. *c.* 1.

[f] Speed *in* H. IV. §. 4.

[g] Ibid.

2. Secondly, If I had ſpoken theſe Words, either they were ill adviſed Words, but no Treaſon, and then they come not home to the Charge; or they are treaſonable, and then I ought by [a] Law to have been tried within ſix Months. ‘ Mr. *Browne* in his Reply to me in the Houſe of Commons, ſaid, That this Statute expired with the Queen, becauſe it concerned none but her, and the Heirs of her Body. I had here urged [b] Sir *Edward Coke*, as urging this Statute, and commending the Moderation of it. But I was therein miſtaken, for he ſpeaks of 1 *Eliz. Cap.* 1. And that [c] Statute is in force, and is for Trial within ſix Months, for ſuch Crimes as are within that Statute. So it comes all to one for my Cauſe, ſo either of the Statutes be in force. And to this Charge in general, I gave the ſame Anſwers which are here.’

[a] 1 *Eliz. c.* 6. § *antepenult.*

[b] *Part* 4. *Inſt.* c. 74.

[c] 1 *Eliz. c.* 1. & 1 *Ed.* VI. *c.* 12.

3. Thirdly, Sir *Henry Vane* is in this a ſingle Witneſs; whereas by [d] Law, he that is accuſed of Treaſon muſt be convicted by two Witneſſes, or his own Confeſſion without Violence; neither of which is in this Caſe. And ſtrange it is to me, that at ſuch a full Table no Perſon of Honour ſhould remember ſuch a Speech but Sir *Henry Vane*.

[d] 1 *Ed.* VI. *c.* 12. § *ult.* & 1 *El. c.* 6. § *ult.*

4. Fourthly, Both this and the former Charge relate to the *Scotiſh* Buſineſs, and ſo are within the Act of Oblivion, which I have pleaded.

‘ Beſides, here is nothing expreſſed in the Words charged which favours of Practice, Conſpiracy, Combination, or Force, and cannot therefore poſſibly be adjudged Treaſon; eſpecially ſince there is no Expreſſion made in the Words witneſſed, what Power is meant: For what ſhould hinder the King to uſe his own Power? But legal ſtill; ſince nothing is ſo properly a King's own Power, as that which is made or declared his own by Law. As for the Inference, That *this was called his own in oppoſition to Law:* Firſt, Sir *Henry Vane* is a Witneſs to the Words only, and not to any Inference; ſo the Words have but one Witneſs, and the Inference none. And perhaps it were as well for themſelves, as for Perſons queſtioned in great Courts, if they who are imployed about the Evidence would be more ſparing of their [e] Inferences, many Men laying hold of them without Reaſon or Proof.

[e] *the dreadful Licence of Inferences among our* Engliſh *Pleaders in Caſes of Death.* Speed *in* H. VII. §. 61.

‘ Laſtly, For the Honour of Sir *Henry Vane*, let me not forget this: He is a Man of ſome Years; and Memory is one of the firſt Powers of Man on which Age works; and yet his Memory ſo good, ſo freſh, that he alone can remember Words ſpoken at a full Council-Table, which no Perſon of Honour remembers but himſelf: Had any Man elſe remember'd ſuch Words, he could not have ſtood ſingle in this Teſtimony. But I would not have him brag of it: For I have read in St. *Auguſtine*, that *quidam peſſimi*, ſome, even the worſt of Men have great Memories, and are *tanto pejores*, ſo much the worſe for having them. God bleſs Sir *Henry*!

Aug. l. 7. de Civ. Dei, c. 3.

I have ſtaid the longer upon theſe two, becauſe they were apprehended to be of more weight than moſt which follow.

III. The next was a Head containing my illegal Preſſures for Money, under which the next Particular was, That in the Caſe of Ship-Money I was very angry againſt one *Samuel Sherman*, of *Dedham* in *Eſſex:* That I ſhould ſay *Dedham* was a Maritime Town; and that when the Sum demanded of him was named, I ſhould ſay a proper Sum; whereas the Diſtreſs came to eleven Subſidies.

To this I anſwered, Firſt, Here was no Proof but *Sherman*; and in his own Cauſe. Secondly, He himſelf ſays no more, than that he believes I was the Inſtrument of his Oppreſſion (as he called it); whereas his Cenſure was laid upon him by the Council-Table, not by me: Nor was I in any other Fault than that I was preſent, and gave my Vote with the reſt. So here is no Proof at all but his Belief. ‘ Laſtly, Here can be no Treaſon, but againſt *Dedham* or *Sherman*, that I can diſcover.’

IV. The next to *Sherman* comes in my great Friend, Alderman *Atkins*; and he teſtifies, That when he was brought to the Council-Table, about the Ship-Money, none was ſo violent againſt him as I was; and that this Preſſure for Ship-Money was before the Judges had given Sentence for the King. And that at another Time I preſſed him hard to lend Money, the King being preſent: At which time he conceived that I favoured Alderman *Harriſon* for Country-ſake; becauſe himſelf was committed, and not the other.

To this, I muſt confeſs, I did uſe to be ſerious and zealous too in his Majeſty's Service; but not with any the leaſt Intention to violate Law. And if this, here inſtanced, were before the Judgment given for the King; yet it was long after the Judges had put the Legality of it under their Hands. And I for my part could not conceive the Judges would put that under their Hands to be Law, which ſhould after be found unlawful. Therefore in this, as I erred with honourable Company at the Council-Table, ſo both they and I had, as we thought, ſufficient Guides to lead us.

As for the Partiality which he puts upon me in preſerving my Countryman, Alderman *Harriſon*, from Priſon: Firſt, He himſelf durſt not affirm it upon his Oath, but ſays only, that he conceives I favoured him; but his Conceit is no Proof. Secondly, If I had favoured him, and done him that Office, 'tis far ſhort of Treaſon. But the Truth is, Alderman *Harriſon* gave a modeſt and a civil Anſwer; but this Man was rough, even to Unmannerlineſs: and, ſo far as I remember, was committed for that.

‘ And whereas he ſays, I preſſed him hard to lend Money, and that none was ſo violent as I; he is much miſtaken: For of all Men in that Fraternity, I durſt never preſs him hard for any thing, leaſt of all for Money. For I knew not what Stuffing might fly out of ſo full a Cuſhion, as afterwards 'tis ſaid did, when being a Colonel he was preſſed, but not hard, in a little Skirmiſhing in *Finſbury-Fields*.’

V. Then it was urged, That I aggravated a Crime againſt Alderman *Chambers*, and told him, That if the King had many ſuch *Chambers*, he would have never a *Chamber* to reſt in: That in the Caſe of Tunnage and Poundage, he laboured to take Bread from the King; and that I preſſed upon him in the Buſineſs of Coat and Conduct-Money.

To this I gave this Anſwer, That by the Affection Mr. *Chambers* then ſhewed the King, I had ſome reaſon to think, he deſired ſo many *Chambers* to his Uſe; that if the King had many ſuch Subjects, he might want a Chamber for himſelf; or to that effect. And the Violence of his Carriage in that Honourable Aſſembly gave juſt Occaſion to other Men to think ſo. But as for the Buſineſs of Tunnage and Poundage, and of Coat and Conduct-Money, I conceived both were lawful on the King's part. And I was led into this Opinion by the expreſs Judgment of ſome Lords preſent, and the Silence of others in that behalf; none of the great Lawyers at the Table contradicting either. And no Witneſs to this, but Alderman *Chambers* himſelf.

VI. The ſixth Particular was, That I urged the Buſineſs of Ship-Money upon Alderman *Adams*.

To this my Anſwer was, That I never preſſed the Ship-Money, but as other Lords did at the Council-Table, nor upon other Grounds: Nor doth Alderman *Adams* ſay any more, than that he was preſſed to this Payment by me and others. And to me it ſeems ſtrange, and will, I hope, to all Men elſe, that this, and the like, ſhould be a common Act of the Lords at the Council-Table, but ſhould be High-Treaſon in nobody but in me. And howſoever, if it be Treaſon, it is againſt three Aldermen, *Atkins*, *Chambers*, and *Adams*.

VII. The ſeventh Particular was, That I was ſo violent about the ſlighting of the King's Proclamations, as that I ſaid, A Proclamation was of as great force, or equal to a Statute-Law; and that I compared the King to the Stone ſpoken of in the Goſpel; that *whoſoever falls upon it, ſhall be broken*; *but upon whomſoever it falls, it will grind him to powder.* St. *Matth.* xxi. 34. And for this they brought three Witneſſes, Mr. *Griffin*, *Tho. Wood*, and *Rich. Hayles*.

1. This was in the Caſe of the Soap-buſineſs, and two of the Witneſſes were Soap-boilers. They and their Company ſlighted all the Proclamations which the King ſet out; and all the Lords in the *Star-Chamber* were much offended, (as I conceived they had great reaſon to be) at the great and open Daring of that whole Company. And whatſoever Sentence paſſed upon them in that whole Buſineſs, was given by the Court of *Star-Chamber*, not by me.

For the Words: Firſt, theſe Men have good Memories, that can punctually, being plain ordinary Men, ſwear Words ſpoken full twelve Years ſince; and yet, as good as their Memory is, they ſwear doubtfully touching the time, as that the Words were ſpoken in *May* 1632, or 33.

2. Secondly, My Lords, 'tis impoſſible theſe Words ſhould be ſpoken by me. For I think no Man in this Honourable Preſence thinks me ſo ignorant, as that I ſhould not know the vaſt difference that is between an Act of Parliament and a Proclamation. Neither can theſe Gentlemen, which preſs the Evidence, think me ſo wilfully fooliſh ſo to ſpeak, conſidering they accuſe me here for a cunning Delinquent. ‘ So God forgive theſe Men the Falſhood and the Malice of this Oath!’

3. For the Words ſpoken of the Stone in Scripture, 'tis ſo long ſince, I cannot recal whether I ſaid it or no: Nor have I any great Reaſon to obſerve theſe angry Witneſſes in their own Cauſe. But if by way of Alluſion I did apply that Place to the King and them, 'tis far enough from Treaſon. ‘ And let them, and their like take heed leſt it prove true upon themſelves: For ſeldom do Subjects fall upon their King, but in the end they are broken; and if it ſo happen that he falls upon them, they are ground to Powder.’ And *Solomon* taught me this Anſwer, where he ſays, *The Anger of a King is Death.* Prov. xvi. 14. And yet I would not be miſtaken: For I do not conceive this is ſpoken of a King and his natural Anger (tho' it be good Wiſdom to ſtir as little Paſſion in Kings as may be), but of his legal Anger: According to which, if the Stone roll ſtrictly, few Men can ſo live, but for ſomething or other they may be in danger of grinding.

4. And for theſe Soap-boilers, they have little cauſe to be ſo vehement againſt me. For if the Sentence paſſed againſt them in the *Star-Chamber* were in any thing illegal, tho' it were done by that Court, and not by me; yet I alone, ſo ſoon as I heard but muttering of it, was the only means of reſettling them and their Trade, which none of all the Lords elſe took Care of. ‘ And the Sum of theſe Anſwers I gave to Mr. *Browne*, when he gave up the Sum of his Charge againſt me.’

VIII. The next Particular was about Depopulations. A Commiſſion of Grace, to compound with ſome Delinquents in that kind, was iſſued under the Broad-Seal, to ſome Lords, and other Perſons of Honour of the Council, of which I was one. One Mr. *Talboys* was called thither: And the Charge about this was, That when he pleaded, that by Statute 39 *Eliz.* he might convert ſome to Paſture; I ſhould ſay, *Do you plead Law here? Either abide the Order, or take your Trial at the* Star-Chamber*:* And that he was fined 50*l*.

In this Particular Mr. *Talboys* is ſingle, and in his own Cauſe; but I was ſingle at no Sitting of that Commiſſion: Nor did I ever ſit, unleſs the Lord Privy-Seal and Mr. Secretary *Coke* were preſent, that we might have Direction from their Knowledge and Experience.

And for the Words (if ſpoken), they were not to derogate from the Law; but to ſhew, that we ſat not there as any Judges of the Law, but to offer his Majeſty's Grace to ſuch as would accept it.

As for the Fine mentioned, we impoſed none upon him or any other, but by the Conſent of the Parties themſelves. If any Man thought he was not faulty, and would not accept of the Favour ſhewed him, we left him to the Law: but the plain truth is, this Gentleman being Tenant to the Dean and Chapter of *Chriſt-Church* in *Oxford*, offered them (as they conceived) great Wrong in the Land he held of them; inſomuch as they feared other their Tenants might follow his Example, and therefore complained of him. And becauſe I laid open his Uſage of his Landlords before the Commiſſioners, he comes here to vent his Spleen againſt me. ‘ And 'tis obſervable, that in all the Buſineſs of Depopulations, in which ſo many appeared, no one complained either againſt me or any other Lord, but only this *Talboys*. Mr. *Browne*, when he preſſed the Sum of this Charge againſt me, added, ‘ That at the Council-Table I was for all illegal Projects, as well as for thoſe Incloſures. But, Firſt, I was neither for this nor any other, either longer or otherwiſe than I underſtood them to be lawful. And, Secondly, I oppoſed there the Buſineſs of Salt and the baſe Money; and I alone took off that of the Malt and the Brewing: And three Gentlemen of *Hertfordſhire* (which County was principally concerned in the Caſe of the Malt) came over to *Lambeth* to give me thanks for it.’

IX. Then was charged upon me the Printing of Books which aſſerted the King's Prerogative above Law, *&c.* The Inſtance was in Dr. *Cowel*'s Book, Word *King*. That this Book was decryed by Proclamation: That Complaint was made to me, that this Book was printing in a cloſe Houſe without Licenſe, and by *Hodgkinſon*, who was my Printer; that I referred them to Sir *John Lamb*; that they came to me again, and a third time, and I ſtill continued my Reference; which Sir *John Lamb* ſlighting, the Book came forth. The Witneſſes to this, were *Hunt* and *Wallye*, if I miſtook not their Names.

1. For this Book of Dr. *Cowel*'s, I never knew of it till it was printed; or ſo far gone on in printing, that I could not ſtay it. And the Witneſſes ſay, *it was in a cloſe Houſe, and without Licenſe*; ſo that neither I nor my Chaplains could take Notice of it.

2. They ſay, they informed me of it, but name no time, but only the Year 1638. But they confeſs I was then at *Croydon*: So being out of Town (as were almoſt all the High Commiſſioners), I required Sir *John Lamb*, who, being a High Commiſſioner, had in that Buſineſs as much Power as myſelf, to look to it carefully, that the Book proceeded not; or if it were already printed, that it came not forth. If Sir *John* ſlighted his own Duty and my Command (as themſelves ſay), he is living, and may anſwer for himſelf; and I hope your Lordſhips will not put his Neglect upon my Account.

3. As for *Hodgkinſon*, he was never my Printer; but *Badger* was the Man whom I imployed, as is well known to all the Stationers. Nor was *Hodgkinſon* ever employed by me in that kind or any other: Upon juſt Complaint I turned him out of a Place, but never put him into any. And therefore thoſe Terms which were put upon me, of *my Hodgkinſon*, and *my* Sir *John Lamb*, might have been ſpared. Sir *John* was indeed Dean of the Arches, and I imployed him, as other Archbiſhops did the Deans which were in their Times: otherwiſe no way mine. And *Hodgkinſon* had his whole dependence on Sir *Henry Martin*, and was a mere Stranger to me. 'And this Anſwer I gave to Mr. *Browne* when he ſumm'd up the Charge. Nor could any Danger be in the printing of that Book to miſlead any Man; becauſe it was generally made known by Proclamation, that it was a Book condemned, and in ſuch Particulars; but for other things, the Book very uſeful.'

X. The next Charge was, That when Dr. *Gill*, School-Maſter of *Paul*'s School in *London*, was warned out by the Mercers (to the Care of which Company that School ſome way belongs); upon Dr. *Gill*'s Petition to the King, there was a Reference to ſome other Lords and myſelf to hear the Buſineſs. The Charge is, That at this Hearing I ſhould ſay, the Mercers might not put out Dr. *Gill* without his Ordinary's Knowledge: And that upon mention made of an Act of Parliament, I ſhould reply, *I ſee nothing will go down with you but Acts of Parliament*; *no regard at all of the Canons of the Church*: And that I ſhould farther add, *That I would reſcind all Acts which were againſt the Canons*; *and that I hoped ſhortly to ſee the Canons and the King's Prerogative of equal force with an Act of Parliament.*

To this I anſwered, That if all this Charge were true, yet this is but the ſingle Teſtimony of *Samuel Bland*, an Officer belonging to the Company of Mercers, and no ſmall Stickler againſt Dr. *Gill*, whoſe aged Reverend Father had done that Company great Service in that School for many Years together.

The Reference, he grants, was to me and others; for I neither thruſt myſelf into the Buſineſs, nor was alone in it.

And as there is a Canon of this Church *(Can.* 77.), That no Man may be allowed to teach School, but by the Biſhop of the Dioceſs; ſo *à paritate rationis*, it ſtands good, they may not turn him out, without the ſaid Biſhop's Knowledge and Approbation. And 'tis expreſſed in another Canon *(Can.* 79.), *That if any School-Maſter offend in any of the Premiſes* (there ſpoken of), *he ſhall be admoniſhed by his Ordinary*; *and if he do not amend upon that his Admonition, he ſhall then be ſuſpended from teaching*: Which, I think, makes the Caſe plain, that the Mercers might not turn out Dr. *Gill*, without ſo much as the Knowledge of his Biſhop.

And for the Words, That *I ſaw nothing would down with them but an Act of Parliament, and that no regard was had to the Canons*; I humbly conceive there was no Offence in the Words. For tho' the Superiority by far in this Kingdom belongs to the Acts of Parliament; yet ſome Regard, doubtleſs, is or ought to be had to the Canons of the Church. 'And if nothing will down with Men but Acts of Parliament, the Government cannot be held up in many Particulars.'

For the other Words, God forgive this Witneſs; for I am well aſſured I neither did nor could ſpeak them. For is it ſo much as probable, that I ſhould ſay, *I would reſcind all Acts that are againſt the Canons?* What Power have I, or any particular Man, to reſcind Acts of Parliament? Nor do I think any Man that knows me will believe I could be ſuch a Fool as to ſay, That *I hoped ſhortly to ſee the Canons and the King's Prerogative equal to Acts of Parliament*; ſince I have lived to ſee (and that often) many Canons rejected, as contrary to the Cuſtom of the Place; as in Choice of Pariſh-Clerks, and about the Reparation of ſome Churches, and the King's Prerogative diſcuſſed and weighed by Law: Neither of which hath or can be done by any Judges, to an Act of Parliament. 'That there is Malice in this Man againſt me, appears plainly; but upon what 'tis grounded, I cannot tell: unleſs it be that in this Buſineſs of Dr. *Gill*, and in ſome other about placing Lecturers (which in ſome Caſes this Company of the Mercers took on them to do), I oppoſing it ſo far as Law and Canon would give me leave, croſſed ſome way either his Opinion in Religion, or his Purſe-Profit. I was (I confeſs) ſo much moved at the Unworthineſs of this Man's Teſtimony, that I thought to bind this Sin upon his Soul, not to be forgiven him till he did publickly aſk me Forgiveneſs for this notorious publick Wrong done me. But by God's Goodneſs I maſter'd myſelf: and I heartily deſire God to give him a Senſe of this Sin againſt me his poor Servant, and forgive him.' And 'if theſe Words could poſſibly eſcape me, and be within the Danger of that Statute; then to that Statute which requires my Trial within ſix Months, I refer myſelf.

XI. The eleventh Charge of this Day, was the Impriſonment of Mr. *George*[a] *Waker*, about a Sermon of his preached to prove (as he ſaid), That 'tis Sin to obey the greateſt Monarchs in things which are againſt the Command of God; that I had Notes of his Sermons for four or five Years together, of purpoſe to entrap him; that I told his Majeſty he was factious; that Sir *Dudley Carlton* writ to keep him cloſe; that in this Affliction I proteſted to do him kindneſs, and yet did contrary.

[a] ſ. *Waker.*

My Anſwer was, That for the Scope of his Sermon, *to obey God rather than Man*, no Man doubts but it ought to be ſo, when the Commands are oppoſite. But his Sermon was viewed, and many factious Paſſages, and of high Nature, found in it. And yet I did not tell the King he was factious, but that he was ſo complained of to me; and this was openly at the Council-Table.

And whereas he ſpake of Notes of his Sermons for divers Years, with a purpoſe to entrap him: all that he ſays is, That he was told ſo, but produces not by whom. And truly I never had any ſuch Notes, nor ever uſed any ſuch Art againſt any Man in my Life. For his Commitment, it was done by the Council-Table; and after, upon ſome Miſcarriages of his there by the Court of *Star-Chamber*, not by me; nor can that be imputed to me, which is done there by the major Part, and I having no Negative. And if Sir *Dudley Carlton* writ to keep him cloſe at his Brother's Houſe, contrary to the Lords order, let him anſwer it: And if he ſuppoſes that was done by me, why is not Sir *Dudley* examined to try that Truth? As for the Proteſtation, which, he ſays, I made to his Wife and his Brother, that I complained not againſt him; it was no Denial of my Complaint made againſt him at the firſt, that I heard he was factious; but that after the time, in which I had ſeen the full Teſtimony of grave Miniſters in *London*, that he was not factious, I made no Complaint after that, but did my beſt to free him. And the Treaſon in theſe two Charges is againſt the Company of the Mercers and Mr. *Waker*.

XII. The next Charge was, That Dr. *Manwaring* having been cenſured by the Lords in Parliament for a Sermon of his againſt the Liberty and Propriety of the Subject, was yet after this preferred by me in contempt of the Parliament-Cenſure, both to the Deanery of *Worceſter*, and the Biſhoprick of *St. David*'s: And my own Diary witneſſes that I was complained of in Parliament for it; and that yet after this I did conſecrate him Biſhop.

1. To this I anſwered, That he was not preferred by me to either of theſe; and therefore that could not be done in contempt of the Parliament-Cenſure, which was not done at all. For as for *St. David*'s 'tis confeſſed, Secretary *Windebank* ſignified the King's Pleaſure, not I. And whereas it was added, that this was by my means; this is only ſaid, but not proved. And for *Worceſter*, there is no Proof but the Docket-Book: Now, my Lords, 'tis well known in Court, that the Docket doth but ſignify the King's Pleaſure for ſuch a Bill to be drawn; it never mentions who procured the Preferment. So that the Docket can be no proof at all againſt me; and other there is none.

2. For the Sermon, 'tis true, I was complained of in Parliament, that I had been the Cauſe of Licenſing it to the Preſs; and 'tis as true, that upon that Complaint I was narrowly ſifted, and an Honourable Lord now preſent and the Lord Biſhop of *Lincoln* were ſent to Biſhop *Montague*, who licenſed the Sermon, to examine and ſee whether any Warrant had come from me, or any Meſſage: But when nothing appeared, I was acquitted in open Parliament, to ſomebody's no ſmall Grief. 'God forgive them, and their Malice againſt me; for to my knowledge my Ruin was then thirſted for. And as I anſwered Mr. *Browne*'s ſummary Charge, when he preſſed this againſt me, could this have been proved, I had been undone long ſince; the Work had not been now to be done.'

That he was after conſecrated by me, is true likewiſe; and I hope, 'tis not expected I ſhould ruin myſelf, and fall into a *Præmunire*, by refuſing the King's Royal Aſſent; and this for fear leſt it might be thought I procured his Preferment. But the truth is, his Majeſty commanded me to put him in mind of him when Preferments fell; and I did ſo: But withal, I told his Majeſty of his Cenſure, and that I feared ill Conſtruction would be made of it.

25 Hen. VIII. c. 20 §. ult.

To this it was replied, That I might have refuſed to conſecrate, the Cauſe why being ſufficient, and juſtifiable in Parliament, and excepted in that Law. 'But how ſufficient ſoever that Cauſe may be in Parliament, if I had been in a *Præmunire* there-while, and loſt my Liberty, and all that I had beſide, for diſobeying the Royal Aſſent; I believe I ſhould have had but cold Comfort when the next Parliament had been ſummoned; no exception againſt the Man being known to me, either for Life or Learning, but only this Cenſure: nor is there any Exception which the Archbiſhop is by that Law allowed to make, if my Book be truly printed.'

XIII. Then followed the Charge of Dr. *Heylin*'s Book againſt Mr. *Burton*; out of which it was urged, That an unlimited Power was preſſed very far; and out of *p.* 40. *That a way was found to make the Subject free, and the King a Subject*: that this Man was preferred by me; that Dr. *Heylin* confeſſed to a Committee, that I commanded him to anſwer Mr. *Burton*'s Book; and that my Chaplain Dr. *Braye* licenſed it.

1 Heylin *cont.* Burton. p. 40.

I anſwered as follows: I did not prefer Dr. *Heylin* to the King's Service: it was the Earl of *Danby*, who had taken honourable Care of him before in the Univerſity. His Preferments I did not procure: For it appears by what hath been urged againſt me, that the Lord Viſcount *Dorcheſter* procured him his Parſonage, and Mr. Secretary *Coke* his Prebend in *Weſtminſter*.

For his Anſwer to the Committee, that I commanded him to write againſt *Burton*, it was an ingenuous and a true Anſwer, and became him and his Calling well; for I did ſo. 'And neither I in commanding, nor he in obeying, did other than what we had good Precedent for in the Primitive Church of Chriſt. For when ſome Monks had troubled the Church at *Carthage*, but not with half that danger which Mr. *Burton*'s Book threatened to this; *Aurelius*, then Biſhop, commanded St. *Auguſtine* to write againſt it; and he did ſo. His Words are, *Aurelius ſcribere juſſit, & feci.*' But tho' I did, as by my Place I might, command him to write an Anſwer; yet I did neither command nor adviſe him to inſert any thing unſound or unfit. If any ſuch thing be found in it, he muſt anſwer for himſelf, and the Licenſer for himſelf. For as for licenſing of Books, I held the ſame courſe which all my Predeceſſors had done: and when any Chaplain came new into my

Aug. 2. Retract. c. 21.

Houſe, I gave him a ſtrict Charge in that particular. And in all my Predeceſſors times, the Chaplains ſuffered for Faults committed, and not their Lords; though now all is heaped on me.

'As for the particular Words urged out of Dr. *Heylin*'s Book, *p.* 40. 'there is neither Expreſſion by them, nor Intention in them, againſt 'either the Law, or any lawful Proceedings; but they are directed to Mr. '*Burton* and his Doctrine only. The Words are, *You have found out a* '*way* (not the Law, but you Mr. *Burton*) *to make the Subject free, and the* '*King a Subject.* Whereas it would well have beſeemed Mr. *Burton*, to 'have carried his Pen even at the leaſt, and left the King his Freedom, 'as well as the Subject his.'

XIV. From this they proceeded to another Charge; which was, That I preferred Chaplains to be about the King and the Prince, which were diſaffected to the publick Welfare of the Kingdom. The Inſtance was in Dr. *Dove*; and a Paſſage read out of his Book againſt Mr. *Burton*: And it was added, that the declaring of ſuch Diſaffection was the beſt Inducement or Bribe to procure them Preferment.

To this I then ſaid, and 'tis true, I did never knowingly prefer any Chaplain to the King or Prince, that was ill-affected to the Publick. And for Dr. *Dove*, if he uttered by Tongue or by Pen any ſuch wild Speech concerning any Members of the Honourable Houſe of Commons, as is urged, thereby to ſhew his Diſaffection to the Publick; he is living, and I humbly deſire he may anſwer it. But whereas it was ſaid, That this was the beſt Inducement or Bribe to get Preferment; this might have been ſpared, had it ſo pleaſed the Gentleman which ſpake it; but I know my Condition, and where I am, and will not loſe my Patience for Language.

And whereas 'tis urged, That after this he was named by me to be a Chaplain to the Prince his Highneſs; the thing was thus: His Majeſty had Suit made to him, that the Prince might have Sermons in his own Chapel for his Family. Hereupon his Majeſty approving the Motion, commanded me to think upon the Names of ſome fit Men for that Service. I did ſo: but before any thing was done, I acquainted the Right Honourable the Lord Chamberlain that then was, with it; my Lord knew moſt of the Men, and approved the Note, and delivered it to his Secretary Mr. *Oldſworth* to ſwear them. This was the Fact; and at this time, when I put Dr. *Dove*'s Name into the Liſt, I did not know of any ſuch Paſſage in his Book, nor indeed ever heard of it till now. For I had not read his Book, but here and there by Snatches.

XV. I am now come (and 'tis time) to the laſt Particular of this Day. And this Charge was, the giving of Subſidies to the King in the Convocation, without Conſent in Parliament: That the Penalties for not paying were ſtrict, and without Appeal, as appears in the Act; where it is farther ſaid, that *we do this according to the Duty which by Scripture we are bound unto*; which reflects upon the Liberties of Parliaments in that Behalf. But it was added, they would not meddle now with the late Canons for any thing elſe, till they came to their due Place.

1. My Anſwer to this was, That this was not any ſingle Act, but the Act of the whole Convocation, and could not be applicable to me only.

2. That this Grant was no other, nor in any other Way, *mutatis mutandis*, than was granted to Queen *Elizabeth* in Archbiſhop *Whitgift*'s time. This Grant was alſo put in Execution, as appeared by the Originals which we followed. Theſe Originals (among many other Records) were commanded away by the Honourable Houſe of Commons, and where they now are I know not; but for want of them, my Defence cannot be ſo full.

3. For the Circumſtances, as *that the Penalties are without Appeal*, and the like, 'tis uſual in all ſuch Grants. And *that we did it according to our Duty and the Rules of Scripture*, we conceived was a fitting Expreſſion for ourſelves, and Men of our Calling, without giving Law to others, or any Intention to violate the Law in the leaſt. For thus, I humbly conceive, lies the mutual Relation between the King and his People, by Rules of Conſcience: The Subjects are to ſupply a full and honourable Maintenance to the King; and the King (when Neceſſities call upon him) is to aſk of his People, in ſuch a way as is, *per Pacta*, by Law and Covenant, agreed upon between them, which in this Kingdom is by Parliament: yet the Clergy ever granting their own at all times. And that this was my Judgment long before this, appears by a Sermon of mine appointed to be preached at the opening of the Parliament, in the Year 1625. My Words are theſe: *If you would have indeed a flouriſhing both State and Church, the King muſt truſt and endear his People, and the People muſt honour, obey, and ſupport their King*, &c. This, I hope, is far enough from derogating from any Law: and if I ſhould privately have ſpoken any thing to him contrary to this, which I had both preached and printed, how could his Majeſty have truſted me in any thing?

My Sermon on Pſal. lxxv. 2, 3. *p.* 14.

This brought this tedious Day to an End. And I had an Order the ſame Day to appear again on *Saturday*, *March* 16, 1643. with a Note alſo from the Committee which were to charge me, that they meant then to proceed upon Part of the ſecond Additional Article, and upon the third Original, and the third and fifth Additional Articles. The ſecond Additional Article is written down before: And here follow the reſt now mentioned to be next proceeded upon.

The Third Original is,

III. He hath by Letters, Meſſages, Threats, Promiſes, and divers other ways, to Judges and other Miniſters of Juſtice, interrupted and perverted; and at other times, by the Means aforeſaid, hath endeavoured to interrupt and pervert the Courſe of Juſtice in his Majeſty's Courts at *Weſtminſter*, and other Courts, to the Subverſion of the Laws of this Kingdom: whereby ſundry of his Majeſty's Subjects have been ſtopped in their juſt Suits, and deprived of their lawful Rights, and ſubjected to his tyrannical Will, to their utter Ruin and Deſtruction.

The Third and Fifth Additionals follow:

III. That the ſaid Archbiſhop, to advance the Canons of the Church and Power Eccleſiaſtical above the Law of the Land, and to pervert and hinder the Courſe of Juſtice, hath at divers times within the ſaid time, by his Letters and other undue Means, and Sollicitations uſed to Judges, oppoſed and ſtopped the granting of his Majeſty's Writs of Prohibition, where the ſame ought to have been granted for Stay of Proceedings in the Eccleſiaſtical Court; whereby Juſtice hath been delayed and hindered, and the Judges diverted from doing their Duties.

V. That the ſaid Archbiſhop, about eight Years laſt paſt, being then alſo a Privy-Counſellor to his Majeſty, for the End and Purpoſe aforeſaid, cauſed Sir *John Corbet*, of *Stoke*, in the County of *Salop*, Bart. then a Juſtice of Peace of the ſaid County, to be committed to the Priſon of the *Fleet*, where he continued Priſoner for the Space of half a Year or more; for no other Cauſe but for calling for the *Petition of Right*, and cauſing it to be read at the Seſſions of the Peace for that County, upon a juſt and neceſſary Occaſion. And during the time of his ſaid Impriſonment, the ſaid Archbiſhop, without any Colour of Right, by a Writing under the Seal of his Archbiſhoprick, granted away Parcel of the Glebe-Land of the Church of *Adderley* in the ſaid County, whereof the ſaid Sir *John Corbet* was then Patron, unto *Robert* Viſcount *Kilmurrey*, without the Conſent of the ſaid Sir *John*, or the then Incumbent of the ſaid Church: which ſaid Viſcount *Kilmurrey* built a Chapel upon the ſaid Parcel of Glebe-Land, to the great Prejudice of the ſaid Sir *John Corbet*, which hath cauſed great Suits and [a] Diſſenſions between them. And whereas the ſaid Sir *John Corbet* had a Judgment againſt Sir *James Stonehouſe*, Knight, in an Action of Waſte, in his Majeſty's Court of *Common Pleas* at *Weſtminſter*, which was afterwards affirmed in a Writ of Error in the *King*'s-*Bench*, and Execution thereupon awarded; yet the ſaid Sir *John*, by means of the ſaid Archbiſhop, could not have the Effect thereof, but was committed to Priſon by the ſaid Archbiſhop and others of the Council-Table, until he had ſubmitted himſelf unto the Order of the ſaid Table; whereby he loſt the Benefit of the ſaid Judgment and Execution.

The Third Day of my Hearing.

SATURDAY, *March* 16, 1643. In the *interim*, between the 13th and this 16th of *March*, upon ſome ſtrict Charge to look to the *Tower*, my Sollicitor was not ſuffer'd to come in to me. Whereupon, ſo ſoon as I was ſettled at the Bar, before the Evidence began to be open'd, I ſpake to the Lords as follows:

My Lords, I ſtand not here to complain of any Thing, or any Man; but only am inforced to acquaint your Lordſhips with my ſad Condition. Your Lordſhips have appointed my Secretary to be my Sollicitor, and given him leave to aſſiſt me in the turning of my Papers, and to warn in ſuch Witneſſes, and to fetch me the Copies of ſuch Records as I ſhall have occaſion to uſe. And I humbly deſire your Lordſhips to conſider, that myſelf being impriſoned, and ſo utterly diſenabled to do theſe things myſelf; it will be abſolutely impoſſible for me to make any Defence, if my Sollicitor be denied to come to me, as now he is. [b] This was granted, and the Hearing adjourned till *Monday* following; and I humbly thanked their Lordſhips for it.

The Fourth Day of my Hearing.

THE fourth Day of my Hearing was *Monday*, *March* 18. and was only my Anſwer to the third Day's Charge, and the only time in which I was not put to anſwer the ſame Day.

I. The firſt Charge of this Day was about *St. Paul*'s. And firſt out of my Diary (where I confeſs it one of my Projects to repair that ancient Fabrick); and three ſtrict Orders of the Lords of the Council, for the demoliſhing of the Houſes built about that Church. One was *November* 21. 1634. the demoliſhing of the Houſes commanded by this before *Jan.* 6. for one, and for the reſt by *Midſummer*. Another was *March* 26. 1631. a Committee appointed, with Power to compound with the Tenants, and with Order to pull down, if they would not compound. The third was *March* 2. 1631, which gives Power to the Sheriffs to pull down, if Obedience be not yielded.

To this, I confeſs I did, when I came firſt to be Biſhop of *London*, project the Repair of that antient and famous Cathedral of *St. Paul*, ready to ſink into its own Ruins. And to this I held myſelf bound in general, as Biſhop of the Place; and in particular for the Body of the Church, the Repair of which is by the local Statutes laid upon the Biſhop. And the Biſhop was well able to do it, while he enjoyed thoſe Lands which he had when that Burden was laid upon him. 'But what ſacrilegious Hands 'deſpoiled that Biſhoprick of them, 'tis to no purpoſe to tell.' And truly, my Lords, ſince I am in this preſent Condition, I humbly and heartily thank God, that *St. Paul*'s comes into my Sufferings; and that God is pleaſed to think me worthy to ſuffer either for it, or with it any way: though I confeſs, I little thought to meet that here, or as a Charge any where elſe. And ſo God be pleaſed (as I hope in Chriſt he will) to pardon my other Sins, I hope I ſhall be able (human Frailties always ſet aſide) to give an eaſy Account for this. But whereas I ſaid, *the Repair of* St. Paul'*s was a ſtrange piece of Treaſon*; and they preſently replied, that they did not charge the *Repair* upon me, but *the Manner of doing it, by demoliſhing of Mens Houſes*: To that I anſwered as follows; with this firſt, That the Work hath coſt me above One Thouſand and Two Hundred Pounds out of my own Purſe, beſides all my Care and Pains, and now this heavy Charge to boot: no one Man offering to prove, that I have miſpent or diverted to other uſe, any one Penny given to that Work; or that I have done any thing about it, without the Knowledge, Approbation, and Order of his Majeſty, or the Lords of the Council, or both.

To the Particulars then. For the three Orders taken out of the Council-Books, I ſhall not need to repeat them. But what is the Myſtery, that theſe Orders are reckoned backwards, the laſt firſt? Is it to aggravate, as if it roſe by Steps? That cannot well be; becauſe the firſt Order is the ſureſt, if I conceive it right. Beſides, here was real Compoſition allotted for them, and that by a Committee named by the Lords, not by me. And I think it was very real; for it coſt Eight or Nine Thouſand Pounds (as appears upon the Accounts) merely to take down the Houſes (which had no Right to ſtand there) before we could come at the Church to repair it.

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[a] *Contentions*, Ruſhw.

[b] *Here the Relation is imperfect. It ſeems he moved, that his Sollicitor might come to him, and in the mean time the Hearing put off* W. S. A. C.

And if any thing ſhould be amiſs in any of theſe, (which is more than I either know or believe) they were the Council's Orders, not mine. And ſhall that be urged as Treaſon againſt me, which is not imputed to them ſo much as a Miſdemeanour? Beſides, the Lords of the Council are in the antient Conſtitution of this Kingdom one Body; and whatſoever the major part of them concludes, is reputed the Act of the whole, not any one Man's. And this I muſt often inculcate, becauſe I ſee ſuch publick Acts like to be heaped upon my Particular.

1. The firſt Witneſs about this Buſineſs of *St. Paul*'s is *Mich. Burton*, and 'tis charged that his Houſe was pulled down in King *James*'s time; that he was promiſed Relief, but had none; that hereupon he got a Reference from his Majeſty that now is, and came with it to the Council, and was referred to the Committee: That Sir *Hen. Martin* told him, that the Archbiſhop was his Hindrance; that he reſorted to me, and that I bid him go to King *James* for his Recompence.

To this my Anſwer was, That this Houſe, which he ſays was his, was (as is confeſſed by himſelf) taken down in King *James*'s time, when an Attempt was made about the Repair of this Cathedral, but nothing done. If he deſired Satisfaction, he was to ſeek it of them who took down his Houſe, not of me. If his Majeſty that now is gave him a Reference, he was by the Lords of the Council, or by me (if to me it were referred), to be ſent to the Sub-Committee, becauſe Satisfaction for each Houſe was to be ordered by them. Nor had I any reaſon to take it on my Care, which was done ſo long before. He ſays, that Sir *Henry Martin* told him that I hindred him: but that's no Proof that Sir *Henry Martin* told him ſo; for 'tis but his Report of Sir *Henry Martin*'s Speech; and I hope Sir *Henry* neither did, nor would do me ſuch apparent Wrong. He was the third Man to whom I brake my Intentions touching the Repair and the Difficulties which I foreſaw I was to meet with; and he gave me all Encouragement. And it may be, when nothing would ſatisfy the eager old Man, I might bid him go to King *James* for Recompence: but 'tis more than I remember, if I did ſo. And this Man is ſingle, and in his own Caſe; and where lies the Treaſon that is in it? Beſides, leaſt Conſideration was due to this Houſe: for not many Years before the demoliſhing of it, it was built at the Weſt End of *St. Paul*'s for a Lottery, (it was ſaid to be the Houſe of one *Wheatly*) and after the Lottery ended, finiſh'd up into a Dwelling-Houſe, to the great annoyance of that Church: the Biſhop and Dean and Chapter being aſleep while it was done.

2. The next Charge about *St. Paul*'s was witneſſed by *Mary Berry*, That her Huſband was fain to ſet up his Trade elſewhere, and that every Man reported the Biſhop was the cauſe of it.

Her Huſband was forced by this Remove to ſet up his Trade elſewhere; ſo ſhe ſays: and perhaps in a better Place, and with Satisfaction ſufficient to make him a better Stock: Where's the Wrong? Beſide, ſhe is ſingle, and in her own Cauſe, and no Proof, but that every Man reported the Biſhop was the Means to remove him. And it is obſervable, that in King *James*'s time, when the Commiſſion iſſued out for the demoliſhing of theſe very Houſes, the Work was highly applauded; and yet no Care taken for Satisfaction of any private Man's Intereſt: 'That now great Care hath been taken, and great Sums of Money expended about it, yet I muſt be a Traitor, and no leſs for doing it. This makes me think ſome Party of Men were heartily angry at the Repair itſelf, tho' for very ſhame it be turned off upon the demoliſhing of the Houſes.'

3. The next that came in was *Tho. Wheeler:* He ſays, that his Houſe was pulled down by the Committee, by my Direction, about eleven Years ago; and that word was brought him of it.

His Houſe was pulled down; but himſelf confeſſes it was by the Committee. It was, he ſays, above eleven Years ago, and the Time limited in that Article is [a] *ſix* Years. He ſays, that word was brought him that I was the Cauſe, or gave the Direction. Word was brought him, but he names not by whom, nor from whom; ſo all this Proof is a ſingle Hearſay of he knows not whom: whereas I had the Broad Seal of *England* for all that was done. It was replied here, That for demoliſhing of theſe Houſes the King's Commiſſion was no full and legal Warrant: I ſhould have procured Authority from Parliament. I replied to this Interruption, That Houſes more remote from the Church of *St. Paul*'s were pulled down by the King's Commiſſion only in King *Edward* the Third's time; and humbly deſired a Salvo might be entered for me till I might bring the [b] Record: which was granted.

4. The laſt Inſtance for this Charge of *St. Paul*'s, was the Houſe of *W. Wakern*; who witneſſed, that he had a Hundred Pound Recompence for his Houſe, but then was after fined in the High-Commiſſion-Court 100 *l.* for Profanation, of which he paid 30 *l.*

To this I gave this Anſwer, That his Charge is true; and that after he had received 100 *l.* Compoſition, the Cry of the Profanation brought him into the High Commiſſion. It was thus: The Skulls of dead Men (perhaps better than himſelf) were tumbled out of their Graves into his Draught, and part of the Foundation of the Church (as appeared in the taking down of his Houſe) was broken, or pared away, to make room for the Uncleanneſs to paſs into the Vault: And ſurely were I to ſit again in the High-Commiſſion, I ſhould give my Vote to cenſure this Profanation. But himſelf confeſſes, he paid but Thirty Pound of it, which was too little for ſuch an Offence. And beſides, my Lords, this was the Act of the High-Commiſſion, and cannot be charged ſingly upon me.

And I cannot forbear to add thus much more, That the Biſhop and Dean and Chapter, whoever they were, did ill to give way to theſe Buildings, and to increaſe their Rents by a Sacrilegious Revenue; no Law, that I know, giving way to build upon conſecrated Ground, as that Church-yard is. But howſoever, the preſent Tenants being not *in dolo*, I ever thought fit they ſhould have Recompence for their Eſtates, and they had it.

II. The next Charge was about the Shops of the Goldſmiths in *Cheapſide* and *Lombard-ſtreet*. An Order was made at the Council-Table, *Novemb.* 12. 1634. That within ſix Months the Goldſmiths ſhould provide themſelves Shops there, and no where elſe, till all thoſe Shops were furniſhed; and this under a Penalty, and to give Bond.

Theſe two were the antient Places for Goldſmiths only, time out of mind: and it was thought fit by the Lords, for the Beauty of the Place, and the Honour of the City, to have theſe Places furniſhed as they were wont, and not to have other Trades mixed among them. Beſide, it concerned all Mens Safety; for if any Plate were ſtolen, the Inquiry after it might be made with more eaſe and ſpeed: whereas if the Goldſmiths might dwell here and there, and keep their Shops in every By-place of the City, ſtolen Plate might eaſily be made off, and never heard of. But howſoever, if in this Order there were any thing amiſs, it was the Order of the Council-Table, not mine: and far enough off from Treaſon, as I conceive.

1. Upon this Charge there were two Inſtances. The firſt is Mr. *Bartley*; who ſaid, his Houſe was taken from him, by Order to the Lord Mayor, 1637. That my Hand was to the Order; That he was impriſoned ſix Months, and recovered 600 *l.* Damages of Sir *Ed. Bromfield*; That after this he was committed to *Flamſted*, a Meſſenger belonging to the High-Commiſſion, about Dr. *Baſtwick*'s and Mr. *Burton*'s Books; That after this he was ſent for to the Council, and there heard my Voice only; That when he deſired ſome help, Sir *Thomas Ailſbury*'s Man told him, he were as good take a Bear by the Tooth; That all this was for his entertaining a Man that came out of *Scotland:* And laſtly, That Dr. *Haywood*, my Chaplain, had licenſed a Popiſh Book.

To which I gave this Anſwer: That if the Lord Mayor put him from his Houſe, by Order from the Lords, (being a Stationer among the Goldſmiths) then it was not done by me: and tho' my Hand were to the Order, yet not mine alone; and I hope my Hand there ſubſcribed no more Treaſon than other Lords Hands did. And if he did recover 600 *l.* againſt Sir *Ed. Bromfield*, who (I think) was the Lord Mayor ſpoken of, ſurely he was a Gainer by the Buſineſs. And whereas he ſays, he was after ſeized again, and committed to *Flamſted* about the Books named: if he were (as was informed) a great Vender of thoſe and ſuch like Books, leſs could not be done to him than to call him to anſwer. He ſays farther, That he was ſent for to the Council-Table, and there he heard my Voice only againſt him. It may be ſo, and without all fault of mine: for that heavy Office was uſually put upon me and the Lord Keeper, to deliver the Senſe of the Board to ſuch as were called thither, and examined there; and by this means, if any ſour or diſpleaſing Sentence paſſed, (how juſt ſoever, it mattered not) it was taken as our own, and the Envy of it fell on us. And that this was ſo, many Lords here preſent know well. He adds what Sir *Thomas Ailſbury*'s Man ſaid, when he would have petitioned again: but ſince Mr. *Bartley* is ſingle here, and in his own Cauſe, why doth he reſt upon a Hearſay of Sir *Thomas Ailſbury*'s Man? Why was not this Man examined to make out the Proof? And if this Man did ſo far abuſe me, as to ſpeak ſuch words of me, ſhall I be abuſed firſt, and then have that Abuſe made a Charge? That he was troubled thus for a *Scotchman*'s coming to him, is nothing ſo, nor is any Proof offered; tho' then the Troubles were begun in *Scotland:* and therefore if this had any relation to that Buſineſs, I pleaded again the Act of Oblivion. For that of Dr. *Haywood*, I ſhall give my Anſwer in a more proper place; for 'tis objected again.

2. The ſecond Inſtance was in Mr. *Manning*'s Caſe. He ſpeaks alſo of the Order of the Council, *Novemb.* 12. 1634. That the Goldſmiths in their Books make an Order upon it, *June* 15. 1635. That they which obey not ſhould be ſuſpended (I think 'tis meant from Uſe of their Trade); that when ſome intreated them to Obedience, I ſhould ſay, *This Board is not ſo weak, but that it can command*; or to that Effect.

For the Council's Order, it was theirs, not mine. For the Order which the Company of Goldſmiths made upon it, it was their own Act, I had nothing to do with it. For the Words, if I did ſpeak them (which is more than I remember), he is ſingle that ſwears them, and in his own Cauſe. But, my Lords, I muſt needs ſay, whether I ſpake it then or not, moſt true it is, that the Council-Table is very weak indeed, if it cannot command in things of Decency, and for Safety of the Subject, and where there is no Law to the contrary. And this was then my Anſwer.

III. The Third Charge of this Day was, That I forced Men to lend Money to the Church of *St. Paul*'s: and Mrs. *Moore* was called upon. But this was deſerted.

IV. The next Charge was concerning a long and tedious Suit between *Rich* and *Poole*, about the Parſonage of *North-Cerny*, in *Glouceſterſhire:* That *Rich* was turned out, after three Years Poſſeſſion, by a Reference procured by *Poole* to my Lord Keeper *Coventry* and myſelf; and that I did in a manner act the whole Buſineſs at the Reference: That Letters were ſent from the Council to Sir *William Maſters*, one of the Patrons, to ſee *Poole* inſtituted, and to impriſon *Rich* if he refuſed Obedience: That after, by the Lord Marſhal's Procurement, there was another Reference obtained to thirteen Lords, who awarded for *Rich*.

I was never more weary of any Buſineſs in my Life than I was of this Reference. And I was ſo far from acting the whole Buſineſs, as that I did nothing but as the Lord Keeper directed, the Cauſe was ſo entangled with *Quare Impedits*, and many other Buſineſſes of Law. Our Judgments upon full Hearing went with *Poole*, and we certified accordingly. And upon this (it may be) the Letters mentioned were ſent down for *Poole*. And if the Lord Keeper that now is, then his Majeſty's Sollicitor, could not or durſt not meddle, but gave back his Fee (as was farther urged), his Lordſhip is living to tell the Cauſe himſelf; for here was none ſet down, tho' it were urged as if he did it becauſe I was a *Referree*. And in the mean time, this is but a bare Report concerning him. If the thirteen Lords, to whom it was after referred, were of another Opinion, that was nothing to us, who, without any Touch of Corruption, did as our Knowledge and Conſcience guided us. And, my Lords, it ſeems this Title was very doubtful; for after all this, it came into this Parliament, and was referred to a Committee, where Mr. *Rich* was very willing to compound the Buſineſs. 'And well he might; for I was ſince certified by a Gentleman, a Lawyer, that underſtood well, and was at the Hearing of that Cauſe, that it was one of the fouleſt Cauſes, on *Rich*'s Side, that ever he heard. And out of this I took the Sum of my Anſwer, which I gave to Mr. *Browne*, when he ſummed up my Charge.'

The Witneſſes to this Charge were Mr. *Rich*'s Brother, and my good Friend Mr. *Talboys*. But this latter witneſſes nothing but that he heard me

[a] *Ten.* Vide *the ſecond Additional Article.*

[b] *See this Record twice referred to afterwards. In the latter place the uſeful Words of it are recited.*

ſay that *Poole*'s Behaviour was unfit; ſo there I checked the one Party: And that upon ſome Words given me by *Rich*, I ſhould ſay, *Do you throw Dirt in my Face?* And why might I not aſk this Queſtion, if his Words deſerved it? So upon the Matter, here is *Rich* ſingle in his Brother's Caſe, and nothing throughout that looks like Treaſon.

Here I had a Snap given me, That I ſlighted the Evidence: Whereas they (as 'twas ſaid) did not urge theſe Particulars as Treaſon, but as Things tending to the Violation of Law, and ſhould be found to make Treaſon in the Reſult. ‘ The Truth is, I did then think within myſelf, ‘ that ſuch Evidence might very well be ſlighted in an Accuſation of ‘ Treaſon. But I thought better to forbear; and ſo in my continued ‘ Patience expected the next Charge.’

V. Which was Mr. *Foxlie*'s Impriſonment about Popiſh Books. That he was tender'd the Oath *ex Officio*, then brought before the Council, and impriſoned again by a Warrant under my Hand, and others, and my Hand firſt to the Warrant, his Wife not ſuffer'd to come to him till he was ſick; that the chief Cauſe of all this was the Impropriations, becauſe he deſired to name the Men for the Feoffment.

My Lords, this Man confeſſes he was called in queſtion about Popiſh Books; but expreſſing no more, I cannot tell what to make of it; nor can I tell how to accuſe him of Popiſh Books. ‘ For I cannot tell which is ‘ leaſt, his Underſtanding of them, or his Love to them.’ And for tendring him the Oath *ex Officio*, that was the uſual Proceeding in that Court. When he was brought before the Lords of the Council, he ſays the Warrant for his Impriſonment was under my Hand and others: This was according to Courſe; ſo the Commitment of him was by the Lords, not by me. But my Hand was firſt; ſo was it in all things elſe, to which I was to ſet it. And the Reſtraint of his Wife from coming to him, was by the ſame Order of the Lords: And upon her Petition, when her Huſband was ſick, both of them confeſs ſhe had admittance. But whereas he ſays the chief Cauſe of his Commitment was the Feoffment, he is much miſtaken: Himſelf ſays before, it was about Popiſh Books. This I am ſure of, the Feoffment was not ſo much as mentioned againſt him; tho' he freely confeſſes that he got twelve Men to undertake that Feoffment: which was a great deal more Power than he could take to himſelf by Law. And his Wife ſpeaks not one Word to the Cauſe of his Impriſonment. So he is ſingle, and in his own Cauſe; and no Treaſon, unleſs it be againſt Mr. *Foxlie*.

VI. The next Charge of this Day was Mr. *Vaſſal*'s Impriſonment: And to ſave Repetition, I ſhall weave all the Circumſtances of Aggravation and my Anſwer together.

Firſt, He is ſingle in all, both Subſtance and Circumſtance. Secondly, He ſays, *That he conceives I was the Cauſe of his Impriſonment.* But his Conceit is no Proof. He ſays again, That I ſaid at the Council-Table, (whither he was called) *Why ſit we here, if we be not able to judge?* It may be, my Lords, I ſaid ſo; I remember not now: But if I did ſay ſo, it was of ſuch Things only as were fit and proper for that Honourable Board to judge of. Then he charged me, that I ſhould there ſay, *That he did eat the Bread out of the King's Children's Mouths; and that if he were in another Country, he would be hanged for it.* ‘ I doubt this Gentleman has borrowed ſome of Sir Henry *Vane*'s Memory: But I remember no ſuch Thing.’ Yet if I did ſay it, it was no Treaſon: For if I did ſay he might be hanged for the like in ſome other Countries, it was becauſe the Laws and Cuſtoms of other Countries, and this of ours, differ in many things. So that by this Speech he was to thank the Law of the Land for his Preſervation, notwithſtanding his Oppoſition againſt Majeſty; which, where the Laws were not ſo favourable to the Subject, would not be endured.

He ſays, *He was fain to depoſit* 300l. *into the Hand of Sir* Abra. Dawes, *and that it was taken out the next Day:* But he ſays withal, it was done by a Decree at the Council-Board; and I hope I ſhall not be held Author of all Decrees which paſſed there. He ſays that I called him *Sirrah:* A high Crime, if I did ſo! High Treaſon at leaſt! But ſure this Gentleman's Spleen ſwell'd up *Sir* into *Sirrah:* ‘ For that is no Language of mine to ‘ meaner Men than Mr. *Vaſſal* is. The main of this Charge is Words; ‘ and thoſe (if utter'd) haſty, not treaſonable. And as *M.* ‘ *Lepidus* ſpake in the Caſe of *C. Lutorius Priſcus*, * *Vana* ‘ *à ſceleſtis, dicta à maleficiis differunt*; Vain Things differ ‘ from wicked, and Words from malicious Deeds. And let any Man ‘ elſe be ſifted as I have been for all the Time I have been a Biſhop, which ‘ is now upon the Point of twenty and three Years, and I doubt not but ‘ as high Words as theſe will be heard from him upon leſs Occaſion, ‘ and of greater Perſonages than Mr. *Vaſſal* is. Beſides, Mr. *Vaſſal*, at ‘ the end of his Teſtimony, deſired the Lords he might have Reparation; which altogether in Law infirms that which he teſtified.’

* Tacit. L. 3. Annal.

VII. After this followed a Charge about a Grant paſſed from his Majeſty to one Mr. *Smith*. The difference was between Mrs. *Burrill* and him. As far as I can recall, it was thus: The King had made a Grant to Mr. *Burrill* in his Life-time, of a Wharf, or ſomething elſe belonging to the *Thames*. Mr. *Smith* conceals this, and gets a Grant from his Majeſty over the head of the Widow and her Children: And as himſelf confeſſes, his Majeſty being informed that Mrs. *Burrill* was Siſter to the reverend Prelate Biſhop *Andrews*, being then dead, † ſhould ſay, That he would not have granted it to Mr. *Smith*, had he known ſo much. This was an honourable Memory of his faithful Servant, her worthy Brother. But whatſoever was done in this Buſineſs, was by Order of the Council-Board, and not by me; as was alſo the 250*l.* which (he ſays) was paid in to Sir *William Beacher* (by way of Depoſit, as I conceive). In which, if he had any hard Meaſure, the Law was open for his Right. And in the whole Buſineſs he is ſingle, and in his own Cauſe.

† *did.*

VIII. The next Charge was Sir *Jo Corbet*'s; which, becauſe it is expreſſed at large in the Article before recited, I ſhall not here repeat, but apply the Anſwer to it, which I then gave.

Sir *John* ſays he *was ſent for about reading the* Petition of Right *at a Seſſions in the Country; and that the Earl of* Bridgewater *ſhould ſay he was diſaffected to the King.* This concerns not me in any thing. He ſays, *That for this he was committed, lay long in the* Fleet, *and was denied Bail.* But he ſays it was denied by the whole Board. ‘ So, by his own Confeſſion, ‘ this was the Act of the Council, not mine. And this Anſwer I gave ‘ to Mr. *Browne*, when he put this Part of the Charge into his Sum.’

In his Cauſe with Sir *John Stonehouſe* about a Waſte, I cannot recal the Particulars: But whatever was done therein, himſelf confeſſes was by Order of the Council-Table, and his Majeſty preſent, *April* 18, 1638.

For the Iſle built by the Lord Viſcount *Kilmurrey*, the Grant which I made, was no more than is ordinary in all ſuch Caſes; and 'tis expreſſed in the Body of the Grant, *Quantum in nobis eſt, & de jure poſſumus.* So there is nothing at all done, to the Prejudice of Sir *John*'s Inheritance: for if we cannot grant it by Law, then the Grant is voided by its own Words. And that the Grant was ſuch, and no other, I ſhew'd the Deeds ready atteſted out of the Office. Beſides, had I wrong'd him, there was an ordinary Remedy open by Appeal to the *Delegates.* And this was well known to him; for he did ſo appeal from a like Grant againſt him by the now Lord Biſhop of *Dureſme*, then of *Litchfield*, and Sir *John*'s Dioceſan. And whereas 'tis alledged, *That I made this Grant without the Conſent of him the Patron, or the then Incumbent*; Sir *John* acknowledges, like a Gentleman, that I ſent unto him for his Conſent, if it might have been had. And this I foreſaw alſo, that if I had denied the Lord Viſcount that which was not unuſual, then the Complaint would have fallen more heavy on the other Side that I made Perſons of Quality in a manner Recuſants, by denying them that Conveniency which was in my Power to grant. So I muſt be faulty, whatever I do.

IX. Then the Buſineſs of the Tythes of *London* was raiſed up in Judgment againſt me. And it was read out of my Diary, that I projected to give the Miniſters Aſſiſtance therein.

I had been much to blame, having been Biſhop of *London*, ſhould I have had other Thoughts: For their Caſe is very hard; all their Offerings being ſhrunk away into nothing but a poor *Eaſter*-Book. The Miniſters of *London* had often petitioned about ſome Relief long before my Time; and I did then, and do ſtill think it moſt juſt they ſhould have it. ‘ For they ‘ are now under the Taſk-Maſters of *Egypt*; (*Exod.* v. 7.) the Tale of ‘ Brick muſt be made; they muſt preach twice a Sunday, get Straw where ‘ they can.’ And yet I never thought of any thing contrary to Law, had all been done which I deſired: For that was no more than that the Citizens would voluntarily yield to ſome reaſonable Addition, where Right and Need appeared. And this, I am ſure, nor did nor could croſs with the Act of Parliament concerning the Tythes of *London*. And Mr. *Moſs*, who is their only Witneſs in this Particular, ſays no more againſt me, but that *I preſſed this Buſineſs much and often.* Which is moſt true I did; and held it my Duty ſo to do; but ſtill in the way before mentioned.

X. After this came the great Charge (as at preſent it is accounted) concerning the cenſure of Mr. *Prynn*, and *Burton*, and *Baſtwick*, in the *Star-Chamber*, and their Baniſhment (as 'tis called) upon it. The Witneſſes produced in ſome Circumſtances of that Cauſe, were Mr. *Cockſhott*, *Tho. Edwards*, *William Wickens*, Mr. *Burton*, Mrs. *Baſtwick*, and Mr. *Prynn* himſelf. The Cenſure is known and urged to be againſt Law: But ſo far as any Particular is put upon me, my Anſwer is preſent to it.

1. And, Firſt, for Mr. *Cockſhott*, he ſays, Mr. *Attorney* Banks *ſent him* (being then his Servant) *to give me an Account of that Buſineſs.* Hence 'tis inferred, that I took care of it. This might have had ſome ſhew of Proof, if I had ſent to Mr. Attorney to give me an Account of it. But there's no Word of any ſuch Proof. And yet, conſidering what relation their Cauſe had to the Church, if I had ſent and deſired ſome Account of the Proceedings, I humbly conceive (my Place in the Church conſidered) it could have been no great Crime.

2. Then were read certain Warrants, one *Feb.* 1. 1632. for Commitment, another of *Feb.* 2. 1636. to bar Acceſs to them. Theſe were Acts of the Lords ſitting in *Star-Chamber*, not mine. Then was read a third Order, after Sentence given, of *May* 13. 1634. for the ſeizing of his Books. But this, as the former, was an Act of the Court, not mine: And it is expreſſed in the Order (as the Charge itſelf lays it down) for the Diſpoſal of the Books according to Law. Then the Warrant of their Commitment to the Iſlands, *Aug.* 27. 1637. This Commitment was no Device of mine; nor did I ever hear of it till it was ſpoken by others in the *Star-Chamber*. Nor do any one of theſe Warrants prove any thing that can be called my Act. And I humbly conceive that I ought not by Law, nor can by Uſage of Parliamentary Proceedings, be charged ſingle for thoſe Things which were done in public Courts. The laſt Order was, *Nov.* 12. 1637. about the Aldermen of *Coventry*, and the *Quo Warranto* reſolved upon againſt the Charter of that City, *only for ſuppoſed Favours ſhewed to Mr.* Prynn *in his Paſſage that way.* Firſt, 'tis confeſſed in the Charge, that this was an Act of the Lords. Secondly, That it was made at a full Board. Thirdly, 'Tis not urged that any one Man diſliked it. Fourthly, The Complaint which cauſed it, was, that both Aldermen and their Wives, and other Citizens, were not content to ſhew Mr. *Prynn* Kindneſs; but they both did and ſpake that which was diſgraceful to the *Star-Chamber* Sentence. But howſoever, there is no Particular in that Order that is or can be charged upon me.

3. This for the Warrants. The next Witneſs concerning this Charge was *Tho. Edwards.* He ſays, *That three Hampers of Mr.* Prynn*'s Books were taken out of his Houſe,* (whither it ſeems they were conveyed for Safety) *and no Warrant ſhewed to take them.* The weaker Man he, to let his Friend's Books go ſo. But this Witneſs hath not one Word of me.

4. The next Witneſs was *William Wickens.* He ſays, *He knew of no Warrant neither; but that Licenſe was given by the Sheriffs about ſix Years ſince.* Here's never a Word concerning me: Nor am I to anſwer for the Sheriffs Act. And whereas it is an Aggravation in the Charge, *That all Mr.* Prynn*'s Books were ſold*; *Tho. Edwards* ſays there were but three Hampers of them; and this Witneſs ſays he bought them for two-and-thirty Pounds. And theſe neither by Number nor Price could be half of Mr. *Prynn*'s Books, if I have heard Truth of his Library.

5. After this Man's Teſtimony, comes Mr. *Prynn* himſelf in his own Cauſe. He made a long Relation of the Buſineſs, and full of Bitterneſs againſt me. This I doubt not was purpoſely done, to repreſent me as odious as he could to the Lords and the Hearers. But I ſhall aſſume nothing to myſelf, that was done by Order of the Court of *Star-Chamber:* Whatſoever was done there by com-

mon Conſent, was their Act; not mine; and if any Treaſon be in it, they are as guilty as I; for Treaſon admits no Acceſſaries. Nor will I meddle with the Language: God forgive him that, and whatever elſe he hath done againſt me. Only I ſhall anſwer to all ſuch Particulars of his as ſeem to touch upon my ſelf.

(1.) Firſt then he ſays, *He brought a Prohibition*, An. 1629. *and that was the Ground of my Hatred againſt him.* For Prohibitions, I ſhall anſwer when they are charged: But as I remember not this, ſo I bare him no hatred; and bearing him none, it could not be for that Cauſe: Nor doth he ſo much as offer to prove it was.

(2.) Next he ſays, *I gave Direction to Mr. Attorney* Noy, *and that Dr.* Heylin *drew ſome Informations for him.* Dr. *Heylin* was well acquainted with Mr. Attorney; but how long, or upon what Grounds, I know not: Nor did I give Mr. Attorney any Direction. What Dr. *Heylin* did, if he did any thing, is nothing to me, unleſs I ſet him on; which is not proved, nor ſworn.

(3.) He farther ſays, That *Mr. Attorney read his Book twice over*; *and ſaid, that he found nothing amiſs in it.* I know not what Mr. Attorney ſaid to him, nor what he may ſay of Mr. Attorney now he is dead: This I am ſure of, and 'tis well known to ſome of your Lordſhips, he ſaid far otherwiſe in open Court.

(4.) He ſays, That *his Book was licenſed to the Preſs, and after that ſeized; and that the Meſſenger told him it was done by me.* This was done by Warrant of the High Commiſſion, not by me: Nor doth he offer any Proof againſt me, but that the Meſſenger told him ſo; which is a bare Hearſay, and no Proof.

(5.) Then he ſays, That *there was another Order given about his Buſineſs, and that I did it.* But he brings no Proof for this, but that Mr. *Ingram*, the then Keeper of the Fleet, told him ſo. But this is as bare a Hearſay as the former, and Mr. *Ingram* not produced to make out the Proof.

(6.) Then he ſays, *He writ me a Letter, and that I ſent it to Mr. Attorney, to have him yet farther proceeded againſt.* 'Tis true, my Lords, he did write unto me; but whether it were a Letter, or a Libel, I leave other Men to judge. This Letter I did ſend to Mr. Attorney; but only to let him ſee how I was uſed, not to have any farther Proceeding againſt him. But Mr. Attorney was ſo moved at the Sight of it, that when he ſaw me next, he told me he would call him *Ore tenus* for it. Therefore, it ſeems, ſomewhat was very much amiſs in it, call the Writing what you will.

(7.) He ſays, *Mr. Attorney thought he had not kept the Letter*; *but he was deceived, for he had it.* But how was Mr. Attorney deceived? I'll tell your Lordſhips what himſelf told me. When Mr. Attorney ſaw that I would not agree to any farther Proſecution, he ſent for Mr. *Prynn*, ſhewed him the Letter, and thought, after he had read it, to give him ſome good Counſel, to deſiſt from that libelling Humour of his. But Mr. *Prynn*, after he had got the Letter into his Hands, went to the Window, as if he meant to read it; and while Mr. Attorney was otherwiſe buſied, he tare it into ſmall Pieces, and threw it out at the Window; and then ſaid unto him, *This ſhall never riſe in Judgment againſt me.* Now he confeſſes he hath the Letter ſtill, and that Mr. Attorney was deceived: Belike he tare ſome other Paper for it, and put the Letter in his Pocket. 'But that you 'may ſee the Honeſty of this Man, and what Conſcience he makes of that 'which he ſpeaks upon his Oath; here he ſays he had the Letter ſtill, 'and that Mr. Attorney was deceived: And yet after this, 'when he ſets out his Breviate of my Life, he confeſſes, in 'an unſavoury marginal Note, *That he tare it, Mr. Attorney 'having need of ſuch a Paper.* And for this Breviate of his, 'if God lend me Life and Strength to end this firſt, I ſhall 'diſcover to the World the baſe and malicious Slanders with 'which it is fraught.'

W. Prynn's *Breviate of the Archbiſhop's Life*, p. 19.

(8.) He went on, and ſaid, *There was an Order made againſt him when Term was done, ſo that he could have no Remedy.* This is directly againſt the Court and their Order, not againſt me.

Paulo poſt medium.

(9.) Then he cites out of the Epiſtle before my Speech in the Star-Chamber, *That I cenſured him for having his Hand in the Pamphlets of thoſe times, and yet was doubtful of it.* The Words are, *For I doubt his Pen is in all the Pamphlets.* But, Firſt, 'tis acknowledged I gave no Vote at all in his Cenſure; and if I did not judicially cenſure him, then ſure I was not doubtful, and yet cenſured. Secondly, He was cenſured upon his own Pamphlet; And his Hand was certainly in his own, what Doubt ſoever I might make of its being in theirs. And, Thirdly, if the Words be extended to their Pamphlets alſo, that's nothing to prove I doubted of the Juſtneſs of the Sentence. For the Words are not, *I doubt his Pen is in all thoſe Pamphlets of Mr.* Burton *and Dr.* Baſtwick; but in all the Pamphlets, whether their Libels, or any others: ſo I might be doubtful of the one, and yet certain enough of the other.

(10.) And whereas he adds, That *he was jointly charged with Dr.* Baſtwick *and Mr.* Burton, *yet could not be ſuffered to ſpeak together for a joint Anſwer*; *and that his Croſs-Bill was refuſed:* All this was done by the Court of Star-Chamber, not by me. And your Lordſhips know well the Lord Keeper managed the Affairs of that Court, not I.

(11.) Then he ſays, That *at laſt Mr.* Holt *came to him, but was threatened that very Afternoon for it.*

But he doth not tell your Lordſhips by whom; and for my Part, more than civil giving him the Time of the Day, I never ſpake with him in all my Life.

(12.) He tells your Lordſhips next, *how he paſſed thro'* Coventry (to which I have ſpoken already) *and how thro'* Cheſter, *and how ſome* Cheſter *Men were uſed concerning him and his Entertainment.* But, my Lords, whatſoever was done in this, was by the High-Commiſſion at *York*; and if any thing be therein amiſs, they muſt anſwer that did it.

(13.) Laſtly, he ſpake of ſending Sir *William Balfore* to me, and ſome other like Particulars. Of all which there is no Proof, but a bare Relation what Mr. *Hungerford*, Mr. *Ingram*, and Sir *William Balfore* ſaid; which is all Hearſay, and makes no Evidence, unleſs they were preſent to witneſs what was ſaid. 'And here give me leave to obſerve, that Mr. '*Prynn* hath in this Charge woven together all that he could ſay concerning both Cauſes, for which he was cenſured: For in the third Particu- 'lar he ſpeaks of his Book, for which he was firſt cenſured; and in the 'ninth and tenth of his Croſs-Bill, and the like, which were in his ſe- 'cond Cauſe.

6. The ſixth Witneſs was Mr. *Burton*, a Party too. For that which he ſaid agreeable to Mr. *Prynn*, it received the ſame Anſwer. And he added nothing new, but *that his Wife was kept from him by Warrant from the Lords.* And if it was by the Lords Order, then was it not by me. And when it was replied, That till he was ſentenced to *Guernſey*, his Wife had acceſs to him: Mr. *Burton* anſwered, Yea; *but*, my Lords, *ſhe was not ſuffered to be with me at Nights.* At which the Lords fell a laughing, and there ended his Charge.

7. The laſt Witneſs was Mrs. *Baſtwick*; and ſhe alſo ſaid nothing different from Mr. *Prynn*, but that ſhe was kept from her Huſband, and that ſhe petitioned the Lords about it; but of me in particular, not one Word. 'And tho' Mr. *Brown*, in his laſt Reply upon me, ſaid, The Time of 'theſe Mens Cenſure, was the noted Time of the Oppreſſion of the Sub- 'jects Liberty; yet I ſhall crave leave to ſay of theſe Men, as St. *Auguſ- 'tine* once ſaid of two great *Donatiſts* in his time, who (it ſeems) had re- 'ceived ſome Sentence, and afterwards a Return, not altogether unlike 'theſe Men: (they were *Felicianus* and *Pretextatus*) of thoſe 'thus St. *Auguſtine*; *if theſe Men were innocent, why were 'they ſo condemned? And if they were guilty why were they with 'ſuch Honour returned and received?* This applies itſelf. And 'here I am willing to put the reader in mind too, That Mr. '*Browne* drawing up an exact Sum of my Charge, and preſſ- 'ing it hard againſt me, to my Remembrance (and I think 'my Notes could not have ſlipped it) paſſed by this Charge 'concerning Mr. *Prynn*; and I cannot but think he had ſome Reaſon 'for it.'

Si innocentes erant, quare ſic damnati ſunt? ſi ſcelerati, quare ſic recepti? *Aug. Epiſt.* 172.

XI. This tedious Charge being over, the World ran round, and I was brought back again to another Charge about demoliſhing the Houſes at *St. Paul*'s; and here three Witneſſes more came againſt me.

1. The firſt was Mr. *Bently*: He ſaid, *There were above ſixty Houſes pull'd down.* I anſwered, I know not the Number; but if there be ſo many, the Recompence given was ſufficient for more. He ſaid farther, That *there were twenty Yards between the Church and ſome of the Houſes.* There were very few, if any ſuch (let him look to his Oath;) but then ſome were cloſe upon the Wall of the Church. And ſuppoſe all had been twenty Yards diſtant; that was not room enough to bring in, and lodge Materials for the Repair, and to turn the Carriages. And here again I made mention of my *Salvo*, before deſired, for the Record of *Ed.* 3. touching the like Buildings, and their Demolition.

2. The ſecond Witneſs was Mr. *Goare*. For the ſixty Houſes, as was before teſtified, I gave the ſame Anſwer; as alſo, that the Act of the Council-Table cannot be ſaid to be my Act. For *St. Gregory*'s Church they were not left without a Place for Divine Service, (as he would fain have it thought:) For they were aſſigned to a part of *Chriſt-Church*, till another Church might be built for them. And for the pulling down of St. *Gregory*'s 'tis well known to divers of that Pariſh, that I was not ſo much as one of the Referrees, to whoſe View and Conſideration it was referred. But the truth is, this Man rented the Parſonage-Houſe, and had a good Pennyworth of it to gain by his Under-Tenant. The going down of that Houſe troubles him, and not the Church.

3. The third Witneſs, *Walter Biggs*, ſays nothing different from the two former; *but that I ſaid I was oppoſed for the pulling down of the Houſes.* Whence it was inferred, that it was my Act; becauſe I was oppoſed. But my Lords, I hope, I might ſay, [I was oppoſed] without any Offence, or without taking the Order of the Council-Table to myſelf: For 'tis well known the Work of that Repair under God, was mine; and I took no indirect, no oppreſſing way to it: nor can I now be aſhamed of that, which, in future times, in deſpite of the preſent Malice, will be my Honour. So that the Care of the Work lying upon me, I might well ſay *I was oppoſed*, tho' the Oppoſition went higher, againſt the Orders of the Lords.

XII. The laſt Charge of this Day, was about the putting down of two Brewers in *Weſtminſter*, becauſe the exceſſive and noiſom Smoke from thence much annoyed the King's Houſe, Gardens and Park at *St. James*'s. Theſe two were Mr. *Bond* and Mr. *Arnold.*

1. For Mr. *Bond*, he begins with ſomewhat that I ſhould ſay at the Council-Table; as namely, that he muſt ſeal a Bond of two thouſand Pounds to brew no more with Sea-Coal. Now this argues, if I did ſo ſpeak, that it was in delivering to him the Senſe of the Board; which Office (as I have before expreſſed, and is well known) was uſually put upon me, if I were preſent. And your Lordſhips may here again ſee what Envy hath followed me upon that which I could not decline. He ſays farther, That upon this Mr. *Attorney* Banks *proceeded againſt him in the Exchequer*; That there upon ſome Occaſion the Lords Chief Baron ſhould ſay, *Ye are wiſe Witneſſes for the King*; That *his Counſel were forbid to plead, and ſo a Verdict paſſed for the King.* All this is nothing to me; I was neither Chief Baron nor Witneſs, nor one of the Jury that gave the Verdict. He ſays, *He was informed, that there was an Order of Council made, that no Man ſhould put up a Petition for him:* But himſelf doth not ſo much as mention, that this Order was procured by me: And it is but a Report that no Petition might be delivered for him; and none of them that told him ſo, produced for Proof. So he ſcandalizes the Lords by Hearſay.

Next he ſays, That the *King graciouſly ſent him with a Reference to the Council for Satisfaction.* Firſt, I muſt believe if he were ſo ſent, the Wrong being only the King's, and he willing he ſhould have ſatisfaction however for his Loſs; 'That the Lords would never refuſe, in ſuch a Caſe, 'whatſoever is here ſaid to the contrary. Secondly, It may be obſerved 'how gracious the King was to the Subject; that tho' the Annoyance was 'great to that Houſe of his Recreation and Retiring near the City, yet he 'would not have Mr. *Bond* ſuffer without Satisfaction: notwithſtanding 'which Goodneſs of the King, he comes into this great Court; and ſo 'he may have a blow at me, blaſts (as much as in him lies) all the King's 'Proceedings, under the Name of Oppreſſion, and that in a high degree.' He ſays alſo, *That a Friend of his perſuaded him to come to me, and offer me ſomewhat to* St. Paul's; *and that he did come to me accordingly, and that I ſaid I muſt have of him a Thouſand Pounds to* St. Paul's; *That he was not unwilling to give it, becauſe his Brewing was worth twice as much to him.* My

Lords, I humbly deſire your Lordſhips to conſider this part of the Charge well. Firſt, What Friend of his this was, that came ſo to him, he ſays not, nor do I know, and ſo have no poſſibility to examine. Secondly, He ſays not that I ſent his Friend of his to him, thus to adviſe him: and then his coming no way concerns me. Thirdly, when he was come upon this Friend's perſuaſion, if he were willing to give a Thouſand Pounds to *St. Paul's*, in regard of his double Gain from his Brew-Houſe, as himſelf confeſſes; I do not ſee (under favour) what Crime or Oppreſſion is in it. Laſtly, I remember none of this, and let him well weigh his Oath with himſelf; for I cannot call to mind one Penny that he gave to *St. Paul's*: nor yet ſhall I ever think it a Sin, to take a Thouſand Pounds to ſuch a Work, from any rich and able Man that ſhall voluntarily offer it; eſpecially upon hope of gaining twice as much.

To make this Charge the heavier, he ſays, I ſent him to the Queen-Mother, who lay then at *St. James's*; and that there he was laboured by ſome about her to change his Religion, and then he ſhould have all Favour. This is a bold Oath; let him look to it, for I ſent him not. It may be I might tell him, that if the Queen-Mother were offended with the Annoyance from his Houſe, it would not be in my Power to help him; which was true. And that about his Religion, was added to make your Lordſhips think that I ſent him thither for that Purpoſe: but God be thanked, this Witneſs ſays not any one Word tending that way. And for the Queen-Mother, ſince ſhe is thus mentioned, I ſhall crave leave to ſay two things: the one, That I did both in open Council, and privately, oppoſe her coming into *England*, with all the Strength I had; tho' little to my own Eaſe, as I after found: the other, That after ſhe was come, the Lords of the Council went in a Body to do their Duty to her; that time I could not but go; but never either before or after was I with her.

Then he concludes, That there was a *Capias* out for him, and that he was fain to make an eſcape by Night; which he did to Alderman *Pennington*, who very nobly ſuccoured him privately in his Houſe. All which concerns me nothing.

2. The other Witneſs is Mr. *Arnold*; who told as long a Tale as this, to as little purpoſe. He ſpeaks of three Brew-Houſes in *Weſtminſter* all to be put down, or not brew with Sea-Coal; that Secretary *Windebank* gave the Order. Thus far it concerns not me. He added, that I told him they burnt Sea-Coal: I ſaid indeed, I was informed they did; and that I hope was no Offence. He ſays, That upon Sir *John Banks*'s new Information, four Lords were appointed to view the Brew-Houſes, and what they burnt. But I was none of the four, nor did I make any Report, for or againſt. He ſays, Mr. Attorney *Banks* came one day over to him, and told him that his Houſe annoyed *Lambeth*, and that I ſent him over. The truth is this; Mr. Attorney came one Day over to dine with me at *Lambeth*, and walking in the Garden before Dinner, we were very ſufficiently annoyed from a Brew-Houſe; the Wind bringing over ſo much Smoke, as made us leave the Place. Upon this Mr. Attorney aſked me, why I would not ſhew myſelf more againſt thoſe Brew-Houſes, being more annoyed by them than any other? I replied, I would never be a means to undo any Man, or put him from his Trade, to free myſelf from Smoke. And this Witneſs doth after confeſs, that I ſaid the ſame Words to himſelf. Mr. Attorney at our parting ſaid, he would call in at the Brew-Houſe: I left him to do as he pleaſed, but ſent him not. And I humbly deſire Mr. Attorney may be examined of the Truth of this.

He farther ſays, That he came over to me to *Lambeth*, and confeſſes the Words before mention'd; and that he offered me Ten Pounds yearly to *St. Paul's*, and that I ſaid he might give Twenty. He ſays, That I ſent him to Mr. Attorney; but withal told him, that if he found not ſuch Favour as I wiſhed him, it was a ſign he had more powerful Adverſaries than my Friendſhip could take off. In all this I cannot ſee what Fault I have committed. And I foretold him Truth: for tho' the Buſineſs were after referred to Mr. Attorney and myſelf, (as himſelf ſays) yet we were not able to end it. Then he ſays, I would not ſuffer Sir *Edw. Powel*, Maſter of the Requeſts, to deliver his Petition to the King. But firſt, this is but Sir *Edward Powel*'s Report, and ſo no Proof, unleſs he were produced to juſtify it. Secondly, the World knows I had no Power in Sir *Edward*; he would then willingly have delivered Petition, or any thing elſe, that he thought might hurt me: and the Cauſe is known.

Laſtly, he ſays, Mr. Attorney ſent out a *Capias* for him; that the Sheriff came by force to take him, and what hard ſhift he made to eſcape: That after upon his Petition, the Lords gave him ſix Months time to provide himſelf elſewhere; and that he was fain to give five hundred Pound Bond not to brew there. To all this I then ſaid, and ſay ſtill, Firſt, Here's no one thing charged upon me in particular. Secondly, here's not a Word of my Advice or Endeavour to ſet on Mr. Attorney, or to move the Lords to any thing againſt him. And whereas it hath been urged, that my Power was ſuch, that I ſwayed the Lords to go my way; this cannot be ſaid, without laying an Imputation upon the Lords, as if they could ſo eaſily be overwrought by any one Man and that againſt Law: which is a moſt unworthy Aſperſion upon Men of Honour. And if all this were true, it is but Treaſon againſt a Brew-Houſe. Nor yet may this be called ſlighting of any Evidence, which is but to anſwer home in my own juſt Defence. 'And out of this I gave my anſwer to 'Mr. *Browne*'s ſummary Charge againſt me in the Houſe of Commons, 'for that which concerned theſe two Brewers.'

And here, before I cloſe this Day, give me leave, I beſeech your Lordſhips to obſerve two things. Firſt, That here have been thirteen Witneſſes at leaſt produced in their own Cauſe. Secondly, That whereas here have been ſo many things urged this Day about the Star-Chamber and the Council-Table; the Act made this Parliament, for the regulating of the one, and the taking away of the other, takes no Notice of any thing paſt: and yet Acts paſt (and thoſe Joint-Acts of the Council, and not mine) are urged as treaſonable, or conducing to Treaſon, againſt me. Nay, the Act is ſo far from looking back, or making ſuch Offences Treaſon, as that if any offend in future, and that ſeveral times, yet the Act makes it but Miſdemeanour, and preſcribes Puniſhments accordingly.

The Fifth Day of my Hearing.

FRIDAY, *March* 22. 1643. The firſt Charge of this Day was concerning the Indictment of Mr. *Newcommin* a Miniſter at *Colcheſter*, for refuſing to adminiſter the Sacrament, but at the Rails; and the Proſecution which followed againſt *Burrowes* for this. The two Witneſſes of the Particulars, are *Burrowes* and Mr. *Aſke*.

1. The Teſtimony which *Burrowes* gave, was, That Mr. *Newcommin* would not adminiſter the Communion, but at the Rail; that he indicted him for receiving it there; that the Foreman threw it out, *&c.* If Mr. *Newcommin* did this, Complaint might have been made of him; but howſoever here's no one Word of any Command from me. And it ſeems the factious Malice of *Burrowes* was ſeen, that the Foreman at firſt threw away the Indictment. He ſays, That upon this he was called into the High-Commiſſion; a Warrant from me; his Houſe beſet; *Stockdall* left the Warrant with the Mayor; a *Habeas Corpus* not obeyed. The Warrant, by which he was detained, was from the High-Commiſſion, not from me: and himſelf ſays, there were ſix or ſeven Hands to the Warrant. But then he ſays, my Hand alone was to another Warrant, which is impoſſible, for there muſt be three Hands at the leaſt, or no Warrant can iſſue out. And all his Proof of this latter is, that he ſaw my Hand; which I hope he may do, tho' other Hands beſides mine were to it. For the *Habeas Corpus*, if the Mayor ſaid (for ſo *Burrowes* adds) he would obey my Warrant, rather than the King's Writ, becauſe it came firſt; he was extremely ill adviſed: but if a Mayor of a Town give an undiſcreet, or a worſe Anſwer, I hope that ſhall not be imputed to me. And if there be any thing in this Buſineſs, why is not *Stockdall* the Meſſenger produced, that knows thoſe Proceedings? Laſtly, he ſpeaks of a Letter ſent to Judge *Crawley*, and ſhew'd to Judge *Hutton*. But firſt, he ſays not that Letter was ſent by me, or by my means. Secondly, he names not the Contents of the Letter; without which, no Man can tell whether it charge any thing upon me or not. And until the Letter be produced, or ſufficiently witneſſed, (neither of which is offered) 'tis but like a written Hearſay. And I humbly pray you to obſerve from himſelf, that the two Reverend Judges looking into the Buſineſs, ſaid, it was a mere Cheat for Money, and returned him back to *Colcheſter*: which is a Proof too, that the *Habeas Corpus* was obeyed; for if he were not brought up before them, how could he be returned by them?

2. Then Mr. *Aſke*, the ſecond Witneſs, was produced. He ſaid, there came Players to Town, and that ſome, which ſaid they came from me, were taken in a Tavern upon *Eaſter-Eve* at unſeaſonable Hours. I know not of any that were ſent from me: but if any were, and kept any Diſorder in the Town, eſpecially at ſuch a Time, Mr. *Aſke* did very well to queſtion them. He ſays, That upon the Matter I referred him twice to Sir *John Lambe*, and that, at the ſecond time, he found the Plot was to make him an Inſtrument about the Rails, which he abſolutely refuſed. I did refer him (and it may be twice) to Sir *John Lambe*; but if Sir *John* ſpake to him about the Rails, he had no Commiſſion from me ſo to do. 'I underſtood Mr. *Aſke* too well, to offer to make 'him an Inſtrument in ſuch a Buſineſs. His Zeal would 'have ſet the Rails on fire, ſo ſoon as ever he had come near 'them.'

Frigidius dictum. *W. S. A. C.*

Next he ſays, That Mr. *Newcommin* was indicted, as is aforeſaid, and that Indictment found: That Letters Miſſive were ſent for him and his Wife, by *Stockdall*. If Letters Miſſive by *Stockdall*, then they were ſent by the High-Commiſſion, whoſe joint Act cannot be charged upon me: And if any thing can be proved, why is not *Stockdall* produced? He ſays, that he went into *Holland* to avoid the Oath *ex Officio*. The Oath *ex Officio* was then the common, and, for ought I yet know, then the legal Courſe of that Court: ſo I could not help the Tender of that Oath unto them, had they ſtaid and appeared. But the Truth is, he was too guilty to appear; for his Wife was a Separatiſt, and himſelf confeſſes that ſhe came not to the Prayers of the Church. And as for him, I ever found him the great Maintainer of all wilful Oppoſition againſt the Church. He farther ſays, he came to me to *Croydon*, and that there I told him he might have put the Indictment againſt Mr. *Newcommin* in his Pocket. Indeed, my Lords, if I did ſay ſo, I think I ſpake it truly. For if he had borne any Reſpect to the Reputation of the Clergy, I think he might have pocketed it for one Seſſions, without any prejudice at all to the Law, or any thing elſe. God knows, this is often done. And if thereupon I added, (as Mr. *Aſke* ſays I did) That if he were ſo ſtrictly ſet againſt Churchmen in the Temporal Courts, he muſt look for as ſtrict Proceedings in the High-Commiſſion; I ſee no great Crime in it: for we are as ſtrictly bound to proſecute in the one, as he was in the other. And if his Clerk (as he ſays) was attached, who read the Indictment; yet it is not ſaid by himſelf, that he was attached for reading it. 'And if it were ſo, 'that ſome Jurors were attached, and not Mr. *Aſke*'s Clerk only, (as 'Mr. *Browne* preſſed it in the Sum of his Charge) yet the Anſwer 'comes all to one. For no Witneſs ſays, theſe Jurors were called in'to the High-Commiſſion for being Jurors, or diſcharging that legal 'Duty. And then I hope a Man's being of a Jury ſhall not 'excuſe him[a] for anſwering any Crime in any Court, that 'hath power to call him; provided he be not called off at the 'time of his Service, or while he is under the Privilege of that Court, in 'which he is a Juror. And according to this, I gave Mr. *Browne* my 'Anſwer. And howſoever, the Attachment goes of courſe out from the 'Commiſſion, and not from me.'

[a] *from.*

II. The ſecond Charge of this Day was about the Cenſure which fell on the Inhabitants of *Beckington* in *Somerſetſhire*, about their refuſing to remove the Communion-Table according to the Order of their Dioceſan: About which were produced three Witneſſes, to whoſe Evidence I ſhall anſwer in order.

1. The firſt was *William Longe*, who ſays he was Foreman of the Jury, when theſe Men were indicted for a Riot; and that, as he conceives, the Parſon ſpake with the Judge about it, which cauſed a ſudden Verdict. The Parſon of the Place ſpake with the Judge, and he conceives that produced a ſudden Verdict: Firſt, he doth but conceive ſo, and that can make no Proof:

If it did make Proof, 'tis only againſt the Parſon, not againſt me. And if the Parſon ſpeaking of it, did ſay, (as Mr. *Longe* affirms he did) That this Riot was like a *Waldenſian* or *Swiſſerland* Commotion; he muſt anſwer for his own diſtempered Language, me it cannot concern.

2. The ſecond Witneſs was *George Longe.* He ſays the Biſhop of *Bath* commanded the Communion-Table to be removed, and ſet at the upper end of the Chancel; that the Church-Wardens refuſing, were excommunicated: but he ſays withal, that they appealed to the Arches, and had remedy. Then he adds farther, That the Biſhop proceeded again, but the Church-Wardens would not remove it, ſaying it was an Innovation, and againſt Law. But, my Lords, 'tis neither: and therefore theſe Church-Wardens were in a great Contempt againſt their Biſhop, to the ill Example of all that Country. And that it is no Innovation againſt Law, appears by the Injunctions of Queen *Elizabeth*, where it is commanded expreſly to be ſet there. The Words are; *The Holy Table in every Church* (not Cathedrals only) *ſhall be decently made, and ſet in the Place where the Altar ſtood.* Now all Men know, that with us in *England* the Altar ſtood North and South, at the upper end of the Chancel; and to ſet it Eaſt and Weſt, had been croſs the Place where the Altar ſtood, and not in it. And this being Law in the beginning of the Reformation, cannot now be an Innovation.

Injunct. of Q. Eliz. fine.

When they came to me again, (as they ſay they did) if I then told them they deſerved to be laid by the Heels for the Contempt of their Biſhop; under favour, my Lords, I ſpake Truth. And give me leave, I beſeech you, to tell you this: It began to be a general Complaint, not of the Biſhop of *Bath* only, but of other Biſhops alſo, that they could do little or no ſervice in their ſeveral Countries, by reaſon of the Inhibitions which iſſued out of my Courts to ſtay their Proceedings. And I wanted no good Friends in Court to tell the King as much, when any thing was complained of. By this I was brought into great Streights: deny Appeals, I might not; frequent granting in my Courts, deſtroyed, in a manner the Biſhops Juriſdictions. In this Difficulty, ſeeing the Wilfulneſs of theſe Men, and knowing they had received full Benefit by their Appeal once already in the ſame Caſe; I did refuſe to hear any more of it, (unleſs there were new Matter) but yet left them free to appeal to the Delegates.

For Mr. *Hughes*, the Parſon there, if he gave ill Words, or laid violent Hands on any of his Neighbours, it concerns not me; let him anſwer for what he hath ſaid or done. 'Tis farther ſaid, That Mr. *Hughes* was with me at *Windſor*, and had Letters from me to the Lord Chief Juſtice *Finch.* But this Witneſs delivers not this upon his own knowledge; I ſent no Letter by him, nor did he ſee me ſend by any other: ſo this is merely a Report, and he doth not ſo much as tell from whom. Yea, but then he ſays, That Mr. *Morgan* (a man inward with the Judge) told him, that the Judge told him, that the little Man had put a Spoke in their Cart; and thereupon (as he conceives) the Petty-Jury was changed. Here are, if your Lordſhips mark them, two great Proofs. The one is the Witneſs's Report of Mr. *Morgan*'s Report, that the Judge had ſaid ſo of me: But why is not Mr. *Morgan* produced to clear this? The other is not the Knowledge, but the Conceit only of the Witneſs: *He conceives*, which I am confident cannot ſway with your Lordſhips for a Proof. 'Beſides, were Mr. '*Morgan* never ſo inward with that Judge, yet it follows not, that he 'muſt know all. And if that Judge did mean me, (for name me he did 'not) he did me the more wrong. For I never deſired any thing of any 'Judge, him or other, but what was according to Law. Nay, I ſo ex'preſſed myſelf, as that if by miſtake or miſ-information I had deſired 'any thing which was not according to Law, I humbly deſired my Motion 'might be, as if it had never been made.'

3. The third Witneſs is Mr. *Jo. Aſh.* That which this Gentleman ſays, is, That Sir *John Lambe* told, that the Man which came about that Buſineſs, could have no Appeal admitted without me; and that if he would be ſo troubleſome, he ſhould be laid by the Heels. I have given your Lordſhips an Account, why he could not have an Appeal without me: he had had the benefit of an Appeal before in the ſame Cauſe. And for this Witneſs, he delivers no Knowledge of his own; but only he ſays, the Man employ'd related it to him: ſo 'tis a Relation, no Proof. He ſays, the Penance was enjoined them in three Churches. And truly, my Lords, their Diſobedience to their Biſhop was great; but if the Penance enjoined were too heavy, it was the Act of their own Biſhop, not mine. Then he ſays, That the Lord *Finch* told him, another powerful Hand was upon him; intimating me. Firſt, this is no Knowledge of the Witneſs, but a Speech of the Lord *Finch.* Secondly, if the Lord *Finch* did ſay ſo of a powerful Hand, he wronged me much, but himſelf more, to confeſs he could be drawn awry in Judgment. Thirdly, this Witneſs ſays not that he named me, but that he intimated me: I pray your Lordſhips Judgment, what a forward Witneſs this Man is, that can upon Oath deliver what is intimated and of whom.

He ſays farther, That upon Petition to Sir *William Portman* for ſome Aſſiſtance, the Biſhop of *Bath* laid all upon me; and that when himſelf came to me at the *Tower*, ſince my Reſtraint, I told him the Biſhop of *Bath* did like an obedient Biſhop to his Metropolitan. For this, my Lords, there is no Proof, that the Biſhop laid this Buſineſs upon me, but Sir *William Portman*'s Report. Sir *William* is a worthy Gentleman, why is not he produced? Why is not the Biſhop, that is ſaid to lay all upon me, brought into the Court, that he may clear himſelf and me, if he had ſaid it not; or that I may make him aſhamed, if he ſaid it? For 'tis confeſſed, that in the firſt Buſineſs, the Church-Wardens had their Remedy by their Appeal to me; but that then the Biſhop began again, as the former Witneſs declared. Nor knew I any thing of this Buſineſs till the Appeal came. As for my Anſwer to himſelf, that, under favour, is quite miſtaken: For I did not ſay, That in this Particular, but that in his general Proceedings in his Dioceſs, the Biſhop of *Bath* carried himſelf like an obedient Biſhop to his Metropolitan. Nor can my Words be drawn to mean this Particular: For how could I ſay that in this Particular he carried himſelf like an obedient Biſhop to me, when after Remedy given to theſe Men by their firſt Appeal into my Court, he began with them again upon the ſame Cauſe? Beſides, my Lords, this is not the firſt time Mr. *Aſh* hath miſtaken me. 'Mr. *Browne*, in ſumming up this 'Charge againſt me, falls twice very heavily upon this Buſineſs of *Beck*'*ington.* Firſt, For the Point of Religion: And there he quoted a Paſ'ſage out of my Speech in the *Star-Chamber*, where do I reſerve the In'differency of the ſtanding of the Communion Table either way; and 'yet (ſaith he) they were thus heavily ſentenced for that which I myſelf 'hold indifferent. But 1ſt, This Sentence was laid upon them by their 'own Biſhop, not by me. 2dly, The more indifferent the Thing was, 'the greater was their Contumacy to diſobey their Ordinary. And had 'it not been a Thing ſo indifferent, and without danger of advancing 'Popery, would Queen *Elizabeth*, who baniſhed Popery out of the King'dom, have endured it in her own Chapel all her time? 3dly, The Hea'vineſs of the Sentence, ſo much complained of, was but to confeſs their 'Contumacy in three Churches of the Dioceſs, to example other Mens 'Obedience. Secondly, For the ſame Point, as it contained Matter a'gainſt Law, I anſwered Mr. *Browne*, as I had before anſwered the Lords.'

III. The third Charge was about certain Houſes given to *St. Edmond*'s *Lombard-Street*, where old Mr. *Pagget* is Parſon. The Witneſſes are two.

1. The firſt is Mr. *Symms*, who ſays, That after a Verdict, Mr. *Pagett* the Incumbent, upon a pretence that theſe Tenements were Church-Land, got a Reference to the Lord Biſhop of *London*, then Lord Treaſurer, and myſelf. My Lords, we procured not the Reference; but when it was brought to us under the King's Hand, we could not refuſe to ſit upon it. Upon full hearing, we were ſatisfied that the Cauſe was not rightly ſtated; and therefore we referred them to the Law again for another Trial, and for Coſts to the Barons of that Court. 'And this was the Anſwer 'which I gave to Mr. *Browne*, when he inſtanced in this Caſe.' He ſays the Houſes were given to ſuperſtitious Uſes: But Poſſeſſions are not to be carried away for ſaying ſo. If Men may get Land from others by ſaying it was given to ſuperſtitious Uſes, they may get an eaſy Purchaſe. And Mr. *Symms* is here in his own Caſe. But whether the Houſes were given to ſuperſtitious Uſes or not, is the thing to be tried in Law, and not to be pleaded to us. He complains that I would not hear his Petition alone: And ſurely, my Lords, I had no reaſon, ſince it was referred to another with me. And yet I ſee, tho' I was not in the Reference alone, nor would hear it alone, yet I muſt be alone in the Treaſon. And here I deſired that Mr. *Pagett*, the Incumbent, might be heard.

2. The other Witneſs was Mr. *Bernard:* He ſays he was preſent at the Hearing; and that Mr. *Symms* ſaid he was undone, if he muſt go to a new Tryal. But, my Lords, ſo may Men ſay, that by their Troubleſomeneſs in Law-ſuits go about to undo others. He ſays that Mr. *Pagett* named his own Referrees: If that be ſo, 'tis no Fault of mine. He ſays the Reference was made to us only to certify, not to make any Order in it: If this be ſo, here's no Proof ſo much as offered that we did not certify, as we were requir'd, and then had power given to order it; which we did. And he confeſſes the Counſel on both ſides had full hearing before ought was done.

IV. The fourth Charge of this Day was concerning the Impriſonment of one *Grafton*, an Upholſter in *London.* The Witneſſes three: Of which,

1. The firſt is *Grafton*, in his own Cauſe: And 'tis much if he cannot tell a plauſible Tale for himſelf. He ſays firſt, That twelve Years ago he was committed, and fined fifty Pounds by other Commiſſioners. By others, my Lords; therefore not by me: And an Act of the High-Commiſſion, by his own Words, it appears to be. He ſays, He was continued in Priſon by my procurement, as he verily believes. Firſt, (as he verily believes) is no Proof. And the ground of his Belief is as weak: For he gives no reaſon of it but this, That Dr. *Ryves*, the King's Advocate, ſpake with the Barons; but he doth not ſay about what, or from whom. He adds farther, That Mr. *Ingram* Keeper of the *Fleet*, would not give way to his Releaſe, notwithſtanding the Barons Orders, till he heard from me. Here's no Man produced that heard Mr. *Ingram* ſay ſo; nor is Mr. *Ingram* himſelf brought to teſtify. Laſtly, he ſays, That he then made Means in Court, and ſo repaired to the Barons again, but all in vain; and that Baron *Trevor* cried out, *O the Biſhop! O the Biſhop!* Firſt, here's a Confeſſion of Means in Court made to the Judges: So belike they may have Means made to them, ſo it be not by me. For the Particular, I did humbly deſire the Baron, being then preſent, might be aſked. He was aſked: He bluſhed, and fumbled. The Lords laughed, and I could not hear what he ſaid.

2. The ſecond Witneſs was Mr. *Lenthall.* But he ſaid nothing, but that there was an Order for *Grafton*'s Liberty; which is not denied.

3. The third was Mr. *Rivett.* He ſays, That Mr. *Ingram* ſaid that *Grafton* was a *Browniſt*, and muſt be brought into the Fleet again, becauſe he did much hurt among the King's Subjects. This is a bare Report of a Speech of Mr. *Ingram*; it no ways concerns me. And a Separatiſt he is from the Church of *England*: But whether a *Browniſt*, or no, I cannot tell, there are ſo many Sects, (God help us.) And much harm he hath done among weak People: For moſt true it is, which St. *Cyril* obſerves, Προετοιμάζει ὁ Διάβολος τὰ σχίσματα τῶν λαῶν, ἵνα εὐπαράδεκτος γένηται ὁ ἐρφόμενος, *That the Devil prepares theſe ſchiſmatical Separations, that ſo much the more eaſily the Enemy may be received.* As for this Man, he was in his way cunning enough: for under pretence that he ſuffer'd by me, he got Madam *Vantlet*, and other of the *French*, to negotiate with the Queen's Majeſty in his behalf. And this I found, that ſometimes, when her Majeſty knew not of it, they ſent to the Barons for Favour for him. 'And yet I never heard that Baron *Trevor* ever cried out, *O the* '*French! O the French!* Nor can I tell what ſtopped his Mouth in this 'Cry, and opened it ſo wide in the other, when we moved to defend our'ſelves and our Proceedings. Where, I humbly deſire, this Paſſage of 'the Law may be conſidered; in the Caſe of depraving the *Common*'*Prayer-Book*, (ſo much ſcorned and villified at this day) and for not 'coming to Church. The Words of the Law are, *For due Examination* '*hereof, the Queen's moſt excellent Majeſty, the Lords Temporal, and all the* '*Commons in this preſent Parliament aſſembled, do in God's Name earneſtly* '*require and charge all the Arch-biſhops, Biſhops, and other Ordinaries, that* '*they ſhall endeavour, to the uttermoſt of their Knowledge, that the due and* '*true Execution hereof may be had throughout their Dioceſſes and Charges, as* '*they will anſwer before God*, &c. 1 Eliz. c. 2. Now, if I do not this, 'here's an apparent Breach of the Law: And if I do it againſt the com'mon and great Depraver of this Book, then the Judge, who by this Law

‘ ſhould aſſiſt me, cries, *O the Biſhop!* And this Anſwer I gave Mr. *Browne*, when he ſumm'd his Charge againſt me.’

V. The fifth Charge of this Day was Mr. *John Ward*'s Caſe, in a Suit about Simony in the High-Commiſſion.

He ſays, (for he alſo is in his own Cauſe) That upon a pretence of a Lapſe by Simony, I procured a Preſentation from the King to the Church of *Dinnington*. His Majeſty truſted me with the Titles, which did accrue to him in that kind: And becauſe *Simony* had been ſo rife, commanded me to be careful I might not betray his truſt. And therefore the Simony being offered to be proved, I procured his Majeſty's Preſentation for trial of the Title. And this I conceive was no Offence; tho' this be that which he calls the Heavineſs of my Hand upon him. He farther ſays, That I ſent to the Biſhop of *Norwich* to admit the King's Clerk, the Church being void, 7 *Junii* 1638. Nor do I yet ſee, my Lords, what Crime it is in me, truſted eſpecially as before, to ſend to the Biſhop to admit when the Church is void: Many Lay-Patrons do that, upon Allegation of Simony, before Proof. ‘ And Mr. *Bland*, produced as a Witneſs alſo, ſays, That the Lord *Goring* prevailed with the Lord Biſhop of *Norwich* not to admit. And I hope an Archbiſhop, and truſted therein by his Majeſty, may as lawfully write to the Ordinary for Admiſſion of the King's Clerk, as any Lay-Lord may write againſt it.’ But Mr. *Ward* ſays nothing to this of the Lord *Goring*; but adds, That Sir *John Rowſe* prevented this Admiſſion by a *Ne Admittas*, *Junii* 12. And that thereupon I ſaid, *It was to no purpoſe for us to ſit there, if after a long Trial, and Judgment given, all might be ſtopped.* If I did ſay ſo, I think it is a manifeſt Truth that I ſpake: for it were far better not to have Simony tried at all in Eccleſiaſtical Courts, than after a long Trial to have it called off into *Weſtminſter-Hall*, ‘ to the double Charge and Trouble of the Subject. But if the Law will have it otherwiſe, we cannot help that. Nor is this Expreſſion of mine any Violation of the Law.’

Then he ſays, a Letter was directed from the Court of the High-Commiſſion to the Judges, to revoke the *Ne Admittas*; and that I was forward to have the Letter ſent. How forward ſoever I was, yet it is confeſſed the Letter was ſent by the Court, not by me: and let the Letter be produced, it ſhall therein appear, that it was not to revoke the *Ne Admittas*, but to deſire the Judges to conſider, whether it were not fit to be revoked, conſidering the Church was not void till *Jun.* 14. And it hath been uſual in that Court, to write or ſend ſome of their Body to the Temporal Judges, where they conceive there hath been a Miſinformation, or a Miſtake in the Cauſe; the Judges being ſtill free to judge according to Law, both for the one and the other. And here he confeſſes the Writ of *Ne Admittas* was revoked by three Judges, and therefore I think legally.

But here he hopes he hath found me in a Contradiction. For when I writ to the Biſhop of *Norwich*, *Junii* 7. 1638. I there ſaid the Church was void; whereas this Letter to the Judges ſays it was not void till *Junii* 14. But here is no Contradiction at all: For after the Trial paſt, and the Simony proved, the Church is void to ſo much as the Biſhop's giving of Inſtitution; and ſo I writ *Junii* 7. But till the Sentence was pronounced in open Court, and read, the Church was not void, as touching thoſe Legalities, which (as I humbly conceive) do not till then take place in *Weſtminſter-Hall*: And the reading of the Sentence was not till *Junii* 14. However, if I were miſtaken in my own private Letter to the Biſhop, yet that was better thought on in the Letter from the High-Commiſſion to the Judges. He ſays, laſtly, That upon a *Quare Impedit*, after taken forth, it was found that the King had no Right. Why, my Lords, if different Courts judge differently of Simony, I hope that ſhall not be imputed to me. In the Court where I ſat, I judged according to my Conſcience, and the Law, and the Proof, as it appeared to me. And for Dr. *Ryves*'s Letter, which he ſays was ſent to the Curſitor to ſtop the *Ne Admittas*, let Dr. *Ryves* anſwer it. The Witneſs himſelf confeſſes that Dr. *Ryves* ſays the Command to the Curſitor was from the Lord Keeper, not from me. ‘ And here ends the Treaſon againſt Mr. *Ward*; and, till now, I did not think any could have been committed againſt a Miniſter.’

VI. Then followed the Caſe of *Ferdinando Adams*, his Excommunication, and the Suits which followed it: As it will appear by the Witneſſes following, which were four.

1. The firſt was Mr. *Henry Dade*, the Commiſſary then, before whom the Cauſe began. And he confeſſes, He did excommunicate *Adams* for not blotting out a Sentence of Scripture, which the ſaid *Adams* had cauſed to be written upon the Church-Wall, as in many Churches Sentences of Scripture are written. But he tells your Lordſhips too, that this Sentence was, [a] *My Houſe ſhall be called a Houſe of Prayer; but ye have made it a Den of Thieves.* The Commiſſary's Court was kept (as uſually it is) at or toward the Weſt End of the Church; and juſt over the Court *Adams* had written this Sentence upon the Wall, merely to put a Scorn and a Scandal (tho' I hope an unjuſt one) upon that Court. ‘ He was commanded to blot it out: He would not, becauſe it was Scripture; as if a Man might not revile and ſlander, nay, ſpeak Treaſon too, (if he will be ſo wicked) and all in Scripture-Phraſe: Witneſs that leud Speech lately utter'd, [b] *To your Tents O Iſrael*, &c.’ Upon this he was excommunicated; and I cannot but think he well deſerved it. For the Suit which followed againſt Mr. *Dade* in the Star-Chamber; the Motion that Mr. Attorney would leave him to the common Proſecutor, and not follow it in his own Name, himſelf confeſſes, was made in open Court by Mr. *Bierly*, and that from me he had no Inſtructions at all.

2. The ſecond Witneſs is *Adams* in his own Cauſe. To the Place of Scripture I have ſpoken already. And the next that he ſays, is, That Sir *Nath. Brent*, in my Viſitation, commanded the ſetting of the Communion-Table at the upper end of the Chancel; That upon his not blotting out the paſſage of Scripture, he had an Action: and that his Solicitor was committed by *J. Jones*, till he relinquiſhed his Suit. In all this there is not one Word of any thing that I did. And for that which Sir *Nath. Brent* did about placing the Communion-Table, 'tis [c] anſwered before. He ſays alſo, That when he ſaw he muſt proſecute his Suit againſt Commiſſary *Dade* in his own Name, he left the Kingdom. And ſurely, my Lords, if he would leave the Kingdom rather than proſecute his Cauſe in his own Name, 'tis more than a ſign, that his Cauſe was not very good.

3. The third Witneſs was Mr. *Cockſhot*, one of Mr. Attorney *Bank*'s Servants. He ſays, That *Adams* moved him, and he Mr. Attorney; and that thereupon Mr. Attorney gave his Warrant againſt *Dade*. By which your Lordſhips may ſee how active Mr. *Cockſhot* was againſt a Church-Officer, and in ſo foul a Scandal. He ſays alſo, That Mr. *Dade* came to Mr. Attorney, and told him, that I did not think it fit, a Proſecution in ſuch a Cauſe ſhould be followed in Mr. Attorney's Name. Firſt, 'tis true, I did not think it fit; nor did Mr. Attorney himſelf, when, upon Mr. *Bierly*'s Motion, he fully underſtood it. Secondly, The Cauſe being ſo ſcandalous to a Church-Officer, I conceive I might ſo ſay to Mr. *Dade*, or any other, without offence. But then, Thirdly, here's not one Word that I ſent Mr. *Dade* to Mr. Attorney about it: He came and uſed my Name, ſo Mr. *Cockſhot* ſays; but not one Word that I ſent him. Laſtly, He ſays, That Mr. Attorney told him, that I blamed him for the Buſineſs, and that thereupon he chid this Witneſs, and ſent him to me; and that I rebuked him for it: but he particularly remembers not what I ſaid. Nor truly, my Lords, do I remember any of this. But if I did blame Mr. Attorney for lending his Name in ſuch a ſcandalous Cauſe as this, I did (as I conceive) what became me. And if he chid his Man, he did what became him. And if I rebuked Mr. *Cockſhot* when he was ſent to me, ſure he deſerved it; and it ſeems it was with no great Sharpneſs, that he cannot remember any thing of it. ‘ And ſo I anſwered Mr. *Brown* when he inſtanced in this.’

4. The laſt Witneſs was Mr. *Prynn*, who ſays, no Appeal was left him. But that, under favour, cannot be: For if my Courts refuſed him (which is more than I know) he might have appealed to the Delegates. He ſays, That he adviſed *Adams* to an Action of the Caſe; that he blamed *Lechford* for deſerting the Suit, and that he adviſed him to go to Mr. Attorney. So here's no Aſſiſtance wanting to *Adams*, but the Church-Officer Mr. *Dade* muſt have none. Yet I blame not Mr. *Prynn*, becauſe he ſays he did it as his Counſel. He ſays farther, That when *Adams* was put to prefer his Bill in his own Name, that then the Excommunication was pleaded in Bar: But he doth not ſay it was pleaded by me, or my Advice; nor do I hear him ſay, it was unjuſtly pleaded. And had not *Adams* been wilful, he might have taken off the Excommunication, and then proceeded as it had pleaſed him.

VII. Then the Charge went on againſt me, about the Stop of Mr. *Bagſhawe* the Reader of the *Middle-Temple*. The Witneſſes are two Lawyers, who accompanied Mr. *Bagſhawe* to *Lambeth*, Mr. *White* and Mr. *Pepys*. They ſay, That Mr. *Bagſhawe* inſiſted upon theſe two Points; Firſt, That a Parliament might be held without Biſhops; and, Secondly, That Biſhops might not meddle in Civil Affairs. My Lords, theſe things are now ſettled by an Act of this Parliament, but then they were not. And I conceive, under favour, that Mr. *Bagſhawe* (the Crazineſs of theſe times conſidered) might have beſtowed his time better upon ſome other Argument: And ſure no Man can think, that either myſelf, or any Church-Governor, could approve his Judgment in that Particular. And whereas they ſay, That the Lord Keeper *Finch*, and the Lord Privy-Seal told them, that I was the Man that complained of it to the King and the Lords: 'Tis moſt true, I did ſo; and I think I had been much to blame if I had not done it. And if when they came over to *Lambeth* about it, they heard me tell Mr. *Bagſhawe* (as they alſo ſay they did) that he ſhould anſwer it in the High-Commiſſion Court next Term; I humbly conceive this no great Offence; but out of all queſtion no Treaſon to threaten the High-Commiſſion to a Reader of the Inns of Court.

VIII. The laſt Charge of this Day was concerning the Lord Chief Juſtice *Richardſon*, and what he ſuffered for putting down Wakes and other diſorderly Meetings in *Somerſetſhire*, at the Aſſizes there holden.

The ſingle Witneſs to this is *Edward Richardſon*, (a Kinſman of the Judge's, as I ſuppoſe.) He ſays, That Complaints were made to the Judge of Wakes and Feaſts of Dedication; That his Majeſty writ Letters about it to Sir *Robert Phillips* and others. They certify a Command comes by the Lord Keeper to revoke the Order next Aſſizes. Firſt, 'Tis not done. Then by Command from the Lords of the Council, the Judge, upon that ſecond Command, revokes it; but, as 'tis certified, not fitly. In all this here's not one Word that concerns me. Then he ſays, That upon this laſt Certificate, the Buſineſs was referred to the Lord Marſhal and myſelf, and the Judge put from that Circuit. I cannot now remember what Report we made: But whate'er it was, the Lord Marſhal agreed to it as well as I. Then a Letter of mine was produced of *Octob.* 4. 1633. But the Letter being openly read, nothing was found amiſs in it. And, under your Lordſhip's Favour, I am ſtill of Opinion, that there is no Reaſon the Feaſts ſhould be taken away for ſome Abuſes in them; and thoſe ſuch as every Juſtice of Peace is able by Law to Remedy, if he will do his Duty. ‘ Elſe by this kind of Proceeding, we may go back to the old Cure, and remedy Drunkenneſs by rooting out all the Vines; the Wine of whoſe Fruit cauſes it. As for the Pretences, which this Witneſs ſpake of; they were none of mine, as appears evidently by the Letter itſelf.’

As an Appendix to theſe, was added a Letter of my Secretary Mr. *Dell*, to Sir *John Bridgman*, Chief Juſtice of *Cheſter*, in a Cauſe of one *Ed. Morris*. It was (as I think it appears) upon an Incroachment made in the Marches Court upon the Church; in which Caſe, I conceive, by my Place, I may write to any Judge for Information: And there is nothing peremptory in the Letter. The Words are *(If things be rightly ſuggeſted.)* But howſoever, the Letter is *Dell*'s; and if he have done amiſs in it, he is here preſent to anſwer. And it will be a hard Buſineſs with Men of Honour, if when any Lord ſhall command his Secretary to write, and give him Directions for the Matter, he ſhall afterwards be anſwerable for every Slip of his Secretary's Pen; eſpecially in ſo high a way, as 'tis charged on me. But the beſt is, here's nothing amiſs that I know.

The Sixth Day of my Hearing.

I. THURSDAY *March* 28. 1644. The firſt Charge of this Day concerned the Cenſure, Deprivation and Impriſonment of Mr. *Huntly*. The Witneſſes produced are four.

1. Mr. *Merifield* comes on firſt. He ſays, That himſelf was committed by the Lords of the Council; and that there I ſaid, That he the ſaid *Merifield* deſerved to be laid by the Heels, and to be called into the Star-Chamber.

[a] *Mat.* xxi. 13.

[b] *Reg.* 12. 16.

[c] *In the ſecond Charge of this Day.*

Chamber. This Man was (as I take it) Mr. *Huntly*'s Attorney; and if I did ſpeak thoſe Words concerning him, ſurely his Words and Carriage deſerved it; elſe I am confident the Lords would not have committed him for a naked, and an orderly following of his Client's Cauſe; eſpecially in the Preſence of two Judges, Juſtice *Jones* and Juſtice *Crook*, who, he ſays himſelf, were preſent. 'And this Anſwer I gave Mr. *Browne*; who, in 'the Sum of his Charge againſt me, omitted not this Caſe of Mr. *Meri*-'*field*; for ſo was this Attorney's Name.

2. The next Witneſs is Mr. *Huntly* himſelf. He ſays, that I ſaid unto him, That he being an Eccleſiaſtical Perſon, and in an Eccleſiaſtical Cauſe, ought not to decline the Church-Cenſure. Then followed his Impriſonment, and his Action for falſe Impriſonment, and the reſt of his Proceedings. In all which the High-Commiſſion proceeded againſt him, and he proceeded againſt the High-Commiſſioners; nothing done by me, or againſt me, in particular. So nothing of his Charge falls upon me, but the Words; and for them, they are very far from offering to [a] exempt any Clergyman, him, or other, from the Temporal Laws, if Things cognizable by them. But I humbly conceive, his Oath of Canonical Obedience conſidered, that he ought not to decline the Eccleſiaſtical Judicature, in Things merely Eccleſiaſtical. And if in this my Judgment I do err, yet it is Error without Crime; and ſurely, my Lords, no Treaſon.

3. The third Witneſs is *John Dillingham*. He ſays, That Mr. *Huntly* moved before the Lord Chief Juſtice *Richardſon*; and that the Judge replied, By his Faith he durſt not do him Juſtice. To this, my Lords, I anſwer: Here's never a Word that he durſt not do him Juſtice for fear of me; that's not ſaid by the Witneſs, and ought not, by Conjectures, to be inforced againſt me. But howſoever, if he ſpake theſe Words, the more ſhame for him. He is dead, and I will not rake into his Grave; but if he ſo ſpake, it ſeems he was none of thoſe Judges, which *Jethro* adviſed *Moſes* to make for the eaſe of himſelf, and the good of the People, *Exod.* xviii. 21. 'Mr. *Browne*, in ſumming up of his Charge, preſſed 'this Speech of the Judge hard upon me; which inforces me to add thus 'much more, That this Witneſs lays it hard upon the Judge, not upon 'me: For no Proof is offered, that I did ſollicit him in that Cauſe: And 'if he wanted Courage to do Juſtice, why ſat he there?'

4. The fourth Witneſs was Mr. *Pit*, a ſworn Officer; he ſays, The Order concerning Mr. *Huntly* was from the Council, and that there was then a full Board; ſo this was no ſingle Act of mine. He ſays farther, That he was not ſimply prohibited, but only till he had acquainted the Lord Keeper with it, or thoſe Judges whoſe Courts it concerned. And this was ſo ordered (as I conceive) to remedy the tedious and troubleſome Interpoſitions of Mr. *Huntly*. Where it is not unfit for me to inform your Lordſhips, that this Cauſe of Mr. *Huntly*'s was in my Predeceſſor Archbiſhop *Abbot*'s Time; I had nothing to do in it, but as any other Ordinary Commiſſioner then preſent had.

And here, at the entering upon my Anſwers this Day, I did in general put the Lords in mind, That nothing of late times was done, either in Star-Chamber, or at Council-Table, which was not done in King *James* and Queen *Elizabeth*'s Times, before I was born; and that many Parliaments have been ſince, and no Man accuſed of Miſdemeanour for Things done there, much leſs of Treaſon. Nor is there any one Witneſs that hath charged me, That that which I did, was to overthrow the Laws, or to introduce arbitrary Government: 'That's only the Conſtruction made 'on't at the Bar; which, as it is without all Proof for any ſuch Inten-'tion, ſo I am confident they ſhall anſwer for it at another Bar, and for 'ſomething elſe in theſe Proceedings.'

II. Then followed the Charge about Prohibitions; in which are many Particulars, which I ſhall take in order, as the ſeveral Witneſſes charged them upon me.

1. The firſt is Mr. *Prynn*. He ſays, That in *An. 4to Caroli*, he brought a Prohibition, and that thereupon I ſhould ſay, *Doth the King give us Power, and then are we prohibited? Let us go and complain.* Firſt, If this were *Anno* 4 *Caroli*, it was long before the Article; ſo that I could neither expect the Charge, nor provide the Anſwer. Secondly, I humbly conceive there's no Offence in the Words: For if a Prohibition be unjuſtly granted upon Miſinformation, or otherwiſe; or if we do probably conceive it is ill-grounded, I hope 'tis no Sin to complain of it to the King, the Fountain of Juſtice in both Courts. Yea, but he ſays farther, that I ſaid I would lay him by the Heels that brought the next: 2. And this M. *Burton* witneſſes with him. Firſt, If I did ſay ſo, they were but a few haſty Words; for upon ſecond thoughts it was not done. Next, I deſire your Lordſhips to conſider what manner of Witneſs Mr. *Burton* is; who confeſſes here before your Lordſhips, that he brought the next with a purpoſe to tempt me: You know whoſe Office that is; and ſo Mr. *Burton* hath abundantly ſhewed himſelf, and proclaimed his Religion.

3. As for Mr. [b] *Comes*, he ſays juſt the ſame with Mr. *Prynn*, and I give the ſame Anſwer.

Then about taking down of a Pew in a Church in *London*, (my Notes are uncertain for the Name) which Pew was ſet above the Communion-Table; That I required to have it pulled down; That they came to me to have an Order for it: and that thereupon I ſhould ſay, *You deſire an Order of Court, that you may have it to ſhew, and get a Prohibition; but I will break the back of Prohibitions, or they ſhall break mine.* 4, 5. And this is jointly witneſſed by Mr. *Pocock* and Mr. *Langham*: and this they ſay was thirteen or fourteen Years ago. Excellent Memories, that can punctually ſwear Words ſo long after! But, my Lords, I confeſs to your Lordſhips, I could never like, that Seats ſhould be ſet above the Communion-Table: if that be an Error in me, be it ſo. For the Words, I did not ſpeak them of Prohibitions in general, but of ſuch as I did conceive very illegal; as, for ought I yet know, this muſt have been. 'And this was the Anſwer 'which I gave Mr. *Browne*, when, in ſumming up the Charge, he in-'ſtanced in this againſt me.' 6. To theſe *Rowland Tompſon* adds new Words; *That I wondered who durſt grant a Prohibition, the High-Commiſſion Court being above all.* But he confeſſes, he knows not the time when this was ſpoken. Let him look to his Oath, for I am as confident he knows not the thing. And I farther believe, that neither he, nor any the reſt of my Accuſers think me ſo ignorant, as to ſay the High-Commiſſion Court was above all.

7. *Francis Nicolas* ſays, That about four Years ſince he delivered a Prohibition, and was committed for it. 8. To this, *Quaterman* comes in and ſays more than *Nicolas* himſelf: for he ſays, he delivered it in upon a Stick, and was committed for it. Firſt, if he were committed, it was not for bringing the Prohibition, but for his unmannerly Delivery of it; and to reach it into the Court upon a Stick to call the People to ſee it, was no handſome way of Delivery. And one that brought a Prohibition (whether this Man or no, I cannot certainly ſay) threw it with that violent Scorn into the Court, that it bounded on the Table, and hit me on the Breaſt, as I ſat in Court. Howſoever his Commitment was the Act of the Court, not mine: And for *Quaterman*, he is an exaſperated Man againſt me and that Court, as hath appeared to the World many ways.

9. Mr. *Edwards* was called up next; and he ſays, It was a common thing to lay them by the heels which brought Prohibitions. And they were commonly brought by bold impudent Men, picked out of purpoſe to affront the Court. And then if the Court made their Impriſonment as common as they their Rudeneſs, where's the fault? And I pray mark, this is ſtill the Act of the Court, not mine.

10. Mr. *Welden* ſays, That there was a Command given to lay hold of a Man, which brought a Prohibition: But more he ſays not. Nor did he offer to make himſelf Judge of the Juſtice of the Court in that behalf. And conſidering what Affronts have been put upon the Court of High-Commiſſion by the Bringers of Prohibitions, I hope it ſhall not be accounted a Crime to ſtay him that brings it, till the Prohibition be ſeen and conſidered.

11. 'The next Witneſs is Mr. *Ward*; and he is an angry Witneſs, for 'his Cauſe before mentioned about Simony.' That which he ſays, is, That *Ann.* 1638. he that brought a Prohibition in a Cauſe of Mr. *Foetroughts*, was laid by the heels: but he himſelf confeſſes, the Court then declared, that they were affronted by him; and then he was puniſhed for that Miſdemeanor in his Carriage, not for bringing the Prohibition. He ſays farther, That I directed ſome Commiſſioners to attend the Judges about it, and that the Party had no benefit by his Prohibition. For my directing Attendance upon the Judges, I think I did what well became me; for there came a Rule before the Prohibition, which required the Court ſo to do: 'And Mr. *Prynn* objected, becauſe this was not done; 'and now I am accuſed, becauſe I gave direction to do it.' And if the Party had no benefit by his Prohibition, it muſt needs follow, that either the Judges were ſatisfied by our Information of the Cauſe; or if not, that they did Mr. *Foetroughts* the wrong, and not we.

12. The laſt Witneſs about Prohibitions, was Mr. *Wheeler*. He ſays, that in a Sermon of mine long ſince, I uſed theſe words; *They which grant Prohibitions to the diſturbance of the Church's Right, God will prohibit their Entrance into the Kingdom of Heaven:* And he ſays he writ down the Words, that he might remember them. If this Gentleman will tell me what Text I then preached on, I will look upon my Sermon, (if that, with my other Papers, be not taken from me) and ſhew the Place. In the mean time, with that Limitation with which he confeſſes I ſpake them, I conceive there is no fault at all in the words. For it will be found no ſmall fault in Judges to grant Prohibitions to the diſturbance of the Rights of the Church, which no Law of God or Man warrants them to do. So the words I ſpake, muſt needs be underſtood of illegal Prohibitions. For they which are legal, do only ſtop the Church from doing wrong, but do no wrong to the Church by diſturbing her Rights. 'Mr. *Browne* charg-'ed this Sermon-Note upon me alſo, and I gave him this Anſwer. Ne-'vertheleſs, I cannot but be ſorry to hear it from Mr. *Wheeler*'s own 'Mouth, that he was ſo careful to write this Paſſage, and ſo ready to 'come to witneſs it againſt me, conſidering how many Years I have 'known him, and how freely he hath often come to my Table, and been 'welcome to me; yet never told me, this Paſſage in my Sermon troubled 'him. It ſeems ſome Malignity or other laid it up againſt this wet Day.'

Here, having thus anſwered all Particulars, I humbly craved leave of their Lordſhips, to inform them ſome few things concerning Prohibitions. As Firſt, that there was a great Conteſtation about them, between my Predeceſſor, Archbiſhop *Bancroft*, and the then Judges, and this before King *James* and the Lords of the Council; and Mr. Attorney *Hobart* pleaded for the Church againſt them. Sir *Henry Martin* gave me Copies of all thoſe Papers on both ſides. No final End made, that I could ever hear of. This calling them all in queſtion, was far more than ever was done by me, or in my time; and yet no Accuſation at all, much leſs any of Treaſon, put up againſt Archbiſhop *Bancroft* for this. Secondly, I have here Papers atteſted of all the Prohibitions, which have been admitted in my Courts of Arches, and Audience; and I find, there are as many (if not more) admitted in my ſeven Years time, as in any ſeven Years of my Predeceſſor Archbiſhop *Abbot*. And theſe Papers I delivered into the Court. As for the High-Commiſſion, the Records are all taken from us; elſe I make no doubt, but it would ſoon appear by them, that as many have been admitted there alſo. Thirdly, There is a great difference touching Prohibitions, and the ſending of them, ſince the Times of Reformation, and before. For before, the Biſhops Courts were kept under a foreign Power; and there were then weighty Reaſons for Prohibitions, both in regard of the King's Power, and the Subjects Indemnity. But ſince the Reformation, all Power exerciſed in the Spiritual Courts is from the King, as well as the Temporal; ſo that now there neither is nor can be ſo much Cauſe as formerly was. And yet all that I did humbly and earneſtly deſire, was, that ſome known Bounds might be ſet to each Court, that the Subject might not, to his great Trouble and Expence, be hurried, as now he was, from one Court to another. And here I deſired a *Salvo*, till I might bring [a] Archbiſhop *Parker*'s Book, to ſhew his Judgment in this Point, in the beginning of the Reformation, if it ſhall be thought needful. 'According to whoſe Judgment (and 'he proves it at large) there is open Wrong done to the Eccleſiaſtical Ju-'riſdiction by Prohibitions.'

Sir Timothy Baldwin *hath theſe Papers.* W. S. A. C.

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[a] *Exclude from the Benefit.*

[b] f. *Combs.*

[a] Ma. Parkeri Antiq Britan. in vita Joh. Stafford. *p.* 326, 327.

III. The next Charge is about my undue taking of Gifts: A Charge which I confeſs I did not think to meet here. And I muſt and do humbly deſire your Lordſhips to remember, that till this Day I have not been accuſed, in the leaſt, for doing any thing corruptly: And if I would have had any thing to do in the baſe dirty Buſineſs of Bribery, I needed not have been in ſuch Want as now I am. But my Innocency is far more to my Comfort, than any Wealth ſo gotten could have been: For I cannot forget that of *Job*, That [a] *Fire ſhould conſume the Tabernacle of Bribery.* ‘And in the *Roman* Story, when [b] *P. Rutilius*, a Man *Summâ Innocentiâ*, of greateſt Integrity, was accuſed, condemned, and baniſhed, ’tis obſerved, by the Story, that he ſuffered all this not for Bribery, of which he was not guilty, but *ob Invidiam*, for Envy; againſt which, when it rages, no Innocency, no Worth of any Man is able to ſtand.’

1. But to come to the Particulars: The firſt is the Caſe of Sir *Edward Greſham*'s Son, unhappily married againſt his Father's Will; a Suit in the High-Commiſſion about it; and that there he had but fifty Pounds Damages given him. That was no fault of mine: My Vote gave him more; but it was carried againſt me. The bond of two hundred Pounds, which was taken according to [c] Courſe in the Court, was demanded of me by Sir *Edward*, to help himſelf that way; and ’tis confeſſed I granted it. But then ’tis charged, That in my Reference to Sir *John Lambe*, to deliver him the Bond, I required him to demand one half of the Forfeiture of the Bond toward the Repair of *St. Paul's*. ’Tis true, I did ſo: But, 1ſt, I deſire it may be conſider'd, that it was wholly in my Power, whether I would have deliver'd him the Bond, or not. 2dly, That upon this groſs Abuſe, I might have ſued the Bond in my own Name, and beſtowed the Money upon what charitable Uſes I had thought fit. 3dly, That I did nothing herein but what the Letters-Patent for Repair of *St. Paul's* gave me Power to do. 4thly, That this is the third time *St. Paul's* is urged againſt me: Which I am not ſorry for; becauſe I deſire (ſince ’tis once moved) it may be ſifted to the uttermoſt. And whereas, to make all Eccleſiaſtical Proceedings the more odious, it was urged, That the Rubrick in the *Common-Prayer Book* mentions no Licence, but Aſking of Banes: That Rubrick is to be underſtood where no Licence is granted: For elſe no Licence at all for Marriage without Banes-aſking can be good; which is againſt the Common both Law and Practice of the Kingdom. *Can.* 62. *Ec. Ang.*

2. The ſecond Particular was charged by one Mr. *Stone*, of *London*; who ſaid, He ſent into *Lambeth* two Buts of Sack, in a Cauſe of ſome *Cheſter*-Men, whom it was then in my Power to relieve, and mitigate their Fine ſet upon them in the High-Commiſſion at *York*, about Mr. *Prynn*'s Entertainment, as he paſſed that way; and that this Sack was ſent in before my Compoſition with him what ſhould be mitigated, and ſo before my Return of the Fine mitigated into the Exchequer. The Buſineſs, my Lords, was thus: His Majeſty having taken the Repair of the Weſt-end of *St. Paul's* to himſelf, granted me to that end all the Fines in the High-Commiſſion Court, both here and at *York*, and left the Power of Mitigation in me. The *Cheſter*-Men, which this Witneſs ſpeaks of, were deeply ſentenced at *York* for ſome Miſdemeanours about Mr. *Prynn*, then lately ſentenced in the *Star-Chamber*. One or more of them were Debtors to this Mr. *Stone*, to the Value of near three thouſand Pounds, (as he ſaid.) Theſe Men, for fear of the Sentence, kept themſelves cloſe, and gave Mr. *Stone* to know how it was with them; and that if he could not get me to moderate the Fine, they would away, and ſave themſelves, (for they had now heard the Power was in me.) Upon this, Mr. *Stone*, to ſave his own Debt of three thouſand Pounds, ſends his Son-in-Law Mr. *Wheat* and Dr. *Bailie*, Men that were bred in the College of *St. John* under me, and had ever ſince good Intereſt in me, to deſire my Favour. I at firſt thought this a Pretence, and was willing to preſerve to *St. Paul's* as much as fairly I might. But at laſt, upon their earneſt pleading that the Men were not rich, and that Mr. *Stone* was like (without any fault of his) to be ſo much damnified, I mitigated their Fines, which were in all above a thouſand Pounds, to two hundred. I had great Thanks of all Hands; and was told from the *Cheſter*-Men, that they heartily wiſhed I had the hearing of their Cauſe from the beginning. While Mr. *Wheat* and his Brother Dr. *Bailie* were ſolliciting me for favour to Mr. *Stone*, he thinks upon ſending Sack into my Houſe, and comes to my Steward about it. My Steward acquaints me with it. I gave him abſolute Command not to receive it, nor any thing from any Man that had Buſineſs before me: So he refuſes to admit of any. Mr. *Stone* preſſes him again, and tells him he had no relation to the *Cheſter*-Mens Cauſe; but would give it for the great Favour I had always ſhewed to his Son-in-Law. But ſtill I commanded my Steward to receive none. When Mr. *Stone* ſaw he could not faſten it, he watches a time when my Steward was out of Town, and myſelf at Court, and brings in his Sack, and tells the Yeoman of my Wine-Cellar he hath leave to lay it in. My Steward comes home, finds the Sack in the Cellar; tells me of it: I commanded it ſhould be taken out, and carried back. Then Mr. *Stone* comes, intreats he may not be ſo diſgraced; proteſts, as before, that he did it merely for my great Favour to his Son-in-Law; and that he had no relation to the *Cheſter*-Mens Buſineſs: And ſo after he proteſted to myſelf, meeting me in a Morning, as I was going over to the *Star-Chamber*. Yet afterwards this religious Profeſſor (for ſo he carries himſelf) goes home, and puts the Price of the Sack upon the *Cheſter*-Mens Account. Hereupon they complain to the Houſe of Commons; and *Stone* is their Witneſs.

This is the Truth of this Buſineſs, as I ſhall anſwer it to God. ‘And whether this do not look like a thing plotted by the Faction, ſo much imbittered againſt me, let underſtanding Men judge.’ Mr. *Wheat*, his Son-in-Law, was preſent in Court, and there avowed that he tranſacted the Buſineſs with me, and that he went not out of Town till I had agreed to the Mitigation; that in all that time there was no Tender of Sack, or any thing elſe, unto me; and he and Dr. *Bailie* were the only Men with whom I tranſacted the whole Buſineſs. ‘And ſo much could Dr. *Bailie* alſo witneſs, but that (as the Times are) I could not bring him from *Oxford*.’ With Mr. *Stone* himſelf I never treated. For my Steward, he is dead three Years ſince, who could have been my Witneſs clean thorough the Buſineſs. And when I preſſed Mr. *Stone* at the Bar with the Proteſtation which he made to me; that he had no relation herein to the *Cheſter*-Men, he that remembred every Circumſtance elſe, ſaid he remembred not that. Then I offered to take my voluntary Oath of the Truth of it; but that was not admitted. Then it was preſſed, That this Bribe muſt needs be before the Agreement; for he ſays the Sack was ſent into my Houſe ——, and the Mitigation of the Fine into the *Exchequer* not till ——. But that is nothing; for my agreement was paſſed, and I meddled no more with it. Yea, but he ſays, that Mr. *Holford*, my Servant, had forty Pounds more than I agreed upon, before he would finiſh their Buſineſs. Mr. *Holford* was the King's Officer for thoſe Returns into the *Exchequer*: And if after my Agreement made, he either unduly delay'd their Buſineſs, or corruptly took any Money from them, he is living, and muſt anſwer for his own Fault; me it cannot concern, who did not ſo much as know of it.

‘Mr. *Wheat*, having thus teſtified in open Parliament, before the Lords, was within a Day or two called before the Committee; there re-examined in private, and very ſtrictly, touching the time of my Agreement made: Then (not without ſome Harſhneſs) commanded not to depart the Town, till he heard farther from them. This himſelf afterwards told me. Hereupon I reſolved to call him again for farther Evidence, and, if I ſaw cauſe, to acquaint the Lords with this Uſage. And I did call for it divers times after; but one Delay or other was found, and I could never obtain it. And ſuch a kind of calling my Witneſſes to a private After-reckoning, is that which was never offered any Man in Parliament. And here Mr. *Browne*, in ſumming up my Charge, did me a great deal of Right: For neither to the Lords, nor in the Houſe of Commons, did he vouchſafe ſo much as to name this falſe, baſe, and unworthy Charge; of which my greateſt Enemies are ready to acquit me.’

3. The third Particular was charged by one Mr. *Delbridge*; who ſays, He was oppreſſed at the Council-Table by the Lord Keeper *Finch*; that he was adviſed by Mr. *Watkins* to give my Secretary, Mr. *Dell*, Money to get my Hand to a Petition to the Lord Keeper, who, he ſaid, would not oppoſe me: That *Dell* took of him One hundred and fifty Pounds, and procured my Hand to his Petition. I remember nothing of this Buſineſs, and it lies wholly upon my Secretary; who being my Sollicitor, is here preſent in Court, and deſires he may anſwer the Scandal.

There's no Touch at all upon me, but that (he ſays) my Secretary got my Hand to his Petition to the Lord Keeper. This Petition of his was either juſt or unjuſt: If juſt, I committed no Fault in ſetting my Hand to it; if unjuſt, he muſt confeſs himſelf a diſhoneſt Man, to offer to get my Hand to boulſter out his Injuſtice: And yet if the Injuſtice of it were varniſhed over with fair Pretences, and ſo kept from my Knowledge, the Crime is ſtill his own, and nothing mine, but an Error at moſt. As for Mr. *Watkins*, he did me much Wrong, if he ſent any Man to my Houſe on ſuch an Errand.

‘Here my Secretary had leave to ſpeak: denied the whole Buſineſs; and produced Mr. *Hollys*, with whom it was ſaid the Hundred and fifty Pounds before-named ſhould be depoſited, who (to my Remembrance) ſaid he knew of no ſuch Thing.’

4. The fourth Inſtance was a Bond for the Payment of Money as a Fine: The Bond found in Sir *Jo. Lamb*'s Chamber, with a Note upon the Back of it, for One hundred Pound received, and Sir *John*, by my Direction, was to call for the reſt. And here it was ſaid, That I uſed the Name of *St. Paul's* in an illegal way to get Money; which might well have been ſpared. For (as is aforeſaid) I had a Broad-Seal, which gave me all Fines in the High-Commiſſion Court to the repairing of the Weſt End of *St. Paul's*, and with Power to mitigate. And the Fines are the King's, and he may give them by Law. The Broad-Seal is in the Hands of Mr. *Holford*, who is thereby appointed Receiver of all ſuch Fines; but is upon Record to be ſeen: And if it be doubted, I humbly deſire a *Salvo* till the Record can be taken out, and ſhewed. But I preſume theſe Gentlemen have ſeen it. And Commutations for ſuch Crimes, as Sir *James Price*'s was, are according to Law, and the antient Cuſtom and Practice in this Kingdom, eſpecially where Men of Quality are the Offenders. And the Power of commuting is as legal in that Court as any other: And if that be doubted, I humbly deſire my Counſel may argue it.

5. The fifth Inſtance was a Charge concerning a Leaſe in *Lancaſhire*, held in three Lives by Sir *Ralph Aſhton*. ’Tis ſaid by his Son Mr. *Aſhton*, (the only Witneſs in the Cauſe) That I by power at *Cheſter* and *York*, and the High Commiſſion here, being Landlord in Right of my Archbiſhoprick, did violently wreſt this Leaſe of the Rectory of *Whally* in *Lancaſhire* out of his Hands againſt Law, and made him take a Leaſe for Years, and pay a great Fine beſides, and other Fines beſides towards the Repair of *St. Paul's*, and raiſed the Rent Sixty Pound. Truly, my Lords, I am not any whit ſollicitous to anſwer this Charge. I challenged this Leaſe as void, and had great reaſon ſo to do, both for the Invalidity of the Leaſe itſelf, and the Unworthineſs of the Tenant, both to me and my See. If in the Preparations for Trial at Law, the Judge at *Cheſter* (altogether unknown to me, and unlaboured by me) did ſay, (as Mr. *Aſhton* ſays he did) That for higher Powers above he durſt not, he was the more unworthy. And for *York*, I needed no Power there; for I reſolved to have him called into the High-Commiſſion here: which was after done.

This Gentleman his Son came to me about the Leaſe: I told him plainly, it was void in Law, and that I meant to overthrow it; That if his Father would ſurrender, I would renew it for Years at a reaſonable Rate; but if he put me to Expence in Law, I would ſecure myſelf as well as legally I might. He replied, That Mr. Sollicitor *Littleton*, (for ſo then he was) ſaid, he durſt not be againſt me. And there was good reaſon for it; he was my Counſel, and fee'd in that Particular. And what a poor Evaſion was this? Were there no other Lawyers for him, becauſe Mr. Sollicitor was for me? The Truth is, all that ever I did in this Buſineſs, was not only with the Knowledge, but by the Advice of my Counſel, which were Mr. Sollicitor *Littleton* and *Mr. Herbert*.

And at laſt this Gentleman ſubmitted himſelf and the Cauſe; and if (as he ſays) Dr *Eden* perſuaded him to it, that nothing to me. As for the Fine, I referred the Moderation of it wholly to my Counſel: they

pitched

[a] Job, xv. 34.

[b] Calviſ. Chro. p. 251.

[c] Can. Ec. Ang. 101.

pitched upon Sixteen hundred Pounds, and gave ſuch Days of Payment, as that a good part is yet unpaid: and this Sum was little above one Year's Rent; for the Parſonage is known to be well worth Thirteen hundred Pounds a Year, if not more. And after the Buſineſs was ſettled, my Lord *Wimbleton* came to me, and gave me great thanks for preſerving this Gentleman, being (as he ſaid) his Kinſman, whom he confeſſed, it was in my power to ruin.

For the raiſing of the Rent Sixty Pounds, it was to add Means to the ſeveral Curates to the Chapels of Eaſe: And I had no reaſon to ſuffer Sir *Ralph Aſhton* to go away with ſo much Profit, and leave the Curates both upon my Conſcience and my Purſe. And for his Fine to *St. Paul's* I gave him all the eaſe I could. But ſince his Son will force it from me, he was accuſed of Adultery with divers Women, and confeſſed all: And whether that Fine went, and by what Authority, I have already ſhewed. And thus much more, my Lords, at Mr. *Bridgman*'s Intreaty, I turned this Leaſe into Lives again without Fine: But ſince I have this Reward for it, I wiſh with all my heart I had not done it. For I am confident in ſuch a Caſe of Right, your Lordſhips would have left me to the Law, and more I would not have aſked. And I think this (tho' intreated into it) was my greateſt Error in the Buſineſs.

6. The laſt Inſtance was about the Converſion of ſome Money to *St. Paul's*, out of Adminiſtrations: By name, Two thouſand Pounds taken out of *Wimark*'s Eſtate, and Five hundred out of Mr. *Gray*'s. Firſt, whatſoever was done in this kind, I have the Broad Seal to warrant it. And for Mr. *Wimark*'s Eſtate, all was done according to Law, and all care taken for his Kindred. And if I had not ſtirred in the Buſineſs, four Men, all Strangers to his Kindred, would have made themſelves, by a broken Will, Executors, and ſwept all away from the Kindred. Secondly, for Mr. *Gray*'s Eſtate, after as odious an Expreſſion of it as could be made, and as void of Truth as need be, the Proceedings were confeſſed to be orderly and legal, and the Charge deſerted.

Then there was a fling at Sir *Charles Cæſar*'s getting of the Maſterſhip of the Rolls for Money, and that I was his Means for it: And ſo it was thence inferred, that I ſold Places of Judicature, or helped to ſell them. For this they produced a Paper under my Hand: But when they had thrown all the Dirt they could upon me, they ſay, they did only ſhew what Probabilities they had for it, and what Reaſon they had to lay it in the end of the Fourth Original Article; and ſo deſerted it. And well they might; for I never had more hand in this Buſineſs, than that when he came to me about it, I told him plainly as Things then ſtood, that Place was not like to go without more Money, than I thought any wiſe Man would give for it: Nor doth the Paper mentioned ſay any more, but that I informed the Lord Treaſurer what had paſſed between us.

This Day ended, I was order'd to appear again, *April* 4. 1644. and received a Note from the Committee, under Serjeant *Wild*'s Hand, dated *April* 1. That they meant to proceed next upon the Fifth and Sixth Original Articles, and upon the Ninth Additional; which follow *in hæc verba*.

V. He hath traitorouſly cauſed a Book of Canons to be compoſed and publiſhed, and thoſe Canons to be put in execution, without any lawful Warrant and Authority in that behalf. In which pretended Canons many Matters are contained contrary to the King's Prerogative, to the Fundamental Laws and Statutes of this Realm, to the Right of Parliament, to the Propriety and Liberty of the Subjects; and Matters tending to Sedition, and of dangerous Conſequence; and to the Eſtabliſhment of a vaſt, unlawful, and preſumptuous Power in himſelf and his Succeſſors: Many of which Canons, by the Practice of the ſaid Archbiſhop, were ſurreptitiouſly paſſed in the late Convocation, without due Conſideration and Debate; others by Fear and Compulſion were ſubſcribed unto by the Prelates and Clerks there aſſembled, which had never been voted and paſſed in the Convocation, as they ought to have been. And the ſaid Archbiſhop hath contrived and endeavoured to aſſure and confirm the unlawful and exorbitant Power which he hath uſurped and exerciſed over his Majeſty's Subjects, by a wicked and ungodly Oath, in one of the ſaid pretended Canons, enjoined to be taken by all the Clergy, and many of the Laity of this Kingdom.

VI. He hath traitorouſly aſſumed to himſelf a Papal and Tyrannical Power, both in Eccleſiaſtical and Temporal Matters, over his Majeſty's Subjects in this Realm of *England*, and in other Places, to the Diſinheriſon of the Crown, Diſhonour of his Majeſty, and Derogation of his ſupreme Authority in Eccleſiaſtical Matters. And the ſaid Archbiſhop claims the King's Eccleſiaſtical Juriſdiction, as incident to his Epiſcopal and Archiepiſcopal Office in this Kingdom; and doth deny the ſame to be derived from the Crown of *England:* which he hath accordingly exerciſed, to the high Contempt of his Royal Majeſty, and to the Deſtruction of divers of the King's liege People in their Perſons and Eſtates.

The Ninth Additional Article.

IX. That in and about the Month of *May* [a] 1641. preſently after the Diſſolution of the laſt Parliament, the ſaid Archbiſhop, for the ends and purpoſes aforeſaid, cauſed a Synod or Convocation of the Clergy to be held for the ſeveral Provinces of *Canterbury* and *York*; wherein were made and eſtabliſhed, by his Means and Procurement, divers Canons and Conſtitutions Eccleſiaſtical, contrary to the Laws of this Realm, the Rights and Privileges of Parliament, and Liberty and Property of the Subject; tending alſo to Sedition, and of dangerous Conſequence. And, amongſt other Things, the ſaid Archbiſhop cauſed a moſt dangerous and illegal Oath to be therein made and contrived; the Tenor whereof followeth in theſe Words: *That I* A. B. *do ſwear, that I do approve the Doctrine and Diſcipline or Government eſtabliſhed in the Church of* England, *as containing all things neceſſary to Salvation; and that I will not endeavour, by myſelf or any other, directly or indirectly, to bring in any Popiſh Doctrine, contrary to that which is ſo eſtabliſhed: Nor will I ever give my conſent to alter the Government of this Church by Archbiſhops, Biſhops, Deans, and Archdeacons,* &c. *as it ſtands now eſtabliſhed, and as by right it ought to ſtand; nor yet ever to ſubject it to the Uſurpations and Superſtitions of the See of* Rome. *And all theſe things I do plainly and ſincerely acknowledge and ſwear, according to the plain and common Senſe and Underſtanding of the ſame Words, without any Equivocation or mental Evaſion, or ſecret Reſervation whatſoever. And this I do heartily, willingly and truly, upon the Faith of a Chriſtian. So help me God in Jeſus Chriſt.* Which Oath the ſaid Archbiſhop himſelf did take, and cauſed divers other Miniſters of the Church to take the ſame, upon pain of Suſpenſion and Deprivation of their Livings, and other ſevere Penalties: And did alſo cauſe *Godfrey*, then Biſhop of *Glouceſter*, to be committed to Priſon for refuſing to ſubſcribe to the ſaid Canons, and to take the ſaid Oath; and afterward the ſaid Biſhop ſubmitting himſelf to take the ſaid Oath, he was ſet at liberty.

[a] 1640. Ruſh.

On *Thurſday April* 4. 1644. I was again brought to the Houſe, made a ſufficient Scorn and Gazingſtock to the People; and after I had waited ſome Hours, was ſent back, by reaſon of other Buſineſs, unheard; but order'd to appear again on *Monday April* 8. Then I appeared again, and was uſed by the baſeſt of the people as before. I did not appear any Day but it coſt me ſix or ſeven Pounds: I grew into want. This made my Counſel and other Friends to perſuade me, the next time I had admittance to ſpeak, to move the Lords again for ſome neceſſary Allowance, notwithſtanding my former Petition had been rejected. This Advice I meant to have followed that Day: But after ſome Hours Attendance I was ſent back again unheard, and ordered to come again on *Thurſday April* 11. This Day I did not come to the Houſe; a Warrant being ſent to the Tower, which ſtayed me till *Tueſday April* 16.

The ſeventh Day of my Hearing.

I. APRIL 16. I appeared, and (as I remember) here Mr. *Maynard* left off (ſave that now and then he interpoſed, both in the Reply, and otherwiſe) and Mr. *Nicolas*, a Man of another Temper, undertook the managing of the Evidence. And the firſt Charge was concerning the late Canons, [a] which he ſaid, were againſt Law to ſit, the Parliament being diſſolved. No, my Lords, nothing againſt Law that I know: For we were called to ſit in Convocation by a different Writ from that which called us as Biſhops to the Parliament. And we could not riſe, till his Majeſty ſent us another Writ to diſcharge us: And this is well known to the Judges, and the other Lawyers here preſent. So we continued ſitting, tho' the Parliament roſe. Nor was this ſitting continued by any Advice or Deſire of mine: For I humbly deſired a Writ to diſſolve us. But the beſt Counſel then preſent, both of Judges, and other Lawyers, aſſured the King we might legally ſit. And here is a Copy atteſted under their Hands.

[a] l. *for the making of which, he ſaid it was againſt Law for the Convocation.*

Vide ſupra, poſt init.

Then he urged, out of my Diary, at *May* 29. 1640. That I acknowledged there were ſeventeen Canons made, which I did hope would be uſeful to the Church. 'Tis true, my Lords, I did hope ſo. And had I not hoped it, I would never have paſſed my Conſent unto them. And when I writ this, there was nothing done or ſaid againſt them. And if by any Inadvertency, or human Frailty, any thing erroneous or unfit have ſlipped into thoſe Canons, I humbly beſeech your Lordſhips to remember, it is an Article of the Church of *England*, That General Councils may err *(Art.* 21.) and therefore this National Synod may miſtake. And that ſince (if any Error be) it is not wilfully, it may be rectified, and in Charity paſſed by.

For the Biſhop of *Glouceſter*'s refuſing to ſubſcribe the Canons, and take the Oath; which is here ſaid by the Counſel, but no Proof offered; the Truth is this: He firſt pretended (to avoid his Subſcription) that we could not ſit, the Parliament riſen. He was ſatisfied in this by the Judges Hands. Then he pretended the Oath. But that which ſtuck in his Stomach, was the Canon about ſuppreſſing of the Growth of Popery, *(Can.* 3.) For, coming over to me to *Lambeth* about that Buſineſs, he told me, he would be torn with wild Horſes before he would ſubſcribe that Canon. I gave him the beſt Advice I could; but his Carriage was ſuch, when he came into the Convocation, that I was forced to charge him openly with it, and he as freely acknowledged it; as there is plentiful Proof of Biſhops and other Divines then preſent. And for his Lordſhip's being after put to take the Oath, (which was alſo urged) it was thus. I took myſelf bound to acquaint his Majeſty with this Proceeding of my Lord of *Glouceſter*'s, and did ſo. But all that was after done about his Commitment firſt and his Releaſe after, when he had taken the Oath, was done openly at a full Council-Table, and his Majeſty preſent, and can no way be charged upon me, as my Act: For it was my Duty to let his Majeſty know it, to prevent farther Danger then alſo diſcovered. But I am here to defend myſelf, not to accuſe any man elſe.

Next he urged, That I had interlined the original Copy of the Canons with my own Hand. But this is clearly a miſtake, if not a wilful one. For, peruſing the Place, I find the Interlining is not in my Hand, but my Hand is to it, as (I humbly conceive) it was fit it ſhould. And the Words are in the Ratification of the Canons, and therefore were neceſſarily to be in the Original, howſoever ſlipped in the Writing of them.

As for the Oath ſo bitterly ſpoken of at the Bar, and in the Articles; either it was made according to Law, or elſe we were wholly miſled by Precedent, as that ſuch as was never excepted againſt. For in the Canons made in King *James*'s Time, there was an Oath made againſt [b] Simony; and an Oath for [c] Church Wardens; ‘ and an Oath about [d] Licences and Marriages; and an ‘ Oath for [e] Judges in Eccleſiaſtical Courts: And ſome ‘ of theſe Oaths as dangerous as this is accounted to be. And ‘ all theſe eſtabliſhed by no other Authority than theſe late were.’ And yet neither thoſe Canons, nor thoſe Oaths, were ever declared illegal by any enſuing Parliament, nor the Makers of them accuſed of any Crime, much leſs of Treaſon. So that we had in this Synod unblamed Precedent for what we did, as touching our Power of doing it.

[b] *Can.* 40. [c] *Can.* 118.
[d] *Can.* 103.
[e] *Can.* 127.

But, after all this, he ſaid he would paſs theſe things by, (that is, when he had made them as odious as he could) and would charge nothing upon me but the Votes of both Houſes; namely, that theſe Canons contain Matters contrary to the King's Prerogative, to the Fundamental Laws of the Realm, to the Rights of Parliaments, to the Propriety and Liberty of the Subject, and Matters tending to Sedition, and of dangerous Conſequence. So theſe Votes of the Honourable Houſes made ſo long after (and therefore cannot well be an Evidence againſt the making of that which was done ſo long before) is the Taſk lying now upon me to anſwer; which with your Lordſhips Honourable Favour, I ſhall in all Humbleneſs addreſs myſelf unto.

Before theſe Words were well out of my Mouth, Mr. *Nicolas* with much earneſtneſs interpos'd, That he hoped their Lordſhips would not endure that the *ſolemn Votes of both Houſes* ſhould be called into queſtion by any Delinquent; and was ſure the Houſe of Commons would not endure it. Upon this the Lords preſently gave their Reſolution, that I might not ſpeak to any thing that was declared by Votes; but was to anſwer only to the Fact, whether I made the Canons or no. To this, with Leave humbly aſked, I replied, That if I might not anſwer to the Votes, I muſt yield the Evidence, which I could not do; and that if I might anſwer, I muſt diſpute the Votes, which their Lordſhips reſolved I ſhould not do: That then I was in a Perplexity, and muſt neceſſarily offend either way; and therefore humbly beſought them to conſider not my Caſe only, but their own too. For I did conceive it would concern them in Honour, as much as me in Safety, That no Charge might be brought againſt me in that great Court, to which I ſhould not be ſuffered to make anſwer: or elſe that they in Honour would not judge me for that, to which my Anſwer is not ſuffered to be given. With this, that all theſe Canons were made in open and full Convocation, and are Acts of that Body, and cannot be aſcribed to me, tho' Preſident of that Synod, but are the joint Acts of the whole Body: So by me they were not made; which is my Anſwer.

'And according to this I framed my Anſwer to Mr. *Browne*'s Summary of my Charge, both hinting the Canons in general, and concerning the Inſtance before given about the Biſhop of *Glouceſter*.

'But tho' I was not allowed there to make any farther Anſwer in defence of theſe Canons; nor can hold it fit to inſert here ſo long an Anſwer as theſe Votes require; I humbly deſire the courteous Reader, if he pleaſe, to look upon the Anſwer which I have made to a Speech[a] of Mr. *Nathaniel Fiennes*, in the Houſe of Commons, againſt theſe Canons. In which Anſwer, I humbly conceive, I have ſatisfied whatſoever theſe Votes contain againſt them. Howſoever, I cannot but obſerve this in preſent. The Words in the ſixth Original Article are, as they are above cited; That the late Canons contain Matters contrary to the King's Prerogative, the Laws, *&c.* But in the ninth Additional all the reſt of the Exceptions are in againſt them, but theſe Words about the King's Prerogative are quite left out. I would fain know, if I could, what is the reaſon of this Omiſſion in theſe added Articles: Is it for ſhame, becauſe there was a purpoſe to charge me (as Serjeant *Wild* did in his Speech the firſt Day) That I laboured to advance the King's Prerogative above the Law? To advance it, and yet made contrary Canons againſt it; which is the way to deſtroy it. What pretty Nonſence is this? Or is it becauſe the Framers of theſe Additionals (whom I conceive were ſome Committee, with the help of Mr. *Prynn*) thought the time was come, or coming, in which the King ſhould have no more Prerogative? Or if there be a third Reaſon, let them give it themſelves.'

[a] *Made* December 14. 1640. *and extant in* Ruſhworth, par. 3. vol. 1. p. 105.

Et Art. 2. additionalis.

This was all concerning the Canons. Then followed the ſixth Original Article about my aſſuming of Papal Power; where Mr. *Browne*, in ſumming up of his Charge, was pleaſed to ſay, 'That no Pope claimed ſo much as I had done. But he was herein much miſtaken: For never any Pope claimed ſo little. For he that claimed leaſt, claimed it in his own Right, which was none; whereas I claimed nothing but in the King's Right, and by virtue of his Conceſſion: between which there is a vaſt Latitude.' The firſt Proof upon this Article was read out of certain Letters ſent unto me by the Univerſity of *Oxford*, I being then their Chancellor. Which great Titles were urged to prove my aſſuming of Papal Power, becauſe I did not check them in my Anſwers to thoſe Letters.

(1.) The firſt Title was *Sanctitas tua*, which Mr. *Nicolas* ſaid, was the Pope's own Title; but he is deceived: for the Title was commonly given to other Biſhops alſo clean thro' the Primitive Church, both *Greek* and *Latin*. 'He replied in great heat, (as his manner it ſeems is) That 'tis Blaſphemy to give that Title (*Sanctitas*) in the Abſtract, to any but God. And tho' by the Courſe of the Court I might not anſwer then to the Reply, yet now I may: And muſt tell Mr. *Nicolas*, that 'tis a great Preſumption for him, a Lawyer, and no ſtudied Divine, to charge Blaſphemy upon all the Fathers of the Primitive Church. 'Tis given to[b] St. *Auguſtine* by *Hilarius* and *Euodius*, and in the abſtract. And (which is the charge laid to me) St. *Auguſtine* never checks at, or finds fault with the Title, nor with them for writing it. And[c] St. *Auguſtine* himſelf gives that Title to *Euodius*, anſwering his Letters, which I was not to do to theirs: And after that to[d] *Quintianus*. Neither is any thing more common than this Style among the Fathers, as all Learned Men know. And 'tis commonly given by[e] *St. Gregory the Great* to divers Biſhops; who being Pope himſelf, would not certainly have given away his own Title (had it been peculiar to him) to any other Biſhop. Nor would any of the Fathers have given this Epithet to their Brethren, had any Savour of Blaſphemy been about it.' But there is a twofold Holineſs, the one Original, Abſolute and Eſſential, and that it is in God only, and incommunicable to any Creature: * the other Derivative and Relative; and that is found in the Creatures, both things and Perſons; or elſe God ſhould have no Saints, no Holy Ones. For no Man can be ſaid to be *Sanctus*, Holy, but he who in ſome degree hath *Sanctitatem*, Holineſs, reſiding in him. And this I anſwered at the preſent. 'But according to Mr. *Nicolas* his Divinity, we ſhall learn in time to deny the Immortality of the Soul: For Immortality, in the Abſtract, is applied to God only, 1 *Tim.* 6. 16. *Who only hath Immortality.* Therefore, if it may not in an under and a qualified Senſe, by Participation, be applied to the Creature, the Soul of Man cannot be immortal.'

[b] Apud Aug. Epiſt. 88, 98.

[c] Aug. Epiſt. 102.

[d] Aug. Epiſt. 103.

[e] Greg. Eulogio Epiſcopo Alexandrino. Apud H. Spelman. in Concil. p. 80. Et Epiſc. Arelatenſi. *Ibid.* p. 95.

(2.) The ſecond Title in *Spiritu Sancto effuſiſſime plenus.* My Lords, I had ſent them many hundred Manuſcripts, and in many Languages. Upon this, in Alluſion to the Gifts of Tongues, (and it was about *Pentecoſt* too that I ſent them) the luxuriant Pen of the Univerſity Orator ran upon theſe Phraſes; which I could neither foreſee before they were written, nor remedy after: And finding fault, could not remedy that which was paſt. Beſides, all theſe Letters were in anſwer to mine; I was to anſwer none of theirs: that might have made me work enough, had I wanted any.

(3.) The third Style is *Summus Pontifex.* But this was in my Lord of *London*'s Letters; and he muſt anſwer, if any thing be amiſs. But *Pontifex*, and *Summus* too, is no unuſual Style to and of the chief Prelate in any Nation.

(4.) The fourth Style is *Archangelus, & ne quid nimis.* Yes ſure, the meaneſt of theſe Titles is *multum nimis*, far too much, applied to my Perſon and Unworthineſs: Yet a great ſign it is that I deſerved very well of that Univerſity in the Place I then bare, or elſe they would never have beſtowed ſuch Titles upon me. And if they did offend in giving ſuch an unworthy Man ſuch high Language, why are not they called in queſtion for their own Fault?

(5.) The laſt which I remember, is, *Quo rectior non ſtat Regula*, &c. And this is no more than an abſolute *Hyperbole*; a high one I confeſs; yet as high are found in all Rhetorical Authors: And what ſhould make that Blaſphemy in an Univerſity Orator, which is every where common, and not only allowed, but commendable, I know not: 'Eſpecially ſince the Rule of the Interpretation of them is as well known as the Figure. Where the Words are not to be underſtood in their proper and literal Senſe, but as St. *Auguſtine* ſpeaks, when that which is ſpoken,[a] *longè eſt amplius*, is far larger than that which is ſignified by it.' And if I had aſſumed any of theſe Titles to myſelf, which I am, and ever was far from doing; yet 'tis one thing to aſſume Papal Title, and another to aſſume Papal Power, (which is the thing charged) tho' I thank God I did neither. 'If I have here omitted any Title, it is mere Forgetfulneſs; for one part or other of the Anſwers given will reach it, whate'er it be. And, as I told Mr. *Browne*, when he charged this on me, Dr. *Strowd*, the Univerſity Orator, who writ thoſe Letters, and gave thoſe Titles, was called up before a Committee of this Parliament, examined about them, acquitted, and diſmiſſed.'

[a] St. Aug. 16. Civ. Dei, *c.* 21.

(6.) Theſe Titles from the Letters being paſt, he quoted another, which he called a blaſphemous Speech too, out of my Book againſt *Fiſher*; where, he ſaid, I approved of[b] *Anſelme*, an Enemy to the Crown: and took on me to be Patriarch of this other World. Let any Man look into that place of my Book, and he ſhall find that I make uſe of that Paſſage only to prove that the Pope could not be appealed unto out of *England*, according to their own Doctrine: Which I hope is no Blaſphemy. And for St. *Anſelme*, howſoever he was ſwayed with the Corruptions of his Time, yet was he in other things worthy the Teſtimony which the Authors by me cited give him. 'And if any Man be angry that the Archbiſhop of *Canterbury* is called the Patriarch of this other World, he may be pleaſed to remember that St. *Jerom* gives St. *Auguſtine*, who was Biſhop of *Hippo*, and no Archbiſhop, a greater Title than that: For he writes,[c] *Beatiſſimo Papæ Auguſtino* more than once and again, as appears in his Epiſtles to St. *Auguſtine*.'

[b] *Cont.* Fiſher, § 25. *p.* 171.

[c] St. Hieron. apud Aug. Epiſt. 11. 13, 14, 17, 18, *&c.*

(7.) To theſe Sir *Nathaniel Brent*'s Teſtimony is produced; who ſays, That he over-heard me ſay to another *That I would not ſo eaſily quit the Plenitude of my Power*, or to that effect. He confeſſes he was coming in, and finding me ſpeaking with another, made ſtay, and ſtood afar off, and knows not of what I ſpake, (for ſo he ſaid) but over-heard the Words. I beſeech your Lordſhips obſerve this Witneſs: He confeſſes he knows not of what I ſpake, and yet comes here upon his Oath, to teſtify of Plenitude of Power in relation to my aſſuming Papal-Power. If he meant not this, his Teſtimony is nothing; for Plenitude of Power may extend to many other Things; and I might juſtly ſay, (if I ſaid it) *That I would not eaſily part with the Plenitude of my Power*, in relation to other Biſhops of my Province, who by Law have not ſo full Power as I have. But if he did mean this, then his Teſtimony is worſe than nothing: Nothing, in regard he confeſſes he knows not of what I was ſpeaking; and worſe than nothing, that not knowing, he would give ſuch a Teſtimony upon Oath.

II. The next Charge of this Day was, That I went about to exempt the Clergy from the Civil Magiſtrate.

1. The firſt Witneſs is Mr. *Pincen*. He ſays he heard me ſay at the High-Commiſſion, *That the Clergy were now debaſed; that heretofore it was otherwiſe, and I hope to ſee it ſo again.* Truly, my Lords, if I did ſay thus (which is more than I can call to Memory) I ſpake Truth: They were debaſed; and I did hope to ſee it otherwiſe: For the debaſing of the Clergy will make their Office and their Doctrine baſe, as well as their Perſons. But here is not a word of freeing them from Laws or the Temporal Magiſtrate. It was replied, He did mention the Civil Magiſtrate. 'If he did, he mentions no time; by which I might be enabled to make Counter-proof. He is ſingle. They are Words, and if within the Statute, then triable by it within ſix Months. And I deſire this grave Gentleman to conſider his Oath: For if I ſpake of any ſuch Exemption, I muſt ſpeak againſt my Conſcience and Judgment; which, I humbly thank God, I uſed not to do. Nor is it altogether impoſſible for the Civil Magiſtrate ſometimes to oppreſs poor Clergymen. But a little will be thought too much of this. And therefore to Mr. *Browne*'s ſummary Charge, I gave the former Anſwer, That I ſpake of Exemption from Oppreſſion, not from Law.'

2. The ſecond Witneſs was Alderman *Railton*, about the carrying up of the Sword in the Church when he was Lord Mayor. He ſays, I once ſent him word about it, but knows not by whom; and after heard no more of it, but refers himſelf to Mr. *Marſh*. He ſays, There was an Order of the Council-Table, *May* 3, 1633. concerning the ſubmitting of the Sword in time and place of Divine Service. If an Order of Council, then was it no Act of mine, as I have often pleaded, and muſt as often as it comes. He

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* *The Managers againſt the Archbiſhop in another Place pretend, that this Title was never given to any* Engliſh *Biſhop at leaſt: But herein they are much miſtaken; for it was often given to them. To produce but one inſtance; Pope* Leo III. *gave this Title to* Ethelard *Archbiſhop of Canterbury, and that in a Letter wrote to* Kenulphus *King of* Mercia. Ang. Sacr. par. 1. p. 460. H. W.

ſays farther, That I ſpake theſe Words, or to this effect, *That the Church had been low for theſe Hundred Years; but I hoped it would flouriſh again in another Hundred.* But here's no one Word of Exemption from Civil Magiſtracy. And I hope your Lordſhips will take Witneſſes as they ſpeak, not as Men ſhall infer and deſcant upon them. And then, my Lords, under favour, 'I ſee no harm in the Words.' Only I ſhall recal my Hope: For if I had then any hope to ſee it flouriſh in another Hundred Years, 'tis that which I cannot hope for now. He ſays, there was a Reference to the Counſel on both Sides; and that under that Reference the Buſineſs died. And if it died then, what makes it here before the Reſurrection? Yea, but ſays Mr. *Nicolas*, Here's Agitation about the ſubmitting of the Sword, which is the Emblem of Temporal Power. But neither to foreign nor home Power, but only to God; and that in the Place, and at the Performance of his holy Worſhip: At which Time and Place Chriſtian Kings ſubmit themſelves, and therefore cannot ſtand upon the Emblems of their Power. Nor would the Lords of the Council have made either Order or Reference, had there been any thing of Danger, or againſt Law, in this kind of ſubmitting. Mr. *Yorke* was produced as another Witneſs, but ſaid juſt the ſame with *Marſh*; and ſo the ſame Anſwer ſerved him.

III. Then followed a Charge about the Charter of *York* to be renewed; and that I did labour to have the Archbiſhop of *York*, his Chancellor, and ſome of the Reſidentiaries, named in it to be Juſtices of Peace within the City. To prove this, Alderman *Hoyle* is produced; who ſays, There was an Order of the Council about this; but cannot ſay that I procured it. So far then this Proof reaches not me. For the Biſhop, his Chancellor, and ſome of the Reſidentiaries, to be Juſtices of Peace within the City; if I were of this Opinion, (as then adviſed) I am ſure there's no Treaſon in it, and I believe no Crime. And, under your Lordſhip's Favour, I could not but think it would have made much Peace, and done much Good in all the Cities of *England* where Cathedrals are. Laſtly, he ſays, There was a debauched Man committed about Breach of the Sabbath; and being caſually ſmother'd; I ſhould ſay, *They deſerved to be hanged that killed him.* Concerning this Man; he loſt his Life, that's confeſſed. His Debauchery; what it was, is not proved. And were he never ſo diſorderly, I am ſure he was not without legal Trial to be ſhut up into a Houſe, and ſmother'd; that is againſt both Law and Conſcience: And the Officers then in being had reaſon to ſmother the Buſineſs as much as they could; and, it may be, deſerved ſomewhat, if not that which this Alderman ſays I ſaid, to his beſt remembrance: For ſo, and with no more Certainty he expreſſed it. This I am ſure I ſaid, That if the Biſhop, or any of the Church, had been then in their Charter, the poor Man's Life had not been loſt.

IV. The fourth Charge was juſt of the ſame nature, concerning the Charge of *Shrewſbury*. For this there were produced two Witneſſes, Mr. *Lee* and Mr. *Mackworth*. But they make up but one between them: For Mr. *Lee* could ſay nothing but what he acknowledges he heard from Mr. *Mackworth*. And Mr. *Mackworth* ſays firſt, That the School-Maſter's Buſineſs was referred to other Lords and myſelf. That's no Crime: And, to my knowledge, that has been a troubleſome Buſineſs for theſe Thirty Years. He ſays, I cauſed that there ſhould go a *Quo Warranto* againſt the Town. This is but as Mr. *Owen* informed him; ſo no Proof. Beſide, 'tis no Crime, being a Referee, If I gave legal Reaſon for it. Nor is it any Crime that the Biſhop and his Chancellor ſhould be Juſtices within the Town, as is aforeſaid in the Caſe of *York*; conſidering eſpecially, that then many Clergymen bare that Office in divers Counties of *England*. He adds, that an old Alderman gave Fifty Pound to *St. Paul's*. But out of what Conſideration, I know not, nor doth he ſpeak. And if every Alderman in the Town would have given me as much to that uſe, I would have taken it, and thanked them for it. Then he ſays, There was an Order from all the Lords Referees, for ſettling all Things about their Charter. So, by his own Confeſſion, the whole Buſineſs was tranſacted publickly, and by Perſons of great Honour, and nothing charged upon my particular. If Mr. *Owen* ſent me in a Butt of Sack, and after put it upon the Town Account, (for ſo he alſo ſays) Mr. *Owen* did ill in both; but I knew of neither. And this the Counſel, in their Reply, ſaid they urged not in that kind. Laſtly, The Charter itſelf was read to both Points, of the Biſhop and his Chancellor being Juſtices of Peace within the Town, and the not bearing up of the Sword: To both which I have anſwer'd already. And I hope your Lordſhips cannot think his Majeſty would have paſſed ſuch a Charter, or that his learned Counſel durſt have put it to him, had this Thing been ſuch a Crime as 'tis here made.

V. The next Charge was out of my Diary, at *March* 5. 1635. The Words are; William Juxon, *Lord Biſhop of* London, *made Lord High Treaſurer of* England. *No Churchman had it ſince* Henry VII's *Time. I pray God bleſs him, to carry it ſo, that the Church may have Honour, and the King and the State Service and Contentment by it. And now if the Church will not hold up themſelves, under God, I can do no more.* I can ſee no Treaſon in this, nor Crime neither. And tho' that which I did to help on this Buſineſs was very little, yet Aim I had none in it, but the Service of the King, and the Good of the Church: And am confident it would have been both, had not ſuch troubleſome Times followed, as did.

VI. Then they inſtanced in the Caſe of Mr. *Newcommin*. But that Cauſe being handled before, they did only refer the Lords to their Notes: And ſo did I to my former Anſwers.

VII. Then followed the Caſe of *Thorn* and *Middleton*, which were fined in the High-Commiſſion, about ſome Clergy-mens Buſineſs, *Thorn* being Conſtable. The Witneſſes in this Caſe are three.

1. The firſt is *Hunsford*, (if I took his Name right:) And for the Cenſure of theſe Men, he confeſſes, it was in and by the High-Commiſſion; and ſo no Act of mine, (as I have often pleaded.) But then he ſays, that I there ſpake theſe Words, *That no Man of their Rank ſhould meddle with Men in Holy Orders.* Firſt, he is in this part of the Charge ſingle, and neither of the other Witneſſes comes in to him. Secondly, I humbly deſire the Proceedings of the High Commiſſion may be ſeen, (which are taken out of our Hands.) For ſo far as I can remember any thing of this Cauſe, the Miniſter, Mr. *Lewis*, had hard Meaſure. And perhaps thereupon I might ſay, That Men of their Rank ſhould not in ſuch ſort meddle with Men in Holy Orders. But to tax the Proceedings of a violent buſy Conſtable, was not to exempt the Clergy from Civil Magiſtracy.

Upon this, he falls juſt upon the ſame Words, and ſays, That I utter'd them about their offering to turn out a Corrector from the Printing-Houſe. This Corrector was a Miniſter, and a well-deſerving Man. The Truſt of the Preſs was referred to the High-Commiſſion Court. And I hope your Lordſhips will not think, that not to ſuffer the Printers to turn out a deſerving Man at their Pleaſure, is to exempt the Clergy from the Civil Magiſtrate. The Buſineſs, my Lords, was this: This Corrector was principally entertained for the *Latin* and *Greek* Preſs eſpecially, which I had then not without great Pains and ſome Coſt erected. They were deſirous to keep only one for the *Engliſh*, and him at the cheapeſt. Among them their Negligence was ſuch, as that there were found above a thouſand Faults in two Editions of the Bible and Common-Prayer-Book. And one which cauſed this Search was, that in *Exod.* 20. where they had ſhamefully printed, *Thou ſhalt commit Adultery.* For this the Maſters of the Printing-Houſe were called into the High-Commiſſion, and cenſured, as they well deſerved it. As for this Corrector, whom they would have heaved out, they never did ſo much as complain of him to any that had power over the Preſs, till this fell upon themſelves for ſo groſs an Abuſe. Nor did they after this proceed againſt him, to make him appear faulty; and till that were done, we could not puniſh. And for this Buſineſs of the Preſs, he is ſingle too. And I have told your Lordſhips that which is a known Truth. 'And '*Hunsford* being bit in his Credit, and Purſe, and Friends, by that Cen'ſure, for ſo groſs an Abuſe of the Church and Religion, labours to faſten 'his Fangs upon me in this way.'

2. The ſecond Witneſs is Mr. *Bland*. But all that he ſays is, That there was once a Diſmiſſion of this Cauſe out of the Court, and that tho' I diſliked it, yet I gave way to it, becauſe all Parties were agreed. And no word of Proof, that I was any cauſe of bringing it back into the Court again. What's my fault in this?

3. The third Witneſs was *Thorn* in his own Cauſe: and 'tis plain, by his own words, that this Cauſe was depending in Court before my time. And I believe, were the Records of the Court here, Mr. *Lewis* would not be found ſo great an Offender as Mr. *Thorn* would make him. This I am ſure of, both the High-Commiſſion and myſelf have been quick enough againſt all Miniſters which have been proved to be debauched in their Life and Converſation. And he ſays nothing againſt me, but that I ſided with his Adverſaries; which is eaſy to ſay againſt any Judge that delivers his Sentence againſt any Man. But neither of theſe come home to *Hunsford*.

VIII. The next Charge is in the Caſe of one Mr. *Tomkins*, about the taxing of a Miniſter in a Caſe of Robbery, and Repayment by the Country.

To this Mr. *Newdigate* is produced; who ſays, as he remembers, that I ſhould ſpeak theſe Words, *That Miniſters were free from ſuch Taxes, and I hoped to ſee the Times in which they might be free again.* Firſt, this Gentleman is ſingle. Secondly, He ſpeaks not poſitively, but *as he remembers.* Thirdly, This Tax, I do humbly conceive, is not by Law to be laid upon any Miniſter. For no Man is ſubject to this Tax, but they which are to keep Watch and Ward; which Miniſters in that kind are not bound unto. And this I learned of the Lord Keeper *Coventry* at the Council-Table. So I might well then hope to ſee Miniſters free from all ſuch Taxes, by the right underſtanding and due Execution of our own Laws, without aſſuming any Papal Power.

IX. The laſt Inſtance of this Day was the bringing of Sir *Rich. Samuel* into the High-Commiſſion, for doing his Office as Juſtice of the Peace upon ſome Clergymen. Firſt, For this, this Gentleman is ſingle, and in his own Caſe. Secondly, himſelf confeſſes, that his bringing into the High-Commiſſion was long after the Fact. Therefore in all probability not for that; nor doth he ſay that I cauſed his bringing in. He ſays farther, That one Article for which he was called into the Commiſſion, was, that he was an enemy to the Clergy. But he doth not ſay, that I preferred theſe Articles againſt him: nor doth he tell, or can I remember, what the other Articles were, which with this may be bad enough to merit what was there laid againſt him. And whatſoever was done, appears by his own Narration to be the Act of the High-Commiſſion, or the Council-Table, and ſo not chargeable upon me alone. And whereas he ſays, I blamed him much at the Council-Table; let him tell why, and then I'll give him a farther Anſwer: And ſure if I did blame him, I had juſt cauſe ſo to do. Laſtly, he ſays, I did uſe the word *baſe* to him, when he came to me. Sure I cannot believe I did; it was not my Language to meaner Men. If it did ſlip from me, it was in relation to his Enmity to the Clergy, not to his Perſon or Quality. 'And I conceive ''tis no genteel part, for a Man of Place and Power in his Country, to 'oppreſs poor Clergymen which neighbour about him. In which kind 'this Gentleman, *peſſime audiebat*, heard extremely ill.'

This Day thus ended, I was ordered to appear again on *Monday, April* 22. I came, and my former Anſwers having taken off the edge of many Men, (for ſo I was told by good Hands) the Scorns put upon me at my landing, and elſewhere, were ſomewhat abated, tho' when it was at beſt I ſuffered enough. After I had attended the Pleaſure of the Houſe ſome Hours, I was remitted without hearing, and commanded to attend again upon *Thurſday, April* 25. but ſent back again then alſo, and ordered to appear on *Tueſday, April* 30. And when I came, I was ſent away once more unheard: no Conſideration had of myſelf, or the great Charge which this frequent coming put me to. I was then ordered to appear again on *Saturday, May* 4. Then I was heard again: and the Day proceeded as follows.

My Eighth Day of Hearing.

SATURDAY, *May* 4. 1644. To raiſe up Envy againſt me, Mr. *Nicolas* falls firſt to repeating the Titles which were given me in Letters from *Oxford*; to which I gave anſwer the day before. From thence he fell again upon the former Charge, my Endeavour to exempt the Clergy from the Civil Power. And very loud he was, and full of ſour Language upon me. To this General, I anſwered with another more true; That I never did attempt to bring the Temporal Power under the Clergy, nor to free the Clergy from being under it: But I do freely confeſs, I did labour all I could to preſerve poor Clergymen from ſome Laymens Oppreſſion, which lay heavy on them. And *de Vi Laica* hath been an old, and a great, and too juſt a Complaint. And this I took to be my Duty, doing it without wrong to any Man; as ſincerely I did to the beſt of my knowledge: And aſſuring myſelf, that God did not raiſe me to that Place of Eminency, to ſit ſtill, ſee his Service neglected, and his Miniſters diſcountenanced; nay, ſometimes little better than trampled on. 'And my ſtanding thus to the Clergy, and their juſt Grievances, 'is not the leaſt cauſe of my preſent Condition. In which my Caſe (tho' 'not my Abilities) is ſomewhat like *Cicero*'s. For having now for many 'Years defended the Publick State of the Church, and the private of many Church-men, as he had done many Citizens; when he by prevailing Factions came into danger himſelf, *ejus Salutem defendit nemo*, no Man took care to defend him that had defended ſo many: which yet I ſpeak not to impute any 'thing to Men of my own Calling, who, I preſume, 'would have lent me their juſt Defence, to their Power, had not the ſame 'Storm which drove againſt my Life, driven them into Corners to preſerve themſelves.'

Paterc. L. 2. Hiſt.

I. The firſt Inſtance was in Mr. *Shervil*'s Caſe; in which Mr. *John Steevens* tells what I ſaid to the Counſel pleading in the *Star-Chamber*, which was, That they ſhould take care not to cauſe the Laws of the Church and the Kingdom to claſh one againſt another. I ſee, my Lords, nothing that I ſpake was let fall, nor can I remember every Speech that paſſed from me; he may be happy that can. But if I did ſpeak theſe words, I know no Crime in them: it was a good Caveat to the Counſel, for ought I know. For ſurely the Laws of Church and State in *England* would agree well enough together, if ſome did not ſet them at odds. And if I did farther ſay to the then Lord Keeper, (as 'tis charged) *That ſome Clergymen had ſat as high as he, and might again:* which I do not believe I ſaid: yet if I did, 'tis a known Truth. For the Lord *Coventry*, then Lord Keeper, did immediately ſucceed the Lord Biſhop of *Lincoln* in that Office. But tho' I dare ſay, I ſaid not thus to the Lord Keeper, whoſe Moderation gave me no cauſe to be ſo round with him, yet to the Counſel at the Bar, I remember well, upon juſt occaſion given, that I ſpake to this effect; That they would forbear too much depreſſing of the Clergy, either in their Reputation or Maintenance, in regard it was not impoſſible that their Profeſſion, now as high as ours once was, may fall to be as low as ours now is; 'if the Profeſſors ſet themſelves againſt the Church, as 'ſome of late are known to have done: And that the ſinking of the 'Church would be found the ready way to it.'

II. The ſecond Inſtance was about calling ſome Juſtices of the Peace into the High-Commiſſion, about a Seſſions kept at *Tewkſbury*.

1. The firſt Witneſs for this (for three were produced) was Mr. *Jo. Steevens*. He ſays, That the Iſle where the Seſſions were kept, was joined to the Church. If it were not now a part of the Church, yet doubtleſs being within the Church-yard, it was conſecrated Ground. He ſays, That Seſſions were kept there heretofore. And I ſay, the more often the worſe. He ſays, That I procured the calling of them into the High-Commiſſion. But he proves no one of theſe things, but by the Report of Sir *Rob. Cook* of *Glouceſterſhire*, a Party in this Cauſe. He ſays again, That they had the Biſhop's Licenſe to keep the Seſſions there. But the Proof of this alſo is no more than that Sir *Rob. Cook* told him ſo: ſo all this hitherto is Hearſay. Then he ſays, the 88th Canon of the Church of *England* was urged in the Commiſſion-Court, which ſeems to give leave in the cloſe of the Canon, that Temporal Courts or Leets may be kept in Church or Church-yard. Firſt, that Clauſe in the end of the Canon, is referred to the ringing of Bells, not to the Profanations mentioned in the former part of that Canon. Nor is it probable, the Miniſter and Church-wardens ſhould have power to give ſuch leave, when no Canon gives ſuch power to the Biſhop himſelf. And were it ſo, here's no Proof offered, that the Miniſter and Church-wardens did give leave: And ſuppoſe ſome Temporal Courts might upon urgent occaſion be kept in the Church with leave, yet that is no Warrant for Seſſions, where there may be Trial for Blood. He ſays farther, That the Civilians quoted an old Canon of the Pope's, and that that prevailed againſt the Canon of our Church, and Sentence given againſt them. All thoſe Canons which the Civilians urged, are Law in *England*, where nothing is contrary to the Law of God, or the Law of the Land, or the King's Prerogative Royal: and to keep off Profanation from Churches, is none of theſe. Beſides, were all this true which is urged, the Act was the High-Commiſſion's, not mine. Nor is there any thing in it that looks towards Treaſon.

25 H. 8. *c.* 19. § ult.

2. The ſecond Witneſs is Mr. *Edward Steevens*. He confeſſes that the Sentence was given by the High-Commiſſion, and that I had but my ſingle Vote in it. And for the Place itſelf, he ſays, the Place where the Seſſions were kept, was ſeparated from the Iſle of the Church by a Wall breaſt-high; which is an evident Proof that it was formerly a part of that Church, and continued yet under the ſame Roof.

3. The third Witneſs is Mr. *Talboyes*, (who, it ſeems, will not be out of any thing which may ſeem to hurt me.) He ſays, the Pariſh held it no part of the Church. Why are not ſome of them examined, but this Man's Report from them admitted? They thought no harm (he ſays) and got a Licenſe. But why did they get a Licenſe, if their own Conſcience did not prompt them that ſomething was irregular in that buſineſs? He ſays, he was informed the Seſſions had been twice kept there before. And I ſay, under your Lordſhips favour, the oftner the worſe. But why is not his Informer produced, that there might be Proof, and not Hearſay? Upon this, I ſaid, (ſo he concludes) That I would make a Precedent againſt keeping it any more. If I did ſay ſo, the Cauſe deſerved it; Men in this Age growing ſo bold with Churches, as if Profanation of them were no fault at all.

III. The third Inſtance concerning Sir *Tho. Dacres*, a Juſtice of Peace in *Middleſex*, and his Warrant for puniſhing ſome diſorderly Drinking. The Witneſſes the two Church-wardens, *Colliar* and *Wilſon*; two plain Men, but of great Memories: for this Buſineſs was when I was Biſhop of *London*, and yet they agree in every Circumſtance, in every Word, tho' ſo many Years ſince. Well, what ſay they? It ſeems Dr. *Duck*, then my Chancellor, had cited theſe Church wardens into my Court? therefore either there was, or at leaſt to his Judgment there ſeemed to be ſomewhat done in that Buſineſs againſt the Juriſdiction of the Church. They ſay then, that the Court ended, Dr. *Duck* brought them to me. And what then? Here is a Cauſe, by their own confeſſion, depending in the Eccleſiaſtical Court; Dr. *Duck* in the King's Quarters, where I cannot fetch him to teſtify; no means left me to know what the Proceedings were; and I have good Cauſe to think, that were all the Merits of the Cauſe open before your Lordſhips, you would ſay, Sir *Tho. Dacres* did not all according to Law. But what is the Heart of this Charge? It is, ſay they, That I commanded Dr. *Duck* to proſecute them. And what fault was in this? For if it were juſt, why ſhould not Dr. *Duck* go on with his Proſecution? If Dr. *Duck* and I were both miſtaken in the Particular, 'twas eaſy getting a Prohibition. Yea, but they ſay I ſaid, *If this muſt be ſo, Sir* Thomas Dacres *ſhall be Biſhop of* London, *and I'll be Sir* Tho. Dacres. For ought I ſee in the Weight of it, this whole Charge was but to bring in this Speech. And truly, my Lords, my old decayed Memory is not ſuch, as that I can recal a Speech thirteen or fourteen Years ſince. But if I did ſay it, I preſume 'tis not High-Treaſon for a Biſhop of *London* to ſay ſo much of Sir *Tho. Dacres*. 'Mr. *Browne*, in the ſumming up the 'Charge againſt me, laid the Weight of the Charge in this, That theſe 'Church-wardens were proſecuted for executing the Warrant of a Juſtice 'of Peace upon an Ale-houſe Keeper, for tipling on the Sabbath-Day, 'contrary to the Statutes *Jac.* 7. & *Car.* 3. To which I anſwered, 'That thoſe Statutes did concern the Ale-houſe Keepers only; nor were 'the Church-wardens called in queſtion for that; but becauſe being 'Church-officers, and a Churchman tippling there, they did not complain of that to the Chancellor of the Dioceſs. Mr. *Browne* replied, 'There was no Clergyman there. I am glad I was ſo miſtaken. But 'that excuſeth not the Church-wardens, who being Church-Officers, 'ſhould have been as ready to inform the Biſhop, as to obey the Juſtice 'of Peace.'

IV. The fourth Inſtance was about Marriages in the *Tower*, which I oppoſed againſt Law. The Witneſs Sir *William Balfore*, then Lieutenant of the *Tower*. He ſays, that I did oppoſe thoſe Marriages: And ſo ſay I. But I did it for the Subject of *England*'s ſake: for many of their Sons and Daughters were there undone. Nor Banes, nor Licence, nor any Means of Fore-knowledge to prevent it. Was this ill? He ſays, That when he ſpake with me about it, I deſired him to ſpeak with his Majeſty about it, becauſe it was the King's Houſe. What could I do with more moderation? He confeſſes he did ſo, and that he moved the King that the Cauſe might be heard at the Council-Table, not at the High-Commiſſion. To this his Majeſty inclined, and I oppoſed nothing, ſo the general Abuſe might be rectified. Then he ſays, Mr. Attorney *Noye* ſaid at the Council-Table, it was the King's free Chapel, and that no Pope in thoſe Times offer'd to inhibit there. Firſt, if Mr. Attorney did ſo ſay, he muſt have leave to ſpeak freely in the King's Cauſe. Secondly, (as I humbly conceive) the Chapel for ordinary Uſe of Priſoners and Inhabitants of the *Tower*, where theſe diſorderly Marriages are made, is not that which is called the King's free Chapel; but another, in the ſide of the White Tower by the King's Lodgings. Thirdly, if it be, yet I have herein not offended; for I did all that was done by the King's Leave, not by any Aſſumption of Papal Power. Then he tells the Lords, That in a Diſcourſe of mine with him at *Greenwich*, about this Buſineſs, I let fall an Oath. I am ſorry for it, if I did, but that's no Treaſon. 'And I know whom the Deponent thinks to pleaſe by this Interpoſition: 'for to the Matter it belongs not.' In concluſion, he ſays truly, That the King committed the Buſineſs to ſome Lords and Judges, that ſo an end might be put to it; and in the mean time ordered, that till it were ended, there ſhould be no more Marriages in the *Tower*. How this Buſineſs ended, I know not. It began, I am ſure, by Authority of his Majeſty's Grant of the High-Commiſſion, to queſtion and puniſh all ſuch Abuſes, *tam in locis exemptis, quam non exemptis*. And his Majeſty having graciouſly taken this Care for the Indemnity of the Subject, I troubled myſelf no more with it; my Aim being not to cut off any Privileges of that Place, but only to prevent the Abuſes of that lawleſs Cuſtom. 'And if *cui bono* be a conſiderable Circumſtance, as it uſes to be in all 'ſuch Buſineſſes, then it may be thought on too, that this Gentleman 'the Lieutenant had a conſiderable Share for his part out of the Fee of 'every Marriage. Which I believe was as dear to him as the Privilege.'

V. The next Inſtance is broke out of the *Tower*, and got as far as *Oxford*. The Witneſs, Alderman *Nixon*. He ſays, the Mayor, and the Watch ſet by him, were diſturbed by the Proctors of the Univerſity, and a Conſtable impriſoned. The Night-Walk, and the keeping of the Watch, is the antient, known, and conſtant Privilege of the Univerſity for ſome Hundred of Years; and ſo the Watch ſet by the Town (purpoſely to pick a Quarrel) was not according to Law. He adds, That when the Right Honourable the Earl of *Berkſhire* would have referred the Buſineſs to the King's Counſel learned, I refuſed, and ſaid, I would maintain it by my own Power, as Chancellor. If I did ſay this (which I neither remember nor believe) I might better refuſe Lawyers, (not the Law, but Lawyers) than they a ſworn Judge of their own Nomination, which they did.

The Caſe was briefly this. There were ſome five or ſix Particulars which had, for divers Years, bred much Trouble and Diſagreement between the Univerſity and the City; of which (to my beſt remembrance) this about the Night-Watch, and another about Felons Goods, were two of the chief. The Univerſity complained to me. I was ſo far from going any By-way, that I was reſolved upon a Trial at *Weſtminſter-Hall*, thinking (as I after found) that nothing but a legal Trial would ſet thoſe two Bodies at quiet. The Townſmen liked not this; came ſome of the chief of them to *London*; prevailed with their Honourable Steward my Lord the Earl of *Berkſhire*, to come to me to *Lambeth*, and, by his Lordſhip, offer'd to have all ended without ſo great a Charge at Law, by reference to any of the Judges. I ſaid I had no mind to wrong the Town, or put them to charge, but thought they would fly off from all Awards; and therefore ſtuck to have a legal Trial. After this, ſome of the chief Aldermen came to me with my Lord, and offer'd me, That if the Univerſity would do the like, they would go down and bring it up under the Mayor and Aldermens Hands, that they would ſtand to ſuch end as Judge *Jones*, who rode that Circuit, ſhould, upon Hearing, make. They did ſo, and brought the Paper ſo ſubſcribed; (and therefore I think Alderman *Nixon*'s Hand is to it as well as the reſt: Upon this I gave way; the Univerſity excepted; the Judge heard and ſettled. And now when they ſaw my Troubles threatning me, they brake all, whiſtled up their Recorder to come and complain at the Council-Table, his Majeſty preſent. And I remember well, I told his Lordſhip, (then making the aforeſaid Motion to refer to the King's learned Counſel) that his Lordſhip well knew what had paſſed; and that being ſo uſed as I had been by the Townſmen, I would trouble myſelf with no more References to Lawyers, or to that effect. And I appeal to the Honour of my Lord, whether this be not a true Relation.

VI. The ſixth Inſtance concerns the putting of one Mr. *Grant* out of his Right. He ſays, (but he is ſingle, and in his own Cauſe) That Mr. *Bridges* was preſented to an Impropriation; and that ſuing for Tythe, he (the ſaid *Grant*) got a Prohibition, and Mr. *Bridges* a Reference to the then Lord Keeper *Coventry* and myſelf; That we referred them to the Law, and that there *Grant* was non-ſuited, and ſo outed of his Right. Firſt, In all this there's nothing ſaid to be done by me alone. Secondly, The Lord Keeper, who well underſtood the Law, thought it fitteſt to refer them to the Law; and ſo we did. If he were there non-ſuited firſt, and outed after, it was the Law that put him out, not we. 'Yet your 'Lordſhips ſee here was a Prohibition granted a Caſe, which the Law 'itſelf after rejected.'

VII. Then follows the Inſtance, That I had a purpoſe to aboliſh all Impropriations. The firſt Proof alledged was a Paſſage out of Biſhop *Mountague*'s Book, *p.* 210. That Tythes were due by Divine Right, and then no Impropriations might ſtand. And Mr. *Prynn* witneſſed very carefully, That this Book was found in my own Study, and given me by Biſhop *Mountague*. And what of this? Doth any Biſhop print a Book, and not give the Archbiſhop one of them? Or muſt I anſwer for every Propoſition that is in every Book that is in my Study, or that any Author gives me? And if Biſhop *Mountague* be of Opinion that Tythes are due by Divine Right, what is that to me? Your Lordſhips know many Men are of different Opinions in that Difficulty; and I am confident you will not determine the Controverſy by an Act of Parliament. They were nibbling at my Diary in this, to ſhew that it was one of my Projects to fetch in Impropriations; but it was not fit for their purpoſe: For 'tis expreſſed, That if I lived to ſee the Repair of *St. Paul's* near an end, I would move his Majeſty for the like Grant for the buying in of Impropriations. And to buy them from the Owners, is neither againſt Law, nor againſt any thing elſe that is good; nor is it any Uſurpation of Papal Power.

Diary, in fine, nu. 21.

2. The ſecond Proof was my procuring from the King ſuch Impropriations in *Ireland*, as were in the King's Power, to the Church of *Ireland*. 'Which Mr. *Nicolas* (in his gentle Language) calls Robbing of the 'Crown.' My Lords, the Caſe was this. The Lord Primate of *Armagh* writ unto me, how ill conditioned the State of that Church was for want of Means; and beſought me that I would move his Majeſty to give the Impropriations there, which yet remained in the Crown, for the Maintenance and Incouragement of able Miniſters to live among the People, and inſtruct them; aſſuring me, they were daily one by one begged away by private Men, to the great Prejudice both of Crown and Church. And the Truth of this, the Lord Primate is now in this Kingdom, and will witneſs. I acquainted the King's great Officers, the Lord Treaſurer, and the Chancellor of the *Exchequer* with it. And after long Deliberation, the King was pleaſed, at my humble Suit, to grant them in the Way which I propoſed: which was, That when they came into the Clergy's Hands, they ſhould pay all the Rents reſpectively to the King, and ſome Conſideration for the ſeveral Renewings. And the Truth of this appears in the Deeds: So here was no Robbery of the Crown. For the King had all his ſet Rents reſerved to a Penny, and Conſideration for his Caſualties beſide. And, my Lords, the Increaſe of Popery is complained of in *Ireland*: Is there a better way to hinder this Growth, than to place an able Clergy among the Inhabitants? Can an able Clergy be had without Means? Is any Means fitter than Impropriations reſtored? My Lords, I did this, as holding it the beſt Means to keep down Popery, and to advance the Proteſtant Religion. And I wiſh with all my Heart I had been able to do it ſooner, before ſo many Impropriations were gotten from the Crown into private Hands.

VIII. Next I was charged with another Project in my Diary, which was to ſettle ſome fixed *Commendams* upon all the ſmaller Biſhopricks. For this, I ſaid, their own Means were too ſmall to live and keep any Hoſpitality, little exceeding Four or five hundred Pounds a Year. I conſidered that the *Commendams* taken at large and far diſtant, cauſed a great Diſlike and Murmur among many Men; that they were in ſome Caſes *Materia odioſa*, and juſtly complained of. And hereupon I thought it a good Church-Work to ſettle ſome Temporal Leaſe, or ſome Benefice, *ſine Cura*, upon the leſſer Biſhopricks, but nothing but ſuch as was in their own Right and Patronage; that ſo no other Man's Patronage might receive Prejudice by the Biſhops *Commendam*: Which was not the leaſt Rock of Offence, againſt which *Commendams* endanger'd themſelves. And that this was my Intent and Endeavour, is expreſſed in my Diary; and I cannot be ſorry for it.

Diary, fine. *nu.* 8.

IX. Then I was accuſed for ſetting old Popiſh Canons above the Laws. Mr. *Burton* is the ſole Witneſs. He ſays, it was in a Caſe about a Pew, in which thoſe Canons did weigh down an Act of Parliament. 'I did 'never think till now Mr. *Burton* would have made any Canons Pew-'Fellows with an Act of Parliament.' But ſeriouſly, ſhould not Mr. *Burton*'s Teſtimony for this have been produced at the ſecond Inſtance of this Day? For in the end of that is juſt ſuch another Charge; and the Anſwer there given will ſatisfy this, and that by Act of Parliament too.

25 Hen. VIII. c. 19. § ult.

X. After this came a Charge with a great Outcry; That ſince my coming to be Archbiſhop, I had renewed the High-Commiſſion, and put in many illegal and exorbitant Clauſes, which were not in the former. Both the Commiſſions were produced. Upon this, I humbly deſired that the Docket might be read, by which their Lordſhips might ſee all thoſe Particulars which were added in the new Commiſſion, and ſo be able to judge how fit or unfit they were to be added. The Docket was read; and there was no Particular found, but ſuch as highly deſerved Puniſhment, and were of Eccleſiaſtical Cognizance: as Blaſphemy, Schiſm, and two or three more of like nature.

1. In this Charge, the firſt exorbitant Clauſe they inſiſted on, as added to the new Commiſſion, was the Power given *in Locis Exemptis, & non Exemptis*; as if it were thereby intended to deſtroy all Privileges. No, not to deſtroy any Privilege, but not to ſuffer enormous Sins to have any Privilege. Beſides, this Clauſe hath ever been in all Commiſſions that ever were granted. And I then ſhewed it to the Lords in the old Commiſſion there preſent, *p.* 28, 32, 35, 42. 'Nay more, this Pro-'ceeding *tam in Locis Exemptis quam non Exemptis*, is allowed to the Go-'vernors of the Church, in the Exerciſe of their Eccleſiaſti-'cal Juriſdiction, by Act of Parliament in Queen *Elizabeth*'s 'Time: which would never have been allowed, had it then 'been thought ſuch a dangerous Buſineſs, as 'tis now made againſt me.'

1 Eliz. *c.* 2.

2. The ſecond Clauſe was Power to cenſure, by Fine and Impriſonment. This alſo I ſhewed in the old Commiſſion, *Fol.* 37. and is (I conceive) in plain purſuance of the Act of Parliament upon which the High-Commiſſion is grounded. For the King ſays there, *Fol.* 13. (and ſo 'tis in the new) That he grants this Power by virtue of his Supreme Authority, and Prerogative Royal, [a] and of the ſaid Act. Nay farther, 'tis added in this latter Commiſſion, *And by our Authority Eccleſiaſtical*, which is not expreſſed in the former. And ſure I would never have cauſed Authority Eccleſiaſtical to be added, had I any Plot (as 'tis urged) either to exalt the Clergy above the Laity, or to uſurp Papal Power; which all Men know is far enough from aſcribing Eccleſiaſtical Authority to the King. And as for Fine and Impriſonment, if that Power be not according to Law, why was it firſt admitted, and after continued in all former Commiſſions?

1 Eliz. *c.* 1. § 8.

[a] *The Words of the Statute are*, By virtue of this Act.

3. The third Clauſe was the *Non Obſtante*, which he ſaid was againſt all Law, and of ſuch a boundleſs extent, as was never found in Commiſſion or other Grant in *England*. And he here deſired the Lords that he might read it, which he did, with great Aſſurance of a Triumph. But after all this Noiſe which Mr. *Nicolas* had made, I ſhewed the ſame *Non Obſtante* in the Old Commiſſion, *Fol.* 62. word for word, which I humbly deſired might be read and compared: It was ſo. The Lords looked ſtrangely upon it; Mr. *Nicolas* was ſo ſtartled, that he had not patience to ſtay till his Reply, (which he ſaw impoſſible to be made) but interrupted me, and had the face to ſay in that Honourable aſſembly, That I need not ſtand upon that: for he did but name that, without much regarding it. And yet at the giving of the Charge, he inſiſted principally upon that Clauſe, and in higher and louder Terms than are before expreſſed. Had ſuch an Advantage been found againſt me, I ſhould have been accounted extremely negligent, if I compared not the Commiſſions together; or extremely impudent, if I did.

4. The fourth Exception was, That by this Commiſſion I took greater Power than ever any Court had, becauſe both Temporal and Eccleſiaſtical. Firſt, Whatſoever Power the High-Commiſſion had, was not taken by them, till given by his Majeſty, and that according to Uſe and Statute, (for ought hath been yet declared.) Secondly, They have not Power of Life or Limb, therefore not ſo great Power as other Courts have. Thirdly, They may have more various Power in ſome reſpects, but that cannot make it greater. 'As for the Expreſſion in which 'tis 'ſaid, *I took this Power*; that is put moſt unworthily and unjuſtly too, to 'derive the Envy as much as he could upon my Perſon only.' For he could not hold from comparing me to Pope *Boniface* VIII. and ſaying, That I took on me the Power of both Swords. But this was only *ad faciendum Populum*. For he knows well enough, that to take both the Swords, as the Pope takes them, is to challenge them originally as due to him and his Place: Not to take both, as under the Prince, and given by his Authority; and ſo not I alone, but all the Commiſſioners take theirs.

5. Fifthly, to prove that this vaſt Commiſſion (as it was called) was put in execution, Mr. *Burton* is produced. He ſays, That when he was called into the High-Commiſſion, he appealed to the King, and pleaded his Appeal; and that thereupon I and the Biſhop of *London* writ to the King to have him ſubmit to the Court. He confeſſes he was diſmiſſed upon his Appeal, till his Majeſty's Pleaſure was farther known. And it was our Duty, conſidering what a Breach this would make upon the Juriſdiction of the Court, to inform his Majeſty of it; and we did ſo. The King declared that he ſhould ſubmit to the Court, as is confeſſed by himſelf. Then he ſays, Becauſe he would not ſubmit to the Court, he was cenſured notwithſtanding his Appeal. And he well deſerved it, that would not be ruled by his Majeſty, to whom he had appealed. And the Commiſſion had Power to do what they did. Beſides, himſelf confeſſes, all this was done by the High-Commiſſion, not by me. Nor doth he urge any Threat, Promiſe, or Sollicitation of mine, any way to particularize the Act upon me: And farther, he is ſingle, and in his own Cauſe.

XI. Then followed the laſt Charge of this Day, which was the Patent granted for the Fines in the High-Commiſſion, for finiſhing the Weſt End of *St. Paul's* cried out upon as illegal, and extorted from the King, and ſuch as took all Power from him for the ſpace of the Ten Years, for which time it was granted. This is the fourth time that *St. Paul's* is ſtruck at. My Lords, let it come as often as it will, my Project and Endeavour in that Work was honeſt and honourable to both Church and Kingdom of *England*. No Man in all this Search and Purſuit hath been able to charge me with the turning of any one Penny or Pennyworth to other uſe than was limited to me. I took a great deal of care and pains about the Work, and cannot repent of any thing I did in that Service, but of human Frailty. And whereas 'tis ſaid, this Patent was extorted from his Majeſty; as there is no Proof offered for it, ſo is there no Truth in it. For his Majeſty's Piety was ſo forward, that nothing needed to be extorted from him. Thus went I on, *bona fide*, and took the prime Direction of the Kingdom for drawing the Patent, the Lord Keeper *Coventry*, Mr. *Noy*, and Sir *Henry Martin*. And therefore if any thing be found againſt Law in it, it cannot be imputed to me, who took all the care I cou'd to have it beyond Exception. And I marvel what Security any Man ſhall have, that adventures upon any great and publick Work in this Kingdom, if ſuch Counſel cannot be truſted for drawing up ~~of his~~ Warrant. 'And whereas it was ſaid, This Patent for the ten Years ſpace took away both Juſtice and Mercy from the King; that's nothing ſo: For whatever the Words be, to enable me the better for that Work, yet theſe being inſeparable from him, may be uſed by him, notwithſtanding this or any other Patent. And if theſe be inſeparable, (as 'tis granted they are) no inſeparable thing can be taken away; or if it be taken, 'tis void in Law, and the King is where he was in the Exerciſe of his Right, both for Juſtice and Mercy. And ſo I anſwer'd Mr. *Browne*'s ſummary Charge againſt me. And as for that which he farther argued concerning *St. Gregory*'s Church, Mr. *Inigo Jones* and others were truſted with that whole Buſineſs, and were cenſured for it in this preſent Parliament. In all which Examination no part of the Charge fell on me.' And becauſe here are ſo many things urged about Free-Chapels, Lay-Fee, Patents, Appeals, and the like, I humbly deſire a *Salvo* may be enter'd for me; and that my Counſel may be heard for Matter of Law, if any Doubt ſtick with your Lordſhips.

This Day ended, I did, according to my Reſolution formerly taken, move the Lords for Means, conſidering my Charge in coming, and how oft I had attended, and was not heard. Their Lordſhips conſidered of my Motion, and ſent me out word I ſhould petition them. I did humbly petition their Lordſhips *May* 6. My Petition was preſently ſent down to the Houſe of Commons, that ſo by both Houſes it might be recommended to the Committee for Sequeſtrations. But upon a Speech in the Houſe of Commons, that it was fit to ſee what would become of me, before they troubled themſelves with thinking of Means for me, my Petition was caſt aſide.

At my parting from the Houſe, I was ordered to appear again on *Thurſday*, *May* 9. but then fairly put off by an Order (ſent to the Lieutenant of the Tower) to *Monday*, *May* 13. So the Scorn and Charge of that Day was ſcaped. But then I appeared according to this Order, and had Scorn plenty, for what I eſcaped the Day before: And, after long Attendance, was diſmiſſed again unheard; and had *Thurſday*, *May* 16. aſſigned unto me. That Day held, and proceeded thus.

The Ninth Day of my Hearing.

I. MAY 16. 1644. The firſt Charge of this Day was about a Reverſion of the Town-Clerk's Office of *Shrewſbury* to one Mr. *Lee*, which he deſir'd might be inſerted into the new Charter. Firſt, Mr. *Lee* is ſingle here, and in his own Caſe. Secondly, it appears by his own Confeſſion, out of the Mouth of Mr. *Barnard*, that there was a Reference of this Buſineſs to thoſe Lords to whom *Shrewſbury* Charter was referred; For he ſays, That Mr. *Barnard* told him his Buſineſs was ſtayed, and he thought by me; but did not know whether the Lord Keeper's Hand were not in it. So it ſeems by himſelf, this was done by the Lords Referees, and not by me. Thirdly, I did not then think, nor do now, that the Reverſion of a Place, to be ſold for three hundred Pound, (as he confeſſes that was) was fit to be put into a Town-Charter. But yet neither I, nor the Lord-Keeper, did any thing in that Stop, but what we acquainted his Majeſty with, and had his Approbation of. And whereas he ſays, That he acquainted the Right Honourable the Earl of *Dorſet* with the ſtay that was made, and that thereupon his Lordſhip ſhould ſay, *Have we two Kings?* I cannot believe that Honourable Lord would ſo ſay, unleſs he were much abuſed by Mr. *Lee*'s Information, both in regard of his Love to me, and in regard it could not proceed from a Man of ſo great a Judgment as that Lord is. For I beſeech your Lordſhips conſider, may not Lords, to whom a Buſineſs is referred, give his Majeſty good Reaſon to alter his Mind in ſome Particulars which they have debated, and not he? And may not this be done without any one of them taking on him to be a ſecond King?

II. The ſecond Charge was laid on me by Sir *Arthur Haſelrig*, (which ſhould have come in the Day before, as Mr. *Nicolas* ſaid, but that Sir *Arthur* was abſent in the neceſſary Service of the State.) Sir *Arthur*, being ſingle and in his own Caſe, ſays, That Sir *John Lambe* preſented a blind Parſon to a living of his. If Sir *John* did that, or any unworthy thing elſe, *ætatem habet*, let him anſwer for himſelf. He ſays farther, That this Living is an Impropriation, and ſo a Lay-Fee by Law; and that when he told me ſo much, I made him this Anſwer, *That if I lived, no Man ſhould name or ſtand upon his Lay-Fee.* I conceive, my Lords, here's a great Miſtake in the main: For I have been credibly informed, and do believe, that Benefice is preſentative, and ſo no Lay-Fee. And then there's no Fault to preſent unto it, ſo the Clerk be fit. Secondly, There's a main Miſtake in my Words, which I remember well, and where it was that I ſpake them. My Words, under this Gentleman's Favour, and your Lordſhips, were theſe, and no other; *That I had good Information that the Benefice was preſentative*; *and that if I lived, I hoped to order it ſo, that no Man ſhould make a preſentative Benefice a Lay-Fee*; *there were too many of them already.* Thirdly, If I did ſpeak the Words as they are charged, if they come within that Statute of Six Months, ſo often mentioned, to that I refer myſelf: *whatſoever the Bird at this time of the Year ſings*, as Mr. *Nicolas* was pleaſed to put it upon me. And truly, My Lords, I could eaſily return all his Bitterneſs upon himſelf, could it befit my Perſon, my preſent Condition, or my Calling.

III. The third Charge was about the refuſing of a Pardon, which Mrs. *Baſtwick* ſaid ſhe produced in the High-Commiſſion Court ſome nine or ten Years ſince: And ſhe adds, That I ſhould then ſay, it ſhould not ſerve his turn. But this was no rejecting of the Pardon; for ſhe confeſſes I ſaid I would move his Majeſty about it. So that if it did not ſerve his turn, it was from the King himſelf, upon Motion made, and Reaſon given, not from any Power aſſumed by the High-Commiſſion or myſelf. And the Act, whatever it were, was the Act of the whole Court not mine. As for the Words, (if mine) I gave the ſame Anſwer as before, notwithſtanding Mr. *Nicolas* his Bird.

IV. The fourth Charge was, That whereas there was a Proclamation to be printed about the Pacification with the *Scots*, it was ſuddenly ſtopp'd: and an Order after for burning of the Pacification. Firſt, Mr. *Hunſcot* is ſingle in this Charge. Secondly, Whatſoever was done in this, was by Order of Council: And himſelf names an Order which could not come from me. Thirdly, He charges me with nothing but that I ſent word the Proclamation was to be ſtayed; which, if I did, I did it by Command. Howſoever, this concerns the *Scotiſh* Buſineſs, and therefore to the Act of Oblivion I refer myſelf. 'With this, that I ſee by this Teſtimony, Mr. *Hunſcourt* (for I took his Name uncertainly) hath not yet forgotten, *Thou ſhalt commit Adultery*; ſo deſirous he is to catch me at the Preſs.'

V. The firſt Charge was about a Benefice in *Northamptonſhire*, in the Caſe of Mr. *Fautrye* and Mr. *Johnſon*, and Dr. *Beal*'s ſucceeding them. In which broken Buſineſs, (for ſuch it was) Firſt, That Buſineſs was all along acted by the High-Commiſſion, not by me. Secondly, That though in the Caſe of Simony the Benefice be loſt, *ipſo facto*, yet that muſt be proved before the Incumbent can be thruſt up, and another inſtituted, elſe Churchmen were in a miſerable Condition for their Livelihood. Excommunication is in many Caſes void in Law, *ipſo facto*; and yet, *ante latam Sententiam*, till Sentence be orderly pronounced againſt it, no Man ſhall be ſubjected to thoſe fearful Conſequences which follow upon it. 'And upon this ground of natural Equity, that in the Statute concerning the Uniformity of Common-Prayer proceeds:' Where 'tis ſaid, [a] *That a Party once convicted for depraving the Common Prayer-Book, and relapſing into the ſame Crime, ſhall be deprived of all his Spiritual Promotions*, ipſo facto. But how? without any legal Proceedings? No, God forbid: For the Words preceding immediately in the Statute, are, *That he muſt be firſt legally convicted of that criminal Relapſe*; and then follows *ipſo facto*, and not before. And therefore the Super-inſtitution, before the Simony tried and judged, was illegal; beſide the great danger to the Pariſhioners, while two Parſons, and their ſeveral Friends are ſcrambling for the Tythes. Secondly, *Fautrye* was not cenſured for the original Cauſe of Simony, but for an Intruder, and Colluder too with *James*, to abuſe the King's Grant of the Benefice. Thirdly, It ſeems *Fautrye* had no better Opinion of his own Cauſe: For he went to his Benefice in *Jerſey*, and ſet not his Title on foot again till after ſeven Years; and that, I think, was when he heard that Mr. *Johnſon* was a Pretender to it. And his Bond upon the Sentence was to make a final Peace. For the Prohibition, which he ſays was refuſed, I have anſwered that before, in the Charge about Prohibitions. Beſides, it appears by [b] Law, that as Prohibitions may be granted in ſome Caſes, ſo in ſome Caſes they may be refuſed. For Dr. *Beal*, there is not the leaſt ſhew of Proof offered, that I brought him in, if to do ſo be a Crime.

Thus far Mr. *Fautrye* went. As for Mr. *Johnſon*'s Title, he ſays, That the Lords order'd it for him, and declared that we in the High-Commiſſion could put no Man out of his Freehold. Where firſt, if your Lordſhips have order'd this Buſineſs, I muſt crave to know how far I ſhall have leave to ſpeak to it: For if there be any Errors charged upon the Sentence given in the High-Commiſſion, if they may not be ſpoken to, they cannot be ſatisfied. This I am ſure of, the Commiſſion hath Power to deprive: For the [c] Statute gives it Power *to uſe all Eccleſiaſtical and Spiritual Cenſures*; of which Deprivation is known to be one: And that Power is expreſly given to deprive ſome Offenders of all their Spiritual Promotions, by the following [d] Statute. Therefore I think it follows neceſſarily, either that we have Power over Freehold in that Caſe, or elſe that a Benefice is not a Freehold. But I have no reaſon, howſoever, to ſpeak any thing (were I left never ſo free) againſt your Lordſhips Order, which very honourably left Dr. *Beal* to the Law; as 'tis confeſſed by *Johnſon*.

Beſides theſe two in their own Cauſe, one Mr. *Jenkins* is produced; but to what end I know not, unleſs it be to beſpatter Dr. *Beal*. He ſays, That ſeven Years ſince Dr. *Beal* was Vice-Chancellor of *Cambridge*; that in his Sermon then he inveighed bitterly againſt the Power of Parliaments, and named ſome unſavoury Speeches of his, both concerning their Perſons and Proceedings. Surely, if Dr. *Beal* did as is teſtified, he was much to blame. But what is this to me? If it be ſaid I did not puniſh him: How could I puniſh that I knew not? And I profeſs I heard not of it till now at Bar. If it be ſaid I did prefer him; that I do abſolutely deny. And neither Mr. *Jenkins*, nor any other, offers the leaſt Proof that I knew the one, or did the other.

VI. The ſixth Charge was concerning the Statutes of the Univerſity of *Oxford*; in which, and the Cathedrals of the new Erection, Mr. *Nicolas* ſays I took on me to be an univerſal Law-giver. Many ſuch Offices he beſtows upon me, which God knows, and I believe he too, that I never affected. No, my Lords, the great Neceſſities of that Univerſity called upon me for it: Their Statutes lay in a miſerable confuſed Heap. When any Difficulty aroſe, they knew not where to look for Remedy or Direction. Then into the Convocation-Houſe, and make a new Statute; and that many times proved contrary to an old one concerning the ſame Buſineſs: Men in the mean time ſworn to both, which could not poſſibly be kept together. By this means Perjury was in a manner unavoidable: And themſelves confeſs in their [e] Regiſter, (which is now in Court) that till this was done, they did in a ſort ſwear, that they might be forſworn.

Beſides, my Lords, I did not aboliſh any the old Books, in which the Statutes lay ſo confuſed, ſome in one Book, and ſome in another; but left them all intirely in the Univerſity, in caſe in after-times any uſe might be made of them. Nor did I with them, as ſome ancient Philoſophers are ſaid to have done with the Works of ſome that went before them; that is, make them away, to advance their own Honour the more, as if without any help of former Pains, they had done all themſelves: Holding it Honour more than enough for me, that God had ſo highly bleſſed me in this Work, as to finiſh and ſettle thoſe Statutes, which the greateſt Men in their Times, Cardinal *Wolſey* firſt, and after him Cardinal *Pool*, aſſayed, but left as imperfect as they found them. Neither did I any thing in this Work but by the Conſent of the Univerſity, and according to an Act (and a Delegacy thereby appointed) of their own Convocation.

Mr. *Nicolas* ſays, There is a Raſure in one of the Acts, and ſupplied in other Ink. I told your Lordſhips then preſently, (being loth to lie never ſo little under ſuch an Imputation) that if there be any ſuch, it muſt be charged upon the Univerſity, not upon me, for thoſe Records were never

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[a] *Eliz. c.* 2.

[b] 13 *Edw.* I.

[c] 1 *Eliz. c.* 1. § 8.

[d] 1 *Eliz. c.* 2.

[e] Jurati ante ut Perjuri evaderent *fol.* 69.

in my hands? nor is it ſo much as ſaid they were. And ſince I withdrew to make my Anſwer, I have viewed the Record, and an Alteration or Addition there is; and 'tis a known Hand. 'Tis Dr. *Duppa's* Hand, now Lord Biſhop of *Saliſbury*, and then Vice-Chancellor; who I doubt not but is able to give a good account of what he did therein, and why. And for aught appears, 'tis nothing but the Amendment of ſome ſlip, which their ignorant Regiſter *French* had failed in, and the Vice-Chancellor thought it ſafeſt to mend with his own Hand. And for my own part, if ever I did any thing worth Thanks from the Publick in all my Life, I did it in this Work for that Univerſity. And I wiſh with all my Heart the Times were ſo open, as that I might have the Univerſity's Teſtimony both of me and it. ‘ Since ‘ I cannot, a great Lord, preſent in the Houſe when this Charge was laid ‘ againſt me, ſupplied in part their Abſence: for he was over-heard to ſay ‘ to another Lord, *I think my Lord Archbiſhop hath done no good Work in all his* ‘ *Life, but theſe Men will object it as a Crime againſt him before they have done.*’

With this Charge about the Statutes it was let fall, (and I well know why, ‘ It was to heat a Noble Perſon then preſent,’) That I procured myſelf to be choſen Chancellor of that Univerſity. If I had ſo done, it might have been a great Ambition in me, but ſurely no Treaſon. But, my Lords, I have Proof great ſtore, might I be enabled to fetch it from *Oxford*, that I was ſo far from endeavouring to procure this Honour to myſelf, as that I laboured by my Letters for another. And 'tis well known, that when they had choſen me, I went inſtantly to his Majeſty, ſo ſoon as ever I heard it, and humbly beſought him that I might refuſe it, as well foreſeeing the Envy that would follow me for it; and it did plentifully every way. But this for ſome Reaſons his Majeſty would not ſuffer me to do.

Then were objected againſt me divers Particulars contained in thoſe Statutes: As, Firſt, The making of new Oaths. The Charters of the Univerſity are not new, and they gave Power to make Statutes for themſelves, and they have ever been upon Oath. Secondly, The next Illegality is, That Men are tied to obey the Proctors in ſinging the Litany. This is antient, and in uſe long before ever I came to the Univerſity; and it is according to the Liturgy of the Church of *England*, eſtabliſhed by Law. Thirdly, The Statute of Bannition from the Univerſity. But there is nothing more antient in the Univerſity-Statutes than this. Fourthly, That nothing ſhould be propoſed in Convocation, but what was conſented unto among the Heads of Colleges firſt; which was ſaid to be againſt the Liberty of the Students. The young Maſters of Arts, void of Experience, were grown ſo tumultuous, that no Peace could be kept in the Univerſity, till my worthy Predeceſſor, the Right Honourable *William* Earl of *Pembroke*, ſettled this Order among them: As he did alſo, upon the ſame grounds, ſettle the preſent way of the Choice of their Proctors. In both which I did but follow and confirm (for ſo much as lay in me) the good and peaceable Grounds which he had laid in thoſe two Buſineſſes. ‘ And Mr. *Browne*, ‘ who, in the ſumming up of my Charge, urged this againſt me, mainly ‘ miſtook in two Things. The one was, That he ſaid this Inhibition of ‘ Propoſals was in Congregations: whereas it was only in Convocations, ‘ where more weighty Buſineſſes are handled. The other was, That this ‘ ſtay of Propoſals was made till I might be firſt acquainted with them. ‘ No; it was but till the Heads of Colleges had met, and conſidered of them, ‘ for avoiding tumultuary Proceedings. And when my Honourable Prede‘ ceſſor made that Order, it was highly commended every where: And is ‘ it now degenerated into a Crime, becauſe it is made up into a Statute?’ Fifthly, That ſome Things are referred to arbitrary Penalties. And that ſome Things are ſo referred, is uſual in that Univerſity, and many Colleges have a particular Statute for it: Nor is this any more Power than ordinary School-Maſters have, which have not a Statute-Law for every Puniſhment they uſe in Schools. And in divers things the old known Statute is, That the Vice-Chancellor ſhall proceed *groſſo modo*, that is, without the regular Forms of Law, for the more ſpeedy ending of Differences among the Scholars. Sixthly, That the [a] Statute made by me againſt Conventicles is very ſtrict: But for theſe that Statute is expreſs *de illicitis Conventiculis*; and I hope ſuch as are unlawful may be both forbid and puniſhed. Beſides, it is according to the Charter of *Richard* the Second to that Univerſity. Seventhly, The ſeventh was the Power of Diſcommoning. But this alſo hath ever been in power, and in uſage in that Univerſity, as is commonly known to all *Oxford* Men: And no longer ſince than King *James* his Time, Biſhop *King*, then Vice-Chancellor, diſcommoned three or four Townſmen together. Eighthly, That Students were bound to go to Priſon upon the Vice-Chancellor's, or Proctor's Command. This alſo was antient, and long before my coming to the Univerſity. And your Lordſhips may be ſure the Delegacy, appointed by themſelves, would not have admitted it, had it not been antient and uſual. Ninthly, and laſtly, [b] About the ſtay of granting Graces, unleſs there were Teſtimony from the Biſhop of the Dioceſs. This was for no Graces, but of ſuch as live not reſident in the Univerſity, and ſo they could not judge of their Manners and Converſation. And for their Conformity to the Church of *England*, none (as I conceive) can be a fitter Witneſs than the Biſhop of the Dioceſs in which they reſided. And, my Lords, for all theſe thus drawn up by ſome of their own Body, I obtained of his Majeſty his Broad-Seal for Confirmation; and therefore no one thing in them is by any Aſſumption of Papal Power, as 'tis urged; but by the King's Power only. ‘ As for ‘ the Statutes themſelves, there was ſcarce one urged againſt me, but it ‘ was either a Statute or a Preſcription of that Univerſity long before I was ‘ born into the World, and could not therefore be of my new making. ‘ And this was my Anſwer to Mr. *Browne* in the Houſe of Commons. ‘ And ſuch Bannition, Diſcommoning, and the like, are well known to ‘ be.’

[a] Tit. 15. § 12.

[b] Tit. 9. § 2.

VII. Then followed the ſeventh Charge, About the Statutes of ſome Cathedral Churches. Firſt, my Lords, for this, I did it by Letters-Patents from the King, bearing date *Mar.* 31. *decimo Caroli*, and is extant upon Record. And all that was done, was *per juris remedia*, and ſo nothing intended againſt Law, nor done, that I know. They had extreme need of Statutes; for all lay looſe for want of Confirmation, and Men did what they liſted: And I could not but obſerve it; for I was Dean of *Glouceſter*, where I found it ſo. In ſeeking to remedy this, I had nothing but my Labour for my Pains; and now this Accuſation to boot. The Particulars urged are, 1. That I had ordered that nothing ſhould be done in theſe Statutes, *me inconſulto*. And I had great reaſon for it. For ſince I was principally truſted in that Work by his Majeſty, the King, if any Complaint were made, would expect the Account from me. And how could I give it, if other Men might do all, and I not be ſo much as conſulted before they paſſed?

2. That I made a Statute againſt letting Leaſes into three Lives. But firſt, my Lords, the Statute which makes it lawful to let Leaſes for one-and-twenty Years, or three Lives, hath this Limitation in it, *That they ſhall not let for many more Years than are limited by the ſaid Colleges or Churches.* Now in *Wincheſter*-Church, and ſome other, the old local Statute is moſt plain, that they ſhall let no Leaſe into Lives. Let the Dean and Prebendaries anſwer their own Acts, and their Conſciences, as they can. And in thoſe Statutes which I did not find pregnant to that purpoſe, I did not make the Statute abſolute, but left them free to renew all ſuch Leaſes as were antiently in Lives before. And this give me Leave to ſay to your Lordſhips without offence: If but a few more Leaſes be granted into Lives, no Biſhop nor Cathedral Church ſhall be able to ſubſiſt. And this is conſiderable alſo, That, as the Statute of the Church yet ſtands, the Laity have the benefit, by the Leaſes which they hold, of more than five parts of all the Biſhops, Deans and Chapters, and College Revenues in *England*. ‘ And ſhall it ‘ be yet an Eye-ſore to ſerve themſelves with the reſt of their own? This ‘ Evidence Mr. *Browne*, whoſe part it was to ſum up the Evidence againſt ‘ me at the end of the Charge, wholly omitted: for what cauſe, he beſt ‘ knows.’

13 Eliz. c. 10. § penult.

VIII. The next Charge was about my Injunctions in my Viſitation of *Winton* and *Sarum*, for the taking down of ſome Houſes. But they were ſuch as were upon conſecrated Ground, and ought not to have been built there; and yet with Caution ſufficient to preſerve the Leſſees from over-much Damage. For it appears *apud Acta*, that they were not to be pulled down till their ſeveral Leaſes were expired. And that they were Houſes not built long ſince, but by them; and that all this was to be done, to the end that the Church might ſuffer no damage by them: and that this Demolition was to be made *juxta Decreta Regni*, according to the Statutes of the Kingdom. Therefore nothing enjoined contrary to Law: or if any thing were, the Injunction took not place, by the very Tenour of that which was charged. ‘ Mr. *Browne* omitted this Charge alſo, though he hung heavily ‘ upon the like at *St. Paul's*; though there was Satisfaction given, and ‘ not here.’

IX. The ninth Charge was my intended Viſitation of both the Univerſities, *Oxford* and *Cambridge*. For my Troubles began then to be foreſeen by me, and I viſited them not. 1. This was urged as a thing directly againſt Law. But this I conceive cannot be, ſo long as it was with the King's Knowledge, and by his Warrant. 2. Secondly, Becauſe all Power of the King's Viſitations was ſaved in the Warrant, and that with Conſent of all Parts. 3. Thirdly, Becauſe nothing in this was ſurreptitiouſly gotten from the King, all being done at a moſt full Council-Table, and great Counſel at Law heard on both Sides. 4. Fourthly, Becauſe it did there appear, that three of my Predeceſſors did actually viſit the Univerſities, and that *Jure Eccleſiæ ſuæ Metropoliticæ*. 5. Fifthly, No Immunity pleaded, why the Archbiſhop ſhould not viſit; for the Inſtance againſt Cardinal *Pool* is nothing. For he attempted to viſit, not only by the Right of his See, but by his Power Legatine from the Pope; whereas the Univerſity-Charters are expreſs, that ſuch Power of Viſitation cannot be granted *per Bullas Papales*. And yet now 'tis charged againſt me, that I challenged this by Papal Power *. ‘ Mr. *Browne* wholly neglected this Charge alſo; which ‘ making ſuch a Shew, I think he would not have done, had he found it ‘ well grounded.’

X. The tenth Charge was my Viſitation of *Merton-College* in *Oxford*. The Witneſs Sir *Nathaniel Brent*, the Warden of the College, and principally concerned in that Buſineſs. He ſaid, Firſt, That no Viſitation held ſo long. But if he conſult his own Office, he may find one much longer, held and continued at *All-Souls-College* by my worthy Predeceſſor Archbiſhop *Whitgift*. Secondly, He urged that I ſhould ſay, *I would be Warden for ſeven Years.* If I did ſo ſay, there was much need I ſhould make it good. Thirdly, That one Mr. *Rich. Nevil*, Fellow of that College, lay abroad in an Ale-houſe; that a Wench was got with Child in that Houſe, and he accuſed of it; and that this was complained of to me; and Sir *Nath. Brent* accuſed for conſpiring with the Ale-Wife againſt *Nevil.* I am not here to accuſe the one, or defend the other. But the Caſe is this: This Cauſe between them was publick, and came to Hearing in the Vice-Chancellor's Court, Witneſſes examined, Mr. *Nevil* acquitted, and the Ale-Wife puniſhed. In all this I had no hand. Then in my Viſitation it was again complained of to me. I liked not the Buſineſs; but forbare to do any thing in it, becauſe it had been legally cenſured upon the Place. ‘ This part of the Charge Mr. *Browne* urged againſt me in the Houſe of ‘ Commons, and I gave it the ſame Anſwer.’ Laſtly, When I ſat to hear the main Buſineſs of that College, Sir *Nathaniel Brent* was beholden to me that he continued Warden. For in Archbiſhop *Warham's* time, a Predeceſſor of his was expell'd for leſs than was proved againſt him. And I found that true which one of my Viſitors had formerly told me, namely, That Sir *Nathaniel Brent* had ſo carried himſelf in that College, as that if he were guilty of the like, he would lay his Key under the Door, and be gone, rather than come to anſwer it. Yet I did not think fit to proceed ſo rigidly. But while I was going to open ſome of the Particulars againſt him, Mr. *Nicolas* cut me off, and told the Lords, this was to ſcandalize their Witneſſes. So I forbare.

XI. Then followed the laſt Charge of this Day, concerning a Book of Dr. *Baſtwick's*, for which he was cenſured in the High-Commiſſion. The Witneſſes in this Charge were three. Mr. *Burton*, a mortal Enemy of mine, and ſo he hath ſhewed himſelf: Mrs. *Baſtwick*, a Woman and a Wife, and well tutor'd: for ſhe had a Paper and all written which ſhe had to ſay; tho' I ſaw it not till 'twas too late. And Mr. *Hunſcot*, a Man that comes in to ſerve all turns againſt me, ſince the Sentence paſſed againſt the Printers for *Thou ſhalt commit Adultery*.

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* *The Archbiſhop had collected many Papers, Decrees, and Precedents, to aſſert his Privilege of viſiting the Univerſities, in Right of his See, about the Year* 1635. *Which being ſeized on by* Prynn, *among his other Papers at* Lambeth, *were by him, after the Archbiſhop's Death, publiſhed in his own Name, with this Title,* The Plea of the Univerſity of *Oxford* refuted, *&c. London* 1647. *eight Sheets in* 4*to.* H. W.

In the Particulars of this Charge, 'tis firſt ſaid, That this Book was written *contra Epiſcopos Latiales*. But how cunningly ſoever this was pretended, 'tis more than manifeſt, it was purpoſely written and divulged againſt the Biſhops and Church of *England*. Secondly, That I ſaid that Chriſtian Biſhops were before Chriſtian Kings: So *Burton* and Mrs. *Baſtwick*. And with due Reverence to all Kingly Authority be it ſpoken, who can doubt but that there were many Chriſtian Biſhops, before any King was Chriſtian? Thirdly, Mr. *Burton* ſays, That I applied thoſe Words in the Pſalm, *Whom thou may'ſt make Princes in all Lands*, to the Biſhops. For this, if I did err in it, many of the Fathers of the Church miſled me, who interpret that place ſo: And if I be miſtaken, 'tis no Treaſon. But I ſhall ever follow their Comments before Mr. *Burton*'s. Fourthly, Mrs. *Baſtwick* ſays that I then ſaid, *No Biſhop, and no King*: If I did ſay ſo, I learned it of a wiſe and experienced Author, King *James*, who ſpake it out and plainly in the Conference at *Hampton-Court*. And I hope it cannot be Treaſon in me to repeat it. Fifthly, Mrs. *Baſtwick* complained, That I committed her Huſband cloſe Priſoner. Not I, but the High-Commiſſion; not cloſe Priſoner to his Chamber, but to the Priſon, not to go abroad with his Keeper; which is all the cloſe Impriſonment which I ever knew that Court uſe. Laſtly, The Pinch of this Charge is, That I ſaid *I received my Juriſdiction from God, and from Chriſt*; contrary to an Act of Parliament, which ſays, Biſhops derive their Juriſdiction from the King. This is witneſſed by all three, and that Dr. *Baſtwick* read the Statute. That Statute ſpeaks plainly of Juriſdiction *in Foro contenſioſo*, and Places of Judicature, and no other. And all this forinſecal Juriſdiction, I and all Biſhops in *England* derive from the Crown. But my Order, my Calling, my Juriſdiction *in Foro Conſcientiæ*, that is from God, and from Chriſt, and by Divine and Apoſtolical Right. And of this Juriſdiction it was that I then ſpake (if I named Juriſdiction at all, and not my Calling in general). For I then ſat in the High-Commiſſion, and did exerciſe the former Juriſdiction under the Broad Seal, and could not be ſo ſimple to deny the Power by which I then ſat. Beſide, the Canons of the Church of *England*, to which I have ſubſcribed, are plain for it. Nay further, the Uſe and Exerciſe of my Juriſdiction *in Foro Conſcientiæ*, may not be but by the Leave and Power of the King within his Dominions. And if Biſhops and Preſbyters be all one Order (as theſe Men contend for), then Biſhops muſt be *Jure Divino*, for ſo they maintain that Preſbyters are. 'This part of the Charge Mr. *Browne* preſſed in his Report to the Houſe of Commons; and when I gave this ſame Anſwer, he in his Reply ſaid nothing but the ſame over and over again, ſave that he ſaid, I fled to he knew not what inward Calling and Juriſdiction: which Point, as I expreſſed it, if he underſtood not, he ſhould not have undertaken to judge me.'

Pſal. xlv. 17.

Conf. at Hampton-Court, *p.* 84.

37 H. VIII. c. 17.

Can. 1.

The 16th of *May* I had an Order from the Lords, for free Acceſs of four of my Servants to me.

On *Friday*, *May* 17. I received a Note from the Committee, that they intended to proceed upon part of the ſixth Original Article remaining, and upon the ſeventh; which ſeventh Article follows *in hæc Verba*:

VII. That he hath traitorouſly endeavoured to alter and ſubvert God's true Religion by Law eſtabliſhed in this Realm, and inſtead thereof to ſet up Popiſh Superſtition and Idolatry: and to that end hath declared and maintained in Speeches and printed Books divers Popiſh Doctrines and Opinions, contrary to the Articles of Religion eſtabliſhed. He hath urged and enjoined divers Popiſh and Superſtitious Ceremonies, without any warrant of Law; and hath cruelly perſecuted thoſe who have oppoſed the ſame, by corporal Puniſhment and Impriſonment; and moſt unjuſtly vexed others, who refuſed to conform thereto, by Eccleſiaſtical Cenſures of Excommunication, Suſpenſion, Deprivation, and Degradation, contrary to the Law of this Kingdom.

The Tenth Day of my Hearing.

MONDAY, *May* 20. 1644. This Day Mr. Serjeant *Wild* undertook the Buſineſs againſt me. And at his entrance he made a Speech, being now to charge me with Matter of Religion. In this Speech he ſpake of a Tide, which came not in all at once: And ſo he ſaid it was in the intended Alteration of Religion. Firſt, A Connivance, then a Toleration, then a Subverſion. Nor this, nor that: but a Tide it ſeems he will have of Religion. And I pray God his Truth (the True Proteſtant Religion here eſtabliſhed) ſink not to ſo low an Ebb, that Men may with eaſe wade over to that ſide, which this Gentleman ſeems moſt to hate. He fears both Ceremonies and Doctrine: but in both he fears where no Fear is; which I hope ſhall appear. He was pleaſed to begin with Ceremonies.

I. In this he charged firſt my Chapel at *Lambeth*, and Innovation in Ceremonies there.

1. The firſt Witneſs for this was Dr. *Featly*: he ſays, (1.) There were Alterations ſince my Predeceſſor's time. And I ſay ſo too, or elſe my Chapel muſt lie more undecently than is fit to expreſs. He ſays, I turned the Table North and South. The Injunction ſays it ſhall be ſo. 'And then the Innovation was theirs in going from, not mine in returning to that way of placing it. Here Mr. *Browne*, in his laſt Reply in the Houſe of Commons, ſaid, That I cut the Injunction ſhort, becauſe in the Words immediately following 'tis ordered, That *this Place of ſtanding ſhall be altered, when the Communion is adminiſtred*. But firſt, the Charge againſt me is only about the Place of it: of which that Injunction is ſo careful, that it commands, That *when the Communion is done, it be placed where it ſtood before*. Secondly, it was never charged againſt me, that I did not remove it at the time of Communion, nor doth the Reaſon expreſſed in the Injunction require it; which is, *When the Number of Communicants is great, and that the Miniſter may be the better heard of them*. Neither of which was neceſſary in my Chapel, where my Number was not great, and all might eaſily hear.'

Injunct. of Q. Eliz. fine.

(2.) The ſecond Thing which Dr. *Featly* ſaid, was in downright Terms, That the Chapel lay naſtily, all the Time he ſerved in that Houſe. Was it one of my Faults, too, to cleanſe it?

(3.) Thirdly, He ſays, the Windows were not made up with coloured Glaſs, till my Time. The Truth is, they were all ſhameful to look on, all diverſly patched, like a poor Beggar's Coat. Had they had all white Glaſs, I had not ſtirred them. And for the Crucifix, he confeſſes it was ſtanding in my Predeceſſor's time, tho' a little broken: ſo I did but mend it, I did not ſet it up (as was urged againſt me). 'And it was utterly miſtaken by * Mr. *Browne*, that I did repair the Story of thoſe Windows, by their like in the Maſs-Book. No; but I and my Secretary made out the Story, as well as we could, by the Remains that were unbroken. Nor was any Proof at all offered, that I did it by the Pictures in the Maſs-Book; but only Mr. *Prynn* teſtified, that ſuch Pictures were there; whereas this Argument is of no Conſequence: There are ſuch Pictures in the Miſſal, therefore I repaired my Windows by them. The Windows contain the whole Story from the Creation to the Day of Judgment: three Lights in a Window; the two Side-Lights contain the Types in the Old Teſtament, and the Middle-Light the Antitype and Verity of Chriſt in the New: And I believe the Types are not in the Pictures in the Miſſal. In the mean time, I know no Crime or Superſtition in this Hiſtory. And tho' *Calvin* do not approve Images in Churches, yet he doth approve very well of them which contain a Hiſtory; and ſays plainly, that theſe have their uſe, *in docendo & admonendo*, in teaching and admoniſhing the People: And if they have that uſe, why they may not inſtruct in the Church, as well as out, I know not. Nor do the Homilies in this Particular differ much from *Calvin*.'

* *In his Reply.*

Calv. 1 Inſtit. c. 11. § 12.

Hom. of Idol. par. 2. To. 2. p. 27. fine.

But here the † Statute of *Edw.* VI. was charged againſt me, which requires *the Deſtruction of all Images, as well in Glaſs-Windows, as elſewhere*. 'And this was alſo earneſtly preſſed by Mr. *Browne*, when he repeated the Sum of the Charge againſt me in the Houſe of Commons.' To which I anſwered at both times: Firſt, That the Statute of *Edw.* VI. ſpake of other Images; and that Images in Glaſs-Windows were neither mentioned, nor meant in that Law: the Words of the Statute are, *Any Images of Stone, Timber, Alabaſter or Earth, graven, carved or painted, taken out of any Church*, &c. *ſhall be deſtroyed*, &c. and not reſerved to any ſuperſtitious Uſe. So here's not a Word of Glaſs-windows, nor the Images that are in them. Secondly, that the contemporary Practice (which is one of the beſt Expounders of the Meaning of any Law) did neither deſtroy all coloured Windows, tho' Images were in them, in the Queen's time, nor abſtain from ſetting up of new, both in her and King *James*'s time. And as the Body of this Statute is utterly miſtaken, ſo is the Penalty too; which, for the firſt and ſecond Offence, is but a ſmall Fine, and but Impriſonment at the King's Will for the third. 'A great way ſhort of Puniſhment for Treaſon. And I could not but wonder, that Mr. *Browne* ſhould be ſo earneſt in this Point, conſidering he is of *Lincoln*'s-*Inn*, where Mr. *Prynn*'s Zeal hath not yet beaten down the Images of the Apoſtles in the fair Windows of that Chapel; which Windows alſo were ſet up new, long ſince that Statute of *Edw.* VI. And 'tis well known, that I was once reſolved to have returned this upon Mr. *Browne* in the Houſe of Commons, but changed my Mind, leſt thereby I might have ſet ſome furious Spirit on work to deſtroy thoſe harmleſs goodly Windows, to the juſt Diſlike of that worthy Society.'

† 3 & 4 Ed. VI. c. 10.

But to the Statute Mr. *Browne* added, That the Deſtruction of all Images, as well in Windows as elſewhere, was commanded by the Homilies of the Church of *England*, and thoſe Homilies confirmed in the Articles of Religion and the Articles by Act of Parliament. This was alſo urged before; and my Anſwer was, Firſt, That tho' we ſubſcribed generally to the Doctrine of the Homilies, as good; yet we did not expreſs, or mean thereby to juſtify and maintain every particular Phraſe or Sentence contained in them. And Secondly, That the very Words of the Article to which we ſubſcribe, are, *That the Homilies do contain a godly and a wholſome Doctrine, and neceſſary for thoſe Times*. Godly, and wholeſome for all Times; but neceſſary for thoſe, when People were newly weaned from the Worſhip of Images: afterwards, neither the Danger nor the Scandal alike. 'Mr. *Browne* in his Reply ſaid, That ſince the Doctrine contained in the Homilies was wholſome and good, it muſt needs be neceſſary alſo for all Times. But this worthy Gentleman is herein much miſtaken. Strong Meat, as well ſpiritual as bodily, is good and wholſome; but tho' it be ſo, yet if it had been neceſſary at all Times, and for all Men, the Apoſtle would never have fed the *Corinthians* with Milk, and not with Meat, 1 *Cor.* iii. 1, 2. The Meat always good in itſelf, but not neceſſary for them which were not able to bear it.'

Art. 35.

(4.) The fourth Thing which Dr. *Featly* teſtifies, is, That there were Bowings at the coming into the Chapel, and going up to the Communion-Table. 'This was uſual in Queen *Elizabeth*'s time, and of old, both among *Jews*, as appears in the Story of *Hezekiah*, 2 *Chron.* xxix. 28. and among Chriſtians, as is evident in *Rhenanus*'s Notes upon *Tertullian*.' And one of them, which have written againſt the late Canons, confeſſes it was uſual in the Queen's Time; but then adds, *That that was a Time of Ignorance*. What, a Time of ſuch a Reformation, and yet ſtill a Time of Ignorance! I pray God the oppoſite be not a Time of Profaneneſs, and all is well. 'Mr. *Browne*, in the Sum of his Charge given me in the Houſe of Commons, inſtanced in this alſo. I anſwered as before, with this Addition, *Shall I bow to Men in each Houſe of Parliament, and ſhall I not bow to God in his Houſe, whither I do, or ought to come to worſhip him? Surely I muſt worſhip God, and bow to him, tho' neither Altar nor Communion-Table be in the Church*.'

B. Rhenani Annot. in Tert. de Coron. Mil. *p.* 40.

Bp. Morton de Miſſa, l. 6. *c.* 5.

(5.) For Organs, Candleſticks, a Picture of a Hiſtory at the back of the Altar, and Copes at Communions and Conſecrations; all which Dr. *Featly* named: Firſt, Theſe Things have been in uſe ever ſince the Reformation. And Secondly, Dr. *Featly* himſelf did twice acknowledge that it was in my Chapel, as it was at *Whitehall*; no difference. And it is not to be thought, that Queen *Elizabeth* and King *James* would have endured them all their Time in their own Chapel, had they been Introductions for Popery. And for Copes, they are allowed at Times of Communion by the Canons of the Church. So that theſe, all or any, are very poor Motives from whence to argue an Alteration of Religion.

Can. Eccleſ. Angl. 24.

2. The ſecond Witneſs againſt my Chapel was Sir *Nathaniel Brent*: But he ſays not ſo much as Dr. *Featly*; and in what he doth ſay, he agrees with him, ſaving that he cannot ſay, whether the Picture at the back of the Communion-Table were not there before my time.

3. The third Witneſs for this Charge was one Mr. *Boreman*, who came into my Chapel at Prayers-time, when I had ſome new Plate to conſecrate for uſe of the Communion; and I think it was brought to me for that end by Dr. *Featly*. This Man ſays firſt, He then ſaw me bow, and wear a Cope. That's anſwer'd. Secondly, That he ſaw me conſecrate ſome Plate; that in that Conſecration I uſed ſome part of *Solomon*'s Prayer at the Dedication of the Temple; and that in my Prayer I did deſire God to accept thoſe Veſſels. No Fault in any of the three. For in all Ages of the Church, eſpecially ſince *Conſtantine*'s time, that Religion hath had publick allowance, there have been Conſecrations of ſacred Veſſels, as well as of Churches themſelves. [a] And theſe inanimate Things are holy, in that they are deputed and dedicated to the Service of God. And we are ſaid *to miniſter about holy Things*, 1 Cor. ix. 13. And *the Altar* is ſaid *to ſanctify the Gift*, St. *Matth.* xxiii. 19. which it could not do, if itſelf were not holy. So then, if there be no Dedication of theſe Things to God, no Separation of them from common uſe, there's neither *Thing* nor *Place* holy: And then no Sacrilege; no Difference between Churches and common Houſes, between *Holy Tables* (ſo the Injunction calls them) and ordinary Tables. But I would have no Man deceive himſelf; Sacrilege is a grievous Sin, and was ſeverely puniſhed, even among the Heathen. And St. *Paul*'s Queſtion puts it home, would we conſider of it; *Thou which abhorreſt Idols, committeſt thou Sacrilege?* Rom. ii. 22. Thou which abhorreſt Idols, to the very defacing of Church-windows, doſt thou, thou of all other, commit Sacrilege, which the very Worſhippers of Idols puniſhed? And this being ſo, I hope my uſe of a part of *Solomon*'s Prayer, or the Words of my own Prayer *(That God would be pleaſed to accept them)*, ſhall not be reputed Faults.

[a] Tho. p. 3. q. 63. A. 6. ad Secundum.

Injunct. of Q. Eliz. in fine.

But here ſtepped in Mr. *Prynn*, and ſaid, This was according to the Form *in Miſſali parvo*. But 'tis well known I borrowed nothing thence. All that I uſed was according to the Copy of the late Reverend Biſhop of *Wincheſter*, Biſhop *Andrews*, which I have by me to be ſeen, and which himſelf uſed all his time.

II. Then from my Chapel he went to my Study; and there the ſecond Charge was, 1. That I had a Bible with the five Wounds of Chriſt fair upon the Cover of it. This was curiouſly wrought in Needlework. The Bible was ſo ſent me by a Lady, and ſhe a Proteſtant; I was loth to deface the Work: but the Bible I kept in my Study from any Man's Hand or Eye, that might take offence at it. ' Mr. *Browne* touched upon this, ' and my Anſwer was the ſame, ſaving that I mentioned not the Lady. ' 2. That I had in my Study a Miſſal, and divers other Books belonging to ' the *Roman* Liturgy.' My Lords, 'tis true, I had many; but I had more of the *Greek* Liturgies than the *Roman*: And I had as many of both, as I could get. And I would know, how we ſhall anſwer their Errors, if we may not have their Books? I had Liturgies, all I could get, both antient and modern. I had alſo the *Alcoran* in divers Copies. If this be an Argument, why do they not accuſe me to be a *Turk?* 3. To this Charge was added my private Prayer-book, which Mr. *Prynn* had taken from me in his Search. Where firſt I obſerved, That the Secrets between God and my Soul were brought to be divulged in open Court. ' *Nihil gravius dicam*: But ' ſee whether it can be parallel'd in Heatheniſm.' But what Popery was found in theſe Prayers? Why, Firſt, they ſaid, My Prayers were in Canonical Hours, *Hora ſexta*, & *Hora nona*, &c. I injoined myſelf ſeveral Hours of Prayer; that, I hope, is no Sin: And if ſome of them were Church-Hours, that's no Sin neither: *Seven times a Day will I praiſe thee*, (Pſal. cxix.) was the Prophet *David*'s, long before any Canonical Hours. And among Chriſtians they were in uſe before Popery got any head. God grant this may be my greateſt Sin! Secondly, The Prayer which I made at the Conſecration of the Chapel at *Hammerſmith*. I deſire that might be read, or any other. No Offence found. Thirdly, The Word *Proſtratus* in my private Devotions, before I came to the Euchariſt. If I did ſo to God, what's that to any Man? But I pray, in all this curious Search, (' and Mr. ' *Prynn* here, and all along, ſpared no Pains') why were no Prayers to the B. Virgin and the Saints found, if I were ſo ſwallowed up in Popery?

III. From my Study he went on to my Gallery. The Serjeant would find out Popery ere he had done. Thence I was charged with three Pictures: The firſt of them was a fair Picture of the four Fathers of the Weſtern Church, St. *Ambroſe*, St. *Jerome*, St. *Auguſtine* and St. *Gregory*. It was as lawful to have this Picture as the Picture of any other Men. Yea, but there was a Dove pictured over them, and that ſtood for the Holy Ghoſt. That's more than any Witneſs did or durſt depoſe. The Second was the *Ecce Homo*, as *Pilate* brought Chriſt forth, and ſhewed him to the *Jews*. This Picture is common, and I yet know no hurt of it, ſo it be not worſhipped: and that I deteſt as much as any Man, and have written as much againſt it as any Proteſtant hath: And it was then read in part. And for both theſe Pictures I anſwered out of *Calvin*; That it is lawful to make, and have the Picture of any Things, *quorum ſint capaces Oculi*, which may be ſeen. Now the Dove was viſible and ſeen, St. *John* i. 32, 33. That's for the firſt Picture, And for the ſecond, the *Ecce Homo*, why did *Pilate* ſay *Ecce*, but that the *Jews* might and did ſee him? *John* xix. So both Pictures lawful by the Rule laid down by *Calvin*.

Cont. Fiſher. § 33. *p.* 279.

L. 1. Inſt. c. 11. § 12.

' Mr. *Browne* charged againſt both theſe Pictures very warmly. And ' when I had anſwered as before, in his Reply he fell upon my Anſwer; ' and ſaid it was in the Homilies (but either he quoted not the Place, or ' elſe ſlipped it), That every Picture of Chriſt was a Lye, becauſe whole ' Chriſt cannot be pictured. But by this Argument it is unlawful to picture any Man, for the whole Man cannot be pictured. Who ever drew a ' Picture of the Soul? And yet who ſo ſimple as to ſay the Picture of a ' Man is a Lye? Beſides, the *Ecce Homo* is a Picture of the Humanity of ' Chriſt only, which may as lawfully be drawn as any other Man. And it ' may be I may give farther Anſwer, when I ſee the Place in the Homilies.'

The third Picture found in my Gallery, I marvel why it was produced; for it relates to that of our Saviour, St. *John* x. 1, 2. where he ſays, That the Shepherd enters into the Sheepfold by the Door, but they which climb up to enter another way, are Thieves and Robbers. And in that Picture the Pope and the Friars are climbing up to get in at the Windows: So 'tis as directly againſt Popery as can be. Beſides, it was witneſſed before the Lords by Mr. *Walter Dobſon*, an ancient Servant, both to Archbiſhop *Bancroft* and *Abbot*, That both the *Ecce Homo* and this Picture were in the Gallery when he came firſt to *Lambeth-Houſe*, which was about forty Years ſince: So it was not brought thither by me to countenance *Popery*. * And I hope your Lordſhips do not think me ſuch a Fool; if I had an Intention to alter Religion, I ſhould hang the Profeſſion of it openly in my Gallery, thereby to bring preſent Danger upon myſelf, and deſtroy the Work which, themſelves ſay, I intended cunningly. And if there be any Error in having and keeping ſuch Pictures, yet this is no ſufficient Proof that I had any Intention to alter the Religion eſtabliſhed; which I deſire may be taken notice of once for all.

IV. From my Gallery the Serjeant croſſed the Water to *White-Hall* (and ſure in haſte; for at that time he took no leave of Captain *Gueſt*, or his Wife, before he left *Lambeth*): At the Court he met Sir *Henry Mildmay*. 1. This Knight being produced by him againſt me, ſays, That in my time Bowings were conſtantly uſed in the Chapel there. But, Firſt, Dr. *Featly* told your Lordſhips, there was nothing in my Chapel but as it was in uſe at *White-Hall*. So all the Popery I could bring, was there before. And, Secondly, if bowing to God in his own Houſe be not amiſs, (as how it ſhould I yet know not) then there can be no Fault in the conſtant doing of it: *Quod ſemel feciſſe bonum eſt, non poteſt malum eſſe, ſi frequenter fiat*: So St. *Jerome* teaches. Thirdly, I am very ſorry, that any Reverence to God in his Houſe, and in the time of his Worſhip, ſhould be thought too much. I am ſure the Homilies, ſo often preſſed againſt me, cry out againſt the Neglect of Reverence in the Church. This Paſſage was read; and by this it ſeems, the Devil's Cunning was, ſo ſoon as he ſaw Superſtition thruſt out of this Church, to bring Irreverence and Profaneneſs in. ' Here Mr. *Browne* having preſſed ' this Charge, replies upon me in his laſt, That I would admit no Mean, ' but either there muſt be Superſtition or Profaneneſs; whereas my Words ' can infer no ſuch thing. I ſaid *this was the Devil's Practice*: I would ' have brought in the Mean between them, and preſerved it too, by God's ' Bleſſing, had I been let alone.'

S. Hierom. adverſus Vigilantium.

Tom. 2. Hom. 1. Princip.

2. Sir *Henry* ſays next, That he knew of no Bowings in that Chapel before my time, but by the Right Honourable the Knights of the Garter at their Solemnity. No time elſe? Did he never ſee the King his Maſter offer before my time? Or did he ever ſee him offer, or the Lord Chamberlain attend him there, without Bowing and Kneeling too? And for the Knights of the Garter, if they might do it without Superſtition, I hope I and other Men might do ſo too: Eſpecially ſince they were ordered by *Hen.* V. to do it with great Reverence, *ad modum Sacerdotum*: Which proves the Antiquity of this Ceremony in *England*.

In Regiſtro Windeſorienſi, *p.* 65. *'tis commonly called the Black Book.*

3. He farther ſays, There was a fair Crucifix in a piece of Hangings hung up behind the Altar, which he thinks was not uſed before my time. But that he thinks ſo, is no Proof. 4. He ſays, This fair Piece was hanged up in the *Paſſion Week*, as they call it. As they call it? Which they? Will he ſhut out himſelf from the *Paſſion Week?* All Chriſtians have called it ſo for above a [a] Thouſand Years together; and is that become an Innovation too, as they call it? 5. Fifthly, He ſays, The hanging up of this Piece was a great Scandal to Men but indifferently affected to Religion. Here I humbly crave leave to obſerve ſome few Particulars. Firſt, That here's no Proof ſo much as offer'd, that the Piece was hung up by me, or my Command. Secondly, That this Gentleman came often to me to *Lambeth*, and profeſſed much Love to me; yet was never the Man that told me his Conſcience, or any Man's elſe was troubled at it: which had he done, that ſhould have been a Scandal to no Man. Thirdly, That if this were ſcandalous to any, it muſt be offenſive in regard of the Workmanſhip; or *quatenus tale*, as it was a Crucifix; not in regard of the Works certainly, for that was very exact. And then if it were becauſe it were a Crucifix, why did not the old one offend Sir *Henry*'s Conſcience as much as the new? For the Piece of Hangings, which hung conſtantly all the Year at the back of the Altar, thirty Years together, upon my own Knowledge, and ſomewhat above, long before, (as I offer'd proof by the Veſtry-Men) and ſo all the time of Sir *Henry*'s being in Court, had a Crucifix wrought in it, and yet his Conſcience never troubled at it. Fourthly, That he could not poſſibly think that I intended any Popery in it, conſidering how hateful he knew me to be at *Rome*, beyond any my Predeceſſors ſince the Reformation: For ſo he proteſted at his return from thence to myſelf. And I humbly deſire a *Salvo*, that I may have him called to witneſs it: which was granted.

[a] Et obſervabatur ab omnibus. Videlius *(and he no way ſuperſtitious)* in Ignat. Epiſt. ad Philip. Exercit. 16. *c.* 3.

When they had charged me thus far, there came up a Meſſage from the Houſe of Commons. I was commanded to withdraw: But that Buſineſs requiring more haſte, I was diſmiſſed with a Command to attend again on *Wedneſday, May* 22. But then I was put off again to *Monday, May* 27. And after much preſſing for ſome Maintenance, conſidering how oft I was made attend, and with no ſmall Expence; on *May* 25. I had an Order from the Committee of Sequeſtrations, to have Two hundred Pounds allowed me out of my own now ſequeſter'd Eſtate: It was a Month before I could receive this. And this was all that ever was yet allowed me ſince the Sequeſtration of my Eſtate, being then of above two Years continuance.

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* *All theſe Pictures were placed in the Gallery by Cardinal* Poole, *when he built it, and continue there ſtill, having not been defaced in the time of the* Rebellion, *as were the Windows of the Chapel, and the Chapel itſelf converted into a Dancing-Room; Archbiſhop* Parker'*s Tomb in the middle of it being firſt beat down, and his Bones caſt upon the Dunghill.*

The Eleventh Day of my Hearing.

I. MONDAY, *May* 27. 1644. This Day Mr. Serjeant *Wilde* followed the Charge upon me; and went back again to my Chapel-windows at *Lambeth:* Three Witneſſes againſt them. The firſt was one *Pember* a Glaſier. He ſays, there was in one of the Glaſs-windows on the North-ſide, the Picture of an old Man with a Glory, which he thinks was of God the Father. But his thinking ſo is no Proof; nor doth he expreſs in which of the North-windows he ſaw it. And for the Glory, that is uſual about the Head of every Saint. And Mr. *Browne*, who was the ſecond Witneſs, and was truſted by me for all the Work of the Windows, both at *Lambeth* and *Croydon*, ſays expreſly upon his Oath, that there was no Picture of God the Father in the Windows at *Lambeth*. But he ſays, he found a Picture of God the Father in a Window at *Croydon*, and Archbiſhop *Cranmer*'s Arms under it; and that he pulled it down. So it appears this Picture was there before my time, and continued there in ſo zealous an Archbiſhop's time, as *Cranmer* was well known to be; and it was pulled down in my time. Neither did I know till now, that ever ſuch a Picture was there; and the Witneſs depoſes he never made me acquainted with it. The third Witneſs was Mr. *Prynn*. He ſays, He had taken a Survey of the Windows at *Lambeth*. And I doubt not his Diligence. He repeated the Story in each Window. I have told this before, and ſhall not repeat it. He ſays, the Pictures of theſe Stories are in the Maſs-Book. If it be ſo, yet they were not taken thence by me. Archbiſhop *Morton* did that Work, as appears by his Device in the Windows. He ſays, the Story of the Day of Judgment was in a Window *in atrio*, that muſt not come into the Chapel. Good Lord! whither will Malice carry a Man? The Story oppoſite is of the Creation; and what, muſt not that come into the Chapel neither? The Chapel is divided into an inner and outer Chapel: in this outward the two Windows mentioned are; and the Partition or Skreen of the Chapel, which makes it two, was juſt in the ſame Place where now it ſtands, from the very building of the Chapel, for aught can be proved to the contrary. So neither I, nor any Man elſe, did ſhut out the Day of Judgment. He ſays, I had read the Maſs-book diligently. How elſe ſhould I be able really to confute what is amiſs in it? He ſays, I had alſo a Book of Pictures concerning the Life of Chriſt in my Study. And it was fit for me to have it; for ſome Things are to be ſeen in their Pictures for the People, which the Writings do not, perhaps dare not avow.

II. The ſecond Charge of this Day was about the Adminiſtration of the Sacrament in my Chapel. The Witneſſes two.

The firſt was Dr. *Haywood*, who had been my Chaplain in the Houſe. They had got from others the Ceremonies there uſed, and then brought him upon Oath. He confeſſed he adminiſtred in a Cope; and the Canon warranted it. He confeſſes (as it was urged) that he fetched the Elements from the Credential (a little Side-Table as they called it), and ſet them reverently upon the Communion-Table. Where's the Offence? For firſt, the Communion-Table was little, and there was hardly room for the Elements to ſtand conveniently there, while the Service was in Adminiſtration. And, Secondly, I did not this without Example; for both Biſhop *Andrews*, and ſome other Biſhops, uſed it ſo all their time, and no Exceptions taken. The ſecond Witneſs was *Rob. Cornwall*, one of my menial Servants: A very forward Witneſs he ſhewed himſelf, but ſaid no more than is ſaid and anſwered before; both of them confeſſing that I was ſometimes preſent.

Can. Eccleſ. Angl. 24.

III. The third Charge was about the Ceremonies at the Coronation of his Majeſty. And, firſt, out of my Diary, *Feb.* 2. 1625. 'tis urged, that I carried back the *Regalia*, offered them on the Altar, and then laid them up in their Place of Safety. I bare the Place at the Coronation of the Dean of *Weſtminſter*, and I was to look to all thoſe Things, and their ſafe return into Cuſtody, by the Place I then executed; and the offering them could be no Offence: For the King himſelf offers upon ſolemn Days; and the Right Honourable the Knights of the Garter offer at their Solemnity: And the Offertory is eſtabliſhed by Law in the Common-Prayer Book of this Church: And the Prebendaries aſſured me it was the Cuſtom for the Dean ſo to do. Secondly, They charged a Marginal Note in the Book upon me, that the Unction was *in formâ Crucis*. That Note doth not ſay that it ought ſo to be done; but it only relates the Practice, what was done. And if any Fault were in anointing the King in that Form, it was my Predeceſſor's Fault, not mine; for he ſo anointed him. Thirdly, they ſay, there was a Crucifix among the *Regalia*, and that it ſtood upon the Altar at the Coronation, and that I did not except againſt it. My Predeceſſor executed at that time, and I believed would have excepted againſt the Crucifix, had it ſtood there: But I remember not any there; yet if there were, if my Predeceſſor approved the ſtanding of it, or were content to connive at it, it would have been made but a Scorn, had I quarrell'd it. Fourthly, They ſay, One of the Prayers was taken out of the *Pontifical*. And I ſay, if it were, it was not taken thence by me: And the Prayers are the ſame that were uſed at King *James*'s Coronation: And ſo the Prayer be good (and here's no Word in it that is excepted againſt), 'tis no matter whence 'tis taken.

Heylin *affirmeth, that the old* Crucifix *being found among the* Regalia, *was then placed upon the Altar.* Life of *Laud*, *p.* 144.

Then leaving the Ceremonies, he charged me with two Alterations in the Body of the King's Oath. One added, namely theſe Words *(agreeable to the King's Prerogative)*; the other omitted, namely theſe Words *(quæ Populus elegerit*, which the People have choſen, or ſhall chuſe). For this latter, the Clauſe omitted, that ſuddenly vaniſhed; for it was omitted in the Oath of King *James*, as is confeſſed by themſelves in the [a] printed Votes of this preſent Parliament. But the other highly inſiſted on, as taking off the total Aſſurance which the Subjects have by the Oath of their Prince for the Performance of his Laws. Firſt, I humbly conceive this Clauſe takes off none of the Peoples Aſſurance; none at all. For the King's juſt and legal Prerogative, and the Subjects Aſſurance for Liberty and Property, may ſtand well together, and have ſo ſtood for Hundreds of Years. Secondly, That Alteration, whatever it be, was not made by me; nor is there any Interlining or Alteration ſo much as of a Letter found in that Book. Thirdly, If any thing be amiſs therein, my Predeceſſor gave that Oath to the King, and not I. I was merely miniſterial both in the Preparation, and at the Coronation itſelf, ſupplying the place of the Dean of *Weſtminſter*.

[a] *P.* 706.

After this Day's Work was ended, it inſtantly ſpread all over the City, that I had altered the King's Oath at his Coronation, and from thence into all parts of the Kingdom; as if all muſt be true which was ſaid at the Bar againſt me, what Anſwer ſo ever I made: The People, and ſome of the Synod, now crying out, That this one thing was enough to take away my Life. And tho' this was all that was charged this Day concerning this Oath; yet ſeeeing how this Fire took, I thought fit, the next Day that I came to the Bar, to deſire that the Books of the Coronation of former Kings, eſpecially thoſe of Queen *Elizabeth* and King *James*, might be ſeen and compared, and the Copies brought into the Court, both from the *Exchequer*, and ſuch as were in my Study at *Lambeth*, and a fuller Inquiſition made into the Buſineſs; in regard I was as innocent from this Crime, as when my Mother bare me into the World. A *Salvo* was enter'd for me upon this. And every Day that I after came to the Bar, I called upon this Buſineſs: But ſomewhat or other was ſtill pretended by them which managed the Evidence, that I could not get the Books to be brought forth, nor any thing to be done, till almoſt the laſt Day of my Hearing. Then no Books could be found in the *Exchequer*, nor in my Study, but only that of King *James*; whereas, when the Keys were taken from me, there were divers Books there, as is confeſſed in the [b] printed Votes of this Parliament, and one of them with a Watchet-Sattin cover, now miſſing: And whether this of King *James* (had not my Secretary, who knew the Book, ſeen it drop out of Mr. *Prynn*'s Bag) would not have been concealed too, I cannot tell. At laſt, the Book of King *James*'s Coronation, and the other urged againſt me concerning King *Charles*, were ſeen and compared openly in the Lords Houſe, and found to be the ſame Oath in both, and no Interlining or Alteration in the Book charged againſt me.

[b] *Pag.* 706.

‘ This Buſineſs was left by the Serjeant to Mr. *Maynard*, who made the moſt that could be out of my Diary againſt me: And ſo did Mr. *Browne*, when he came to give the Sum of the Charge againſt me, both before the Lords, and after in the Houſe of Commons. And therefore for the avoiding of all tedious Repetition, and for that the Arguments which both uſed are the ſame, and becauſe I hold it not fit to break a Charge of this moment into divers Pieces, or put them in different Places, I will here ſet down the whole Buſineſs together, and the Anſwer which I then gave.

‘ Mr. *Browne*, in the Sum of the Charge againſt me in the Commons Houſe, when he came to this Article, ſaid, He was now come to the Buſineſs ſo much expected. And I humbly beſought that Honourable Houſe, if it were a Matter of ſo great Expectation, it might be of as great Attention too, while I ſhould follow that worthy Gentleman ſtep after ſtep, and anſwer as I went.

‘ 1. And, Firſt, he went about to prove out of my Diary, that this Addition *(of the King's Prerogative)* to the Oath, was made by me. Thus he ſays, That *December* 31. 1625. I went to *Hampton-Court*. That's true. He ſays, That there, *Jan.* 1. I underſtood I was named with other Biſhops to meet and conſider of the Ceremonies about the Coronation; and that, *Jan.* 4. we did meet at *White-Hall* accordingly; and that, *Jan.* 6. we gave his Majeſty an Anſwer. Not *I*, (as 'twas charged) but *We* gave his Majeſty anſwer. So if the Oath had been changed by me, it muſt have been known to the Committee, and broken forth to my Ruin long ſince. Then he ſays, That *Jan.* 16. I was appointed to ſerve at the Coronation, in the room of the Dean of *Weſtminſter*. That's no Crime: And 'tis added in the Diary, that this Charge was deliver'd unto me by my Predeceſſor. So he knew that this Service to attend at the Coronation was impoſed upon me. He ſays next, That *Jan.* 18. the Duke of *Buckingham* had me to the King, to ſhew his Majeſty the Notes we had agreed on, if nothing offended him. Theſe were only Notes of the Ceremonies. And the other Biſhops ſent me, being puny, to give the Account. Then he ſays, *Jan.* 23. It is in my Diary, *Librum habui paratum*, I had a Book ready. And it was time, after ſuch Meetings, and the Coronation being to follow *Feb.* 2. and I deſigned to aſſiſt and attend that Service, that I ſhould have a Book ready: The Ceremonies were too long and various to carry them in Memory. And whereas 'tis urged, That I prepared and altered this Book, the Words in my Diary are *paratum habui*, I had the Book ready for my own uſe in that Service. Nor can *paratum habui* ſignify preparing or altering the Book. And, Thirdly, 'tis added there, That the Book which I had ready in my hands, did agree *per omnia cum Libro Regali*. And if it did agree in all Things with the King's recorded Book then brought out of the *Exchequer*, where then is the Alteration ſo laborioully ſought to be faſten'd on me? I humbly beſeech you to mark this.

‘ Yet out of theſe Premiſes put together, Mr. *Browne*'s Inference was, That I made this Alteration of the Oath. But ſurely theſe Premiſes, neither ſingle nor together, can produce any ſuch Concluſion; but rather the contrary. Beſide, Inference upon Evidence is not Evidence, unleſs it be abſolutely neceſſary; which all Men ſee that here it is not. But I pray obſerve: Why was ſuch a ſudden ſtay made at *Jan.* 23. whereas it appears in my Diary at *Jan.* 31. that the Biſhops were not alone truſted with this Coronation-Buſineſs, *ſed alii Proceres*, but other Great and Noble Men alſo? And they did meet that *Jan.* 31. and ſat in Council about it. So the Biſhops Meetings were but preparatory to eaſe the Lords, moſt of the Ceremonies being in the Church-way. And then can any Man think that theſe great Lords, when they came to review all that was done, would let the Oath be altered by me, or any other, ſo materially, and not check at it? 'Tis impoſſible.

‘ 2.

‘ 2. Secondly, This Gentleman went on to charge this Addition upon me thus: There were found in my Study at *Lambeth* two Books of King *James*’s Coronation; one of them had this Clauſe or Addition in it, and the other had it not; and we cannot tell by which he was crowned. Therefore it muſt needs be ſome wilful Error in me, to make choice of that Book which had this Addition in it, or ſome great Miſtake. Firſt, If it were a Miſtake only, then it is no Crime: And wilful Error it could not be; for being named one of them that were to conſider of the Ceremonies, I went to my Predeceſſor, and deſired a Book, to ſee by it what was formerly done. He delivered me this now in queſtion: I knew not whether he had more, or no; nor did I know that any one of them differed from other. Therefore no wilful Error. For I had no Choice to make of this Book which had the Addition, before that which had it not, but thankfully took that which he gave me. But, Secondly, if one Book of King *James*’s Coronation, in which I could have no hand, had this Addition in it, (as is confeſſed) then was not this a new Addition of my making. And, Thirdly, it may eaſily be ſeen that King *James* was crowned by the Book which had this Addition in it; this being in a fair Carnation-Sattin Cover, the other in Paper, without a Cover, and unfit for a King’s Hand, eſpecially in ſuch a great and publick Solemnity.

‘ 3. In the third Place, he ſaid, There were in this Book twenty Alterations more, and all, or moſt in my Hand. Be it ſo; (for I was never ſuffered to have the Book to conſider of) they are confeſſed not to be material. The Truth is, when we met in the Committee, we were fain to mend many Slips of the Pen, to make Senſe in ſome Places, and good *Engliſh* in other. And the Book being truſted with me, I had Reaſon to do it with my own Hand, but openly at the Committee all. Yet two Things, as Matters of ſome Moment, Mr. *Browne* checked at.’

(1.) The one was, That *Confirm* is changed into *Perform*. ‘ If it be ſo, *Perform* is the greater and more advantageous to the Subjects, becauſe it includes *Execution*, which the other Word doth not. Nor doth this Word hinder, but that the Laws and Liberties are the People’s already: For tho’ they be their own, yet the King, by his Place, may and ought to perform the keeping and maintaining of them. I ſay, (if it be ſo) for I was never ſuffered to have this Book in my Hands, thoroughly to peruſe: Nor, under favour, do I believe this Alteration is ſo made, as ’tis urged. [In the Book which I have by me, and was tranſcribed from the other, it is *Confirm*.]

‘ (2.) The other is, That the King is ſaid to anſwer *I will*, for *I do*. But when will he? Why, all the Days of his Life; which is much more than *I do*, for the preſent. So if this Change be made, ’tis ſtill for the People’s Advantage. [And there alſo ’tis *I do grant*.] And again, I ſay, *(if)* for the Reaſon before given. Beſides, in all the *Latin* Copies there is a *Latitude* left for them that are truſted, to add to thoſe Interrogatories which are then put to the King any other that is juſt, in theſe Words, *Adjiciantur prædictis Interrogationibus quæ juſta fuerint*. And ſuch are theſe two mentioned, if they were made.

‘ 4. Mr. *Browne*’s fourth and laſt Objection was, That I made this Alteration of the Oath, becauſe it agrees (as he ſaid) with my Judgment: For that in a Paper of Biſhop *Harſnett*’s there is a Marginal Note in my Hand, that *Salvo Jure Coronæ* is underſtood in the Oaths of a King. But, firſt, there’s a great deal of Difference between *Jus Regis & Prærogativa*, between the Right and Inheritance of the King and his Prerogative, tho’ never ſo legal. And with Submiſſion, and until I ſhall be convinced herein, I muſt believe that no King can ſwear himſelf out of his native Right. Secondly, If this were, and ſtill be an Error in my Judgment, that’s no Argument at all to prove Malice in my Will: That becauſe that is my Judgment for *Jus Regis*, therefore I muſt thruſt *Prærogativam Regis*, which is not my Judgment, into a publick Oath which I had no power to alter. Theſe were all the Proofs which Mr. *Maynard* at firſt, and Mr. *Browne* at laſt, brought againſt me in this Particular. And they are all but conjectural, and the Conjectures weak. But that I did not alter this Oath by adding the *Prerogative*, the Proofs I ſhall bring are pregnant, and ſome of them neceſſary. They are theſe:

‘ 1. My Predeceſſor was one of the Grand Committee for theſe Ceremonies. That was proved by his Servants to the Lords. Now his known Love to the Publick was ſuch, as that he would never have ſuffered me, or any other, to make ſuch an Alteration. Nor would he have concealed ſuch a Crime in me, loving me ſo well as he did.

‘ 2. ’Tis notoriouſly known that he crowned the King, and adminiſter’d the Oath (which was avowed alſo before the Lords by his antient Servants): And it cannot be rationally conceived he would ever have adminiſter’d ſuch an alter’d Oath to his Majeſty.

‘ 3. ’Tis expreſſed in my Diary, at *Jan.* 31, 1625. (and that muſt be good Evidence for me, having been ſo often produced againſt me) that divers great Lords were in this Committee for the Ceremonies, and did that Day ſit in Council upon them. And can it be thought they would not ſo much as compare the Books? Or that comparing of them, they would endure an Oath with ſuch an Alteration to be tender’d to the King? Eſpecially ſince ’tis before confeſſed, that one Copy of King *James*’s Coronation had this Alteration in it, and the other had it not.

‘ 4. ’Tis expreſſed in my Diary, and made uſe of againſt me, at *Jan.* 23, 1625. that this Book urged againſt me did agree *per omnia cum Libro Regali*, in all things with the King’s Book, brought out of the *Exchequer*. And if the Book that I then had, and is now inſiſted upon, did agree with that Book which came out of the *Exchequer*, and that in all things, how is it poſſible I ſhould make this Alteration?

‘ 5. With much Labour I got the Books to be compared in the Lords Houſe; that of King *James*’s Coronation, and this of King *Charles*; and they were found to agree in all things to a Syllable. Therefore ’tis impoſſible this ſhould be added by me. And this, I conceive, cuts off all conjectural Proofs to the contrary.

‘ Laſtly, In the printed * Book of the Votes of this preſent Parliament, it is acknowledged, that the Oath given to King *James* and King *Charles* was the ſame. The ſame: therefore unaltered. And this Paſſage of that Book I then ſhewed the Lords in my Defence. To this Mr. *Maynard* then replied, That the Votes there mentioned were upon the Word *elegerit*, and the Doubt whether it ſhould be *hath choſen*, or *ſhall chooſe*. I might not then anſwer to the Reply, but the Anſwer is plain. For, be the Occaſion which led on the Votes what it will, as long as the Oath is acknowledged the ſame, ’tis manifeſt it could not be alter’d by me. And I doubt not, but theſe Reaſons will give this Honourable Houſe Satisfaction, that I added not this Particular of the Prerogative to the Oath.

* *P.* 706.

‘ Mr. *Browne*, in his laſt Reply, paſſed over the other Arguments I know not how. But againſt this he took Exception. He brought the Book with him, and read the Paſſage; and ſaid, (as far as I remember) That the Votes had relation to the Word *chuſe*, and not to this Alteration. Which is in effect the ſame which Mr. *Maynard* urged before. I might not reply by the Courſe of the Court, but I have again conſidered of that Paſſage, *p.* 706. and find it plain. Thus, firſt they ſay, They have conſider’d of all the Alterations in the Form of this Oath, which they can find: therefore of this Alteration alſo, if any ſuch were. Then they ſay, *Excepting that Oath which was taken by his Majeſty and his Father King* James. There it is confeſſed, that the Oath taken by them was one and the ſame, called there *that Oath* which was taken by both. Where falls the Exception then? For ’tis ſaid, *Excepting that Oath*, &c. Why it follows, *excepting that the Word* chuſe *is wholly left out*, *as well* hath choſen *as* will chuſe. Which is a moſt manifeſt and evident Confeſſion, that the Oath of King *James* and King *Charles* was the ſame in all things, to the very leaving out of the Word *chuſe*. Therefore it was the ſame Oath all along: no difference at all. For *Exceptio firmat Regulam in non Exceptis*; and here’s no Exception at all of this Clauſe of the Prerogative. Therefore the Oath of both the Kings was the ſame in that, or elſe the Votes would have been ſure to mention it. Where it may be obſerved too, that Serjeant *Wilde*, though he knew theſe Votes, and was preſent both at the Debate and the Voting, and ſo muſt know that the Word *chuſe* was omitted in both the Oaths; yet at the firſt he charged it eagerly upon me, that I had left this Clauſe of *chuſing* out of King *Charles*’s Oath, and added the other. God forgive him! But the World may ſee by this, and ſome other Paſſages, with what Art my Life was ſought for.

‘ And yet before I quite leave this Oath, I may ſay, ’tis not altogether improbable, that this Clauſe, *And agreeing to the Prerogative of the Kings thereof*, was added to the Oath in *Edward* VI’s or Queen *Elizabeth*’s time; and hath no relation at all to *the Laws of this Kingdom*, abſolutely mentioned before in the beginning of this Oath; but only to the Words, *The Profeſſion of the Goſpel eſtabliſhed in this Kingdom*: And then immediately follows, *And agreeing to the Prerogative of the Kings thereof*. By which the King ſwears to maintain his Prerogative, according to God’s Law, and the Goſpel eſtabliſhed, againſt all foreign Claims and Juriſdictions whatſoever. And if this be the meaning, he that made the Alteration, whoever it were (for I did it not), deſerves Thanks for it, and not the Reward of a Traitor.’

IV. Now to return to the Day. The fourth Charge went on with Ceremonies ſtill. But Mr. Serjeant was very nimble; for he leaped from the Coronation at *Weſtminſter*, to ſee what I did at *Oxford*.

1. There the firſt Witneſs is Sir *Nathaniel Brent*. And he ſays, The ſtanding of the Communion-Table at *St. Mary*’s was alter’d. I have anſwered to this Situation of the Communion-Table already. And if it be lawful in one place, ’tis in another. For the Chapel of *Magdalen-College*, and *Chriſt-Church* Quire, he confeſſes he knows of no Direction given by me to either: nor doth he know whether I approved the things there done or no. So all this is no Evidence. For the Picture of the Bleſſed Virgin at *St. Mary*’s Door, as I knew nothing of it till it was done, ſo never did I hear any Abuſe or Diſlike of it after it was done. And here Sir *Nathaniel* confeſſes too, that he knows not of any Adoration of it, as Men paſſed the Streets or otherwiſe. When this Witneſs came not home, they urged the Statute of *Merton-College*, or the Univerſity, (§. 11.) where (if I took my Notes right) they ſay, I enjoined *debitam Reverentiam*. And as I know no fault in that Injunction or Statute, ſo neither do I know what due bodily Reverence can be given to God in his Church, without ſome Bowing or Genuflection.

2. The ſecond Witneſs was Mr. *Corbett*. He ſays, that when decent Reverence was required by my Viſitors in one of my Articles, he gave Reaſons againſt it, but Sir *John Lambe* urged it ſtill. Firſt, My Lords, if Mr. *Corbett*’s Reaſons were ſufficient, Sir *John Lambe* was to blame in that; but Sir *John Lambe* muſt anſwer it, and not I. Secondly, It may be obſerved, that this Man, by his own Confeſſion, gave Reaſons (ſuch as they were) againſt due Reverence to God in his own Houſe. He ſays, That Dr. *Frewen* told him from me, *That I wiſhed he ſhould do as others did at* St. Mary’*s*, *or let another execute his Place as Proctor*. This is but a Hearſay from Dr. *Frewen*, who being at *Oxford*, I cannot produce him. And if I had ſent ſuch a Meſſage, I know no Crime in it. He ſays, that after this he deſired he might enjoy in this Particular the Liberty which the King and the Church of *England* gave him. He did ſo; and from that Day he heard no more of it, but enjoyed the Liberty which he aſked. He ſays, Mr. * *Channel* deſired the ſame Liberty as well as he. And Mr. *Channel* had it granted as well as he. He confeſſes ingenuouſly, that the Bowing required, was only *toward*, not *to* the Altar. And † to the Picture at *St. Mary*’s Door, he ſays he never heard of any Reverence done to it; and doth believe, that all that was done at *Chriſt-Church* was ſince my time. But it muſt be his Knowledge, not his Belief, that muſt make an Evidence.

* I. *Cheynel*.

† *And the third Witneſs agrees in this.*

3. The third Witneſs was one Mr. *Bendye*. He ſays, There was a Crucifix in *Lincoln-College* Chapel ſince my time. If there be, ’tis more than I know. My Lord of *York* that now is, when he was Biſhop of *Lincoln*, worthily beſtowed much Coſt upon that Chapel; and if he did ſet up a Crucifix, I think it was before I had aught to do there. He ſays there was Bowing at the Name of Jeſus. And God forbid but there ſhould; and the Canon of the Church requires it. He ſays, There were *Latin* Prayers in *Lent*, but he knows not who injoined it. And then he might have held his peace. But there were *Latin* Sermons and Prayers on *Aſh-Wedneſdays*, when few came to Church, but the *Lent* Proceeders who underſtood them. And in divers Colleges they have their Morning-Prayers in

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Latin, and had ſo, long before I knew the Univerſity. The laſt thing he ſaid was, That there were Copes uſed in ſome Colleges, and that a Traveller ſhould ſay upon the ſight of them, *That he ſaw juſt ſuch a thing upon the Pope's back.* This wiſe Man might have ſaid as much of a Gown: He ſaw a Gown on the Pope's back, therefore a Proteſtant may not wear one. Or entring into *St. Paul*'s he may cry, *Down with it! for I ſaw the Pope in juſt ſuch another Church in* Rome.

4. Then was urged the Concluſion of a Letter of mine ſent to that Univerſity; the Words were to this effect: *I deſire you to remember me a Sinner, quoties coram Altare Dei procidatis.* The Charge lay upon the Word *procidatis*; which is no more, than that when they there fall on their knees, or proſtrate to Prayer, they would remember me. In which Deſire of mine, or Expreſſion of it, I can yet ſee no Offence. No, nor in *coram Altare*, their ſolemneſt time of Prayer being at the Communion. Here 'Mr. *Browne* aggravated the things done in that Univerſity; and 'fell upon the Titles given me in ſome Letters from thence: but becauſe 'I have anſwered thoſe Titles already, I refer the Reader thither, and 'ſhall not make here any tedious Repetition. Only this I ſhall add, 'That in the Civil Law 'tis frequent to be ſeen, that not Biſhops only 'one to another, but the great Emperors of the World have commonly 'given that Title of *Sanctitas veſtra*, to Biſhops of meaner place than 'myſelf; to ſay no more. But here Mr. *Browne*, in his laſt Reply, was 'pleaſed to ſay, This Title was not given to any Biſhop of *England*. 'Firſt, If I had my Books about me, perhaps this might be refuted. 'Secondly, Why ſhould ſo grave a Man as he ſo much diſparage his own 'Nation? Is it impoſſible (be my Unworthineſs what it will) for an '*Engliſh* Biſhop to deſerve as good a Title as another? Thirdly, Be that 'as it may, if it were (as certainly it was) lawfully given to other Biſhops, 'though they not *Engliſh*, then it is neither Blaſphemy, nor Aſſumption 'of Papal Power, as was charged upon it.'

V. From *Oxford* Mr. Serjeant went to *Cambridge*. And I muſt be guilty, if aught were amiſs there too. For this fifth Charge were produced three Witneſſes, Mr. *Wallis*, Mr. *Greece*, and Mr. *Seaman*. Their Teſtimonies agreed very near: ſo I will anſwer them together. Firſt, they ſay, That at *Peter-Houſe* there were Copes and Candleſticks, and Pictures in the Glaſs-Windows; and the like. But theſe things I have often anſwered already, and ſhall not repeat. They ſay, The chief Authors of theſe things were Dr. *Wren* and Dr. *Coſens*. They are both living, why are they not called to anſwer their own Acts? For here's yet no ſhew of Proof to bring any thing home to me. For no one of them ſays, that I gave direction for any of theſe. No, (ſays Mr. Serjeant) but why did I tolerate them? Firſt, No Man complained to me. Secondly, I was not Chancellor, and endured no ſmall Envy for any little thing that I had occaſion to look upon in that place. And Thirdly, This was not the leaſt Cauſe, why I followed my Right for Power to viſit there. And though that Power was confirmed to me, yet the Times have been ſuch, as that I did not then think fit to uſe it. It would have but heaped more Envy on me, who bare too much already. 'As for Mr. *Greece*, who hath laboured 'much againſt me in all this Buſineſs, God forgive him; and while he 'inherits his Father's ill Affections to me, God preſerve him from his 'Father's End!'

VI. From *Cambridge* he went to the Cathedrals, and firſt to *Canterbury*. Here the Charge is bowing *verſus Altare*; the two Witneſſes, two Prebendaries of that Church, Dr. *Jackſon* and Dr. *Blechenden*. And firſt, Dr. *Jackſon* ſays, the bowing was *verſus Altare*; ſo not *to*, but *toward* the Altar: and Dr. *Blechenden* ſays, it was the Adoration of the high Majeſty of God, to whom, if no Altar were there, I ſhould bow. Dr. *Jackſon* ſays, This Bowing was to his grief. Strange! I avow to your Lordſhips and the World, no Man did ſo much approve all my Proceedings in that Church, as he; and for this Particular, he never found the leaſt fault with it to me: and if he conceal his Grief, I cannot eaſe it. He ſays, This Bowing was not in uſe till within this ſix or ſeven Years. Sure the old Man's Memory fails him. For Dr. *Blechenden* ſays, The Communion-Table was railed about, and Bowings before it, when he came firſt to be a Member of that Church; and ſaith upon his Oath, that's above ten Years ago; and that it was practiſed before their new Statutes were made; and that in thoſe Statutes no Puniſhment inflicted for the Breach or not Performance of this Reverence. I could tell your Lordſhips how often Dr. *Jackſon* hath ſhifted his Opinions in Religion, but that they tell me their Witneſſes muſt not be ſcandalized. As for the Statutes, my Secretary Mr. *Dell*, who copied them out, teſtified here to the Lords, that I left out divers Superſtitions which were in the old Book, and ordained many Sermons in their Rooms.

The next Cathedral he inſtanced in, was *Wincheſter*. But there's nothing but the old Objections, Copes. And the wearing of them is warranted by the Canon; and Reverence at coming in and going out of the Church. And That great Kings have not (in better Ages) thought much to do. And they did well to inſtance in the College of *Wincheſter*, as well as the Church; for 'tis confeſſed, the Injunction ſent thither requires, that the Reverence uſed be ſuch as is not diſſonant from the Church of *England*. So this may be a Comment to the other Injunctions. 'But for the Copes in Cathedrals, Mr. *Browne* in his 'laſt Reply was not ſatisfied. For he ſaid, the Canon mentioned but the 'wearing of one Cope. Be it ſo: but they muſt have that before they 'can wear it. And if the Canon enjoin the wearing of one, my Injunc-'tion might require the providing and uſing of one. Beſides, if there be 'no Popery, no Introduction to Superſtition in the having or uſing of 'one; then certainly there can be none in the having of more for the ſame 'uſe: the Superſtition being lodged in the Miſuſe, not in the Number.'

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VII. From the Cathedrals Mr. Serjeant went to view ſome Pariſh-Churches. And firſt 'tis charged, That in a Pariſh-Church at *Wincheſter* two Seats were removed, to make way for railing in of the Communion-Table. But for aught I know, this might have been concealed. For it was liked ſo well, that they to whom the Seats belonged, removed them at their own Charges, that the other might be done.

The next Inſtance was in *St. Gregory*'s Church, by *St. Paul*'s. The Charge was, the placing of the Communion-Table Altar-wiſe. To the Charge itſelf Anſwer is given before. The Particulars which are new, are theſe: the Witneſs Mr. *Wyan*. He ſays, the Order for ſuch placing of the Table was from the Dean and Chapter of *St. Paul*'s. And *St. Gregory*'s is in their peculiar Juriſdiction. So the Holy Table was there placed by the Ordinary, not by me. He ſays next, That the Pariſhioners appealed to the Arches, but received an Order to command them and the Cauſe to the Council-Board: That it was a full Board when the Cauſe was heard, and his Majeſty preſent; and that there I maintained the Queen's Injunction about placing the Communion-Table. In all this, here's nothing charged upon me, but Maintenance of the Injunction: and I had been much to blame, if I ſhould not have maintained it. He ſays, Sir *Henry Martin* came and ſaw it, and ſaid it would make a good Court-Cupboard. If Sir *Henry* did ſay ſo, the Scorn ill became either his Age or Profeſſion, tho' a Court-Cupboard be ſomewhat a better Phraſe than a Dreſſer. God forgive them who have in Print called it ſo! He ſays, That hereupon I did ſay, *That he which ſpake that, had a Stigmatical Puritan in his Boſom.* This Man's Memory ſerves him long for Words: this is many Years ſince; and if I did ſpeak any thing ſounding this way, 'tis more like I ſhould ſay *Schiſmatical*, than *Stigmatical Puritan*. But let him look to his Oath; and which Word ſoever I uſed, if Sir *Henry* uſed the one, he might well hear the other. For a prophane Speech it was, and little becoming a Dean of the Arches. He ſays, That ſoon after this Sir *Henry* was put out of his Place. Not very ſoon after this; for I was at the time of this Buſineſs (as far as I remember) Biſhop of *London*, and had nothing to do with the diſpoſing of his Place. After, when I came to be Archbiſhop, I found his Patent was void, neither could Sir *Henry* himſelf deny it. And being void, and in my Gift, I gave it to another.

Q. Eliz. *Injunct.* fine.

He ſays farther, That it was urged that this way of placing the Communion-Table was againſt the Word of God, in Biſhop *Jewel*'s and Mr. *Fox*'s Judgment; and that I replied, *It were better they ſhould not have theſe Books in Churches, than ſo to abuſe them.* Firſt, For aught I yet know (and in theſe Straits of Time the Books I cannot come at), their Judgment, rightly underſtood, is not ſo. Secondly, Though theſe two were very worthy Men in their time, yet every thing which they ſay is not by and by the Doctrine of the Church of *England*. And I may upon good Reaſon depart from their Judgment in ſome Particulars, and yet not differ from the Church of *England*. As in this very Particular, the Injunction for placing the Table ſo, is the Act of the Queen and the Church of *England*. And I conceive the Queen, then upon the Act of Reformation, would not have enjoined it, nor the Church obeyed it, had it been againſt the Word of God. Thirdly, If I did ſay, *That if they could make no better uſe of* Jewel *and the* Book of Martyrs, *it were better they had them not in the Churches*; they gave too great occaſion for the Speech: For they had pick'd divers Things out of thoſe Books which they could not maſter, and with them diſtemper'd both themſelves and their Neighbours. And yet, in hope other more modeſt Men might make better uſe of them, I never gave Counſel to have thoſe Books removed (nor is that ſo much as charged) but ſaid only thus, That if no better uſe would be made of them, then that laſt Remedy; but never till then. 'This laſt Paſſage Mr. '*Browne* inſiſted upon: The taking of good Books from the People. But 'as I have anſwer'd, there was no ſuch Thing done, or intended; only 'a Word ſpoken to make buſy Men ſee how they abuſed themſelves and 'the Church, by miſunderſtanding and miſapplying that which was writ-'ten for the good of both.' Laſtly, It was urged, he ſaid, that the Communion-Table muſt ſtand Altar-wiſe, that Strangers which come and look into theſe Churches, might not ſee ſuch a Diſproportion; the holy Table ſtanding one way in the Mother-Church, and quite otherwiſe in the Parochial annexed. And truly, to ſee this, could be no Commendation of the Diſcipline of the Church of *England*. But howſoever, Mr. *Clarke* (the other Witneſs with *Wyan*, and agreeing with him in the moſt) ſays plainly, that it was the Lord of *Arundel* that ſpake this, not I; and that he was ſeconded in it by the Lord *Weſton*, then Lord Treaſurer, not by me.

VIII. The laſt Charge of this Day was a Paſſage out of one Mr. *Shelford*'s Book, *p.* 20, 21. *That they muſt take the Reverend Prelates for their Examples*, &c. And Mr. *Prynn* witneſſed the like was in the Miſſal, *p.* 256. Mr. *Shelford* is a mere Stranger to me, his Book I never read; if he have ſaid any thing unjuſt or untrue, let him anſwer for himſelf. As for the like to that, which he ſays, being in the Miſſal, tho' that be but a weak Argument, yet let him ſalve it.

Here this Day ending, I was put off to *Saturday*, *June* 1. And then again put off to *Thurſday*, *June* 6. which held.

My Twelfth Day of Hearing.

Thurſday June 6. 1644. This Day Serjeant *Wilde*, inſtead of beginning with a new Charge, made another long Reply to my Anſwers of the former Day. Whether he found that his former Reply, made at the time, was weak, and ſo reputed, I cannot tell. 'But another he 'made, as full of premeditated Weakneſs, as the former was of ſudden. 'Mr. *Prynn*, I think, perceived it, and was often at his Ear; but Mr. 'Serjeant was little leſs than angry, and would on.' I knew I was to make no anſwer to any Reply, and ſo took no Notes; indeed holding it all as it was, that is, either nothing, or nothing to the purpoſe. This tedious Reply ended;

I. Then came on the Firſt Charge about the Window of coloured Glaſs ſet up in the new Chapel at *Weſtminſter*: It was the Hiſtory of the coming down of the Holy Ghoſt upon the Apoſtles. This was charged to be done by me, and at my Coſt: the Witneſſes, Mr. *Browne*, employ'd in ſetting up the Window, and Mr. *Sutton* the Glaſier.

Theſe Men ſay, that Dr. *Newell*, Sub-Dean of *Weſtminſter*, gave order for the Window, and the ſetting of it up; but they know not at whoſe Coſt, nor was any Order given from me. So here's nothing charged upon me. And if it were, I know nothing amiſs in the Window. As for the King's Arms being taken down (as they ſay), let them anſwer that did it. Tho', I believe, that the King's Arms ſtanding alone in a white Window, was not taken down out of any ill Meaning, but only out of Neceſſity to make way for the Hiſtory.

II. The Second Charge was the Picture of the Bleſſed Virgin ſet upon a new-built Door at *St. Mary*'s in *Oxford*. Here Alderman *Nixon* ſays, That ſome Paſſengers put off their Hats, and, as he ſuppoſes, to that Picture. But, my Lords, his Suppoſal is no Proof. He ſays, that the next Day he ſaw it. But what did he ſee? Nothing, but the putting off the Hat; for he could not ſee why, or to what, unleſs they which put off, told it. They might put off to ſome Acquaintance that paſſed by. He farther ſays, he ſaw a Man in that Porch upon his Knees, and, he thinks, praying; but he cannot ſay to that. ‘ But then (if the Malice he hath long borne me would have ſuffer'd him) he might have ſtaid till he knew to whom he was praying, for till then 'tis no Evidence.’ He ſays, he thinks that I countenanced the ſetting of it up, becauſe it was done by Biſhop *Owen*. But Mr. *Bromfeeld*, who did that Work, gave Teſtimony to the Lords, that I had nothing to do in it. He ſays, there was an Image ſet up at *Carfax* Church, but pulled down again by Mr. *Widdows*, Vicar there. But this hath no relation at all to me. ‘ This Picture of the Bleſſed Virgin was twice mentioned before: and Sir *Nath. Brent* could ſay nothing to it but Hearſay. And Mr. *Corbett* did not ſo much as hear of any Abuſe. And now Alderman *Nixon* ſays, he ſaw Hats put off; but the wiſe Man knows not to what. Nor is there any Shew of Proof offer'd, that I had any Hand or Approbation in the ſetting of it up; or that ever any Complaint was made to me of any Abuſe to it, or Diſlike of it. And yet Mr. *Browne*, when he gave the Sum of the Charge againſt me, inſiſted upon this alſo, as ſome great Fault of mine, which I cannot yet ſee.’

III. In the next Charge, Mr. Serjeant is gone back again to *Whitehall*, as in the former to *Oxford*. The Witneſſes are Mrs. *Charnock* and her Daughter. They ſay, they went (being at Court) into the Chapel, and it ſeems a Woman with them, that was a Papiſt; and that while they were there, Dr. *Brown*, one of the King's Chaplains, came in, bowed towards the Communion-Table, and then at the Altar kneeled down to his Prayers. I do not know of any fault Dr. *Brown* committed, either in doing Reverence to God, or praying there. And yet if he had committed any Fault, I hope I ſhall not anſwer for him. I was not then Dean of the Chapel, nor did any ever complain to me. They ſay, that two Strangers came into the Chapel at the ſame time, and ſaw what Dr. *Brown* did, and ſaid thereupon, *That ſure we did not differ much, and ſhould be of one Religion ſhortly:* And that the Woman which was with theſe Witneſſes, told them they were Prieſts. Firſt, This can no way relate to me; for neither did theſe Women complain to me of it, nor any from them. Secondly, If theſe two Men were Prieſts, and did ſay as is teſtified, are we ever a whit the nearer them in Religion? Indeed, if all the Difference between *Rome* and us conſiſted in outward Reverence, and no Points of Doctrine, ſome Argument might hence be drawn; but the Points of Doctrine being ſo many and great, put ſtop enough to that. Thirdly, If Recuſants, Prieſts eſpecially, did ſo ſpeak, might it not be ſaid in Cunning, to diſcountenance all external Worſhip in the Service of God, that ſo they may have Opportunity to make more Proſelytes? And 'tis no ſmall Advantage, to my knowledge, which they have this way made. ‘ And this was the Anſwer which I gave Mr. *Browne*, when he charged this upon me in the Houſe of Commons.’

Here, before they went any farther, Mr. Serjeant *Wilde* told the Lords, That when Sir *Nathaniel Brent* was employed in my Viſitation, he had Inſtructions for particular Churches, of which ſome were tacit Intimations, and ſome expreſs. I know not to what End this was ſpoken; for no coherent Charge followed upon it. But ſure he thinks Sir *Nathaniel Brent* very ſkilful in me, that he can underſtand my tacit Intimations, and know to what particular Church to apply them. ‘ And as I ſaid no more at the Bar, ſo neither did I think to ſay any more after; yet now I cannot but a little bemoan myſelf. For ever ſince Mr. *Maynard* left off, who pleaded, tho' ſtrongly, yet fairly, againſt me; I have been in very ill Condition between the other two. For, from Mr. *Nicolas* I had ſome Senſe, but extreme virulent and foul Language: And from Serjeant *Wilde* Language good enough ſometimes, but little or no Senſe. For let me anſwer what I would, when he came to reply, he repeated the Charge again, as if I had made no Anſwer at all: Or as if all that I expreſſed never ſo plainly, had been but tacit Intimations; which I think he underſtood as much as Sir *Nathaniel Brent*.’

IV. In the Fourth Charge, he told the Lords he would not trouble them with repeating the Evidence, but only put them in mind of ſome things in the Caſe of *Ferdinando Adams* of *Ipſwich*; of the Men of *Lewes* ſuffering in the High-Commiſſion; of the Pariſhioners of *Beckington*, and ſome others heard before, but would leave the Lords to their Memory and their Notes: Yet read over their Sentences given in the High-Commiſſion, and made a Repetition of whatſoever might but make a Shew to render me odious to the People. ‘ And this hath been their Art all along, to run over the ſame thing twice and again (as they did here in the ſecond Charge about the Picture of the Bleſſed Virgin), to the End that, as the Auditors changed, the more of them might hear it; and that which wrought not upon ſome, might upon others. In all which I patiently referred myſelf to my former Anſwers, having no other way to help myſelf; in regard they pretended that they renewed the ſame Inſtances, but not the ſame way; but in one Place, as againſt Law; and in another, as againſt Religion. But why then did they not in both Places run over all Circumſtances appliable to both?’ And on they went too with the Men of *Lewes*; where,

1. One Mr. *Parnlye* (they ſay) was cenſured cruelly in the High-Commiſſion, for not removing the Communion-Table. The Buſineſs was but this: Sir *Nathaniel Brent*, and his own Ordinary Dr. *Nevill*, ordered the Remove of the Table; he would not. For this Contumacy he was cenſured, but enjoined only to make his Submiſſion to Dr. *Nevill*. Which, I think, was a Sentence far from any barbarous Cruelty, as 'tis called.

2. Another Inſtance, and the next, was Mr. *Burket*. He ſays, he was cenſured alſo about removing the Communion-Table, and for that only. But firſt, this was not ſimply for removing the Holy Table; but it was for abetting the Church-wardens to remove it back again from the Place, where lawful Authority had ſet it. And ſecondly, whereas he ſays, he was cenſured for this only, the very Charge itſelf confutes him. For there 'tis ſaid, that this, about removing the Communion-Table, appears in the ſixth Article that was againſt him. Therefore there were five other Articles at leaſt more againſt him: And therefore not this only.

3. The third Inſtance was Mr. *Chancye*: And he likewiſe is ſaid to have ſuffered very much only about railing in of the Communion-Table. But this is not ſo neither: For he confeſſes that he ſpake reproachful Words againſt Authority, and in Contempt of his Ordinary; that he ſaid the Rails were fit to be ſet up in his Garden; that he came fifty Miles from his own Church, on Purpoſe to countenance this Buſineſs: And all this he acknowledges upon his Oath in his Submiſſion. And yet nothing laid upon him but Suſpenſion; and that no longer than till he ſubmitted. And all this the Act of the High-Commiſſion, not mine. ‘ And ſo I anſwered Mr. *Browne*, who urged this againſt me alſo.’ And the Truth of all this appears *apud Acta*; though they were taken away, and kept ever ſince from my Uſe, yet many things done in that Court have been charged againſt me. And here ſtepped in a Teſtimony of Mr. *Genebrard*'s, that I threatened openly in the High-Commiſſion to ſuſpend Dr. *Merrick*. And why might I not do it, if he will be over-bold with the Proceeding of the whole Court? I have known ere now a very good Lawyer committed from the *Chancery-Bar* to the *Fleet*, though I ſhall ſpare Names.

4. The fourth Inſtance was in Mr. *Workman*'s Caſe; charged as if he were ſentenced only for preaching a Sermon to the Judges againſt Images in Churches. (1.) The firſt Witneſs in the Cauſe was Mr. *Langly*. He ſays, Mr. *Workman* was cenſured for this Sermon, and other Things. Therefore not for this Sermon only: The High-Commiſſioners were no ſuch Patrons of Images. He ſays, That when I was Dean of *Glouceſter*, I told them in the Chapel, that King *James* had heard of many things amiſs in that Church, and required me to take Care of them. 'Tis true, he did ſo. He ſays farther, that hereupon I placed the Communion-Table Altar-wiſe, and commanded due Reverence at the coming into the Church. This I did, and I have given my Reaſon often already for it out of the Injunctions of Queen *Elizabeth*. He ſays, that Biſhop *Smith* took Offence at this, and would come no more to the Cathedral. Firſt, my Lords, this Gentleman was then School-maſter there, and had free Acceſs unto me: He never diſcovered this. Secondly, the Biſhop himſelf never ſaid a Word to me about it. If he had, I would either have ſatisfied his Lordſhip in that, or any thing elſe that I did; or if he had ſatisfied me, I would have forborn it. He ſays, That Mr. *Workman*, after he was put from his Lecture, was not ſuffered to teach Children. Firſt, If he had been ſuffered, this Man had been like to make the firſt Complaint for Decay of his own School. But, Secondly, the Commiſſion thought it no way fit to truſt him with the Education of Children, who had been factious among Men; eſpecially not in that Place, where he had ſo ſhewed himſelf. ‘ And this Anſwer I gave to Mr. *Browne*; who, in ſumming up the Evidence, ſtood as much, and inveighed as earneſtly againſt this cruel Proceeding with Mr. *Workman*, as upon any one thing in the Charge. At which time he added alſo, that he would not be ſuffered to practiſe Phyſick to get his Living. But, Firſt, no Witneſs evidenceth this, that he was denied to practiſe Phyſick. And, Secondly, he might have taught a School, or practiſed Phyſick, any where elſe. But he had done ſo much Harm, and made ſuch a Faction in *Glouceſter*, as that the High-Commiſſion thought it not fit to continue him there: And he was not willing to go from thence, where he had made his Party.’ He ſays farther, That ſome few of the Citizens of *Glouceſter* were called into the High-Commiſſion, for an Annuity of Twenty Pound a Year allowed Mr. *Workman* out of the Town-Stock. For the Thing itſelf, it was a groſs Abuſe and Scorn put upon that Court; that when they had cenſured a Schiſmatical Lecturer (for ſuch he was there proved), the Townſmen ſhould make him an Allowance of Twenty Pound a Year: A Thing (as I humbly conceive) not fit to be endured in any ſettled Government. And whereas Clamour is made, that ſome few of the Citizens were called to an Account for it, that's as ſtrange on the other Side: For where there are many Offenders, the Noiſe would be too great to call all. And yet here's Noiſe enough made for calling a few. Here it was replied by Mr. *Maynard*, That this was done by that Corporation, and yet a few ſingled out to anſwer; and that therefore I might be ſingled out to anſwer for Things done in the High-Commiſſion. ‘ But, under favour, this learned and worthy Gentleman is miſtaken: For here the Mayor and Magiſtrates of *Glouceſter* did that which was no way warrantable by their Charter, in which Caſe they may be accountable, all or ſome. But in the High-Commiſſion we meddled with no Cauſe not cognoſcible there; or if by Miſinformation we did, we were ſure of a Prohibition to ſtop us. And meddling with nothing but Things proper to them, I conceive ſtill no one Man can be ſingled out to ſuffer for that which was done by all. And this may ſerve to anſwer Mr. *Browne* alſo, who in his laſt Reply upon me, when I might not anſwer, made uſe of it.’

(2.) The Second Witneſs was Mr. *Purye* of *Glouceſter*. He ſays, That Mr. *Brewſter*, and Mr. *Guies* the Town-Clerk, were called to the Council-Table about this Annuity; and that I deſired it might be further examined at the High-Commiſſion. If this were true, I know no Offence in it, to deſire that ſuch an Affront to Government might be more thoroughly examined, than the Lords had Leiſure to do. But the Witneſs doth not give this in Evidence: For he ſays no more, than that he heard ſo from Mr. *Brewſter*. And his Hear-ſay is no Conviction. He ſays farther, That the High-Commiſſion called upon this Buſineſs of the Annuity, as informed that the Twenty Pound given to Mr. *Workman* was taken out of the Monies for the Poor. And this I muſt ſtill think was a good and a ſufficient Ground juſtly to call them in Queſtion. He ſays alſo, that theſe Men were fined, becauſe that which they did was againſt Authority. So by their own Witneſs it appears, that they were not fined ſimply for allowing Means to Mr. *Workman*, but for doing it in Oppoſition to Authority. Laſtly, he ſays, they were fined Ten Pound a-piece; and that preſently taken off again. So here was no ſuch great Perſecution, as is made in the Cauſe. And for the cancelling of this Deed of Annuity, it was done by themſelves, as Mr. *Langly* witneſſes.

After theſe two Witneſſes heard, the Sentence of the High-Commiſſion Court was read, which I could not have come at, had not they produced it. And by that it appeared evidently, that Mr. *Workman* was cenſured as well for other Things, as for his Sermon about Images in Churches. As firſt he ſaid, So many Places in Dancing were ſo many to Hell. This was hard, if he meant the Meaſures in the Inns of Court at *Chriſtmas*; and he excepted none. Then he ſaid, and was no way able to prove it, That Drunkards, ſo they were conformable, were preferred. Which was a great and a notorious Slander upon the Governors of the Church, and upon orderly and conformable Men. Then he ſaid, That Election of Miniſters was in the People. And this is directly againſt the Laws of *England*, in the Right of all Patrons. Then conſtantly, in his Prayer before his Sermon, he prayed for the *States* and the King of *Sweden* before his Majeſty, which was the Garb of that Time among that Party of Men. Then, that one of his common Themes of preaching to the People, was againſt the Government of the Church. And then, that Images in Churches were no better than Stews in the Commonwealth; which at the beſt is a very unſavoury Compariſon. But here it was replied, That Images were Idols, and ſo called in the [a] Homilies; and that therefore the Compariſon might hold. Yea, but in the ſecond Homily againſt the Peril of Idolatry, Images or Pictures in Glaſs or Hangings are expreſly and truly ſaid not to be Idols, till they be worſhipped. And therefore Mr. *Workman* ſhould not have compared their ſetting up, to Stews, till he could have proved them worſhipped. And in all this, were the Act good or bad in the cenſuring of him, it was the Act of the High-Commiſſion, not mine.

V. After this followed the fifth Charge; which was Mr. *Sherfeild*'s Caſe, his Sentence in the *Star-Chamber* for defacing of a Church-Window in or near *Saliſbury*. The Witneſſes produced were two.

1. The firſt was Mr. *Carill*. He ſaid that Mr. *Sherfeild* defaced this Window becauſe there was an Image in it, conceived to be the Picture of God the Father. But firſt, this comes not home: For many a Picture may be conceived to be of God the Father, which yet is not, nor was ever made for it. And then ſuppoſe it were ſo, yet Mr. *Sherfeild* in a ſettled Government of a State, ought not to have done it but by command of Authority. He ſays, That in my Speech there in the Court, I juſtified the having of the Picture of God the Father, as he remembers, out of *Dan.* vii. 22. This (as he remembers) came well in: For I never juſtified the making or having that Picture. ‘For [b] *Calvin*'s Rule, that we picture that which may be ſeen, is grounded upon the Negative, that no Picture may be made of that which was never, never can be ſeen. And to ground this Negative, is the Command given by *Moſes*, Deut. iv. 15 & 16. *Take good heed to yourſelves.* For what? That you make not to yourſelves this Picture. Why? *For that you ſaw no manner of Similitude in the Day that the Lord ſpake unto you out of the midſt of the Fire.* Out of the midſt of the Fire; *and yet he ſtill reſerved himſelf in thick Darkneſs*, Exod. xx. 21. So no Picture of him, becauſe no Similitude ever ſeen. And this Rule having ever poſſeſſed me wholly, I could not juſtify the having of it.’ I ſaid, indeed, that ſome Men in later ſuperſtitious Times were ſo fooliſh as to picture God the Father, by occaſion of that Place in *Daniel*: But for myſelf, I ever rejected it. Nor can that Place bear any Shew of it: For *Daniel* ſays there, *That the Ancient of Days came.* But in what Shape or Similitude he came, no Man living can tell. And he is called the *Antient of Days*, from his Eternity, not as if he appeared like an old Man. The Text hath no Warrant at all for that.

2. Yet the ſecond Witneſs, Mr. *Tomlyns*, ſays alſo, That I did juſtify this Picture. ‘God forgive him the Malice or Ignorance of this Oath, be it which it will!’ He might have been as wary as Mr. *Carill*, and added *(as he remembers)*: For ſo many Years ſince, as this Hearing was, he may eaſily miſtake. But if I did ſay any ſuch thing, why are not my own Papers here produced againſt me? I had that written which I then ſpake, and the Paper was in my Study with the reſt, and came (for aught I know) into their Hands which follow the Charge againſt me. I aſk again, why is not this Paper produced? Out of all doubt it would, had there appeared any ſuch thing in it. He ſays alſo, That I ſaid then, that if the Idol of *Jupiter* were ſet up, yet it were not lawful to pull it down in a popular Tumult, but by Order and Authority. I did ſay ſo, or to that effect, indeed; and muſt ſay it ſtill. For I find in St. *Auguſtine* almoſt the very Words. And Biſhop *Davenant*, a Man very learned, cites this Place of St. *Auguſtine*, and approves it. And they both prove this Doctrine from *Deut.* vii. 5. & xii. 2. where the Command given for deſtroying of the Idols when they came into the Land of *Canaan*, was not left at large to the People, but ſettled in *Moſes* the Chief Magiſtrate, and his Power. And according to this Rule, the Temple of *Æſculapius*, tho' then grown very ſcandalous, was not pulled down but by [c] *Conſtantine*'s Command. Which Place I then ſhewed the Lords. But this Witneſs added, That Mr. *Sherfeild* had Authority to do this from the Veſtry. If he had, that's as good as none; for by the Laws of *England* there is yet no Power given them for that, or any thing elſe. And all that Veſtries do, is by Uſurpation, or Conſent of the Pariſh, but reaches not this. The *Biſhop* of the Dioceſs had been fitter to be conſulted herein than the Veſtry.

Here, as if theſe Witneſſes had not ſaid enough, Mr. *Nicolas* offered himſelf to be a Witneſs; and told the Lords he was preſent at the Hearing of this Cauſe; and that four Witneſſes came in clear, that the Picture broken down was the Picture of God the Father; and that yet the Sentence of the Court paſſed againſt Mr. *Sherfeild*. Firſt, if this be ſo, it concludes againſt the Sentence given in the *Star-Chamber*, not againſt me: And he calls it here the *Sentence of the Court*. Secondly, be it that it were undoubtedly the Picture of God the Father; yet he ought to have taken Authority along with him, and not to go about it with Violence; which he did, and fell, and brake his Leg in the Buſineſs. Thirdly, By his own Deſcription of the Picture, it ſeems to me to be ſome old fabulous Picture out of a Legend, and not one of God the Father: For he then told the Lords, it was the Picture of an old Man with a Budget by his Side, out of which he was plucking *Adam* and *Eve*. ‘And I believe no Man ever ſaw God the Father ſo pictured any where. Laſtly, Let me obſerve how Mr. *Nicolas* takes all parts upon him wherein he may hope to do me miſchief.’

VI. The ſixth Charge was concerning a Bible that was printed with Pictures, and ſold. The Witneſs was Mr. *Walſal* a Stationer; who ſays, That this Bible was licenſed by Dr. *Weeks*, my Lord of *London*'s Chaplain, not mine; ſo thus far it concerns not me. ‘Yes, ſays Mr. *Browne* in his laſt Reply; for it appears in a Liſt of my Chaplains, under my own Hand, that Dr. *Weeks* was one. 'Tis true, when I was Biſhop of *Bath* and *Wells*, he was mine; but my Lord of *London* had him from me, ſo ſoon as ever he was Biſhop; and was his, not mine, when he licenſed that Book. And Mr. *Browne* knew that I anſwered it thus to the Lords.’ He ſays, That I gave him Direction that they ſhould not be ſold openly upon the Stalls, but only to diſcreet Men that knew how to uſe them. The Caſe was this: As I was at Prayers in the King's Chapel, I there ſaw one of them in Mrs. *Kirk*'s Hand. She was far enough from any Affection to *Rome*. And this being the firſt Knowledge I had of it, many were vended and ſold before I could prevent it. Upon this I ſent for one, (whether to this Witneſs or another, I cannot ſay) and acquainted the Lords of the Council with it, and craved their Direction what ſhould be done. It was there ordered, that I ſhould forbid the open Sale of them upon their Stalls, but not otherwiſe to learned and diſcreet Men. And when I would have had this Order ſtricter, no Man ſtuck to me but Mr. Secretary *Cook*. So according to this Order I gave Direction to Mr. *Walſal*, as he witneſſes.

Here Mr. *Maynard* replied, That I ought to have withſtood this Order, in regard it was every way faulty. For, ſaid he, either theſe Pictures were good or bad. And if they were good, why ſhould they not be ſold openly upon the Stalls to all that would buy? And if they were bad, why ſhould they be ſold privately to any? ‘To this Reply I was not ſuffered to anſwer. But when I heard Mr. *Browne* charge this Bible with Pictures againſt me, then I anſwered the thing as before, and took occaſion thereby to anſwer this *Dilemma* thus: Namely, That this kind of Argument concludes not but in things neceſſary, and where no *Medium* can be given. For where a *Medium* can be given, the Horns of this Argument are too weak to hurt; and ſo 'tis here. For Pictures in themſelves are things indifferent; not ſimply good, nor ſimply bad, but as they are uſed. And therefore they were not to be ſold to all Comers, becauſe they may be abuſed, and become Evil; and yet might be ſold to learned and diſcreet Men, who might turn them to good. And that Images are things indifferent of themſelves, is granted in the Homilies, which are againſt the very Peril of Idolatry.’ He ſaid, There were ſome inconvenient Pictures among them, as the Aſſumption and the Dove. Be it ſo; the Book was not licenſed by me nor mine: And yet, as I then ſhewed the Lords, they were not ſo ſtrict at *Amſterdam* againſt theſe Pictures; for the Book which Mr. *Walſal* ſhewed me, was printed and ſent thence, before it was printed here. Beſides, our old *Engliſh* Bibles in the Beginning of the Queen were full of Pictures, and no fault found. As for that which was added at the Bar, That one of theſe Bibles was found in Secretary *Windebank*'s Trunk, and another in Sir *John Lambe*'s; that's nothing to me.

VII. The laſt Charge of this Day was, That ſomething about Images was expunged out of Dr. *Featly*'s Sermons by my Chaplain, Dr. *Bray*, before they could be ſuffered to be printed. But, Firſt, he himſelf confeſſes, That I told him he might print them, ſo nothing were in them contrary to the Doctrine and Diſcipline of the Church of *England*. Secondly, he confeſſes, That when Dr. *Bray* made ſtay of them, he never complained to me; and I cannot remedy that which I do not know. Thirdly, He confeſſes, That all the time he was in *Lambeth-Houſe*, my Predeceſſor ever left that Care of the Preſs upon his Chaplains; and why I might not do it as well as my Predeceſſor, I do not yet know. But he ſaid, That he complained to Sir *Edmund Scott*, and deſired to be adviſed by him what he ſhould do; and that he anſwered, He thought I would not meddle with that troubleſome Buſineſs, more than my Predeceſſors had done. ‘Be this ſo, yet Sir *Edmund Scott* never told me this; nor is there any the leaſt Proof offer'd that he did. But becauſe this and the like Paſſages about expunging ſome things out of Books, makes ſuch a great Noiſe, as if nothing concerning Popery might be printed; and becauſe Mr. *Browne*, in ſumming up of the Charge in the Houſe of Commons, warmly inſiſted upon this Particular; I thought it neceſſary to anſwer as follows: That what moved my Chaplain to expunge that large Paſſage againſt Images, I know not; nor could I now know, my Chaplain being dead. But that this I was ſure of, that elſewhere in thoſe very Sermons there was as plain a Paſſage, and full againſt [d] Images left in. And in another Place a whole Leaf together ſpent to prove them [e] Idolaters; and that as groſs as the *Baaliſts*, and ſo he terms them. Yea, and that the [f] Pope is Antichriſt, too; and not only called ſo, but proved by divers Arguments: And not ſo only, but in plain Terms, that he is [g] *the Whore of Babylon.* And theſe Paſſages I then read out of the Book itſelf in the Houſe of Commons: and many other like to theſe there are. So my Chaplain might ſee good Cauſe to leave out ſome Paſſages, where ſo many upon as good Cauſe were left in.’

But to the Buſineſs of leaving the Care of theſe Books, and the Overview of them to my Chaplain, it was then urged, That the ‘Commiſſary of *John* Lord Archbiſhop of *York* had excommunicated the Lord Biſhop of *Durham*, being then in the King's Service; and that the Archbiſhop himſelf was deeply fined for this Act of his Commiſſary; and that therefore I ought much more to be anſwerable for my Chaplain's Act, whom I might put away when I would, than he for his Commiſſary, who had a Patent, and could not be put out at Pleaſure.’ Mr. *Browne* alſo followed this Precedent cloſe upon me. But firſt, there is a great deal of Difference in the thing itſelf: My Chaplain's Caſe being but the leaving out of a Paſſage in a Book to be printed; but his Commiſſary's Caſe being the Excommunicating of a great Biſhop, and he in the King's Service, of whoſe Honour the Laws of this Realm are very tender. And, Secondly, the Biſhop and his Official (call him Chancellor or Commiſſary, or what you will) make but one Perſon in Law; and therefore the Act of the Commiſſary, to the full Extent of his Patent, is the Act of the Biſhop in legal Conſtruction, and the Biſhop may be anſwerable for it. But the Biſhop and his Chaplain are not one Perſon in any Conſtruction of Law. ‘And ſay he may put away his Chaplain when he will, yet that cannot help what is paſt, if aught have

‘been

Hom. par. 1. *p.* 11.

This was done long before the Reformation; when the Patents of Chancellors and Commiſſaries were revocable at the pleaſure of the Biſhop, H.W.

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[a] *Hom. againſt the Peril of Idolat. p.* 3. *p.* 92.

[b] Calv. 1 Inſt. c. 11. §. 12.

[c] Euſeb. 3. de vita Conſtan. c. 54.

[d] *Dr.* Featly's *Sermons, p.* 447.

[e] *P.* 791.

[f] *P.* 808.

[g] *P.* 810.

‘ been done amiſs by him. And this was the Anſwer I inſiſted on to Mr. *Browne.*’

Upon my entrance on this Day's Defence, I found myſelf aggrieved at the *Diurnal*, and another Pamphlet of the Week, wherein they print whatſoever is charged againſt me, as if it were fully proved; never ſo much as mentioning what or how I anſwer'd. And that it troubled me the more, becauſe (as I conceived) the Paſſages, as there expreſſed, trenched deep upon the Juſtice and Proceedings of that Honourable Houſe; and could have no aim but to incenſe the Multitude againſt me. With ſome difficulty I got theſe Pamphlets received; but there they died, and the weekly Abuſe of me continued to keep my Patience in breath.

The Thirteenth Day of my Hearing.

I. W*Hitſon-Tueſday*, *June* 11. 1644. The firſt Charge of this Day, was the Opinion which was held of me beyond the Seas. The firſt Witneſs was Sir *Henry Mildmay*, who (as is before related) told me without aſking, That I was the moſt hateful Man at *Rome*, that ever ſat in my See ſince the Reformation. ‘ Now he denied not this, but being helped on by good Preparation, a flexible Conſcience, and a fair leading Interrogatory by Mr. *Nicolas*,’ (Mr. Serjeant *Wilde* was ſick, and came no more till the laſt Day, when I made my Recapitulation) he minced it. And now he ſays, That there were two Factions at *Rome*, and that one of them did indeed ſpeak very ill of me, becauſe they thought I aimed at too great a Power here in *England*; but the other Faction ſpake as well of me, becauſe they thought I endeavoured to bring us in *England* nearer to the Church of *Rome*. But Firſt, my Lords, this Gentleman's Words to me were round and general; That I was hated at *Rome*, not of a Party or Faction there; and my Servants heard him at the ſame time, and are here ready to witneſs it, That he then ſaid the Pope was a goodly Gentleman, and did uſe to ride two or three great Horſes in a Morning; and, but that he was ſomething taller, he was as like Auditor *Philips* (who was then at Dinner with me) as could be. But I pray mark what wiſe Men he makes them at *Rome*. One Faction hates me, becauſe I aim at too much Power; and the other loves me, becauſe I would draw *England* nearer *Rome*. Why, if I went about to draw *England* nearer *Rome*, can any among them be ſuch Fools as to think my Power too great? For if I uſed my Power for them, why ſhould any there condemn me? And if I uſed it againſt them, why ſhould any here accuſe me? ‘ *Non ſunt hæc bene diviſa temporibus*; Theſe things ſuit not with the Times, or the Diſpoſitions of *Rome*: But the plain Truth is, I do not think that ever he was at *Rome*; I after heard a Whiſper, that he only ſtepped into *France* for another Cure, not to *Rome* for Curioſity, which was the only Cauſe he gave the Lords of his going thither.’

2. The ſecond Witneſs was Mr. *Challoner*. He ſays not much of his own Knowledge, but of Fame, that tattling Goſſip; yet he told the Lords, I was a very obſcure Man, till within theſe fifteen Years. Be it ſo, if he pleaſe; yet I have been a Biſhop above Three-and-Twenty Years: and 'tis Eighteen Years ſince I was firſt Dean of his Majeſty's Chapel-Royal. He ſays, That after this time there was a ſtrong Opinion of Reconciliation to *Rome*. A ſtrong Opinion, but a weak Proof: For it was an Opinion of Enemies, and ſuch as could eaſily believe what they over-much deſired. He farther ſaid, That ſome of them were of Opinion, that I was a good *Roman Catholick*; and that I wrought cunningly to introduce that Religion by Inches; and that they prayed for me. Firſt, My Lords, the Opinion of Enemies is no Proof at all, that I am ſuch as they think me. And ſecondly, this is a notable and no unuſual piece of Cunning, for an Enemy to deſtroy by commending; for this was the ready way; and I doubt not but it hath been practiſed, to raiſe a Jealouſy againſt me at home, thereby either to work the Ruin of my Perſon, or utterly to weaken and diſable me from doing harm to them, or good for the Church of *England*. Beſides, if the Commendation of Enemies may in this kind go for Proof, it ſhall be in the power of two or three practiſing Jeſuits, to deſtroy any Biſhop or other Church-man of *England*, when they pleaſe. At laſt he told a Story of one Father *John*, a Benedictine; that he aſked him how Church-Livings were diſpoſed in *England*, and whether I had not the diſpoſing of thoſe which were in the King's Gift? And concluded, That he was not out of hope to ſee *England* reduced to *Rome*. Why, my Lords, this is not Father *John*'s Hope alone; for there is no * *Roman Catholick* but hath ſome Hope alive in him to ſee this Day. And were it not for that Hope, there would not have been ſo many, ſome deſperate, all dangerous Practices upon this Kingdom to effect it, both in Queen *Elizabeth*'s Time, and ſince. But if this I know not what Father *John* hope ſo, what is that to me?

3. The third Witneſs was Mr. *Anthony Mildmay*; a Man not thought on for a Witneſs, till I called for his Brother Sir *Henry*. But now he comes laden with his Brother's Language. He ſays juſt as Sir *Henry* did before, That there were two Factions at *Rome*, the Jeſuits, and they abhorred me; but the other, the ſecular Prieſts, they wiſhed me well, as he was informed. Firſt, This is ſo one and the ſame Teſtimony, that any Man that will, may ſee, that either he informed his Brother, or his Brother him. Secondly, Here's nothing affirmed, for it is but as he was informed: And he doth not tell you by whom. It may be, my Lords, it was by his Brother. Then he ſays, This was to make myſelf great; and tells a Tale of Father *Fitton*, as much to the purpoſe as that which Mr. *Challoner* told of Father *John*. But whatſoever either of theſe Fathers ſaid, it was but their own Opinion of me, or Hearſay; neither of which can prove me guilty of any thing. ‘ Thus much Mr. *Anthony* made a ſhift to ſay by Five of the Clock at Afternoon, when I came to make my Anſwer. And this (as I have ſufficient Cauſe to think) only to help to ſhoar up his Brother's Teſtimony. But in the Morning, when he ſhould have come, as his Brother did, he was by Nine in the Morning ſo drunk, that he was not able to come to the Bar, nor to ſpeak common Senſe, had he been brought thither: *Nobile Par Fratrum.*’

II. The ſecond Charge was the Conſecration of two Churches in *London*; St. *Catharine Cree-Church*, and St. *Giles in the Fields*. The Witneſſes two.

1. The firſt Witneſs was one Mr. *Willingham*. And he ſays, That I came to theſe Churches in a pompous manner: But all the Pomp that he mentions, is, that Sir *Henry Martin*, Dr. *Duck*, and ſome other of the Arches, attended me, as they uſually do their Dioceſans in ſuch Solemnities. He ſays, he did curiouſly obſerve what was done, thinking it would one Day be called to an account, as now it is. So this Man (himſelf being Judge) looked upon that Work with a malevolent Eye, and God preſerve him from being a malicious Witneſs! He ſays, that at my Approach to the Church-door was read, *Lift up your Heads, O ye Gates, and be ye lift up, ye everlaſting Doors, and the King of Glory ſhall come in*, Pſal. xxiv. 7. And this was urged over and over, as a Jeer upon my Perſon. But this Place of Scripture hath been antiently uſed in Conſecrations: And it relates not to the Biſhop, but to God Almighty, the true King of Glory, who, at the Dedication, enters by his Servant to take poſſeſſion of the Houſe, then to be made his. He ſays, that I kneeled down at my coming in, and after uſed many Bowings and Cringings. For my kneeling down at my entrance, to begin with Prayer, and after to proceed with Reverence, I did but my Duty in that; let him ſcoffingly call it *Cringing*, or *Ducking*, or what he pleaſe.

He ſays farther, That at the beginning I took up Duſt, and threw it in the Air, and after uſed divers Curſes. And here Mr. *Prynn* put Mr. *Nicolas* in mind to add, that *ſpargere Cinerem* is in the Form of Conſecration uſed in the *Pontifical*. ‘ And Mr. *Browne*, in his ſummary Account of my Charge, laid the very Conſecration of theſe Churches as a Crime upon me, and inſiſted on this Particular.’ But here my Anſwer to all was the ſame; That this Witneſs had need look well to his Oath, for there was no throwing up of Duſt, no Curſes uſed throughout the whole Action: Nor did I follow the *Pontifical*, but a Copy of Learned and Reverend Biſhop *Andrews*, by which he conſecrated divers Churches in his Time; and that this is ſo, I have the Copy by me to witneſs, and offered them to ſhew it. Nor can this howſoever ſavour any way of Treaſon. No, ſaid Mr. *Browne*; but the Treaſon is, to ſeek, by theſe Ceremonies, to overthrow the Religion eſtabliſhed. Nor was that ever ſought by me: And God of his Mercy preſerve the true Proteſtant Religion amongſt us, till the Conſecration of Churches, and Reverence in the Church, can overthrow it; and then I doubt not, but, by God's Bleſſing, it ſhall continue ſafe to the World's end.

He ſays alſo, that I did pronounce the Place Holy. I did ſo: And that it was in the ſolemn Act itſelf of the Conſecration, according to the uſual Form in that behalf. And no Man will deny, but that there is a Derivative and a [a] Relative Holineſs in Places, as well as in Veſſels, and other Things dedicated to the Honour and Service of God. Nor is any thing more common in the Old Teſtament; and 'tis expreſs in the New, both for Place and Things: 1 *Cor.* ix. 13.

[a] Objectiva & adhærens. Jo. Prideaux, Concio in S. Luc. xix. 46.

Then it was urged at the Bar, that a Prayer which I uſed, was like one that is in the *Pontifical*. So in the *Miſſal* are many Prayers like to the Collects uſed in our *Engliſh* Liturgy, ſo like, that ſome are the very ſame, tranſlated only into *Engliſh*; and yet theſe confirmed by Law. And for that of *Pſal.* xcv. 6. *Venite, procidamus*, &c. then alſo excepted againſt, that hath been of very antient uſe in the Liturgies of the Church. From which *rejecimus Paleam, numquid & Grana?* We have ſeparated the Chaff, ſhall we caſt away the Corn too? If it come to that, let us take heed we fall not upon the Devil's winnowing, who labours to beat down the Corn; 'tis not the Chaff that troubles him, St. *Luke* xxii. 31. Then they urged my Predeceſſor Archbiſhop *Parker*, that he found fault with the Conſecration of new Churches. I anſwered then upon Memory, that he did not find fault ſimply with Conſecrations of Churches, but only with the ſuperſtitious Ceremonies uſed therein. ‘ And this ſince, upon peruſal of the Place, I find to be true. For after he had in ſome ſort commended the Popes for taking away ſome groſs and ſuperſtitious Purgations, he adds, that yet, for want of Piety or Prudence, their later *Pontifical* and *Miſſal-books* did outgo the antient *in multitudine Ceremoniarum, & peragendi Difficultate, & Tædio, & Exorciſationis Amentia*. So theſe were the Things he found fault with, not the Conſecration itſelf; which he could not well do, himſelf being then a conſecrated Biſhop.’

In Antiq. Britannicis, *p.* 85.

2. The ſecond Witneſs was Mr. *Hope*. He ſays, That he agrees with the former Witneſs, and ſaw all, and the throwing up of the Duſt, *&c.* Since he agrees with the former Witneſs, I give him the ſame Anſwer. Yet with this Obſervation upon him and his Oath: The former Witneſs ſays, that at the beginning of this Action, I took Duſt and threw it up; this Man agrees with him, and ſaw all; and almoſt in the very next Words confeſſes, he was not there at the Beginning. Not there; yet he ſaw it. My Lords, if you mark it, this is a wholeſome Oath. He ſays, that then the Church-yard was conſecrated by itſelf. It was ever ſo; the one Act muſt follow the other, tho' both done the ſame Day: for the Places being different, the Act could not paſs upon them at the ſame time. Then he ſaid, there were Fees required, and a good Eye had to the Money. This is a poor Objection againſt me: if the Officers did exact any Money without Rule, or beyond Precedent, let them anſwer for it. But for that which was ſaid to belong to me, I preſently gave it to the Poor of the Pariſh: and this Mr. *Dell* my Secretary, then preſent, atteſted to the Lords. Laſtly he ſaid, they were not new Churches; let him look to his Oath again; for 'tis notoriouſly known, they were both new built from the Ground, and St. *Giles* not wholly upon the old Foundation.

III. The third Charge was laid on me only by Mr. *Nicolas*, and without any Witneſs. It was, That I out-went Popery itſelf; for the Papiſts conſecrated Churches only, but I had been ſo ceremonious, that I had conſecrated † Chapels too. My Lords, the uſe of Chapels and of Churches, in regard of God's Service, is the ſame. Therefore if Conſecration be fit for the one, it muſt needs be for the other. And the Conſecration of Chapels was long before Popery came into the World. For even Oratories newly built were conſecrated in or before *Euſebius*'s Time: and he flouriſhed about the Year of Chriſt 310 So antient they are in the Courſe of Chriſtianity; and for any

Euſeb. l. 10. Hiſt. *c.* 3.

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* *The Archbiſhop calls the* Engliſh *Papiſts* Roman Catholicks; *not as allowing them to be ſuch, but referring to that Name, which ſome of them were before ſaid to have affixed to him.* H. W.

† *Here in* England, *both before and ſince the Reformation, Chapels newly erected were always ſolemnly conſecrated, as well as Churches. I could produce innumerable Inſtances of the Time preceding, many of the Time ſucceeding the Reformation.* H. W.

Prohibition of them, there is neither Law nor Canon in the State or Church of *England* that doth it.

The Chapels they inſtance in are three. Firſt, they ſay I conſecrated a Chapel of the Right Honourable the Lord Treaſurer *Weſton*'s. I did ſo, and did no harm therein. As for the Touch given by the way upon that Honourable Perſon, he is gone to God, I have nothing to do with it. Secondly, they inſtanced in a Chapel of Sir *John Worſtenham*'s building. 'Tis true, I conſecrated that too; but that was a Pariſh-Church, built in the Place where he was born, and it was in my Dioceſs, and ſo the Work proper for me. The third Inſtance was in my own Chapel, in my Houſe at *Aberguilly*, when I was Biſhop of St. *David*'s; the Room lay waſte and out of repair, and I fitted it at my own coſt, and conſecrated it into a Chapel, that Houſe having no Oratory before. Here they farther aggravated many Circumſtances; as Firſt, That I named it at the Dedication, *The Chapel of St.* John *the Baptiſt*. I did ſo name that Chapel, in memory of the College where I was bred, which bears the ſame Name; but I dedicated it to God and his Service. And to give the Names of Angels and Saints to Churches, for diſtinction-ſake, and for the honour of their Memory, is very antient and uſual in the Church, as appears in St. *Auguſtine*, and divers others of the Fathers; but dedicated only to God: 'Which in the midſt of Superſtitious Times, the School itſelf confeſſes.' So yet no Offence. Secondly, That I did it upon the 29th of *Auguſt*. And why might I not do it that Day, as well as upon any other? But reſolving to name the Chapel as I did, I the rather made choice of that Day, both becauſe it was the Day of the Decollation of St. *John* the Baptiſt, and becauſe as upon that Day God had wonderfully bleſſed me, in the Hearing of my Cauſe concerning the Preſidentſhip of *St. John*'s *College* in *Oxford*, by King *James* of ever-bleſſed Memory: So yet no Offence. Thirdly, There was a Paper read, and avowed to be mine, in which was a fair Deſcription of Chapel-Furniture and rich Plate, and the Ceremonies in uſe in that Chapel, and Wafers for the Communion. At the reading of this Paper I was a little troubled. I knew I was not then ſo rich, as to have ſuch Plate or Furniture; and therefore I humbly deſired ſight of the Paper. So ſoon as I ſaw it, I found there was nothing in it in my hand but the Indorſement, which told the Reader plainly, that it was the Model of the Reverend Biſhop *Andrews*'s Chapel, with the Furniture, Plate, Ceremonies therein uſed, and all things elſe. And this Copy was ſent me by the Houſhold Chaplain to that famous Biſhop. 'This I laid open to the Lords, and it 'would have made any Man aſhamed, but Mr. *Prynn*, who had delivered 'upon Oath, that it was a Paper of my Chapel-Furniture at *Aberguilly*, 'contrary to his Conſcience, and his own Eyeſight of the Paper.' And for Wafers, I never either gave or received the Communion, but in ordinary Bread. At *Weſtminſter* I knew it was ſometimes uſed, but as a thing indifferent. As for the Slur here given to that Reverend dead Biſhop of *Wincheſter*, it might well have been ſpared; he deſerved far better Uſage for his Service to the Church of *England*, and the Proteſtant Cauſe.

Tho. 2. 2æ q. 85. A. 2 ad 3.

IV. The Fourth Charge was the publiſhing the Book of Recreations: and it was uſhered in with this Scorn upon me, That I laboured to put a Badge of Holineſs, by my Breath, upon Places: and to take it away from Days. But I did neither; the King commanded the printing of it, as is therein atteſted, and the Warrant which the King gave me, they have. And tho' at Conſecrations I read the Prayers, yet it was God's Bleſſing, not my Breath, that gave the Holineſs. And for the Day, I ever laboured it might be kept holy, but yet free from a ſuperſtitious Holineſs. And firſt it was ſaid, That this was done of purpoſe to take away Preaching. But firſt, there is no Proof offered for this. And Secondly, 'tis impoſſible; for till the Afternoon-Service and Sermon were done, no Recreation is allowed by that Book, nor then to any but ſuch as have been at both: therefore it could not be done to take it away. Thirdly, the Book names none but *Lawful Recreations*; therefore if any unlawful be uſed, the Book gives them no warrant. And that ſome are lawful (after the publick Service of God is ended) appears by the Practice of *Geneva*, where after Evening-Prayer, the elder Men bowl, and the younger train. And *Calvin* ſays in expreſs Terms, That one Cauſe of the Inſtitution of the Sabbath was, * *That Servants might have a Day of Reſt and Remiſſion from their Labour*. And what time of the Day fit, if not after Evening-Prayer? And what Reſt is there for able young Men, if they may uſe no Recreation? Then it was urged, That there was a great Riot and Diſorder at Wakes kept on the Lord's-Day. That is a very ſufficient Cauſe to regulate and order thoſe Feaſts, but not quite to take them away. I make no doubt, for my part, but that the Feaſt of the *Dedication* was abuſed by ſome among the *Jews*: and yet Chriſt was ſo far from taking it away for that, as that he honoured it with his own Preſence: St. *John* x. 22. As for the Paper which was read, containing three Cauſes why that Book was publiſhed, that was a Note taken for my own private Uſe and Memory.

Then came in Mr. *Prynn*, who ſaid, That the Lord Chief Juſtice *Richardſon* had made an Order in his Circuit againſt theſe Wakes, and was forced to revoke it. This was done by Authority, as is before anſwered; to which I refer myſelf. Here 'tis added, to help fill up the Noiſe. But Mr. *Prynn* ſays, That all the Gentlemen in the Country petitioned on the Judge's behalf. No; there was a great Faction in *Somerſetſhire* at that time, and Sir *Robert Phillips* and all his Party writ up againſt the Judge and the Order he made, as was apparent by the Certificates which he returned. And Sir *Robert* was well known in his time to be neither Popiſh nor Profane. He ſays farther, That *William* then Earl of *Pembroke* was out of Town, and the Book printed in the interim by my Procurement. But for this laſt, here's not one Word of Proof offered, and ſo I leave it.

V. The Fifth Charge was, That ſome Miniſters were puniſhed for not reading this Book. Witneſſes for this were produced.

1. The firſt was Sir *Nathaniel Brent*; who ſays, He had charge from me to call for an account of not reading this Book, both in my Province at my Viſitation, and in my Dioceſs. His Majeſty having commanded this, I could do little, if I had not ſo much as inquired what was done. And he confeſſes, That for my Province he gave time to them which had not read it, and then never aſked more after it. So here was no eager Proſecution. But then he ſays, that three in my Dioceſs ſtood out, and aſked time; and confeſſes that I granted it; but adds, that when he aſked more time for them, I denied; and that they were then ſuſpended *ab officio* only. I thought I had reaſon to deny, when I ſaw they did but dally by aſking time. And it was then evident, that in the Dioceſs of other Biſhops far more than three were puniſhed, and their Puniſhment greater. 'However, this my Proceeding was far from Rigour. And this was the Anſwer that I gave Mr. *Browne*, who in the Sum of his Charge inſtanced 'in this Particular againſt me.'

2. The ſecond Witneſs was Mr. *Culmer*, one of the three Miniſters that was ſuſpended. He ſays, That he was ſuſpended by Sir *Nathaniel Brent*, and that when he came to me about it, I ſaid, *If you know not how to obey, I know not how to grant your Petition*. Truly, my Lords, finding him both wilful and ignorant, I cannot tell what I could ſay leſs. He ſays, that his Patron took away his Benefice. Why, my Lords, he had none: he was only a Curate, and, God knows, unfit for that. So being ſuſpended from his Office, this muſt needs be done. He ſays, he was not abſolved till the *Scots* came in, and that he was conformable in all things elſe. For the time of his Abſolution, I leave that to the Record: but for his Conformity in other Things, 'tis more than ever I heard of any †. 'This I can ſay 'for him, he is good at purchaſing a Benefice; for he offered a Servant of 'mine One Hundred and Fifty Pounds, ſo he could procure me but to 'name him to the Parliament for *Chartham* in *Kent*. Since, I have heard 'he is as good at doing Reverence in the Church: for 'he piſſed in the Body of the Cathedral at *Canterbury* at 'Noon-day, as will be juſtified by Oath. And for this 'very Particular, the Book of Recreations, he informed 'at the Council-Table againſt a Gentleman of Quality, for ſaying, *It was unfit ſuch Books ſhould be ſent, for Miniſters to read* '*in the Church*. And was himſelf laid by the Heels, for the Falſhood of 'this Information. So he is very good at the point of Conſcience too, 'that can refuſe to read the Book, as being unfit, and complain to have 'another puniſhed for ſaying 'tis ſo.'

Antidotum Culmerianum. *p.* 11.
Ibid. *p.* 35.

3. The third Witneſs is Mr. *Wilſon*. He ſays, that I ſent to Sir *Nath. Brent* to ſuſpend him. That is true; but it was when he would neither obey, nor keep in his Tongue. He ſays, his Living was ſequeſtred for almoſt four Years. But it was not for not reading this Book. For himſelf confeſſes it was done in the High-Commiſſion; and that for Dilapidations, in not repairing his Houſe.

4. The fourth Witneſs was one Mr. *Snelling*, a Miniſter in the Dioceſs of *Rocheſter*. All that was done againſt this Man, was openly in the High-Commiſſion Court: and there he was cenſured for other things, as well as for this. Himſelf confeſſes his open refuſing to bow at the Name of Jeſus, tho' the Canon of the Church command it. I kept him off from being ſentenced a long time, and when he was ſentenced, he confeſſes I was not preſent. He ſays, ſomewhat was expunged out of his Brief. If it were, it was with the conſent of his Counſel; which in that Court was ordinary. Howſoever, it cannot touch me: for thoſe Things were done at Informations, where I was not preſent. He ſays, that when I heard of the Nature of his Defence, I ſaid, *If any ſuch Defence were put in, it ſhould be burnt*. This was upon juſt Complaint of the Judge then preſent at Informations, affirming it was againſt all the Courſe of that Court. He ſays, there is no Penalty mentioned in that Declaration. And I ſay, his Obedience, and other Mens, ſhould have been the more free and chearful. Well, I pray God keep us in the Mean, in this Buſineſs of the Sabbath, as well as in other Things; that we run not into a *Jewiſh* Superſtition, while we ſeek to ſhun Profaneneſs. This *Calvin* hath in the mean time aſſured me, *That thoſe Men who ſtand ſo ſtrictly upon the Morality of the Sabbath, do, by a groſs and carnal Sabbatization, three times out-go the Superſtition of the* Jews.

Craſsâ carnalique Sabbatiſmi Superſtitione ter Judæos ſuperant. *Calv.* 2. *Inſt. c.* 8. § 34.

Here it was inferred, That there was a Combination for the doing of this in other Dioceſes. But no Proof at all was offered. Then Biſhop *Mountague*'s Articles and Biſhop *Wren*'s were read, to ſhew that Inquiry was made about the reading of this Book; and the Biſhop of *London*'s Articles named, but not read. But if I were in this Combination, why were not my Articles read? Becauſe no ſuch thing appears in them; and becauſe my Articles gave ſo good Content, that while the Convocation was ſitting, Dr. *Brown* and Dr. *Holdſworth* came to me, and deſired me to have my Book confirmed in Convocation, to be general for all Biſhops in future, it was ſo moderate, and according to Law. But why then (ſay they) were other Articles thought on, and a Clauſe that none ſhould paſs without the Approbation of the Archbiſhop? Why, other were thought on, becauſe I could not in modeſty preſs the Confirmation of my own, tho' ſollicited to it. And that Clauſe was added, till a ſtanding Book for all Dioceſes might be perfected, that no *Quære* in the *interim* might be put to any, but ſuch as were according to Law.

VI. The ſixth Charge was about reverſing of a Decree in *Chancery* (as 'tis ſaid) about Houſes in Dr. *Walton*'s Pariſh, given (as was ſaid) to ſuperſtitious Uſes.

1. The firſt Witneſs was Serjeant *Turner*. He ſays, He had a Rule in the *King*'s-*Bench* for a Prohibition in this Cauſe. But by reaſon of ſome Defect (what, is not mentioned) he confeſſes he could not get his Prohibition. Here's nothing that reflects upon me. And if a Prohibition were moved for, that could not be perſonally to me, but to my Judge in ſome Spiritual Court, where it ſeems this Cauſe depended, to which the Decree in *Chancery* was directed. And indeed this Act, which they call a Reverſing, was the Act and Seal of Sir *Nath. Brent*, my Vicar-General: And if he violated the Lord Keeper's Decree, he muſt anſwer it. But the Inſtrument being then produced, it appeared concurrent in all Things with the Decree. The Words are, *Juxta ſcopum Decreti hac in parte in Curia Cancellariæ factum*, &c.

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* Tertio, Servis & iis qui ſub aliorum degerent imperio, quietis Diem indulgendum cenſuit, quo aliquam haberent a labore remiſſionem. *Calv. L.* 2. *Inſt. c.* 8. § 28.

† *This Mr.* Culmer *not only piſſed in the Church of* Canterbury, *but alſo demoliſhed the noble Glaſs-Windows of it with his own Hands. The like he did in the Pariſh-Church of* Minſter *in* Thanet; *which Benefice he uſurped during the Rebellion.*

2. The ſecond Witneſs was Mr. *Edwards*. And wherein he concurs with Serjeant *Turner*, I gave him the ſame Anſwer. For that which he adds, That Dr. *Walton* did lett Leaſes of theſe Houſes at an under Value, and called none of the Pariſhioners to it: If he did in this any thing contrary to Juſtice, or the Will of the Donor, or the Decree, he is living to anſwer for himſelf; me it concerns not. For his Exception taken to my Grant (of Confirmation, I think he means) and to the Words therein, *Omnis & Omnimoda*, *&c.* 'tis the antient Style of ſuch Grants for I know not how many Hundred Years; no Syllable innovated or altered by me.

VII. Then followed the Charge of Mr. *Burton* and Mr. *Prynn*, about their Anſwer, and their not being ſuffered to put it into the *Star-Chamber*. Which tho' Mr. *Prynn* preſſed at large before, yet here it muſt come again, to help to fill the World with Clamour. Yet to that which ſhall but ſeem new, I ſhall anſwer. Two Things are ſaid: (1.) The one, that they were not ſuffered to put in their Defence *modo & forma*, as it was laid. There was an Order made openly in Court to the Judges to expunge ſcandalous Matter. And the two Chief Juſtices did order the expunging of all that which was expunged, be it more or leſs; as appears in the Acts of that Court. (2.) The other is, that I procured this Expunging. The Proofs that I procured it, were theſe: Firſt, Becauſe Mr. *Cockſhot* gave me account of the Buſineſs from Mr. Attorney. I had reaſon to look after the Buſineſs, the whole Church of *England* being ſcandalized in that Bill, as well as myſelf. But this is no Proof that I either gave Direction, or uſed any Sollicitation to the Reverend Judges, to whom it was referred. Secondly, Becauſe I gave the Lords Thanks for it. It was openly in Court: It was after the Expunging was agreed unto. And what could I do leſs in ſuch a Cauſe of the Church, tho' I had not been perſonally concerned in it? Thirdly, Becauſe I had a Copy of their Anſwer found in my Study. I conceive it was not only fit but neceſſary for me to have one, the Nature of the Cauſe conſidered. But who interlined any Paſſages in it with Black-lead, I know not: For I ever uſed Ink, and no Black-lead all my Life. Theſe be ſtrange Proofs that I procured any thing.

Then Mr. *Prynn* added, That the Juſtice and Favour which was afforded Dr. *Leighton* was denied unto him. As far as I remember, it was for the putting in of his Anſwer under his own Hand. This, if ſo, was done by Order of the Court; it was not my Act.

VIII. The laſt Charge followed: And that was taken out of the Preface to my Speech in the *Star-Chamber*. The Words are, [a] *That one Way of Government is not always either fit or ſafe, when the Humours of the People are in a continual Change*, &c. From whence they inferred, I laboured to reduce all to an arbitrary Government. But I do humbly conceive no Construction can force theſe Words againſt me for an arbitrary Government: For the Meaning is, and can be no other, for ſometimes a ſtricter, and ſometimes a remiſſer holding and ordering the Reins of Government; yet both according to the ſame Laws, by a different uſe and application of Mercy and Juſtice to Offenders. ‘And ſo I anſwer'd to Mr. ‘*Browne*, who charged this againſt me as one of my ill Counſels to his ‘Majeſty. But my Anſwer given is Truth: For it is not ſaid, That there ‘ſhould not be one Law for Government, but not one Way in the order‘ing and execution of that Law. And the [b] Obſervator ‘upon my Speech, (an *Engliſh* Author, and well enough ‘known, tho' he pretends 'tis a Tranſlation out of *Dutch*) ‘tho' he ſpares nothing that may be but carped at; yet ‘to this Paſſage he ſays, 'tis a good Maxim, and wiſhes ‘the King would follow it. And truly, for my part, I learned it of a ‘very wiſe and an able Governor, and he a King of *England* too; it was ‘of *Henry* VII. of whom the Story ſays, [c] That in the ‘Difficulties of his Time and Cauſe he uſed both Ways ‘of Government, Severity and Clemency; yet both ‘theſe were ſtill within the Compaſs of the Law. He far too wiſe, and I ‘never yet ſuch a Fool, as to imbrace arbitrary Government.'

[a] *My Speech in the* Star-Chamber, Præfat. verſus finem.

[b] *Divine and Politick Obſervations upon my Speech*, p. 78.

[c] Speed in Hen. VII. § 16.

June 14. 1644. This Day I received a Note from the Committee, that they intended to proceed next upon the Remainder of the Seventh, and upon the Eighth and Ninth Original Articles: Which follow *in hæc verba:*

VIII. That for the better advancing of his Traitorous Purpoſe and Deſign, he did abuſe the great Power and Truſt his Majeſty repoſed in him: and did intrude upon the Places of divers great Officers, and upon the Right of other of his Majeſty's Subjects: whereby he did procure to himſelf the Nomination of ſundry Perſons to Eccleſiaſtical Dignities, Promotions and Benefices, belonging to his Majeſty, and divers of the Nobility, Clergy, and others; and hath taken upon him the Commendation of Chaplains to the King; by which Means he hath preferred to his Majeſty's Service, and to other great Promotions in the Church, ſuch as have been popiſhly affected, or otherwiſe unſound and corrupt both in Doctrine and Manners.

IX. He hath for the ſame traitorous and wicked Intent, choſen and employed ſuch Men to be his Chaplains, whom he knew to be notoriouſly diſaffected to the Reformed Religion, groſly addicted to Popiſh Superſtition, and erroneous and unſound both in Judgment and Practice. And to them, or ſome of them, he hath committed the Licenſing of Books to be printed; by which Means divers falſe and ſuperſtitious Books have been publiſhed, to the great Scandal of Religion, and to the ſeducing of many of his Majeſty's Subjects.

The Fourteenth Day of my Hearing.

MONDAY, *June* 17. 1644. At the ending of the former Day's Charge, I was put off to this Day, which held.

I. The firſt Charge was concerning Mr. *Dampòrt*'s leaving his Benefice in *London*, and going into *Holland*.

1. The firſt Witneſs for this was *Quaterman*, a bitter Enemy of mine; God forgive him! He ſpeaks as if he had fled from his Miniſtry here for fear of me. But the ſecond Witneſs, Mr. *Dukeſwell*, ſays, that he went away upon a Warrant that came to ſummon him into the High-Commiſſion. The Truth is, my Lords, and 'tis well known, and to ſome of his beſt Friends, that I preſerved him once before, and my Lord *Vere* came and gave me thanks for it. If after this he fell into danger again, *majus Peccatum habet*; I cannot preſerve Men that will continue in dangerous Courſes. He ſays farther, (and in this the other Witneſs agrees with him) That when I heard he was gone into *New-England*, I ſhould ſay my Arm ſhould reach him there. The Words I remember not. But for the Thing, I cannot think it fit that any Plantation ſhould ſecure any Offender againſt the Church of *England*. And therefore if I did ſay my Arm ſhould reach him, or them ſo offending, I know no Crime in it; ſo long as my Arm reached no Man but by the Law.

2. The ſecond Witneſs, Mr. *Dukeſwell*, adds nothing to this, but that he ſays, Sir *Maurice Abbot* kept him in before. For which Teſtimony I thank him. For by this it appears, that Mr. *Damport* was a dangerous factious Man, and ſo accounted in my Predeceſſor's time, and it ſeems proſecuted then too, that his Brother Sir *Maurice Abbot* was fain (being then a Pariſhioner of his) to labour hard to keep him in.

II. The ſecond Charge was concerning *Nathaniel Wickens*, a Servant of Mr. *Prynn*.

1. The firſt Witneſs in this Cauſe was *William Wickens*, Father to *Nathaniel*. He ſays, his Son was nine Weeks in divers Priſons, and for no cauſe but for that he was Mr. *Prynn*'s Servant. But it appears *apud Acta*, that there were many Articles of great Miſdemeanour againſt him. And afterwards himſelf adds, That he knew no Cauſe, but his refuſing to take the Oath *ex Officio*. Why, but if he knew that, then he knew another cauſe, beſide his being Mr. *Prynn*'s Servant: unleſs he will ſay all Mr. *Prynn*'s Servants refuſe that Oath, and all that refuſe that Oath are Mr. *Prynn*'s Servants. As for the Sentence which was laid upon him, and the Impriſonment, that was the Act of the High-Commiſſion, not mine. Then he ſays, That my Hand was firſt in the Warrant for his Commitment. And ſo it was to be of courſe.

2. The ſecond Witneſs was *Sarah Wayman*. She ſays, That he refuſed to take the Oath. Therefore he was not committed for being Mr. *Prynn*'s Servant. She ſays, That for refuſing the Oath, he was threatened he ſhould be taken *pro Confeſſo:* And that when one of the Doctors reply'd, *That could not be done by the Order of the Court*, I ſhould ſay, *I would have an Order by the next Court Day*. 'Tis manifeſt in the Courſe of that Court, that any Man may be taken *pro Confeſſo*, that will not take the Oath, and anſwer. Yet ſeeing how that Party of Men prevailed, and that one Doctor's doubting might breed more difference, to the great ſcandal and weakning of that Court; I publickly acquainted his Majeſty and the Lords with it: who were all of opinion, that if ſuch Refuſers might not be taken *pro Confeſſo*, the whole Power of the Court was ſhaken. And hereupon his Majeſty ſent his Letter under his Signet, to command us to uphold the Power of the Court, and to proceed. She ſays farther, That he deſired the ſight of his Articles, which was denied him. It was the conſtant and known Courſe of that Court, that he might not ſee the Articles till he had taken the Oath, which he refuſed to do.

3. The third Witneſs was one *Flower*. He agrees about the buſineſs of taking him *pro Confeſſo:* But that's anſwer'd. He adds, That there was nothing laid to his charge; and yet confeſſes, that *Wickens* deſired to ſee the Articles that were againſt him. This is a pretty Oath: There were Articles againſt him, which he deſired to ſee, and yet there was nothing laid to his Charge.

4. Then was produced his Majeſty's Letter ſent unto us. And herein the King requires us by his Supreme Power Eccleſiaſtical to proceed, *&c.* We had been in a fine caſe, had we diſobeyed this Command. Beſides, my Lords, I pray mark it, we are enjoined to proceed by the King's Supreme Power Eccleſiaſtical; and yet it is here urged againſt me, that this was done to bring in Popery. An excellent new way of bringing in Popery by the King's Supremacy. Yea, but they ſay, I ſhould not have procured this Letter. Why? I hope I may by all lawful ways preſerve the Honour and juſt Power of the Court in which I ſat. And 'tis expreſſed in the Letter, that no more was done, than was agreeable to the Laws and Cuſtoms of the Realm. And 'tis known that both an Oath, and a taking *pro Confeſſo* in point of refuſal, are uſed both in the *Star-Chamber* and in the *Chancery*.

5. The laſt Witneſs was Mr. *Prynn*; who ſays, that his Man was not ſuffered to come to him, during his Soreneſs, when his Ears were cropt. This Favour ſhould have been aſked of the Court of *Star-Chamber*, not of me. And yet here is no Proof that I denied him this, but the bare Report of him, whom he ſays he employed. Nor do I remember any Man's coming to me about it.

III. The third Charge followed; it was concerning ſtopping of Books from the Preſs, both old and new, and expunging ſome things out of them.

1. The firſt Inſtance was about the *Engliſh* Bibles with the *Geneva* Notes. The Bibles with thoſe Notes were tolerated indeed both in Queen *Elizabeth*'s and King *James*'s time; but allowed by Authority in neither. And King *James* ſaid plainly, *That he thought the* Geneva *Tranſlation was the worſt, and many of the Notes very partial, untrue, ſeditious, and ſavouring too much of dangerous and traitorous Conceits:* and gave Inſtance. This Paſſage I then read to the Lords: and withal told them, That now of late theſe Notes were more commonly uſed to ill Purpoſes than formerly, and that That was the Cauſe why the High-Commiſſion was more careful and ſtrict againſt them than before.

Conference at Hampton-Court, *p.* 47.

Here *Michael Sparks* the elder came in as Witneſs, and ſaid, He was called into the High-Commiſſion about theſe Books: but he confeſſes, it was not only for them. He ſays, *The Reſtraint of thoſe Bibles was for the Notes:* but he adds, *as he ſuppoſes*. And his Suppoſal is no Proof. Beſides, he might have added here alſo, that the Reſtraint was not for the Notes only: for by the numerous coming over of Bibles, both with and without Notes, from *Amſterdam*, there was a great and a juſt Fear conceived, that by little and little Printing would quite be carried out of the Kingdom. For the Books which came thence, were better Print, better bound, better Paper, and, for all the Charges of bringing, ſold cheaper. And would any one buy a worſe Bible dearer, when he might have a better cheaper? And to preſerve Printing here at home, as well as the Notes, was the cauſe of ſtricter looking to thoſe Bibles. And this appears by a Letter of Sir *William Boſwell*'s, his Majeſty's Agent in the *Low-Countries*; the Letter written to me, and now produced againſt me: but makes for me, as I conceive. For therein he ſends me word of two Impreſſions of the Bible in

Engliſh, one with Notes, and the other without; and deſires me to take care to regulate this Buſineſs at home. What ſhould I do? Should I ſleep upon ſuch Advertiſements as theſe, and from ſuch a Hand? Eſpecially ſince he ſends word alſo, that Dr. *Amyes* was then printing of a Book wholly againſt the Church of *England*. So my Care was againſt all Underminings, both at home and abroad, of the eſtabliſhed Doctrine and Diſcipline of the Church of *England*, for which I am now like to ſuffer. And I pray God that Point of *Arminianiſm*, *Libertas Prophetandi*, do not more Miſchief in ſhort time, than is expreſſible by me.

2. The ſecond Inſtance was about the new Decree of the *Star-Chamber*, concerning Printing. Four Articles of this Decree were read, namely, the 1ſt, 2d, 18th, 24th. What theſe are, may be ſeen in the Decree: And as I think that whole Decree made *Anno* 1637, uſeful and neceſſary; ſo, under your Lordſhips favour, I think thoſe four Articles as neceſſary as any.

Mr. *Waly* and Mr. *Downes*, two Stationers, Witneſſes in this Particular, ſay, That they deſired ſome Mitigation of the Decree, and that Judge *Bramſton* ſaid, he could not do it without me. I ſaw my Lord Chief Juſtice *Bramſton* here in the Court but the other Day; why was not he examined, but theſe Men only, who oppoſe all regulating of the Preſs that oppoſes their Point? And ſure that grave Judge meant, he could not do it alone without the Conſent of the Court. Or if he would have me conſulted, it was out of his judicious Care for the Peace of this Church, almoſt preſſed to death by the Liberty of Printing. The chief Grievance they expreſſed againſt the new licenſing of Books, was only for Matter of Charges; but that is provided for in the Eighteenth Article. And Mr. *Downes* takes a fine Oath, which was, That he makes no doubt, but that all was done by my Direction; and yet adds, that he cannot ſay it. So he ſwears that which, himſelf confeſſes, he cannot ſay. And manifeſt it is in the Preface, that this Decree was printed by Order of the Court, and ſo, by their Command, ſent to the *Stationers-Hall*: And the end of it was to ſuppreſs ſeditious, ſchiſmatical, and mutinous Books, as appears in the firſt Article.

Frigidè dictum. W. S. A. C.

3. The third Inſtance was, That I uſed my Power to ſuppreſs Books in *Holland*. This was drawn out of a Letter which *John le Mare*, one of the prime Preachers in *Amſterdam*, writ to me; expreſſing therein, That ſince the Proclamation made by the States, no Man durſt meddle with printing any ſeditious Libels againſt either the State or Church of *England*. Where's the Fault? For this Gentleman did a very good Office to this Kingdom and Church, in procuring that Proclamation: For till this was done, every diſcontented Spirit could print what he pleaſed at *Amſterdam*, againſt either. And if he had any Direction from me about it (which is not proved), I neither am, nor can be ſorry for it. And the Fear which kept Men in from printing, proceeded from the Proclamation of the States, not from any Power of mine.

4. The fourth Inſtance was in the *Book of Martyrs*. But that was but named to credit a baſe Buſineſs, an Almanack made by one Mr. [a] *Genebrand*; in which he had left out all the Saints, Apoſtles and all, and put in thoſe which are named in Mr. *Fox*, and yet not all of them neither; for he had left out the ſolemn Days, which are in *Fox*, as *Feb*. 2. *Feb*. 25. *Mar*. 25. And *Cranmer* tranſlated to *Mar*. 23.

In this Particular Mr. *Genebrand*, Brother to this Almanack-Maker, witneſſeth, that the Queen ſent to me about this new Almanack. If her Majeſty did ſend to me about it (as it is probable ſhe would diſdain the Book), is that any Crime in me? Could I prevent her Majeſty's ſending, who could not know ſo much as that ſhe would ſend? He ſays, His Brother was acquitted in the High-Commiſſion, but charged by me that he made a Faction in the Court. If I did ſay ſo, ſurely, my Lords, I ſaw ſome practiſing by him in this new-found Way. He ſays, The Papiſts bought up a great Number of theſe Almanacks, and burnt them. It ſeems he could not hinder that, nor I neither; unleſs it ſhall not be lawful for a Papiſt to buy an Almanack: for when he hath bought him, he may burn him if he pleaſe.

But ſince the *Book of Martyrs* was named, I ſhall tell your Lordſhips how careful I was of it. It is well known how eaſily Abridgements, by their Brevity and their Cheapneſs, in ſhort time work out the Authors themſelves. Mr. *Young* the Printer laboured me earneſtly and often for an *Abridgment of the Book of Martyrs*; but I ſtill withſtood it (as my Secretary here preſent can teſtify) upon theſe two Grounds: The one, leſt it ſhould bring the large Book itſelf into diſuſe; and the other, leſt if any material Thing ſhould be left out, that ſhould have been charged as done of purpoſe by me, as now I ſee it is in other Books. And I humbly pray your Lordſhips caſt your Eyes upon the Frontiſpiece of the *Book of Martyrs*, printed *Anno* 1642. ſince this Parliament began, and when I was ſafe enough from having any hand in the Buſineſs, and there you ſhall ſee as dangerous Pictures as have been charged upon me, or any my Chapel-Windows.

Upon occaſion of Mr. *Genebrand*'s Calendar, Mr. *Prynn* took occaſion to tell the Lords, That I had made Notes upon the Calendar in the *Miſſal*. I deſired they might be read: it was thought too tedious. They were nothing but ſome Additions of my own reading to the Occurrences on ſome Days. And becauſe the Calendar in the *Miſſal* was open and large, I thought fit to write them there.

5. The fifth Inſtance is in Dr. *Pocklington*'s Cenſure of [b] .... and of *Flaccius Illyricus*; and that this Book was licenſed by my Chaplain Dr. *Bray*; and he was cenſured in this Honourable Houſe for that and like Slips of his. Then it was inferred at the Bar, That it muſt be taken as my Act, if it were done by my Chaplain: But Inferences are no ſworn Proof. And, I conceive, no Man can by Law be puniſhed criminally for his Servant's Fact, unleſs there be Proof that he had a hand in it. Then it was urged, but without any Proof too, that Dr. *Pocklington* was preferred by me. To which I ſhall anſwer when Proof is made; and if I had, 'tis far enough from Treaſon.

6. The next Inſtance was about the calling in of *Thomas Beacon*'s Diſputation of the Maſs. The Witneſs Mr. *Prynn*. He ſays, The Book was licenſed, and that a Papiſt thereupon ſaid, Doth my Lord of *Canterbury* licenſe ſuch Books? That I was informed of theſe Words, and the Book called in the next Day. Firſt, Mr. *Prynn* is ſingle in this part of the Teſtimony for the Words. Secondly, if any Papiſt did ſay ſo, it was not in my Power to ſtop his Mouth; and they which licenſe Books muſt endure many and various Cenſures, as the Readers of them ſtand affected. Thirdly, If any Papiſt did ſo ſpeak, I have Reaſon to think it was to do me a Miſchief, as much as in him lay. Fourthly, This is a very bold Oath; for he ſwears, that I was informed of theſe Words. He was not preſent to hear it, and then he can have it but by Hearſay; and no Religion teaches him to ſwear that for Truth, which he doth but hear. Laſtly, The Book was called in, becauſe it was ſlipt out contrary to the late Decree for Printing. Yea, but Mr. *Prynn* ſwears, and ſo doth *Michael Sparks* the other Witneſs, That the Book was ſent to the Printer before the Decree. But Firſt, *Sparks*'s Oath is uncertain; for he ſays, Mr. *Prynn* ſent him the Book before the Decree; and then by and by after ſays, it was about that time. Now the Book is ſomewhat large, ſo that it might be ſent him before the Decree, and yet not be printed till after, and that a good Space too. And, Secondly, Mr. *Prynn* himſelf confeſſes, the Book was ſent when the Decree was in Agitation.

7. The ſeventh Inſtance was about *Arminianiſm*, as maintained by me againſt the Declarations of both Houſes of Parliament, and of King *James*, concerning *Vortius* and *Berſtius*. Firſt, I have nothing to do to defend *Arminianiſm*, no Man having yet charged me with the abetting any Point of it. Secondly, King *James*'s Declaration is very learned: But under Favour, he puts a great deal of Difference between *Vorſtius* and *Bertius*; and his Majeſty's Opinion is clear with the Article of the Church of *England*, and ſo expreſſed by himſelf; and to which I ever conſented. And the Paſſage in the Conference at *Hampton-Court* was then read to the Lords: and yet for the Peace of Chriſtendom, and the ſtrengthening of the Reformed Religion, I do heartily wiſh theſe Differences were not purſued with ſuch Heat and Animoſity, in regard that all the *Lutheran Proteſtants* are of the ſame Opinions, or with very little Difference from thoſe which are now called *Arminianiſm*.

Confer. at Ham. Court, *p*. 29, 30.

And here comes in *Michael Sparks*, who ſays, He was called into the High-Commiſſion about a Book of Biſhop *Carleton*'s. I cannot punctually remember all Particulars ſo long ſince; but he confeſſes the Buſineſs was in the High-Commiſſion, and ſo not ſingly chargeable againſt me. Beſides, he is ſingle in this Buſineſs. He ſays, He was Eleven Years in the High-Commiſſion, and never ſentenced. 'This is more than I know: But if 'it be ſo, he had better luck than ſome honeſter Men; for a bitterer Ene- 'my, to his Power, the Church-Government never had.' He was Mr. *Prynn*'s Printer. He ſays, I was a Dean then, and he thinks of *Hereford*. I was never Dean of *Hereford*: But howſoever, this is a dangerous Oath; let him think of it. He ſwears that I was a Dean then, and a High-Commiſſioner, or elſe what had I to do in the Buſineſs? Now it is well known I was never a High-Commiſſioner, till I had been a Biſhop ſome Years. For the Book itſelf, *Sparks* ſays nothing what was the Argument of it; but (ſo far as I remember) it was expreſly againſt the King's Declaration. 'And ſo I anſwered Mr. *Browne*, when he ſummed up the Evidence 'againſt me in the Houſe of Commons. And tho' in his Reply he ſeemed 'to deny this, yet I remember no Proof he brought for it.'

8. The laſt Inſtance was pregnant, and brought forth many Particulars. 1. As Firſt, Dr. *Featly*'s Parallels againſt Biſhop *Mountague*: but this was ſtill-born; at leaſt it ſays nothing of me. 2. Secondly, Mr. *Prynn*'s Perpetuity, and againſt Dr. *Coſens*, both burnt. But he doth not ſay abſolutely burnt, but as he is informed; and he may be informed amiſs. And howſoever he ſays, it was done by the High-Commiſſion, not by me. 3. Thirdly, Some Sheets of Dr. *Succliff*'s Book prohibited the Preſs at *Oxford*. I hope *Oxford* is able to give an Account for itſelf. And whereas it was here ſaid at the Bar, They hoped I would ſhew ſome repreſſing of the contrary Part; I would ſatisfy their Hopes abundantly, could I bring Witneſſes from *Oxford*, how even and ſteady a Hand I carried to both Parts. 4. Fourthly, Mr. *Burton* queſtioned about his Book called, *The Seven Vials*: But himſelf confeſſes, That upon Sir *Henry Martin*'s Information, that, as that Cauſe was laid, the High-Commiſſion had no Power in it, he was diſmiſſed. 5. Fifthly, That about his Book, intitled, *Babel, no Bethel*, he was queſtioned at a Court out of Term. This was very uſual, whenſoever the Court was full of Buſineſs, to hold one Court-day out of Term. This is warranted by the Commiſſion; and Warning of it was always publickly given the Court-day before, that all whom it concerned might take notice of it, and provide themſelves. 6. Sixthly, He ſays he was there railed at by Biſhop *Harſnet*. 'Tis more than I know that Biſhop *Harſnet* railed at him; but if he did, I hope I am not brought hither to anſwer all Men's Faults. 7. Seventhly, He ſays, He claimed the Petition of Right, yet was committed. This is more than I know or believe; yet if it were ſo, it was done by the High-Commiſſion Court, not by me. 8. He ſays next, That he could never be quiet. But I am ſure, my Lords, the Church for divers Years could never be in quiet for him and his Aſſociates. 9. Laſtly, They ſay, Some Paſſages againſt *Arminianiſm* were left out of two Letters; one of Biſhop *Davenant*'s, and the other of Biſhop *Hall*'s, ſent to be printed. Firſt, Here's no Proof at all offer'd, that I differ'd in any thing from the Doctrine expreſſed in thoſe Letters. And, Secondly, for the leaving out of thoſe Paſſages, it was (it ſeems) done to avoid kindling of new Flames in the Church of *England*. And it appeared on the other Side of the Paper, which was produced againſt me, and ſo read to the Lords, that theſe Paſſages were left out by the expreſs Order from thoſe Biſhops themſelves, under Biſhop *Hall*'s own Hand, and with Thanks to Dr. *Turner*, then my Chaplain, for his Letter to them. And here this Day's Buſineſs ended; and I received Command to attend again the Twentieth of the ſame Month.

The Fifteenth Day of my Hearing.

THurſday, *June* 20, 1644. This Day I came again to the Houſe. A Day or two before, as now alſo, the Landing-Place at *Weſtminſter* was not ſo full of People; and they which were there, much more civil towards me than formerly. My Friends were willing to perſuade me, that my Anſwer had much abated the Edge of the People, ſaving from the violent and factious Leaders of the Multitude, whom it ſeems nothing would ſatisfy but my Life (for ſo I was after told in plain Terms by a Man deeply intereſted in them); when I preſently ſaw *Quaterman* coming towards me;

[a] *His Name was* Gellibrand. W. S. A. C.

[b] *I believe the Name here wanting is Mr.* Fox *the Martyrologiſt*. W. S. A. C.

me; who, ſo ſoon as he came, fell to his wonted railing, and aſked aloud, *What the Lords meant, to be troubled ſo long and ſo often with ſuch a baſe Fellow as I was? They ſhould do well to hang me out of the way.* I heard the Words with Grief enough, and ſo left them and him in the Hands of God. My Servants were earneſt to have me complain to the Lords. I remembred my late Complaint about the Pamphlets had no Redreſs, and ſo forbare it. They notwithſtanding, out of their Zeal, complained to Mr. Lieutenant of the *Tower*, who preſently went forth, and ſaid he would ſchool him; but I hearkened no more after it.

When I came to the Bar, Mr. *Nicolas* began with great Violence, and told the Lords, the Buſineſs grew higher and higher againſt me. What the Buſineſs did, will after appear; but I am ſure he grew higher and higher: and from this time forward, beſides the Violence of Expreſſion, gave me ſuch Language, as no Chriſtian would give a Jew. But God, I humbly thank him, bleſſed me with Patience; and ſo I made my Ears obedient. That which made him ſay *the Buſineſs grew higher and higher*, was this: Upon my often calling to have the Oaths at the Coronation of King *James* and King *Charles* compared, ſome of them repaired again to my Study at *Lambeth*, to ſearch for all ſuch Copies of Coronation-Books as could there be found. In this diligent and curious Search (' for Mr. *Prynn*'s Malice ' made it') they found ſome Papers concerning Parliaments, no other (I praiſe God for it) than ſuch as with indifferent Conſtruction might (I hope) well paſs; eſpecially, conſidering what Occaſion led me, and what Command was upon me. And, as I have been told by able and experienced Men, they would have been nothing, had they been found in any but this troubleſome and diſtracted time about the Rights of Parliaments (as 'tis ſaid). Howſoever, I was moſt unfortunate they ſhould be now found; and I had not left them a Being, but that I verily thought I had deſtroyed them long ſince: But they were unhappily found among the Heaps of my Papers. And ſo,

I. An Anſwer to the Remonſtrance made *June* 17, 1628. (which is ſixteen Years ſince) was made the firſt Charge againſt me.

II. And the ſecond Charge was, a Paper concerning a *Declaration*, *Jan.* 28, 1628. To both which I then anſwered; but becauſe theſe are urged more than once, to help fill the People with new Clamour, and becauſe they are more cloſely preſſed againſt me at the laſt Day of my Hearing; and becauſe Mr. *Browne*, in his ſummary Charge, laid and charged all theſe Papers together; to avoid tedious Repetition, I will alſo make my whole and entire Anſwer together, when that time comes.

III. The third Charge of this Day was, a Letter of a Jeſuit to his Superior, found in my Study, dated *March* 1628. Let the Letter be dated when it will, I hope the Archbiſhop may get and keep the Letters of any Jeſuits or others. How ſhall I be able to know or prevent their Plots upon the Religion by Law eſtabliſhed, if this may not be done? Yet this I deſire all Men to take notice of, that this Letter was not directed to me. I was then Biſhop of *London*: The Letter was found in a Search. But when by all poſſible Care taken by the High-Commiſſion, the Author could not be found, I had (as I humbly conceive) great Reaſon to keep it. And I then humbly deſired the whole Letter might be read. There was in it, That *Arminianiſm* (as 'twas urged) was their Drug, and their Plot againſt us, *&c.* The Jeſuit ſeeing a Fire kindling about theſe Opinions, might write what he pleaſed to help on his Cauſe: Yet this Drug, which he ſays is theirs, is the received Opinion of all the *Lutherans*, and they too Learned Proteſtants to uſe their Drugs. And if it be their Drug, why do the *Dominicans* ſo condemn it? Nay, why doth the *Maſter of the Sentences*, and the School after him, for the moſt, determine rigidly againſt it? And whereas 'tis ſaid, That theſe Men had Inſtruments at the Duke's Chamber-Door; that belongs not to me, I was not Porter there. As for that Power which I had (called by Mr. *Nicolas* the Command of his Ear), I uſed it as much as I could to ſhut ſuch Inſtruments thence. Beſide, 'tis barely ſaid, no Proof at all offer'd, that ſuch Inſtruments were about the Duke's Chamber-Door. Other Papers were found in my Study, above ſixty at leaſt, expreſſing my continued Labours for ſome Years together, to reconcile the divided *Proteſtants* in *Germany*, that ſo they might go with united Forces againſt the *Romaniſts*. ' Why are not theſe produced too? ' Would not Chriſtianity and Juſtice have my Innocence cleared as well ' as my Faults accuſed?'

IV. The fourth Charge was Biſhop *Mountague*'s Preferment. The Parliament (they ſay) called him in queſtion, and the King called in his Book; yet in Affront to the Parliament, that he was preferred by me. No, it was then publickly known in Court (whether now remembered or no, I cannot tell) that he was preferred by my Lord Duke; but being a Church-Buſineſs, the King commanded me to ſignify his Pleaſure to the Signet-Office: And the Docket (which is all the Proof here made) mentions him only by whom the King's Pleaſure is ſignified, not him that procures the Preferment: So the Docket in this Caſe is no Proof at all.

V. The fifth Charge was a Paper, intitled, *Conſiderations for the Church.* Three Exceptions againſt them. *The Obſervation of the King's Declaration*, Art. 3. *The Lecturers*, Art. 5. *And the High-Commiſſion and Prohibitions*, Art. 10, 11. The Paper I deſired might be all read: nothing in them againſt either Law or Religion. And for Lecturers a better Care taken, and with more Eaſe to the People, and more Peace to the Church, by a Combination of conformable neighbouring Miniſters, in their Turns, and not by ſome one humorous Man, who too often miſleads the People. Secondly, My Copy of *Conſiderations* came from Archbiſhop *Harſnett*, in which ſome four Expreſſion concerning *Emanuel* and *Sidney* Colleges in *Cambridge*, which the King in his Wiſdom thought fit to leave out. The King's Inſtructions upon theſe *Conſiderations* are under Mr. *Baker*'s Hand, who was Secretary to my Predeceſſor; and they were ſent to me to make Exceptions to them, if I knew any, in regard of the Miniſters of *London*, whereof I was then Biſhop. And by this, that they were thus ſent unto me by my Predeceſſor, 'tis manifeſt, that this Account from the ſeveral Dioceſes to the Archbiſhop, and from him to his Majeſty once a Year, was begun before my time. Howſoever, if it had not, I ſhould have been glad of the Honour of it, had it begun in mine. For, I humbly conceive there cannot be a better or a ſafer Way to preſerve Truth and Peace in the Church, than that once a Year every Biſhop ſhould give an Account of all greater Occurrences in the Church to his Metropolitan, and he to the King: Without which, the King, who is the Supreme, is like to be a great Stranger to all Church Proceedings.

I ſuppoſe theſe Conſiderations *are thoſe publiſhed in* Prynn's *Compl. Hiſt. p.* 287. W. S. A. C.

VI. The ſixth Charge was about Dr. *Silthorp*'s Sermon, That my Predeceſſor oppoſed the printing of it, and that I oppoſed him, to affront the Parliament. Nothing ſo, my Lords: Nothing done by me to oppoſe, or affront the one or the other. This Sermon came forth when the Loan was not yet ſettled in Parliament. The Lords, and the Judges, and the Biſhops, were ſome for, ſome againſt it. And if my Judgment were erroneous in that Point, it was miſled by Lords of great Honour and Experience, and by Judges of great Knowledge in the Law. But I did nothing to affront any. 'Tis ſaid, that I inſerted into the Sermon, *That the People may not refuſe any Tax that is not unjuſtly laid.* I conceive nothing is juſtly laid in that kind but according to Law, God's and Man's: And I dare not ſay, the People may refuſe any thing ſo laid. For *Jus Regis*, the Right of a King, (which is urged againſt me too) I never went farther than the Scriptures lead me; nor did I ever think that *Jus Regis*, mentioned 1 *Sam.* viii. is meant of the ordinary and juſt Right of Kings, but of that Power which ſuch as *Saul* would be, would aſſume unto themſelves, and make it Right by Power, 1 *Sam.* viii. 12.

Then they ſay I expunged ſome Things out of it: As, Firſt, the *Sabbath*, and put inſtead of it the *Lord's-Day*. What's my Offence? *Sabbath* is the *Jews* Word, and the *Lord's-Day* the *Chriſtians*. Secondly, About evil Counſellors, to be uſed as *Haman*. The Paſſage (as there expreſſed) was very ſcandalous, and without juſt Cauſe, upon the Lords of the Council. And they might juſtly have thought I had wanted Diſcretion, ſhould I have left it in. Thirdly, That I expunged this, *That Popery is againſt the firſt and the ſecond Commandment.* If I did it, it was becauſe it is much doubted by Learned Men, whether any thing in Popery is againſt the firſt Commandment, or denies the Unity of the God-head. And Mr. *Perkins* (who charges very home againſt Popery) lays not the Breach of the firſt Commandment upon them. ' And when I gave Mr. *Browne* ' this Anſwer; in his laſt Reply he aſked why I left out both? Why, I ' did it becauſe its being againſt the ſecond is common and obvious, ' and I did not think it worthy the ſtanding in ſuch a Sermon, when it ' could not be made good againſt the firſt.'

But they demanded, Why I ſhould make any Animadverſions at all upon the Sermon? It was thus: The Sermon being preſented to his Majeſty, and the Argument not common, he committed the Care of printing it to Biſhop *Mountain*, the Biſhop of *London*, and four other; of which I was one. And this was the reaſon of the Animadverſions now called mine; as alſo of the Anſwer to my Predeceſſor's Exceptions (now charged alſo), and called mine. But it was the Joint-Anſwer of the Committee. And ſo is that other Particular alſo, in which the whole Buſineſs is left to the Learned in the Laws: For tho' the Animadverſions be in my Hand, yet they were done at and by the Committee, only I being puny Biſhop, was put to write them in my Hand.

VII. The ſeventh Charge was Dr. *Manwaring*'s Buſineſs and Preferment. It was handled before, only reſumed here to make a noiſe, and ſo paſſed it over.

VIII. The eighth Charge was concerning ſome Alterations in the Prayers made for the Fifth of *November*, and in the Book for the Faſt, which was publiſhed *Anno* 1636. and the Prayers on the *Coronation-Day*.

1. Firſt, For the Faſt-Book: The Prayer mentioned was altered, as is expreſſed; but it was by him that had the ordering of that Book to the Preſs, not by me. Yet I cannot but approve the Reaſon given for it, and that without any the leaſt Approbation of Merit: For the Abuſe of Faſting, by thinking it meritorious, is the Thing left out: whereas in this Age and Kingdom, when and where ſet Faſtings of the Church are cried down, there can be little fear of that erroneous Opinion of placing any Merit in Faſting.

2. Secondly, For the Prayers publiſhed for the Fifth of *November* and *Coronation-Day*; the Alterations were made either by the King himſelf, or ſome about him when I was not in Court: And the Book ſent me, with a Command for the printing, as there altered. I made ſtay till I might wait upon his Majeſty. I found him reſolved upon the Alterations; nor in my Judgment could I juſtly except againſt them. His Majeſty then gave Warrant to the Books themſelves, with the Alterations in them; and ſo by his Warrant I commanded the Printing. And I then ſhewed both the Books to the Lords, who viewed them, and acknowledged his Majeſty's Hand, with which, not his Name only, but the whole Warrant was written.

And here I humbly deſired three Things might be obſerved, and I ſtill deſire it. Firſt, With what Conſcience this Paſſage out of my Speech in the [a] *Star-Chamber* was urged againſt me, (for ſo it was, and fiercely by Mr. *Nicolas*) to prove that I had alter'd the Oath at the King's Coronation, becauſe the Prayers appointed for the Anniverſary of the Coronation were alter'd. ' Which is abſolute ' Nonſenſe.' Secondly, He charged me that the Word *Antichriſtian* was left out. But that is viſibly untrue: for it is left in. Thirdly, That tho' it be in, yet that the Alteration takes it off from the Papiſt, as alſo their Rebellion. Neither: For the Change is this: *That Antichriſtian Sect*, alter'd into the *Antichriſtian Sect of them which*, &c. and, *whoſe Religion is Rebellion*, alter'd into *who turn Religion into Rebellion*. By which it is manifeſt, that the Alteration takes off neither Imputation from the Papiſt, but moderates both. And for aught I yet know, 'tis neceſſary it ſhould: For if their Religion be Rebellion, ſee what it will produce. Is not this the Syllogiſm? The Religion of the Papiſt is Rebellion; but Chriſtianity is the Religion of the Papiſt: Therefore Chriſtianity is Rebellion. I may not inlarge; but you may ſee more, if you pleaſe, in my Speech [b] in the *Star-Chamber*. ' And when Mr. *Browne* in the ' Sum of his Charge preſſed theſe Alterations hard againſt ' me, he did not ſo much as mention that I had the King's both War- ' rant and Command to all that I did in that Particular. And beſides ' urged this as a great Innovation; becauſe the Prayers mentioned had ' continued unaltered for the ſpace of above thirty Years; not remem- ' bring therewhile, that the Liturgy of the Church, eſtabliſhed by Act of ' Parliament, muſt be taken away, or alter'd, tho' it hath continued above ' fourſcore. Nay, and Epiſcopacy muſt be quite aboliſhed, tho' it have con- ' tinued in the Church of Chriſt above ſixteen hundred.'

[a] *Pag.* 32.

[b] *Pag.* 36.

IX. The ninth Charge was from Sir *Edward Hungerford*, who came to *Lambeth* to have a little Book licenſed at the Preſs. The Author was Sir *Anthony Hungerford*; whether Sir *Edward*'s Grandfather or his Uncle, I remember not the Relation. He ſays he came to my Chaplain Dr. *Bray* to licenſe it; and that Dr. *Bray* told him there were ſome harſh Phraſes in it, which were better left out, becauſe we were upon a way of winning the Papiſts. Firſt, I hope I ſhall not be made anſwerable for my Chaplain's Words too. And Secondly, I hope there is no harm in winning the Papiſts to the Church of *England*; eſpecially, if ſo eaſy a Cure as avoiding harſh Language would do it. He ſays, my Chaplain expreſſed a diſlike of *Guicciardin*'s Cenſure of Pope *Alexander* the Sixth. Sure, if the Cenſure be falſe, he had reaſon to except againſt it: If true, yet to publiſh ſuch an unſavoury Buſineſs to the common People.—He ſays, he came and complained to me; and that I told him I was not at leiſure, but left it to my Chaplain. So the Charge upon me was, that my Chaplain was in an Error concerning this Book, and I would not redreſs it. To this I anſwered, Firſt, That my Chaplain was dead; and I not knowing the Reaſons which moved him to refuſe licenſing this Book, can neither confeſs him to be in an Error, nor yet juſtify him. Secondly, for my own refuſing to meddle with it, Sir *Edward* took me in a time of Buſineſs, when I could not attend it. Thirdly, If I had abſolutely refuſed it, and left it to my Chaplain, I had done no more than all my Predeceſſors did before me. And Dr. *Featly* then witneſſed to the Lords, that Archbiſhop *Abbot*, my immediate Predeceſſor, and to whom the Doctor was Houſhold Chaplain, would never meddle with licenſing Books, but ever referred them to his Chaplains. And Dr. *Mocket*, another of his Chaplains (well known to Dr. *Featly*), ſuffered for a Book ſharply; yet not one word ſaid to my Predeceſſor about it. Fourthly, As the Liberty of the Preſs is in *England*, and of the Books which are tendered to the Preſs, the Archbiſhop had better grind than take that Work to his own Hands, eſpecially conſidering his many and neceſſary Avocations. Laſtly, No Man ever complained to me in this kind, but this Gentleman only. So it is one only ſingle Offence, if it be any. But how this, or the reſt, ‘ ſhould be Trea-‘ ſon againſt Sir *Edward Hungerford*, I cannot yet ſee. And ſo I anſwered ‘ Mr. *Browne*, who in his ſummary Charge forgot not this. But Mr. ‘ *Nicolas* laid load upon me in his Reply, in ſuch Language as I am wil-‘ ling to forget.’

X. The tenth Charge was out of a Paper of Conſiderations to Dr. *Potter*, about ſome few Paſſages in his Anſwer to a Book intitled *Charity Miſtaken.* The Buſineſs this: Dr. *Potter* writ to me for my Advice. I uſed not to be peremptory; but put ſome few Things back to his farther Conſideration: Of which three were now charged upon me. The firſt was, he uſed this Phraſe, *Believe in the Pope.* I deſired him to conſider of *(in)*. And in this I yet know not wherein I offend. The ſecond was this Phraſe, *The Idol of Rome.* I adviſed him to conſider this Phraſe too, that Men might not be to ſeek what that Idol was. ‘ And here Mr. *Nicolas* cried ‘ out with Vehemency, That every Boy in the Street could tell the Pope ‘ was the Idol. I had not Dr. *Potter*'s Book now at Hand, and ſo could ‘ not be certain in what Senſe the Doctor uſed it; but elſe, as many at ‘ leaſt think the Maſs the Idol of *Rome*, as the Pope; unleſs Mr. *Nicolas*'s ‘ Boys in the Streets think otherwiſe, and then I cannot blame him for ‘ following ſuch mature Judgments.’ The third was, that I bid him conſider whether the Paſſage, *p.* 27. (as I remember) did not give as much Power to the Parliament in Matter of Doctrine, as the Church. ‘ But my ‘ Anſwer to this I ſhall put off to the Charge againſt me concerning Par-‘ liaments, becauſe there Mr. *Browne* began with this. The two former ‘ he charged alſo, and I anſwered them as before. But he omitted, that I ‘ obtained of the Lords the reading of Dr. *Potter*'s Letter to me; by which ‘ he drew from me thoſe Things which I determined not, but only put to ‘ his ſecond Thoughts and Conſideration. In which way (I humbly con-‘ ceive) I cannot be in Crime, tho' I were in Error. Here ended the ‘ Buſineſs of this Day, and I was ordered to attend again *June* 27.’

The Sixteenth Day of my Hearing.

I. THURSDAY, *June* 27, 1644. I appeared this Day again: And the firſt Charge laid againſt me, was my Chaplain Dr. *Bray*'s Expungings out of Dr. *Featly*'s Sermons. The ſame Charge *ad verbum* which was before; and I give it the ſame Anſwer: Theſe Repetitions of the ſame Things being only to increaſe Clamour, and to fill more Men's Ears with it.

II. The ſecond Charge was certain Expunctions of ſome Things againſt the Papiſts in Dr. *Clark*'s Sermons. The Witneſs which ſwore to the Paſſages left out was one Mr. *White*, a Miniſter, and it ſeems ſome near Acquaintance of Dr. *Clark*'s. But, Firſt, this Witneſs is ſingle. Secondly, he brought only a Paper, in which he had written down what was expunged; but Dr. *Clark*'s Sermons he brought not with it: So 'tis not impoſſible he might be miſtaken. Howſoever, I not having the Book, could not poſſibly make an abſolute and a perfect Anſwer. Thirdly, this Witneſs confeſſes that Dr. *Weeks*, then Chaplain to my Lord of *London*, had the view of Dr. *Clark*'s Sermons, and took Exceptions againſt ſome Paſſages, as well as my Chaplain Dr. *Haywood* did. So it ſeems there was Cauſe for it. Fourthly, I anſwer, That for this, and for all other of like nature, my Chaplain muſt anſwer for his own Act, and not I. He is living, and an able Man: I humbly deſire he may be called to his Account. For 'tis not poſſible for me to tell your Lordſhips upon what Grounds he did expunge theſe many and different Paſſages, which are inſtanced againſt me. Laſtly, In all the Paſſages of Dr. *Clark*'s Sermons, it is not any where diſtinguiſhed which were expunged by my Chaplain, and which by Dr. *Weeks*. So that the Charge in that behalf is left very uncertain.

For the Paſſages themſelves, as they are many, ſo they are ſuch as may eaſily be miſtaken, the moſt of them. And whether Dr. *Clark* handled them in ſuch manner as was not juſtifiable, either againſt *Arminius* or the Papiſts, cannot poſſibly be known, till each Place in the Book be examined for the Thing, and my Chaplain Dr. *Haywood* for the Meaning. ‘ This ‘ made a great Noiſe in Mr. *Browne*'s ſummary Charge againſt me: He ‘ alledging, that Two-and-twenty Paſſages about Points of Popery were ‘ daſhed out of Dr. *Clark*'s Sermons. To which I anſwered, That I con-‘ ceived my Chaplain would be able to make it good, there were Two ‘ hundred left in for Two-and-twenty left out; and that they which were ‘ left out, were not ſome way or other juſtifiable againſt the Papiſts, as ſet ‘ down and expreſſed by him. And if ſo, they are better out than in: ‘ For we gain nothing by urging That againſt the Papiſts, which, when it ‘ comes to the Touch, cannot be made good againſt them.’

One Paſſage is here added out of Dr. *Featly*'s Sermons, *Pag.* 225. where he inveighs againſt too much imbelliſhing and beautifying the Church, and not the Souls of Men, *&c.* Firſt, If there be not a care to beautify the Soul, let Men profeſs what Religion they will, 'tis a juſt Exception; and I believe no Fault found with that. But, Secondly, for the over-much beautifying of the Church, 'tis a Point that might be well left out. Little Neceſſity, God knows, to preach or print againſt too much adorning of Churches among us, where yet ſo many Churches lie very naſtily in many Places of the Kingdom, and no one too much adorned to be found. Nay, the very Conſecration of Churches cried down (as is before expreſſed). And this Opinion, that no Place is holy but during the Service in it, made Mr. *Culmer*, tho' a Miniſter, to piſs in the Cathedral Church of *Canterbury*; and divers others to do ſo, and more againſt the Pillars of *St. Paul*'s, nearer hand, as may daily be both ſeen and ſmelt, to the ſhame of that which is called Religion. ‘ Here Mr. *Nicolas* would fain have ſhovell'd it to the ‘ Out-ſide of the Church (which had been bad enough); but it was the ‘ Inſide I ſpake of, and the thing is known.’

Then an Inſtance was made in a Book of Dr. *Jones.* The Witneſs that any thing was expunged out of this, was only Mr. *Chetwin.* And he confeſſes, that this Book was licenſed by Dr. *Baker*, and he my Lord of *London*'s Chaplain, not mine. Here my Friends at the Bar infer, that Dr. *Baker* was preferred by me. Firſt, That's not ſo; he was preferred by his own Lord. Secondly, If he had been preferred by me, it could have made no Charge, unleſs Proof had been made that I preferred him for abuſing Dr. *Jones*'s Book. And for the Docket, which is the only Proof offered that I preferred him, I have already ſhewed that That is no Proof. Yea, but they ſay, Dr. *Baker* was employed by me as one of my Viſitors. And what then? Muſt I be anſwerable for every Fault that is committed by every Man that I employ in my Viſitation, tho' it be a Fault committed at another Time and Place? Tho' I humbly deſire Dr. *Baker* may anſwer for himſelf, before I acknowledge any Fault committed by him. ‘ And ‘ tho' I conceive this Anſwer abundantly ſatisfactory for any Thing that ‘ may concern me, yet Mr. *Browne* omitted not this Inſtance againſt me.’

III. The third Charge was perſonally againſt myſelf, and taken out of my [a] Speech in the *Star-Chamber.* The Words theſe: *The Altar is the greateſt Place of God's Reſidence upon Earth, greater than the Pulpit; for there 'tis* Hoc eſt Corpus meum, *This is my Body; but in the other it is at moſt but* Hoc eſt Verbum meum, *This is my Word: And a greater Reverence is due to the Body, than the Word of the Lord.* Out of this Place, Mr. *Nicolas* would needs inforce, that I maintained Tranſubſtantiation; becauſe I ſay, there 'tis *Hoc eſt Corpus meum.* Firſt, I perceive by him, he confounds (as too many elſe do) Tranſubſtantiation with the Real Preſence, whereas theſe have a wide Difference. And *Calvin* grants a Real and True Preſence, yea, and he grants *realiter* too; and yet no Man a greater Enemy to Tranſubſtantiation than he: as I have proved at large in my Book againſt *Fiſher*, and had leave to read the Paſſage therein to the Lords. And Mr. *Perkins* avows as much. And ſecondly, the Word *there* makes nothing againſt this. For after the Words of Conſecration are paſt, be the Miniſter never ſo unworthy; yet 'tis infallibly *Hoc eſt Corpus meum* to every worthy Receiver. So is it not *Hoc eſt Verbum meum*, from the Pulpit to the beſt of Hearers, nor by the beſt of Preachers ſince the Apoſtles time. ‘ And as Preaching goes now, ſcarce is any thing ‘ heard from many in two long Hours, that ſavours of the Word of God.’ And *St. Paul* tells us, 1 *Cor.* xi. 29. of a great Sin committed in his time of *not diſcerning the Lord's Body*, when unworthy Communicants received it. Where was this? Why it was *there*, at the holy Table or Altar where they received, yet did not *diſcern.* I hope, for all this, *St. Paul* did not maintain Tranſubſtantiation. ‘ Mr. *Browne* in his ſummary Charge ‘ preſſed this alſo upon me. I anſwer'd as before, and added, That in ‘ all Ages of the Church the Touch-ſtone of Religion was, not to hear the ‘ Word preached, but to communicate. And, at this Day, many will ‘ come and hear Sermons, who yet will not receive the Communion to-‘ gether. And as I call the Holy Table the greateſt Place ‘ of God's Reſidence upon Earth, ſo doth a late learned ‘ Divine of this Church call the Celebration of the Eu-‘ chariſt, *the Crown of Public Service, and the moſt ſolemn and* ‘ *chief Work of Chriſtian Aſſemblies:* and he a Man known to be far from ‘ affecting Popery in the leaſt. And all Divines agree in ‘ this, which our Saviour himſelf teaches, *St. Mat.* xxvi. 26. ‘ *That there is the ſame Effect of the Paſſion of Chriſt, and of* ‘ *this bleſſed Sacrament worthily received.*’

[a] Pag. 47.

Cont. Fiſher, *p.* 202.

Perkins's Opera *in fol. p.* 590.

Thorndike *of Aſſemblies. c.* 8. p. 260.

Idem eſt Effectus Paſſionis Chriſti & Euchariſtiæ. *Thorn. p.* 3. *q.* 79. *A.* 1. *c.*

Another Paſſage taken out of my [b] Speech, was, *That due Reverence be given to God, and to his Altar.* Hence Mr. *Nicolas* infers again, this Reverence is one joint Act, therefore 'tis Divine to the Altar, as well as to God, and ſo Idolatry. Firſt, The very next Words in my Speech are, that this Reverence to the Altar comes *far ſhort of Divine Worſhip.* What can prevent an Objection, if ſuch plain Words cannot? Secondly, Having thus plainly expreſſed it, he may infer too, if he will, that I do not then worſhip God. For this Reverence is one joint Act; but 'tis confeſſed, that 'tis not Divine Worſhip to the Altar, and therefore not to God. ‘ But Thirdly, This Gen-‘ tleman, by his favour, underſtands not the Myſteries which lie hid in ‘ many Parts of Divinity. In this for one.’ For when this Reverence is performed, 'tis to God as to the Creator, and ſo Divine; but 'tis only *toward*, and not *to* the Altar, and ſo far ſhort. And though in outward Performance it be one joint Act, yet that which is not ſeparated, is and muſt be diſtinguiſhed one from the other. ‘ To make a ‘ good

[b] *Pag.* 49.

In bono opere Deo acceptabili, Fides & Charitas diſtinguuntur, non ſeparantur. Qui loquitur, ſimul facit vocem & verbum. *St. Aug. l.* 1. *de Gen. ad Lit. c.* 15.

‘ good Work acceptable to God, there muſt be both Faith and Charity; they cannot be ſeparated one from the other: what, ſhall they not therefore be diſtinguiſhed? He that ſpeaks (ſaith *St. Auguſtine)* by one joint Act ſends out his Voice and his Word; ſeparated they cannot be, ſhall not they be diſtinguiſhed therefore? But I have lived long enough, and taken pains to ſmall purpoſe, if Mr. *Nicolas*, or any Layman elſe, at his bye and leiſure Hours from a buſy Profeſſion, ſhall be able to teach me in that which I have laboured all my Life. And God bleſs the poor Biſhops and Clergy of *England*, if falling into a Storm (as I now am) they muſt have ſuch Judges as Mr. *Nicolas!*’

IV. The fourth Charge is the licenſing of *Sales*, and other Books which had Popery in them, by my Chaplain Dr. *Haywood.*

1. To this Mr. *Prynn* (who is the ſingle Witneſs) ſays, That he tendered a Bill to the then Lord Keeper againſt my Chaplain for licenſing this Book, and that his Lordſhip refuſed it. If the Lord Keeper *Coventry* refuſed his Bill, I believe, were he living, he would aſſign juſt Cauſe why he did it. But whatever Cauſe he had, it concerns not me, that he rejected the Bill. Mr. *Prynn* ſays farther, that this Book of *Sales* was printed heretofore, but purged firſt by Dr. *James*; but licenſed now by Dr. *Haywood*, not according to that Purgation, but with all the Points of Popery in. For this he produces Mr. *Oakes*, whoſe Son printed it. And ſays farther, that his Corrector at the Preſs found fault with ſome Paſſages, and thereupon he was ſent to Dr. *Haywood*, who returned Anſwer (as they ſay), *That if he licenſed it, he would juſtify it:* and that his Son told him this. Firſt, my Lords, this Under-teſtimony of Mr. *Oakes*, produced by Mr. *Prynn*, is nothing but a Hearſay from his Son, who is now dead, and cannot be examined; and while he was living, ran away, and would not be examined. Secondly, This was a moſt notable Piece of Villany practiſed againſt my Chaplain, and, thro' his Sides, againſt me. It was thus, my Lords: Whether the Bill were rejected or no, I cannot tell; but the Complaint of printing this Book came publickly into the *Star-Chamber*. And then was the firſt time that ever I heard of it. I then humbly deſired their Lordſhips, that Dr. *Haywood* might anſwer whatever he had done amiſs, either there, or where they pleaſed. The Court preſently commanded Mr. Attorney *Banks* to call all Parties before him, examine them thoroughly, and then give his Account what he found, that the Court might proceed farther according to Juſtice. Dr. *Haywood* appeared, and ſhewed Mr. Attorney how he had corrected *Sales* in all Popiſh Points before he licenſed it. But young *Oakes*, and he which brought *Sales* to be licenſed (who was then thought to be ſome Jeſuited Recuſant, and, as I remember, lodged for that time of printing in *Oakes*'s Houſe), ran both away, or hid their Heads, and would not be found. And this was a mere Plot of this Recuſant, if not Prieſt, to have *Sales* printed with all his Points of Popery in him, to work Miſchief to my Chaplain and myſelf: And young *Oakes* was in all likelihood well paid for his Pains. This Account Mr. Attorney brought into that Court, and this Relation Dr. *Haywood* (who I obtained might be after ſent for) atteſted at this Bar.

One Circumſtance my old decayed Memory miſtook. For I thought, and ſo at firſt told the Lords, that for this Clamour raiſed upon him in this way, I did ſoon after diſmiſs him my Houſe. But after, I found that he was gone out of my Houſe before. Howſoever, I left him without any Mediation to the Juſtice of the Court. And here I may not forget that which I then obſerved to the Lords, that whereas 'tis urged, that many Points of Popery have paſſed the Preſs; 'tis no Wonder, if ſuch Art be uſed as was here to get out *Sales*. And this farther is obſervable, that all theſe Quotations of Popiſh Opinions, mentioned here to fill up the Noiſe, are out of four or five Books at the moſt, of which more are out of this *Sales* than all the reſt. ‘ And called in he was, as ſoon as known. Which Mr. *Browne* in the Sum of his Charge acknowledges.’

2. After *Sales*, the next Inſtance was in a Book intitled, *Chriſt's Epiſtle to the devout Reader*. Four particular Points were urged out of this: But neither I nor my Chaplains had aught to do with it. For it was licenſed at *London-Houſe* by Dr. *Weeks*. Nor was there ever any Complaint brought to me to have it called in: nor was any ſuch Proof ſo much as offered.

3. The Third Inſtance was of a Book called *The Female Glory*, where Mr. *Prynn* (who is ſingle again) ſaid, that Dr. *Heylin* anſwered Mr. *Burton*, and juſtified all the Paſſages in this Book: And added, that this was by my Direction. But upon my Motion at the Bar concerning the Boldneſs of this Oath, Mr. *Prynn* recalled himſelf, and ſaid, that I appointed him to anſwer Mr. *Burton*. But it is one Thing to appoint him to anſwer Mr. *Burton*, and another to direct him to juſtify all Paſſages in *The Female Glory*.

4. The fourth Inſtance was in a Letter ſent to me from one *Croxton*, a young Divine in *Ireland*. He was bred in *St. John*'s-*College* in *Oxford*. At the Lord *Mountnorris*'s Intreaty, I ſent *Croxton* into *Ireland* to be his Chaplain. If he miſcarried there, I could not help it, nor hinder his writing of a Letter to me, nor preſcribe what he ſhould write in it. But, to my remembrance, I never heard of any Miſcarriage of his in Matter of Religion: And whether he be living or dead, I know not. That Letter indeed had a Croſs at the Top of it. But then was another Letter of his ſhewed without a Croſs, in which he calls *Rome*, *Monſtrum Abominandum*. Howſoever, I conceive all this is nothing to me.

5. The fifth Inſtance was a Book, which they ſaid was licenſed by Dr. *Weeks*. And if ſo, then not by my Chaplain. But upon Peruſal, I find no Licenſe printed to it, nor to any of the other, but only to *Sales*, which is anſwered.

6. The ſixth Inſtance was in Biſhop *Mountague*'s Books, the *Gagg* and the *Appeal*. Here they ſaid, that Dr. *White* told Dr. *Featly*, *That five or ſix Biſhops did allow theſe Books*. But he did not name me to be one of them. Then Mr. *Prynn* urged upon his Oath, that theſe Books were found in my Study. And I cannot but bleſs myſelf at this Argument. For I have *Bellarmine* in my Study, therefore I am a *Papiſt*; or I have the *Alcoran* in my Study, therefore I am a *Turk*, is as good an Argument as this: I have Biſhop *Mountague*'s Books in my Study, therefore I am an *Arminian*. May Mr. *Prynn* have Books in all Kinds in his Study, and may not the Archbiſhop of *Canterbury* have them in his? Yea; but he ſays, There is a Letter of the Biſhop's to me, ſubmitting his Books to my Cenſure. This Letter hath no Date, and ſo belike Mr. *Prynn* thought he might be bold both with it and his Oath, and apply it to what Books he pleaſed. But as God would have it, there are Circumſtances in it as good as a Date. For 'tis therein expreſſed, that he was now ready to remove from *Chicheſter* to *Norwich*. Therefore he muſt needs ſpeak of ſubmitting thoſe his Books to me, which were then ready to be ſet out, which were his *Origines Eccleſiaſticæ*; not the *Gagg*, nor the *Appeal*, which are the Books charged, and which were printed divers Years before he was made a Biſhop: And my Receipt indorſed upon it, is *Mar.* 29. 1638. And I hope Mr. *Nicolas* will not call this the Colour of an Anſwer, as he hath called many of the reſt given by me.

7. The ſeventh Inſtance was in a Book licenſed by Dr. *Martin*, then my Chaplain in *London-Houſe*. This Book, Mr. *Prynn* ſays, was purpoſely ſet out to countenance *Arminianiſm*, as if it had been ſome Work of Moment, whereas it was anſwered twice in the Queen's time. If Dr. *Martin* did this, 'tis more than I remember; nor can I ſo long after give any Account of it. But Dr. *Martin* is living, and in Town, and I humbly deſired he might be called to anſwer. He was called the next Day, and gave this Account.

[*The Account is wanting*; *a Space left for it, but not filled up.*]

Mr. *Prynn* ſays farther, That after this he preached *Arminianiſm* at *St. Paul*'s *Croſs*. Why did not Mr. *Prynn* come then to me, and acquaint me with it? which neither he nor any Man elſe did. And I was in Attendance at Court, whither I could not hear him. And the Charge which came againſt him upon the next Day's Hearing, was this and no more, That one then preached at the *Croſs* Univerſal Redemption; but he that gave teſtimony knew him not: only he ſays, one told him 'twas Dr. *Martin*.

8. The laſt Inſtance was of a Bible commonly ſold, with a Popiſh Table at the End of it. This is more than I know, or ever heard till now; nor was any Complaint ever brought to me of it. And I cannot know all things that are done abroad for Gain; for that will teach them to conceal, as well as move them to act. Yet one of the Popiſh Heads mentioned in that Table, was *Confirmation*, which is commanded in our Church-Liturgy, and ratified by Law.

Here this Day ended, and I was ordered to appear again *July* 4. That Day I received a Note, under Mr. *Nicolas*'s Hand, that they meant to proceed upon the Eighth, Ninth, Tenth, Eleventh, Twelfth, and Fourteenth Original Articles, and the Sixth and Seventh Additionals. The laſt Warrant for other Articles came under Serjeant *Wilde*'s Hand, and Mr. *Nicolas* ſigning this, it ſeems, miſtook: For the Eighth and Ninth Original Articles are in part proceeded on before. Now they go forward with theſe, and then on to the reſt; which I will write down ſeverally, as they come to them.

The ſame Day, being *Thurſday*, all my Books at *Lambeth* were by Order of the Houſe of Commons taken away by Mr. . . . . . . Secretary to the Right Honourable the Earl of *Warwick*, and carried I know not whither, but are (as 'tis commonly ſaid) for the uſe of Mr. *Peters*. Before this time, ſome good number of my Books were delivered to the uſe of the Synod; the Miniſters which had them giving no Catalogue under their Hands, which or how many they had. And all this was done contrary to an Order of the Lords, bearing Date *Novemb.* 9. 1642. for the ſafe keeping of my Books there; and before I was convicted of any Crime. This Day alſo I received an Order, which put off my Hearing till the next Day.

The Seventeenth Day of my Hearing.

I. F*RIDAY*, *July* 5. 1644. This Day I appeared again: And the firſt Charge againſt me was, That I had preferred none to Biſhopricks, Deaneries, Prebends, and Benefices, but men Popiſhly affected, or otherwiſe unworthy. And ſome they named:

1. As Firſt, Dr. *Manwaring*, diſabled by the Parliament.

2. Secondly, Mr. *Mountague*, excepted againſt by Parliament. But for theſe no Proof was now brought: They referred themſelves to what was ſaid before, and ſo do I. And where they go to prove only by Dockets, I deſire it may ſtill be remembered that the Docket is a full Proof who gave Order for drawing the Bill at the Signet-Office, but no Proof at all who procured the Preferment.

3. Thirdly, Biſhop *Corbett*. But the Earl of *Dorſet* got my Lord Duke of *Buckingham* to prefer him, to make way for Dr. *Duppa*, his deſerving Chaplain, into *Chriſt-Church*. Nor was any thing charged againſt Dr. *Corbett*, but that he was preferred by me.

4. Fourthly, Biſhop *Pierce:* againſt whom there was no Proof offered neither. And he is living to anſwer it, if any be.

5. Nor was there now any Proof offered againſt Biſhop *Wren*, who was named alſo: at the leaſt, not till he was made a Biſhop. So if I did prefer him, it ſeems I did it when nothing was laid againſt him. And if after he had his Preferment he did any thing unworthily, that could not I foreſee; and he is living to anſwer it.

6. The Sixth was Biſhop *Lindſey*, a Man known to be of great and univerſal Learning, but preferred by the then Lord Treaſurer *Portland*, not by me. Him they charged with *Arminianiſm*. The Witneſſes two: The firſt, Mr. *Smart*; he is poſitive he was his Fellow-Prebendary at *Durham*. There was Animoſity between them. ‘ And *Smart*, not able to judge of *Arminianiſm*.’ Secondly, Mr. *Walker*, who could ſay nothing, but that he heard ſo much from ſome Miniſters, and Dr. *Baſtwick*. ‘ So here is as learned a Man as *Chriſtendom* had any of his time, debaſed in this great and honourable Court, by Ignorance, and a Hearſay; and that, when the Man is gone to that which ſhould be his Quiet, the Grave.’

7. The Seventh was Archbiſhop *Neile*, a Man well known to be as true to, and as ſtout for, the Church of *England* eſtabliſhed by Law, as any Man that came to Preferment in it. Nor could his great Enemy Mr. *Smart* ſay any thing now againſt him, but a Hearſay from one Dr. *Moor* of *Wincheſter*. And I cannot but profeſs, it grieves me much, to

hear ſo many honeſt and worthy Men ſo uſed, when the Grave hath ſhut up their Mouths from anſwering for themſelves.

8. The next was Dr. *Coſens*, to be Dean of *Peterborough.* I named four of his Majeſty's Chaplains to him, as he had commanded me: and the King pitched upon Dr. *Coſens*, in regard all the Means he then had, lay in and about *Dureſm*, and was then in the *Scots* hands; ſo that he had nothing but Forty Pound a Year by his Headſhip in *Peter-Houſe*, to maintain himſelf, his Wife and Children.

9. The Ninth was Dr. *Potter*, a known *Arminian*, to the Deanery of *Worceſter.* What Proof of this? Nothing but the Docket. And what of the Crime? Nothing but Dr. *Featly*'s Teſtimony; who ſays no more but this, That Dr. *Potter* was at firſt againſt *Arminianiſm* (that's abſolute): But afterwards he defended it, as he hath heard (there's a Hearſay).

10. The Tenth was Dr. *Baker.*

11. The Eleventh Dr. *Weeks.* Both very honeſt and able Men; but preferred by their own Lord, the Lord Biſhop of *London.*

12. The Twelfth was Dr. *Bray.* He had been my Chaplain above ten Years in my Houſe; I found him a very able and an honeſt Man, and had reaſon to prefer him to be able to live well; and I did ſo. Here is nothing objected againſt him, but his Expungings and not Expungings of ſome Books; which, if he were living, I well hope he would be able to give a good account for.

13. The Thirteenth Dr. *Heylin.* He is known to be a learned and an able Man; but for his Preferment, both to be his Majeſty's Chaplain, and for that which he got in that Service, he owes it under God to the Memory of the Earl of *Danby*, who took care of him in the Univerſity.

14. After theſe, they named ſome, whom they ſaid I preferred to be the King's Chaplains. The Witneſs here Mr. *Oldſworth*, the Lord Chamberlain's Secretary. He ſays, the Power and Practice of naming Chaplains was in the Lord Chamberlain for theſe 25 Years. And I ſay, 'tis ſo ſtill, for aught I know. He ſays, that in all Things concerning which the Lord Chamberlain's Warrant went in this Form, *Theſe are to will and require you, &c.* that there his Lordſhip did it without conſulting the King; and that the Warrants for Chaplains run all in this Form. Firſt, This is more than I know, or ever heard of till now. Secondly, Be it ſo; yet 'tis hard to deny the King to hear Men preach, before they be ſworn his Chaplains, 'if his Majeſty deſire it, ſince it argues a great Care in the King, ' eſpecially in ſuch a factious time as began to overlay this Church.' Thirdly, He confeſſes, that he knows not who put the King upon this way, but believes that I did it. He is ſingle, and his Belief only is no Evidence. 'And whoſoever gave the King that Advice, deſerved very well ' both of his Majeſty and the Church of *England*: That none might be put ' about him in that Service, but ſuch as himſelf ſhould approve of. But ' that which troubled this Witneſs, was another thing. He had not Mo- ' ney for every one that was made Chaplain; nor Money to get them a ' Month to wait in; nor Money to change their Month, if it were in- ' convenient for their other Occaſions; nor Money for ſparing their At- ' tendance when they pleaſed. In which, and other things, I would he had ' been as careful of his Lord's Honour, as I have been in all things. For ' 'tis well known in Court I obſerved his Lordſhip as much as ' any Man.'

The Men which are inſtanced in, are Dr. *Heylin.* But he was preferred to that Service by my Lord the Earl of *Danby.* Then Dr. *Potter.* But the Lord-Keeper *Coventry* was his means. Dr. *Coſens* was preferred by Biſhop *Neile*, whoſe Chaplain he had been many Years, and he moved the Lord Chamberlain for it. Dr. *Lawrence* was my Lord Chamberlain's own Chaplain, and preferred by himſelf; and in all likelihood by Mr. *Oldſworth*'s means: for he was Fellow of *Magdalen-College* in *Oxford*, as Mr. *Oldſworth* himſelf was, and he once (to my knowledge) had a great opinion of him. Dr. *Haywood* indeed was my Chaplain; but I preferred him not to his Majeſty, till he had preached divers times in Court with great Approbation; nor then, but with my Lord Chamberlain's Love and Liking. As for Dr. *Pocklington*, I know not who recommended him; nor is there any Proof offered that I did it.

15. Then they proceeded to my own Chaplains. They name four of them: Firſt, Dr. *Weeks.* But he was never in my Houſe, never meddled with the licenſing of any Books, till he was gone from me to the Biſhop of *London*: So he is charged with no Fault, ſo long as he was mine. The Second, Dr. *Haywood.* But he is charged with nothing but *Sales*, which was a moſt deſperate Plot againſt him, as is before ſhewed. The Third was Dr. *Martin.* Againſt him came Mr. *Prynn*, for his *Arminian* Sermon at *St. Paul's Croſs.* But that's anſwered before. And Mr. *Walker*, who ſaid, He propoſed *Arminian* Queſtions to divers Miniſters. Belike, ſuch as were to be examined by him. But he adds, *As theſe Miniſters told him.* So 'tis but a Hearſay. And ſay he did propoſe ſuch Queſtions, may it not be fit enough to try how able they were to anſwer them? The Fourth was Dr. *Bray.* Againſt him Dr. *Featly* was again produced, for that which he had expunged out of his Sermons. But when I ſaw this ſo often inculcated to make a noiſe, I humbly deſired of the Lords, that I might aſk Dr. *Featly* one Queſtion. Upon leave granted, I aſked him, Whether Nothing were of late expunged out of a Book of his written againſt a Prieſt? and deſired him to ſpeak upon the Oath he had taken. He anſwered roundly, That divers Paſſages againſt the Anabaptiſts, and ſome in defence of the Liturgy of the Church of *England*, were expunged. I aſked, By whom? He ſaid, By Mr. *Rouſe* and the Committee, or, By Mr. *Rouſe* or the Committee. Be it which it will, I obſerved to the Lords, that Mr. *Rouſe* and the Committee might expunge Paſſages againſt the Anabaptiſts, nay, for the Liturgy eſtabliſhed by Law; but my Chaplains may not expunge any thing againſt the Papiſts, tho' perhaps miſtaken.

From thence they fell upon Men whom they ſaid I had preferred to Benefices. They named but two. Dr. *Heylin* was one again, whom I preferred not. The other was Dr. *Jackſon*, the late Preſident of *Corpus Chriſti-College* in *Oxford.* Dr. *Featly*, being produced, ſaid, Dr. *Jackſon* was a known *Arminian.* If ſo to him, 'tis well; the Man is dead, and cannot anſwer for himſelf. Thus far I can for him, without meddling with any of his Opinions: He was very honeſt and very learned, and at thoſe Years he was of, might deſerve more than a poor Benefice.

16. Here Mr. *Prynn* came in again, and teſtified very boldly, That I gave many Benefices, which were in the Gift of the Maſter of the Wards: and all Preferments only to ſuch Men as were for Ceremonies, Popery, and *Arminianiſm.* For the firſt of theſe two, the Buſineſs was thus: There aroſe a Difference between the then Lord Keeper *Coventry* and the Lord *Cottington*, then Maſter of the Wards, about the diſpoſing of thoſe Benefices. It grew ſomewhat high, and came to Hearing by the King himſelf: His Majeſty, upon Hearing, gave the Right of Sealing to the Lord Keeper; but for the time, till more might appear, reſerved the Giving to himſelf, that he might have ſome of thoſe leſſer Preferments to beſtow on ſuch Miniſters as attended upon his Navy then at Sea. I never gave any one of theſe Benefices in my Life. And that this Story is of Truth, the Lord *Cottington* is yet living, and can witneſs it. 'And this very ' Anſwer I gave to Mr. *Browne*, who in ſumming up the Charge laid this ' alſo upon me, and without mentioning what Anſwer I gave to it.' For the ſecond, That I preferred none but ſuch Men; 'tis known I preferred Biſhop *Hall* to *Exeter*, Dr. *Potter* to *Carliſle*, Dr. *Cook* to *Briſtol* firſt, and then to *Hereford*; that I gave Dr. *Weſtfield* the Archdeaconry of *St. Albans*; that I was Dr. *Fell*'s means for *Chriſt-Church*, and Dr. *Higgs*'s for the Deanery of *Litchfield*; that I ſettled Dr. *Downing* at *Hackney*, and Mr. *Herrick* at *Mancheſter*, when the Broad-Seal formerly given him was queſtioned: That I gave two of my own Benefices to Mr. *Palmer* and Mr. *Taylor*, two of the now Synod; an Hoſpital to Dr. *Jackſon* of *Canterbury*, and a Benefice to his Son-in-Law, at his Suit. I could not name all theſe upon the ſudden, yet ſome I did; and no one of them guilty of this Charge in the leaſt. 'Mr. *Browne* in his Summary ſaid, I could name ' but one or two. And when in my Anſwer made in the Houſe of Com- ' mons I ſpecified more, among which Mr. *Palmer* was one; Mr. *Browne* ' ſaid in his Reply, That Mr. *Palmer* had indeed his Benefice of my giv- ' ing, ſo himſelf told him, but it was at the Intreaty of a great Nobleman. ' Say it were; Mr. *Palmer* was then a Stranger to me: ſomebody muſt ' ſpeak, and aſſure me of his Wants and Worth, or I cannot give. But ' if upon this I gave it freely, is it worth no thanks from him, becauſe a ' Nobleman ſpake to me? Let Mr. *Palmer* rank this Gratitude among ' his other Virtues.'

17. From hence they ſtepped over into *Ireland*, and objected my preferring of Dr. *Chappel* to be Maſter of the College at *Dublin.* Here the firſt Witneſs is Mr. *Walker.* He ſays, That all his Scholars were *Arminians.* This is a great Sign, but not full Proof. He ſays, That Dr. *Chappel* was at firſt fierce againſt them, but afterwards changed his Mind. Dr. *Featly* ſaid the like of Dr. *Potter.* Some ſay *Arminius* himſelf was at firſt zealous againſt thoſe Opinions, but ſtudying hard to confute them, changed his own Mind. 'Take heed, Mr. *Walker*, do not ſtudy theſe Points ' too hard.' For my own Part, Dr. *Chappel* was a *Cambridge* Man, altogether unknown to me, ſave that I received from thence great Teſtimony of his Abilities and Fitneſs for Government, which that College then extremely wanted; and no Man ever complained to me, that he favoured *Arminianiſm.*

The other Witneſs was Dr. *Hoyle*, a Fellow of the College in *Dublin.* He ſays, That the Doctor did maintain, in that College, *Juſtification by Works*; and in *Chriſt-Church*, *Arminianiſm.* In this he is ſingle: But if it be true, why did not the Lord Primate of *Armagh* puniſh him? for he ſays, he knew it. That he oppoſed ſome things in the Synod: And it may be there was juſt Cauſe for it. Laſtly, he ſays, The late Lord Deputy liked not the *Iriſh* Articles, but gave them an honourable Burial, as (he ſays) the Lord Primate himſelf confeſſed. I am a Stranger to all this; nor doth Dr. *Hoyle* charge any thing againſt me; but ſays, That they which did this, were ſuppoſed to have ſome Friend in *England.* And ſurely their Carriage was very ill, if they had none.

18. Then were Letters read of my Lord Primate's to me, in which is teſtified my Care of the Patrimony of that Church. And then a Paper of Inſtructions given by me to the Lord Deputy at his firſt going into that Kingdom. For the firſt, tho' it be thruſt in here among Matters of Religion, yet I pray your Lordſhips to conſider, 'tis about the Patrimony of that Church only; and I thank them heartily for producing it. For in this Letter is a full Confeſſion of my Lord Primate's, That the Motion of getting the Impropriations from his Majeſty, (formerly objected againſt me) proceeded from him, as I then pleaded: And the Letter was read. For the ſecond, my Lord Deputy, a little before his firſt going into *Ireland*, aſked me what Service I would command him for the Church there? I humbly thanked him, as I had Reaſon, and told him I would bethink myſelf, and give him my Thoughts in writing: Theſe are they which are called *Inſtructions.* They are only for the Good of that poor Church, as your Lordſhips have heard them. This was all; and herein my Lord ſhewed his Honour, and I did but my Duty. 'Tho' I very well under- ' ſtand why this Paper is produced againſt me.'

After this they proceeded to the Eleventh Original Article, which follows *in hæc verba*:

XI. He in his own Perſon, and his Suffragans, Viſitors, Surrogates, Chancellors, or other Officers, by his command, have cauſed divers Learned, Pious, and Orthodox Preachers of God's Word to be ſilenced, ſuſpended, deprived, degraded, excommunicated, or otherwiſe grieved and vexed, without any juſt and lawful Cauſe; whereby, and by divers other Means, he hath hindred the preaching of God's Word, cauſed divers of his Majeſty's Loyal Subjects to forſake the Kingdom, and increaſed and cheriſhed Ignorance and Profaneneſs amongſt the People; that ſo he might the better facilitate the Way to the effecting of his own wicked and traitorous Deſign of altering and corrupting the true Religion here eſtabliſhed.

1. The firſt Inſtance to make good this Article, was a Repetition of ſome Lecturers before-named. But when they thought they had made Noiſe enough, they referred the Lords to their Notes; and ſo did I to my former Anſwers.

2. The ſecond Inſtance was out of ſome Articles of Biſhop *Mountague* and Biſhop *Wren*, and their Account given to me. Biſhop *Wren*, *Art.* 16. ſpeaks of the Afternoon-Sermons being turned into Catechiſing: And *Art.* 5. (of his Account, I take it) That no Lecture in his Dioceſs after, *&c.* It was made plain to the Lords, that this was ſpoken of ſome ſingle and factious Lecturers; and that they had their Lectures read by a Company of Learned and Orthodox Miniſters by turns; as appeared by the *Monday* Sermon at *Bury*, during that Learned Biſhop's time. Nor were any forbid to

preach in the Afternoon, ſo the Catechiſing were not omitted, before it, or with it: And the Biſhop is living to anſwer it, if aught were then done amiſs by him. In all which he did nothing as any Deputy or Surrogate of mine, but as Dioceſan of the Place. As for the yearly Account to the King, according to his Royal Inſtructions in that Behalf, tho' it were preſſed here again to multiply Noiſe, yet nothing being new, I gave my Anſwer as before, and to that I refer myſelf.

3. The third Anſwer was concerning Mr. *Lee* of *Wolverhampton.* The Evidence was a Letter of my Secretary Mr. *Dell*, written by my Command to my Viſitors there, to this Effect: That whether there were Cauſe or no, they ſhould either puniſh Mr. *Lee*, or bring him into the High-Commiſſion. Had the Words or the Senſe been thus, they might well ſay, It was hard for the Judge before whom the Party was to anſwer, to write thus. But I called to have the Letter read again, and the Words were theſe: If there were found againſt him that which might juſtly be cenſured, then they ſhould puniſh, *&c.* And the Reaſon why this ſtrict Care was taken, was, becauſe the Dean of *Windſor* his Ordinary complained unto me, That Mr. *Lee*'s Carriage was ſo factious there, that he could contain him in no Order. If he were a Man after this approved at *Shrewſbury* (as Mr. *Walker* witneſſes), I hope the Proceedings at *Wolverhampton* did him good. But, my Lords, had it ſo fallen out, that my Secretary had forgotten my Inſtructions, and himſelf too, and expreſſed himſelf amiſs, ſhall that Slip of his (had it been ſuch) be imputed to me? I believe your Lordſhips would not willingly anſwer for every Phraſe of your Secretaries Letters, which yet you command them to write.

4. The laſt Inſtance was the Sentence in the High-Commiſſion againſt Mr. *Barnard*, for Words about *Pelagian* Errors and Popery. Firſt, If he were ſentenced in the High-Commiſſion, it was the Act of the Court, and not mine; as has been often ſaid. Secondly, No Proof is offer'd that he was ſentenced for thoſe Words only. Thirdly, The Recantation (howſoever refuſed by him, as Mr. *Prynn* ſays it was) makes mention of four Points for which he was cenſured, of which theſe Words are one: But not the Words themſelves, but his unjuſt and ſcandalous Application of them to me, which deſerves them not. And laſtly, Dr. *Cumber*, Maſter of *Trinity-College* in *Cambridge*, was Proſecutor againſt him; which Office ſo grave and worthy a Man would not (I ſuppoſe) have undertaken, had there not been great and juſt Cauſe for it.

Hence they proceeded to the Sixth Additional Article, which follows in theſe Words:

VI. That whereas divers Gifts and Diſpoſitions of divers Sums of Money were heretofore made by divers charitable and well-diſpoſed Perſons, for the buying in of divers *Impropriations* for the Maintenance of Preaching the Word of God in ſeveral Churches; the ſaid Archbiſhop about Eight Years laſt paſt, wilfully and maliciouſly cauſed the ſaid Gifts, Feoffments and Conveyances, made to the Uſes aforeſaid, to be overthrown in his Majeſty's Court of *Exchequer*, contrary to Law, as things dangerous to the Church and State; under the ſpecious Pretence of buying in *Impropriations*; whereby that pious Work was ſuppreſſed and trodden down, to the great Diſhonour of God, and Scandal of Religion.

This Article is only about the *Feoffments.* That which I did, was this: I was (as then adviſed, upon ſuch Information as was given me) clearly of Opinion, that this was a cunning Way, under a glorious Pretence, to overthrow the Church-Government, by getting into their Power more Dependency of the Clergy, than the King, and all the Peers, and all the Biſhops in all the Kingdom had. And I did conceive the Plot the more dangerous for the Fairneſs of the Pretence, and that to the State as well as the Church. Hereupon, not maliciouſly (as 'tis charged in the Article) but conſcientiouſly I reſolved to ſuppreſs it, if by Law it might be done. Upon this, I acquainted his Majeſty with the thing, and the Danger which I conceived would, in few Years, ſpring out of it. The King referred me to his Attorney and the Law. Mr. Attorney *Noy*, after ſome Pauſe upon it, proceeded in the *Exchequer*, and there it was by judicial Proceeding and Sentence overthrown. If this Sentence were according to Law and Juſtice, then there's no Fault at all committed: if it were againſt Law, the Fault, whate'er it be, was the Judges, not mine; for I ſollicited none of them. And here I humbly deſired, that the Lords would at their Leiſure read over the Sentence given in the *Exchequer*, which I then delivered in; but by Reaſon of the Length, it was not then read: whether after it were, I cannot tell. I deſired likewiſe that my Counſel might be heard in this, and all other Points in Law.

Sir Leolin Jenkins *hath a Copy of it, out of the Records of the* Exchequer. W. S. A. C.

1. The firſt Witneſs was Mr. *Kendall.* He ſays, That ſpeaking with me about *Preſteen*, I thanked God that I had overthrown this *Feoffment.*

2. The ſecond Witneſs, Mr. *Millar*, ſays, he heard me ſay, They would have undone the Church, but I have overthrown their *Feoffment.* Theſe two Witneſſes prove no more than I confeſs: For in the Manner aforeſaid, I deny not but I did my beſt in a legal Way to overthrow it. And if I did thank God for it, it was my Duty to do ſo, the thing being in my Judgment ſo pernicious as it was.

3. The third Witneſs was Mr. *White*, one of the *Feoffees.* He ſays, That coming as Counſel in a Cauſe before me, when that Buſineſs was done, I fell bitterly on him as an Underminer of the Church. I remember well his coming to me as Counſel about a Benefice; and 'tis very likely I ſpake my Conſcience to him, as freely as he did his to me, but the Particulars I remember not; nor do I remember his coming afterwards to me to *Fulham*, nor his Offer to change the Men or the Courſe, ſo the thing might ſtand. For to this I ſhould have been as willing as he was: and if I remember right, there was order taken for this in the Decree of the *Exchequer*; and his Majeſty's Pleaſure declared, That no Penny ſo given ſhould be turned to other Uſe. And I have been, and ſhall ever be as ready to get in *Impropriations*, by any good and legal Way, as any Man (as may appear by my Labours about the *Impropriations* in *Ireland*). But this way did not ſtand either with my Judgment or Conſcience.

1. Firſt, Becauſe little or nothing was given by them to the preſent Incumbent, to whom the Tythes were due, if to any; that the Pariſhioners which paid them, might have the more chearful Inſtruction, the better Hoſpitality, and more full Relief for their Poor.

‘ 2. Secondly, Becauſe moſt of the Men they put in, were Perſons diſ-
‘ affected to the Diſcipline, if not the Doctrine too, of the Church of
‘ *England.*

‘ 3. Thirdly, Becauſe no ſmall Part was given to School-Maſters, to
‘ ſeaſon Youth *ab Ovo*, for their Party; and to young Students in the Uni-
‘ verſities, to purchaſe them and their Judgments to their Side, againſt
‘ their coming abroad into the Church.

‘ 4. Fourthly, Becauſe all this Power to breed and maintain a Faction,
‘ was in the Hands of Twelve Men, who were they never ſo honeſt, and
‘ free from Thoughts of abuſing this Power, to fill the Church with Schiſm;
‘ yet who ſhould be Succeſſors, and what Uſe ſhould be made of this
‘ Power, was out of human Reach to know.’

Fifthly, Becauſe this Power was aſſumed by and to themſelves, without any legal Authority, as Mr. Attorney aſſured me.

He farther ſaid, That the *Impropriation* of *Preſteen* in *Radnorſhire*, was ſpecially given to *St. Antolin*'s in *London.* I ſay, the more the Pity, conſidering the Poorneſs of that Country, and the little Preaching that was among that poor People, and the Plenty which is in *London*: Yet becauſe it was ſo given, there was care taken after the Decree, that they of *St. Antolin*'s had Conſideration, and I think to the full. He ſays, That indeed they did not give any thing to the preſent Incumbents, till good Men came to be in their Places. Scarce one Incumbent was better'd by them. And what then? In ſo many Places not one good Man found? ‘ Not one fac-
‘ tious enough againſt the Church, for Mr. *White* to account him good?’ Yet he thinks I diſpoſed theſe things afterwards to unworthy Men. ‘ Truly, had they been at my diſpoſal, I ſhould not wittingly have given
‘ them to Mr. *White*'s Worthies.’ But his Majeſty laid his Command upon his Attorney, and nothing was done or to be done in theſe things, but by his Direction. For Dr. *Heylin*, if he ſpake any thing amiſs concerning this *Feoffment*, in any Sermon of his, he is living to anſwer it; me it concerns not. ‘ Mr. *Browne*, in the Sum of the Charge, omitted
‘ not this; and I anſwered as before: And in his Reply he turned again
‘ upon it, That it muſt be a Crime in me, becauſe I projected to overthrow
‘ it. But, under favour, this follows not: for to project (tho' the Word
‘ *Projector* ſound ill in *England)* is no more than to forecaſt and forelay any
‘ Buſineſs. Now, as 'tis lawful for me, by all good and fit Means, to
‘ project the Settlement of any thing that is good; ſo is it lawful by good
‘ and legal Means to project the Overthrow of any thing that is cunningly
‘ or apparently evil. And ſuch did this *Feoffment* appear to my Underſtand-
‘ ing, and doth ſtill.’ As for reducing of *Impropriations* to their proper Uſe, they may ſee (if they pleaſe) in my Diary (whence they had this) another Project to buy them into the Church's Uſe; for given they will not be. But Mr. *Prynn* would ſhew nothing, nor Mr. *Nicolas* ſee any thing, but what they thought would make againſt me.

Here this Day ended, and I was commanded to attend again *July* 15, but was then put off to *July* 17, which Day held.

The Eighteenth Day of my Hearing.

W*EDNESDAY, July* 17, 1644. This Day they charged upon me the Twelfth Original Article; which follows in theſe Words:

XII. He hath traitorouſly endeavoured to cauſe Diviſion and Diſcord between the Church of *England* and other Reformed Churches; and to that end hath ſuppreſſed and abrogated the Privileges and Immunities, which have been by his Majeſty and his Royal Anceſtors granted to the *French* and *Dutch* Churches in this Kingdom: And divers other ways hath expreſſed his Malice and Diſaffection to thoſe Churches, that ſo by ſuch Diſunion the Papiſts might have more Advantage for the Overthrew and Extirpation of both.

I. The firſt Charge is, That I deny them to be a Church: For they ſay that I ſay plainly in my Book againſt *Fiſher*, that [a] *No Biſhop, no Church.* Now 'tis well known they have no Biſhops, and therefore no Church. The Paſſage in my Book is an Inference of St. *Jerom*'s Opinion, no Declaration of my own. And if they, or any other, be aggrieved at St. *Jerom* for writing ſo, they may anſwer him. Mr. *Nicolas* added, That this was ſeconded by Biſhop *Mountague*'s Book, which Mr. *Prynn* (carefully) witneſſed was found in my Study, and licenſed by Dr. *Bray.* Is this Argument come again, that Biſhop *Mountague*'s Book was in my Study? ‘ Leave it, for ſhame!’ But they have now left me never a Book in my Study; ſo I cannot make them any fuller Anſwer, without viewing the Place, than themſelves help me to, by their own Confeſſion: which is, that he adds this Exception, That none but a Biſhop can ordain, but *in caſu neceſſitatis*, which is the Opinion of many learned and moderate Divines. ‘ Yet this is very con-
‘ ſiderable in the Buſineſs, whether an inevitable Neceſſity be caſt upon
‘ them, or they pluck a kind of Neceſſity upon themſelves.’

Mount. Orig. Eccleſ. *p.* 464.

II. The ſecond Charge is out of a Letter of mine to Biſhop *Hall*, upon a Letter which he had formerly ſent me. In which, it ſeems, is ſomething about the Caſe of Neceſſity in point of Ordination, which (they ſay) I diſliked. And it ſeems I diſliked upon good Ground: For he had given me Power, under his Hand, to alter what I would in that which he ſent unto me. I would not take that Power; but writ back to him what Paſſages I thought might be better expreſſed, if it could agree with his Judgment alſo. Hereupon he ſent me another Letter of *Jan.* 18, 1639. in which he alter'd thoſe Things which I put to his farther Conſideration. Could any thing be more fairly carry'd? And this Letter was read to the Lords. Yea, but they ſay, I diſliked the giving of this Title *Antichriſt* to the Pope. No, I did not ſimply diſlike it; but I adviſed Biſhop *Hall*, if he thought it good, not to affirm it ſo poſitively. And the Reaſon I gave was this: That King *James* being preſſed upon a great Occaſion that he had maintained that the Pope was *Antichriſt*, which might much trouble, if not quite croſs ſome Proceedings much deſired by that prudent King; his Majeſty made anſwer, *I maintain it not as a Point of Faith, but as a probable*

[a] *Cont.* Fiſher, § 25. *p.* 176.

Opinion : And for which I have more Grounds than the Pope hath for his Challenge of Temporal Power over Princes. Let him recall this Opinion, and I'll recall that. This I writ to the Biſhop, but left him free to do what he pleaſed.

Here Mr. *Nicolas* fell extremely foul upon me, inſomuch that I could not but wonder at their Patience which heard him. Among other Titles beſtowed upon me, many and groſs, he called me, over and over again, *Pandar to the Whore of* Babylon. I was much moved ; and humbly deſired the Lords, that if my Crimes were ſuch as that I might not be uſed like an Archbiſhop, yet I might be uſed like a Chriſtian ; and that were it not for the Duty which I owe to God and my own Innocency, I would deſert my Defence before I would endure ſuch Language in ſuch an Honourable Preſence. Hereupon ſome Lords ſhewed their Diſlike, and wiſhed him to leave, and purſue the Evidence.

‘ Mr. *Browne* in ſumming up the Charge made this a great Matter, the Denial of the Pope to be Antichriſt. But I did not deny it, nor declare any Opinion of my own : and many Proteſtants, and thoſe very learned, are of Opinion that he is not. 'Tis true, I did not, I cannot approve foul Language in Controverſies. Nor do I think that the calling of the Pope *Antichriſt*, did ever yet convert an underſtanding Papiſt. And ſure I am, *Gabriel Powel*'s Peremptorineſs (to ſay no worſe) in this Point, did the Church of *England* no good, no honour in foreign Parts : For there he affirms [*], *That he is as certain that the Pope is Antichriſt, as that Jeſus Chriſt is the Son of God, and Redeemer of the World.* As for the thing itſelf, I left it free to all Men to think as their Judgment guided them ; as appears by the licenſing of Dr. *Featly*'s Sermons, where he proves the Pope, in his Opinion, to be [a] *Antichriſt* ; where he calls him alſo the [b] *Whore of* Babylon. Which ſurely I ſhould never have ſuffer'd to be printed, had I been her Pandar. And for Biſhop *Hall*, I only told him what King *James* had ſaid, and left him to make what uſe he pleaſed of it.’

III. The third Charge was out of a Paper, which Biſhop *Hall*, about the time when he wrote his Book in Defence of Epiſcopacy, ſent unto me, containing divers Propoſitions concerning Epiſcopal Government. In which either he or I, or both, ſay, (for that Circumſtance I remember not) *That Church-Government by Biſhops is not alterable by human Law.* To this I anſwer'd, That Biſhops might be regulated and limited by human Laws, in thoſe Things which are but Incidents to their Calling : But their Calling, ſo far as it is *Jure Divino*, by Divine Right, cannot be taken away. They charge farther, That I ſay this is the Doctrine of the Church of *England*. And ſo I think it is : For Biſhop *Bilſon* ſet out a Book in the Queen's time, intitled, *The Perpetual Government*. And if the Government by Biſhops be perpetual, as he there very learnedly proves thro' the whole Book, it will be hard for any Chriſtian Nation to out it. Nor is this his Judgment alone, but of the whole Church of *England*. For in the *Preface* to the *Book of Ordination* are theſe Words : *From the Apoſtles time there have been three Orders of Miniſters in the Church of Chriſt, Biſhops, Prieſts, and Deacons.* Where 'tis evident, that in the Judgment of the Church of *England*, Epiſcopacy is a different, not *Degree* only, but *Order* from Prieſthood, and ſo hath been reputed from the Apoſtles times. And this was then read to the Lords. And the Law of *England* is as full for it, as the Church : For the Statute of 8 *Eliz. cap.* 1. abſolutely confirms all and every Part of this *Book of Ordination :* Where alſo the Law calls it, *The high Eſtate of Prelacy*. And *Calvin*, (if my old Memory do not fail me) upon thoſe Words of St. *John, ver.* 20, 21. *As my Father ſent me, ſo ſend I you*, &c. ſays thus upon that Place, *Eandem illis imponit Perſonam ac idem Juris aſſignat.* And if our Saviour Chriſt put the ſame Perſon upon the Apoſtles, and aſſigned to them the ſame Right which his Father gave him, it will prove a ſour Work to throw their Succeſſors the Biſhops out of the Church, after ſixteen hundred Years continuance ; ‘ and in the mean time cry out againſt Innovation.’ For either Chriſt gave this Power to his Apoſtles only, and that will make the Goſpel a Thing temporary, and confined to the Apoſtles times ; or elſe he gave the ſame Power, tho' not with ſuch eminent Gifts, to their Succeſſors alſo, to propagate the ſame Goſpel to the end of the World, as St. *Paul* tells us he did, *Epheſ.* iv. 11. Now all the Primitive Church all along gives Biſhops to be the Apoſtles Succeſſors ; and then it would be well thought on, what Right any Chriſtian State hath (be their abſolute Power what it will) to turn Biſhops out of that Right in the Church which Chriſt hath given them.

IV. The fourth Charge was an Alteration made in a Brief for a third Collection for the diſtreſſed Miniſters and others in the *Palatinate*. The Queen of *Bohemia* was pleaſed to do me the Honour to write to me about this : And becauſe two Collections had been before, her Majeſty deſir'd that this third might be only in *London*, and ſome few Shires about it. I, out of my Deſire to relieve thoſe diſtreſſed Proteſtants, and to expreſs my Duty to the Queen, became an humble Suitor to his Majeſty that this Collection alſo might go thro' *England*, as the reſt had done. And 'tis acknowledg'd by all, that this I did. Now the Witneſſes which accuſe me for ſome Circumſtances in this Buſineſs, are two.

1. The firſt is Mr. *Wakerly*. He ſays, That Mr. *Ruly* (who was employed by the Queen of *Bohemia* about this Collection) was roughly uſed by me upon Occaſion of this Clauſe put into the Brief, and which, he ſays, I cauſed to be altered. This, Firſt, is a bold Oath ; for Mr. *Wakerly* was not preſent, but ſwears upon Hearſay. Secondly, What Kindneſs I ſhewed him and the Buſineſs, is mentioned before ; and if for this Kindneſs he had been practiſing with Mr. *Wakerly* about the Brief, (as I had probable Reaſon to ſuſpect) I cannot much be blamed, if I altered my Countenance towards him, and my Speech too ; which yet theſe Witneſſes (for the other agrees in this) have no Reaſon to call rough Carriage, only upon Mr. *Ruly*'s unthankful Report.

He ſays, That theſe Words, *the Antichriſtian Yoke*, were left out. Firſt, this is more than I remember ; and the Briefs I had not to compare : Nor is there any Neceſſity that two Briefs, coming for the ſame Thing, with ſome Years diſtance between, ſhould agree in every Phraſe or Circumſtance. Secondly, If I did except againſt this Paſſage, it was partly becauſe of the fore-recited Judgment of King *James*, of which I thought his Son King *Charles* ought to be tender ; and partly becauſe it could move nothing but Scorn in the common Adverſary, that we ſhould offer to determine ſuch a Controverſy by a Broad-Seal. I remember well, ſince I had the Honour to ſit in this Houſe, the naming of Tythes to be due *Jure Divino* caſt out the Bill ; a prudent Lord aſking the Peers, whether they meant to determine that Queſtion by an Act of Parliament. The other part of the Clauſe, which they ſay was altered, was, *The Religion which we with them profeſs.* Whence they infer, becauſe *(with them)* was left out, that I would not acknowledge them of the ſame Religion ; which follows not : For we may be and are of the ſame Religion ; and yet *(agree)* not with them in thoſe Opinions, in which we differ from them. And Mr. *Wakerly* confeſſes that the Words as altered are, *That they are perſecuted for their Religion* ; and their Religion is the Proteſtant Religion, and ſo is ours. And therefore I could have no Intention to make the Religions different, but the Opinions under the ſame Religion.

‘ For Mr. *Wakerly*, he is a *Dutchman* born ; and how far the Teſtimony of an Alien may be of force by the Law, I know not : And a bitter Enemy to me he hath ever ſhewed himſelf, ſince I complained to the King and the Lords that a Stranger born and bred ſhould be ſo near a Secretary of State, and all his Papers and Cyphers, as he was known to be to Mr. Secretary *Coke*. A Thing which few States would endure. And how far the Teſtimony of ſuch a canker'd Enemy ſhould be admitted, let the World judge. Admitted he was.’

2. The ſecond Witneſs was Mr. *Hartlip*. He acknowledges my Improvement of the Collection, and my great Readineſs therein ; which doubtleſs I ſhould not have ſhewed, had I accounted them of another Religion. He ſays, There was no Alteration but in that Clauſe ; and that implies a manifeſt Difference. But that is but in his Judgment ; in which I have already ſhewn that *Wakerly* is miſtaken, and ſo is he. Beſide, he comes here as a Witneſs of the Fact, not as a Judge of my Intentions or Thoughts. He adds, that, if he remember well, the Alteration was drawn by me. But if he do not remember well, what then ? Surely here's no Evidence to be grounded upon *Iſs*. Here, upon the Point of Antichriſt, Mr. *Nicolas* ſtiled me as before, and was furious till he foamed again. But I ſaw a Neceſſity of Patience. ‘ Mr. *Browne* alſo in his ſummary Charge followed this Buſineſs cloſe : But I gave it the ſame Anſwer.’

5. The fifth Charge, and the laſt under this Article, was the calling in of a Book, *Anno* 1637. ſhewing the Doctrine and Diſcipline of the Church in the *Palatinate* ; but called in only becauſe againſt Arminianiſm. The ſingle Witneſs *Michael Sparks*. He ſays this Book was called in ; but he knows not by whom, nor mentions he for what. But he ſays the Purſuivants which ſearched for it were mine. He means ſuch as belonged to the High-Commiſſion ; for other than ſuch I had none. And there was cauſe enough for calling in the Book, without thinking of Arminianiſm.

‘ But what is the reaſon why here's nothing urged againſt me about abrogating the Immunities and Privileges of the *French* and *Dutch* Churches, which fill the Body of this Article ? Why, I conceive there may be two Reaſons of it. One, becauſe there was taken by Mr. *Prynn*, among other Papers for my Defence, a Letter under Queen *Elizabeth*'s own Hand to the Lord *Pawlet*, Marquiſs of *Wincheſter*, then Lord Treaſurer ; in which ſhe expreſſes her Willingneſs that thoſe Strangers, diſtreſſed in and for point of Conſcience, ſhould have Succour and free Entertainment ; but ſhould conform themſelves to the *Engliſh* Liturgy, and have that tranſlated into their own Language. And they knew I would call to have this Letter produced, proved, and read. And had this Letter been ſtood unto, they had never been able to do the Church of *England* half the Harm they have ſince. The other was, becauſe they found by their own Search againſt me, that all which I did concerning thoſe Churches was with this Moderation ; that all thoſe of their ſeveral Congregations in *London*, *Canterbury*, *Sandwich*, *Norwich*, or elſewhere, which were of the ſecond Deſcent, and born in *England*, ſhould repair to their ſeveral Pariſh-Churches, and conform themſelves to the Doctrine, Diſcipline, and Liturgy of the Church of *England* ; and not live continually in an open Separation, as if they were an *Iſrael* in *Ægypt*, to the great Diſtraction of the Natives of this Kingdom, and the aſſiſting of that Schiſm which is now broke forth. And as this was with great Moderation, ſo was it with the joint Approbation of his Majeſty and the Lords of his Council, upon the Reaſons openly given and debated. And all this before I proceeded to do any thing ; as appears *apud Acta*.’

Then they went to the Thirteenth Original Article ; which here follows.

XIII. He hath traitorouſly and wickedly endeavoured to reconcile the Church of *England* with the Church of *Rome :* And for the effecting thereof, hath conſorted and confederated with divers Popiſh Prieſts and Jeſuits ; and hath kept ſecret Intelligence with the Pope of *Rome :* And by himſelf, his Agents and Inſtruments, treated with ſuch as have from thence received Authority and Inſtruction. He hath permitted and countenanced a Popiſh Hierarchy or Eccleſiaſtical Government to be eſtabliſhed in this Kingdom. By all which traitorous and malicious Practices this Church and Kingdom have been exceedingly indangered, and like to fall under the Tyranny of the *Roman* See.

The Seventh Additional Article.

That the ſaid Archbiſhop at ſeveral times within theſe ten Years laſt paſt, at *Weſtminſter*, and elſewhere within this Realm, contrary to the known Laws of this Land, hath endeavoured to advance Popery and Superſtition within the Realm : And for that end and purpoſe hath wittingly and willingly received, harboured, and relieved divers Popiſh Prieſts and Jeſuits ; namely, one called *Sancta Clara*, alias *Damport*, a dangerous Perſon and *Franciſcan* Friar : who having written a Popiſh and Seditious Book, entitled, *Deus, Natura, Gratia*, wherein the Thirty-nine Articles of the Church of *England*, eſtabliſhed by Act of Parliament, were much traduced and ſcandalized ; the ſaid Archbiſhop had divers Conferences with him

[a] *Dr.* Featly's *Sermons, p.* 808.

[b] *P.* 810.

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[*] Tam certo ſcio Papam eſſe magnum illum Antichriſtum, quam Deum ipſum eſſe in Cœlis Creatorem, & Jeſum Chriſtum verum Meſſiam. *Gab. Pow. de Antichriſto. Epiſt. ad Lectorem.*

while he was writing the ſaid Book: and did alſo provide Maintenance and Entertainment for one Monſieur *St. Giles*, a Popiſh Prieſt, at *Oxford*, knowing him to be a Popiſh Prieſt.

I. The firſt Charge (they ſay) was to be laid as a Foundation; and it was, That I was generally reputed a Papiſt in Heart, both in *Oxford*, and ſince I came thence.

1. The firſt Witneſs for this was Dr. *Featly*. He ſays, There was ſuch an Opinion of me Thirty Years ſince there. But he ſays, he never heard any Popiſh Opinion maintained by me. So here's nothing of Knowledge. And if I ſhould ſay, that above Thirty Years ago there was an Opinion that Dr. *Featly*, then in *Oxford*, was a Puritan, this could make no Proof againſt him: Nor can his ſaying that I was reputed a Papiſt, make any Proof againſt me. He ſays farther, That one Mr. *Ruſſel*, who had been bred in *St. John*'s-*College*, told him in *Paris*, that I maintained ſome Catholick Opinions. Firſt, Mr. *Nicolas* would have it that this Mr. *Ruſſel* was my Scholar: But the whole College can witneſs it is not ſo; nor had he ever any relation to me in the leaſt degree. After his Father's Death he left the College, and went beyond Sea; where the weak Man (for ſuch he was) loſt his Religion. Secondly, Dr. *Featly* ſays expreſly, that Mr. *Ruſſel* ſaid I was no Papiſt; which, for the Countenance of his own Charge, he would never have ſaid, had he thought me one. Thirdly, If he did ſay that I maintained ſome Catholick Opinions; yet he named none, by which there might be Trial and Judgment whether they were ſuch or no, in the Senſe he meant them. Laſtly, Mr. *Perkins*, in his *Reformed Catholick*, ſets down divers Opinions in which they of *Rome* and we agree: Shall he be a Papiſt for this? Or ſhall not that which is lawful for him, be as lawful for me?

2. The ſecond Witneſs was one *Harris*. He ſays, That Mr. *Ireland* (who was ſome time Student of *Chriſt-Church* in *Oxford*, and after Schoolmaſter at *Weſtminſter*) told him that I would leave the Church of *England*. This is a bare Report from Mr. *Ireland*, with whom I never had any Acquaintance, nor was ſcarce in his Company twice in all my Life. Nor is it in my Power to hinder what Mr. *Ireland* will ſay, or Mr. *Harris* from him. He ſays, That one that called himſelf *Leander*, came over on purpoſe to make this Reconciliation. If he did, (which is more than I know or believe) I think he would hardly make ſuch a one, as *Harris* is reported to be, acquainted with it. But howſoever, if he did come with that purpoſe, was it in my power to hinder his coming? And here is no proof offered that I did help on his Purpoſe, or ſo much as know of it. He ſays he often petitioned me for Relief, but had none. It may be; I well knew he deſerved none: And your Lordſhips know, that by Law I might not afford him any. Had I given him any, I ſhould now have heard it with both Ears. For I am informed he is a Prieſt, and condemned in a *Præmunire*, and was let out of Priſon on purpoſe to be a Witneſs againſt me. And having ſet that which is aforeſaid, under his Hand, is now ſlipped away, and gone. Who got him out of Priſon for this good purpoſe, I know not; but ſure ſomewhat there is in it, for your Lordſhips ſee his Teſtimony is now read, but he appears not.

3. The third Witneſs was Sir *Nathaniel Brent* (now abſent, but came in the next Day). He ſays, I was eſteemed Popiſhly-affected in *Oxford*; and he gave three Inſtances very carefully to prove it. The firſt was, That in the Divinity-School there, I maintained the Neceſſity of Baptiſm. I did ſo; and my Predeceſſor Archbiſhop *Abbot* was then Vice-Chancellor, and preſent, and approved my Opinion: and my Grace paſſed for my Degree to be Batchelor of Divinity, without any one Man's Oppoſition. He ſays, that Mr. *Dale* of *Merton College* then ſhewed him all my Suppoſition taken out of *Bellarmine*. This is a bold and a dangerous Oath: He might ſwear that Mr. *Dale* ſhewed him in *Bellarmine*, that which he ſaid was my Suppoſition; but that he ſhewed him all my Suppoſition there, is a ſtrange Oath for a Man of Learning and Law to make, in ſuch a Preſence. Beſides, I have my Suppoſition, which I then made, yet by me; and if my Tenet of that Queſtion be the ſame with *Bellarmine*'s, or that there be any Line taken out of him, but what I cite for my own Advantage againſt him, I will utterly forfeit my Reputation of any Learning to your Lordſhips. His ſecond Inſtance was, that I was acquainted with one Mr. *Brown*, Fellow of *Corpus-Chriſti-College* in *Oxford*, who was ſuſpected to be a Papiſt, and after his Death proved to be one, by a Book that was found in his Study, proving that a Man might be a Roman Catholick, and yet go to Church, and conform in *England*. I was acquainted with this Man; he was a very good Scholar, and an honeſt Man, and a good Proteſtant, for aught I know. For the Tract found after his Death among his Papers, that's no Proof: for Scholars get all the Papers they can, eſpecially ſuch as belong to their own Profeſſion. And the more ſtrange the Opinions are, the more do they labour to get them. Nor is it any Proof that the Tract was of his making, becauſe written in his own Hand, as 'tis urged. For the Argument being ſo foul and dangerous, it could not be ſafe for him, nor any way fit, to commit it to any other to write for him. Nor is there any Proof that I knew he had ſuch a Tract by him; neither indeed did I. The Opinion is very baſe and unworthy, and was firſt broached by the Jeſuit *Azorius*, and it ſeems ſome of the Fellows had inlarged him, and made this Tract out of his Principles. His third Inſtance was, That I petitioned King *James* in this Buſineſs. I was complained of to King *James* by a great Perſon, that I had inward Acquaintance with this Man. Hereupon, my waiting Month being *June*, and not long after the Complaint made, I took occaſion in my firſt Sermon to confute this Opinion, and then petitioned his Majeſty that it might be examined, that ſuch an Imputation might not lie upon me. His Majeſty referred it to the Lord Archbiſhop of [a] *Canterbury*, Biſhops of *London*, *Wincheſter*, and *Dureſme*; where, after full Examination, I was acquitted.

Inſtit. Moral. *p.* 1. *l.* 8. *c.*27.

[a] Abbot, King, Mountague, Neile.

II. The ſecond Charge was, that the ſame Opinion was held of me beyond the Seas, that I was a cunning Promoter of the *Roman* Cauſe. And here the Witneſſes are the ſame which were produced before; Mr. *Challoner*, who told over his old Tale again of I know not what Plot he heard from a Jeſuit: nothing but Hearſay at the beſt. And it ſavours like an Almanack *de poſt facto*, ' or rather of ſomewhat elſe, which I will ſpare to ' name, becauſe he is upon his Oath.' The other Witneſs is Mr. *Anthony Mildmay*, who alſo tells over his old Tale of his Father *Fitton*. But he was out of the way again, and appeared not till the next Day, with Sir *Nathaniel Brent*. So here's a Repetition again of the ſame Witneſſes, and ſame things to multiply the noiſe. ' Only noble Sir *Henry Mildmay* appeared ' not the ſecond time; but whether it were becauſe he had enough at his ' firſt appearance, or whether his Face was ſcratched then (as ſince Men ' ſay it was), I cannot tell.'

III. The Third Charge was, That I had a damnable Plot, to reconcile the Church of *England* with the Church of *Rome*. If to reconcile them with the Maintenance of Idolatry, it were a damnable Plot indeed. But if Chriſtian Truth and Peace might meet and unite together, all *Chriſtendom* over, were that a Sin too? Were I able to plot and effect ſuch a Reconciliation, I would think myſelf moſt happy, whatever I ſuffered for it. But how is this damnable Plot proved? Pope *Gregory* writ a Letter to his Nuncio in *Spain*, and a Letter alſo to King *Charles*; which Letter is printed: Copies of theſe Letters were found in my Study. Could I hinder the Pope from writing to whom he pleaſed? Shall not I get Copies of any Letters I can, to ſee what practiſing is abroad for private Intereſt? Shall it be lawful for all my Predeceſſors to get and keep Copies of ſuch Letters by them, and ſhall it be unlawful for me only? And here I produced Mr. *Dobſon*, an antient Servant to my Predeceſſors, who witneſſed that Archbiſhop *Bancroft* had ſtore of them, and kept them all his time. Nor do I know, how this Charge can fall upon me: for there is no one Word in any of the Letters produced, that reflects upon me, or any Plot of mine. Nor indeed had I ever any ſuch to reflect upon.

IV. The Fourth Charge is, That I had a hand in the Plot for ſending the King, when he was Prince, into *Spain*, to be perverted in his Religion. They follow their Proof of this out of my Diary: And they begin with my Friendſhip with the Lord Duke of *Buckingham*, who waited on the Prince in this Journey. And firſt they urged my Diary at *June* 9, 1622. where I mention, that there were then Particulars, which are not for Paper. But the Words, which lead theſe in, were his Entrance upon a near Reſpect to me, the particular Expreſſions whereof were not for Paper: Nor Word, nor Thought, of either Plot or Popery. Then they urged *June* 15. 1622. where 'tis ſaid, that I became C. that is, Confeſſor to the Lord Duke. Firſt, If my Lord Duke would honour me ſo much as to make me his Confeſſor, as I know no Sin in it, ſo it is abundantly proof, that the Paſſages before-mentioned were not for Paper. Should I venture them ſo, there's never a Perſon of Honour preſent, but would think me moſt unworthy of that Truſt. Next, they preſſed *June* 13, 1623. where I confeſs, that I received Letters from my Lord Duke out of *Spain*. I did ſo; and I then held it great honour to me, and do ſo ſtill. But then, and long before, it was known to all Men whither he was gone, and with whom; nay, it was commonly known to all Men of Quality hereabout within three or four Days: And till it was ſo commonly known, I knew it not. Yea, but then they inforced out of *Feb.* 17, 162$\frac{2}{3}$, That the Prince and the Marquiſs of *Buckingham* ſet forward very ſecretly for *Spain*. And *Febr.* 21, That I writ to his Lordſhip into *Spain*. 'Tis true, they went away that Day, and very ſecretly; but I neither did, nor could ſet it down, till afterwards that I came to know it. And then ſo ſoon as I came to know it, which was about the 21ſt, I did write. To theſe was cunningly (how honeſtly let all the World judge) pieced a Paſſage out of a Letter of mine to Biſhop *Hall*. But that Letter was read, at my humble Motion to the Lords, and the Date of it was in 1634, ſo many Years after this Buſineſs of *Spain*. And the Paſſage mentioned, was only about King *James*'s manner of defending the Pope to be Antichriſt, and how he ſalved it while the Prince was in *Spain*. But King *James* related it after. Nor could any Words of that Letter be drawn to the King's going thither, much leſs to any knowledge I had of it.

V. The Fifth Charge was concerning his Majeſty's Match with *France*. And here again they urge my Diary at *Mar.* 11. 1625, That the Duke of *Buckingham* was then and there employed. And at *May* 19, & 29, That I then writ Letters to him. Firſt, My Lords, I hold it my great honour, that my Lord Duke would write to me, and give me leave to write to him. Secondly, I have committed ſome Error in theſe Letters, or none. If none, why are they charged? If any, why are they not produced, that I may ſee what it is, and anſwer it?

VI. The Sixth Charge was, That I was an Inſtrument of the Queen's. This they endeavoured to prove by my Diary in three places. Firſt, at *Aug.* 30, 1634. Upon occaſion of ſome Service done, ſhe was graciouſly pleaſed to give me leave to have immediate Acceſs unto her, when I had occaſion. This is true, and I moſt humbly thanked her Majeſty for it: for I very well knew what belonged to Addreſſes at ſecond-hand in Court. But what Crime is in this, that the Queen was pleaſed to give me Acceſs unto her, when I had occaſion? Here's no word of Religion. Secondly, at *May* 18, 1635, where 'tis ſaid, That I gave her Majeſty an account of ſomething committed to me. If her Majeſty ſent or ſpake to me to do any thing, as it ſeems ſhe did, ſhall I want ſo much Duty, as not give her an account of it? So belike I muſt be unmannerly with her Majeſty, or lie open to no leſs than a Charge of High-Treaſon. Thirdly, at *April* 3, 1639, 'tis made a great matter, That I ſhould then diſpatch a great Buſineſs for the Queen, which I underſtood ſhe would not move for herſelf: and that for this her Majeſty gave me great Thanks. Mr. *Nicolas*'s Inference upon this was, That they conceive wherefore. But his Conceit makes no Evidence: he muſt not only conceive, but prove wherefore, before it can work any thing againſt me. As for Religion, as there is no word of it in my Diary, ſo neither was it at this time thought on. Her Majeſty would therein have moved for herſelf: But it ſeems it muſt be a Crime, if I be but civil and dutiful towards the Queen, though it be but thrice mentioned in ſo many Years.

VII. The Seventh Charge was, That I forbad Miniſters praying for the Queen's Converſion, and puniſhed others. The firſt Witneſs, Mr. *Ratcliff*, ſays, That Sir *Nath. Brent* gave it in charge at *Bow-Church* in my Viſitation. The more to blame he, if ſo he did. Yea, but he ſays, it was by my Command delivered unto him by Sir *John Lambe*. Was it ſo? How doth Mr. *Ratcliff* know that? He doth not expreſs. He was not preſent, when I ſpake with Sir *John Lambe*. And if Sir *Nath. Brent* told him of it, 'tis but Hearſay. And Sir *Nath.* having been ſo ready a Witneſs againſt me, why is he not examined to this Particular? And as for the Paper which was ſhewed, it appears plainly there, that it was no Paper of Inſtructions ſent to my Viſitors by me, but of particular Informations to me: of which one was, That the Queen was prayed for in a very factious and ſcandalous way. And this appeared, when that Paper was read. And this I referred to my Viſitors, as I not only might, but ought: not forbidding the Prayers, but the ſcandalous manner of them. The ſecond Witneſs was Mr. *Prynn*; who ſays, That one Mr. *Jones* was puniſhed for praying for the Queen. He was puniſhed in the High-Commiſſion for ſcandalous abuſing the Queen, under a Form of praying for her, and for divers other Articles that were againſt him. ‘ And this Anſwer I gave to Mr. *Browne*, who forgot not this in ſumming up my Charge.’

VIII. The Eighth Charge was, That I puniſhed Men for praying to preſerve the Prince. No; God forbid! The High-Commiſſion-Book was ſhewed, and that there in the Year 1634, one Mr. *Howe* was cenſured for it. I got this Act of the High-Commiſſion to be read to the Lords: His Prayer went thus, *That God would preſerve the Prince in the true Religion, of which there was Cauſe to fear.* Could this Prayer have any other Operation upon the People, than to make them think his Majeſty was careleſs in the Education of the Prince, eſpecially in point of Religion? And this was ſo grievous and graceleſs a Scandal caſt upon a Religious King, as nothing could be greater. Upon the matter, it was the Shew of a Prayer for the Prince, but was indeed to deſtroy the King in the Hearts of his People. And had I not there conſented to his Puniſhment, I had deſerved to be puniſhed myſelf. ‘ Mr. *Browne*, when he repeated the Sum of the Evidence, laid this Charge upon me, but ſpake not one word (to my remembrance) of this Anſwer given to it.’

IX. The Ninth Charge, That I did extol Queen *Mary*'s Days. The Proof for it was taken out of the Preface to the Statutes of the Univerſity of *Oxford*. I took a great deal of pains about thoſe Statutes, and might juſtly have expected Thanks for it, not ſuch an Accuſation. But as for the Preface, it was made and printed at *Oxford*: I meddled not with it. I could truſt the Univerſity with little, if not with making of a Preface. If they have done any thing amiſs in it, let them anſwer it. The Paſſage was about certain Offers made to amend thoſe confuſed old Statutes, both in *Edward* VI's and Queen *Mary*'s Days; but no effect came of the pains then taken; *Recruduit Labor*, ſays the Preface. So that this I can anſwer for them: There's not a word ſpoken of Religion, but of Manners only, and that as much in relation to the Times of Princes following, as hers. For the Words, to my remembrance, are, *Interim optandâ Temporum Fœlicitate*, &c. And that *Interim* cannot be reſtrained to Queen *Mary*'s Days only, but muſt include the whole *Interim*, or middle Diſtance of Time, to that preſent in which I ſettled the Body of their Statutes; that is, all Queen *Elizabeth*'s and King *James*'s days, which I think no Man can deny was *Optanda Temporum Fœlicitas*

X. Here Mr. *Nicolas* confeſſed there was *no downright Proof* againſt me. That was his Phraſe: But he added, that was not to be expected in ſuch a Work of Darkneſs. Then he produced a Paper found in my Study, printed at *Rome*. So were divers of my Books printed there: what of this? They may print what they will at *Rome*, I cannot hinder it: and I may have and keep whatever they print, no Law forbidding it. Then he ſhewed a Letter ſent unto me from Mr. *Graves*. The Gentleman is at this preſent Fellow of *Merton-College* in *Oxford*, a great Traveller, and a Man of great Worth. As far as I remember, his Letter came to me from *Alexandria*. It was fit to be ſent, and kindly received; as by me it was. I deſired it might be read. Then were mentioned Sir *William Boſwell*'s Letters, and the Papers ſent by *Andreas ab Habernfeld*, about a great Plot to deſtroy the King and Religion, and that I concealed theſe Papers. ‘ I might have been amazed at the Impudence of this Charge above all the reſt: *Diaboli Impudentia*, the Devil's Impudence, and no leſs, as St. *Auguſtine* ſpeaks in another Caſe.’ Did I conceal theſe Papers? Firſt, the ſame Day that I received them, I ſent them by an Expreſs to his Majeſty. I had a ſpeedy Anſwer from his Majeſty, and that I returned with equal ſpeed to his Majeſty's Agent Sir *William Boſwell*, as I was commanded. And this Mr. *Prynn* and Mr. *Nicolas* knew: For Mr. *Prynn* took all theſe Letters and Papers from me, when he ſearched me at the *Tower*; and out of them made his Book called * Rome'*s Maſter-piece*: excepting the Slanders, which he hath juggled in of his own. So ſoon as his Majeſty came home, I humbly beſought him, that he would be pleaſed to appoint a time, and call ſome Lords to him, to hear and examine the Buſineſs; and this Examination continued till I was committed. What was after done, I cannot account for. Beſides, my Lords, it appears by thoſe Papers, that my Life was ſought for, becauſe I would not give way to the Change of Religion; and Mr. *Prynn* himſelf hath printed this: and yet now Mr. *Nicolas*, from his Teſtimony, preſſes theſe Papers againſt me. But the King, and the Lords, and both Secretaries of State then preſent, can witneſs, that I took all the care and pains abovementioned to have it ſifted to the bottom. ‘ Notwithſtanding all this, Mr. *Nicolas* falls upon this Plot again upon the next Day of my Hearing, as if nothing had been ſaid unto it: and was ſo ſhameleſs as to ſay, That I followed this Buſineſs ſo long as I thought the Plot was againſt the Puritans; but ſo ſoon as I found it was againſt the Papiſts, I kept it ſecret, till Mr. *Prynn* diſcovered it in his Search of my Papers. Where, Firſt, there's no Word in all the Papers to make me or any Man think the Puritans were concerned in it. And Secondly, I did not ſleep upon the Receipt of theſe Papers, till I had ſent them to his Majeſty. But I had reaſon to keep the Papers as ſafe as I could, conſidering how much they juſtify me againſt theſe foul Calumnies put upon me.’

S. Aug. Epiſt. 167.

XI. Then followed the Charge of *Sancta Clara*'s Book, *alias* Monſieur *St. Giles*: ſo they expreſſed it; and I muſt follow the way they lead me.

1. Firſt, then, they charge, That I had often Conference with him, while he was writing his Book, intitled, *Deus, Natura, Gratia.* No, he never came to me, till he was ready to print that Book. Then ſome Friends of his brought him to me. His Suit then was, That he might print that Book here. Upon Speech with him, I found the Scope of his Book to be ſuch, as that the Church of *England* would have little Cauſe to thank him for it: and ſo abſolutely denied it. Nor did he ever come more at me after this, but twice or thrice at moſt, when he made great Friends to me, that he might print another Book, to prove that Biſhops are by Divine Right. My Anſwer then was, That I did not like the way which the Church of *Rome* went, in Caſe of Epiſcopacy. And howſoever, that I would never give way, that any ſuch Book ſhould be printed here from the Pen of a Romaniſt; and that the Biſhops of *England* were able to defend their own Cauſe and Calling, without calling in Aid from *Rome*, and would in due time. Maintenance he never had any from me, nor did I then know him to be a Prieſt. Nor was there any Proof ſo much as offered in contrary to any of this.

2. Secondly, They did ſpecially except againſt a Paſſage in the Licenſer, and another at the end of the Book. The Book was printed at *Lyons*, where I could not hinder the printing, either of the whole, or any part. This might have been ſomething, had I licenſed it here; but that I conſtantly denied.

3. Thirdly, They produced a Letter written to me from *Venice*, by one Mr. *Middleton*, Chaplain there to the Right Honourable the now Earl of *Denbigh*, his Majeſty's Ambaſſador. Therein he writes, *That* S. Clara *was* Homo nequiſſimus, *and that one Monſieur* S. Giles *was the Author of that Book.* That *Clara* and *S. Giles* were the ſame Perſon, is but Mr. *Middleton*'s Opinion. Such News as he there heard, ſome true, ſome falſe, he thought fit to write unto me: and he being abſent, here's no Proof upon Oath, that they are one and the ſame Perſon. And I hope a young Man's Letter from *Venice*, or any other Place, ſignifying only ſuch things as he hears, ſhall not ſtand for good Evidence in a Caſe of Life. And he was mainly deceived in this Particular, as appears, Firſt, Becauſe what *Clara* is, I know not: but Monſieur *S. Giles* is a great Scholar, and a ſober Man; and one that gave the late Lord *Brooke* ſo good Content, that he allowed him One Hundred Pound a Year during his Life. Secondly, Becauſe 'tis commonly known that *Clara* is an *Engliſhman*, and *S. Giles* a *Frenchman* born and bred. ‘ Thirdly, Becauſe their own Article, upon which they bring this Charge, acknowledges them two diſtinct Perſons. Fourthly, Becauſe both Mr. *Prynn* and Mr. *Nicolas* had Monſieur *S. Giles* before them in Examination, and could not but know him to be a *Frenchman*: as appears by a Warrant given to him by Mr. *Prynn*, to ſecure him after his Examination; which Warrant follows in theſe Words:

The 7th Additional.

‘ THESE *are to certify thoſe whom it may concern, That the Committee of the Houſe of Commons, appointed to proſecute the Archbiſhop of* Canterbury, *have examined and received Satisfaction from Monſieur* S. Giles, *a Domeſtick Servant to the Reſident of* Venice; *and therefore he is no farther to be examined or moleſted concerning the ſame.*

‘ This Licenſe came to my Hands ſince my anſwering was paſt, ſo I could not then ſhew it. Monſieur *S. Giles* was never the Man that gave me notice of any of this, not ſo much as that he had been examined; but my Secretary Mr. *Dell* came to hear of it by chance, and went to him, and had this Copy (with ſome Labour) from him, and will make Oath it is a true Copy. This is not the thankfulleſt Part that ever *S. Giles* played, conſidering my Carriage towards him.’

4. Then they charged upon Monſieur *S. Giles* directly, That I knew him to be a Prieſt, and yet maintained him at *Oxford*. The † Caſe was this: Mr. *S. Giles* was in good Place about the Queen's Majeſty at her firſt coming: Here he did ſo good Services to this State, that he loſt himſelf in *France*, and durſt not go thither when the *French* were ſent away. All this while the Man was unknown to me, till his Majeſty one Day at St. *James*'s told me this, and that he was a Prieſt, and that it lay upon him in Honour to allow him ſome Maintenance, and preſcribed me a Way how to order it, that he might receive One Hundred Marks a Year as from him; and gave me charge, if the Penſion were at any time behind, I ſhould acquaint him with it. After this Mr. *S. Giles*, by his Friends, petition'd his Majeſty, that being a Stranger, he might live in *Oxford*, to have the Uſe of the Library there, being reſolved to meddle no more with the Controverſies of the Time, but to apply himſelf to *Metaphyſical* Learning. His Majeſty was deſirous to have him plac'd in ſome College, to ſave Charges: But this I moſt humbly deprecated, becauſe it might be dangerous to the Youth there, and ſcandalous to his Majeſty, the Church, and the Univerſity; and dangerous to myſelf, being Chancellor: to the reſt I ſubmitted. So he was left to place himſelf in ſome Town-Houſe, as he could: And for this his Majeſty gave me his Warrant, which Mr. *Prynn*, in his Search, took from me. But here follows the true Copy of it.

‘ Charles Rex.

‘ CAnterbury, *Mr.* S. Giles *by ſerving Us and this State, hath loſt all his Hopes in* France, *and deſires to ſpend his time here at his private Studies. I would have you think upon ſome way for his Maintenance, and to place him in* Oxford, *that he may have uſe of that Library, which he much deſires. And you may ſo order it, that his Profeſſion in Religion may do no harm.*’

And according to this Direction of his Majeſty I did take order, but with Aſſurance from himſelf, and with Spies upon him there, beſides the ſpecial Care of the Vice-Chancellor, that he ſhould not converſe with young Students, nor exerciſe his Prieſtly Office, nor do any thing againſt the Laws. Nor did I ever hear that he failed in any of theſe Aſſumptions.

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* *This Book was publiſhed by* Prynn *in the Year* 1643, *in five Sheets in Quarto. A Copy whereof being by his Endeavours conveyed to the Archbiſhop, then a Priſoner in the* Tower, *the Archbiſhop wrote Notes in the Margin of it, ſo far, and ſo much, as to vindicate himſelf from the Aſperſions laid upon him therein. This Copy, with the ſaid Notes, is now in the Hands of that knowing and learned Antiquary Mr.* Anthony Wood.

† *The Archbiſhop related this Caſe more at large, and therewith defended himſelf in a written Paper; which being ſeized by* Prynn *in the* Tower, *was now produced and read before the Lords. It may be found in* Prynn'*s* Comp. Hiſt. p. 428. *H. W.*

5. Then they produced one Mr. *Broad*, who teſtified, That while *S. Giles* lived at *Oxford*, ſome Doctors came to him. Doctors were able to deal well enough with him; but all Reſort of young Scholars was forbidden. He ſays farther, That Mr. *S. Giles* ſhould ſay, That the Biſhops of *England* were cordially of his Religion, but that he feared their Rigidneſs would ſpoil all. Firſt, This is but a Report of his Speech. Secondly, Why was not *S. Giles* at his Examination aſked, whether he ſaid it or no? And if he did, what Ground he had for it? At the moſt, it was but his Opinion of the Biſhops, who were never the more cordial to Popery for his thinking ſo. 'And Thirdly, I doubt it appears by this time, that 'all is overthrown, or near it, not by the Rigidneſs, but by Over-Re-'miſſneſs of ſome Biſhops, who never would believe any Danger could 'come from the *Godly*, as they were called.'

6. Laſtly, What's the Reaſon of this great Endeavour, upon nothing but News in a Letter, to make *Clara* and Mr. *S. Giles* to be one and the ſame Man? 'Doubtleſs, nothing but an Hydropical Thirſt after my 'Blood.' For Reſort of Prieſts to *Lambeth* was uſual in both my laſt Predeceſſors times, *Bancroft*'s and *Abbot*'s, and ſome lay in the Houſe, and had Relief. This was proved to the Lords by two antient Servants of that Houſe: Neither of which have been done in my time. Archbiſhop *Abbot* made a Warrant (this Warrant was ſhewed to ſecure Mr. *Preſton*, an *Engliſh* Prieſt, upon [a] Command of King *James*: Why may not I a *French* one, by the Warrant of King *Charles*? King *James* juſtified Biſhop *Bancroft* for doing this, when he was Biſhop of *London*, and no Privy-Counſellor: And may not I do it, being Archbiſhop and Privy-Counſellor, with as much Privity of the King and the State, as he did? But to let theſe paſs, why ſhould I ſay here was a Thirſt for Blood? I'll tell you why? The Statute of 27 *Eliz.* makes it Felony, without Benefit of Clergy, to maintain or relieve any *Romiſh* Prieſt born in *England*, or any other of her Majeſty's Dominions, knowing him to be ſuch. Now they had laid their *Article*, That I had given Maintenance to one Monſieur *S. Giles*, a Popiſh Prieſt at *Oxford*, knowing him to be ſuch. But when, upon Examination of *S. Giles*, they found him to be a *Frenchman*, and ſo not within the Statute; (as the Words of that Statute are moſt plain, and ſo is Sir *Edward Coke*'s Judgment upon them; both which I then read to the Lords:) I ſay, when they ſaw this, then they caſt about how to make * *S. Clara* and Mr. *S. Giles* to be one Man. And tho' they could find no Shadow of Proof of a thing that is not, but *a Letter of News from* Venice; yet againſt their own Knowledge and Conſcience, they give that in Evidence to reach my Life any way.

[a] *Confer. at* Hamp. Court, *p.* 51.

27 Eliz. c. 2. §. 3.

Art. 7. *Addit.*

L. 3. Inſt. c. 37.

Here Mr. *Nicolas*, ſo ſoon as he had diſcovered whither I tended, would have broken me off, ſaying, They did not urge it for that now, they were not yet come to it. I replied, if they came to it after, I would be at the Pains to anſwer again: But ſince it concerned my Life, I would not ſlip it now, nor leave it unanſwered in any Circumſtance. So I went on, but they never mentioned it after; and by this way meant certainly to have involved me within the Law, *Clara* being an *Engliſhman* born. 'God of his 'Mercy grant, that this Thirſt after my Blood lie not too heavy another 'Day upon their Souls! Mr. *Browne*, in ſumming up the Charge, fell 'upon this alſo. I made a brief Anſwer out of that which is aforeſaid: 'Yet after in his Reply, he fell upon this Letter of Mr. *Middleton*'s, and 'cites his News for Evidence, That *S. Clara* and Mr. *S. Giles* were the 'ſame Man: Which I much wonder ſo able and grave a Man as he is 'ſhould ſwallow from Mr. *Prynn*, who doubtleſs (being preſent) was 'angry to ſee himſelf ſo laid open in the Houſe of Commons.'

XII. At laſt came in the laſt Charge of this Day, That a Cardinal's Hat was offer'd unto me. My Diary quoted for this, at *Aug.* 4, & 21, 1633. I could hinder no Offer, unleſs I could propheſy what each Man came about, and ſo ſhun them. But why is not my Anſwer, there ſet down, expreſſed too? My Anſwer was, *That ſomewhat dwelt in me, which would not ſuffer me to accept that till* Rome *were other than now it is.* Beſides, I went preſently to his Majeſty, and acquainted him with it; which is all that the [b] Law requires at my Hands. And his Majeſty very prudently and religiouſly (yet in a calm Way, the Perſons offering it having Relation to ſome Ambaſſador) freed me ſpeedily of that, both Trouble and Danger. They urged farther out of the Papers of *Andreas ab Habernfield* (which Mr. *Prynn* took from me in his Search) That Signior *Con* had Power to offer me a Cardinal's Hat. The Words which they cite, are (for I could never get ſight of thoſe Papers ſince) *Mandatum habuit offerre, ſed non obtulit.* What Power he had to make me ſuch an Offer, I know not; but themſelves confeſs he did not offer it. Nor had I ever any Speech with him during all the time he ſtaid here. I was ſollicited as much by honourable Friends to give him admittance to me at *Lambeth*, with Aſſurance he ſhould ſpeak nothing about Religion, as ever I had about any thing in my Life. I ſtill refuſed, and could not perſuade myſelf to do other; and yet could not but inwardly (*in Verbo Sacerdotis*, this is true) condemn myſelf of groſs Incivility for refuſing; for which yet now I ſee I am much bound to God for that Unmannerlineſs. Had I held a Correſpondence with him, tho' never ſo innocent, where had I now been? Beſides, I would not have it forgotten, that if to offer a Cardinal's Hat, or any like thing, ſhall be a ſufficient Cauſe to make a Man guilty of Treaſon, it ſhall be in the Power of any *Romaniſt* to make any *Engliſh* Biſhop a Traytor when he pleaſes: a Miſchief not to be indured. And thus this long and tedious day ended; and I had order to attend again on *July* 24, which I did accordingly.

[b] *Sir* Ed. Coke, L. 3. Inſt. c. 3.

The Nineteenth Day of my Hearing.

I. MONDAY, *July* 24, 1644. This Day they went on with the ſame Article: And the firſt Charge was, my denying the Pope to be Antichriſt. The Proofs, the Alteration of the Clauſe in the Letters Patents for the *Palatinate*, and the Letters between Biſhop *Hall* and me. Theſe Proofs are anſwer'd before, and repeated here only to make a Noiſe. Nor did I in any of theſe deny the Pope to be Antichriſt: For, to forbear that Word, for ſome both Temporal and Eccleſiaſtical Reſpects, is one thing; and to deny the Thing itſelf, is another.

II. The ſecond conſiſts of a great many Particulars, and moſt of them urged before, repeated only to help to make the Ignorant clamorous and wild againſt me. God forgive them this Practice!

1. The firſt Particular was *Shelford*'s Book: *The whole Book.* And Mr. *Prynn* very gravely ſaid, That this Book, and the other two following, were found in my Study. Is he not yet aſhamed of this Argument? May I have no Book in my Study, but I muſt be of the ſame Judgment with the Author in all Things? The Author is altogether unknown to me; the Book was licenſed at *Cambridge*: ſo nothing faulty in me, but the having of the Book in my Study.

2. The ſecond was Dr. *Heylin*'s Book againſt Mr. *Burton*. This Book was printed by my Command (they ſay), and in it is a Paſſage for Abſolute Obedience to Kings, *p.* 229. This was before alſo. And I did command the printing of the Book, but gave no Warrant to put any thing unjuſtifiable into it. This Paſſage I cauſed to be read to the Lords; and the Doctor there ſays no more than what he learned of King *James* in the Conference at *Hampton-Court*. But if any thing be amiſs, he is ready to anſwer it: But I find not one word in him, that this Abſolute Obedience ought to be in any thing that is againſt Law. 'That's one of Mr. *Nicolas*'s Stretches.'

Heylin cont. Burton, *p.* 229.

3. The third Particular is Biſhop *Mountague*'s Appeal, *p.* 141. But nothing hence charged upon me, but only, that the Book was found in my Study. I would Mr. *Prynn* could find any Books there now.

4. The fourth was, That divers Books of like Nature were licenſed by my Chaplains. But none was of all they then named, but Dr. *Heylin*'s and *Sales*, of which your Lordſhips have heard the Plot how it came to be licenſed. And for Dr. *Heylin*, he is ready to make all good, which he hath therein done.

5. The fifth Particular is, That the Homilies which are authorized in the Church of *England*, make the Pope Antichriſt, *p.* 216. And the *Babyloniſh* Beaſt of *Rome*, *p.* 316. But, Firſt, this is nothing againſt me, 'till it be proved, (which yet is not done) that I have poſitively denied the Pope to be Antichriſt. And, Secondly, I do not conceive, that the Article of the Church of *England* which confirms the Homilies doth alſo confirm every Phraſe that is in them. Nor, Thirdly, do I conceive that the Homilies in thoſe Places which are cited, do make the Pope the great Antichriſt. For in the firſt place, the Words are, *to the beating down of Sin, Death, the Pope, the Devil, and all the Kingdom of Antichriſt*: Which Words cannot poſſibly imply, that the Pope is that Antichriſt. In the ſecond place, he is only called the *Babylonical Beaſt of* Rome; which Phraſe doth not neceſſarily ſignify *the great Antichriſt.* For the *Beaſt* ſo often mentioned in the *Revelation* (Chap. xi. 7.) is no where called the *Babylonical Beaſt of* Rome. And if that Beaſt do ſtand for the great Antichriſt, I ſay, *If*, becauſe thoſe Scriptures are very dark) then [c] the Beaſt is primarily the *Roman* Empire in the Judgment of the *Geneva Noters*. 'And 'that there ſhould be two great *Antichriſts*, is more than 'any Man hath yet ſaid. Here Mr. *Nicolas* was up again *with Pandar to* '*the Whore of* Babylon, and other foul Language; not remembring all 'this while, (which yet I was loth to mind him of) that one of his zea-'lous Witneſſes againſt the *Whore of* Babylon, and all her Superſtitions, 'got all his Means (which are great) by being a Pandar to other leud 'Women; and loved the Buſineſs itſelf ſo well, as that he was (not long 'ſince, Men ſay) taken in Bed with one of his Wife's Maids. Good Mr. '*Nicolas*, do not diſpenſe with all Whores, ſave the Whore of *Babylon*.'

Art. 35. Eccl. Ang.

[c] Annot. in Apoc. 17, 8.

6. The ſixth Particular was the Articles of *Ireland*, which call the Pope the *Man of Sin*. But the Articles of *Ireland* bind neither this Church, nor me. And ſome learned Proteſtants do not underſtand that noted Place of the Apoſtle, 2 *Theſſ.* ii. as meant of Antichriſt or the Pope.

7. The ſeventh and laſt Particular is a Repetition of *Sancta Clara* and Mr. *S. Giles*, and the *Letter of News*, (which were News indeed) to make them one Man; tho' this were anſwered at large but the laſt Day, and Sir *Ed. Hungerford*'s Teſtimony brought up again. It's a ſign Mr. *Nicolas* hath indeed no downright Proof, (as he ſaid before) that ſo tumbles up and down in repeating the ſame Things.

III. The third Charge is, That I ſay in [d] my Book that the Religion of the Church of *Rome* and ours is all one. This is ſpoken only in oppoſition to other Religions, in regard of Chriſtianity. The Words are, *Nor do the Church of* Rome *and the Proteſtants ſet up a different Religion*; *for the Chriſtian Religion is the ſame to both*, &c. And the like Paſſage to this is in my [e] Speech in the *Star-Chamber*, and theſe Paſſages were read to the Lords. So that either Papiſts muſt be denied to be Chriſtians, or elſe this Charge can work nothing againſt me.

[d] *My Book contra* Fiſher, *p.* 376.

[e] *Page* 36.

IV. The fourth Charge is out of *Chouneus*'s Book, *p.* 45, & 46. licenſed by my Chaplain Dr. *Bray*; where (they ſay) 'tis ſaid, *That* Rome *is a true Church, and differs not in Fundamentals.* And that at the High-Commiſſion, when this Book was queſtioned by ſome, I did ſay, *That the Church of* Rome *and the Proteſtants did not differ in Fundamentals, but in Circumſtances.* And this latter part was teſtified by Mr. *Burton* and one Mr. *Lane*, who ſaid they were preſent. Firſt, Suppoſe this be falſe, and that they do differ in Fundamentals, yet this then is but my Error in Divinity, no Practice to overthrow Religion. Secondly, I ſuppoſe, if I did ſo ſay, I did not err: For the Foundations of the Chriſtian Religion are the Articles of the Creed; and the Church of *Rome* denies no one of them. Therefore there is no Difference in the Fundamentals. If they of *Rome* differ in Expoſition of ſome of theſe, that muſt needs be a Superſtructure upon or beſide the Article, not the Article or Foundation itſelf. Nor did I follow my own Judgment herein, but † *Calvin*'s; who ſays expreſly,

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* *After all* Prynn *would inſinuate, that* S. Giles *was the ſame Man with* Sancta Clara, *and wrote the Book intitled,* Deus, Natura, & Gratia, *altho' he fully knew the contrary,* Compl. Hiſt. *p.* 427, 429. *Nay, he hath the Confidence at laſt (p.* 430.) *to add, that* it is moſt apparent. *H. W.*

† Quemadmodum ſæpe diruuntur ædificia, ut fundamenta & ruinæ maneant; ita non paſſus eſt Eccleſiam ſuam ab Antichriſto vel a fundamento ſubverti, vel ſolo æquari, &c. ſed ab ipſâ quaque vaſtatione ſemirutum ædificium ſupereſſe voluit. *Calv. L.* 4. *Inſt. c.* 2. §. 11.

preſly, *That in deſpight of Antichriſt, the Foundations of the Church remain'd in the Papacy itſelf, that the Church might not wholly periſh.* And this Paſſage was then read to the Lords. Thirdly, theſe two learned Witneſſes (as they would be reputed) are quite miſtaken in their very Terms: For they report me, as if I ſaid, *Not in Fundamentals, but in Circumſtantials*; whereas theſe are not *Membra oppoſita*, [a] but Fundamentals and Superſtructures, which may ſway quite beſide the Foundation. And this, tho' not the only, yet is a main Failing in the *Roman* Fabric; in which many Things are built upon unwarrantable Tradition, as is expreſſed in my [b] Book at large, and their many Superſtitions named: and that Paſſage read alſo to the Lords. For tho' they differ not in the prime Foundations, [c] yet they in many things grate cloſe upon him, and in ſome things fall beſide them, to no ſmall hazard of their own Souls. As for Circumſtantials, it ſeems theſe Men have forgotten, or never knew, that many times Circumſtantials in Religion do quite deſtroy the Foundation. For Example: The Circumſtances are theſe: *Quis? Quid? Ubi? Quibus Auxiliis? Quomodo? Quando?*

[a] *Cont.* Fiſher, § 3. *p.* 11.

[b] *Cont.* Fiſher, *p.* 377.

[c] *Cont.* Fiſher, § 37. *nu.* 6. *p.* 326.

1. *Quid?* What Man believes; and that contains Fundamentals, and in the firſt place,

2. *Ubi?* Place a mere Circumſtance; yet to deny that Chriſt took our Fleſh of the Bleſſed Virgin, and that in *Judea*, denies the Foundation, and is flat Judaiſm.

3. *Quibus Auxiliis?* By what Helps a Man believes, and in ſome meaſure obeys as he is commanded? For to believe that a Man doth this by the Strength of Nature only, and not by Aid and Aſſiſtance of Grace, is with the *Pelagian* to deny the Foundation, and to overthrow the Grace of Chriſt.

4. *Quando?* When? That's Time, a mere Circumſtance: Yet to deny that Chriſt is already come in the Fleſh, denies the Foundation utterly, and is flat Judaiſm, and an inſeparable Badge of the great Antichriſt, 1 *John* iv. 3. And in the caſe of the Reſurrection, to ſay 'tis paſt already, (which is Time) *St. Paul* tells us, 2 *Tim.* ii. 18. is no leſs than *the Overthrow of Faith.* And the Rule is general, That ſome [d] Circumſtances *dant Speciem*, give the very Kind and Form to a moral Action. ‘ This for their Ignorance: But for the ‘ Malice of their Oath, I leave them to God's Mercy. ‘ Here Mr. *Browne*, when he ſummed up the Evidence ‘ againſt me, fell upon this; and ſaid, That when I gave ‘ divers Inſtances what dangerous Errors Circumſtances did ‘ ſometimes breed in Religion, I gave no Inſtance in any Point of Popery. ‘ But to this I anſwered, Firſt, That it was not material what Inſtances ‘ I made, ſo I was able to make ſome. Secondly, That it was not poſ‘ ſible for me, or perhaps a readier Man, to have all Inſtances ſo preſent ‘ with his Memory. Thirdly, If an Inſtance in Popery, rank Popery, ‘ will ſerve the Turn, you may take it in Tranſubſtantiation. That is ‘ either a Fundamental Point, or it is not: If it be not fundamental, why ‘ did the Papiſt put the Proteſtant to Death for it? And why did the Pro‘ teſtant ſuffer death? If it be fundamental, (as it ſeems by both Sides it ‘ was accounted) it is upon the bare Circumſtance of *Quomodo*, how ‘ Chriſt is preſent in the Sacrament.'

[d] Aliqua Circumſtantia dat ſpeciem Actui morali. *Tho.* 1. *ſecundæ*, *q.* 73. *A.* 7. *ad primum.*

As for that which was ſaid in the Beginning of this Charge, *That* Rome *is a True Church:* I ever did, and ever muſt grant it, that ſuch it is, *Veritate Entis*, in the Truth of its Entity and Being. For as I have ſaid againſt [e] *Fiſher*, *Ens & Verum*, *Being* and *True* are convertible one with another. And every Thing that hath a Being, is truly that Being which it is in Truth of Subſtance. But a Right or an Orthodox Church I never ſaid it was, either in Doctrine or Manners. As a Thief is a true Man in Verity of his Eſſence, that is, he is a Creature indued with Reaſon: But it doth not therefore follow and that he is a true Man, *Veritate Moris*, in his Life and Converſation. ‘ And this I anſwered firſt to the Lords, and after to Mr. *Browne*'s ſum‘ mary Charge; who in his laſt Reply ſaid two Things: Firſt, That ‘ when I ſaid *Rome* was a True Church, I ſpake it generally, without ‘ this Diſtinction. But this is quite beyond the Proof; for no Witneſs ‘ ſays ſo. Beſides, it is manifeſt by Diſtinction of Fundamentals from ‘ other Doctrines (acknowledged by both the Witneſſes) that I did not ‘ ſpeak it abſolutely, but plain enough to any ordinary Underſtanding. ‘ Secondly, (which I was very ſorry to hear from ſo grave a Man) he ‘ added, That there was no Truth of a Church, but in the Verity of ‘ Doctrine and Manners; and that *in Veritate Entis*, a Company of *Turks* ‘ were a True Church. Now God be merciful to us, whither are we ‘ poſting? 'Tis known that the *Greek* Word Ἐκκλησία, which ſignifies ‘ *Church*, ſignifies alſo in Heathen Authors any kind of *Company* or *Con‘ gregation* of Men, *Turks* if you will. But in Eccleſiaſtical Writers, ‘ and among all Chriſtians, the Word *Church* is uſed only (and Ἐκκλησία ‘ too) for a Company of Men which profeſs the Faith of Chriſt, and are ‘ baptized into his Name. And will any Man ſay that a Company of ‘ *Turks* are ſuch a Church *in Veritate Entis*, in the Verity of this Being, ‘ as all the World knows Papiſts are? Or if he will not ſpeak *de Ente ‘ tali*, but change the *Suppoſitum*, he may ſay what he pleaſe. But I was ‘ very much troubled to hear this, and from him.' I had almoſt forgot that Mr. *Nicolas* here preſſed the Authority of the [f] *Homilies* upon me again; where 'tis ſaid, *That the Biſhop of* Rome *and their Adherents are not the true Church.* But the Anſwer is eaſy: For I ſay as the *Homily* doth, and as it means too in that Place; namely, that the Church of *Rome* is not the True; that is, not the Catholick Church, nor the Head thereof. But there is a great deal of Difference between *the Church* and *a Church:* The one is the General, the other a Particular. *The Church* it cannot be: *A Church* it is; and a true one too, in the Senſe before ſpecified. Upon occaſion of this, Mr. *Nicolas*'s Mouth was open again, and ſaid, That at the beginning I reckon'd up ſome that I had converted; but if this were my Opinion, and that if this might ſtand for good, I might convert the Devil and all. My Ears had been ſo beaten with his Language, that I was patient, and left him to inſult. And to help on this Buſineſs, while he was in theſe loud Expreſſions, the Earl of *Pembroke* came to Mr. *Burton* to the Bar, and in my hearing deſired him to repeat the Teſtimony he had given; which Mr. *Burton* did, and his Lordſhip ſeemed to be much pleaſed with it. Not long before, when the News was come hot to the Houſe that *York* was taken, when I came at Five in the Afternoon to make my Anſwer, I was no ſooner come to the Bar, but the ſame Lord came and ſat juſt before me, and there with much Joy told Mr. Lieutenant the News. I preſume he did it in favour to me, becauſe he thought it would put me in very good Heart, being then inſtantly to begin to make my Anſwer. God forgive this Lord! for I have deſerved in my time far better of him, if he underſtood himſelf, or any Man elſe.

[e] § 20. *p.* 128.

[f] *Hom. Par.* 2. *p.* 213.

V. The next Charge was out of Dr. *Pocklington*'s *Altare Chriſtianum*, p. 49, 50. where he ſpeaks (they ſay, for I now have not his Book) of a Happineſs that the Biſhops of *England* can derive their Succeſſion from *St. Peter*; which, in great Scorn, Mr. *Nicolas* called the *Archbiſhop's Pedigree.* Firſt, If there be any Crime in this, Dr. *Pocklington* is to anſwer it, not I. Secondly, he may ſcorn what he will; but wiſe Men know 'tis a great Honour to the Church of *England*, and a great Stopple in the Mouths of the *Romaniſts*, that her Biſhops can derive their Calling ſucceſſively from *St. Peter*; eſpecially conſidering how much they ſtand upon perſonal Succeſſion. Thirdly, Dr. *Pocklington* in this ſays no more for me and the Biſhops, than * *St. Auguſtin* urged for himſelf and his Brethren againſt the *Donatiſts* in the ſame Words, ſave that *St. Auguſtin* begins at *St. Peter*, and deſcends to his own Time; and the Doctor begins at his own Time, and aſcends to *St. Peter*. ‘ But it ſeems, an upſtart Clergy, ‘ without a Calling, will ſerve Mr. *Nicolas* well enough.'

VI. The ſixth Charge was, That Books were written of purpoſe to maintain theſe Opinions; and ſuch Men as writ them only preferred. He named Mr. *Shelford*, Mr. *Butterfield*, Dr. *Coſens*, and Dr. *Pocklington*. This hath been clamoured upon already: If any have ſet out unworthy Books, they may be called to account for it; I hope I ſhall not anſwer for all the Divines in the Kingdom. ‘ They whom I preferred were wor‘ thy and able Men, and it will not be in the power of Mr. *White*'s Cen‘ turies to blaſt a Man of them among any that know them.' For theſe that are named, Mr. *Shelford* I know not, Mr. *Butterfield* I ſaw puniſhed in the High-Commiſſion; neither of them preferred, that I know. ‘ The ‘ two laſt, by whomſoever they were preferred, deſerved all the Prefer‘ ment they had, and more.'

VII. The ſeventh Charge is out of my Diary at *June* 15, 1632. where 'tis ſaid, That *I preferred Mr. Secretary* Windebank, *my old Friend.* And here Mr. *Nicolas* laid all the Correſpondency open, which (he ſaid) that Gentleman had with the Pope's Agents, with Prieſts and Jeſuits: And when he had made him this way as foul as he could, then I muſt be guilty of all, for preferring ſuch a Man to the King. This Gentleman was indeed my antient Friend: In my many Years Acquaintance with him, I ſaw nothing in him but Honeſty and Worth. If when he was preferred, he deceived my Opinion, he is living to anſwer for himſelf. Many in all Ages have been preferred to Princes, which do not anſwer the Hopes and Deſires of them which prefer them; and yet they not made anſwerable for them neither. But whether he did fail in any publick Truſt, or no, I am not his Judge. Yea, but ſome Letters were found from his Son *Thomas*, what Entertainment he had in foreign Parts for his Father's ſake. But theſe Letters were read to the Lords, and there is not one Word in them that relates to me: And 'tis both likely and fit the Son of a Secretary of State ſhould be worthily uſed in his Travels. Yea, but his Son *Chriſtopher* was at *Rome*, and ſent thither to inſinuate himſelf with the Pope: So *Andreas ab Habernfield* writes in the Papers which Sir *William Boſwell* ſent over to me. If he did ſend his Son to that end, then I diſcovered his Plot; for I cauſed thoſe Papers to be examined by the King and the Lords, as is before related. Beſides, in my poor Judgment, the Pope muſt be a very ſimple Man (‘ it may be ‘ Mr. *Nicolas* thinks him ſo, compar'd with himſelf'), that a Youth of Seventeen at the moſt, ſhould inſinuate himſelf to fiſh any thing out of him for his Father's Service. Laſtly, he preſſed, that my Intereſt continued with Mr. Secretary in all theſe Courſes of his. 'Tis well known in Court, the old Intereſt did not continue between us: But for old Friendſhip's ſake I will not be drawn to ſay more. As for his releaſing of any Prieſts, he muſt give an Account of that himſelf. But for myſelf, I was ſo careful in this Particular, that I never put my Hand, tho' publick at Council-Table or *Star-Chamber*, to any Releaſe in all my Time. I might be named, as preſent when ſuch Releaſe was made, (which I could not avoid;) but act in any I did not. Nay, I was ſo careful, that I refuſed to ſet my Hand to any Licence to travel, leſt, if any young Man ſhould be perverted abroad in his Travels, any thing might be imputed to me. And this all the Clerks of the Council can witneſs. ‘ But I ſee no Warineſs, ‘ no Care, can prevent the Envy and the Malice of the Many and the ‘ Mighty.'

Qui ſe inſinuaret cum Papâ.

VIII. The eighth Charge was my Correſpondence with Popiſh Prieſts. And for Proof of this they produced divers Witneſſes.

1. The firſt Witneſs was one *Wadſworth*, one of the common Meſſengers uſed to attach ſuch Perſons. He ſays, That *Smith*, *alias Fludd*, bragged to him that he had Acquaintance with me. Here's nothing but a bragging Report of *Smith*; who, what he is, I know not. So here's no Proof. He ſays, That four Pound was ſent to himſelf, to free him out of Priſon; and that *Davis* told him it came from me. This is but a Hearſay from *Davis*, as the former was from *Smith*. But ſay, my Lords, if I did ſend him four Pound to free him out of Priſon, doth he not now very thankfully reward me for it? The truth is, my Lords, I did ſend him four Pound: And the Motive that made me ſend it, was becauſe I heard he was a Convert from Popery to be a Proteſtant, and that his Impriſonment was as much for that as for any thing elſe. And this was atteſted to the Lords by my Servant Mr. *Snath*, who was one of them that moved me for him.

2. The ſecond Witneſs was *Francis Newton*, another Meſſenger. He ſays, that when he had taken *Henry Mors*, a Prieſt, he ſhould have been carried to a private Committee; that he diſliked it, and complained to Mr. *Secretary Cook*, who (he ſays) ſent him to me; and that when he came to *Lambeth*, Mr. *Dell* told him I was in my Garden with Sir *Toby Matthew*.

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* Petro ſucceſſit Linus, Lino Clemens, &c. Et ſic que ad Anaſtaſium, qui nunc ſedet. Et in hoc ordine ſucceſſionis nullus Donatiſta Epiſcopus invenitur. *S. Aug. Epiſt.* 165.

My Servant Mr. *Dell* being appointed my Sollicitor, was now preſent in Court, and denied all this. And well he might; for Sir *Toby* was never in my Garden with me in all his Life. And if Mr. *Dell* told him that I would not meddle in the Buſineſs (as he ſays he did), Mr. *Dell* muſt give the Account for it, not I. Yet if there were a Reference of this *Mors* to a private Committee, the hindring of that was more proper to Mr. Secretary than to me. Howſoever, here was no hurt done: For he confeſſes that *Mors* was ſent back to *Newgate*. And if (as he farther ſays) he was diſcharged by Mr. Secretary *Windebank*, that is nothing to me. He ſays, he was informed by *Stukely*, that *Smith*, *alias Fludd*, was acquainted with me. But if he were but informed ſo himſelf, that's no Proof to inform your Lordſhips. He ſays, that *Brown* a Prieſt was diſmiſſed out of the High-Commiſſion. Thus it was: He was called in thither for very foul Uncleanneſs. In Proceſs of this Buſineſs, he there openly confeſſed himſelf a Prieſt. Hereupon that Court ſent him to *Newgate*. ' What became of ' him after, I know not, ſave that I know he was ſtrictly examined by ' Mr. *Pym* and others concerning me.' This *Newton*, upon what Grudge I know not, calls me Rogue, and all to naught in all Companies; and with ſo much I acquainted the Lords.

3. The third Witneſs was *Tho. Mayo*, a Meſſenger alſo. He ſays, that Sir *Toby Matthew* was accounted a Prieſt when he was in Parts beyond the Seas; and that he ſaw him in a Coach with me, and that he went over with me in my Barge. Firſt, I gave in two Exceptions againſt this Witneſs: One, that he was a Man of no Conſcience; for he had ſhifted his Religion from Proteſtant to Papiſt, and back again, three or four times: Which was a thing known. The other was, that he kept a Brothel-Houſe at this preſent, and that his Fellow *Wadſworth* knew this, and called him pimping Knave, ſaying he kept a Brace of Wenches at this Time in his Houſe. And theſe Words he ſpake of him but the fifth of this preſent *July*, in the *Bull* Tavern in the *Palace-Yard*. So I thought him no fit Witneſs. But he was heard, for all this. ' And afterward *Wadſworth* meeting my ' Servant Mr. *Snath*, he told him that he did ſay ſo to *Mayo*, and wondred ' how I ſhould come to hear it.' Being admitted, and ſaying as he did, I told the Lords that he began with a very bold Oath, and like a Shifter of his Religion: For I had four Servants there, three of which uſually attended me when I went and returned from Court, Mr. *Dell*, Mr. *Snath*, Mr. *Goodwin*, and Mr. *Dobſon*, and they all atteſted the contrary; and I never went, but one of theſe, at leaſt, was with me. Beſides, he is ſingle in this Teſtimony. He ſays, that he ſaw Sir *Toby* ſeveral times in my Houſe. But he confeſſes withal, that he never ſaw him near me. For my own Part, I cannot ſay that ever he was within my Doors. But if he, or others of his Quality, do come to pry out any thing in my Houſe, how is it poſſible for me to hinder it? My Porter could not ſee it written in their Foreheads, who they were. He ſays, that one *Price* was often ſeen at my Houſe. But he doth not ſay he was ſeen with me, or there with my Knowledge. He ſays, that one *Leander* was reported to have been my Chamber-Fellow in *Oxford*. Firſt, This is but a Report, and ſo no Evidence. Secondly, If he were my Chamber-Fellow in *Oxford* when we were Boys together, I am ſure he was then no Prieſt; and he was but a Boy when he left the College. He confeſſes that I gave Order to obſerve who and how many reſorted to Ambaſſadors Houſes, and Signior *Con*'s, and ſays he thought I could prove it. But I believe he would never have confeſſed it, but that he knew I could prove it. And thereupon I ſhewed the Lords many Papers certifying me what Numbers were found reſorting to each Place reſpectively; and *Thomas Mayo*'s Hand to many of thoſe Papers. He ſays, he took one *Peter Wilford*, and brought him to me to *Whitehall*, while Sir *John Lambe* was with me. But he confeſſes withal, that *Wilford* then ſhewed Mr. Secretary *Windebank*'s Warrant to diſcharge him: And then what could I do to him? Nay, I have ſome Cauſe to think he would never have apprehended him, had he not known he had that Warrant. Laſtly, he ſays, that once at the *Star-Chamber* I told him he was too quick and nimble for me. And I hope it is no Treaſon, if I did ſay ſo. Nor could I mean he was too quick in apprehending Prieſts, for I found both him and his Fellows, after *Croſſe*'s Death, ſlow enough at that: But if I ſaid ſo, it was becauſe I could not tell how to truſt his Shifting and his Wilineſs.

4. The fourth Witneſs was *Elizabeth Graye*, Wife to another Meſſenger. And this is a very fine Witneſs. For firſt, ſhe ſays, her Huſband was committed by my Means, and then with a Breath ſhe ſays, ſhe doth not know by whom he was committed, but ſhe thinks by Secretary *Windebank* and me. But ſince ſhe doth not know, but think only, I hope her thinking can be no Evidence. She ſays, that ſhe delivered me a Petition, and that I flung it away, ſaying, *I would not meddle with any Prieſt-catching Knave.* The Witneſs ſingle, and I doubt doating, and the Words far from Treaſon.

5. The fifth Witneſs was *John Cooke*, a Meſſenger too, and one that for his Miſdemeanor had ſtood in the Pillory. This I urged againſt him, as unfit to witneſs againſt me: ' My Witneſs that ſaw him in the Pillory, ' was ſo threatned, that he ſent me Word he durſt not come. I may not ' ſay from whom this Threatning came.' But the thing was ſo true, that *Cooke* himſelf confeſſed it, but excuſed the Cauſe; and his Teſtimony received. He told how *Fiſher* the Jeſuit was taken by *Graye*; that when he was brought to the Council-Table, Secretary *Cook* and I went to the King to know his Pleaſure about him; that we brought back Word from his Majeſty to the Lords, that he ſhould be baniſhed. All this while here's no hurt done. Then he ſays, that notwithſtanding this Order of his Majeſty, *Graye* and he met *Fiſher* at Liberty, by a Warrant from Secretary *Windebank*: That hereupon *Graye* repaired to Secretary *Cook*, and to me, and that *Dell* told him I would not meddle with it. My Secretary muſt anſwer this, I remember it not. But if Mr. *Dell* received any ſuch Anſwer from me, that I would not meddle with it; there were two apparent Reaſons for it: One, that I would not meddle with it alone, his Majeſty's Order being to all the Lords: The other, that *Fiſher* was the Man I had written againſt, and Men would have been apt to ſay, that when I could not anſwer, I ſought means to deſtroy. So I no way fit (alone at leaſt) to meddle with him, of all men. He ſays, that *Graye* was committed to the *Fleet* for railing on me in my own Houſe. Yet he confeſſes, that he was not committed by me. And I preſume your Lordſhips will think there was Cauſe of his Commitment, if he did rail upon me. And 'tis confeſſed by Mr. *Prynn* (tho' he had then received no Anſwer from myſelf), That he ſaid he ſaw now how the Game went, and hoped ere long to ſee better Days, *&c.* He ſays, That *Smith*, alias *Fludd*, deſired Sir *Kenelm Digby*, as he was going to *Lambeth*, to tell me that he could not dine with me that Day, but deſired his Buſineſs might be remembred. No ſuch Man ever dined at my Table, to my Knowledge. And if any Prieſt would ſay ſo to Sir *Kenelm*, how could I poſſibly hinder it? And Sir *Kenelm*, when this *Cooke* was examined, was a Priſoner in *Wincheſter-Houſe*; why was not he examined to ſift out this Truth, if Truth be in it?

The Pop. Roy. Favourit. *p.* 51.

6. The ſixth Witneſs was *John Threſher*, a Meſſenger too: He ſays, that he took *Mors* and *Goodwin*, two Prieſts; and that Secretary *Windebank* took away his Warrant, and diſmiſſed them, ſaying, he would ſpeak with me about it: And that when he came to me, I was angry with him about the Warrant. Mr. Secretary *Windebank* will, I hope, be able to anſwer for his own Actions. Why he diſmiſſed the Prieſts, I know not; but he had great Reaſon to take away his Warrant, and I had a greater Reaſon to be angry with him for it. For no Warrant can iſſue from the High-Commiſſion Court, but under three of their Hands at leaſt. Now *Threſher* having gotten my Hand to the Warrant, never goes for more Hands, but proceeds in his Office, upon this unwarrantable Warrant. Had not I Reaſon to be offended at this? He ſays, That at the ſame time I ſaid that *Graye* was an ill-tongued Fellow, and that if he kept him Company, I ſhould not regard him. I had good Cauſe to ſay this and more, conſidering how *Graye* had uſed me: And I believe no Archbiſhop would have borne his Words. Laſtly, he ſays, That by a Warrant from me he arreſted Sir *Toby Matthew*, and that the Earl of *Strafford* ſtayed him from going to Priſon, ſaying, he ſhould anſwer it before the Lords. Here by the Witneſs himſelf it appears that I did my Duty. And Sir *Toby* did appear before the Lords, as was [a] aſſumed he ſhould. In the mean time, I was complained of to the Queen: And a great Lady (who perhaps made the Complaint) ſtood by, and made herſelf merry to hear me chid. The Queen was pleaſed to ſend to the Lords, and Sir *Toby* was releaſed. Where my Fault was in all this, I do not yet ſee.

[a] *aſſured.*

7. The laſt of theſe famous Witneſſes was *Goldſmith*; who ſays nothing, but that one Day before the High-Commiſſion Court began, I forewarned the Meſſengers of that Court of *Graye*, in regard he was openly ſpoke againſt at the Council-Table. Which, all things conſidered, I had great Reaſon to do. He ſays likewiſe, That then *Graye*'s Wife tendered me a Petition, which I rejected, ſaying, *I would meddle with no Prieſt-catching Knaves.* I think his Carriage deſerved no better of me, than to reject his Petition: but as for the Words, I cannot own them; let the *Goldſmith* look to it that he have not forged them. And I would very willingly know, whether when the Apoſtle required, that *an Accuſation ſhould not be received againſt an Elder, but under two or three Witneſſes*, (1 *Tim.* v. 19.) he had any Meaning they ſhould be ſuch as theſe?

Frigidè dictum. W. S. A. C.

IX. The ninth Charge was about the ordering of Popiſh Books that were ſeized, and the diſpoſing of them. The ſole Witneſs here is *John Egerton*: He ſays, Theſe Books were delivered to Mr. *Matterſhead*, Regiſter to the High-Commiſſion. And I ſay ſo too; it was the conſtant Courſe of the High-Commiſſion to ſend them thither, and have them kept in that Office, till there was a ſufficient Number of them, and then to burn them. Yea, but he adds, That *Matterſhead* told him they were re-delivered to the Owners. This is but a Report, and *Matterſhead* is dead, who ſhould make it good. ' And tho' this be but a ſingle Witneſs, and of ' a dead Man's Report; yet Mr. *Browne* thought fit to ſum it up with the ' reſt. But ſurely if any Books were re-delivered to the Owners, it was ſo ' ordered by the High Commiſſion, in regard the Books were not found ' dangerous: From me *Matterſhead* had never any ſuch Command.' Laſtly, he ſays, He met Sir *Toby Matthew* twice at *Lambeth*. But he confeſſes he never ſaw him with me; and then me it cannot concern.

X. The tenth Charge was concerning the Prieſts in *Newgate*; the Witneſſes are Mr. *Deuxel*, and *Francis Newton*. They both agree, and they ſay, That the Prieſts there had the beſt Chambers, and Liberty to go abroad without Keepers. I hope theſe Men do not mean to make the Archbiſhop of *Canterbury* Keeper of *Newgate*. If any Man gave them this Liberty, he is to be blamed for it, not I, who never knew it till now. Nor do either of theſe Witneſſes ſay, that they called on me for Remedy, or ever did ſo much as acquaint me with it. And they ſay this was twelve Years ſince: and I had been Archbiſhop but ſeven Years when I was committed.

XI. The Eleventh Charge was about Words in my Epiſtle Dedicatory before my Book againſt Mr. *Fiſher*. The Words theſe: *For, to my remembrance, I have not given him, or his, ſo much as coarſe Language.* So the Charge is, becauſe I have not given ill Words. And here Mr. *Nicolas* fell foul upon me again for taking ſuch care, that the Whore of *Babylon* may have nothing but good Words, *&c.* But firſt, my Lords, I have always thought, and do ſtill, that ill Language is no Proof againſt an Adverſary: All the good it can do, is, it may bring Scorn upon the Author, and work Hardneſs of Heart in the Adverſary, whom he doth or ſhould labour to convert. And this I learned of two eminent Fathers in the Church, * *Gregory Nazianzen*, and † *St. Auguſtine*. The firſt would not uſe it, no not againſt the *Arians*, who (as he ſaith) made open War againſt the Deity of Chriſt. Nor would the other againſt the ſame Adverſaries. The one accounts it Ignorance, tho' a Faſhion taken up by many; and the other Loſs of Time. And here I deſired the Lords, that I might read what immediately followed this Paſſage, which was granted: And there, as their Lordſhips did, ſo may the Reader ſee, if he pleaſe, that tho' my Words were not uncivil, yet in the matter I favoured neither him nor his. And to avoid Tedioufneſs, thither I refer the Reader, with this, that ſometimes Men apt enough to accuſe me, can plead for this Moderation in their own Caſes, and tell each other that [a] *Chriſt will not own Bitterneſs in maintaining any way, tho' conſonant to his Word.* And [b] another *finds juſt fault both with Papiſt and* Martin Mar-Prelate, *for this reproachful Language.* And yet it muſt be a Crime in me not to uſe it.

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* Non imperitè docemus, nec Adverſarios Contumeliis inceſſimus, ut plerique faciunt, &c. *Greg. Naz. Orat.* 32.

† Abſtineamus nos à conviciis, ne tempus inaniter impendamus, &c. *Aug. Epiſt.* 177.

[a] *In the Antiquæries to Mr.* Prynn, *p.* 12.
[b] Sid. Simpſon's *Anatomiſt, p.* 2, & 6.

XII. The laſt Charge was the Commitment of one *Ann Huſſy* to the Sheriff of *London.* The Buſineſs was this: She ſent one *Philip Bambridge* to tell me of I know not what Plot againſt the King (nor I think ſhe neither). *Bambridge* came to *Whitehall* toward the Evening, and could make nothing of this dangerous Plot. Yet becauſe it pretended ſo high, I ſent him preſently to Mr. Secretary *Windebank*; I being the next Morning to go out of Town. The Buſineſs was called to the Council-Table. When I came back, I was preſent there. *Bambridge* produced *Ann Huſſy*, but ſhe could make nothing appear. She ſays, I thought ſhe was out of her Wits. Not ſo, my Lords; but I did not think ſhe was well in them; nor do I yet. And whereas ſhe complains of her Impriſonment, it was her own deſire ſhe might be committed to the Sheriff; and Mr. *Hearn* (my Counſel here preſent) was aſſigned by the Lords to take her Examination. Therefore if any Particular in this Charge ſtick with your Lordſhips, I humbly deſire Mr. *Hearn* may ſupply my Want of Memory. But it paſſed over, as well it might. Here this Day ended, and I was ordered to attend again *July* 29.

The Twentieth, and the laſt Day of my Hearing.

MONDAY, *July* 29, 1644. This Day I appeared again, and they proceeded upon the Fourteenth Original Article, which follows in theſe Words:

XIV. That to preſerve himſelf from being queſtioned for theſe, and other his traitorous Courſes, he hath laboured to ſubvert the Rights of Parliaments, and the ancient Courſe of Parliamentary Proceedings, and by falſe and malicious Slanders to incenſe his Majeſty againſt Parliaments. By which Words, Counſels and Actions, he hath traitorouſly, and contrary to his Allegiance, laboured to alienate the Hearts of the King's liege People from his Majeſty, to ſet a Diviſion between them, and to ruin and deſtroy his Majeſty's Kingdoms. For which they do impeach him of High-Treaſon againſt our Sovereign Lord the King, his Crown and Dignity.

I. The Firſt Charge of this Day was prefaced with a Note out of my Diary at *May* 8, 1626. That *the Duke of* Buckingham *was that Day impeached to the Lords by the Houſe of Commons.* And at *May* 25. *The Difference ariſing in the Houſe of Peers about the Earl of* Arundel*'s Commitment to the* Tower *withouta Cauſe declared.* No uſe made of theſe, but that I then Biſhop of *St. David's* took Notice of theſe things. Then the Charge followed; and the firſt of it was, That I then being of the Lords Houſe, and ſo to be one of the Duke's Judges, made a Speech for him, and corrected his Speech in ſome particulars; and of a Judge made myſelf an Advocate. Which Mr. *Nicolas* ſaid was a great Offence. I ſaw not theſe Papers, and therefore can ſay nothing, what is, or is not under my Hand. But to the thing itſelf I ſay firſt, That if in that Speech any particular Fault had been found impeaching any Right or Power of Parliament, that I muſt have anſwered; but none is charged, but only the bare making of one Speech, and the mending of another. And this is a very poor Argument of any Enmity againſt Parliaments. Secondly, Seeing no Fault is charged upon me in particular, it was but the Office of a poor Friend to a great one, to whom being ſo much bound as I was I could not refuſe ſo much Service, being intreated to it. And Thirdly, I do humbly conceive, that ſo long as there was nothing done againſt Law, any Friend may privately aſſiſt another in his Difficulties. And I am perſuaded, many Friends in either Houſe do what they juſtly may, when ſuch ſad Occaſions happen. ‘And this Anſwer I gave to Mr. *Browne*, when he ſummed up my Charge in the Houſe of Commons.

See Heylin*'s Life of Archbiſhop* Laud, *p.* 152.

‘But Mr. *Browne* did not begin with this, but with another, here omitted by Mr. *Nicolas*; tho' he had preſſed it before in the fifteenth Day of my Hearing. Dr. *Potter* writ unto me for my Advice in ſome Paſſages of a Book writ by him (as I remember againſt a Book intitled, *Charity miſtaken*): I did not think it fit to amend any thing with my own Pen, but put ſome few things back to his ſecond Thoughts, of which this was one; That if he expreſs himſelf ſo, he will give as much Power to the Parliament in Matters of Doctrine, as to the Church. This Mr. *Browne* ſaid, took away all Authority from Parliaments, in that kind. But, under favour, this takes away not all, nor any that is due unto them. Not all, for my Words are about *giving ſo much Power*: Now he that would not have ſo much given to the one, as the other, doth not take away all from either: Not any that is due to them; for my Words not meddling ſimply with Parliamentary Power, (as appears by the Comparative Words *ſo much*) my Intention muſt needs be to have Dr. *Potter* ſo to conſider of his Words, as that, that which is proper to the Church, might not be aſcribed to Parliaments. And this I conceive is plain in the very Letter of the Law. The Words of the [c] Statute are, *Or ſuch as ſhall hereafter be ordered, judged, or determined to be Hereſy, by the High-Court of Parliament in this Realm, with the Aſſent of the Clergy in their Convocation.* Where 'tis manifeſt, that the judging and determining Part, for the Truth or Falſhood of the Doctrine, is in the Church. For *the Aſſent of the Church* or Clergy cannot be given, but in Convocation, and ſo the Law requires it. Now *Aſſent in Convocation* cannot be given, but there muſt precede a Debate, a Judging, a Voting, and a Determining. Therefore the *determining Power* for the Truth or Falſhood of the Doctrine, Hereſy or no Hereſy, is in the Church: But *the judging and determining Power*, for binding to Obedience, and for puniſhing, is in the Parliament, with this Aſſent of the Clergy. Therefore I humbly conceive the Parliament cannot by Law, that is, till this Law be firſt altered, determine the Truth of Doctrine without this Aſſent of the Church in Convocation; and That ſuch a Synod and Convocation, as is choſen and aſſembled as the Laws and Cuſtoms of this Realm require,

[c] 1 Eliz. c. 1.

‘To this Mr. *Browne*, in his Reply upon me in the Houſe of Commons, ſaid two Things: The one, That this Branch of the Statute of 1 *Eliz.* was for Hereſy only, and the adjudging of that; but meddles not with the Parliament's Power in other Matters of Religion. If it be for Hereſy only, that the Church alone ſhall not ſo determine Hereſy, as to bring thoſe grievous Puniſhments which the Law lays upon it, upon the Neck of any Subject, without Determination in Parliament; then is the Church in Convocation left free alſo in other Matters of Religion, according to the firſt Clauſe in *Magna Charta*, which eſtabliſhes the Church in all her Rights. And her main and conſtant Right when that Charter was made and confirmed, *was Power of determining in Matters of Doctrine and Diſcipline of the Church.* And this Right of the Clergy is not bounded or limited by any Law, but this Cauſe of 1 *Eliz.* that ever I heard of.

‘The other was, That if this were ſo, that the Parliament might not meddle with Religion, but with the Aſſent of the Clergy in Convocation, we ſhould have had no Reformation: for the Biſhops and the Clergy diſſented. Firſt, it is not (as I conceive) to be denied, That the King and his High Court of Parliament may make any Law what they pleaſe, and by their abſolute Power may change Religion, *Chriſtianity* into *Turciſm*, if they pleaſe (which God forbid): And the Subjects, whoſe Conſciences cannot obey, muſt fly, or endure the Penalty of the Law. But both King and Parliament are *ſub graviori Regno*, and muſt anſwer to God for all ſuch Abuſe of Power. But beſide this Abſolute, there is a Limited Power; Limited, I ſay, by natural Juſtice and Equity, by which no Man, no Court, can do more, than what he can by right: And according to this Power, the Church's Intereſt muſt be conſidered, and that indifferently, as well as the Parliament's. To apply this to the Particular of the Reformation: The Parliament, in the beginning of Queen *Elizabeth*, would not endure Popiſh Superſtition, and by Abſolute Power aboliſhed it, [d] without any Aſſent of the Clergy in Convocation. And then in her firſt Year, *Anno* 1559, ſhe had a Viſitation, and ſet out her *Injunctions*, to direct and order ſuch of the Clergy as could conform their Judgments to the Reformation.

Id poſſumus, quod jure poſſumus.

[d] *By the Advice of her Honourable Council.* Prefat. to the Injunctions.

‘But then ſo ſoon as the Clergy was ſettled, and that a Form of Doctrine was to be agreed upon, to ſhew the Difference from the *Roman* Superſtition, a Synod was called; and in the Year 1562, the Articles of Religion were agreed upon, and they were determined and confirmed by Parliament, with the Aſſent of the Clergy in Convocation, and that by a juſt and orderly Power. Nor is the Abſolute Power of King and Parliament any way unjuſt in itſelf, but may many ways be made ſuch, by Miſinformation, or otherwiſe. And this gives the King and the Parliament their full Power, and yet preſerves this Church in her juſt Right: Juſt, and acknowledged by ſome that loved her not over-well. For the [e] Lord *Brooke* tells us, That *what a Church will take for true Doctrine, lies only in Church.* Nay, the very Heathen ſaw clearly the Juſtice of this; for [f] *M. Lucullus* was able to ſay in *Tully*, That *the Prieſts were Judges of Religion, and the Senate of Law.*’

Diſcourſe, § 1. c. 9. p. 51.

Religionis Judices Pontifices ſunt, Legis Senatus. *Cic. L.* 4. *Epiſt. ad Att. Ep.* 2.

II. The ſecond Proof is, That I made two Speeches for the King, to be ſpoken or ſent to the Parliament that then was; and that they had ſome ſour and ill Paſſages in them. ‘Theſe Speeches were read to the Lords; and had I now the Copies, I would inſert them here, and make the World Judge of them.’ Firſt, I might ſhuffle here, and deny the making of them: For no Proof is offer'd, but that they are in my Hand, and that is no neceſſary Proof; for I had then many Papers by me written in my own Hand, which were not my making, tho' I tranſcribed them, as not thinking it fit to truſt them in other Hands. But, Secondly, I did make them, and I followed the Inſtructions which were given me, as cloſe as I could, to the very Phraſes; and being commanded to the Service, I hope it ſhall not now be made my Crime that I was truſted by my Sovereign. Thirdly, As I did never endeavour to imbitter the King this way; ſo the ſmart Paſſages which Mr. *Nicolas* ſays are there, I hope will not be thought ſuch, when 'tis conſider'd whoſe Mouth was to utter them, and upon what Occaſion: Yet if ſuch they ſhall be thought, I am heartily ſorry for them, and humbly deſire they may be paſs'd by. Howſoever, they can make no Proof that I am an Enemy to Parliaments. ‘And this Anſwer I gave Mr. *Browne* in the Houſe of Commons, for he there omitted it not.’

See the Diary *at* March 26, 29. May 11, Anno 1626. H. W.

III. The third Proof that I am an Enemy to Parliaments, is the Teſtimony of one Mr. *Bland*: A forward Witneſs he hath been againſt me in other Particulars. Here he ſays, That Sir *Sackvil Crowe* ſhewed him a Paper, in which were fifteen or ſixteen Paſſages concerning Parliaments, with ſome four Aſperſions to boot; and that this Paper was ſubſcribed *W. Laud.* Firſt, my Lords, this Man is but a ſingle Witneſs. Secondly, He ſays, He had this Paper from Sir *Sackvil Crowe*, and he is now in *Turkey*, and cannot be produced, that the Truth may be known. Thirdly, As I never gave Sir *Sackvil* any ſuch Paper, ſo had he come by any ſuch, 'tis more than probable ſomebody elſe might have ſeen it beſide Mr. *Bland*, to make a ſecond Witneſs. Fourthly, This is a very bold Oath; for he ſwears, the Paper was ſubſcribed with my own Hand, *W. Laud*: Whereas I being then Biſhop of *St. David's*, never writ my Name to any thing other than *Guil. Meneven.* Let him bethink himſelf of this Oath, *ne quid gravius dicam.* Beſides, it may be conſidered too, that this, with ſome Particulars mentioned by Mr. *Bland*, was charged in the firſt Additional Article, and now brought in upon the fourteenth Original; partly to confound me, that I might not ſee how, or againſt what to defend myſelf; and partly to make me ſecure, becauſe they had quite paſſed over the firſt Additional: But eſpecially, becauſe they had therein charged me, that theſe Propoſitions of mine had cauſed that Parliament to be diſſolved; and yet in the ſame Article, and within three Lines, 'tis ſaid expreſly, That my Propoſitions were delivered to my Lord Duke of *Buckingham* after that Parliament was diſſolved. ‘So this Article hangs as well together as Mr. *Bland*'s

Art. 1. *Additional.*

‘ *Bland*'s Teſtimony concerning it. Mr. *Browne* preſſed this alſo hard againſt me; but I anſwered according to the Sum of that which is above-written.’ And as for the Particular ſaid to be in that Paper, (were it mine, as it is not) or were the Words thought treaſonable; (as well they cannot be) yet the Statute of Queen *Mary* makes 1 Mariæ, c. 1. § 3. it, that no Words, nor Writings, nor Cypherings, nor Deeds, ſhall be Treaſon, but only ſuch as are within the Statute of 25 *Edw.* III. and no other. And this Statute I then read to the Lords, tho' I conceive there was no need of it.

IV. The fourth Proof was out of my Diary, at *June* 15, 1626. The Words theſe: *Poſt multas agitationes privata Malitia in Ducem* Buckinghamiæ *ſuperavit & ſuffocavit omnia publica negotia*; *nihil actum eſt, ſed Parliamentum ſolutum.* And this was applied firſt by Mr. *Nicolas*, and after by Mr. *Browne*, as if I had charged this private Malice upon the Parliament. But this is utterly miſtaken: For I ſpake not this of the Parliament, but of ſome few particular Men, ſome of the Houſe, ‘ Men well enough known to the World;’ and more, not of the Houſe, but Sticklers at large, who went between, and did very ill Offices, and ſo wronged both the King and the Parliament: which is no new thing in *England.* That my Words there cannot be meant of the Parliament, is two ways apparent. Firſt, in that I ſay, *privata Malitia*, private Malice did it; but name not the Parliament, nor charge any thing upon it. Secondly, Becauſe had I ſpoken this of the Parliament, it could not have been called *private*, but *public Malice*; nothing being more publick in this Kingdom, than what is done in and by the Parliament.

V. The fifth Proof was, That a Proclamation for calling in of the Remonſtrance, was found in my Study: And Mr. *Nicolas* ſaid, They conceived I had a hand in it: It was as lawful for me to have and keep this Proclamation, as for any other Subject. And their Conceit that I had a hand in it, is no Proof. Mr. *Nicolas* ſays, That my Preferments followed very quick upon this; and infers, That I was preferred for my ill Services in this kind. But all the Proof that he brings for this his uncharitable Inference, is the Comparing of the Times; and I ſhall be content to be tried by that. For by his own Acknowledgment this Proclamation came out *June* 16, 1622. I being then Biſhop of *St. David's:* And he confeſſes I was not made Biſhop of *Bath* and *Wells* till *June* 20, 1626. full four years after; nor a Privy-Counſellor till *April* 29, 1627. which was five years after. Whereas Rewards for ſuch Services are found to come much quicker. ‘ And Mr. *Browne*, when he made his ſummary Charge, ſlighted this, and paſſed it over.’

VI. The ſixth Proof of my Enmity to Parliaments, was a Paper of Reaſons, Mr. *Nicolas* ſaid, againſt Parliaments. But, Firſt, When this Paper was ſhewed and read to the Lords, it was found otherwiſe, and was but a Paper of Hopes and Fears, which were conceived of a Parliament: Not Reaſons againſt them. Secondly, Theſe Fears and Hopes were not of a Parliament then in Being, but of one in Deliberation, whether it ſhould be or not at that time; which all Men know is often diſputed, and without offence. And any conſidering Man may privately do it, for his own uſe and trial of his Judgment. Thirdly, In this Deliberation, I was not the Author of theſe *Fears and Hopes*, but an *Amanuenſis* to higher Powers, in regard their Hands were ſlower; tho' commanded alſo to ſet down my own Opinion, which I did. Fourthly, I was then either a Counſellor, or a ſworn Servant to the King, and required, upon my Oath, to deliver truly both my Fears and my Hopes; and I durſt not perjure myſelf: And I hope the keeping of my Oath, and doing my Duty in that kind, ſhall not now prejudice my Life. Fifthly, Theſe *Fears and Hopes*, whatever they contain, did relate to the being or not being of that one Parliament only, as appears in the very Paper itſelf; and the *Hopes* prevailed, and that Parliament ſat. ‘ And this Anſwer I gave to Mr. *Browne*, who made all the uſe of this Paper, that could be, againſt me.’

Here Mr. *Nicolas* brings in Mr. *Bland* again, who ſays, That the four laſt Heads in this Paper, were in that Paper alſo which was ſhewed him. This ſingle Witneſs hath an excellent Memory, that can remember four Heads of a Paper punctually ſixteen Years ago. I aſked why he did not complain of me then, when his Memory was freſher, and his Witneſs Sir *Sackvil Crowe* nearer. 'Twas replied, *He durſt not for my Greatneſs.* Why, but he knows well enough, that Parliaments, when they have a juſt Cauſe of Proceeding, do neither fear nor ſpare any Man's Greatneſs. And is it probable, that they which ſpared not the Duke of *Buckingham*'s Greatneſs, would have feared mine, being then a poor Biſhop of *Bath* and *Wells?* And a Parliament was held again in the very next Year, 1627. ſo that he wanted not opportunity to complain. Nor can I believe any Opinion of my ſuppoſed Greatneſs ſtopped him: Let him look into himſelf.

Then Mr. *Nicolas* told the Lords with great vehemency what Venom there was in this Paper, which, he ſaid, was in every Particular. A right Spider I ſee now he is, Venom out of any thing.

[*Here is a void ſpace left, I ſuppoſe, with deſign to have the* Paper *(here mentioned) to be inſerted: which was not done.*]

VII. The ſeventh Proof out of my Diary at *March* 1628. where the Words are, *That the Parliament which was diſſolved* March 10, 1628. *ſought my Ruin.* ‘ This had been a better Argument to prove Parliaments an Enemy to me, than me to them.’ But nothing can be meant by this, but that my Ruin was ſought in that Parliament by ſome particular Men whoſe Edge was too keen againſt me. And this appears in my Diary at *June* 14. preceding; at which time I was put into a Remonſtrance, which, had I been found any way guilty, muſt needs have ruin'd me. But by God's Bleſſing, the very ſame Day I did clearly acquit myſelf in open Parliament, of all the Aſperſions caſt upon me about Dr. *Manwaring*'s Sermons. ‘ This Particular Mr. *Browne* charged upon me, and I anſwered as before: But Mr. *Nicolas* did not touch upon it this Day.’

VIII. The eighth Proof that I was an Enemy to Parliaments, was taken from ſome Marginal Notes, which I had made upon a printed Speech of Sir *Benjamin Rudyard*, which he ſpake in the Parliament held *Anno* 1627. Mr. *Nicolas* named four; but Mr. *Browne*, in ſumming up my Charge, inſiſted only upon two. The word *Reducing*; and the *Aim of gaining from the King.* Sir *Benjamin Rudyard* is my old Acquaintance, and a very worthy Member of that Houſe, both now and then. But be a Man never ſo worthy, may he not uſe ſome Phraſe amiſs? Or if he do, may not I or another obſerve, yea, check at it, but by-and-by I muſt be an Enemy to Parliaments? Is there any Argument in this? I ſaid a *Gentleman* in the Houſe of Commons uſed an ill Phraſe in a Speech of his in that Houſe, therefore I am an Enemy to the Parliament in which he ſpake it? Say I am miſtaken, and not he, and that the Phraſe is without Exception; yet this is but my Error in Judgment, no Proof of Enmity, either to the Parliament, or him that ſpake it. That which I ſaid was this: Firſt, That *the Word* Reducing, *as there placed, was a hard Phraſe.* Let any Man view that Speech conſiderately, and tell me whether it be not ſo. Secondly, That *I diſliked the Word* Gaining *being between the King and his People in Parliament.* For (as I humbly conceive) there will always be Work enough for both to join for the Publick Good; and well it can never be, if they which ſhould ſo join, do labour only to gain one from another. For if the King ſhall labour to *gain* upon the Liberty or Property of the Subject, or the Subjects in Parliament labour to *gain* from the juſt Power and Prerogative of the King; can any prudent Man think the Publick can thrive therewhile? Yea, but they ſay, That my Marginal Note upon this Phraſe was, That this *Gaining* was the Aim of the Lower Houſe. If my Note be ſo, yet that cannot be otherwiſe underſtood, than that according to this Expreſſion, this muſt be their *Aim.* ‘ And the Reaſon why I found fault with this Phraſe was, becauſe I ſaw this muſt follow out of it. So, under favour, I was not ſo bold with this Gentleman, as he was with the Houſe in uſing this Speech.’

IX. The next Proof was, That I found fault with eight Bills that were then in the Houſe. This is a very poor Proof of my Enmity to Parliaments, that I diſliked ſome Bills propoſed in them; tho' there be no Proof of this urged at all, ſave only that I writ the time, *May* 27, 1628. upon the Paper where the Bills were mentioned. And I hope, to mention the time when any Bills were propoſed, is not to diſlike the Bills. But ſay I did diſlike them, what then? It is lawful for any Member of the Houſe (and ſuch was I then) to take Exceptions which he thinks are juſt, againſt any Bill before it paſs. And ſhall not that which is lawful for any Man to do, be lawful for me? Beſide, almoſt all Bills are put in by private Perſons: The Houſe is not intereſted in them, till they are paſſed and voted by them: So that till then any Man may ſpend his Judgment upon the Bill, without any Wrong at all to the Parliament. ‘ Mr. *Browne* ſaw this well enough, and therefore vouchſafed not ſo much as to name it.’

X. The tenth Proof was, That I made an Anſwer to the Remonſtrance ſet out by Parliament, *Anno* 1628. This was preſſed before, and here 'tis laid hold of on all hands, to make as full a Cry as it can againſt me. ‘ Mr. *Nicolas* preſſes it here aloud (as he doth all things), and Mr. *Browne* lays it cloſe in ſumming up the Charge.’ My Anſwer the ſame to both. 1. They charge me, That I made that Anſwer to the Remonſtrance which came forth *Anno* 1628. I did this by the King's Command, and upon ſuch Inſtructions as were given me. And as I obeyed the Command, ſo did I cloſely purſue my Inſtructions: and I durſt do no other; for I was then upon my Oath as a ſworn Counſellor, and ſo employed in that Service. And I hope no Man will conceive, that I would, without ſuch a Command, have undertaken ſuch a kind of Service. 2. Yea, but they ſay, It doth not appear that I had any ſuch Command. Yes, That appears as plainly as that I made it. For they bring no Proof that I made it, but becauſe the Indorſement upon that Paper is in my Hand, and calls it my Anſwer: And the ſame Indorſement ſays, I made it by his Majeſty's Command. So either the Indorſement is no ſufficient Proof for the one, or if it be, 'tis ſufficient for both; and muſt needs witneſs the one for me with the ſame Strength that it doth the other againſt me. For a kind of Confeſſion that Indorſement is, and muſt therefore not be broken, but be taken with all its Qualities. 3. Thirdly, They ſay there are ſome ſour and bitter Paſſages in the Anſwer. 'Tis more than I perceived, if it be ſo. Nor was any Sourneſs intended. And I hope no ſuch Paſſages found in it, the Perſon conſider'd in whoſe Name the Anſwer was made. The Expreſſions indeed might have been too big for a Subject's Mouth. 4. Fourthly, They ſay I was diſpleaſed that this Anſwer was not printed; but all the Proof they brought for it is, that it is written upon the Paper, that there was an Intention to print it, but that I know not what hinder'd it. ‘ But this Argument can never conclude: *John a Nokes* knows not who hinder'd the printing of a Jewiſh Catechiſm in *England*, therefore he was diſpleaſed the Catechiſm was not printed. But I ſee every Foot can help to trample him that is down.’ Yea, but they inſtanced in three Particulars, which they charged ſeverally upon me. The firſt Particular was, That by this Remonſtrance they ſought to fill our People's Hearts more than our Ears. A ſecond was, That they ſwelled to that bigneſs, till they brake themſelves. But neither of theſe ſtrike at any Right or Privilege of Parliaments; they only tax ſome Abuſes, which were conceiv'd to be in the Miſcarriage of that one Parliament. And both theſe Particulars were in my Inſtructions. And tho' I have ever honoured Parliaments, and ever ſhall, yet I cannot think them infallible. General Councils have greater Promiſes than they, yet they may err. ‘ And when a Parliament, by what ill Accident ſoever, comes to err, may not their King tell them of it? Or muſt every Paſſage in his Anſwer be ſour, that pleaſes not?’ And for that Remonſtrance, whither it tended, let the World judge; the Office is too dangerous for me. The third Particular was, the excuſing of *Ireland*, and the Growth of Popery there, of which that Remonſtrance, *Ann.* 1628, complained. This was in the Inſtructions too. And I had reaſon to think, the King and his Council underſtood the State of *Ireland*, for Religion and other Affairs, as well as other Men. And I was the more eaſily led into the belief, that Religion was much at one ſtate in *Ireland* in Queen *Elizabeth*'s and King *James*'s time, and now; becauſe ever ſince I underſtood any thing of thoſe *Iriſh* Affairs, I ſtill heard the ſame Complaints that were now made. For in all theſe times they had their *Romiſh* Hierarchy; ſubmitted to their Government; paid them Tythes; came not to the Proteſtant Churches; and rebelled under *Tyrone*, under pretence of Religion. And I do not conceive they have gone beyond this now. ‘ If they have, let them anſwer it who

‘ have occaſioned it.’ But to prove this great new Growth of Popery there, they produced firſt a Proclamation from the State in *Ireland*, dated *April* 1, 1629. Then a Letter of the Biſhop of *Kilmore*’s to myſelf, dated *April* 1, 1630. Thirdly, A Complaint made to the State there, *Ann.* 1633. of this Growth, ſo that I could not but know it. Moſt true; when theſe Informations came, I could not but know it: But look upon their Date, and you ſhall find that all of them came after this Anſwer was made to the Remonſtrance, and therefore could not poſſibly be foreſeen by me, without the Gift of Prophecy. Then they produced a Letter of the Earl of *Strafford*’s, in which he communicated to me, *Mar.* 1633. That to mould the Lower Houſe there, and to rule them the better, he had got them to be choſen of an equal Number of Proteſtants and Papiſts. ‘ And ‘ here Mr. *Maynard*, who preſſed this Point of Religion hard upon me, ‘ began to fall foul upon this Policy of the Earl of *Strafford*; and himſelf ‘ yet brake off with this, *But he is gone.*’ Then he fell upon me as a Man likely to approve thoſe ways, becauſe he deſired the Letter might be communicated to me. This Letter was not written to me, as appears by the Charge itſelf: For if it had, no Man elſe needed to communicate it to me. And I would fain know, how I could help any of this? If that Lord would write any thing to me himſelf, or communicate any thing to another that ſhould acquaint me with it, was it in my Power to hinder either of theſe? And there were other Paſſages in this Letter, for which, I conceive, his Lordſhip deſired the Communication of that Letter to me, much more than the Particular urged, which could no way relate unto me. ‘ And ‘ Mr. *Browne* in his Sum ſaid very little, if any thing, to this Buſineſs ‘ of *Ireland*.’

XI. After this Mr. *Nicolas*, who would have nothing forgotten that might help to multiply Clamour againſt me, fell upon five Particulars, which he did but name, and left the Lords to their Notes. Four of theſe five were handled before. As Firſt, the Words, *If the Parliament prove peeviſh.* Secondly, *That the King might uſe his own Power.* Thirdly, the Violation of the Petition of Right. Fourthly, the Canons. Fifthly, That I ſet Spies about the Election of Parliament-Men in *Glouceſterſhire*: And for this laſt, they produced a Letter of one *Allibon* to Dr. *Heylin.* To the four firſt, I referred the Lords to their Notes of my Anſwers, as they did. To this laſt, that Mr. *Allibon* is a mere Stranger to me, I know not the Man. And ’tis not likely I ſhould employ a Stranger in ſuch a Buſineſs. The Letter was ſent to Dr. *Heylin*, and if there were any Diſcovery in it of Jugglings there in thoſe Elections (as too often there are), and if Dr. *Heylin* ſent me thoſe Letters, as deſirous I ſhould ſee what Practices are abroad, what Fault is there in him or me for this?

XII. Then Mr. *Nicolas* would not omit that which he thought might diſgrace and diſcontent me, tho’ it could no way be drawn to be any Accuſation: ’twas out of my Diary, at *Oct.* 27, 1640. this Parliament being then ready to begin. The Paſſage there is, *That going into my upper Study, to ſend away ſome Manuſcripts to* Oxford, *I found my Picture which hung there privately, fallen down upon the Face, and lying on the Floor; I am almoſt every Day threatned with my Ruin, God grant this be no Omen of it!* The Accident is true; and having ſo many Libels cauſeleſly thrown out againſt me, and hearing ſo many ways as I did, that my Ruin was plotted, I had Reaſon to apprehend it. But I apprehended it without Paſſion, and with looking up to God, that it might not be ominous to me. ‘ What is this Man angry at? Or why is this produced?’

XIII. But though I cannot tell why this was produced, yet the next was urged only to incenſe your Lordſhips againſt me: ’Tis in my Diary again, at *Feb.* 11. 1640. where Mr. *Nicolas* ſays confidently, I did abuſe your Lordſhips, and accuſe you of Injuſtice. My Lords, what I ſaid in my Diary, appears not; if it did appear whole and altogether, I doubt not but it alone would abundantly ſatisfy your Lordſhips. But that Paſſage is more than half burnt out (as is [a] to be ſeen), whether of Purpoſe by Mr. *Prynn*, or caſually, I cannot tell; yet the Paſſage is confidently made up, and read to your Lordſhips, as if nothing were wanting. For the thing itſelf, the Cloſe of my Words is this: *So I ſee what Juſtice I may expect, ſince here’s a Reſolution taken, not only before my Anſwer, but before my Charge is brought up againſt me.* Which Words can traduce no Man’s Juſtice: Firſt, becauſe they depend upon an *If*; if the Parliament-Man there mentioned told me Truth, that ſuch a Reſolution was taken. And Secondly, Becauſe it can be no Juſtice in any Men, be the Sentence never ſo moderate in itſelf, to take up a Reſolution what Sentence ſhall paſs, before Anſwer given, or Charge put: For elſe a Man may be puniſhed firſt, and tryed after, which is contrary [b] to all Rules of Juſtice. And therefore if ſuch a Reſolution were taken (as I believe not), I might well ſay that which followed after.

[a] *It was viewed.*

[b] Potentia ſequi debet Juſtitiam, non præire. *Aug. L.* 13. *de Trin. c.* 13.

XIV. Then was produced a Paper concerning the Subſidies or Aids which had been given in divers Parliaments, in which it is ſaid, at the Beginning of it, *That* Magna Charta *had an obſcure Birth, and was foſtered by an ill Nurſe.* ‘ I believe ‘ that no Man that knows Mr. *Nicolas*, thinks that he ſpake ſoftly upon ‘ this.’ No, he ſpake loud enough: What Laws would I ſpare, that ſpake thus of *Magna Charta?* Firſt, here is no Proof offered that this Paper is my Collection, but only that it is in my Hand: By which Argument (as is ſaid before) I may be made the Author of any thing; and ſo may any Scholar, that is able and willing to inform himſelf. Secondly, The main Draught of that Paper is not in my Hand, though ſome Notes upon it be. Thirdly, There are *Littleton*, and other Lawyers, quoted in that Paper, Authors which I never read. Nor is this now any Diſgrace to *Magna Charta*, that it had an obſcure Birth: For ſay the Difficulties of the Times brought it obſcurely forth, that’s no Blemiſh to the Credit and Honour to which it hath for many Ages attained. Not only their Laws, but the greateſt Empires that have been in the World, ſome of them have had obſcure Beginnings: Witneſs the *Roman Empire.* Fourthly, What if our Stories agree upon it, that it had an obſcure Birth, and a worſe Nurſe? What if ſome Law-Books (which Mr. *Nicolas* never read), and thoſe of good Account, uſe almoſt the ſame Words of *Magna Charta*, which are in that Paper? Shall the ſame Words be Hiſtory and Law in them, and Treaſon in me? And ſomewhat certainly there is in it, ‘ That Mr. *Browne*, when he gave his ſummary Charge ‘ againſt me, firſt to the Lords, and after in the Houſe of ‘ Commons, quite omitted this Particular. Sure I believe ‘ he found nothing was in the Paper but known Truth, and ‘ ſo paſſed it over, elſe he would never have denied a Vin‘ dication to *Magna Charta.*’

Here is a void Space left in the Margin, with Deſign (I ſuppoſe) to inſert therein ſome Paſſages out of Law-Books concerning the obſcure Birth of Magna Charta: *which Space was not filled up.* H. W.

XV. After all this, Mr. *Nicolas* concludes with a Dream, which he ſays was mine. The Dream (he ſays) was, that I ſhould come to greater Preferment in the Church, and Power in the State, than any Man of my Birth and Calling had done before me, but that in the End I ſhould be hanged. Firſt, my Lords, if I had had any ſuch Dream, ’tis no Proof of any thing againſt me. Dreams are not in the Power of him that hath them, but in the Unrulineſs of the Fancy, which in broken Sleep wanders which way it pleaſes, and ſhapes what it pleaſes; *Numb.* 11. But this Dream is brought in, as the Fall of my Picture was, to make me a Scorn to your Lordſhips and the People, and to try whether any thing will yet at laſt break my Patience. This Dream is reported here according to Mr. *Prynn*’s Edition of my Diary, ſomewhat different from that which Mr. *Prynn* printed in a former Book of his: But the Beginning and the End agree. From Mr. *Prynn*, *Culmer* hath taken and printed it. And Mr. *Prynn* confeſſed before the Lords, that one Mr. *Badger*, an Attorney at Law, a Kinſman of mine, told it him. The Truth, my Lords, is this: This *Badger* married a near Kinſwoman of mine; he was a notorious Separatiſt, and ſo nearer in Affection to Mr. *Prynn*, than to me in Alliance. This Man came one Day to me to *Lambeth*, and told me privately (which was more Manners than uſually the bold Man had) that he heard I had ſuch a Dream when I was young, in *Oxford*: I proteſted to him there was no ſuch thing, and that ſome malicious Fellow or other had ſet him on work to come and abuſe me to my Face. He ſeemed ſatisfied: But going to viſit Mr. *Prynn*, then in the *Tower*, he told it him; and Mr. *Prynn*, without further Proof, prints it in the next Book he ſet out. When I ſaw it in Print, and found that ſome in Court took Notice of it, I reſolved to acquaint his Majeſty how I was uſed; and meeting with the Earl of *Pembroke*, then Lord Chamberlain, and my great Friend, as he pretended (the King being not then come forth of his Chamber), I told his Lordſhip how I was uſed; and when the King came forth, I told it him alſo. But the Earl of *Pembroke*, then preſent in the Houſe, and called up by them for a Witneſs, forgetting the Circumſtances, but remembring the Thing, took it *upon his Honour*, that I ſaid nothing of Mr. *Prynn*’s printing it, but that I told him abſolutely I had this Dream. Now, God forgive his Lordſhip! I was much troubled in myſelf to hear him to take it upon his *Diſhonour* (for ſo it was), and yet unwilling (knowing his Violence) to conteſt with him in that Place, and in my Condition; and obſerving what Spleen he hath lately ſhewed againſt me, I ſtood a little ſtill to gather up myſelf. When Mr. *Nicolas*, before I could make any Reply, fell on with great Earneſtneſs, and told the Lords, That the Fore-part of my Dream was found true, to the great Hurt of both Church and State; and that he hoped they would now make good the latter, *That I might be hanged.* To which I anſwered, That I had not forgotten our Saviour’s Prediction, *St. John* xvi. 33. *That in the World we ſhould be ſure to meet with Affliction.* Nor his Prayer: *Father, forgive theſe Men, for they know not what they do*; *St. Luke* xxiii. 24. No, nor is that out of my Memory which *St. Paul* ſpeaks, 1 *Cor.* iv. 3. *de Humano Die.* But for the Publick, with this I ſhall conclude: *God of his infinite Mercy bleſs the King and his People with Love, and Peace, and Piety, and Plenty, which is the worſt I ever wiſhed or endeavoured, whatſoever it ſhall pleaſe God ſhall become of me; to whoſe bleſſed Will and Pleaſure, in all Humility, I ſubmit myſelf.* And here ended this laſt Day of my Trial. But before I went from the Bar, I made three Motions to the Lords: The one, That I might have a Day to make a Recapitulation of this long and various Charge, or of the Chief Heads of it, that it might appear in a Body together. The other, That after this, my Counſel might have a Day to ſpeak to all Points of Law incident to my Cauſe. The third, That they would be pleaſed to remember, that I had pleaded the Act of Oblivion to the thirteenth Original Article. Mr. *Nicolas* ſaid, they would acquaint their Houſe with it. And the Lords promiſed to take all into Conſideration. And ſo I was diſmiſſed *ſine Die.*

‘ But here I may not go off from this Dream ſo, ſince Mr. *Prynn* hath ‘ printed it at the End of my Diary: Where he ſhameleſly ſays, This Dream ‘ was atteſted from my own Mouth at my Trial in the Lords Houſe. For ‘ I have ſet down all that paſſed exactly. Nor did I then give any Atteſ‘ tation to it; only before I could gather up myſelf to anſwer the Earl of ‘ *Pembroke* in a fitting Manner, and not to hurt myſelf, Mr. *Nicolas* fell ‘ upon me with that unchriſtian Bitterneſs, as diverted me from the Earl, ‘ to anſwer him. But once for all, and to ſatisfy any Man that deſires ‘ it, that is all true which I have here ſet down concerning this Dream: ‘ And upon my Chriſtianity and Hope of future Salvation, I never had ‘ this Dream, nor any like it; nor did I ever tell it this Lord, or any ‘ other, any other way than in relation to *Badger* and *Prynn*, as is before ‘ related. And ſure if I had had ſuch a Dream, I ſhould not have had ſo ‘ little Diſcretion as to tell it any Man, leaſt of all to pour it into that ‘ Sieve, the Earl of *Pembroke.* For that which follows, and wherein his ‘ Charity and Words are almoſt the ſame with thoſe of Mr. *Nicolas*, I ‘ gave him the ſame Anſwer, and (forgiving him all his moſt unchriſtian ‘ and inſatiable Malice againſt me) leave myſelf in the Hands of God, ‘ not in his.’

Aug. 23, 1644. I received an Order from the Lords, That if I had a Mind to make a Recapitulation (as I had formerly deſired) of my long and various Charge, I ſhould provide myſelf for it againſt *Monday* next (this Order came upon *Friday*); and that I ſhould give in my Anſwer the next Morning what I meant to do. The next Day, *Aug.* 24, in Obedience to this Order, I gave in my Anſwer; which was humble Thanks that I might have Liberty to make it, referring the Day to their honourable Conſideration, with this, that *Monday* next was a very ſhort Time for ſuch a Collection. Upon this Anſwer an Order was preſently made, that I ſhould provide to make my Recapitulation upon *Monday*, *September* the ſecond. And about this time (the certain Day I know not) it was reſolved in the Houſe of Commons, that according to my Plea I ſhould enjoy the Benefit of the Act of Oblivion, and not be put to anſwer the thirteenth Original Article, concerning the *Scotiſh* Buſineſs. And truly, I bleſs God for it, I did not deſire the Benefit of that Act for any Senſe of Guiltineſs which I had in myſelf; but in Conſideration of the Times, and the Malice of the now potent Faction, which being implacable towards me, I could not think it Wiſdom to lay by any ſuch Power as might help to ſecure me. Yet in the former Part of my Hiſtory, when I had good Reaſon to think I ſhould not be called to anſwer ſuch general Articles, I have ſet down my Anſwer to each of them, as much as Generals can be anſwered. And thereby I hope my Innocency will appear to this thirteenth Article alſo.

Then came *Monday*, *September* 2. And, according to the Order of the Lords, I made the Recapitulation of my whole Cauſe, in Matters of greateſt moment, in this Form following. But ſo ſoon as I came to the Bar, I ſaw every Lord preſent with a new thin Book in *Folio*, in a blue Coat. I heard that Morning, that Mr. *Prynn* had printed my Diary, and publiſhed it to the World to diſgrace me. Some Notes of his own are made upon it. The firſt and the laſt are two deſperate Untruths, beſides ſome others. This was the Book then in the Lords Hands; and I aſſure myſelf that time picked for it, that the Sight of it might damp me, and diſenable me to ſpeak. I confeſs I was a little troubled at it. But after I had gathered up myſelf, and looked up to God, I went on to the Buſineſs of the Day, and thus I ſpake.

My Recapitulation.

‘MY Lords, my Hearing began *March* 12. 164¾, and continued to the End of *July*. In this time I was heard before your Lordſhips, with much Honour and Patience, twenty Days; and ſent back without Hearing, by reaſon of your Lordſhips greater Employments, twelve Days: The reſt were taken up with providing the Charge againſt me.

‘And now, my Lords, being come near an End, I am by your Grace and Favour, and the Leave of theſe Gentlemen of the Honourable Houſe of Commons, to repreſent to your Lordſhips and your Memories, a brief Sum of my Anſwers to this long and various Charge: In which I ſhall not only endeavour, but perform alſo all poſſible Brevity. And as with much thankfulneſs I acknowledge myſelf bound to your Lordſhips for your Patience; ſo I cannot doubt but that I ſhall be as much obliged for your Juſtice, in what I am innocent from Crime: and for your Clemency, in what the common Frailty of Mankind hath made me err. And I humbly deſire your Lordſhips to look upon the whole Buſineſs with honourable Care of my Calling, of my Age, of my long Impriſonment, of my Sufferings in my Eſtate, and of my Patience in and through this whole Affliction; the Sequeſtration having been upon my Eſtate above two Years. In which, notwithſtanding, I may not omit to give Thanks for the Relief which my Petitions found, for my preſent Neceſſities in this time of my Hearing, at your Honourable Hands.

‘1. Firſt, then, I humbly deſire your Lordſhips to remember the Generality, and, by Occaſion of that, the Incertainty of almoſt every Article charged upon me: Which hath caſt me into great Streights all along in making my Defence.

‘2. Next, That your Lordſhips will be pleaſed to conſider what a ſhort Space, upon each Day's Hearing, hath been allowed me to make my Anſwer to the many Charges in each ſeveral Day laid againſt me: Indeed, ſome Days ſcarce time enough to peruſe the Evidence, much leſs to make, and then to review and weigh my Anſwers: Eſpecially conſidering (to my greateſt Grief) that ſuch a Charge ſhould be brought up againſt me from ſo great and honourable a Body as the Commons of *England*. In regard of which, and all other ſad Occaſions, I did at firſt, and do ſtill in all Humility deſire, that in all Particulars concerning Law, my Counſel may be heard before your Lordſhips proceed to Sentence; and that a Day may be aſſigned for my Counſel accordingly.

‘3. Thirdly, I heartily pray alſo, that it may be taken into your honourable Conſideration, how I have all manner of Ways been ſifted to the very Bran, for that (whate'er it amounts to) which ſtands in Charge againſt me.

‘(1.) The Key and Uſe of my Study at *Lambeth*, Books and Papers taken from me.

‘(2.) A Search upon me at the *Tower*, made by Mr. *Prynn*, and one-and-twenty Bundles of Papers, prepared for my Defence, taken from me, and not three Bundles reſtored to me again. This Search made before any particular Articles were brought up againſt me. My very Pockets ſearched; and my Diary, nay, my very Prayer-Book taken from me, and after uſed againſt me: And that in ſome Caſes not to prove, but to make a Charge. Yet I am thus far glad, even for this ſad Accident: For by my Diary your Lordſhips have ſeen the Paſſages of my Life; and by my Prayer-Book the greateſt Secrets between God and my Soul. So that you may be ſure you have me at the very Bottom. Yet, bleſſed be God, no Diſloyalty is found in the one; no Popery in the other.

‘(3.) That all Books of Council-Table, Star-Chamber, High-Commiſſion, Signet-Office, my own Regiſteries, and the Regiſteries of *Oxford* and *Cambridge*, have been moſt exquiſitely ſearched for Matter againſt me, and kept from me and my Uſe, and ſo affording me no Help towards my Defence.

‘(4.) I humbly deſire your Lordſhips to remember in the fourth Place, that the Things wherein I took great Pains, and all for the public Good and Honour of this Kingdom and Church, without any the leaſt Eye to my own particular, nay, with my own great and large Expences, have been objected againſt me as Crimes: As, namely, the Repair of *St. Paul*'s, and the ſettling of the Statutes of the Univerſity of *Oxford*.

‘(1.) For *St. Paul*'s: Not the Repair itſelf, they ſay (no, for very Shame they dare not ſay that, tho' that be it which galls the Faction); but the demoliſhing the Houſes which ſtood about it. Yea, but without taking down of theſe Houſes, it was not poſſible to come at the Church to repair it; which is a known Truth. And they were taken down by Commiſſion under the Broad-Seal. And the Tenants had valuable Conſideration for their ſeveral Intereſts, according to the Number of their Years remaining, and according to the Judgment of Commiſſioners named for that Purpoſe, and named by his Majeſty and the Lords, not by me: Nor did I ever ſo much as ſit with them about this Buſineſs. And if the Commiſſion itſelf were any way illegal (as they urge it is), that muſt reflect upon them whoſe Office was to draw and ſeal it; not on me, who underſtood not the Legality or Illegality of ſuch Commiſſions: Nor did I deſire that any one Circumſtance againſt Law ſhould be put into it; nor is any ſuch thing ſo much as offered in Proof againſt me. And becauſe it was preſſed, That theſe Houſes could not be pulled down but by Order of Parliament, and not by the King's Commiſſion alone; I did here firſt read in Part, and afterwards, according to a *Salvo* granted me, deliver into the Court three Records, two in *Edward* I.'s Time, and one in [a] *Edward* III.'s Time, in which are theſe Words: *Authoritate noſtra Regali, prout opus fuerit, ceſſantibus quibuſcunque Appellationum & Reclamationum diffugiis, Juris, Scripti, aut Patriæ ſtrepitu procedatis; Nova Ædificia quæ, &c. amoveri, & divelli penitus faciatis, &c.* And a little after, *Quouſque per nos cum deliberatione & aviſamento noſtri Conſilii ſuper hoc aliter fuerit ordinatum, &c.* Here's no ſtaying for a Parliament; here's no Recompence given; here's barring of all Appeal, nay, all Remedy of Law, though written. And all this by the King's own Authority, with the Advice of his Council. And is a far more moderate way taken by me, yet under the ſame Authority, and for the Removal of far greater Abuſes, and for a more noble End, become Treaſon?

‘(2.) As for the Statutes of *Oxford*, the Circumſtances charged againſt me are many; and therefore I crave Leave to refer myſelf to what I had already anſwered therein.

‘5. Fifthly, Many of the Witneſſes brought againſt me in this Buſineſs are more than ſuſpected Sectaries and Separatiſts from the Church; which by my Place I was to puniſh, and that exaſperated them againſt me, whereas by [b] Law no Schiſmatic ought to be received againſt his Biſhop. And many of theſe are Witneſſes in their own Cauſes, and pre-examined before they come in Court; at which Pre-examination I was not preſent, nor any for me, to croſs-interrogate. Nay, many Cauſes which took up divers Days of Hearing in Star-Chamber, High-Commiſſion, and at Council-Table, are now upon the ſudden eaſily overthrown by the Depoſitions of the Parties themſelves. And upon what Law this is grounded, I humbly ſubmit to your Lordſhips. And ſuch as theſe are the Cauſes of Mr. *Prynn*, Mr. *Burton*, Mr. *Wilſon*, Alderman *Chambers*, Mr. *Vaſſal*, Mr. *Waker*, Mr. *Huntly*, Mr. *Foxlye*, and many other. Where I humbly repreſent alſo, how impoſſible it is for any Man that ſits as a Judge to give an account of all the ſeveral Motives which directed his Conſcience in ſo divers Cauſes, and ſo many Years paſt, as theſe have been, and where ſo many Witneſſes have been examined, as have been here produced againſt me: My Lords, above an hundred and fifty Witneſſes, and ſome of them three, four, ſix times over; and Mr. *Prynn* I know not how often. Whereas the Civil Law ſays expreſly, That * *the Judges ſhould moderate Things ſo, that no Man ſhould be oppreſſed by the Multitude of Witneſſes; which is a Kind of Proof too, that they which ſo do, diſtruſt the Truth and Goodneſs of their Cauſe.* Beſides, my Lords, in all Matters which came before me I have done nothing, to the uttermoſt of my Underſtanding, but what might conduce to the Peace and Welfare of this Kingdom, and the Maintenance of the Doctrine and Diſcipline of this Church eſtabliſhed by Law; and under which God hath bleſſed this State with ſo great Peace and Plenty, as other neighbouring Nations have looked upon with Admiration. And what Miſeries the Overthrow of it (which God in Mercy forbid) may produce, he alone knows.

‘6. Sixthly, my Lords, there have been many and different Charges laid upon me about Words. But many of them (if ſpoken) were only paſſionate and haſty; and ſuch, upon what Occaſion ſoever drawn from me (and I have had all Manner of Provocations put upon me), may among human Errors be pardoned unto me, if ſo it pleaſe your Lordſhips. But for ſuch as may ſeem to be of a higher Nature, as thoſe witneſſed by Sir *Henry Vane* the Elder, I gave my Anſwer again now fully to the Lords, but ſhall not need to repeat it here.

‘7. Seventhly, Then, my Lords, for my Actions: Not only my own, but other Mens have been heavily charged againſt me in many Particulars, and that criminally, and I hope your Lordſhips will think illegally: As Secretary *Windebank*'s, Biſhop *Mountague*'s, my Chaplains, Dr. *Heylin*'s, Dr. *Coſen*'s, Dr. *Pocklington*'s, Dr. *Dove*'s, Mr. *Shelford*'s, and divers others: And many of theſe Charges look back into many Years paſt. Whereas the Act made this preſent Parliament takes no Notice of, nor puniſhes any Man for any thing done and paſt at the Council-Table, Star-Chamber, or High-Commiſſion, much leſs doth it make any thing Treaſon. And out of this Act I am no way excepted. Beſides (as I have often pleaded), all Acts done in the Star-Chamber, at Council-Table, High-Commiſſion, or Convocation, are all joint Acts of that Body in and by which they were done; and cannot by any Law be ſingly put upon me, it being a known Rule of the Law, *Refertur ad univerſos quod publice fit per majorem partem.* And [a] Mr. *Prynn* himſelf can ſtand upon this Rule againſt the *Independents*, and tell us, that the major Voice or Party ought to over-rule and bind the leſs; and he quotes [d] Scripture for it too. In which Place, that which is done by the major Part is aſcribed to all; not laid upon any one, as here upon me. And in ſome of theſe Courts, Star-Chamber eſpecially, and Council-Table, I was accompanied with Perſons of great Honour, Knowledge, and Experience, Judges, and others: And 'tis to me ſtrange, and will

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[a] 1 Pars Pat. de An. 45. Ed. III. m. 34.

[b] Cod. L. 1. Tit. 5. L. 12. & 21. *Confer. at* Hampton-Court, *p.* 26.

[c] Prynn *in his* Independency examined, *p.* 4.

[d] 1 Chron. xiii. 4, 5. Acts xv. 22.

* Judices moderentur, &c. ne effrænata poteſtate ad vexandos Homines ſuperflua multitudo Teſtium protrahatur. *Dig. L.* 22. *Tit.* 5. *L.* 1. § 2. Adde & hanc rationem, quod qui prædicta licentia abutuntur, veniunt in ſuſpicionem, quod non ſatis confidunt veritati. *Gloſſ. Ibid.*

‘ ſeem ſo to future Ages, that one and the ſame Act ſhall be Treaſon in me, and not the leaſt Crime, nay, nor Miſdemeanour in any other. And yet no Proof hath been offered that I ſollicited any Man to concur with me; and almoſt all the Votes given preceded mine, ſo that mine could lead no Man.’

8. After this I anſwered to divers other Particulars, as namely, to the Canons, both as they concerned Aid to the King, and as they looked upon Matters of the Church and Religion.

9. To the Charge about Prohibitions.

10. To the baſe Charge about Bribery. But paſs them over here, as being anſwered before: Whither I may refer the Reader now, tho' I could not the Lords then.

‘ 11. My Lords, after this came in the long and various Charge of my uſurping Papal Power, and no leſs than a Deſign to bring in all the Corruptions of Popery, to the utter Overthrow of the Proteſtant Religion eſtabliſhed in *England*. And this they went about to prove,

‘ (1.) *By my Windows in the Chapel:* An Argument as brittle as the Glaſs in which the Pictures are.

‘ (2.) *By Pictures in my Gallery:* Which were there before the Houſe was mine, and ſo proved to your Lordſhips.

‘ (3.) *By Reverence done in my Chapel:* As if it were not due to God, eſpecially in his Church; and done it was not to any other Perſon or Thing.

‘ (4.) *By Conſecration of Churches:* Which was long before Popery came into the World; as was alſo the Care of ſafe laying up of all hallowed and ſacred Things. For which, I deſire your Lordſhips I may read a ſhort Paſſage out of Sir [a] *Walter Raleigh*'s Hiſtory; the rather becauſe written by a Lay-Man, and ſince the Times of Reformation.’

[a] *Sir* Wal. Raleigh's Hiſt. of the World, *L.* 2. *c.* 5. § 1.

But this Mr. *Maynard* excepted againſt, both as new Matter, and becauſe I had not the Book preſent, tho' the Paper thence tranſcribed was offered to be atteſted by Oath to be a true Copy. But though I could not be ſuffered to read it then, yet here it follows: ‘ So ſacred was the moveable Temple of God, and with ſuch Reverence guarded and tranſported, as 22000 Perſons were dedicated to the Service and Attendance thereof, of which 8580 had the peculiar Charge, according to their ſeveral Offices and Functions, the Particulars whereof are in the Third and Fourth of *Numbers*. The reverend Care which *Moſes* the Prophet and choſen Servant of God had in all that belonged even to the outward and leaſt Parts of the Tabernacle, Ark, and Sanctuary, witneſſed well the inward and moſt humble Zeal borne toward God himſelf. The Induſtry uſed in the framing thereof, and every and the leaſt part thereof, the curious Workmanſhip thereon beſtowed, the exceeding Charge and Expence in the Proviſions, the dutiful Obſervance in laying up and preſerving the holy Veſſels, the ſolemn Removing thereof, the vigilant Attendance thereon, and the provident Defence of the ſame, which all Ages have in ſome degree imitated, is now ſo forgotten and caſt away, in this ſuperfine Age, by thoſe of the *Family*, by the *Anabaptiſts*, *Browniſts*, and other Sectaries, as all Coſts and Care beſtowed and had of the Church, wherein God is to be ſerved and worſhipped, is accounted a kind of Popery, and as proceeding from an idolatrous Diſpoſition. Inſomuch, as Time would ſoon bring to paſs (if it were not reſiſted) that God would be turned out of Churches into Barns, and from thence again into the Fields and Mountains, and under the Hedges; and the Office of the Miniſtry (robbed of all Dignity and Reſpect) be as contemptible as thoſe Places; all Order, Diſcipline, and Church-Government, left to Newneſs of Opinion and Men's Fancies: Yea, and ſoon after as many Kinds of Religions would ſpring up, as there are Pariſh-Churches, *&c.*’ Do ye not think ſomebody ſet Mr. *Maynard* on to prohibit the reading out of this Paſſage, as foreſeeing whither it tended? For I had read one third part of it, before I had the Stop put upon me.

‘ (5.) But they went on with their Proof, by my cenſuring of good Men, that is, Separatiſts and refractory Perſons.

‘ (6.) By my Chaplains expunging ſome Things out of Books which made againſt the Papiſts. It may be, if my Chaplains (whom it concerns) had Liberty to anſwer, they were ſuch Paſſages as could not be made good againſt the Papiſts; and then 'tis far better they ſhould be out than in. For as * St. *Auguſtin* obſerved in his, and we find it true in our Time, *The Inconvenience is great, which comes to the Church and Religion by bold Affirmers.* Nay, he is at a *ſatis dici non poteſt*, the Miſchief is ſo great as cannot be expreſſed.

‘ (7.) Then by altering ſome Things in a Sermon of Dr. *Sibthorp*'s. But my Anſwer formerly given will ſhew I had cauſe.

‘ (8.) By my Preferment of unworthy Men. So unworthy, as that they would be famous both for Life and Learning, were they in any other Proteſtant Church in Chriſtendom. And they are ſo popiſhly affected, as that having ſuffered much both in State and Reputation (ſince this perſecution of the Clergy began; for leſs it hath not been), no one of them is altered in Judgment, or fallen into any liking with the Church of *Rome*.

‘ (9.) By the Overthrow of the *Feoffment:* But that was done by Judgment in the *Exchequer*, to which I referred myſelf. And if the Judgment there given be right, there's no Fault in any Man: If it were wrong, the Fault was in the Judges, not in me; I ſollicited none of them.

‘ (10.) By a Paſſage in my Book, where I ſay, *The Religion of the Papiſts and ours is one:* But that's expreſſed at large, only becauſe both are Chriſtianity; and no Man, I hope, will deny that *Papiſts* are *Chriſtians*. As for their notorious Failings in Chriſtianity, I have in the ſame Book ſaid enough to them.

Cont. Fiſh. p. 376.

‘ (11.) By a Teſtimony of Mr. *Burton*'s and Mr. *Lane*'s, That I ſhould ſay, *We and the Church of* Rome *did not differ in Fundamentals, but in Circumſtantials.*’ [This I here followed at large; but, to avoid tedious Repetition, refer my Reader to the Place where 'tis anſwered.]

‘ (12.) By my making the *Dutch* Churches to be of another Religion. But this is miſtaken (as my Anſwer will ſhew the Reader); and if they do not make themſelves of another Religion, I ſhall never endeavour to make them.

‘ (13.) By a Pack of ſuch Witneſſes, as were never produced againſt any Man of my Place and Calling; Meſſengers and Purſuivants, and ſuch as have ſhifted their Religion to and again; Pillory-Men and Bawds; and theſe the Men that muſt prove my Correſpondence with Prieſts.

‘ (14.) In the midſt of theſe, upon occaſion of the Ceremonies at the Coronation, it was preſſed aginſt me, That *I had altered the King's Oath.*

‘ (15.) And laſt of all, That *I had ſhewed myſelf an Enemy to Parliaments.*’ [Upon both theſe I did very much enlarge myſelf: But here alſo, that I may not be a Burden in repeating the ſame things, I deſire the Reader to look upon them in their proper Places, where I doubt not but my Anſwer will give him full Satisfaction, that I did not the one, nor am the other.]

‘ But, my Lords, there are other ſtrange Arguments produced againſt me, to prove my Compliance with *Rome*, which I moſt humbly deſire your Lordſhips may not be forgotten.

‘ 1. As, Firſt, my Lords, it hath been charged upon me, That I made the Oath recited in the firſt of the late Canons; one Clauſe whereof is this: *That I will never give my Conſent to ſubject this Church to the Uſurpations and Superſtitions of the Church of* Rome. Whence the Argument drawn again me muſt be this, and can be no other: That I did endeavour to bring in *Popery*, becauſe I made and took a ſolemn Oath, never to give my Conſent to ſubject this Church of *England* to the Uſurpations and Superſtitions of the Church of *Rome*. I beſeech your Lordſhips mark the Force of this Argument; and they which follow are as pregnant againſt me.

‘ 2. Secondly, My Book againſt *Fiſher* hath been charged againſt me; where the Argument muſt lie thus: I have endeavoured to advance *Popery*, becauſe I have written againſt it: And with what Strength I have written againſt it, I leave Poſterity to judge, when the Envy which now overloads me, ſhall be buried with me. This I will ſay with St. *Gregory Nazianzen* (whoſe Succeſs at *Conſtantinople* was not much unlike mine here, ſave that his Life was not ſought), ‘*I* * *never laboured for Peace, to the Wrong and Detriment of Chriſtian Verity*; nor I hope ever ſhall.’ [And let the Church of *England* look to it: for in great Humility I crave to write this (tho' then was no time to ſpeak it), That the Church of *England* muſt leave the way it's now going, and come back to that way of Defence which I have followed in my Book, or ſhe ſhall never be able to juſtify her Separation from the Church of *Rome*.]

* Non ſtudeamus paci in veræ doctrinæ detrimentum, *Greg. Naz. Orat.* 32.

‘ 3. Thirdly, All the late Canons have been charged againſt me; and the Argument which is drawn from thence, muſt lie thus: The third of theſe Canons for ſuppreſſing the Growth of *Popery*, is the moſt full and ſtrict Canon that ever was made againſt it in the Church of *England*; therefore I that made this Canon to keep it out, am guilty of endeavouring to keep it in.

‘ 4. Fourthly, I have by my Induſtry, and God's great Bleſſing upon my Labours, ſtayed as many from going, and reduced to the Church of *England* as many that were gone to *Rome*, as I believe any Miniſter in *England* can truly ſay he hath done: I named them before, and had Scorn enough put upon me for it, as your Lordſhips could not but both ſee and hear; where the Argument lies thus: I converted many from *Popery*, and ſettled them in the Religion eſtabliſhed in *England*; therefore I laboured to bring in *Popery*, which out of all doubt can be no ſober Man's way.

‘ 5. Fifthly, The Plot diſcovered to Sir *William Boſwell* and myſelf, by *Andreas ab Habernfield*, hath been charged againſt me: That Plot for altering of Religion, and by what ways, your Lordſhips have heard already, and is to be ſeen at full in *Rome's Maſter-Piece*. Now if this Plot in the Iſſue proved nothing but a confuſed Information, and no Proof of any Particular, as indeed it did; what's become of *Rome's Maſter-piece?* But if it had any Reality in it, as it appeared to be a ſad Plot, not only to me, but to all Men that ſaw the ſhort Propoſitions which were firſt ſent, with an abſolute Undertaking to prove them; then it appears expreſly, that I was in danger of my Life, for ſtiffly oppoſing the bringing in of *Popery*; and that there was no hope to alter Religion in *England*, till I was taken out of the way. And tho' in Concluſion the Proofs failed, yet what was conſulted, and it ſeems reſolved, concerning me, is plain enough. And then the Argument againſt me lies thus: There's no hope to bring in *Popery*, till I am taken out of the way; therefore I did labour to bring it in. Do not theſe things, my Lords, hang handſomely together?

Mr. Prynn*'s* Rome*'s Maſter-Piece.*

‘ 6. Laſtly, There have been above threeſcore Letters and other Papers, brought out of my Study into this Honourable Houſe; they are all about compoſing the Differences between the *Lutherans* and *Calviniſts* in *Germany*. Why they ſhould be brought hither, but in hope to charge them upon 'em, I know not; and then the Argument will be this: I laboured to reconcile the *Proteſtants* in *Germany*, that they might unanimouſly ſet themſelves againſt the *Papiſts*; therefore I laboured to bring *Popery* into *England*.

‘ Now that your Lordſhips have heard the Arguments, and what Proof they make againſt me, I muſt be bold to put you in mind of that which was ſaid here at the Bar, *April* 16, 1644. That they did not urge any of theſe particular Actions as Treaſon againſt me; but the Reſult of them altogether amounted to Treaſon. For anſwer to which, I muſt be bold to tell your Lordſhips, That if no Particular which is charged upon me be Treaſon, the Reſult from them cannot be Treaſon; which will appear by theſe Reaſons following:

‘ 1. Firſt, The Reſult muſt be of the ſame Nature and Species with the Particulars from which it riſes. But 'tis confeſſed no one of the Particulars are Treaſon: Therefore neither is the Reſult that riſes from them. And this holds in *Nature*, in *Morality*, and in *Law*.

‘ In *Nature*, and that both for Integral and Eſſential Parts: for neither can the Body of a Bear, and the Soul of a Lion, reſult into a Fox; nor the Legs of a Bull, the Body of a Horſe, and the Head of an Aſs reſult into a Man.

‘ In *Morality*, and that is ſeen both in Virtues and Vices: For neither can many Actions of Liberality, Meekneſs and Sobriety, riſe up into a Reſult of Fortitude; neither can many Actions of Malice, Drunkenneſs and Covetouſneſs, reſult into Treaſon.

‘ In *Law* 'tis ſo too: For be there never ſo many particular Crimes, yet there is no Law in this Kingdom, nor any where elſe that I know, that makes a Reſult of different Crimes to be Treaſon, where none of the Particulars are Treaſon by Law. So this imaginary Reſult is a Monſter in Nature, in Morality, and in Law; and if it be nouriſhed, will devour all the Safety of the Subject of *England*, which now ſtands ſo well fenced by the known Law of the Land. And therefore I humbly deſire your Lordſhips, not for mine, but for the Publick's ſake, to weigh this Buſineſs well, before this Gap be made ſo wide, as there will hardly be Power left again to ſhut it.

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* Quid Moleſtiæ & Triſtitiæ ingerunt Prudentibus Fratribus temerarii Aſſertores, ſatis dici non poteſt. *Aug.* 1. *de Gen. ad Lit. C.* 19.

‘ 2. My ſecond Reaſon is joined to the Anſwer of an Objection: For when this Reſult was ſpoken of, it was added, That the Particulars charged againſt me, are of the ſame kind, and do all tend to the Subverſion of Law and Religion, and ſo become Treaſon. But, firſt, ſuppoſe that all the Particulars charged, do tend to the Subverſion of Law, yet that cannot make them to be all of one kind: For all Crimes tend more or leſs to the Overthrow of Virtue; yet no Man can ſay, that all Crimes are of the ſame kind. Secondly, be they of the ſame, or different kinds; yet neither all, nor any of theſe charged againſt me, do tend to the Subverſion of the Law: For 'tis one thing to break, diſlike or ſpeak againſt ſome particular Laws, and quite another to labour the Subverſion of the whole Body of the Law, and the Frame of Government. And that I have done this by Conſpiracy, Force, or any overt Action, is not ſo much as offered in Proof. And for the Breach of any particular Law, if I be guilty, I am to be puniſhed by the Sanction of that Law which I have broken.

‘ 3. Thirdly, Whereas it hath been ſaid, That many Actions of the ſame kind make a Habit: That's true: But what then? For, Firſt, the Actions urged againſt me are not of the ſame kind, but exceeding different. Secondly, if the Habit be treaſonable, then all thoſe particular Actions which bred that Habit, muſt be ſeveral Treaſons, as well as the Reſult or Habit itſelf; whereas it hath been granted all along, that my particular Actions are not Treaſons. And, Thirdly, a Habit in itſelf, neither is nor can be Treaſon; for all Treaſon is either *Thought, Word or Overt-Act*; but no Habit is either of theſe, therefore not Treaſon. For a [a] Habit is that in the Soul which enclines the Powers of it, and makes a Man apt and ready to think, ſpeak, or do that to which he is habituated. So an ill Habit againſt Sovereign Power, may make a Man apt and forward to fall into Treaſon; but Treaſon it is not.

[a] Tho. 1. 2 æ. q. 50. A. 5.

‘ 4. Fourthly, Nor can this Reſult be Treaſon at the Common Law, by which alone, I conceive, there is no Treaſon at all this Day in *England*: For the main end of that excellent Statute of 25 *Ed.* III. was for the Safety of the Subject, againſt the manifold Treaſons which variouſly fell upon them by the Common Law; and bounded all Treaſons, and limited them to the things expreſſed to be Treaſon in and by that Statute. And in all times of difficulty ſince, Recourſe hath ſtill been had to that Statute: And to that Statute I refer myſelf, with this; That this Reſult muſt be ſomething within this Statute, or ſome other known Statute, or elſe it cannot be Treaſon: And no Proof at all hath been ſo much as offered, that this Reſult is Treaſon by any Law.

‘ My Lords, I do with all humble Submiſſion deſire, that when the Reply is made to this Matter of Fact, a Day may be aſſign'd for my Counſel to be heard in Matter of Law, in all and every Particular which they ſhall find neceſſary for my juſt Defence.

‘ And now, my Lords, I do in all Humility lay myſelf low at God's Mercy-ſeat, to do with me as he pleaſes; and under God, I ſhall rely upon your Lordſhips Juſtice, Honour and Clemency, of which I cannot doubt. And without being farther tedious to your Lordſhips (who have with very honourable Patience heard me thro' this long and tedious Trial), I ſhall conclude with that which St. *Auguſtine* ſaid to *Romanianus*, a Man that had tried both Fortunes as well as I: [b] *If the Providence of God reaches down to us* (as moſt certain it doth), *Sic tecum agi oportet, ſicut agitur*: It muſt ſo be done with thee (and ſo with me alſo) as it is done. And under that Providence, which will, I doubt not, work to the beſt to my Soul that loves God, I repoſe myſelf.'

[b] S. Auguſt. 1. cont. Academ. c. 1. S. Mat. x. 29. Rom. viii. 28.

Here ended my *Recapitulation*, and with it the Work of that Day: And I was ordered to appear again the *Saturday* following, to hear Mr. *Browne* ſum up the whole Charge againſt me. But upon *Tueſday*, *Septemb.* 3. this was put off, to give Mr. *Browne* more time, to *Wedneſday*, *Septemb.* 11.

ON *Wedneſday*, *Septemb.* 11. Mr. *Browne* made in the Lords Houſe a Sum or Brief of the Charge which was brought againſt me, and touched, by the way, at ſome things in my *Recapitulation*. But in regard I might not anſwer him, I took no perfect Notes, but ſtood ſtill, and poſſeſſed my Soul in Patience; yet wondring at the bold, free, frequent, and moſt falſe Swearing that had been againſt me. When Mr. *Browne* had ended, I humbly deſired again, that my Counſel might be heard in Point of Law. And they were hereupon ordered to deliver in Writing under their Hands, what Points of Law they would inſiſt upon, and that by *Saturday*, *Septemb.* 14.

This Day my Counſel, according as they were ordered, delivered into the Lords Houſe theſe two Points following, by Way of Queſtion: Firſt, Whether in all, or any of the Articles charged againſt me, there be contained any Treaſon by the eſtabliſhed Laws of this Kingdom? Secondly, Whether the Charge of the ſaid Impeachment and Articles, did contain ſuch Certainty and Particularity as is required by Law, in a Caſe where Treaſon is charged? This Day I petitioned the Lords, that my Counſel might have acceſs to, and take Copies of all ſuch Records as they thought neceſſary for my Defence; which was granted, and order'd accordingly.

My Counſel's *Queries* having been formerly ſent down to the Houſe of Commons, they were there referred to a Committee of Lawyers to conſider of: And on *Friday*, *Septemb.* 27. they were earneſtly called upon to haſten their Report. And on *Friday*, *Octob.* 4. Mr. *Nicolas* made a great Noiſe about me in the Houſe, and would have had me preſently cenſured in the Houſe; and no leſs would ſerve his turn, but that I muſt be *hanged*; and was at *Suſ. per Coll.* till upon the Reaſons before given, that if they went on this way, they muſt condemn me unheard: this violent Clamour ceaſed for that time. And a Meſſage was ſent up to the Lords for my Counſel to be heard, as touching the firſt Queſtion concerning Treaſon; but not concerning any Exception that they ſhall take againſt the Articles in point of Certainty. This Meſſage the Lords took into preſent Conſideration, and order'd it accordingly: And appointed the *Friday* following, being *Octob.* 11. for my Counſel to be heard, and myſelf to be preſent.

This Day, according to this Order of the Lords, I and my Counſel attended. My Counſel were Mr. *Hern* and Mr. *Hale* of *Lincoln's-Inn*, and Mr. *Gerard* of *Gray's-Inn*. When we were called into the Houſe, and the Lords ſettled in their Places, Mr. * *John Hern* (who was the Man that ſpake what all had reſolved on) delivered his Argument very freely and ſtoutly, proving that nothing which I have either ſaid or done according to this Charge, is Treaſon, by any known eſtabliſhed Law of this Kingdom. The Argument follows in theſe Words, according to the Copy which Mr. *Hern* himſelf delivered me:

My Lords,

A ſhort Introduction.

‘ THE Work of this Day, we humbly conceive, is in many reſpects of very great and high Concernment.

‘ 1. In that it concerns Matter of Life, a thing of the higheſt Conſequence.

‘ 2. The Life of an Archbiſhop, a Perſon who had attained the higheſt Dignity conferred in the Church of *England*.

‘ 3. Thoſe happy Laws, many Years ſince enacted and confirmed by ſeveral Parliaments, to be the Boundaries what was Treaſon; a Crime before ſo various, as it had no Bounds; and ſo odious, that the Puniſhment of it was an infamous Death, a total Confiſcation, with a Brand of Infamy to all Poſterity.

‘ 4. In that the Charge againſt him moves from no leſs a Body than the whole Commons of *England*, which preſents him now a Priſoner at this Bar before your Lordſhips, in the High and Supreme Court of Judicature in Parliament.

‘ And if any thing ſhall fall from us, ſubject to any doubtful Conſtruction, we ſhall humbly crave your Lordſhips Pardon, and Leave to make our Explication: For as there is upon us a Duty to be wary, not to offer any thing which may miniſter juſt Offence; ſo neither may we be unfaithful, to omit what may juſtly tend to our Client's Defence.

The Charge upon what it conſiſts.

‘ The Charge againſt him, we find to be made up of two ſeveral Parcels of Articles, exhibited by the Honourable Houſe of Commons.

The Titles of the ſeveral Parcels of the Articles, upon which the Charge againſt the ABp was made up.

‘ 1. The firſt, *In Maintenance of their Accuſation, whereby he ſtands charged with High Treaſon.*

‘ 2. The latter, entitled, *Farther Articles of Impeachment of High-Treaſon, and divers High Crimes and Miſdemeanours; for all which Matters and Things they have impeached him of High-Treaſon, and other High Crimes and Miſdemeanours, tending to the Subverſion of Religion, Laws and Liberties, and to the utter Ruin of this Church and Commonwealth.*

The Straits upon his Counſel by reaſon of the mix'd Charge, without diſtinguiſhing what was intended to be a Treaſon, what a Miſdemeanour.

‘ Concerning this Charge, and the Archbiſhop's Defence he hitherto made before your Lordſhips, we (by your Lordſhips Command aſſigned his Counſel) neither have nor could (by reaſon of the mix'd Charge, without diſtinguiſhing what was thereby intended to be a Charge of Treaſon, and what of Miſdemeanour only) be farther uſeful to him, than to adviſe the Form of his Plea and Anſwer, which we received from him, as to all the Matters of Fact, to be a Not Guilty.

‘ We have not in all or any the Facts charged or evidenced againſt him, in any ſort intermeddled. But the ſame (how proved and how appliable to the Charges, without mention of any of them) ſhall wholly leave to your Lordſhips Notes and Memories.

‘ What Defence he hath offered hitherto, hath been wholly his own: he without us in that, and we without conſulting him in the Work of this Day.

‘ Wherein, having received your Lordſhips Commands, we did preſent in Writing the Points in Law we then humbly conceived fit for us to inſiſt upon.

The two Points preſented by Counſel in writing, to be inſiſted upon for his Defence in point of Law.

‘ I. Whether in all, or any the Articles charged againſt him, there was contained any Treaſon by the eſtabliſhed Laws of this Kingdom.

‘ II. Whether the Charge of the ſaid Impeachment and Articles, did contain ſuch Certainty and Particularity, as is required by Law in a Caſe where Treaſon is charged.

The firſt only admitted.

‘ But being enjoined by your honourable Order, to ſpeak only to the former; we ſhall, as in Duty becomes, conform thereunto.

The Method propoſed.

‘ For our Method herein ſhall follow the Courſe holden in the Reply made upon the whole Articles, whereby we conceived the Charges contained in them were reduced to theſe three Generals:

The three general Charges.

‘ 1. A traitorous Endeavour to ſubvert the Fundamental Laws of the Realm; and inſtead thereof, to introduce an Arbitrary and Tyrannical Government againſt Law; contained in the firſt Original and firſt Additional Articles.

‘ 2. Secondly, A traitorous Endeavour to ſubvert God's true Religion by Law eſtabliſhed; and inſtead thereof, to ſet up Popiſh Superſtition and Idolatry: this contained in the ſeventh Original and ſeventh Additional Articles.

‘ 3. Thirdly, That he laboured to ſubvert the Rights of Parliament, and the antient Courſe of Parliamentary Proceedings, and by falſe and malicious Slanders to incenſe his Majeſty againſt Parliaments. And this contained in the fourteenth Original and tenth Additional Articles.

‘ All other the Articles, we humbly conceive to be but Inſtances, conducing and applied to ſome of thoſe Generals.

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* *The Lord Chancellor* Finch *told me, that this Argument was not Mr.* Hern'*s, (tho' he pronounced it) for he could not argue; but it was Mr.* Hale'*s, afterwards Lord Chief Juſtice. And he ſaid farther, that being then a young Lawyer, he ſtood behind Mr.* Hern, *when he ſpoke at the Bar of the Lords Houſe, and took Notes of it; and that it will be publiſhed among his* Reports. W. S. A. C.

‘ Concerning thoſe three General Heads of the Charge, we ſhall crave leave to propoſe two Queſtions to be debated.

Two general Queſtions to be inſiſted upon.

‘ Whether there be at this Day any other Treaſon, than what is declared by the Statute of 25 *Ed.* III. *cap.* 2. or enacted by ſome ſubſequent particular Statute; which we humbly conceive, and ſhall endeavour to ſatisfy your Lordſhips there is not any.

‘ Whether any the Matters in any of the Articles charged, contain any of the Treaſons declared by that Law, or enacted by any ſubſequent Law; which we likewiſe conceive they do not. And for the clearing of both theſe, ſhall humbly inſiſt, That,

‘ (1.) An Endeavour to ſubvert the Laws, an Endeavour to ſubvert Religion, a Labouring to ſubvert the Rights of Parliaments; are not Treaſons, either within the Statute of 25 *Ed.* III. or by any other particular Statute.

‘ (2.) That not any of the Particulars, inſtanced in any other the Articles, is a Treaſon within the Statute 25 *Ed.* III. or any other Statute.

In Maintenance of our firſt Tenet upon the firſt Queſtion.

‘ And to make good our Tenet upon our firſt Queſtion, ſhall humbly offer,

‘ That before this Statute of 25 *Ed.* III. Treaſons at the Common Law were ſo general and uncertain, that almoſt any Crime, by Inferences and Conſtructions, might be, and was often extended to be a Treaſon; inſomuch as we find in 22° of the Book of Aſſize, killing the King's Meſſenger was Treaſon. And in the Parliament-Roll, 21 *Ed.* III. *num.* 15. accroaching the Royal Power (wherein every Exceſs was ſubject to a Conſtruction of Treaſon) was Treaſon; for which divers having ſuffered, the Commons in Parliament finding how miſchievous and deſtructive it was to the Subject, petitioned it might be bounded and declared. And this, not to give any liberty, but to give bounds to it; one while it being conſtrued an Accroachment of Royal Power, as in the Caſe of the Earl of *Lancaſter*, *temp. Ed.* II. for being over-popular with the People; and in the ſame King's Reign to *Spencer*, for being over-gracious with the King.

The Uncertainty of what was, or was not, Treaſon produced the Law of 25 Edw. III.

The Act of 25 Ed. III. *the Rule in Parliament to judge Treaſons by.*

Parliament-Roll 1 H. IV. num. 144. *the Prayer of the Commons.*

Parliament-Roll, 5 H. IV. num. 12. *Caſe of E. of* Northumberland.

‘ The ſenſe of theſe and other Miſchiefs by the Uncertainty of Treaſon, brought on this Law of 25 *Ed.* III. And the Benefit of it to the Subject, ſays Sir *Ed. Coke* in his Treatiſe of the Pleas of the Crown, begot that Parliament the Name of *Parliamentum Benedictum*; and that except *Magna Charta*, no other Act of Parliament had more Honour given it by the King, Lords, and Commons. And this Law hath been in all times the Rules to judge Treaſons by, even in Parliament; and therefore in the Parliament Roll, 1 *H.* IV. *num.* 144. the Trial and Judgment in Caſes of Impeachment of Treaſon, is prayed by the Commons might be according to the antient Laws. And in the Parliament-Roll 5 *H.* IV. *num.* 12. in the Caſe of the then Earl of *Northumberland*, this Statute of 25 *Ed.* III. was the Guide and Rule by which the Lords judged, in a Caſe endeavoured to have been extended to be a Treaſon, the ſame to be no Treaſon.

Treaſon particularly enacted after 25 Ed. III. *ſtill reduced to that Law.*

Treaſons made in the divided time of R. II. *reduced* per *Stat.* 1 H. IV. c. 10.

Made in the Time of Hen. VIII. *reduced* 1 Ed. VI. c. 12.

Made in the Time of Ed. VI. *reduced by the Act of* 1 Mariæ, c. 10.

From 1 H. IV. *to this Day, no Judgment in Parliament given of any Treaſon not contained in that Law.*

This Law in all Times the Standard to judge Treaſons by.

‘ And it is, as we conceive, very obſervable, That if at any time the Neceſſity or Exceſs of the Times produced any particular Laws in Parliament, for making of Treaſons not contained in that Law of 25 *Ed.* III. yet they returned and fixed in that Law.

‘ Witneſs the Statute of 1 *H.* IV. *cap.* 10. whereby all thoſe Facts which were made Treaſons in the divided Time of *R.* II. were reduced to thoſe of *Ed.* III.

‘ In the Time of *H.* VIII. wherein ſeveral Offences were enacted to be Treaſons, not contained in the Statute of 25 *Ed.* III. the ſame were all ſwept away by the Statute of 1 *Ed.* VI. 12.

‘ And again, where in the Time of *Ed.* VI. ſeveral Treaſons were enacted, they were all repealed, and by an Act made 1 *Mariæ*, none other Offence left to be Treaſon, than what was contained and declared by the Statute of 25 *Ed.* III.

‘ And from 1 *H.* IV. to Queen *Mary*, and from thence downward, we find not any Judgment hath been given in Parliament, for any Treaſon not declared and contained in that Law, but by Bill.

‘ Thus in Succeſſion of all Times, this Statute of 25 *Ed.* III. in the Wiſdom of former Parliaments, hath ſtood and been the conſtant fixed Rule for all Judgments in Caſes of Treaſon.

Treaſons declared per *Stat.* 25 Ed. III. c. 2.

‘ We ſhall now obſerve, what Offences are in and by that Law declared to be Treaſons; whereby your Lordſhips will examine, whether you find any of them in the Charge of theſe Articles: For which purpoſe we ſhall deſire this Statute of 25 *Ed.* III. be read.

‘ The Treaſons by that Act declared, are,

‘ 1. Compaſſing and imagining the Death of the King, Queen, or Prince, and declaring the ſame by ſome Overt-Act.

‘ 2. Murdering the Chancellor, Treaſurer, *&c.*

‘ 3. Violating the Queen, the King's eldeſt Daughter, or the Prince's Wife.

‘ 4. Levying War againſt the King.

Stat. 25 Ed. III. *may admit no Conſtruction by Equity or Inference to make other Treaſon than thereby declared.*

‘ 5. Or adhering to the King's Enemies, within the Realm or without, and declaring the ſame by ſome Overt-Act.

6. Counterfeiting the Seals and Coin.

7. Bringing in Counterfeit Coin.

‘ Next we ſhall lay for a ground, that this Act ought not to be conſtrued by Equity or Inference.

‘ 1. For that it is a declarative Law, and no Declaration ought to be upon a Declaration.

Reaſons why not.

‘ 2. It was a Law provided to ſecure the Subject, for his Life, Liberty, and Eſtate; and to admit Conſtructions and Inferences upon it, were to deſtroy the Security provided for by it.

‘ It hath been the conſtant Opinion in all times, both in Parliament and upon Judicial Debates, that this Act muſt be literally conſtrued, and not by Inference or Illation: nor would it be admitted in a Particular declared by this Law to be Treaſon; which a Man would have thought might have been conſiſtent with it.

‘ Counterfeiting the Coin of the Kingdom, is by this Law declared Treaſon.

Inſtances where it would not.

Stat. 3 H. V. cap. 6.

1 M. cap. 6. Coke *Collections of Pleas of the Crown.*

‘ Waſhing, Filing, and Clipping the Coin, is an Abuſe, an Abaſing, and not making it current: yet in 3 *H.* V. when the Queſtion was in Parliament, whether that Offence was Treaſon within the Statute of 25 *Ed.* III. it is declared by a ſpecial Act then made, 3 *H.* V. *cap.* 6. That foraſmuch as before that time great Doubt and Ambiguity had been, whether thoſe Offences ought to be adjudged Treaſon, or not, inaſmuch as mention is not thereof made in the Declaration of the Articles of Treaſon by that Statute of 25 *Ed.* III. the ſame was by that particular Act made Treaſon, which before was none: and counterfeiting of foreign Coin made current here, an equal Miſchief with counterfeiting of the Coin of this Realm; yet becauſe the Words of the Statute are *his Money*, this not Treaſon until the Act of 1 *Mariæ*, *cap.* 6. made it ſo. And Sir *Ed. Coke*, in his Book before-mentioned, ſaith, A compaſſing to levy War, is not a Treaſon within that Law, unleſs it proceed into Act; but only to compaſs the Death of the King: Yet if a Conſtructive Treaſon ſhould be admitted, it might happily, without any great ſtraining, be inferred, That Compaſſing to levy War is in ſome ſort a Compaſſing of the King's Death: and of this kind many more Inſtances may be given.

‘ So that the Reſult of all this is, That whatſoever is not declared to be a Treaſon within the Letter of this Law, may not be adjudged a Treaſon, by Inference, Conſtruction or otherwiſe.

‘ Having done with this firſt, we now ſhall come to our ſecond Queſtion.

2 *Queſtion.*

‘ Whether any the Matters in all, or any the Articles charged, contain any the Treaſons declared by that Law, or enacted by any ſubſequent Law; wherein, altho' the Charges may appear to be great and enormous Crimes; yet we ſhall endeavour, and hope to ſatisfy your Lordſhips, the ſame, nor any of them, are Treaſons by any eſtabliſhed Law of the Kingdom. For clearing whereof we ſhall purſue the Order firſt propoſed.

‘ Firſt, That an Endeavour to ſubvert Fundamental Laws, is not Treaſon by any Law in this Kingdom eſtabliſhed: and particular Act to make it Treaſon there is none; ſo as we muſt then return to apply thoſe former general Obſervations of that Act of 25 *Ed.* III. to this Particular; and ſhall add for Reaſons,

‘ 1. That it is not comprized within any the Words of that Law, nor may by any Conſtruction or Inference be brought within it, for the Reaſons formerly alledged.

‘ 2. Becauſe an Endeavour to ſubvert Laws, is of ſo great a Latitude and Uncertainty, that every Action not warranted by Law, may be thereby extended to be Treaſon.

Mildmay's *Caſe,* 6 Report. Coke, *Fol.* 42.

‘ In the ſixth *Report*, in *Mildmay*'s Caſe, *Fol.* 42. where a Conveyance was made in Tale, with a Proviſo, if he did go about or attempt to diſcontinue the Entail, the ſame ſhould be void: It was reſolved the Proviſo was void; and the principal Reaſon was, That theſe Words, *attempt or go about*, are Words uncertain and void in Law. And the Words of the Book are very obſervable, *viz. God defend, that Inheritances and Eſtates of Men ſhould depend upon ſuch Incertainties*; *for that* miſera eſt Servitus, ubi Jus eſt vagum, & quod non definitur in Jure quid ſit conatus; *and therefore the Rule of the Law doth decide this Point:* Non efficit conatus niſi ſequitur effectus; *and the Law doth reject Conations and Goings about, as things uncertain, which cannot be put in iſſue.* Theſe are the Words of the Book: And if ſo conſiderable in Eſtates, your Lordſhips, we conceive, will hold it far more conſiderable in a Caſe of Life, which is of higheſt Conſequence.

Objection. Anſwer.

‘ And if it ſhould be ſaid this Law of 25 *Ed.* III. takes notice of Compaſſing and Imagining: We anſwer, it is in a Particular declared by that Law to be Treaſon, in compaſſing the Death of the King: But this of endeavouring to ſubvert Laws, not declared by that or any other Law to be a Treaſon.

‘ And if it ſhould be granted, that this Law might in any Caſe admit any other Fact to be Treaſon by Inference or Conſtruction, other than is therein particularly declared, which we conceive it cannot:

‘ Yet it is not imaginable, that a Law introduced purpoſely to limit and aſcertain Crimes of ſo high Conſequence, ſhould by Conſtruction or Inference be ſubject to a Conſtruction of admitting ſo uncertain and indefinite a thing, as an Endeavour to ſubvert the Law is, it being not comprized within the Letter of that Law.

‘ 3. That the Subverſion of the Law is an impoſſible thing; therefore an Endeavour to do an Act which cannot be effected, cannot be Treaſon.

‘ 4. That in all times the Endeavouring to ſubvert the Laws hath been conceived no determinate Crime, but rather an Aggravation only of a Crime than otherwiſe: And therefore hath been uſually joined as an Aggravation or Reſult of Crimes below Treaſon.

Parliament-Roll, 28 H. VI. n. 28, *to* 47. *In the Caſe of the Duke of* Suffolk.

‘ As appears in the Parliament-Roll, 28 *H.* VI. *num.* 28 to *num.* 47. in the Caſe of the Duke of *Suffolk*, where the Commons in Parliament having preferred Articles of Treaſon againſt him, did not make that any part of their Charge. Yet in the ſame Parliament, and within few Days after, the firſt being in *February*, the latter in *March*, exhibiting other Articles againſt him, they therein charged all the Miſpriſions, Offences, and Deeds, therein mentioned, to have been the Cauſe of the Subverſion of Laws and Juſtice, and the Execution thereof; and nigh likely to tend to the Deſtruction of the Realm. So as it appears it was then conceived an Offence of another nature, and not a Treaſon.

Articles, Cardinal Wolſey *in Parliament,* 21 Hen. VIII. *Indictment K. Bench* Ligham, 23 Hen. VIII.

‘ And it appears as well by the Articles exhibited in Parliament, 21 *H.* VIII. againſt Cardinal *Wolſey*, as by indictment in the *King*’s-*Bench* againſt *Ligham* 23 *H.* VIII. *Rot.* 25. That the Cardinal did endeavour to ſubvert *Antiquiſſimas Leges hujus Regni*, *Univerſumq*; *hoc Regnum* Angliæ *Legibus Imperialibus ſubjugare:* which altho’ it be a Charge of ſubverting the ancient Laws of the Kingdom, and to introduce new and arbitrary Laws; yet neither upon the Articles or Indictment was the ſame imputed to be Treaſon; but ended in a Charge of a *Premunire*.

Empſon, 1 H. VIII.

‘ And if it ſhall be ſaid, that *Empſon*, 1 *H.* VIII. had Judgment, and died for it, upon an Indictment in *London*; we anſwer,

‘ 1. This was not the Subſtance of the Indictment, but only an Aggravation.

‘ 2. And if charged, it is with an actual ſubverting, not with an endeavour to ſubvert the Laws; and is joined with divers Offences.

‘ 3. Which is a full Anſwer, The Indictment upon which he was tried, was *Paſchæ* 2 *H.* VIII. at *Northampton*, and was for levying War againſt the King, a Treaſon declared by the Law of 25 *Ed.* III. upon which he was convicted and ſuffered; and no Proceeding upon the other Indictment ever had.

Anſwer to the ſecond General Charge of endeavouring to ſubvert Religion.

‘ And as to the ſecond general Charge of endeavouring to ſubvert Religion:

‘ This no more than that former of ſubverting the Laws is any Treaſon, within any Law eſtabliſhed in this Kingdom.

‘ And herein as to the Charge of the Endeavour, we ſhall rely upon what hath been already ſaid upon the former.

‘ With this further:

‘ That until that happy Reformation, begun in the Time of King *Edward* VI. there was another Frame of Religion eſtabliſhed by Law; which was conceived until then to have been the True Religion; and any Endeavour to change or alter it, proſecuted with great Extremities. Yet was not any Attempt to alter it conceived to be Treaſon; but ſeveral ſpecial Acts of Parliament were made for Particular Puniſhments againſt Perſons who ſhould attempt the Alteration thereof; witneſs the Statute of 5 *R.* II. *c.* 5. and 2 *H.* V. *c.* 7.

Stat. 5 *R.* II. c. 5. 2 H. V. c. 7.

‘ In which latter, altho’ mention is made of endeavouring to deſtroy and ſubvert the Chriſtian Faith, yet was not the Offence made or declared to be Treaſon. And at this day Hereſy, of what kind ſoever, is not puniſhable, but according to the old Courſe of the Law.

Stat. Ed. VI. c. 12. 1 Mar. c. 12.

‘ And we may add the Statute of 1 *Ed.* VI. *cap.* 12. that of 1 *Mar.* 12. which makes it but Felony to attempt an Alteration of Religion by Force: The worſt kind of Attempt, certainly.

Anſwer to the third general Charge, labouring to ſubvert and incenſe the King againſt Parliaments.

‘ To the third and laſt general Charge, labouring to ſubvert the Rights of Parliaments. To the labouring to do it, we ſhall add nothing to what hath been ſaid to the Charge of Endeavour in the two former; only thus much we ſhall obſerve:

Articles againſt the Duke of Ireland, *and others*, 11 R.II. 14 *Article.*

‘ That in the Parliament of 11 *R.* II. amongſt the many Articles preferr’d againſt the Duke of *Ireland*, and others, the 14th Article contains a Charge much of this nature, *viz. That when the Lord and others in divers Parliaments, had moved to have a good Government in the Realm, they had ſo far incenſed the King, that he cauſed divers to depart from his Parliament*; *ſo that they durſt not, for fear of Death, adviſe for the Good of the Kingdom.* Yet when the Lords came to ſingle out the Articles, what was, or what was not Treaſon, That, altho’ a Charge tranſcending this, was none of the Articles by them declared to be Treaſon.

Anſwer to the particular Articles inſiſted upon principally in the Charge.

‘ My Lords, having done with theſe Generals, it remains only that we apply ourſelves to thoſe other Articles, which we conceive were inſiſted upon as Inſtances conducing and applied to ſome of the Generals we have handled.

‘ Wherein, if the Generals be not Treaſon, the particular Inſtances cannot be: And on the other ſide, if the Inſtances fall ſhort of Treaſons, the Application to thoſe Generals cannot make them Treaſons.

‘ We ſhall only ſingle out two Particulars, and in thoſe be very brief, in that moſt which hath been ſaid to the former Generals is appliable to them; inaſmuch as none of them is declared to be a Treaſon by the Statute of 25 *Ed.* III. or by any other Law enacted.

The firſt Particular.

‘ 1. The firſt of theſe in the 10th Original Article, *viz.* That he hath traitorouſly endeavoured to reconcile the Church of *England* with the Church of *Rome*.

‘ Which, if it be any Treaſon, muſt be a Treaſon within the Statute of 5 *Jac. cap.* 4. whereby is provided, That if any Man ſhall put in Practice to reconcile any of his Majeſty’s Subjects to the Pope or See of *Rome*, the ſame is enacted to be Treaſon; which we conceive clearly is none of this Charge.

Differences between the Matters charged and the Fact made Treaſon by the Statute 3 Jac. c. 4.

‘ (1.) Firſt, for that here only is charged an Endeavour; there a putting in practice.

‘ (2.) Here a Reconciling of the Church of *England* with the Church of *Rome*; there a Reconciling ſome of his Majeſty’s Subjects to the See of *Rome*. And a Reconciling with, may as well be a reducing of that of *Rome* to *England*, as *England* to *Rome*.

The ſecond Particular.

‘ The ſecond, in the 7th Additional Article, for wittingly and willingly receiving and harbouring divers popiſh Prieſts and Jeſuits, namely, *Sancta Clara* and Monſieur *St. Giles*.

‘ Which Offence, as to the harbouring Prieſts and Jeſuits born within his Majeſty’s Dominions, by the Statute of 27 *Eliz. cap.* 2. is made Felony, not Treaſon; and extends only to Prieſts *Engliſh* born, which theſe are not charged to be.

‘ My Lords, we have now gone thro’ thoſe Articles wherein we conceive the Treaſons charged were intended, and have endeavoured to make it appear, that none of the Matters in any of the Articles charged are Treaſon within the Letter of any Law.

‘ And if not ſo, then they cannot, by Inference or Parity of Reaſon, be heighten’d to a Treaſon.

‘ It is true, the Crimes as they are laid in the Charge are great and many.

‘ Yet if the Laws of this Realm, which have diſtinguiſhed Crimes, and accordingly given them ſeveral Names and inflicted Puniſhments, raiſe none of theſe to a Treaſon;

Number of Crimes below Treaſon or Felony, cannot make a Treaſon.

‘ That we humbly conceive will be worthy of your Lordſhips Conſideration in this Caſe; and that their Number cannot make them exceed their Nature. And if they be but Crimes and Miſdemeanours apart, below Treaſon or Felony, they cannot make a Treaſon by putting them together.

‘ Otherwiſe the Statute of 25 *Ed.* III. which we have ſo much inſiſted upon, had been fruitleſs and vain; if after all that Exactneſs any Number of Miſdemeanours (in themſelves no Treaſon) ſhould by Complication produce a Treaſon, and yet no mention made of it in that Law, much leſs any Determination thereby, that any Number, or what Number, and of what Nature of Crimes, below Treaſon, ſhould make a Treaſon.

‘ It is true, my Lords, that by the Statute of 25 *Ed.* III. there is a Clauſe in theſe Words:

Power to declare Treaſons, per Stat. 25 Ed. III. c. 2. *Wherein we conceive there is no Power to declare an Offence below a Felony to be a Treaſon.*

‘ *It is accorded, That if any other Caſe, ſuppoſed Treaſon, which is not therein ſpecified, doth happen before any Juſtices, the Juſtices ſhall tarry without any going to Judgment of the Treaſon, until the Cauſe be ſhewed and declared before the King and his Parliament, whether it ought to be judged Treaſon or Felony.*

‘ And that hereby might ſeem to be inferred, That there ſhould be ſome other Treaſons than are mentioned in that Law, which may be declared in Parliament.

‘ But, my Lords, we ſhall obſerve,

‘ 1. If ſuch Declaration look only forward, then the Law, making it Treaſon, precedes the Offence, and is no more than an enacting Law.

‘ If it look backward to the Offence paſt, then it appears by the very Clauſe itſelf, of 25 *Ed.* V. it ſhould be at the leaſt a Felony at the Common Law; and that a Crime or Crimes below a Felony, were never intended to be by this Law to be declared, or to be heighten’d to a Treaſon. And we find not any Crime declared Treaſon with a Retroſpect, unleſs it were a Felony before. And in the late Caſe of the Earl of *Strafford*, attainted by Bill, there is a Treaſon within this Law charged, and declared by the Bill of his Attainder to have been proved.

‘ 2. Secondly, We are not now in Caſe of a Declaration of a Treaſon, but before your Lordſhips only upon an Impeachment; and in ſuch Caſe we humbly conceive the Law already eſtabliſhed, as it hath been, ſo it will be the Rule *.

‘ Thus, my Lords, we have gone through that Part which belongs to us, directed us by your Lordſhips, *viz.*

‘ Whether in all or any the Articles exhibited before your Lordſhips, there is contained any Treaſon by any eſtabliſhed Law of this Kingdom, without meddling at all with the Facts or Proof made of them; which, together with our weak Endeavours, we humbly ſubmit to your Lordſhips great Judgment. And for any Authorities cited by us, are ready (if ſo commanded) to produce them.’

Here this Day ended; and I had a few Days Reſt. But on *Tueſday*, *October* 22. being a Day made ſolemn for Humiliation, my Chamber at the *Tower* was ſearched again for Letters and Papers; but nothing found.

After this, there went up and down all about *London* and the Suburbs, a Petition for the bringing of Delinquents to Juſtice; and ſome Preachers exhorted the People to be zealous in it, telling them it was for the Glory of God, and the Good of the Church. By this means they got many Hands of Men which little thought what they went about. In this Petition, none were named but myſelf and the Biſhop of *Ely*: ſo their Drift was known to none but their own Party; and was undoubtedly ſet on foot to do me Miſchief. Whoſe Deſign this was, God knows; but I have cauſe to ſuſpect Mr. *Prynn*’s Hand in it. This barbarous way of the People’s clamouring upon great Courts of Juſtice, as if they knew not how to govern themſelves and the Cauſes brought before them, is a moſt unchriſtian Courſe, and not to be endured in any well-govern’d State. This Petition, with a Multitude of Hands to it, was delivered to the Houſe of Commons on *Monday*, *October* 28. Concerning which I ſhall obſerve this, That neither the Lord-Mayor nor the Sheriffs made any Stop to this illegal and blood-thirſty Courſe, tho’ it were publickly known, and the People exhorted to ſet Hands to it in the Pariſh-Churches. What this, and ſuch-like Courſes as theſe, may bring upon this City, God alone knows, whom I humbly pray to ſhew it Mercy.

November 1. This Day, being *All-halan-day*, a Warrant came to the Lieutenant from the Houſe of Commons to bring me to their Bar, to hear the Evidence formerly ſummed up, and given againſt me in the Lords Houſe. I knew no Law nor Cuſtom for this; for tho’ our Votes, by a late Act of Parliament, be taken away, yet our Baronies are not: And ſo long as we remain Barons, we belong to the Lords Houſe, and not to the Commons. Yet how to help myſelf, I knew not: For when the Warrant came to me, the Lords Houſe was riſen, and I was commanded to the Houſe of Commons the next Morning before the Lords came to ſit; ſo I could not petition them for any Privilege. And had I done it, I doubt it would have been interpreted for an Endeavour to make a Breach between the Houſes: And ſhould I have under any Pretence refuſed to go, Mr. Lieutenant would have carried me.

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* *Whatſoever hath been hitherto placed in the Margin of this Argument, was tranſcribed from Mr.* Hern’*s own Copy; but this which followeth, I tranſcribed from a looſe Note, wrote by an unknown Hand, and affixed to this Place.* H. W.

Concerning the Proviſo *in* 25 Edw. III. (*laſt mentioned*) *it is obſervable, that Mr.* Lane, *in the Lord* Strafford’*s Trial, ſaith, That that Clauſe of Proviſion* 25 Edw. III. *is quite taken away by* 6 Hen. VIII. cap. 4. & 20. *So that no Treaſon is now to be reckoned, but what is literally contained in* 25 Ed. III. *See for this* Whitlock’*s Memoirs, p.* 43. *See alſo* Burnet’*s* Hiſt. Reform. Part II. pag. 253. *about the Repeal of Treaſons.*

Therefore on *Saturday*, *November* 2. I went, according to the Warrant, to the Houſe of Commons. So ſoon as ever I was come to the Bar, Mr. *Speaker* told me, There was an Ordinance drawn up to attaint me of High-Treaſon; but that they would not paſs it till they had heard a Summary of the Charge which was laid againſt me; and that I was ſent for to hear it alſo. I humbly beſought them that my Counſel and my Sollicitor (who were always preſent with me in the Lords Houſe) might ſtand now by me: But it would not be granted. Then Mr. *Browne*, by Order from the Speaker, delivered the Collection and Sum of the Charge againſt me; much at one with that which he formerly made in the Lords Houſe. Now I took Notes of it as exactly as I could. He had no ſooner done, but Mr. Speaker preſſed me to make Anſwer preſently. I humbly beſought the Houſe I might not be put to that, the Charge being long and various; but that I might have Time, and that my Counſel might be heard for Matter of Law. I was commanded to withdraw. And when I was called in again, I received an Order peremptory, to anſwer the *Monday* Sevennight after to ſuch Things as the Reporter was miſtaken in. But not a Word of hearing my Counſel. I returned to my Priſon.

This *Wedneſday*, *November* 6. I got my Prayer-Book, by the Help of Mr. *Hern* and Mr. *Browne*, out of Mr. *Prynn*'s Hands, where it had been ever ſince the laſt of *May*, 1643.

Monday, *November* 11. I came to the Houſe of Commons again; and, according to their peremptory Order, made my Anſwer to the Summary Charge which Mr. *Browne* made againſt me. But here I ſhall advertiſe the Reader, That, to avoid troubleſome and tedious Repetition, I ſhall not ſet down my Anſwer at large, as there I ſpake it; becauſe there is nothing in it but what is in my former Anſwers, the Beginning and the End only excepted. But it was neceſſary for me then to make a whole and an entire Anſwer, becauſe the Houſe of Commons had then heard no part of my Defence. But I preſume the Charitable Reader will look upon my Anſwers in their proper Place, rather than be troubled a ſecond Time with the ſame Thing. Yet becauſe Mr. *Browne* went a different way in his Summary from the Charge lately given, I ſhall repreſent a Skeleton of my Anſwer, with all the Limbs of it intire, that it may be ſeen, as it were, together; tho' I report nothing which hath been already ſaid. And thus I began:

My Defence in the Houſe of Commons.

‘ MR. Speaker, I was here *November* 2. It was the firſt time that ever I came within theſe Doors. And here then you gave me the moſt uncomfortable Breakfaſt that ever I came to; namely, that this Honourable Houſe had drawn up an Ordinance againſt me of High-Treaſon: But that before they would proceed farther, I ſhould hear the Sum of the Charge which was againſt me; which was the Cauſe I was ſent for then: And to give my Anſwer to that which was then ſaid, or rather miſtaken in ſaying and inferring, is the Cauſe of my coming now.

‘ 1. And, Firſt, Mr. Speaker, I give Thanks to this Honourable Houſe that they have given me leave to ſpeak for myſelf. 2. Secondly, I do humbly deſire, if any Word or Thing ſhould be miſtaken or unadviſedly expreſſed by me, (which ſhall be ſore againſt my Will) I may have Liberty to recall and expound myſelf. 3. Thirdly, That you will favourably conſider into what Straits I am caſt; that after a long and tedious Hearing, I muſt now come to anſwer to a Sum or an Epitome of the ſame Charge; which, how dangerous it may be for me, all Men that know Epitomes cannot but underſtand.

‘ Mr. Speaker, I am come hither to make a Brief of my Anſwer to a Sum of my Charge; wherein I may receive as much Detriment by my own Brief, for want of larger Expreſſion, as by the other of my Charge by Omiſſion or Miſtake: Yet ſince your Command is upon me, I ſhall without farther Preface (which I conceive would be as tedious to you, as to me troubleſome) addreſs myſelf, and with as much Brevity as the many Heads of the Charge will bear. And that my Anſwer may be the clearer both to this Honourable Houſe and to the Gentleman who reported the Charge, I ſhall follow every Thing in the ſame Order he proceeded in: So far forth, at leaſt, as an old ſlow Hand could take them, a heavy Heart obſerve them, and an old decayed Memory retain them.

‘ This worthy Gentleman hath preſſed all things as hardly againſt me, as the Cauſe can any way bear. That was his Duty to this Honourable Houſe, and it troubles me not: But his Carriage and Expreſſions were civil towards me, in this my great Affliction; and for this I render him humble and hearty Thanks, having from other Hands pledged my Saviour in Gall and Vinegar, and drunk up the Cup of the Scornings of the People to the very Bottom.

‘ This Gentleman began with four Generals, which he ſaid I complained of, and I ſay I had cauſe ſo to do. 1. The firſt Complaint was, *That I had lain three Years in Priſon before I was heard.* And this, he ſaid, was my own Fault, becauſe I delayed the putting in my full Anſwer when I was called. But herein he is quite miſtaken: For I could not anſwer till I was called, and I was not called in three Years; nor then could I plead to more Articles than were put to me.’ [Nor did this delay three Months of the three Years: Yet this Gentleman in his Reply ſaid ſtill, it was my Fault, *becauſe I did not petition to be brought to hearing.* But this, under favour, is a weaker Reaſon than the former. For the Condition of the Times conſidered, neither my Counſel, nor my other Friends, nor myſelf, could think that a fit or a diſcreet way. Beſides, it is well known, that had I petitioned I could not have been heard, my Buſineſs being in a manner caſt aſide, till Mr. *Prynn*'s Malice, actuated by a Search into my own Papers, undertook it.] ‘ 2. The Gentleman ſaid, my ſecond Complaint was, *That my Papers were ſeized:* But he ſaid, that was done by Authority. And I never denied that: But that which he added is much miſtaken; namely, That I ever ſeized any Man's Papers without Authority, or by my own Power; but what was done in that kind, was by the joint Authority of that Court in which I then ſat. Nor was my Complaint general, that my Papers were ſeized; but that the Papers prepared for my Defence were taken from me, and not reſtored when I needed them, and petitioned for them. 3. He ſaid, my third Complaint was, *That many of the Witneſſes produced againſt me were Separatiſts.* I did indeed complain of this, and I had abundant Cauſe ſo to do: For there was ſcarce an active Separatiſt in *England*, but ſome way or other his Influence was into this Buſineſs againſt me. And whereas the Gentleman ſaid, *The Witneſſes were ſome Aldermen, and ſome Gentlemen, and Men of Quality:* That's nothing; for both Gentlemen, and Aldermen, and Men of all Conditions, (the more's the pity) as the Times now go, are Separatiſts from the Doctrine and Diſcipline of the Church of *England* eſtabliſhed by Law. And I would to God ſome of my Judges were not. 4. My fourth Complaint, he ſaid, was, *of the exceſſive Number of the Witneſſes.* And he added, That if I would not have ſo many Witneſſes, I ſhould not have given Occaſion for it, by committing ſo many Crimes. But, firſt, whether I have committed ſo many Crimes as are urged againſt me, is yet in queſtion. And ſecondly, 'tis one thing to give Cauſe, and another thing to give Occaſion: For an Occaſion may be taken when 'tis pretended as given. And ſo I hope it will be found in my Caſe. But the thing here miſtaken is, That theſe are all ſaid to be *legal Witneſſes*; whereas almoſt all of them have at ſome time or other been before me as their Judge, either at *Star-Chamber*, or *Council-Table*, or *High-Commiſſion*, or as Referree. And then I humbly deſire it may be conſidered; Firſt, how impoſſible it is for a Judge to pleaſe all Men. Secondly, How improbable it is, that Witneſſes diſpleaſed ſhould be indifferent in their Teſtimony. And, Thirdly, how hard it is to convince a Man by ſuch intereſted Witneſſes, now (upon the matter) becoming Judges of him that judged them. And (as St. [a] *Auguſtine* ſpeaks) *Quomodo poteſt, how is it poſſible for one that is contentious and evil to ſpeak well of his Judge?*

[a] Quomodo poteſt malus litigator laudare Judices? *Aug. Ep.* 166.

‘ From theſe Generals the Gentleman paſſed to the Particulars of the Charge; and he cauſed the 7, 8, 9, 10, 11th Original Articles, and the 7th Additional to be read. That done, he divided the Charge into two main Heads: The one, an Endeavour in me to ſubvert the Laws of the Kingdom; and the other, a like Endeavour to alter the true *Proteſtant Religion* into *Popery*. The Evidence given in the Lords Houſe, began at the *Laws* and ended in *Religion*; but this Gentleman in his Sum, both there and here, began with *Religion*, and ended with the *Laws*.

‘ I. The Charge concerning Religion, he ſaid, would bear two Parts; the Ceremonial, and the Subſtantial Part of Religion.

‘ (1.) And he profeſſed he would begin at the Ceremonial; where having firſt charged in general, the Statute of the 3 and 4 of *Ed.* VI. *c.* 10. for the Deſtruction of Images, he gave theſe particular Inſtances following, to ſhew my Intention to alter Religion.

‘ 1. The ſetting up of coloured Glaſs with Pictures in the Windows of my Chapel; the Communion-Table Altar-wiſe; Candleſticks thereon, with Reverence and Bowings.

‘ 2. A Bible in my Study with the five Wounds of Chriſt wrought upon the Cover in Needle-Work.

‘ 3. Three Pictures in my Gallery; the *Ecce Homo*, the four *Latin* Fathers, and the Hiſtory of (St. *John* x.) the true Shepherd entering in by the Door, and the Thief by the Window.

‘ 4. The Crucifix hung up in the Chapel at *White-Hall* on *Good-Friday*; and what happened there upon Dr. *Browne*'s coming in and doing Reverence.

‘ 5. The Copes and Bowings uſed in Cathedral Churches ſince my Time.

‘ The Ceremonies uſed at his Majeſty's Coronation.

‘ 7. The Abuſes in the Univerſities, eſpecially *Oxford*.

  ‘ 1. The Titles given me from thence.

  ‘ 2. Divers Particulars in the new Statutes.

  ‘ 3. Images countenanced there, by me, in divers Chapels.

  ‘ 4. The Picture of the Virgin *Mary* at *St. Mary*'s Church-Door.

  ‘ 5. Nothing to be done without me in Congregations.

‘ 8. The Ceremonies in ſome Pariſh-Churches, and ſome puniſhed for Neglect of them. Inſtances in ſome of *Beckington*, ſome of *Lewes*, and in Mr. *Chancy* of *Ware*.

‘ 9. That I preferred no Men, but ſuch as were active for the Ceremonies.

‘ 10. Paſſages expunged out of Books, if contrary to theſe Courſes; as that in Dr. *Featly*'s Sermons concerning Images.

‘ 11. Bibles with Pictures in them.

‘ 12. The ſevere Puniſhment of Mr. *Workman* of *Glouceſter*, only for a Sermon againſt Images.

‘ 13. Words ſpoken to take Biſhop *Jewell*'s Works and the *Book of Martyrs* out of ſome Pariſh-Churches.

‘ 14. The Conſecration of *Cree-Church*, and *St. Giles in the Fields*. In all which, as I humbly conceive, here's nothing (eſpecially my Anſwers being taken to them) that can co-operate to any Alteration of Religion. Nor is there any Treaſon, were all that is urged true.

‘ (2.) From hence, Mr. *Speaker*, this worthy Gentleman paſſed over from the Ceremonies, to thoſe things which, he ſaid, concerned the Subſtance of Religion: In which the Particulars which he charged were theſe:

‘ 1. A Doubtfulneſs, if not a Denial of the Pope's being *Antichriſt*.

‘ 2. Diſlike of the Name, *the Idol of* Rome.

‘ 3. The Alteration of ſome Paſſages in the Publick Prayers appointed for *Novemb.* 5. and the *Coronation-Day*.

‘ 4. The *Antichriſtian Yoke* left out of the Brief for the *Palatinate*, with an Expreſſion, as if we and thoſe Reformed Churches were not of the ſame Religion.

‘ 5. That Men were puniſhed for praying for the *Queen* and *Prince*.

‘ 6. That the Church of *Rome* is a true Church.

‘ 7. That the Communion-Table or Altar is the Chief Place; for there is *Hoc eſt Corpus meum*.

‘ 8. Reſtraint of all Books againſt Popery, Inſtances in a Book of Biſhop *Carleton*'s: One tendred by Sir *Edward Hungerford*. Dr. *Clarke*'s

Sermons. Dr. *Jones.* None called in but *Sales.* That I myſelf did expunge ſome Paſſages out of a Sermon of Dr. *Sibthorp*'s. Popiſh Books ſeized, re-delivered to the Owners. That for theſe I muſt anſwer for my Chaplains, ſince *John*, Archbiſhop of *York*, was fined for his Commiſſary's Act againſt the Biſhop of *Durham*; who having a Patent, could not ſo eaſily be put out of his Place, as I might change my Chaplains.

‘ 9. Three Miniſters in my Dioceſs ſuſpended for not Reading the *Book of Recreations* on the Lord's Day.

‘ 10. The Feoffment for buying in of Impropriations overthrown, to the Hindrance of Preaching, and Scandal to Religion.

‘ 11. Incroachment upon the Lord Chamberlain for naming of Chaplains to the King; and upon the Maſter of the Wards for giving of Benefices.

‘ 12. Familiarity with Prieſts and Jeſuits, *S. Clara* and Monſieur *S. Giles*.

‘ 13. The Teſtimonies of Mr. *Chaloner*, Sir *Henry Mildmay*, and his Brother Mr. *Anthony*, what Opinion was held of me beyond the Seas, for my cunning introducing of Popery.

‘ 14. That an Offer was made unto me to be a Cardinal. And thus far this Gentleman proceeded in Points of Religion.

‘ But becauſe there hath paſſed divers things done at and by the *Council-Table*, the Courts of *Star-Chamber*, and *High-Commiſſion*, and in *Convocation*; and becauſe many more things ſo done, are to come in the next Head concerning the Law; I humbly crave leave, for avoiding tedious Repetition, to ſay it once for all, That no Act done by any of theſe, either by full Conſent, or major Part, which involves the reſt, ought to be charged ſingly againſt me: And that for theſe Reaſons following:

‘ 1. Firſt, Becauſe this is not *peccare cum multis:* For they meet not there in a Relation as *multi*, but as *unum Aggregatum*, as Bodies made one by Law. And therefore the Acts done by them, are Acts of thoſe Bodies, not of any one Man ſitting in them. And in this Senſe a Parliament is one Body conſiſting of many; and the Acts done by it are Acts of Parliament. For which (ſhould any of them prove amiſs) no one Man is anſwerable, tho' many times one Man brings in the Bill.

‘ 2. Secondly, Becauſe I could ſway no Man's Vote in any of thoſe Places (tho' this hath been often urged againſt me, as an *over-potent Member)*, for my Vote was either laſt, or laſt ſave one, in all theſe Places; ſo I could not lead. Nor is there any ſo much as Shew of Proof offered, that I moved, or prepared any Man to a Sentence one way or other, in any one of theſe Courts or Places.

‘ 3. Thirdly, Becauſe in thoſe Courts of Judicature, there was the Aſſiſtance of able Judges, Lawyers and Divines for Direction. And how can that be a Treaſon in me, which is not made ſo much as a Miſdemeanour in any of the reſt?

‘ 4. Fourthly, Becauſe the Act of this preſent Parliament, which hath taken away the *Star-Chamber*, and the *High-Commiſſion*, and bounded the *Council-Table*, looks forward only, and puniſhes no Man for any Act paſt; much leſs doth it make any Man's Actions done in them to be Treaſon: And I am no way excluded from the Benefit of that Act.

‘ 5. Laſtly, Becauſe in all my Proceedings, both in the High-Commiſſion and elſewhere, I kept ſtrictly to the Doctrine and Diſcipline of the Church of *England* eſtabliſhed by Law, againſt both Papiſts and other Sectaries. And under this Government, and Doctrine of this Church, it hath pleaſed God, now for above Fourſcore Years together, to bleſs this Kingdom and People above other Nations. And I pray God, if we forſake the one, it prove not a Cauſe to deprive us of the other.

‘ II. And now, Mr. *Speaker*, I ſhall follow this worthy Gentleman, as he went on to the ſecond General Head, *the Subverſion of the Laws.* And here, when he had cauſed the 1, 2, 3, 5, and 14th Original Articles to be read, as alſo the 2, 9, and 10th Additionals; he then ſaid, That I had labour'd this Subverſion by my Counſels, and by my Actions.

‘ (1.) By my Counſels firſt; of which he gave three Inſtances.

‘ 1. The Vote of the *Council-Table* to aſſiſt the King in extraordinary Ways, if the Parliament ſhould prove peeviſh, and refuſe: And this out of my Diary at *Decemb.* 5, 1639.

‘ 2. The Paſſage in the Epiſtle before my Speech in the *Star-Chamber*; *Not one way of Government, ſince the Humours of the People were in continual Change.*

‘ 3. A Speech at *Council-Table*, That now the King might uſe his own Power, *&c.* witneſſed only by Sir *Henry Vane* the Elder.

‘ (2.) From my Counſels, Proceed was made to my Actions; where the Particulars were:

‘ 1. That I attempted to ſet *Proclamations* above the *Law.*

‘ 2. That I was for all illegal Projects at the *Council-Table*; inſtanced in *Incloſures*, in *Ship-Money*, and Sir *John Corbet*'s Commitment.

‘ 3. The taking down of the Houſes about St. *Paul*'s, with the large Commiſſion for the Repair of the Weſt-End.

‘ 4. The ſtopping of two Brewers in their Trade, being in *Weſtminſter*, and pretended to annoy the Court.

‘ 5. Things done by me as *Referee*; inſtanced in a Caſe between *Rich* and *Pool*, and another of one *Symmes*.

‘ 6. Obſtructing the Courſe of Law, by ſending to Judges; inſtanced in the Pariſhioners of *Beckington*, in the Caſe of *Ferdinando Adams*; in Sir *Henry Martyn*'s Caſe about an Attorney at Law; Judge *Richardſon*'s Words in *Huntley*'s Caſe, and Baron *Trevor*'s Words in *Grafton*'s Caſe.

‘ 7. The puniſhing Men that came in a legal Way; inſtanced in the Caſe of *Newcomin* and *Burrowes*; that I ſaid in the High-Commiſſion, I hoped to ſee the Clergy exempt again the next Hundred Years: The two Church-Wardens of *Cheſham*, with Words concerning Sir *Thomas Dacres*.

‘ 8. The Caſe of Prohibitions; and Mr. *Wheeler*'s Note out of a Sermon of mine concerning them.

‘ 9. That no Pope ever claimed ſo much Juriſdiction, not from the King.

‘ 10. The Canons; and I the main Man; the overgrown Member again.

‘ 11. The Statutes of *Oxford* enforced a ſecond time; *Nevil*'s Caſe of *Merton-College* inſtanced in.

‘ 12. Books printed that are againſt the Law; inſtanced in *Cowell*'s Interpreter, and Dr. *Manwaring*'s Sermons.

‘ 13. The Alteration of the *King's Oath* at his Coronation.

‘ 14. My Enmity to Parliaments. To all which as I then gave ſufficient Anſwers, ſo I hope the courteous Reader hath found them at large in their ſeveral Places. And for this laſt concerning *Parliaments*, I humbly and heartily deſire, that this may be taken notice of and remembred, That there is not in any one of theſe Paper-Proofs produced againſt me, any one thing that offers to take away any Rights of *Parliaments*, rightly underſtood; much leſs any that offers to take away *Parliaments* themſelves; which is a continued Miſtake all along this particular Charge. And if any raſh or unweighed Words have fallen from me, yet theſe cannot be extended to the diſannulling of *Parliaments*, or their Privileges in any kind, which I defended in Print long ſince, before I could foreſee any of this Danger threatning me. It is in my Book [a] againſt *Fiſher:* It was read in the Lord's Houſe, and I humbly deſire I may read it here. And it was read.

‘ After this, it was inferred by this worthy Gentleman, *what a great Offender I was, and greater than Cardinal* Wolſey. Mr. *Speaker*, I have ſeen the Articles againſt the Cardinal, and ſure ſomebody is miſtaken; for ſome of them are far greater than any thing that is proved againſt me. In which (I thank Chriſt for it) my Conſcience is at peace; whereas the Cardinal confeſſed himſelf guilty of them all, and yet no thought of Treaſon committed; and a *Præmunire* was all that was laid upon him.

‘ Then he gave a touch, That [b] in *Edward* III's time, there was a Complaint that too much of the Civil Government was in the hands of the Biſhops; and that in the 45th Year of his Reign, they were put out, and Laymen put in. But, Firſt, this concerns not me. Secondly, The late Act of this Parliament hath taken ſufficient Order with that Calling for meddling in Civil Affairs. Thirdly, The Time is memorable when this was done: it was in the Forty-and-fifth Year of *Edward* III. that's enough.

‘ Mr. Speaker, I ſhall draw towards an end. Yet not forgetting what Ordinance you told me was drawn up againſt me; if that which I have now ſaid may any way ſatisfy this Honourable Houſe to make ſtay of it, or to mitigate it, I ſhall bleſs God and you for it. And I humbly deſire you to take into conſideration my Calling, my Age, my former Life, my Fall, my Impriſonment, long and ſtrict; that theſe Conſiderations may move with you. In my Proſperity (I bleſs God for it) I was never puffed up into Vanity, whatever the World may think of me. And in theſe laſt full four Years durance, I thank the ſame God, [c] *gravem Fortunam conſtanter tuli*; I have with decent Conſtancy borne the weight of a preſſing Fortune: And I hope God will ſtrengthen me unto, and in the end of it.

‘ Mr. Speaker, I am very [d] aged, conſidering the Turmoils of my Life; and I daily find in myſelf more Decays than I make ſhew of: and the Period of my Life, in the Courſe of Nature, cannot be far off. It cannot but be a great Grief unto me, to ſtand at theſe Years thus charged before ye: Yet give me leave to ſay thus much without offence, Whatſoever Errors or Faults I may have committed by the way, in any my Proceedings, thro' human Infirmity; as who is he that hath not offended, and broken ſome Statute-Laws too by Ignorance, or Miſapprehenſion, or Forgetfulneſs, at ſome ſudden time of Action? Yet if God bleſs me with ſo much Memory, I will die with theſe Words in my Mouth: ‘ *That I never intended, much leſs endeavoured the Subverſion of the Laws of the Kingdom, nor the bringing in of Popiſh Superſtition upon the true Proteſtant Religion eſtabliſhed by Law in this Kingdom.*

‘ And now, Mr. Speaker, having done with the Fact, I have but this one Thing to put to the Conſideration of this Honourable Houſe. My Charge hath been repeated, I confeſs, by a very worthy and a very able Gentleman: But *Ability* is not abſolute in any. The Evidence given againſt me before the Lords, was (as by the Law it ought to be) given in upon Oath: But the Evidence now ſummed up, and preſented to this Honourable Houſe, is but upon the Collection and Judgment of one Man, how able or intire ſoever: and what he conceived is proved againſt me, is but according to his Judgment and Memory; which perhaps may differ much from the Opinion and Judgment of the Judges themſelves, who heard the Evidence at large. Nor was this Gentleman himſelf preſent every Day of my Hearing; and then for thoſe Days in which he was abſent, he can report no more here, than what others have reported to him. So for ſo much, his Repetition here is but a Report of a Report of Evidence given; and at the beſt but a Report of Evidence, and not upon Oath. And, I ſuppoſe, never any Jurors, who are Triers of the Fact in any Caſe, Civil or Criminal, did ever ground their Verdict upon an Evidence only reported before them, and which themſelves heard not.

‘ And if this manner of Proceeding ſhall be thought leſs conſiderable in my Perſon, yet I humbly deſire it may be thoroughly weighed in the prudent Judgment of this Honourable Houſe, the great Preſerver of the Laws and Liberties of the Subject of *England*, how far it doth or may trench upon theſe in future Conſequences, if theſe great Boundaries be laid looſe and open.

‘ And becauſe my Infirmities are many and great, which Age and Grief have added to thoſe which are naturally in me, I moſt humbly deſire again, That my Counſel may be heard for point of Law, according to the former Conceſſion of this Honourable Houſe: For I aſſure myſelf, upon that which hath been pleaded to the Lords, That no one, nor all of the things together which are charged againſt me, if proved, (which I conceive they are not) can make me guilty of High-Treaſon, by any known eſtabliſhed Law of this Kingdom.

‘ The Sum of all is this: Upon an Impeachment ariſing from this Houſe, I have pleaded *Not Guilty.* Thereupon Iſſue hath been joined, and Evidence given in upon Oath. And now I muſt humbly leave it to you, your Wiſdom and Juſtice, Whether it ſhall be thought fit, and juſt, and honourable, to judge me here, only upon a Report, or a Hearſay, and that not upon Oath.'

[a] Cont. Fiſher, *p.* 211.

[b] Anno 45. Ed. III.

[c] Tacit. l. 6. Annal.

[d] Annum jam agens ſeptuageſimum-ſecundum.

Here ended the heavy Buſineſs of this Day. I was exceeding faint with ſpeaking ſo long; and I had great Pain and Soreneſs in my Breaſt for almoſt a Fortnight after: then, I thank God, it wore away. I was commanded to withdraw, and to attend the Houſe again on *Wedneſday*, *Nov.* 13. 1644. which I did. Then Mr. *Browne* made a Reply to my Anſwer: the Reply had ſome great Miſtakes in it, but elſe was for the moſt part but a more earneſt affirming of what he had delivered. And I conceived I was not to anſwer to his Reply, but that he was to have the laſt Speech: for ſo it was always carried during my Hearing in the Lords Houſe. Therefore being diſmiſſed, I went away: And I was no ſooner gone, but the Houſe called for the Ordinance which was drawn up againſt me, and without hearing my Counſel, or any more a-do, voted me guilty of High-Treaſon. And yet, when I came that Day to the Houſe, all Men, and many of the Houſe themſelves, did much magnify my Anſwer before given: I will forbear to ſet down in what Language, becauſe it was high; and as no time can be fit for Vanity, ſo leaſt of all was this time for me. And vain I muſt needs be thought, ſhould I here relate what was told me from many and good hands. But it ſeems the Clamour prevailed againſt me.

On *Saturday*, *Novemb.* 16. this Ordinance was paſſed the Houſe of Commons ſuddenly, and with ſo great deliberation, as you have heard, was tranſmitted to the Lords, and by them the Debate concerning it put off to *Friday*, *Novemb.* 22. Then the Earl of *Pembroke* began more fully to ſhew his canker'd Humour againſt me: how provoked, I proteſt, I know not unleſs by my ſerving him far beyond his Deſert. There, among other coarſe Language, he beſtowed (as I am informed) the *Raſcal* and the *Villain* upon me: and told the Lords, they would put off giving their Conſent to the Ordinance, till the Citizens would come down, and call for Juſtice, as they did in my Lord *Strafford*'s Caſe. Was there not Juſtice and Wiſdom in this Speech? Hereupon the Buſineſs was put off to *Saturday*, *Novemb.* 23. and then to *Friday*, *Novemb.* 29. But then upon *Thurſday*, *Novemb.* 28. Mr. *Strowd* came up with a Meſſage from the Commons, to quicken the Lords in this Buſineſs: And at the end of his Meſſage he let fall, That *they ſhould do well to agree to the Ordinance, or elſe the Multitude would come down and force them to it.* At this, ſome Lords very honourably took exception; and Mr. *Strowd* durſt not bide it, that this was any part of the Meſſage delivered him by the Houſe of Commons. But the Matter was paſſed over, and Mr. *Strowd* not ſo much as checked. This, it may be, was thought ſeaſonable by ſome, to hearten on the Violence of the Earl of *Pembroke.*

The Buſineſs not long heard on *Friday*, was put off again to *Monday*, *Decemb.* 2. and the Houſe of Lords put into a Committee, to examine Particulars by their Notes: the Earl of *Northumberland* on the Wool-Sack during the Debate, which continued, more or leſs, ſome Days. Where their own Notes failed, they called to Mr. *Browne*, Clerk of their Houſe, for his. But at laſt finding him very ready and quick for any thing that was charged againſt me, but loth to be known what Anſwer I gave to any Point, ſome Lords obſerved it. And it did after appear, that the Notes which he put to the Lords, were not the Notes which himſelf took, but that he had a Copy given him, (whether by Mr. *Prynn* or any other, I know not) and I was informed that the Earl of *Warwick* had another Copy of the very ſame. This is marvellous juſt and honourable in that Earl; and moſt Chriſtian-like in Mr. *Browne.* It may be, he learned it out of the Notes which his Father-in-Law takes at Sermons.

Upon *Monday*, *December* 16. there was (the Times conſidered) a very full Houſe of Lords; about twenty preſent, and my Buſineſs largely debated, and ready to come to the Queſtion. I wiſh with all my heart it had, while the Houſe was ſo full. But the Earl of *Pembroke* fell again into his wonted Violence, and aſked the Lords what they ſtuck at? And added, *What, ſhall we think the Houſe of Commons had no Conſcience in paſſing this Ordinance? Yes, they knew well enough what they did.* One of the Wits hearing this excellent Paſſage of the Earl's, proteſted, if ever he lived to ſee a Parliament in *Bedlam*, this prudent Earl ſhould be Speaker, if he were able to procure him the Place.

In the mean time, this unhappy Clamour of his put the Buſineſs off again to the next Day, being *Tueſday*, *Decemb.* 17. Then there were but fourteen Lords in the Houſe. My Buſineſs was aſſumed, and propoſed in three Queſtions, and I was voted guilty of the Fact in all three. Namely, Guilty of endeavouring to ſubvert the Laws; to overthrow the Proteſtant Religion; and that I was an Enemy to Parliaments. Then it being put to the Judges, whether this were Treaſon or no; the Judges unanimouſly declared that nothing which was charged againſt me was Treaſon, by any known and eſtabliſhed Law of the Land, with many things to and fro concerning this Buſineſs.

On *Tueſday*, *Dec.* 24. *Chriſtmas-Eve*, the Lords had a Conference with the Commons about it. In which they declared, that they had diligently weighed all things that were charged againſt me, but could not by any one of them, or all, find me guilty of Treaſon: And therefore deſired that the Argument made by my Counſel might be anſwered. And if it could be made appear unto them by any Law to be Treaſon, they would then proceed farther, as in Honour and Juſtice they ſhould find it. Then came *Chriſtmas-Day*, *Dec.* 25. the laſt *Wedneſday* in the Month, and a moſt ſolemn Faſt kept on it, with as ſolemn an Ordinance for the due Obſervance of this Faſt, and againſt the manner of keeping of that Day in former Superſtitious Times. A Faſt never before heard of in *Chriſtendom.*

After this Conference, Mr. Serjeant *Wilde* ſpeaking freely to ſome Friends about this Buſineſs, told them, he wonder'd the Lords ſhould ſo much diſtruſt their Judgments, as to deſire a Conference about it. To ſee how good Wits agree! Surely, I believe he was of the Earl of *Pembroke*'s Counſel, or the Earl of his, they jumped ſo together. It ſeems in theſe Mens Opinions, the Houſe of Commons can neither err in Conſcience nor Judgment. Howſoever, that Houſe thought it fit the Lords ſhould be ſatisfied, that I was by Law guilty of High-Treaſon: and to that end ſent up a Committee, *Jan.* 2, 1644. to make proof of it to their Lordſhips. At this Meeting, two Judges were preſent, Juſtice *Reeves* and Judge *Bacon.* The Managers of the Buſineſs againſt me, were three Lawyers, Mr. *Browne*, Serjeant *Wilde*, and Mr. *Nicolas.* Neither myſelf nor any of my Counſel there. What this will effect upon the Lords, Time muſt diſcover, as it doth the Effects of other Eclipſes. And thus far I had proceeded in this ſad Hiſtory by *Jan.* 3, 1644. The reſt ſhall follow, as it comes to my knowledge.

[H. W. *Next Day, the Archbiſhop receiving the News that the Bill of Attainder had paſſed in the Houſe of Lords, broke off his Hiſtory, and prepared himſelf for Death.*]

The Reaſons of the Commons for the Attainder of the Archbiſhop, were at a Conference, *Jan.* 2. by Serjeant *Wilde*, Mr. *Browne*, and Mr. *Nicolas*, communicated to the Lords; who thereupon, on the 4th of *January*, paſſed the Ordinance of Attainder: whereby it was ordained, that he ſhould ſuffer Death, as in Caſes of High-Treaſon. And on the 6th of *January* it was ordered by both Houſes that he ſhould ſuffer accordingly on *Friday* the 10th. But on the 7th, the Lords at a Conference acquainted the Commons with a Letter and Petition from the Archbiſhop, and a Pardon to him from the King, dated the 12th of *April*, 19 *Car.* of which he deſired the Benefit: but the ſame was over-ruled and rejected. His Petition was, That in caſe he muſt die, Dr. *Stern*, Dr. *Heywood*, and Dr. *Martin*, might be permitted to be with him before and at his death, to adminiſter Comfort to his Soul; and that the Manner of his Execution might be altered to Beheading. To which the Lords agreed, but the Commons then refuſed both; only granted that Dr. *Stern* and Mr. *Marſhal*, and Mr. *Palmer*, ſhould go to him; and one or both of the latter to be conſtantly preſent, whilſt Dr. *Stern* was with him. But the next Day, upon another Petition of his, ſetting forth Reaſons, from his being a Divine, a Biſhop, one that had had the Honour to ſit in the Houſe of Peers, and of the King's moſt Honourable Privy-Council, &c. praying, in thoſe regards, not to be expoſed to ſuch an ignominious Death; the Commons conſented to remit the reſt of the Sentence, and that he ſhould ſuffer Death by being beheaded. Accordingly on the 10th of *January* he was conducted from the *Tower* to the Scaffold on *Tower-Hill*; where being arrived, holding a Paper in his Hand, he ſpake to the People as followeth:

Ruſhworth's *Hiſt. Collect. Vol.* V. *p.* 780.

Good People,

THIS is an uncomfortable time to preach, yet I ſhall begin with a Text of Scripture, *Heb.* xii. 2. *Let us run with Patience the Race that is ſet before us, looking unto Jeſus, the Author and Finiſher of our Faith; who, for the Joy that was ſet before him, endured the Croſs, deſpiſing the Shame, and is ſet down at the Right Hand of the Throne of God.*

Ruſh. *Vol.* V. *p.* 781.

I have been long in my Race, and how I have looked unto Jeſus, the Author and Finiſher of my Faith, he beſt knows: I am now come to the End of my Race, and here I find the Croſs; a Death of Shame: but the Shame muſt be deſpis'd, or no coming to the Right Hand of God: Jeſus deſpiſed the Shame for me, and God forbid but I ſhould deſpiſe the Shame for him! I am going apace (as you ſee) towards the Red Sea, and my Feet are now upon the very Brink of it; an Argument, I hope, that God is bringing me into the Land of Promiſe, for that was the Way through which he led his People; but before they came to it, he inſtituted a Paſſover for them, a Lamb it was, but muſt be eaten with ſour Herbs. I ſhall obey, and labour to digeſt the ſour Herbs as well as the Lamb; and I ſhall remember it is the Lord's Paſſover: I ſhall not think of the Herbs, nor be angry with the Hand that gathereth them, but look up only unto Him who inſtituted that, and governs theſe. For Men can have no more Power over me than what is given from above. I am not in love with this Paſſage thro' the Red Sea, for I have the Weakneſs and Infirmity of Fleſh and Blood plentifully in me, and I have pray'd with my Saviour, *ut tranſiret Calix iſte*, that this Cup of red Wine might paſs from me; but if not, *God's Will, not mine, be done:* And I ſhall moſt willingly drink of this Cup as deep as he pleaſes, and enter into this Sea, yea, and paſs thro' it in the Way that he ſhall lead me; but I would have it remember'd, good People, that when God's Servants were in this boiſterous Sea, and *Aaron* amongſt them, the *Egyptians* who perſecuted them, and did in a manner drive them into the Sea, were drown'd in the ſame Waters, while they were in purſuit of them.—And as for this People, they are at this Day miſerably miſled; God of his Mercy open their Eyes, that they may ſee the right Way! for at this Day the Blind lead the Blind, and if they go on, both will certainly fall into the Ditch. Tho' the Weight of my Sentence be heavy upon me, I am as quiet within as ever I was in my Life. And tho' I am not only the firſt Archbiſhop, but the firſt Man that ever died by an Ordinance in Parliament, yet ſome of my Predeceſſors have gone this Way, tho' not by this Means.——Here is a geat Clamour that I would have brought in Popery: I ſhall anſwer that more fully by-and-by. In the mean time, you know what the *Phariſees* ſaid againſt Chriſt himſelf, If we let him alone, all Men will believe in him, & *venient Romani*, and the *Romans* will come and take away our Place and Nation. Here was a cauſeleſs Cry againſt Chriſt, that the *Romans* would come: And ſee how juſt the Judgment was; they crucify'd Chriſt for fear the *Romans* ſhould come, and his Death was it that brought in the *Romans* upon them: God puniſhing them with that which they moſt feared. And I pray God this Clamour of *venient Romani*, for which I have given no Cauſe, help not to bring them in: For the Pope never had ſuch an Harveſt in *England* ſince the Reformation, as he hath now upon the Sects and Diviſions that are among us.—This I ſhall be bold to ſpeak of the King, our gracious Sovereign: He hath been much traduced alſo for bringing in Popery, but in my Conſcience (of which I ſhall give God a very preſent Account), I know him to be as free from the Charge as any Man living, and I hold him to be as ſound a Proteſtant (according to the Religion by Law eſtabliſhed) as any Man in this Kingdom, and that he will venture his Life as far, and as freely, for it. And I think I do, or ſhould, know both his Affection to Religion, and his Grounds for it, as fully as any Man in *England.*—I have been accuſed as an Enemy to Parliaments. No! I underſtand them, and the Benefit that comes by them, too well to be ſo; but I did miſlike the Miſgovernments of ſome Parliaments many Ways, and I have good Reaſon for it, for *Corruptio optimi eſt peſſima.* There is no Corruption in the World ſo bad as that which is of the beſt thing within itſelf; for the better the thing is in Nature, the worſe it is corrupted. And that being the higheſt Court, over which no other hath Juriſdiction; when it is miſinform'd or miſgovern'd, the Subject is left without all Remedy: But I have done. I forgive all the World, all and every of thoſe bitter Enemies which have perſecuted me, and humbly deſire to be forgiven of God firſt, and then of every Man, whether I have offended him or not, if he do but conceive that I have: Lord, do thou forgive me, and I beg Forgiveneſs of him; and ſo I heartily deſire you to join in Prayers with me.

Having ended his Prayers, and finding the Scaffold crowded, he deſired they would give him Room to die, that he might have an End of the Miſeries he had ſo long endured; and coming near the Block, he ſaid, *God's Will be done!* I am willing to go out of the World, none can be more willing to ſend me; and perceiving ſome People under the Scaffold thro' the Boards, he deſired the Chinks might be ſtopped, or the People remov'd, *for he did not deſire his Blood ſhould fall upon their Heads.* Sir *John Clotwórthy* demanded of him, what was the moſt comfortable Saying a dying Man could have in his Mouth: He anſwered, *Cupio diſſolvi & eſſe cum Chriſto.* Sir *John* ſtill preſſed him with ſeveral impertinent Queſtions, to which his Grace anſwered with Abundance of Meekneſs; and turning to the Executioner, he gave him Money, and ſaid, Here, honeſt Friend, God forgive thee, and I do, and do thy Office upon me with Mercy! Having made another ſhort Prayer, he laid his Head down upon the Block, and prayed a little time to himſelf, after which he ſaid aloud, *Lord, receive my Soul*; and this being the Signal, the Executioner immediately ſevered his Head from his Body at one Blow. He was buried after the Manner of the Church of *England*, in the Church of *Allhallows, Barking*; the very Day the Liturgy was aboliſhed by an Ordinance of Parliament, and the Directory ſet up in the Room of it. A Braſs Plate was nailed on his Coffin with this Inſcription: *In hac Ciſtula conduntur Exuviæ* Gulielmi Laud, *Archiepiſcopi* Cantuarienſis, *qui ſecuri percuſſus Immortalitatem adiit die* X. Januarii, *Ætatis ſuæ* 73, *Archiepiſcopatus* XII.

XLII. *The Trial of* CONNOR *Lord* MACGUIRE [*], *at the* King's-Bench *for* High-Treaſon, *in being concerned in the* Iriſh Maſſacre. Feb. 10. 1644. Hil. 20. Car. I.

Ruſh. *Col. Vol.* 5. *p.* 729.

ON *Monday* the 11th of *November* 1644, the Priſoner was brought to the Bar of the *King*'s-*Bench* to be arraigned: By the Indictment he was charged, That he, together with Sir *Phil. O-Neale*, *Philip O-Relly*, *Roger Moore* Eſq; *Roger Macguire* Eſq; *Toole O-Coule*, Clerk (being a *Roman Prieſt*), *Hugh Macmahune*, and divers other Perſons, falſe Traitors, unknown; as a falſe Traitor againſt the King's Majeſty, his Supreme Liege Lord, not having the Fear of God in his Heart, nor conſidering his Duty or Allegiance, but being ſeduced by the Inſtigation of the Devil, intending altogether to withdraw, blot out, and extinguiſh the cordial Love and due Obedience which faithful Subjects owe to their Sovereign; did, on the 20th of *October*, 17 *Car.* at *Dublin* in *Ireland*, in the parts beyond the Seas, and at divers other Times, both before and after, as well at *Dublin* as elſewhere, falſely, maliciouſly, and traitorouſly conſpire, imagine, and compaſs utterly to deprive and diſinherit the King's Majeſty of his Royal Eſtate and Kingdom of *Ireland*; to bring his Majeſty's Perſon to Death and Deſtruction; to raiſe Sedition, and breed and cauſe miſerable Slaughter and Deſtruction amongſt the King's Subjects throughout all the whole Kingdom; to make an Inſurrection and Rebellion againſt the King his Sovereign; to levy publick, open, bloody, and fierce War againſt the King in that Kingdom; to change and alter, according to their own Wills, the Government of the Kingdom, and the Religion there eſtabliſhed, and totally to ſubvert the well-ordered State of that Commonwealth; to procure and bring in divers Strangers and Foreigners (not being the King's Subjects) in a warlike manner to invade that Kingdom of *Ireland*, and to levy War there.

And in execution of theſe their wicked Treaſons and traitorous Conſpiracies, 20 *Octob.* 17 *Car.* the Defendant *Connor Macguire*, at *Dublin*, and divers other Times and Places, by one *Toole O-Coule*, and divers other Meſſengers, by him ſent to *Owen O-Neale*, being then in *Flanders*, did move and incite *Phil. O-Neale* to levy and raiſe an Army in *Flanders*, and thence to bring that Army over into *Ireland* in an hoſtile manner, to invade that Kingdom.

And further to put in execution their traitorous Purpoſes, the Defendant, together with *Hugh Macmahune*, *Phil. O-Neale*, *Phil. O-Relly*, *Roger Moore*, *Roger Macguire*, *and Toole O-Coule* the Prieſt, 20 *Oct.* 17 *Car.* at *Dublin*, and divers other Times and Places in *Ireland*, before and after, did traitorouſly conſpire to enter into, ſeize, get into their own Power, and ſurprize the King's Caſtle at *Dublin*, and all other the King's Caſtles and Forts in that Kingdom, and the Magazine therein. And at the ſame time unlawfully and traitorouſly did endeavour and actually attempt to gain into their Poſſeſſion and Power, and to ſurprize the ſaid Caſtle of *Dublin*, and the Munition therein.

That the Defendant, with the other Perſons named, *Philip O-Neale* and others, further to bring to paſs their moſt horrid wicked Treaſons and Conſpiracies, on the 22d of *October*, 17 *Car.* at *Charlemont*, and other Places, before and after, being armed and arrayed with a great Multitude in a warlike manner, with Banners diſplayed, Drums, Swords, Staves, Guns, and other invaſive and defenſive Weapons, did falſly and traitorouſly prepare and levy open, fierce, and bloody War againſt the King's Majeſty; and the ſame 22d of *October*, ſeized and ſurprized the King's Fort at *Charlemont*, and then and there maliciouſly and traitorouſly did kill and murder *Toby* Lord *Calfield*, *Francis Davies*, and others of the King's Subjects, that were Proteſtants.

That the Defendants, 4 *Junii*, 18 *Car.* at the Caſtles of *Keilagh* and *Cragan*, and other times and Places, before and after, levied War, ſeized and ſurprized thoſe Caſtles, and did kill and murder *Owen Powel* and *William Coſens*, and many other of the King's Proteſtant Subjects in that Kingdom.

Which ſeveral Offences are laid againſt his Duty and Allegiance, againſt the Peace of the King's Crown and Dignity, in manifeſt Breach and Contempt of the Laws and Statutes of this Kingdom.

The Defendant pleaded Not Guilty. And being demanded how he would be tried;

The Copy of the Plea.

HE pleaded the Statute of *Magna Charta*, 10 *Feb.* 9. *Hen.* III. That none ſhould be condemned but by Trial of his Peers; and pleaded the Statute of 10 *Hen.* VII. That all the Statutes made in *England* ſhould from thenceforth be in force in *Ireland.*

And pleaded, That before the Time of the ſeveral Treaſons charged in the Indictment, *Bryan Macguire*, his Father, by Letters Patents was created Baron of *Enniſkillen*, in *Ireland*, to him and the Heirs Males of his Body: By force whereof his Father was ſeized of the Barony in Fee-Tail, and 1 *Feb.* 12 *Car.* died ſo ſeized; after whoſe Death the Barony deſcended to the Defendant, by virtue whereof he was a Baron of *Ireland*: And that at a Parliament held at *Dublin*, 16 *March*, 16 *Car.* which was there continued till the 7th of *Auguſt* after, and then adjourned to the 9th of *November* following, and then prorogued to the 24th of *Feb.* thence next following, and from thence continued till the 24th of *June*, 18 *Car.*

That he was as one of the Noblemen and Peers of that Parliament; and that the 23d of *October*, 17 *Car.* he was arreſted and impriſoned upon pretence of the ſeveral Treaſons in the Indictment mentioned, and there continued till the 12th of *June*, 18 *Car.* when he was brought againſt his Will to *Weſtminſter*, and thence committed to the *Tower* of *London* in ſtrict Cuſtody. And averred his Plea, and prayed that he might be tried and judged by his Peers in *Ireland.*

Whereunto the King's Counſel demurred in Law, and the Defendants joined in the Demurrer.

Upon this Plea [†] of the Lord *Macguire*, the Beginning of *Hilary* Term, Judge *Bacon* delivered his Judgment, That a Baron of *Ireland* was triable by a Jury in this Kingdom. After which, the Houſe of Commons declared their Aſſent unto his Opinion in this following Vote:

Die Sabbati, 8 *Feb.* 1644.

REſolved upon the Queſtion, That the Houſe doth approve of the Judgment given by Maſter Juſtice *Bacon*, in over-ruling the Plea of the Lord *Macguire*, and of the Manner of the Trial upon the Indictment of High-Treaſon in the *King*'s-*Bench*; and the Judge is hereby required to proceed ſpeedily thereupon, according to Law and Juſtice. The Lords Concurrence to be deſired herein; Maſter Recorder is appointed to carry it up.

Upon this Vote of the Honourable Houſe of Commons, the Houſe of Peers afterwards declared their Concurrence; and thereupon this enſuing Order was paſſed by both Houſes of Parliament:

Die Lunæ, 10 *Feb.* 1644.

ORdered by the Lords and Commons in Parliament aſſembled, That the ſaid Houſes do approve of the Judgment given by Maſter Juſtice *Bacon*, in over-ruling the Plea of the Lord *Macguire*, and of the Manner of the Trial upon the Indictment of High-Treaſon in the *King*'s-*Bench*; and the Judge is hereby required to proceed ſpeedily thereupon, according to Law and Juſtice.

John Brown, Cler. Parl.
Hen. Elſing, Cler. Parl. D. C.

ON *Monday Feb.* 10. the Lord *Macguire* was brought from the *Tower* of *London*, by the Guard belonging thereunto, unto the *King*'s-*Bench* Bar; where he was arraigned by the Name of *Connor Macguire*, alias *Cornelius Macguire* Eſq; (for his Plea of Peerage was found invalid, and ſo declared by the Court; and that Opinion of the Judge was ſince aſſented unto, and confirmed by both Houſes of Parliament). At his coming to the Bar, the Priſoner ſpake as followeth:

Macguire. I do humbly move, that I may have time allowed me by this Court to ſend for my Witneſſes.

[a] *Judge.* You have had a long time; you were indicted about the Beginning of the laſt Term, you might have prepared Witneſſes the laſt Term.

[a] *Mr. Juſtice* Bacon.

Mac. I did not expect a Trial.

Judge. You ſhould expect it at your Peril.

Mac. I was told, when I came into the Kingdom, that I might have Witneſſes.

Judge. The Proof lies upon the King's Part.

Mac. Though the Proof be of the King's Part, yet I muſt have Time to clear myſelf.

Judge. But if every Man ſhould aſk ſo much Time as you require, he ſhould never come to his Trial.

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[*] *This* Macguire *was one principally deſigned for the Surprizal of the Caſtle of* Dublin, *and the ſecuring or murdering the Lords, Juſtices and Council, for which Intent he came purpoſely to* Dublin *the Day before; but the Plot being detected that Night, he fled diſguiſed from his uſual Lodgings at one* Nevil'*s, a Chirurgeon in* Caſtle-Street, *and ſecretly hid himſelf at one* Ker'*s, a Taylor in* Cook-Street, *where he was found in a Cock-loft by* John Woodcock, *one of the Sheriffs of* Dublin, *ſtanding with his Cloak wrapt about him in an obſcure Place, in which Poſture he was apprehended and brought before the Lords Juſtices and Council, where he made ſome ſort of a Confeſſion, upon which he was committed Priſoner to the Caſtle the 23d of* October 1641, *from whence he was ſent into* England *the 12th of* June *following, and continued Priſoner there till the 18th of* Auguſt 1644, *when he made his eſcape; but was retaken the 20th of* October *following.*

[†] *See Mr.* Prynn'*s long Argument of this Point, intitled,* The Caſe of the Lord *Macguire*, *in* State Trials, *Vol.* VIII. *p.* 335. *See alſo* Hale'*s* H. P. C. *Vol.* I. *p.* 155.

Serj. *Whitfield.* Mr. Juſtice *Bacon*, we know that my Lord *Macguire* was indicted here the laſt Term; he was arraigned at this Bar, he pleaded *Not Guilty*, he could not but expect that he ſhould then have been tried, if it had not been for the Plea of Peerage which he then put in: upon which he knows there was a deliberate Diſpute, and he could not tell but that there would be an end before this time; and if he had any Witneſſes, he might have ſent for them the laſt Term. But it is a very unuſual Courſe, eſpecially in that he could not but expect that he ſhould be tried before this time; but then the Court did conceive this was a legal Information. No Place is mentioned by the Priſoner where the Witneſſes ſhould be, nor are they named who they are, nor any particular thing that they ſhould teſtify; but the Proof lies clear on our part: there's no Juſtification in Treaſon; if we prove that this Lord hath committed Treaſon, there's no Juſtification of that by any Witneſſes he can produce.

Judge. The Lord *Greye*, that was Lord-Deputy of *Ireland*, committed his Treaſons in *Ireland*, for which he was brought over hither, and try'd here; yet the Court did not ſtay for his ſending over into *Ireland* for Witneſſes.

Mac. I deſire Witneſſes.

Judge. What can your Witneſſes ſay for you? Can they ſay thus much, That you did not conſpire, as this Indictment charges you? That there was no taking of theſe Caſtles? Can they ſwear in the Negative? The Proof lies in the Affirmative on the King's part.

Mac. They may be miſ-informed.

Judge. Who may be miſ-informed?

Mac. The Court. I have been kept cloſe Priſoner a long time, and could not provide my Witneſſes.

Serj. *Whitfield.* If we were not tied to that, to nothing but his own Confeſſion, there's enough to condemn him: for that he ſays he was kept cloſe Priſoner, he might have deſired that the laſt Term.

Serj. *Roll.* If we go upon your own Examination, the Witneſſes concurring with that, what can you have?

Judge. If you had Witneſſes here, we would hear them; but to ſtay upon a mere verbal Suppoſal for thoſe Witneſſes in *Ireland*, they may be in that Rebellion too, and they will never come hither, and ſo the Matter muſt never come to a Trial.

Mac. I deſire that it may be the next Term.

Judge. We cannot protract Time; they are the King's Witneſſes, there are (I ſuppoſe) divers here, many Witneſſes of the King's come out of *Ireland*; if you will aſk them any Queſtions for your Defence, you ſhall. There are many Witneſſes of the King's that know how Things were in *Ireland*, the Court ſhall put them to ſpeak.

Mac. I humbly deſire to have a formal Trial.

Judge. In what reſpect do you mean? I think it is ſo now. Now you are come to be arraigned, and the Evidence is to come in againſt you, I conceive it is a formal one.

Then the Priſoner was required to hold up his Hand at the Bar; and it was demanded, if he would challenge any of the Jury that were to paſs upon him in the Matter of Life and Death.

Then the Jury being called, he looked upon them, and challenged thoſe which did appear, being Twenty-three; there being only One abſent. Being demanded whether his Challenge was peremptory or no? he anſwered, It was, for Cauſes beſt known to himſelf.

Jury challenged.

Sir *William Brownelow* Kt. *and* Baronet.
Sir *Henry Row*,
Sir *Matthew Howland*,
Thomas Marſh Eſq;
Thomas Wilcox Eſq;
William Lane Eſq;
Edward Rogers Eſq;
Edward Claxton Eſq;
Richard Zachary Eſq;
Humphrey Weſtwood Eſq;
John Jackſon Eſq;
John Pawlet Gent.
Thomas Poltock Gent.
Henry Smith Gent.
Francis Child Gent.
Edward Wilford Gent.
William Vincent Gent.
John Barnes,
John Arnold,
John Huckſley Eſq;
Sir *James Harrington* Kt.
Thomas Moore Eſq;
Henry Arundell Gent.

Serj. *Whitfield.* The Priſoner hath challenged all the Jury that does appear; Twenty-three appear, and he hath challenged them, and his Challenge is for Cauſes beſt known to himſelf, which is a peremptory Challenge. Truly, it is that which the Law doth allow, and we do not oppoſe it; but we do deſire that we may have another Writ returnable To-morrow.

Judge. You muſt have a *Venire Facias.*

Serj. *Whitfield.* This Cauſe is a Cauſe of very great weight; there are many Witneſſes that have long attended in Court, we are informed that ſome of them are gone away into *Ireland*; that there is the Sheriff of *Dublin*, and ſome others that are now preſent in Court, that cannot be here, if we ſhould defer this Trial, as the Priſoner doth deſire: and we do deſire that it may be referred till To-morrow, we ſhall be ready to give in Evidence againſt him.

Judge. He hath ſpent three Days this Term already, this is the fourth: we would have proceeded now, but for his peremptory Challenge; but if we ſtay till To-morrow, he muſt be content to be try'd by a meaner Jury.

Mr. *Prynn.* This being a publick Caſe, we deſire a ſpeedy Progreſs in it: our Witneſſes have been long detained here, and cannot attend till the next Term, ſome of them being to depart within two Days.

Judge. A publick Caſe muſt have publick Juſtice on both Sides: for your Witneſſes, you ſhall ſtay your Witneſſes here. We muſt do that which the Law doth allow.

Serj. *Whitfield.* The Law does allow of his peremptory Challenge; we deſire to have a new Writ, and that it may be returnable To-morrow. For the doing of it, we ſhall leave it to thoſe that are to proſecute it; and to the Sheriff. We ſee that this Cauſe cannot be try'd this Day, we deſire we may have a ſpeedy end of it; there have been many Days ſpent in it, and we that are of Counſel for the King do deſire that we may confer together, departing the Court for ſome time; and when we have conferred together, we will return to the Court again, and then we will propound to you what Courſe we do deſire for the ſpeedy Trial of this Cauſe.

To this Motion the Judge aſſented, and Serjeant *Whitfield* and the reſt of the Counſel went to conſult together about it; and after a ſhort ſtay, upon their return, Serj. *Whitfield* ſpake thus:

Serj. *Whitfield.* We that are Counſel for the King have conſulted together with the Clerk of the Crown, and the Secretary; we have withdrawn ourſelves, and peruſed ſeveral Precedents, and we do find by ſeveral Precedents, that whereas a peremptory Challenge ſhall be, it is in the Power of the Court to order the Courſe of Trial, and the Courſe is this: There goes a Writ to the Sheriff, that he ſhall diſtrain all them that make default, and that he ſhall amove thoſe that are challenged by the Priſoner; and further, that he ſhall return ſo many more for the Trial. This we conceive to be the conſtant Courſe of this Court; and in this Caſe my Lord *Macguire* having challenged 23 of the 24, we are to diſtrain the other that made default, and to amove the 23 that he hath challenged of them, and have a *Tales* returnable To-morrow for a new Jury.

Serj. *Roll.* That was in *Standiſh*'s Caſe and *Friar*'s Caſe.

Judge. I know the Court may grant a *Tales*; but the Matter is, whether it can be done ſo ſoon as To-morrow or no, if the Sheriff can do it To-morrow.

Serj. *Whitfield.* We do find this in the Precedent of *Friar*, that in 3 *Hen.* VII. the Jury did appear on *Friday*, and all thoſe that did appear were challenged, and there was a *Diſtringas* returned the next Day, which was *Saturday.* It may be *immediatè.*

Judge. Then make your *Diſtringas* againſt To-morrow Morning, make out a *Quadraginta Tales* againſt To-morrow.

Mac. I deſire I may not be ſo ſeverely dealt with.

Judge. It hath been ſo often-times, and the Court doth proceed in theſe Caſes *de Die in Diem*, from Day to Day; and there is no Difficulty in the granting of it, but whether the Sheriff can return it ſo ſoon. If the King's Counſel will have it To-morrow, the other Buſineſſes of the Court muſt be put off.

Hereupon the Priſoner was diſcharged, and a Rule granted to the Lieutenant of the *Tower*, to bring him again the next Day.

On *Tueſday*, *Feb.* 11, the Lord *Macguire* was again brought to the *King*'s-*Bench* Bar, where he made a Motion that his Plea of Peerage might be referred to another Court. To which it was anſwered,

Serj. *Whitfield.* We know not for what end this Motion is, and we know this, that this is no time for my Lord to make this Requeſt; for you know how far we have proceeded: He hath been arraigned, and indicted for High-Treaſon; and one Jury he challenged, the other is returned, ſo as now he is in the way of his Trial; we are now to proceed with ſuch Evidence as we have, to proſecute inſtantly. We do not deſire this to be produced again, and if it be, we know not how it could be material one way or other.

After this, the Lord *Macguire* further urged the Court to the former Purpoſe: to which it was anſwered, That he was then brought to his Trial as a Priſoner upon the Indictment, and that both the Lords and Commons had approved of the Opinion of the Court therein.

Mac. Pleaſe you, Sir, one Word more: I deſire to appeal to the Lords.

Serj. *Whitfield.* When one is come here, to appeal to the Lords, that was never known: now you have put yourſelf upon the Country.

Mac. Under favour, I conceive I may, to an higher Court.

Judge. It cannot be granted, the Lords approved it: if you would have gone to an higher Court before, you might have taken your Courſe; now the Jury is returned, and you are appointed to be try'd here.

After this, the Lord *Macguire* deſired further to appeal; to which the Anſwer was:

Serj. *Whitfield.* Here lies no ſuch Appeal here: you are out of the Eccleſiaſtical Court, there is no ſuch Plea here; you are now upon the Middle of your Trial, we deſire you may go on; you have challenged 23 of the Jury already.

Judge. We have no ſuch Courſe in the Common Law; if a Man will appeal from me, I cannot let him appeal to any Man.

Upon this, theſe of the Jury following were named, which he challenged; *viz. George Hanger* Eſq; Sir *Michael Wharton*, *James Hawley* Eſq; *George Smith* Eſq; *Edmund Beſley* Eſq; *William Ewrſby* Eſq; *Stephen Bourman* Gent. *George Weaver-Baſſet*, *J. Nicolls* the Younger, *Henry Walker* Gent. *Randolph Nicoll*, *Andrew Brent.* Upon his challenging of theſe, which being added to the reſt, make 35 in all, the other Jury being about to be called, the Lord *Macguire* moved:

Mac. Under favour, I conceive that my Lands being ſequeſtred, thoſe Men that have bought my Lands, ſhould not paſs upon my Trial; and therefore I deſire they may make anſwer to it upon Oath, whether any of them have adventured or no.

Serj. *Whitfield.* To deſire that a whole Jury may be demanded ſuch a Queſtion upon their Oath, is that that hath not been known. If my Lord *Macguire* have cauſe now againſt any, he hath run out the Liberty which the Law gave him to challenge 35 peremptorily. Now if he ſhould challenge any more, he muſt make a particular Challenge to every particular Man that comes to be ſworn, and he muſt have ſuch a Challenge notwithſtanding as is warrantable by Law; but this general Challenge is not warrantable by Law, and if it were particular, it were not warrantable neither.

Serj. *Roll.* If you will challenge any more, the Law does not debar you to ſhew cauſe.

Mac. I conceive, that any that have given Money for *Ireland* for my Deſtruction, ought not to paſs againſt me.

Serj. *Whitfield.* This is for the King, this is for no particular Perſon whatſoever.

Mac. I beſeech you hear me in it.

Judge. You know this, that the King cannot grant it without the Conſent of both Houſes, and in this Caſe it may be put to the Jury to try upon their Oath. Thus far I ſhall agree, that if any of this Jury be to have any particular Benefit in *Ireland*, of Lands or Goods by his Attainder, it is good; but if his Lands come to the King, and that the King is no way bound to give it any of them, it is no Challenge: look the Statute.

Mr. *Prynn.* Under favour, Mr. Juſtice *Bacon*, it doth not appear to the Court, that the Priſoner hath any Lands or Goods in *Ireland*; and therefore no ſuch Queſtion is to be demanded of the Jury.

Judge. You may make needleſs Diſputes upon it.

Then the Jury being accordingly required to anſwer upon Oath, whether they had adventured, or had any Share in *Ireland* for the Rebels Land; *Macguire* deſired the Queſtion might be, Whether they themſelves, their Children, or Brothers? But that would not be agreed unto, as being unreaſonable.

Then the Jury following was ſworn: *I. Carpenter*, *John Cooper*, *A. Cordall*, *Rich. Atkinſon*, *Joſias Hendall*, *William Greenwood*, *Willian Barnes*, *Robert Stiles*, *George Norfolk*, *Edward Hudſon*, *John Wait*, *Eſah Riſby*. The Oath which they took was this:

You ſhall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and Connor Macguire *Eſq; now Priſoner at the Bar, and a true Verdict give according to your Evidence.*

The Jury being ſworn, *Macguire* moved that he might have a Jury of 24; to which it was anſwered;

Judge. There have been 40 named.

Mac. Under favour, I conceive, I ought to be try'd by 24; there were ſo many returned at firſt.

Judge. They returned 24; that is, becauſe if any of them did fail, and ſome may be challenged, then there might be twelve left.

Mac. Under favour, I conceive, there ſhould be 24 now left for my Trial.

Judge. You are deceived in that. You challenged 23, and ſo there were 40 more added; now you have challenged 12 of this 40, and out of them there remains ſo many as will make up a Jury of 12.

Then the Court proceeded to his Trial, and the Indictment againſt him was read.

Clerk. Gentlemen of the Jury, Upon this Indictment he hath been arraigned, and to his Arraignment he hath pleaded *Not Guilty*, and thereupon put himſelf upon his Country; and your Charge is, to inquire whether he be guilty of the Indictments, or any of them: If you find him not guilty, you are to declare it; if guilty, then you are to give in your Verdict accordingly.

Then theſe Witneſſes following were ſworn to give in Evidence againſt the Priſoner: The Lord *Blaney*, Lady *Calfield*, Sir *Arthur Leftus*, Sir *John Temple*, Sir *William Stewart*, Sir *Francis Hamilton*, Sir *Edward Borlacey*, Sir *William Cole*, Sir *Charles Coot*, Mrs. *Wordroſe*, *John Carmick*, *Walter Gubſon*, *M. Bunbury*, Captain *Michael Balfoure*, Captain *Berisford*.

Sir William Cole's *Teſtimony.*

Serj. *Whitfield.* You know, Sir *William Cole*, a great many of their Names, which you have heard, that were Conſpirators with this Lord; what Religion were they of?

Sir *W. Cole.* They were all Papiſts.

Serj. *Whitfield.* Who were they?

Sir *W. Cole.* The *Lord Macguire*, Sir *Phelim O-Neale*, *Roger Moore*, &c.

Serj. *Whitfield*, Sir *Francis Hamilton*, upon what occaſion was it, that the Conſpirators got an Order to view the Magazine?

Sir *F. Hamilton.* I was a Member of the Houſe of Commons there, and I remember very well there came a Meſſage from the Houſe of Lords to the Houſe of Commons, to let them know, that there was ſome Plot for the blowing up of the Parliament-Houſe in *Ireland*; and they ſent a Meſſage, to deſire that they might ſearch under the Parliament-Houſe: and there was a Search made, and (as I remember) the Lord *Macguire* was one of the Committee from the Houſe of Lords made ſearch there; but what they found, I do not know. Afterwards they deſired that they might ſearch the Caſtle of *Dublin*, and other Magazines.

Counſel. What was the Cauſe?

Sir *F. Hamilton.* There was a Coachman of my Lord of *Strafford*'s, that had utter'd ſome big Words, (as was given out) That the Parliament Houſe ſhould be blown up: but what was the Ground, I am perſuaded in my Conſcience, it was to know where the Store and Ammunition lay, that they might know where to ſurprize it.

Sir William Stewart's *Teſtimony.*

I was one of the Committee that was ſent by the Parliament, and by Order from the Houſe of Lords, to ſearch the Parliament-Houſe, and the Lord *Macguire* was one of the Lords: they made a very ſtrict Search, and then they inquired for the King's Magazine, and I believe my Lord *Macguire* now here was one of the Committee that went to ſearch for the Houſe of Lords, and he did ſearch very narrowly, and they were deſirous to know where the Store was.

The Lord Blaney's *Teſtimony.*

Counſel. Whether this Search were moved by the Lord *Finghall*, and what was the End of it?

Ld. *Blaney.* So near as I can, I will give you the Buſineſs; it is ſo long ago. This I remember, that there was one of the Lords Houſe, whether it were my Lord *Finghall* or my Lord *Macary*, moved it, I cannot certainly depoſe, but I am ſure it was one of them. This occaſion was, one of the Earl of *Strafford*'s Coachmen ſaid, he hoped to ſee ſome of the Lords blown up for it; it was about a Fortnight after the Earl of *Strafford* was beheaded here. Thereupon they got an Order for it, and ſo they went down, and they did not find the Powder, but they made as narrow a Search as ever any was. I aſked what the meaning was of this, for we had ſtrange Cenſures of it ourſelves. Says one of them, the Lord *Clamorris*, they are afraid of a Powder-Plot of the Proteſtants. I anſwered, that I had heard of a Powder-Plot of the Papiſts, but never of the Proteſtants in my Life. But if you aſk the Reaſon of it, it was to aſſure themſelves of their Strength, for we found by woful Experience afterwards it was their end. My Lord *Borlace* ſaid, Let them not be afraid, for upon my Honour there is no Powder below. It's a great Houſe, the Houſe of Commons ſit on one ſide, and the Lords on the other, and the Block-Houſe in the Middle.

Counſel. What Religion is my Lord *Finghall* and my Lord *Clamorris* of?

Ld. *Blaney.* The Lord *Finghall* is a Papiſt, and *Clamorris* a peſtiferous Papiſt.

Serj. *Whitfield.* All Papiſts. We ſhall now read the Examination of the Manner of his taking, and then his own Examination. The firſt we ſhall read, is this of Mr. *Woodcock*, that was Sheriff of *Dublin*; he was in Town, but he could not ſtay, but he was examined before this Court.

The Information of John Woodcock *the 27th of* October 1644. *taken upon Oath before J.* Bacon.

THE ſaid Examinate depoſeth and ſaith, That he being one of the Sheriffs of the ſaid City of *Dublin*, in the Year 1641, having Notice given him in the Night upon the 22d of *October* in the ſame Year, of ſome great Deſign intended, did by Virtue of his Office walk up and down the City that Night; and coming to the Houſe of one *Nevil*, a Chirurgeon in *Caſtle-Street*, he underſtood by the ſaid *Nevil*, that the Lord *Macguire* with ſome ten or twelve others were there: this Examinate told him it was fit for his Gueſts to be in bed at that time of Night; but the ſaid *Nevil* did bring this Examinate word, that the Lord *Macguire* and his Company were then going to Bed. The ſaid Examinate departed, ſetting a Watch near his Houſe; by which Watch he was informed, that the ſaid Lord *Macguire* and the reſt were gone from the Houſe, and were at the Houſe of one *Kerne* a Taylor: whereupon he ſearched the ſaid Houſe, and there found ſome Hatchets, with the Helves newly cut off cloſe to the Hatchets, five Petronels, five or ſix Swords, three or four ſmall Piſtols, five or ſix Skeines, with other Arms of the Lord *Macguire*'s in an Houſe of Office in the ſaid Houſe; in another Place divers Pole-Axes, and alſo behind a Hen-rooſt ſome great Weapons with ſharp Pikes of Iron in one end of them: the ſaid *Kerne* affirming, that he knew nothing of any of the Particulars before-mentioned, nor how they came in his Houſe. The ſaid Examinate ſhewed all the ſaid Inſtruments unto the ſaid Lords Juſtices and Council of *Ireland*; and thereupon the ſaid Lords Juſtices and Council commanded Search to be made for the ſaid Lord *Macguire*. Upon which, the ſaid Examinate ſearching narrowly for him, at laſt found him in a Cock-loft, with a Cloke wrapt about him, ſtanding by a Bed, the Door lock'd upon him, there being no Key to be found; as alſo the Maſter of the Houſe flying away, and making an Eſcape to the Enemy.

After this the Lord *Macguire*'s own Examination was read, taken the 26th of *March*, 1642, (for as Sir *John Temple* declared to the Court, the Lord *Macguire* was then brought to the Council-Board, and they could get nothing out of him) whereupon he was ſent back to Priſon for that time.

The Examination of Connor *Lord* Macguire, *Baron of* Enniſkillen, *taken before us,* Charles *Lord* Lambert, *and Sir* Robert Meredith *Kt. Chancellor of his Majeſty's Court of Exchequer, the 26th Day of* March, 1642, *by Direction of the Right Honourable the Lords Juſtices and Council.*

WHO being examined, ſaith, That about the time when Mr. *John Bellew* came out of *England* with the Commiſſion for the Continuance of the preſent Parliament, *Roger Moor*, in the ſaid *Moor*'s Chamber, in the Houſe of one *Peter de Coſtres* of this City, acquainted him this Examinate, That if the *Iriſh* would riſe, they might make their own Condition, for the regaining of their own Lands, and Freedom of their Religion. At which time the ſaid *Moor* alſo acquainted him this Examinate, That he had ſpoken with ſundry of *Leinſter*, who would be ready for that Purpoſe: and withal told him this Examinate, That he was aſſured a good Part of *Conaught* would do the like; and thereupon moved this Examinate to join likewiſe with them, with all he could make: unto which Motion, he this Examinate yielded. And the next Day following, there was a Meeting in his the ſaid *Moor*'s Chamber aforeſaid, where ware Col. *Mac-Bryan*, *Macmahone*, *Tirelagh O-Neal*, *Philip Mac-Hugh O-Rely*, this Examinate, and *Roger Moor*; where Diſcourſe was had on that Buſineſs, yet nothing concluded on, ſave that *Roger Moor*, and the reſt ſhould go and prepare their Parties. And this Examinate further ſaith, That about *May* laſt he this Examinate, *Roger Moor*, *Philip O-Rely*, and *Roger Macguire* this Examinate's Brother, diſpatched a Prieſt, one *Toole O-Coole*, who lived in *Leinſter*, unto *Owen O-Neale* into *Flanders*, to acquaint him with the Buſineſs concerning the general Rebellion then in Preparation; which ſaid Prieſt returned about a Month before the time appointed for Execution thereof. And the Anſwer which the ſaid Prieſt brought from the ſaid *Owen O-Neale*, was, That he would (within fifteen Days after the People were up) be with them, with his beſt Aſſiſtance and Arms. And it being demanded why the ſaid *Owen* ſhould bring Arms, conſidering that the Caſtle of *Dublin* was to be taken, with the Arms therein; this Examinate anſwered, That they ſo provided for Arms, that they might not want any, in caſe they could not take the ſaid Caſtle, whereof they doubted. And this Examinate acknowledgeth, That the Caſtle of *Dublin* was to have been ſurprized by himſelf, Capt. *Bryan O-Neale*, Capt. *Con O-Neale*, Capt. *Macmahone*, one *Owen O-Rely*, *Roger Moor*, *Hugh Macmahone*, Col. *Plunket*, and Capt. *Fox*; and likewiſe further acknowledgeth, That *Hugh Mac-Phelim*, Capt. *Con O-Neale*, and *Bryan O-Neale*, brought from *Owen O-Neale*, out of *Flanders*, the very ſame Meſſage which the ſaid Prieſt brought. And this Examinate further ſaith, That he was told by *Roger Moor*, that a great Man was in the Plot, but he might not name him for the preſent. And at another time, and during the ſitting of the Parliament the laſt Summer, he this Examinate was informed by one *John Barnwell* a Franciſcan Fryar, then reſident in this City, That thoſe of the Pale were alſo privy unto the Plot, (meaning the preſent Rebellion.) And laſtly ſaith, That of thoſe Perſons who came to attend him this Examinate for the Surprize of the ſaid Caſtle of *Dublin*, only *Cohonogh Macguire* was privy unto the Buſineſs in Hand; and that the laſt Meeting (when the Day appointed for Execution thereof was reſolved on) was at *Logh-Roſſe*, where were preſent only *Ever Macmahone*, Vicar-General of the Dioceſs of *Clogher*; *Thomas Mac-Kearnan*, a Fryar of *Dundalk*; Sir *Phelim O-Neale*, *Roger Moor*, and *Bryan O-Neale*.

Concordat cum Originali Ex.
per Parl. Harris.

Charles Lambert,
Robert Meredith.

This being read, and opened unto the Jury, being the Lord *Macguire*'s free and voluntary Confeſſion, which he afterwards acknowledged ſince his coming to the *Tower*, viz.

Memorandum, That this within written being ſhewed and read unto the within-named Lord *Macguire*, and himſelf having peruſed the ſame, his Lordſhip did acknowledge the ſame to be true in all things, ſaving that he doth not now acknowledge that *Bernard* told him, That thoſe of the

Pale were privy to the Plot; neither doth acknowledge, that *Cohonagh Macguire* was privy to the Plot before his coming to *Dublin.*

This Examination and Acknowledgment was made and taken the 22d Day of June 1642. Anno Regni Caroli Regis decimo octavo, *before us.*

John Bramſton, Thomas Mallet.

In the Preſence of John Conyers, William Ayloffe, Nathaniel Finch.

June 24, 1642, *The Examination of* Connor *Lord* Macguire, *Baron of* Enniſkillen, *taken before Sir* John Bramſton, *Knight*, *Lord Chief Juſtice of the* King's-Bench.

WHO ſaith, that he is of the Age of Twenty-ſix Years and upwards, and that he was born in the County of *Fermanagh* in *Ireland*; and ſaith, That his Examination taken at *Dublin* the 26th Day of *March* 1642, before *Charles* Lord *Lambert*, and Sir *Robert Meredith*, with his Acknowledgment thereof the 2d of *June* before Judge *Bramſton* and Juſtice *Mallet*, is true in ſuch manner as in the ſaid Examination and Acknowledgment is expreſſed. *Connor Macguire.*

The Examination of Cornelius Macguire, *Lord Baron of* Enniſkillen *in* Ireland, *taken before* Iſaac Pennington *Eſquire*, *Lieutenant of the Tower of* London, *and* Laurence Whitaker, *Eſquire*, *two of his Majeſty's Juſtices of the Peace for the County of* Middleſex, *the firſt Day of* October 1644.

HE denieth the receiving of any Letters or Meſſages out of *England*, before the Rebellion, nor did he ever hear of any. He ſaith, he was but a mean Inſtrument in the Deſign in *Ireland*; he confeſſeth he intended to ſeize upon the Caſtle of *Dublin*, and the Magazine there, and keep it till they had Redreſs of ſome Grievances, which they purpoſed to propound to the Parliament there; one whereof was, to have a Toleration of the *Roman* Catholick Religion. He confeſſeth, that he came accidentally to *Philip O-Rely*'s Houſe, as he came up to *Dublin*; and, as he remembreth, *Macmahone* was then there: and that his Intention of coming up to *Dublin*, was to put the aforeſaid Deſign in Execution, and that then and there they had Speech about that Deſign; but he remembreth not the Particulars: which Deſign was to be put in execution the 23d Day of *October* in that Year; and that he was taken there that very Day, being *Saturday*, upon Search made for him, carried before the Lords Juſtices, examined, committed, and ſent over into *England.*

He ſaith further, That he made his Eſcape out of the *Tower* of *London* upon *Sunday* the 18th of *Auguſt* laſt about Four of the Clock in the Morning. *Laurence Whitaker*, *Iſaac Pennington.*

John Carmick's *Teſtimony.*

THAT upon the 21ſt of *October* 1641. *Fergus O-Howen*, one of the Followers of *Brian Macguire* Eſquire, came to his Chamber in the Caſtle of *Enniſkillen*; and after he endeavoured to bind him to keep ſecret a Matter of great Concernment, which *Fergus* ſaid he had to diſcloſe, and particularly to conceal it from Sir *William Cole*, and all other *Engliſhmen*, this Examinate told him, He would be ſecret ſo far as it went with his Allegiance and Conſcience. He diſcovered unto the ſaid Examinate, that the Lord *Macguire* and *Hugh Oge Macmahone*, accompanied with ſeveral *Iriſhmen* of the Counties of *Fermanagh* and *Menaghan*, did take their Journies out of the ſaid Counties upon the 19th and 20th Days of *October* 1641, to the City of *Dublin*, with Reſolution and Intent to murder and kill his Highneſs's Lords Juſtices, and Council of the Kingdom of *Ireland*, and the reſt of the Proteſtants there; and alſo to poſſeſs themſelves of the City of *Dublin*, and to put all the Proteſtants there likewiſe to the Sword: and that to that effect there were other great Men, and others of the Papiſts of that Kingdom to repair unto, and meet them in *Dublin* on *Saturday*, the 23d of *Octob.* 1631, or thereabouts. And that all the Caſtles, Forts, Sea-ports and Holds that were in the Poſſeſſion of the Proteſtants in the ſeveral Counties and Provinces in the Kingdom of *Ireland*, were then alſo deſigned and reſolved to be ſurprized and taken by the *Iriſh* Papiſts, and the Proteſtants in every of thoſe Caſtles, Forts, Sea-Ports and Holds, to be then alſo put all to the Sword by the *Iriſh* Papiſts in *Ireland*, in their own ſeveral Parts and Limits, by Men thereunto chiefly and particularly appointed by the Contrivers thereof: and that eſpecially the Town and Caſtle of *Enniſkillen*, with the reſt, would be taken, and all the Proteſtants in it put to the Sword; and therefore adviſed the Examinate to get himſelf and Goods out of the Town: whereat the Examinate ſmiling, *Fergus* bid him not to ſlight it, for he could aſſure thoſe Things would come to paſs in ſeven Days, or elſe he would be bound to loſe his Head. Whereupon the ſaid *Fergus O-Howen* departed, and the Examinate acquainting Sir *William Cole* with it, there came one *Flartagh Mac-Hugh*, a Gentleman and Freeholder of that County, and affirms to the ſame effect to Sir *William Cole*, that the Plot for ſurpriſing the City and Caſtle of *Dublin*, the Caſtle of *Enniſkillen*, and all the Caſtles and Strengths in *Ireland*, was to be put in full execution by the Papiſts, *Octob.* 22 and 23, 1641. throughout the ſaid Kingdom; and that *Brian Mac-Conagh Macguire*, Eſq; did ſend him the ſaid *Flartagh Mac-Hugh* to give notice and warning thereof to the ſaid Sir *William Cole*, whom he earneſtly deſired to be upon his Guard upon *Friday* the 22d and *Saturday* the 23d of *October*; for the L. *Macguire* was gone with *Macmahone* and others, that Week, with purpoſe to poſſeſs themſelves of the Caſtle and City of *Dublin*. And the L. *Macguire* had written his Letters to *Con O-Bourke*, *Owen O-Roreicke*, *Martagh Oge O-Fantagon*, and others, to go on with that Plot in thoſe parts; and had appointed his Brother *Rori Macguire* (in his abſence) to command the *Iriſh* Papiſts of the County of *Fermanagh*, for the ſupriſing of the Caſtles and Houſes of the Proteſtants. Of all which Sir *William* advertiſed the Lords Juſtices and Council of *Ireland* the ſame Day. And this Examinate ſaith, that Captain *Mac-Hugh*, ſeven or eight Days before the Rebellion brake forth, declared, That the L. *Macguire* poſted Letters, and rode up and down to divers Gentlemen and others of that County, to be very active in the Buſineſs: That it was averred upon the Oaths of *Flartagh Mac-Hugh*, *John Oge Mac-Hugh*, and *Terlagh Oge Mac-Hugh*, before the ſaid Sir *William Cole*, that 150 Men were appointed to ſurprize the Caſtle of *Enniſkillen*, under the Leading of *Don Macguire* and *Rori Macguire*, who were to murder the ſaid Sir *William Cole*, and his Wife, Children and Servants, and throw them over the Wall into the River, and then to do the like unto the Proteſtants in the Town and Corporation of *Enniſkillen*: for which Service they were not only to have the Spoil and Riches of the ſaid Caſtle and Town, but to have alſo the Barony of *Clanawley* granted and confirmed in Fee to them and their Heirs from the ſaid Lord *Macguire* and his Heirs. The Examinate then alſo produced a Letter written in *Iriſh*, from the Lord *Macguire*, to his Couſin, *Brian Macguire*, wherein taking notice that he was abundantly inclined to the *Engliſh*, which did very much trouble him; and therefore deſired him to baniſh ſuch Thoughts out of his Mind, and not to purſue thoſe Reſolutions which in the end might be his own Deſtruction, as he thought it would be to all thoſe that did not appear.

Preſently after, upon the 29th of *October*, one Captain *Rori-Macguire* took upon him the managing of all Buſineſſes in his abſence; he fortifies firſt the *Caſtle-Haſen*, the Houſe wherein he dwelt himſelf, he took in the Caſtle of one *Edward Aldrith*, Eſq; he put out all the *Engliſh* there; he went to the Town, burnt that, but killed none of the men; went thence to another Place, and hanged one *Eleazer M.* one that was Clerk of the Peace of the County; and from thence he went to *Newton*, four Miles off from it, took in the Town, ſtrip'd and diſarmed all the Proteſtants that were in the Church, the next Day after march'd away, and kill'd and deſtroy'd moſt of the *Engliſh* in thoſe Parts; murder'd *Arthur Champion* Eſq; and many more. Two and twenty Caſtles were ſeized upon, and the Church of *Monah*, with Eighteen Proteſtants burnt in it: Seven hundred ninety-four Proteſtants were deſtroyed in that County; and I did hear there was about One hundred and fifty-two thouſand, that they had deſtroyed in that Province of *Ulſter*, in the firſt four Months of the Rebellion. *John Carmick.*

Then Sir *William Cole* (being preſent in Court) gave in his Evidence much to the ſame effect as in *Carmick*'s Teſtimony.

Serj. *W.* We deſire to ſhorten, we have a great many Witneſſes; we ſhall go upon theſe Particulars: 1. Captain *O-Neale*'s landing in *Ireland*, and what he brought with him. 2. *Guilo* and *Crocan.* Laſtly, How long beſieged, and how many murdered.

Then Sir *William Steward* gave in Teſtimony to this effect.

That *Con Owen O-Neale* landed in *July* the ſame Year the Rebellion began, brought many Commanders, much Arms and Ammunition; many of his Commanders, Nine of the chief of them, were taken Priſoners at one Battle.

Serj. *W.* It is his own Confeſſion, that he ſent a Prieſt over to fetch Arms to come into *Ireland.*

[Then the Lady *Calfield* was deſired to declare her Knowledge concerning the taking of *Charlemont-Caſtle.*]

Lady *Calfield.* The 23d of *October* 1641. Sir *Phelim O-Neale* and others came into the Caſtle, they ſeized upon all, murdered his Servants; and thoſe that were alive, they bound them, and put them in Priſon; and at that time Sir *Phelim O-Neale* himſelf, and other of his Companions, told her, *That* Dublin *Caſtle and City, and moſt other Forts of* Ireland *were ſurprized by their Confederates the Papiſts*; *and that he was ſorry for his Couſin the Lord* Macguire, *and that he was afraid he was taken.*

Serj. *W.* What was done with my Lord *Calfield?*

Lady *Calfield.* He was murdered: he beg'd for his Life, and they durſt not but do it.

Serj. *W.* When Sir *Phelim O-Neale* had taken my Lord *Calfield*, then they got this Lady to write to the Lords Juſtices, that my Lord *Macguire* might be exchanged for her Son, but that would not be; and thereupon they murdered my Lord *Calfield*, *Francis Davis*, and others.

Mrs. Mary Wordroſe's *Teſtimony.*

That he came on *Friday* Night about 10 or 11 a-Clock to break into the Caſtle: I hearing the Noiſe aſked what was the matter? I went to call up ſome of our Gentlemen; when I came in again, they had taken ſome of our Gentlemen and bound them.

She alſo teſtified the murdering of the Lord *Calfield*, *Francis Davis*, and others; and the former Words concerning the Lord *Macguire.*

Serj. *W.* Theſe two Witneſſes prove that of *Charlemont*, how far the Rebels owned the Lord *Macguire*, as to endeavour his Exchange. We ſhall now come to the other Caſtles, how long they beſieged them, and who was murdered.

Walter Gubſon's *Teſtimony.*

They beſieged it a Quarter of a Year before they took it; divers of the chief Conſpirators, and *Powell* and *Coſens* took the Caſtle by force in an hoſtile manner.

Sir Francis Hamilton's *Teſtimony.*

Phillip O-Relly came to the Caſtle, to *Guilo* and *Crocan* Caſtles, and they lay before it a Quarter of a Year with 2000 or 3000 Men, ſometimes 1500, but never leſs.

Sir Charles Coote's *Teſtimony concerning the Generality of the Rebellion.*

Sir *Phelim O-Neale* and *Roger Moore* were the Actors in the Maſſacres, and by publick Directions of ſome in place, and of the Titulary Biſhops, for the ſending of an exact Account of what Perſons were murdered throughout all *Ulſter*, a fourth Part of the Kingdom of *Ireland*, to the Pariſh-Prieſts in every Pariſh; and they ſent in a particular Account of it; and the Account was an Hundred Four Thouſand Seven Hundred in one Province, in the firſt three Months of the Rebellion.

Serj. *W.* What ſay you concerning the general Council and the Pope's Bull?

Sir *Charles Coote.* The Supreme Council, they took up a new Form of Government upon them of their own; and by this Authority it was granted to the Lady *Macguire*, that ſhe ſhould have the Rent of ſuch Lands in Recompence of the Loſs that he was at in their Cauſes. They have made ſeveral Judges of their own Courts: They print, they coin, they do all in their own Names.

The Copy of the Pope's Bull.

Ad futuram Rei Memoriam.

Urbanus Octavus, &c.

HAving taken into our ſerious Conſideration the great Zeal of the *Iriſh* towards the propagating of the Catholick Faith, and the Piety of the Catholick Warriors in the ſeveral Armies of that Kingdom (which was for that ſingular Fervency in the true Worſhip of God, and notable

Care had formerly in the like Caſe, by the Inhabitants thereof, for the Maintenance and Preſervation of the ſame Orthodox Faith, called of old, *The Land of Saints*;) and having got certain Notice how, in Imitation of their godly and worthy Anceſtors, they endeavour by force of Arms to deliver their thralled Nation from the Oppreſſions and grievous Injuries of the Hereticks, wherewith this long time it hath been afflicted, and heavily burdened, and gallantly do in them what lieth to extirpate, and totally root out thoſe Workers of Iniquity, who in the Kingdom of *Ireland* had infected, and always ſtriving to infect the Maſs of Catholick Purity with the peſtiferous Leven of their heretical Contagion: We therefore being willing to cheriſh them with the Gifts of thoſe ſpiritual Graces, whereof by God we are ordained the only Diſpoſers on Earth, by the Mercy of the ſame Almighty God, truſting in the Authority of the bleſſed Apoſtles *Peter* and *Paul*; and by virtue of that Power of binding and looſing of Souls, which God was pleaſed (without our deſerving) to confer upon us; to all and every one of the faithful Chriſtians in the foreſaid Kingdom of *Ireland* now, and for the time militating againſt the Hereticks, and other Enemies of the Catholick Faith, they being truly and ſincerely penitent, after Confeſſion, and the ſpiritual refreſhing of themſelves with the ſacred Communion of the Body and Blood of Chriſt, do grant a full and plenary Indulgence, and abſolute Remiſſion for all their Sins, and ſuch as in the holy Time of Jubilee is uſual to be granted to thoſe that devoutly viſit a certain Number of privileged Churches, within and without the Walls of our City of *Rome*: by the Tenor of which preſent Letters, for once only and no more, we freely beſtow the Favour of this Abſolution upon all and every one of them; and withal, deſiring heartily all the Faithful in Chriſt, now in Arms as aforeſaid, to be Partakers of this moſt precious Treaſure.

To all and every one of theſe foreſaid faithful Chriſtians, we grant Licenſe, and give Power to chuſe into themſelves, for this effect, any fit Confeſſor, whether a Secular Prieſt, or a Regular of ſome Order; as likewiſe any other ſelected Perſon approved of by the Ordinary of the Place; who, after a diligent hearing of their Confeſſions, ſhall have Power to liberate and abſolve them from Excommunication, Suſpenſion, and all other Eccleſiaſtical Sentences and Cenſures by whomſoever, or for what Cauſe ſoever, pronounced, or inflicted upon them; as alſo from all Sins, Treſpaſſes, Tranſgreſſions, Crimes and Delinquencies, how heinous and atrocious ſoever they be, not omitting thoſe very Enormities in the moſt peculiar Caſes, which by any whatſoever former Conſtitutions of ours, or of our predeceſſor Popes (than which we will have theſe to be no leſs valued in every Point) were deſigned to be reſerved to the Ordinary, or to the Apoſtolick See: from all which the Confeſſor ſhall hereby have Power granted him to abſolve the foreſaid Catholicks at the Bar of Conſcience, and in that Senſe only. And furthermore, we give them power to exchange what Vow or Vows ſoever they were formerly aſtricted to (thoſe of Religion and Chaſtity excepted) into any other pious and good Work or Works, impoſed or to be impoſed on them, and every one of them to perform in all the aforeſaid Caſes, by wholeſome Penance, according to the Mind and Will of the Confeſſor.

Therefore, by the Tenor of theſe preſent Letters, and by the Virtue of that holy ſtrict Obedience, wherein all Chriſtians are bound unto us, we charge and command all and every one of the Reverend Brethren, Archbiſhops, Biſhops, and other Eccleſiaſtical Prelates, and whatſoever Ordinaries of Places now reſiding in *Ireland*, together with all Vicars, Subſtitutes and Officials under them; or theſe failing, we command all ſuch to whom in thoſe Places the Care of Souls is incumbent; that as ſoon as they ſhall have received the Copies of theſe our Letters, they ſhall forthwith, without any Stop or Delay, publiſh them, and cauſe them to be publiſhed throughout all their Churches, Dioceſſes, Provinces, Countries, Cities, Towns, Lands, Villages, and Places whatſoever.

Nevertheleſs we do not intend by theſe preſent Letters, where any publick or ſecret Irregularity is made known, or any Defection, Apoſtacy, Incapacity or Inability in any manner of way contracted, to diſpence therewith, or grant to any other any Power or Faculty of Diſpenſation, Rehabilitation, or reſtoring the Delinquent to his former Condition, tho' but at the Bar of Conſcience: Neither can nor ſhould theſe our preſent Letters avail or be ſteadable to thoſe, who by us and the Apoſtolick See, or by any Prelate or Eccleſiaſtick Judge, have been excommunicated, ſuſpended, interdicted, or declared, and publickly denounced to have juſtly incurred the Sentences and Cenſures of the Church, till firſt they have ſatisfied and agreed with the Parties therein concerned, notwithſtanding all other Conſtitutions and Apoſtolical Ordinations; whereby, nevertheleſs, the Faculty of Abſolution in theſe, as well as other expreſſed Caſes, is ſo reſerved to his Holineſs the Pope for the time being, that no kind of Jubilee, nor Power of granting ſuch Indulgences can in any ſort avail, unleſs expreſs mention be made of the Fault or Faults in particular, and the whole Tenor of them fully deduced by an individual Relation from Word to Word, and not by general Clauſes importing the ſame thing. This, or ſome other requiſite Form of the like nature, being carefully obſerved, we in that caſe eſpecially, expreſly and namely, by the effect of theſe Preſents, do totally aboliſh and remit them all and every one of them their Offences, notwithſtanding any thing to the contrary.

Now that theſe principal Letters of ours, which cannot be conveniently brought to every Place, may the ſooner come to the notice of all, our Will and Pleaſure is, that any whatſoever Copies of Tranſumpts, whether written or printed, that are ſubſcribed by the Hand of a Publick Notary, and which have the Seal of ſome eminent Perſon in Eccleſiaſtical Dignity affixed thereunto, be of the ſame Force, Power and Authority, and have the like Credit in every reſpect given unto them, as would be to theſe our principal Letters if they were ſhewn and exhibited.

Dated at *Rome* in the *Vatican*, or St. *Peter*'s Palace, the 25th of *May* 1643. and in the Twentieth Year of our Pontificat.

M. A. Maraldus.

Serj. *Whitf.* We have troubled you with a long Relation of the Actions of the Confederates with the Lord *Macguire*, tho' not done in his own Perſon, and his own particular Act; but for this that was done by the Generality, I heard my Lord ſay at the Bar, What's that to me? Yes, my Lord, this is to you; you were one of the Conſpirators in the firſt Plot, and you contrived the buſineſs. And that had been Treaſon alone, to ſend the Prieſt to fetch *Owen O-Neale* into *Ireland* with Arms and Soldiers: but you contrived this, and conſpired it, and you are as guilty in Law, in all theſe cruel Murders and Burnings in every Place: For the Law of *England* is, in Treaſon you are all Principals and no Acceſſaries. Your Son was there, your Lady is rewarded; for the ſupreme Council they have taken care of you: Why! becauſe you were one of the firſt Complotters of it; and this will light upon you, and fall very heavy. And for your Exchange, it was propounded for the Lord *Calfield*; but when they could not have that agreed upon, then what becomes of the poor Lord *Calfield*? murdered too! And you ſee what Incouragement you have from the Complotters, and from the Devil too; for they were both together in it. And now you have ſeen the Indictment fully made good.

Then the Lord *Macguire* proceeded to make his Defence, wherein he firſt of all denied his Examination, (altho' teſtified, as before, by ſo many credible Witneſſes) and ſaid, That he knew no ſuch Examination.

That at the time of his Apprehenſion at *Dublin*, he came about his own particular Occaſions, as his Eſtate was in Danger, if he did not follow it; That becauſe he was found about the City, he was therefore apprehended; That his Lodging was not within the City, but he lodged without the City; That he did lodge at Mr. *Nevil*'s Houſe formerly, but not at this time; That for ſome of the Places mentioned, where he ſhould be about the Conſpiracy, he had not been there a Year before, he was certain of it. For the Number of Proteſtants that were mentioned to be ſlain, he ſaid he did not think there were ſo many Proteſtants in the whole Kingdom; That he was continually either at his own Houſe, or at *Dublin*, and knew nothing of the Plot, but by Hear-ſay.

Judge. You confeſs in your Examination, when the Day was for the Riſing, that you were in the Conſpiracy, and appointed for the taking of *Dublin*-Caſtle; and that you were taken when you came about it: alſo you rode about it, and provided Arms.

Mac. I was in the Houſe in the Cock-loft where I was taken, I did not know where any Army was.

Serj. *Whitfield.* My Lord *Macguire* does forget himſelf, what he acknowledges under his own Hand.

Then the Examination being ſhewed him, he ſaid, There's my Name, but not my Hand.

Judge. I am ſorry to hear it: I did rather expect that you ſhould have acknowledged it: Here are two able Witneſſes that can teſtify it againſt you; your denying your own Hand, which is ſo manifeſtly proved, will be a great Diſcredit to what you ſay: You acknowledged it at two ſeveral Times.

Mac. What did I acknowledge?

Judge. You ſay that you came to *Dublin* to ſettle your Eſtate: By your own examination you acknowledged, That the Caſtle of *Dublin* was to be ſurprized by you ſelf. But it is now time we ſhould draw to the Jury: You hear my Lord *Brampſton* and my Brother *Finch* here juſtify it to you.

Then my L. *Macguire*'s Examination was ſhewed to my L. *Blaney*, being preſent in Court, demanding whether he thought it to be *Macguire*'s Hand, or no?

Lord *Blaney.* It is my Lord's own Hand, he hath written to me many Letters.

Mac. I don't think I have written many Letters to your Lordſhip.

Judge. Gentlemen of the Jury, you may go to the Buſineſs; if there were nothing that you ſee in this Caſe, but what is in the Examination, if you believe it to be his, his Confeſſion does acknowledge it: You hear this by the Teſtimony of my Lord *Bramſton* and my Brother *Finch* expreſly, who were preſent when he did acknowledge it, and ſet his Hand to it; and yet you ſee, tho' it is here proved by my Lord *Blaney*, he denies it. If you find this to be true, here is Treaſon enough, and too much too; for he does here confeſs, That *Roger Moore* did acquaint him, That if the *Iriſh* did riſe, they might make their own Conditions for regaining their Lands: And he acquainted him, that he had ſpoken with ſundry in *Leinſter*, that would be ready for that purpoſe; and that a great part of *Conaught* would do the like: and then moved him (this Lord) the Priſoner at the Bar, to join likewiſe with him, which he did; ſo then was the Plot. The next Day they met; he goes to *Moore*'s Chamber again, where Col. *Mac-Brian*, *Mac-Mahone* and others had Diſcourſe again about it. Then he ſays, That they did ſend over to *Owen O-Neale*, to acquaint him concerning the general Rebellion in *Ireland*, then in preparation. He confeſſes expreſly, That being demanded why the ſaid *Owen* ſhould bring over Arms, ſeeing the Caſtle of *Dublin* was to be ſurprized? he anſwered, That they ſo provided Arms, that they might not want any thing, if they ſhould not take it, whereof they doubted. And then you have him acknowledging, That the Caſtle of *Dublin* was to be ſurprized by himſelf, and Captain *Brian O-Neale*, and others. Theſe Words ſhew here expreſly, That the Day whereon the Execution, was appointed, by the L. *Macguire*'s own confeſſion, he was come to *Dublin* for the Surprize of the Caſtle. So that it is apparent, that he was about this Plot expreſly. If this be true, That you did conſpire to make War or Rebellion within that Kingdom, tho' you were taken yourſelf before it was executed, yet it was your own Conſpiracy: And beſides, endeavouring after that to bring it to Perfection by ſending over for Arms; all theſe do diſcover your own Intention to execute it.

Mac. I confeſs it not, I refer myſelf to the Jury.

Judge. Gentlemen, you are to know, That to conſpire to raiſe a War, if any of that Conſpiracy do act it, as you ſee here Sir *Phelim O-Neale* did, if you obſerve the Teſtimony of my Lady *Calfield*, he came and ſurprized the Caſtle of *Charlemont*, and then it was given out, That my Lord *Macguire* had taken *Dublin*; ſo that tho' it did not take effect, that which is done by any, is Teſtimony enough.

Go together and conſider of it.

Upon this the Jury went together, and ſtaying a ſhort ſpace, returned their Verdict, which was, That they found him guilty of all the Treaſons according to the Indictment.

Clerk. Connor Macguire, alias *Cornelius Macguire*, thou haſt been indicted for ſeveral High-Treaſons, and thou haſt been arraigned. Upon the Arraignment

ment thou haſt pleaded, Not Guilty; and for thy Trial haſt put thyſelf upon the Country, which Country have found thee guilty, according to the Indictment: therefore prepare thyſelf to receive the Sentence.

Macg. I deſire to know by what Law?

Judge. The Law is well enough known: That is a Treaſon within the Statute without doubt.

Macg. I was not tried by my Peers.

Judge. This is a general Exception, formerly annexed in your Plea: If you can ſhew ſome particular Cauſe alſo, you ſhall be heard.

Macg. I deſire Counſel to adviſe me.

Judge. When you did put in a Plea therein, you had Counſel to adviſe you in your Plea, and to argue it: Now your Time is paſt for Counſel; you muſt have none aſſigned to pick Holes in the Indictment.

Macg. I deſire the Court would conſider of it before they proceed to Sentence.

Judge. You offer nothing to the Court that is of any difficulty: You had Counſel whether you ſhould be tried by your Peers, or the Jury here; which Jury are to try any Man under a Nobleman in this Kingdom.

Macg. I deſire to know under what Seal you thus proceed againſt me; for I think you ſit here by the new Seal.

Judge. What Seal do you mean? I ſit here by virtue of the old, by order of Parliament.

Macg. Under favour, I conceive that the Ordinance of Parliament for the new Seal, makes all done by the old Seal to be void.

Judge. Here is nothing done but by good Authority and the Parliament's Approbation.

Macg. I conceive the Ordinance for the new Seal cuts off all Proceedings of the old.

Judge. My Authority is not cut off: I was made by the old Seal before there was any new Seal, and ſo I am continued by the Parliament; and the Parliament did take notice that I have been allowed to ſit. Beſides this, there is nothing done in this Court by the new Seal: The Sheriffs are here by a Charter, and that comes in from Year to Year; and there is no Seal in order of Execution.

Judge. Well, if you have nothing to ſay for yourſelf, I am to pronounce Sentence, as I am a Miniſter of Juſtice. You have been indicted here for ſeveral Treaſons contained in your Indictment, as was here of late read unto you; and you have had a fair Proceeding, and very deliberately: For your Indictment came in about *Alhallowmas* laſt, three Weeks or a Month before the end of the laſt Term, three Weeks at leaſt. You then made a Queſtion, Whether you ought to be tried by your Peers in *Ireland*, or a Jury here? The Court did ſo far deliberate in it, as to allow you Counſel to plead with the beſt Advantage you could: And afterwards, this Term there have been two Arguments at the Bar on each ſide, where hath been ſaid as much for you as can be. The Court over-ruled that, and ſo you are tried by a Jury; and you had the Liberty to challenge them, and had all the Advantages that the Law will afford, and take all the Exceptions you could. Truly for my part, I ſee that there is not any one of them for me, to ſway the Judgment: The Treaſon and the Offences that you are charged withal are very heinous, your Crimes very impious; great Deſtruction hath followed upon your Plot, which the Jury have found you guilty of. What a mighty cruel War and great Devaſtation in that Kingdom? Moſt horrid to ſpeak or rehearſe! It is fitter for you now to bethink yourſelf what your Offences are, and prepare yourſelf for Death, rather than ſeek to maſk or put colours upon thoſe things which are ſo manifeſtly proved to all the World. And now you are found guilty; and therefore there is no Contradiction or Gain-ſaying will avail you: You ought to repent, and pray to God to forgive that Offence whereof you are guilty. The Judgment that I am by the Law to pronounce againſt you, is this: *Connor Macguire* Eſq; you being found guilty of the Treaſons whereof you are indicted, your Judgment is, That you ſhall be carried from hence to the Place from whence you came, that is the *Tower*, and from thence to *Tyburn*, the Place of Execution; and there you ſhall be hanged by the Neck, and cut down alive, your Bowels taken out, and burnt before your Face, your Head to be cut off, your Body to be divided into four Quarters, and the Head of your Body to be ſet up and diſpoſed of as the State ſhall appoint. And the Lord have Mercy upon your Soul.

After Judgment pronounced, the King's Counſel demanded of him whether he would have any Miniſters come to him, to prepare him for his end, and to adviſe him for the good of his Soul.

Macg. I deſire none of them: But I deſire I may be ſent Priſoner to *Newgate*.

Counſel. His Reaſon is, Becauſe there are ſome Popiſh Prieſts there.

Judge. That cannot be: Your Judgment is to return to the *Tower*; where you may have Miniſters (if you pleaſe) to return to adviſe you for your Soul.

Macg. I deſire that ſome Gentlemen of my own Religion may have Acceſs to me, to confer with me; and ſome who are my Fellow-Priſoners in the *Tower*, to ſpeak with me in my Keeper's Preſence.

Judge. You muſt name ſomebody in particular.

Macg. I deſire to confer with Mr. *Walter Montague.* [*Belike he knew him to be a Popiſh Prieſt or Jeſuit.*]

Judge. You muſt prepare yourſelf to die againſt *Saturday* next.

Macg. I deſire a fortnight's Time to prepare myſelf.

Judge. That is too long a Space, and I cannot grant it; but you ſhall have convenient Time.

Macg. I deſire you that I may have three Days notice at leaſt to prepare myſelf.

Judge. You ſhall have three Days warning; but however delay no Time to prepare yourſelf.

Macg. I deſire my Execution may be altered, and not according to the Judgment; and that I may not be hanged, and quartered.

Judge. This lies not in my Power to grant: But here are ſome Members of the Houſe of Commons in Court, and you were beſt addreſs yourſelf to them, that they may acquaint the Houſe with your Deſires.

Macg. I ſhall deſire the Gentlemen of the Houſe of Commons, ſo many as are here, to move the Houſe in my behalf, that I may have a Fortnight's Time to prepare myſelf, and that the Manner of my Execution may be changed.

Sir *John Clotworthy.* My Lord, I have been your School-fellow heretofore, and I have found ſome Ingenuity in you; and I have ſeen ſome Letters of yours importing ſome Remorſe of Conſcience in you for this Fact; and I ſhould be glad to diſcern the like Ingenuity in you ſtill: And ſhall move the Houſe that you may have ſome Miniſters appointed to come to you; and likewiſe acquaint them with your other Deſires.

Then the Priſoner departing from the Bar, Mr. *Prynn* adviſing him to confer with ſome godly Miniſters for the Good and Comfort of his Soul; he anſwered, That he would have none at all, unleſs he might have ſome *Romiſh* Prieſts of his own Religion.

To which Mr. *Prynn* replied, my Lord, theſe *Romiſh* Prieſts are the chief Inſtruments who have adviſed you to plot and perpetrate thoſe execrable Treaſons, for which you are now condemned, and have brought upon you that ſhameful Judgment of a Traitor, the Execution whereof you even now ſo earneſtly deprecated. Since then they have proved ſuch evil deſtructive Counſellors to you in your Life, you have great Reaſon to diſclaim them with their bloody Religion, and to ſeek out better Adviſers for you at your Death, leſt you eternally loſe your Soul as well as your Life, for the Blood of thoſe many thouſand Innocents which have been ſhed by your Means. To which he, pauſing a little, anſwered, That he was reſolved in his Way. Whereupon another Lawyer ſaid, My Lord, you were beſt to hear both Sides. To which he anſwered, in an obſtinate Manner, I am ſettled on one Side already, and therefore I deſire not to confer with any other. And ſo departed thro' the Hall towards the *Tower*, the People crouding and running about to behold his Perſon.

After the Sentence pronounced againſt the Lord *Macguire*, as before ſaid, he petitioned the Parliament as followeth:

To the Right Honourable the Commons now aſſembled in Parliament, the humble Petition of the Lord Macguire;

Humbly ſheweth,

THAT your Petitioner ſtands condemned for his Life, and adjudged to be drawn, hanged, and quartered: The Performance whereof (he humbly conceives) in ſome more favourable Manner, will be ſatisfactory to Juſtice. And foraſmuch as your Petitioner hath hitherto enjoyed the Degree and Dignity of a Lord, which he humbly conceives your Honours are well acquainted with:

In tender Conſideration whereof, he deſireth that your Honours will graciouſly be pleaſed in Mercy to mitigate the Rigour of his Sentence, and turn it to that Degree which moſt befits the Denomination he hath: And as he hath been looked on by the Eye of Juſtice in his Condemnation, ſo in this Particular he may be pitied, and have Mercy.

And he ſhall ever pray, &c.

Cornelius Macguire.

But this Petition was rejected by the Parliament, and on *Thurſday*, *February* the 20th he was drawn on a Sledge from the *Tower* thro' *London*, and ſo to *Tyburn*; where being removed into a Cart, he kneeled and prayed a-while: After which, Sheriff *Gibbs* ſpake to him, repreſenting the Heinouſneſs of his Crime, and the vaſt Numbers who had been murder'd by that Conſpiracy, for which he was to ſuffer, and therefore exhorted him to expreſs his Sorrow for it; in anſwer to which he ſaid, *I deſire Almighty God to forgive me my Sins.*

Ruſh. Col. *Vol.* 1. *p.* 736.

Sheriff Gibbs. Do you believe you did well in thoſe wicked Actions?

Macg. I have but a ſhort time, do not trouble me.

Sher. Sir, it is but juſt I ſhould trouble you, that you may not be troubled for ever.

Macg. I beſeech you, Sir, trouble me not, I have but a little time to ſpend.

Sher. Sir, I ſhall give you as much time after as you ſhall ſpend to give Satisfaction to the People: I do require you, as an Inſtrument ſet in God's Stead here, to make an Acknowledgment to the People, whether you are ſorry for what you have done or no, whether it be good or no.

Macg. I beſeech you do not trouble me, I am not diſpos'd to give you an Account. Pray give me leave to pray.

Dr. *Sibbald.* Give Glory to God, that your Soul may not be preſented to God with the Blood of ſo many thouſand People.

Sher. You are either to go to Heaven or Hell. If you make not an ingenuous Confeſſion, your Caſe is deſperate: Had you any Commiſſion, or no?

Macg. I tell you that there was no Commiſſion, that ever I ſaw.

Sher. Who were Actors or Plotters with you? or who gave you any Commiſſion?

Macg. For God's Sake give me leave to depart in Peace.

Then they aſked him, *If he had not ſome Pardon or Bull from the Pope for what he did?* To which he only anſwer'd, *I am not of the ſame Religion with you.* And being further urg'd about a Bull or Pardon, ſaid, *I ſaw none of it*; *all that I knew*, *I deliver'd in my Examinations*; *all that I ſaid in my Examinations are true*; *all that I ſaid, is right. I beſeech you let me depart in Peace.* And ſo not returning them any Anſwer to their Queſtion, he continued mumbling over a Paper, which he had in his Hand, as he had done from his firſt coming. The Sheriffs commanded his Pockets to be ſearch'd, whether he had no Bull or Pardon about him; but they found in his Pockets only ſome Beads and a Crucifix, which were taken from him. And then Dr. *Sibbald* ſaid to him, Come, my Lord, leave theſe, and acknowledge your Offence to God and the World; one Drop of the Blood of Jeſus Chriſt is able to purge away all the heavy Load of Blood that is upon you: It is not your *Ave Maria*'s, nor theſe things, will do you any good; but it is *Agnus Dei qui tollit peccata Mundi.* The Lord *Macguire* ſeem'd not to regard his Diſcourſe, but read out of his Paper to the People as followeth.

Since I am here to die, I deſire to depart with a quiet Mind, and with the Marks of a good Chriſtian; that is, aſking Forgiveneſs firſt of God, and next of the World. And I do forgive (from the Bottom of my Heart) all my Enemies and Offenders, even thoſe that have an Hand in my Death. I die a Roman Catholick, and altho' I have been a great Sinner, yet am I now by God's Grace heartily ſorry for all my Sins; and I do moſt confidently truſt to be ſaved (not by my own Works, but only) by the Paſſion, Merits and Mercy of my dear Saviour Jeſus Chriſt, into whoſe Hand I commend my Soul. And then added, I beſeech you, Gentlemen, let me have a little time to ſay my Prayers.

Sher. Sir, If you anſwer ingenuouſly to theſe Queſtions we ſhall aſk you, you ſhall have time afterwards: Whether do you account the Shedding of the Proteſtant Blood to be a Sin, or not; and whether do you deſire Pardon of God for that Sin?

Macg. I do deſire Pardon of God for all my Sins: I cannot reſolve you in any thing for my Part.

Sher. You can tell what your Conſcience dictates to you; do you think it was a Sin, or not?

Macg. For my Part I cannot determine it.

Sher. Then now it ſeems nothing to you to kill ſo many.

Macg. How do you mean killing of them? To tell you my Mind directly, for the killing I do not know that, but I think the *Iriſh* had a juſt Cauſe for their Wars.

Sher. Was there any Aſſault made upon you? Had you not enter'd into a Covenant? Had you not engaged by Oath yourſelf to the King?

Macg. For Jeſus Chriſt Sake, I beſeech you to give me a little time to prepare myſelf.

Sher. Have Pity upon your own Soul.

Macg. For God's Sake have Pity upon me, and let me ſay my Prayers.

Sher. I ſay the like to you, in Relation to your own Soul; whether you think the Maſſacre of ſo many thouſand Proteſtants was a good Act? For Jeſus Chriſt's Sake, have Pity upon your own Soul.

Macg. Pray let me have a little time to ſay my Prayers. All this while his Eye was moſtly upon his Papers, mumbling over ſomething out of them to himſelf. Whereupon one of the Sheriffs demanded thoſe Papers of him. He flung them down; they were taken up and given to the Sheriff. They aſk'd him farther, whether they were not ſome Agreement with the Recuſants here in *England?* Whereunto he anſwered, I take it upon my Death, I do not know that any Man knew of it; and after ſome other ſuch-like Talk, the Sheriff bidding him prepare himſelf for Death, he ſaid, I do beſeech all the Catholicks that are here to pray for me. I beſeech God to have Mercy upon my Soul. *And ſo was executed.*

XLIII. *The Trial of Sir* ROBERT SPOTISWOOD, *Preſident of the College of* Juſtice *in* Scotland, *and Secretary there to King* Charles I. *for* High-Treaſon, *in the Parliament held at* St. Andrews, November, December, *and* January, 21 Car. I. 1645.

SIR *Robert Spotiſwood* having been ſent by the King into *Scotland* to negotiate Matters with the Marquis of *Montroſe*, and to carry him, among other things, a Commiſſion to be Generaliſſimo of all his Forces there, took the Opportunity of the Army's marching Southward for his more ſafe Return to his Maſter, to whom he was to give an Account of his Negotiation; but being unfortunately taken Priſoner at the Battle of *Philiphaugh*, where *Montroſe*'s Army was defeated by General *Leſlie*, he was carry'd firſt to *Glaſgow*, and afterwards to St. *Andrews*, where the following Proceſs was proſecuted againſt him.

DITTAY againſt Sir *Robert Spotiſwood.*

SIR *Robert Spotiſwood*, you are indicted and accuſed before the Committee of Eſtates of Parliament; that for ſuameikleas, by the common Law, Law of Nations, Laws and Acts of Parliament, and Practick of this Kingdom; and by all Juſtice, Reaſon, Equity, and Conſcience, all that riſe in Arms, and concur with the Adverſaries of this Kingdom, for ſubduing of their native Country; all Invaders, Aſſaulters, or Subduers of this Kingdom, or any Part thereof, by Force of Arms; all who contribute their Help, Countenance, and Aſſiſtance, to the Adverſaries, Aſſaulters, or Invaders thereof in an hoſtile Way: All who are either Authors, Abettors, Maintainers, Suppliers, or concurr with the Adverſaries of this Kingdom, in the aſſaulting, or ſubduing thereof, or any Part thereof: And all who are Art and part of the ſaids Crimes, Miſdeeds, and Malverſations above ſpecified, or any of them, incurr the Pain of High-Treaſon againſt his Majeſty, his Crown, and againſt the Eſtates of this Kingdom, and the Pain of Forfaulture of Life, Lands, Eſtate, and Goods to be execute againſt them, by the Eſtates of this Kingdom, and the Benefit thereof to be apply'd to the Uſe of the Publick for Relief of their Burdens: And the Committers of the ſaid Crimes above-ſpecify'd, or any of them, are otherwiſe cenſurable and puniſhable in their Perſons, Names, and Fame, and in their Lands, Goods, Means, and Eſtate, by Fining, Confining, or otherwiſe, as the Eſtates of this Kingdom ſhall think expedient. And Albeit, That by the Acts of Parliament of this Kingdom, eſpecially by the 130th Act of the 8th Parliament of King *James* VI. in *May* 1584. It is ſtatute and ordain'd, that none of the King's Liedges and Subjects preſume, or take upon Hand, to impugn the Dignity and Authority of the Eſtates of Parliament, or to ſeek or procure the Innovation or Diminution of the Power and Authority of the Seamen, or of any of the Eſtates thereof in any time coming, under the Pain of Treaſon. Likeas, albeit by the fourth Act of the third Parliament of King *Charles*, dated 29th of *June* 1644, all takers up of Arms againſt the Kingdom and Eſtates of the Country, are guilty of Treaſon, and puniſhable by Forfaulture of Life, Lands, and Goods, or any other Cenſure the Parliament ſhall pleaſe to inflict. Yet nevertheleſs, the ſaid Sir *Robert Spotiſwood* having ſhaken off all Fear of God, and due Reſpect to the Laws of the Kingdom, and all Duty that as a Subject thereof you ought to have carry'd to the Kingdom, and to the Defence thereof, eſpecially in theſe troubleſome Times, when this Kingdom has been threaten'd to be ruin'd and deſtroy'd, with the hoſtile Invaſion of ſome of her unnatural Brood, and ſome *Iriſh* Rebels, and forgetting and contemning that gracious Favour mentioned in the 33d Act of King *Charles*'s ſecond Parliament, of Date 16 of *November* 1641, whereby the Eſtates of Parliament therein conveen'd did then declare, that for the good and grave Conſiderations mentioned, they would not proceed to a final Sentence againſt you, for ſuch Crimes and Miſdemeanors as at that time you were cited before them, and accuſed as guilty of, nor would inſiſt upon the Puniſhment thereof. You have preſum'd and taken upon Hand, to abuſe the King's Majeſty, in purchaſing from his Majeſty by your pretended Ways, the Office of Secretary to yourſelf, and have receiv'd the Signet thereof, which was formerly keeped by the Earl of *Lanerk*, who was appointed by his Majeſty and the Eſtates of Parliament in *Anno* 1641, to be Secretary to his Majeſty for this Kingdom of *Scotland*, and that contrary to his Majeſty's Declaration emitted by his Majeſty in the ſaid Parliament; whereby his Majeſty did declare, that he would not imploy you in any Office or Place of Court or State without Conſent of Parliament, nor grant you Acceſs to his Perſon, whereby you might interrupt or diſturb the firm Peace, was then ſo happily concluded. Likeas, ſince your purchaſing of the ſaid Office of Secretary, at leaſt taking the ſamen Office upon you, and of the keeping of the Signet thereof, you have docqueted with your Hand, ſigneted with the Signet of the ſaid Office, ſeveral Commiſſions granted to *James Graham* ſometime Earl of *Montroſe*, a declared and forfaulted Traitor, and an excommunicated Perſon: and eſpecially, a Commiſſion dated the 5th of *June* 1645, given by the King's Majeſty to the ſaid *James Graham*, making and conſtituting the ſaid *James Graham* Lieutenant-Governor, and Captain General of all Forces rais'd or to be rais'd within this Kingdom; and giving Power and Authority to the ſaid *James Graham*, to raiſe and levy Forces within this Kingdom, and to lead and conduct them againſt the King's Majeſty's good Subjects, and againſt the Forces rais'd and levy'd in Arms by Authority of the Eſtates of Parliament of this Kingdom, for the Maintainence, Defence, and Proſecution of the mutual League and Covenant. By which Commiſſion ſo docqueted and ſigneted by you, as ſaid is, the King's Majeſty's good Subjects who have riſen in Arms for the Defence of the ſaid League and Covenant, and whoſe riſing in Arms is allow'd and authoriz'd by the Eſtates of Parliament of this Kingdom, are deſign'd as traiterous and ſeditious Perſons. And als, you have docqueted and ſigned with your Hand, a Proclamation alledged emitted by the King's Majeſty for holding of Parliaments within this Kingdom; which Proclamation is totally deſtructive of, and derogatory to the Dignity and Authority of the Eſtates of Parliament preſently conveen'd by vertue of the laſt Act of the laſt Parliament 1641, and which Proclamation annuls and condemns the Procedure thereof. And als, you have docqueted and ſign'd with your Hand, a Commiſſion granted by the King's Majeſty to *James Graham* ſometime Earl of *Montroſe*, to be Commiſſioner for his Majeſty for holding of the ſaid pretended Parliament: in docqueting and ſigning of which Proclamation, Commiſſions and Warrants, you have abuſed the aforeſaid Office of Secretary, and that to the Derogation and Diminution of the Honour, Dignity, and Authority of the Eſtates of Parliament of this Kingdom. Likeas, you not being contented with your abuſing of his Majeſty, in purchaſing of the foreſaid Office of Secretary from his Majeſty, contrary to his Majeſty's Declaration in Parliament, in manner and at the time as ſaid is, at leaſt with the taking the ſame upon you, and with the docqueting the foreſaid Commiſſions to the ſaid *James Graham*, and of the foreſaid Proclamation for the Parliament; which is not only derogatory to the Dignity and Authority of the Eſtates of Parliament, but alſo deſtructive of the whole Power thereof, and which declares the Procedure of the Eſtates of Parliament to be Treaſon: You have actually and really joined yourſelf in an unnatural and traiterous way againſt this Kingdom, with the ſaid *James Graham* and his rebellious Army, wherewith he infeſted and troubled the Peace of this Kingdom, and cruelly and unnaturally deſtroy'd and murder'd the King's Majeſty's loyal Subjects; and have been with the ſaid *James Graham* at all the Acts of Hoſtility committed by him and his rebellious Army within this Kingdom, within the Months of *Auguſt* and *September* laſt 1645, or one or other of them. And in ſpecial, you was with him and his rebellious Army after the Conflict at *Kilſyth*, which was upon the 15th of *Auguſt* laſt 1645, betwixt the Army and Forces of this Kingdom, and the ſaid rebellious Army conducted by the ſaid *James Graham*, where you did join yourſelf with the ſaid *James Graham* and his rebellious Army, and was actually with him thereafter, in his Progreſs going thro' the Country in ſubduing the ſame, *viz.* From *Kilſyth* to *Bothwel*, and from *Bothwel* to *Calder*, and from thence to *Limphoy*, and from thence to *Cramſton-riddel*, and from thence to *Torwoodley*, and from thence to *Kelſo*, and from thence to *Jedburgh*, and from thence to *Selkirk*, and to the Fields betwixt *Selkirk* and *Philiphaugh*, where the ſaid *James Graham* and his rebellious Army, were upon the 13th of *September* laſt, by the Mercy of God upon his diſtreſſed People, and by the Strength of his Right-hand againſt his Enemies, defeat and confounded, and where you were actually with the ſaid *James Graham* and his ſaid rebellious Army; at leaſt you the ſaid Sir *Robert Spotiſwood* did join with the ſaid *James Graham* and his rebellious Army, at one or other of the ſaids Places particularly above-ſpecified; and during your being with the ſaids *James Graham* and the ſaids Rebels the time foreſaid, you did ſubſcrive a Letter written by yourſelf to ſome Nobleman about the King's Perſon in *England*, of the Date, from about *Kelſo* to 10th of *September* laſt 1645, which was after the foreſaid Conflict at *Kilſyth*; wherein you boaſt, that you had diſperſed the King's Majeſty's Enemies within this Kingdom, ſome of them to *Ireland*, and ſome to *Berwick*; whereby you do expoſtulate, that no Party was ſent after Lieutenant-General *David Leſley*, who at that time came in with, and conducted Forces within this Kingdom for repreſſing and ſubduing that rebellious Army, wherein you were for the time: And in which Letter, you profeſs'd a Reſolution to follow that rebellious War whereunto you had aſſociate yourſelf, and to clear the Kingdom of the Rebels that had fled to *Berwick*. By which Name of Rebels you did mean and expreſs his Majeſty's beſt and moſt loyal Subjects, within this ſaid Letter of yours, containing many Expreſſions of your joining the ſaid *James Graham* and his rebellious Army, and of your unnatural and traiterous Reſolution to aſſiſt the Proſecution of the ruin and deſtruction of this Kingdom as the ſaid Letter bears. Which Crimes above-ſpecify'd, or one or other of them, you cannot deny; and therefore you as a Traitor to this Kingdom have incurr'd the pain of High-Treaſon, and the pain of Forefaulture of Life, Lands, Eſtate, and Goods to be execute againſt you by the Eſtates of this Kingdom, and the Benefit thereof to be apply'd to the uſe of the Publick, for the Relief of their Burdens, or otherwiſe, in the option of the ſaids Eſtates of this Kingdom, you are cenſurable and puniſhable in your Perſon, Name, and Fame, and in your Lands, Goods, Means and Eſtate, by fining, confining, or otherwiſe, as the ſaids Eſtates of this Kingdom ſhall think expedient.

Glaſcow, 5th *November* 1645.

The Committee ordains the Dittay to be tranſmitted, ſent and deliver'd to the above-written Sir *Robert Spotiſwood*, where he is preſently in the Caſtle of *Glaſcow*; and ordains the ſaid Sir *Robert* to be ready to anſwer to the ſaid Dittay. At St. *Andrews*, upon the 13th of *November* Inſtant 1645.

Sic Subſcribitur,

JA. PRYMROSE.

ANSWERS *to the Dittay given in againſt Sir* Robert Spotiſwood.

IN regard the Defences given in by *James Ogilvie*, againſt the Relevancy of his Dittay, will militate likewiſe in my behalf, I repeat the ſame for me *brevitatis cauſa*.

This of mine is founded upon two Acts of Parliament, the one in *May* 1584, and the other in *June* 1644. By the firſt, it is declared to be Treaſon, to impugn the Dignity and Authority of the Eſtates of Parliament, or to ſeek and procure the Innovation or Diminution of the Power and Authority of the ſamen, or any of the Eſtates thereof. It is ſubſumed, that I have forefaulted againſt this Act, in ſo far as I, forgetting and contemning the Favour granted to me in the laſt Parliament, 1641. have abuſed his Majeſty, in purchaſing from him the Office of Secretary, contrary to the Declaration emitted by his Majeſty in the ſaid Parliament. Likeas, ſince the Purchaſing thereof I have docqueted and ſigneted with the Signet of the ſaid Office, the two Commiſſions and Proclamation mentioned in the Dittay: In doing whereof I am alledged to have abuſed the foreſaid Office of Secretary, and that to the Derogation and Diminution of the Honour, Dignity and Authority of the Eſtates of Parliament of this Kingdom.

Firſt, To this Act of Parliament I anſwer; It cannot militate againſt me, in regard of the Scope and Intention thereof; which was only to reſtrain the Liberty which ſome in thoſe Times took to themſelves, to call in Queſtion the Power that one of the three Eſtates then had to ſit and vote in Parliament. Which is clear, both by the Preface of the ſaid Act (*viz.* finding the Power, Dignity and Authority of the Court of Parliament of late Years called in ſome doubt; at leaſt ſome curiouſly travelling to have introduced ſome Innovation thereanent) and by other Records of that time; eſpecially a Declaration of the King's, yet extant in print, publiſh'd in *Anno* 1585. In which he who knew beſt what was meant thereby, declareth this to have been only the Parliament's Intention in making of this Act. So that it cannot be extended to other Caſes, namely this in hand.

Secundo, Giving, that this Act of Parliament could be extended beyond the true Intent and Meaning thereof; yet the particular Deeds libelled, whereby I am alledged to have tranſgreſſed the ſame, and conſequently to be guilty of Treaſon, are not relevant to import ſo much. And firſt, whereas to aggravate the Matter, I am charged to have been unmindful and unthankful for the Favour I received at the laſt Parliament: Let me ſay this much without Offence, That as I eſteem highly of their Favour, ſo I was not obnoxious to their Cenſure at that time: Whereanent I refer myſelf to that Proceſs, wherein nothing was proven of all that was alledged againſt me.

As to the Purchaſing of the Secretary's Office, what paſt about that, and how far I had Intereſt therein, I remit to the Declaration given in by me to the Committee at *Glaſgow*, which I uſe as a part of my Defence againſt this Point. The Truth is, That the Lord Secretary being from Court at the time, and there being ſundry Sollicitors to his Majeſty for Grants of divers Natures, having relation to this Kingdom, he was pleaſed (there being none then about him fit for the Imployment) to intruſt me with a ſighting and preſenting of the ſame unto him, by ſending me a Warrant under his Sacred Hand to that effect, and the Signet withal, to be kept by me during the abſence of the Secretary, or while his Majeſty ſhould take further Order thereanent. In accepting whereof, I cannot imagine that I did commit any thing worthy of Blame; or that his Majeſty did any thing contrary to the Declaration emitted by him in Parliament, he having conferred no ordinary Place or Office upon me, but only a temporary Imployment *in caſu neceſſitatis*, having none elſe for the time to lay it upon. Likeas I ſee not how I can be charged with Preſumption (as the Dittay bears) in doing thereof; in reſpect that by natural Allegiance (from which no Power under Heaven can looſe me) I am bound to ſerve and obey his Majeſty whenſoever he calls upon me for that effect. And as to that part of his Majeſty's Declaration, not to grant me acceſs to his Perſon; it was never his Intention otherwiſe but in the Caſe annexed, *viz.* whereby I might interrupt or diſturb the firm Peace then ſo happily concluded; which (I thank God) never ſo much as once enter'd into my Thought, as my own Conſcience, and my Behaviour about his Majeſty this while paſt doth bear me Witneſs. Beſides his Majeſty's Declaration, That he ſhould not give any acceſs to thoſe therein mentioned, is not a penal Statute, or Act of the Eſtates, diſabling or reſtraining them to repair to his Majeſty, under any Pain or Certification in caſe they ſhould contraveen, but only a Declaration emitted by his Majeſty himſelf, that he would not admit them to the end expreſſed in the Act. And therefore the ſame is inept to be the Ground or Aggravation of a Criminal Dittay.

As for docqueting and ſigneting Commiſſions, and other Warrants preſented by me, I hope in itſelf it is no Crime, altho' I was not actual Secretary, I having done it by his Majeſty's ſpecial and expreſs Command. For the three Particulars chopt at in the Dittay, I can anſwer: *Firſt*, To the Commiſſion of Lieutenantry docqueted by me, it is but a Double, as the Docquet, I believe, bears, the Principal having been ſent long before by the *Engliſh* Secretary, who was the ſole mover and procurer of it.

Next, To the Proclamation for holding a Parliament, it was drawn *in terminis* by his Majeſty's ſpecial Direction, and docqueted by me, as it is, blank in Day and Place, and other Circumſtances; his Majeſty's Intention in it being only this, to have it come to his hand, to whom it was intruſted, who by ſpecial Order was to diſpoſe of it, as ſhould be found beſt for the Peace of the Kingdom, without Derogation to the ſtanding Laws thereof: neither hath there any Uſe at all been made of it, he having indicted a Parliament before it came to his Hands, by virtue of a preceding Warrant. Wherein it may ſeem to annul and condemn the Procedure of the Eſtates of Parliament preſently conveen'd, or be otherwiſe deſtructive and derogatory to the Dignity and Authority thereof, it is not my part to meddle with, his Majeſty being moſt concerned therein, whoſe Buſineſs it is, I having no further hand in it, but in ſo far as I was obedient to my Maſter's Directions; which by no Law or Act of Parliament can bring me within the Compaſs of the leaſt Cenſure, let be the Guilt of Treaſon. For I am not here (neither can be) called in Queſtion for that which uſually the Miniſters of Princes have been charged with (*viz.* giving of bad Counſel) but only for docqueting and ſigneting theſe three Warrants, which I could not in Duty refuſe, being commanded by his Majeſty to do the ſame.

To the third and laſt Commiſſion I make the ſame Anſwer.

The ſecond Act of Parliament, whereupon this Dittay is founded, is in *June* 1644, bearing, That they who take up Arms againſt the Kingdom and Eſtates of the Country, are Guilty of Treaſon. For anſwer to this part of the Dittay, I ſay, it is not relevantly ſubſumed, that I took up Arms againſt the Kingdom: Only it is alledged, that I was in Company with *James Graham* in his Progreſs thro' the Country, after the Conflict at *Kilſyth*, which by no Interpretation, can be thought to be a taking up of Arms againſt the Kingdom; eſpecially ſince I was directed to him from his Majeſty, and by that Occaſion, and none other, was with him in Company.

Secundo, In the Act itſelf, it being propond in the Quere, Whether aſſiſting, or taking Arms with thoſe who have invaded the Country, ſhall be relevant to make up a Dittay againſt the Doers thereof, no Anſwer is given thereunto by the Parliament; which imports as much, that they thought it not reaſonable to make the Aſſiſters of ſuch as are in Arms againſt the Kingdom and Eſtates, guilty of Treaſon: If not their Aſſiſters, far leſs ſuch as were only in Company with them occaſionally, as I was.

As to the Letter written by me about *Kelſo*, whatever be in it, it cannot be charged upon me; becauſe it went no further than Intention, I having upon better Thoughts called it back, in regard of ſome Expreſſions in it, which might ſeem injurious to thoſe engaged on the other Side. For whatever I think of the Courſe, I thank God, I hate no Man's Perſon that is imbarked therein, nor could wittingly irritate the meaneſt of them by any opprobrious Compellation. Always the moſt can be in it, is Inadvertancy.

To cloſe all, in all this Dittay (laying aſide the ſecond Act, which I hope is ſufficiently anſwer'd) I am not charg'd with any thing that is declared by any Law or Act of Parliament to be Treaſon, which by the 28 Act, 1641. is required, before any Perſon can be declared a Traitor.

Theſe Anſwers for your Lordſhips Satisfaction, I have given in preſently, under Proteſtation, That (in reſpect I have been ſtraitned with Time, and could not gather my Thoughts ſo well as was requiſite) I ſhall be heard to alledge what further I can bethink myſelf of, before the cloſing of the Proceſs, either by Writ or Word, as your Lordſhips ſhall be pleaſed to allow.

REPLIES *to Sir* Robert Spotiſwood's *Anſwers to his Dittay*, 12 December 1645.

WHERE the Defender repeats the Defences given in by *James Ogilvie*, againſt the Relevancy of his Dittay, alledged by the Defender to militate in his behalf. It is replied, That there are no Defences given in by *James Ogilvie*, but only the Defence of Quarters, which is anſwered in the Reply given in againſt the Defence of Quarters.

To the firſt Defence, bearing, That the Act of Parliament in *May* 1584, does not militate againſt the Defender, alledging that the Scope and Intention thereof, was only to reſtrain the Liberty of ſome who called in Queſtion the Power of one of the three Eſtates. It is anſwered, The Defence ought to be repell'd, in reſpect of the diſpoſitive

Words of the ſaid Act, militating againſt all thoſe who ſhould procure the Innovation or Diminution of the Power and Authority of the Eſtates of Parliament, or any of them; and the Parliament are the beſt Judges and Interpreters of the Acts of Parliament, and of the extent of the Senſe and Meaning thereof.

Where the Defender in his ſecond Defence ſeems to inſinuate, that nothing was proven againſt him in his Proceſs in *Anno* 1642, wherein he received the Parliament's Favour. It is anſwered, that the Time preſcribed by the Parliament for the Trial of that whole Proceſs being but two Months, the Committee for the Incendiaries could not proceed at that Time to further Trial, and if they had hade time, ſufficient Probation would have been gotten in theſe Proceſſes, for proving of all, or the moſt part of the Points contain'd therein.

Where in the ſaid ſecond Defence, the Defender affirms that he committed nothing worthy of Blame, and that he cannot be charg'd with Preſumption, in taking upon him the Secretary's Office; becauſe by his natural Allegiance, he was bound to obey the King's Majeſty. It is replied, That ſeeing in the Parliament 1641, the Secretary's Office, and all the Officers of Eſtate are to be provided and filled by Advice and Approbation of the Eſtates of Parliament, during their ſitting, and of the Council, during the Interval betwixt the Parliaments: It was a high Preſumption in the Defender, to accept of the ſaid Office, without Advice and Approbation foreſaid; and his accepting thereof is a preſumptive Deed in prejudice of the Liberty of Parliament, by whoſe Advice he ſhould have been choſen and provided to the ſaid Office; his Preſumption being the greater, by the embracing of the ſaid Office, the ſame not being vacant, but was fill'd by Advice of Parliament: And therefore he ought modeſtly to have refuſed the ſaid Office, which he did not, but embraced the ſamen, and uſed it in manner libelled in his Dittay, to the Diſhonour of the Eſtates of Parliament of this Kingdom, by expeding and docqueting Commiſſions and Proclamations, declaring their Procedures to be ſeditious and treaſonable, chiefly the ſaid Commiſſions being in favour of *James Graham* a declared Traitor.

Where in the ſaid ſecond Defence, it is alledged, That his Majeſty's Intention was never to grant the Defender Acceſs to his Perſon, only in the Caſe annexed to his Majeſty's Declaration in *Anno* 1641. *viz.* whereby the Defender might diſturb the firm Peace then ſo happily concluded. It is replied, That theſe Words of the King's Majeſty's Declaration, are not of the nature of a reſtricting Quality of the denied Acceſs mentioned in the King's Declaration, as if Acceſs to his Majeſty's Perſon had been granted to the Defender, upon Condition that the Defender ſhould not diſturb the firm Peace: But the words are declaratory, That in reſpect the Eſtates of the Kingdom had upon juſt Grounds conceived, that the Defender's Acceſs to his Majeſty's Perſon heretofore, had diſturbed the Peace, and his Acceſs to his Majeſty's Perſon thereafter would diſturb the Peace; therefore his Majeſty was graciouſly pleaſed to make the foreſaid Declaration, That he ſhould not have Acceſs to his Perſon, and ſo the Eſtates would be in Security, that he ſhould not diſturb the Peace by his Acceſs. Likeas *de facto* the Defender's Actions, ſince his attending his Majeſty's Perſon, do teſtify, that he has had no ſmall hand in diſturbing the Peace, which are preſently laid to his Charge in his Dittay.

Where in the ſaid ſecond Defence, it is alledged, That the King's Majeſty's Declaration is no Penal Statute, reſtraining the Defender from having Acceſs to his Majeſty's Perſon, and therefore is ineptly libelled to be a Ground, or Aggravation of a criminal Dittay. It is replied, That albeit it were granted, That his Majeſty's Declaration were no Penal Statute reſtraining the Defender; yet the ſame is pertinently libelled, to aggravate the Defender's Carriage againſt the Honourable Eſtates of Parliament, by his expeding under his Hand, as Secretary to his Majeſty, the Commiſſions and Proclamations mentioned in his Dittay; which Office of Secretary he did accept, whilſt he did accede to his Majeſty's Perſon, contrary to his Majeſty's Declaration made in Parliament.

Where the ſaid ſecond Defence bears, That the Defender cannot be quarrelled nor challenged for docqueting of the three particular Papers mentioned in his Dittay, he having done the ſame by his Majeſty's ſpecial Command, and he not being quarrelled for giving Counſel to the ſamen. It is reply'd, That the Defender's docqueting thereof, not only clears his Acceſſion to the evil Counſel, given to his Majeſty for granting the ſaid Commiſſions and Proclamations, but alſo is a part of the Proſecuting of that evil Counſel, and of its deſired Effect. And it was the Defender's Part, as the part of a true and loyal Subject to his Majeſty, to have diverted his Majeſty from giving Ear to ſuch evil Counſels: But on the contrary, it is acknowledged by the Defender in his firſt Section of his third Defence, That he was ſent by his Majeſty to *James Graham*, whereby it is more than evident, that the Defender has had a great hand, not only in the framing or adviſing of the ſaid Commiſſions and Proclamations, but alſo in the conveying of the ſamen to the ſaid *James Graham*, he being a declared Traitor, and being in Arms againſt the Eſtates of this Kingdom both with Fire and Sword.

Laſtly, the whole ſecond Defence ought to be repelled, in reſpect of the Dittay, bearing the Defender his acceding to his Majeſty's Perſon contrary to his Majeſty's Declaration in Parliament; his accepting of the ſaid Office of being Secretary, contrary to the Act of Parliament, anent the providing of the Places of Officers of Eſtate; and his abuſing of the ſame Office by docqueting and ſigneting Commiſſions and Proclamations, deſtructive of, and derogatory to the Dignity and Authority of the Parliament.

To the firſt Part of the third Defence, bearing that the Defenders being in Company with *James Graham* in his Progreſs thro' the Country after the Field at *Kilſyth*, cannot be interpreted the taking up of Arms againſt the Country, he being ſent to *James Graham* by his Majeſty. It is replied, that the Dittay is relevantly ſubſumed from the Act of Parliament, *viz.* That the Defender did join himſelf with *James Graham* and his rebellious Army, and was with him and his Army at the Places libelled in his Dittay, at leaſt at one or other of them; which joining of the Defender with the Rebels, who were in Arms againſt the Country, is a taking up of Arms againſt the Country. Likeas, the Defender in his Defence founded upon Quarters, grants that he was taken Priſoner by an Officer of our Army, and ſo grants that he was in the Rebel Army againſt ours.

To that part of the third Defence, bearing that the Act of Parliament 1644, makes no Anſwer to that part of the Query therein mentioned, anent Aſſiſters. It is replied, That the Dittay is founded upon the diſpoſitive Words of the Act of Parliament againſt taking up of Arms, and not upon what the Act of Parliament has not anſwered. And where the Defender affirms, that he was only occaſionally in Company with *James Graham:* It is replied, That it is contrary to the preceding Article of his third Defence, bearing that he was ſent to *James Graham* by the King's Majeſty, and ſo cannot alledge that he was there occaſionally.

To that part of the ſaid third Defence, bearing that the Letter mentioned in the Defender's Dittay, went no further than Intention, and was called back again. It is replied, That the Letter, albeit found upon the Defender himſelf, is a Declaration of the Defender's Reſolution therein, and is mentioned in his Dittay, as an aggravation of his Carriage, whereof if he had repented, he would ſurely have deſtroyed the Letter, and retired himſelf from the Rebels. And where the Defender affirms, that he is not charged with any thing that is declared to be Treaſon by any Law or Act of Parliament, except upon the Act of Parliament 1644. ought to be repell'd in reſpect of the Dittay, which is alſo founded upon the Act of Parliament 1584.

Item, To the firſt Part of the Eik anent the Defence of Quarters, the Procurators for the Eſtates refer the ſamen to the Commiſſioners for the Proceſs.

To that part of the Eik given in by the Defender upon the 13th of *December* 1654. bearing, that the Propoſition of his Dittay is not relevant, in ſo far as it is founded upon the Common Law, Equity, Reaſon and Conſcience, becauſe it is provided by diverſe Acts of Parliament, That the King's Lieges ſhould be governed by the King's Laws, and the Laws of the Realm. It is replied, That the Propoſition of the Dittay is relevant, as being founded upon the Common Law, Equity and Reaſon, becauſe, by the 69th Act of the 6th Parliament of King *James* V. it is found by the Eſtates of Parliament, That the King's Majeſty has juſt Action to purſue all Summonds of Treaſon done and committed againſt his Perſon and Commonwealth, conform to the Common Law, good Equity and Reaſon, notwithſtanding there is no ſpecial Law, Act nor Proviſion of the Realm made thereupon before, and the Defender's Dittay is a Dittay of Treaſon.

Item, To that Part of the Eik given in by the Defender upon the 15th of *December*, bearing that the Defender cannot be challenged upon the Act of Parliament 1644 becauſe the ſamen was not made by the King's Majeſty and Eſtates join'd together, making *communem reipub. ſponſionem*, which is the ordinary Definition of Law. It is replyed, That the Defence clears the Defender's Carriage, and all the Paſſages libelled in his Dittay, to have been clearly againſt the Eſtates of Parliament, he now averring, that it were heard to challenge him upon the Act of Parliament 1644, becauſe the King's Majeſty was not preſent thereat. The Defence itſelf inſinuates tacitly, That this preſent Parliament is no Parliament: For if this be a Parliament, and was a Parliament *in Anno* 1644, then the Act is Obligatory, and does oblige all the Lieges, ſo that the Defence is rather a Declinator of the Honourable Eſtates of Parliament, than a Defence, and in effect merits no Anſwer, but Cenſure.

22d *December*, 1645.

Produced by the Procurators of the Eſtates, and given up to Sir *Robert Spotiſwood* this Day, with the Papers formerly given in by him, and orders him to give his Duply to this, againſt *Thurſday* next at Ten a Clock in the Forenoon *peremptorie*.

DUPLIES *given in by Sir* Robert Spotiſwood, *to the Replies made by the Procurators of Eſtates againſt his Anſwers to his Dittay.*

Firſt, WHereas it is Replied, That the diſpoſitive Words of the Act of Parliament *May* 1584. militates againſt thoſe who procure the Innovation or Diminution of the Eſtates of Parliament. It is Duplied, That neither the diſpoſitive Words of the Act, nor the Reply militates againſt me; becauſe neither is it, nor can be ſubſumed that I have impugned the Authority of the Eſtates of Parliament, or have procured the Diminution of their Power, by calling in doubt or in queſtion, or denying their Power anent the providing the Secretary's Office, and all other Places of the State by their Advice, and by procuring the Power and Liberty granted unto them by the Act of Parliament 1641. to be retreated and innovated, and taken from them; which is the only Crime forbidden by the diſpoſitive Words of that Act, as is clear by the ſamen, and by the Narrative of the ſaid Act anent the Occaſion of it, which declares the Diſpoſitive. And albeit I had accepted the Office of Secretary without the Advice and Approbation foreſaid, which is denied, my accepting thereof could not import a Contravening of the ſaid Act 1584, and a downright treaſonable Impugning of the Authority of the Eſtates, becauſe the contravening of an Act of Parliament, or the accepting of an Office not conform to an Act of Parliament, is not a direct Impugning of the Authority of the Eſtates of Parliament, but a null Act; *& quod eſt nullum de jure, nullum ſortitur effectum:* Otherwiſe if the conſequential Impugning of the Authority of the Eſtates of Parliament by contravening of Acts of Parliament, ſhould fall under the compaſs of the ſaid Act 1584. Treaſon ſhould be too frequent, in regard the Contraveners of any Act of Parliament does in conſequence impugn the Authority of the Eſtates.

Secondly, Whereas it is replied, That if there had been ſufficiency of Time, there ſhould have been ſufficient Probation gotten againſt me in my former Proceſs. It is anſwered, *De his quæ non ſunt, & non apparent,* *idem eſt judicium*; and notwithſtanding the pretended ſhortneſs of time, there was Proceſs gotten againſt others, but none againſt me.

Thirdly, Where it is further Reply'd, That it was a Preſumption in me to accept the ſaid Office, being already filled by the Advice of Parliament. It is anſwered, That all Preſumption is not Treaſon, and the Act of Parliament anent the providing of theſe Places by Advice of the Eſtates, does not bear, that if they ſhould be provided otherwiſe, the Accepters ſhould be puniſhed as Traitors.

2*d*, Repeats the Declaration given in by me and my Defence, and denys, that I imbraced or accepted the ſaid Office; and the doing of Acts otherwiſe incumbent to the Secretary, cannot import the accepting of the Office, ſeeing it cannot be denied, but either the neceſſary abſence of a Secretary, or in time of Sickneſs, or in the Vacancy, before his Majeſty could acquaint the Parliament or Council, or have the Advice and Approbation anent the filling theſe Places, his Majeſty may command any of his Subjects to ſupply the Place, without any hazard of Treaſon.

Fourthly, Whereas to the Defence, bearing, That his Majeſty's Declaration, that he ſhould not grant me acceſs to his Royal Perſon, whereby I might diſturb the Peace, it is no penal Statute, and conſequently it can be no Ground of a Dittay: It is Reply'd, That the Declaration is not of a reſtricting Quality; and that tho' his Majeſty's Declaration be not a penal Statute, yet the ſamen may be enough to aggravate my Carriage. I Duply, That I repeat the Defence, and oppones the Declaration itſelf: And if the Declaration be not a penal Statute, as it is acknowledged, it cannot be libelled pertinently to be a relevant Ground of a Dittay, and conſequently it cannot aggravate the Defender's Carriage; *& quod non relevat, non aggravat.*

Fifthly, Whereas it is Reply'd, That my docqueting the Papers mentioned in the Dittay, clears, that I gave ill Counſel in granting the ſaids Commiſſions and Declarations, and is a part of the proſecuting of that Counſel, and that as a good Subject I ſhould have diverted his Majeſty. It is Duply'd, That all theſe who are imployed to docquet or ſign Papers, are not admitted to be of his Council, and cannot in good manners intrude themſelves to divert his Majeſty from his Reſolutions, and refuſe to ſign or docquet ſuch Papers as his Majeſty is pleaſed to cauſe preſent to them, upon pretext, that they in their Judgment diſprove them; and I repeat my Anſwer, whereunto no Reply is made, That what I did in theſe Particulars, was in obedience to his Majeſty's expreſs Commands, and in Law *qui juſſu Judicis aliquid facit* (*multo magis* of the Supreme Judge and Magiſtrate) *non videtur dolo malo facere, qui parere neceſſe habet. ff.* de Regul. Juris *L.* 167. § 1.

Sixthly, Whereas it is Reply'd, That the Dittay is relevantly ſubſum'd; That I did join myſelf with *James Graham*, and was with him in his Army, and that in opponing my Defence for Quarters, grants that I was in the Rebels Army againſt our Army: The Defence is repeated, and that Subſumption is no wiſe relevant, becauſe it is not conform to the Act of Parliament, that he took Arms: And an occaſional being in an Army cannot import a joining with it, and taking of Arms. And altho' I have granted that I was taken Priſoner, being occaſionally in the Army, I have not granted that I was in the Army as an actual Taker of Arms againſt the Country.

Seventhly, And where the Reply bears, That I cannot alledge, that I was occaſionally in the Army, becauſe I have granted in my Defence, that I was ſent by the King: It is anſwered, That in affirming that I was occaſionally in Company with *James Graham*, I am not contrary to myſelf, and my Meaning being, that I was there being ſent, but not there of purpoſe to join actually with him in taking of Arms.

Eighthly, Whereas it is further Reply'd, That my Letter, albeit found upon me, is a Declaration of my Reſolution, and is mentioned as an Aggravation of my Dittay: The Defence is repeated, and the keeping and not ſending of that Letter, argues my Reſolution to the contrary.

Ninthly, Whereas to that Part of the Defence, bearing, That the Propoſition of the Dittay is not relevant, in ſo far as it is founded upon the common Law, and other Grounds not authorized by Acts of Parliament: It is Replyed, That by the 69 Act of the 6th Parliament of King *James* Vth, it is found, That the King's Majeſty has juſt occaſion to purſue all Summonds of Treaſon conform to the common Law, Equity and Reaſon, notwithſtanding that there is no ſpecial Law nor Act of Parliament made thereupon. I Duply, that by the ſaid Act of Parliament in *Anno* 1540. it is provided, That tho' there be not a ſpecial Law or Act of Parliament anent the raiſing of Summonds, and regulating of Proceſſes againſt Parties accuſed of Treaſon, the ſamen may be done conform to the common Law, Equity and Reaſon: but it is not meant, that Dittays of Treaſon may ſubſiſt on theſe pretended Grounds, without an Act of Parliament prohibiting the Lieges, and putting them in *mala fide* anent the committing of unlawful Acts under the pain of Treaſon; which is clear from the Act itſelf, being made upon the occaſion of raiſing of Summonds againſt the Heirs of umquhil *Robert Leſly*, and to ſee his Memory delete and extinct, for certain Points of Leſe Majeſty. The Queſtion was then, and it was murmured, as the Act bears, not that he was accuſed of certain Points which were not Treaſon by any Act of Parliament or Law of the Country; but only that it was a Novelty to raiſe Summonds and move Action againſt a dead Perſon: And therefore the ſaid Act being only ordinatory *quoad* the Regulation of Proceſs, does not derogate from ſo many fundamental Laws, providing, that the King's Lieges ſhould be governed by the Laws of this Kingdom, and of no other; eſpecially ſeeing it is declared likewiſe by the 28 Act of his Majeſty's 2d Parliament, That no Perſon can be declared Traitor but for contravening a Law or Act of Parliament made, under pain of Treaſon. And it were abſurd, that the Subjects of this Kingdom, who cannot in reaſon be obliged to obey Laws, but *in quantum ſunt notificatæ*, ſhould be judged by Laws, which they neither know, nor can know.

Tenthly, Whereas the Replyer repeats as a Defence, that which is only humbly repreſented by me, and not proponed by way of Defence, in regrating how hard my Condition is to be judged, upon the late Act of Parliament made in the time of theſe unhappy Combuſtions, and draws odious Conſequences to irritate the Eſtates. I repeat my Paper, and conceive, that without giving Occaſion of ſuch cruel Inferences, and without Offence, I might regrate my hard Fortune, having adhered to His Majeſty *bona fide*, and following the Light of my Judgment, out of Confidence that I was not contravening any known Law. And now being brought to anſwer a Dittay founded upon a late Act of Parliament, made before the end of theſe unhappy Diſtractions *re non integra*, when I was out of the Kingdom, I would have expected, That ſince theſe Revolutions have brought the Replyer and me to appear in other Stations than we have been in formerly, that he ſhould have forborn to have uſed ſuch Expreſſions, as in the end of his Reply he hath done.

ANSWERS *for Sir* Robert Spotiſwood, *founded upon Quarters.*

ALTHO' the Anſwers to theſe things, wherewith I am charg'd in my Dittay, be both eaſy and obvious; yet I do adhere mainly to that Defence, founded upon the Law of Nations and Humanity itſelf: That I cannot be put to my Anſwer, in regard when I was taken Priſoner, I had Quarters granted me by an honourable Perſon, an Officer of the Army, unto whoſe Promiſe and Word of Honour I do appeal. As to that which may be ſaid for the Equity and Neceſſity of maintaining this univerſal Practice of Nations, becauſe it is ſufficiently touched in the Defences given in by ſome others at this time, to avoid unneceſſary Repetition, I refer myſelf thereunto; whereunto I add this much only.

That hitherto, ſince the Beginning of this unhappy War, Quarters and Exchange of Priſoners too, have been allowed on both ſides; which never having been diſcharged, to deny now to theſe are in your Power, after that by the Fortune of War you have got the Advantage in the Matter of Priſoners, I leave it to your Lordſhip's Conſideration, if it be fair, and how it may be conſtrued in the Opinion of the World. Beſides, I hope your Lordſhips will uſe your Priſoners no worſe than your Friends and Aſſociates in *England* (who are in Arms for the ſelf-ſame Cauſe) are accuſtomed to do; between whom and the King's Party, there have always fair Quarters been granted. Which makes me wonder the more of the Report that is going, of ſome that come from thence, with Inſtructions to preſs the Execution of Juſtice upon the Priſoners. The which Advice, if it come from them, being ſo unſuitable to their own Practice, ought to be ſuſpected, as tending to the Diſcredit and weakning of this Nation.

Now becauſe upon the Deciſion of this Point dependeth much of the Welfare of this Kingdom, both Parties preſently in Arms, being to take it for a Rule hereafter, in the Matter of Quarters; I hope your Lordſhips will amongſt other Reſpects, have before your Eyes the Safety of many innocent Souls, who will be intereſted in the Reſult thereof; and will not liſten to any Motions, which inſtead of curing the Sore, will inflame it, and be the ready Means to perpetuate our unnatural Diviſions, and make them Irreconcileable.

Eiked Defences given in for Sir Robert Spotiſwood.

THAT he adhereth to the Defence already given in by him, founded upon Quarters, and craveth that it may be firſt diſcuſt, being a peremptory Defence *impediens Proceſſum*, and eliding both the Propoſition and Concluſion, in ſo far as Capital Puniſhment and Forfaulture of Life is inferr'd againſt him. And as in a criminal Purſuit before the Juſtice, if a Defence were propon'd upon a Remiſſion, remitting the Crime of Treaſon in ſo far as may infer Forfaulture of Life only, and not of Lands and Goods: The ſaid Exception, albeit, partial, and not eluſory of the whole Propoſition and Concluſion, being propon'd *primo loco*, will be firſt diſcuſt. And therefore the Defender being in the ſame Caſe, and the Exception upon Quarters being in Effect equivalent to a Remiſſion, ſo far as it ſecures his Life, and elides the Concluſion of Capital Puniſhment, he ought to have the like Benefit.

It is further anſwer'd for the Defender, that the Propoſition of the Dittay is nowiſe relevant, in ſo far as it is founded upon the common Law of Nations, Equity, Reaſon, and Conſcience; becauſe the foreſaid Grounds before they be determined and authorized by poſitive Laws and Statutes, are not relevant to be Grounds of criminal Dittays, whereupon capital or arbitrary Puniſhments are inferr'd, in regard it is a fundamental Law in all well-govern'd Kingdoms, *pœnam alicui non eſſe indicendam, niſi expreſſo jure cautum ſit.* ff. de Verb. ſignif. *l.* 131. Likeas it is expreſly provided by diverſe Acts of Parliament, that the King's Lieges ſhould be govern'd by the King's Laws, and Laws of this Realm allenarly, namely, by an Act of the 5th Parliament of King *James* I. *cap.* 48. and another of the ſixth Parliament, King *James* IV. *cap.* 79.

Whereas the Dittay is founded upon the 4th Act in *June* 1644. The Defender repreſents, that as he had no Hand in the Beginning, and hath never been a Fomenter ſince of this unhappy Combuſtion and Diviſion between His Majeſty and his People, ſo he will carefully avoid all ticklish Diſpute anent theſe Queſtions between them. Nevertheleſs he is confident, that without Offence he may remonſtrate how hard his Condition is, being put to anſwer a Dittay, having no other Warrant in Law but a late Act of Parliament, not made as all other former Acts and Laws, by his Majeſty and the Eſtates joined together, and making *communem Reipublicæ ſponſionem*; which is the ordinary Definition of Laws: but during, and in the time of an unhappy Diviſion between his Majeſty and his Subjects, being in Arms, as they both profeſs, for maintaining of their Rights and Privileges, without Intention to prejudge or diminiſh the known Right one of another. When ſuch fatal Queſtions do fall out between ſuch Parties, and when Neceſſity involves all Men to ſide with one of them, and Men are left to their own Judgments and the Light of their Conſciences, without the clear Direction of poſitive Laws, determining expreſly what the Carriage of private Men and Subjects ſhould be in ſo unhappy a Caſe: It hath ever been thought excuſable, that they ſhould follow the Light of their own Conſciences and Judgment, albeit miſtaken and erroneous; and therefore ſhould enjoy the Benefit and Privileges of the Law of War and Nations, whereof one of the main and principal is, that they ſhould not be judged by the Rules and Laws of theſe againſt whom they have ſided; eſpecially ſuch as are made during the Diſpute, and while the War is not ended, but either by the preceding Laws made in time of Peace, or by ſuch as are agreed upon by both Parties after a happy Pacification. The Reaſon of this Law and Practice of Nations is, becauſe *in omnibus ſtatibus controverſiarum, fieri poteſt ut neutra litigantium pars ſit improba: & ſicut ex probabili cauſa litigantes in diſceptationibus fori, victi lite etque ſententia non condemnantur calumnia, utrinque tamen juratur de calumnia*; *ita cenſetur in diſceptatione & lite armorum.*

REPLIES, *to the Defences given in by Sir* Robert Spotiſwood, *founded upon Quarters.*

WHEREAS his Defence given in upon the 8th of *December* 1645, bears, that he cannot be put to anſwer his Dittay; in regard, when he was taken Priſoner, he had Quarters granted to him by an honourable Perſon, an Officer of the Army; and referring himſelf to the Defences given in by others, anent the Equity and Neceſſity of maintaining the univerſal Practice of Nations, anent Quarters.

It is reply'd, The Defence founded upon Quarters, alledged granted to him, is not relevant as it is ſet down; the Defence not condeſcending upon the Perſon Giver and Granter of the Quarters, and Time and Place, when and where. 2. Albeit it were condeſcended who gave him Quarters; yet the Defence bears not what the Granter of the Quarters promiſed to the Defender the time of the granting thereof: for at the taking of Captives, ſeveral Takers give ſeveral Promiſes to their Captives of ſeveral and diſtinct Natures. 3. The Defence founded upon Quarters, as being proponed to liberate the Defender from the Crimes libelled in his Dittay, and of the condign Puniſhment thereof, ought to be repell'd; becauſe, whatſoever hath been heretofore, or is preſently the Cuſtom of other Nations in their Wars, when one Nation is in Arms againſt another, the Eſtates of Parliament of this Kingdom are not to take notice thereof, but *in caſu de quo nunc agitur*, anent the bringing to due Trial and condign Puniſhment, theſe who have riſen in Arms, and taken Arms againſt the Eſtates of this Kingdom. The Alleadgance founded upon any Promiſe, Pardon, Impunity, or Quarters given by ſome particular Men, cannot free the Defender from juſt Trial, and condign Puniſhment, ſeeing the Queſtion is not here of any Man taken *in bello*: But the Queſtion is anent the puniſhing of theſe who have taken Arms in a treacherous and unnatural way againſt their own native Kingdom, and joined themſelves with a declared Traitor, riſen in Inſurrection within the Kingdom; who not only has taken Arms againſt the Eſtates of this Kingdom, and the Liberties of the Nation, but alſo againſt the Religion preſently profeſſed within this Kingdom, and againſt the mutual League and Covenant eſtabliſh'd by the Parliament and Aſſembly of this Kingdom: In Defence whereof, many Thouſands of his Majeſty's good Subjects within this Kingdom have been cruelly cut off by that declared Traitor *James Graham*, to whom the Defender did join himſelf at the times libelled in his Dittay. The Caſe being thus ſtated, that the Defender is challenged and accuſed for riſing in Arms, and joining with *James Graham*, a declared Traitor and Enemy to this Kingdom, who had taken Arms againſt the Eſtates of the Kingdom, for oppoſing of the mutual League and Covenant: There is none who will think, that if any of his Adherents, Counſellors, or thoſe who are joined with him in Arms, being by the Lord's Mercy towards his diſtreſſed People in this Kingdom, deliver'd into the Hands of the Eſtates of this Kingdom, ſhould alledge for their Defence and Impunity, upon this Ground, that when they were taken, their Takers promiſed to ſave their Lives, or their Fortunes: It cannot be thought that this ſhould free the Delinquent, unleſs it be thought in the Power of any private Man in the Army whatſoever, in his private Way, to pardon the greateſt Offenders againſt the Eſtates, and Oppoſers of our ſolemn League and Covenant; *quod eſt abſurdum.* If this Evaſion be ſuſtain'd, then (without any great Hazard) there is a Door opened to all cloſe Malignants (who in their cautelous Way, dare not appear what truly they are) to join in Arms with the publick Traitors, and to have ſome of their own Temper in our Army, ready to give them Quarters, when an adverſe Wind blows. Likeas, if this Defence of Quarters be ſuſtain'd, then the whole Nation, eſpecially the Eſtates of Parliament, do violate the Oath of the Covenant, and the Oath of the Parliament, anent the proſecuting and cenſuring of Malignants, oppoſers of the Covenant. And therefore there cannot be any Impunity promiſed in the Fields to a Delinquent, by any private Man whatſoever, in Prejudice of the ſolemn League and Covenant, and Defence and Maintenance thereof: But theſe who have riſen in Arms againſt the Eſtates of this Kingdom, as they are puniſhable by the Laws of the Kingdom, ſo theſe Laws cannot be evacuate, and made of no Effect by any Man's Protection or Promiſe.

Where in the Defence founded upon Quarters, an Example is cited of the Wars of *England*. It is anſwer'd, That the Eſtates of Parliament are not to be ruled by the Example of the Army of the Parliament of *England*, but are to proceed and to judge before God, that all Means may be eſſayed to divert his Wrath from this Nation; and are to proceed conform to the Laws of the Kingdom, in Proſecution of the ſolemn League and Covenant.

Where in the ſaid Defence it is inſinuate, that the Safety of many innocent Souls will be intereſted in Reſult of the Queſtion of Quarters. It is anſwer'd, that the ſamen needs no Anſwer in Law: but it may juſtly receive the Anſwer, That if Juſtice be done upon God's Enemies, the Lord will let us ſee Judgment upon the Enemies of this Kingdom, whoſe Terror is now caſten up, and upbraided.

And where in the Defence upon Quarters, it is alledged, that Scripture confirms the Law and Practice thereof, the 22d Verſe of the 6th Chapter of the 2d of the *Kings*, anent the Anſwer made by the Prophet *Eliſha* to the King of *Iſrael's* Queſtion, *If he ſhould ſmite the* Syrians *whom the Prophet miraculouſly led blind into* Samaria. It is anſwer'd, that that Paſſage of Scripture does not confirm the Law and Practice of Quarters, becauſe the Prophet thereby does not confirm and allow the Law and Practice of Quarters, but cites a Cuſtom of the Kings of *Iſrael*, which of itſelf is not allowable; being reproved by the Spirit of God, both in *Saul* for *Agag*, and in *Ahab* for *Benhadad*, in the 15th of the 1ſt of *Samuel*, and in the 20th of the 1ſt of the *Kings*. And the Prophet *Eliſha* was alledging the Kings of *Iſrael* their unlawful Cuſtoms, not to confirm the Cuſtom, but to ſhew the Kings of *Iſrael* what Miracle the Prophet had wrought. And where it may be anſwer'd, That there was an expreſs Command of the Lord for the not ſparing of *Agag*; yet it is to be remember'd, that there is no ſuch expreſs Command for *Benhadad*. 2. The Tye of the Covenant is no ſmall Tye, for puniſhing the Enemies of Religion, and theſe who have riſen in Arms againſt the Eſtates of this Kingdom; and is a Bond tying the Eſtates of Parliament to the Proſecution of Delinquents to their condign Puniſhment.

Item, Albeit Quarters were to be ſuſtain'd within this Kingdom, (as they are not to be ſuſtain'd as aforeſaid) yet no Quarters could be granted to this Defender, he being by the Propoſitions of Peace ratified in both Parliaments of *Scotland* and *England*, put amongſt the Number of theſe who ſhould expect no Pardon. In Prejudice of which Declaration of the Eſtates of Parliament, none but the Eſtates of Parliament, or others having their Power, could promiſe Impunity.

22 *December* 1645.

Produced by the Procurators of the Eſtates, and given up to Sir *Robert Spotiſwood* this Day, with the Papers formerly given in by him, and orders him to give in his Duply to this againſt *Thurſday* next, at Ten a-Clock in the Forenoon, *peremptorie.*

DUPLIES *by Sir* Robert Spotiſwood, *to the Replies made againſt his Defences upon Quarters.*

WHEREAS it is reply'd, that the Defence upon Quarters is not relevantly ſet down, becauſe it is not condeſcended upon the Giver of Quarters, and the Time and Place. It is duply'd, that Time and Place, when and where I was taken, is ſo nottour, that there needs not any further condeſcending; it being known that I was taken in the Field about *Philiphaugh*, immediately after the Conflict there. And the ſaid Defence is relevant, without condeſcending upon the Giver of Quarters, becauſe by the Law of War and Nations, theſe who are taken in the Field, *eo ipſo* that they are taken, by whomſoever, have the Right and Benefit of Quarters; neither are they obliged to take preciſe Notice of the Name and Quality of theſe who take them: Neither is it ſometimes poſſible in theſe Occaſions, when ſo many together are promiſcuouſly in Action. And yet I condeſcend that it was my good Fortune to be taken by an Officer belonging to a Man of Honour and Eminence, both in the State and the Army, the Earl *Lanerk*, to whom I was brought immediately thereafter, and had from him that courteous and favourable Reception that could be expected from ſuch a Man, in being ſecured from all Violence and Wrong. And as Honour and Nobility did weigh down in him theſe Prejudices, which he might have had, upon Miſinformation, againſt me; ſo I am confident that the unqueſtionable Law of Arms will not be violated in me, who am Priſoner of ſuch a Nobleman.

Where it is reply'd, that the Defence bears not what the Granter of Quarters promiſed to me in time of granting thereof, and that at the taking of Captives, ſeveral Takers make ſeveral Promiſes of diſtinct Natures. It is anſwer'd, that in theſe Occaſions, when Men are ſo much taken up with Action, they have not Leiſure, neither are they in uſe to ſtand upon Promiſes and Capitulations; and the granting of Quarters, without any other Expreſſion or Condition, is as binding by the Law of Arms, and ſecureth as much the Receiver's Life, as if there were a formal Inſtrument upon it: *Qui enim hoſtem non interficit, ſed capit, tribuit capto jus ex tacita pollicitatione*, tho' there were no other Expreſſion. Yet to clear this part too, I refer my Quarters, and the manner thereof, to the Relation of the ſaid noble Earl, and of the Laird of *Silvertounhall*, one of his Captains, by whom I was firſt taken.

Where it is reply'd, that whatſoever hath been, or is the Cuſtom of other Nations, when one Nation is in War againſt another; *in caſu de quo nunc agitur*, Quarters cannot free me, becauſe I was not taken *in bello*, but in a treacherous way againſt my Country, and have joined myſelf with a declared Traitor. It is duply'd, 1. Albeit the Reply bears, that the Eſtates of Parliament are not to take notice of the Law and Cuſtom of Nations: Nevertheleſs, I (without preſcribing or prejudicating what the Eſtates of Parliament will, or are to take notice of) do adhere to the common Law of Nations and War, which hath Force every where; *jus enim gentium omni humano generi commune eſt.* Neither is the ſaid Law limited to the Caſe of a national and foreign War, when one Nation is in Arms with another; but hath place *in omni bello*, whether Foreign or Inteſtine, which falls under the Definition of War. For War is defined, *Publicorum armorum contentio*, upon ſome probable Grounds and Motives, which either ſide conceive they have to be in Arms; which agreeth to Civil Wars as well as Foreign. And therefore the Neceſſity and favourable Laws of War have place in theſe Civil Wars and Diſtractions, and that with greater reaſon than in any other; becauſe albeit they be called Wars, thoſe who are engaged on either ſide are not properly called *Hoſtes*, but *Adverſarii*; for this reaſon, *quia in civilibus* *diſſenſionibus, quamvis ſæpe Reſpub. lædatur, non tamen in exitium Reipub. contenditur*, as the Law ſaith. So that the Benefit of Quarters cannot be deny'd in Civil Wars, no more than in Foreign. Likeas, it was acknowledged elſewhere by the Replier, that Parties taken *in procinctu* of this War, may challenge the Benefit of Quarters; as appears by the Replies and Triplies in *James Ogilvie*'s former Proceſs, which are in the Clerk's Hands, and are repeated by me, *brevitatis cauſa.*

2. Where the ſaid Reply bears, that I was not taken *in bello*, but in an Inſurrection, and as the Replier ſtates the Queſtion, it is affirmed, that none can think that the Defence upon Quarters ſhould free me. I humbly crave, that what I am neceſſitate to alledge for my juſt Defence be not miſtaken, ſeeing I have no Intention to diſpute ſo high a Queſtion as the Lawfulneſs or Unlawfulneſs of the War; but only to vindicate myſelf, and make it appear that the Benefit of the Law of Nations ought not to be deny'd to me. Therefore I anſwer, that I cannot be judged by the Replyer's Thought and Aſſertion, either in ſtating the Queſtion, or deciding it; and I cannot conceive, that I can be ſaid to be taken in an Inſurrection, and not *in bello*, ſeeing Inſurrection in the Notion and Definition of Law is properly, when in time of a happy Peace and Harmony betwixt a Prince and the collective Body of his People, private and factious Men, for their own Ends and Deſigns, *Plebem contra Rempub. colligunt*; as *Sheba* the Son of *Bichri* did againſt *David*. But when there is a Diviſion betwixt the Prince and his People, it cannot be ſaid that he or his Adherents, who upon probable (tho' poſſible erroneous) Grounds, follow their own Judgment, are in an Inſurrection. And the Queſtion being ſtated, as truly it is, when a Sovereign Prince is in Terms of Difference with his People, and both profeſs that they are for the ſame Ends, and that the Prince intends nothing but the Maintenance of his juſt Right, without Prejudice of Religion or Liberty of the Subject eſtabliſh'd by the Laws; and on the other Part, theſe who are on the other Side profeſs, that they intend nothing but the Preſervation of Religion, and their Liberty, without Diminution of the King's Greatneſs, Power and Sovereignty, eſtabliſhed by ſo many Laws; and none being to interpoſe themſelves to be Judges of ſo high Differences, both Sides conceive they are neceſſitated to take Arms for theſe Ends reſpective. If the Prince give Commiſſion and Command to any of his Subjects who are of the ſame Opinion with himſelf, to make a Diverſion; whether or not are theſe who are taken upon that ſide, to be thought to be taken *in bello*, or in an Inſurrection? The Queſtion being ſo ſtated, it is evident upon the foreſaid Grounds, and from the Story of all Times, and the Treatiſes of theſe who have written upon War, and the Laws thereof, that ſuch a War by the Law and Practice of all Nations, admitteth and challengeth the Privileges & *Jura Belli*, whereof that of Quarters is a main one. Neither are the Perſons or Conditions of theſe who are intruſted with the managing of the War to be conſider'd, in prejudice of thoſe who adhere to the Prince, and are with theſe whom he imployeth, not out of any perſonal Reſpect to them, but as they repreſent the Prince by Commiſſion. Neither can this War be thought to be of another Nature than that in *England*, where Quarters are neither deny'd nor violated. And what Moderation hath been uſed in the like civil Diſtractions in this Country, during that Conteſt and War betwixt the *Bruce* and the *Baliol*, and in the Times of King *James* III. and Queen *Mary*, and in the beginning of King *James* VI. his Reign, as alſo during the cruel Wars in *France*, or yet in thoſe of the Low Countries, the Hiſtories of thoſe Times bear Record. It is reported, that King *Robert* the *Bruce* having taken many Priſoners, *dimiſit omnes humaniter habitos*; which are *Buchanan*'s own Words. Theſe who ſided with King *James* III. and were at the Field of *Stirling*, tho' not only the greateſt part of the Nobility and Country were on the other Side, but alſo the Prince, were not eſteem'd or deſign'd Enemies to the Country, but are ſaid to have been of another and of an ill Opinion, *Act.* 3. & 5. of the 1ſt Parliament of King *James* IV. and are ſaid by *Buchanan* to have follow'd *diverſam ſectam*; and divers of the Nobility who had adhered to King *James* III. did vote in the next Parliament held by King *James* IV. as appears by the 8th Act of his firſt Parliament, of the Edition of *Likprivik.* And likewiſe theſe who adhered to the Queen Regent in the beginning of the Reformation, and thereafter in the Troubles of Queen *Mary*, divers of them being Noblemen of the higheſt Condition, as the Earls of *Argyle*, *Glencairn* and *Caſſils*, the Lord *Home* and *Boyd*, &c. tho' they proceeded to the higheſt Acts of Oppoſition, and ſome of them were at the Battle of *Langſide*, and indicted and held a Parliament at *Edinburgh*, the ſame Time that another was holden in the *Canongate* in the King's Name, yet were ſo favourably conſtrued, that *Archibald* Earl of *Argyle* was in the Liſt to be Regent after the death of the Earl of *Lennox*. And what were the happy Effects of the Moderation uſed towards them, it appear'd by the happy and firm Peace that follow'd, and by the loyal Carriage both of them and their Poſterity ever thereafter. And therefore, for theſe Reaſons, and becauſe Priſoners have been exchanged in this War, it cannot be deny'd, but the Laws and Benefit of Quarters being of the ſame nature, and founded upon the ſame Principles of Law and Nations, ſhould be received and practiſed in this War.

Whereas the Inconvenient is repreſented and aggravated, if it ſhould be in the Power of private Men to pardon the greateſt Offenders, a Door ſhould be opened to cloſe Malignants to uſe the cautelous way mentioned in the Reply, to join in Arms with the public Traitors, upon hope that ſome of their own Temper on the other Side will be ready to give them Quarters when an adverſe Wind blows. It is duplied, that the Queſtion is not of granting an abſolute Pardon, which is not craved by the Defence of Quarters, but a ſecuring of the Life of theſe who are taken: And if the Defence of Quarters ſhould not be ſuſtained, the repelling of it will open a greater Door to all ſort of Cruelty, and to far greater Inconvenience than that imaginary one in the Reply; ſeeing it cannot be thought that Men will engage and expoſe themſelves to Hazard, upon Confidence that they might when they pleaſed have recourſe to their cloſe Friends for Quarters, conſidering the Difficulty to find them out in a Time of ſuch Confuſion.

Where it is further reply'd, That if Quarters be ſuſtained, the whole Nation, and eſpecially the Eſtates of Parliament, will violate the Oath of the Covenant, and that other of the Parliament anent the Proſecution of Malignants; and that there cannot be any Impunity granted to Delinquents by any private Man. It is duplied, that tho' the Oaths of Covenant and Parliament oblige the Takers of theſe Oaths to diſcover Malignants; that they may be brought to Trial; that they do not prejudge thoſe who are called in queſtion of their lawful Defences; competent to them by the Law of Nations, as that of Quarters; neither do they oblige the Judges to repel ſuch Defences, ſeeing by the Covenant they are not obliged to proceed againſt thoſe who are queſtioned as Malignants, notwithſtanding of ſuch Defences. 2. The Practice of the Eſtates in ſome particular Caſes evinceth, that they do not think themſelves ſo limitate by the ſaid Oaths, as the Replier would have, becauſe they have before this condeſcended to the exchanging of divers Priſoners, and have diſmiſſed divers others who were in the like Condition with me, being taken in the Field; and have not only ſpared ſome who were on the other ſide, but have employed them thereafter. And it were abſurd and injurious to charge upon the Eſtates Perjury and Violation of their Oaths, becauſe of theſe Practices, being founded upon the Law of Nations and good Conſiderations.

3. The Queſtion is not of Impunity granted by any private Man in the Field, as the Reply bears, but of Quarters granted by the Laws of War and Nations, which is authorized and approven by the Lieutenant General and Commander in Chief the Day of the Conflict at *Philiphaugh*, in ſo far as he gave no Command diſcharging Quarters to be given in general, but only diſcharging any to be given to the *Iriſh*: Which Exception of the *Iriſh*, militates in Favour of all others not excepted, *quia exceptio firmat regulam in non exceptis.*

Whereas it is further replied, That the Eſtates of Parliament are not to be ruled by the Example of the Parliament of *England*, but to judge before God, and to divert his Wrath, by proceeding againſt Delinquents conform to the Laws of this Kingdom. It is anſwer'd, That the Practice of *England* is urged, not as a Rule to the Eſtates of this Kingdom to regulate their Procedure by, but as an Inſtance of the Practice of Nations, conform to the Law of Nations; which being receiv'd in *England* in this War, which is principally for obtaining the Reformation of Religion and ſettling the Liberties of that Country, ought with far greater Reaſon to be receiv-ed by us who were involved in that War, out of our Deſire to have theſe Ends eſtabliſh'd there, after we had obtained the ſame ourſelves.

Neither can the Laws of this Kingdom, and the mutual League and Covenant be ſtill obtruded for the repelling of the Defence of Quarters; becauſe there is no Law of this Kingdom diſcharging Quarters to be granted or kept, neither any Clauſe of the mutual League and Covenant againſt the ſame; otherwiſe the whole Nation of *England* and the Eſtates there, ſhould be involved in Perjury, ſeeing they joined with us in the mutual League and Covenant; and notwithſtanding think not themſelves obliged to refuſe Quarters contrary to all Nations.

Where it is urged by the Replier, to make me odious, That the Terror of the Enemies of this Kingdom is caſten up and upbraided, and therefore if Juſtice be done upon God's Enemies, the Lord will let us ſee Juſtice done upon the Enemies of this Kingdom. I am confident, that if my Defence and Expreſſions be conſidered, it will appear they cannot be wreſted to import any upbraiding, or caſting up of any Terror; and whatever odious Characters be put upon me, I cannot be thought to be an Enemy to God, except it were ſhown that I had intended ſomething againſt the Honour of God, Purity of Religion, or the Liberty of my Country. For in Civil Combuſtions, the naked difference of Opinion anent Civil Queſtions, and adhering of a Subject to his Prince, was never thought to be Enmity againſt God. This is evident from the 2 *Sam.* chap. ii. ver. 26, and 27. for in that Civil War between *David* and the Houſe of *Saul*, tho' *David* (God's Prophet, and Anointed to be King) was on the one ſide with God's People, yet they who were upon the other ſide of *Iſhboſheth* were not called Enemies to God, but their Brethren; and upon that reſpect *Joab* did not exhort them that were with him to purſue eagerly their Adverſaries, as God's Enemies, but bid them return from following their Brethren. And in chap. iv. ver. 11, *David* calleth *Iſhboſheth*, tho' the Head of that Faction againſt him, a righteous Perſon. Likewiſe, when it pleaſed God to work Deliverances for his People, it was not conceived that there was a neceſſity to divert God's Wrath, by proceeding in Rigour againſt thoſe who had fallen in their Hands; but by the contrary, *David* after that great Victory againſt *Abſalom*, being preſſed to that purpoſe, anſwered, *Shall there any Man be put to Death in* Iſrael? 2 Sam. xix. 22. And *Saul* after his Victory againſt the *Ammonites*, when the People urged that they ſhould be put to Death who had been againſt *Saul*, and had ſaid that he ſhould not be King; he anſwered, *There ſhall not a Man be put to death this Day, for to Day the Lord hath wrought Salvation in* Iſrael, 1 *Sam.* xi. 13.

Where it is further reply'd, That the Paſſage of Scripture cited in the Defence, out of 2 *Kings* chap. vi. doth not confirm the Law and Practice of Quarters, but that the Prophet citeth a Cuſtom of the Kings of *Iſrael*, which of itſelf is not allowable, being reproved by the Spirit of God, in the Caſe of *Agag* and *Benhadad*; and that that unlawful Cuſtom is alledged not to confirm the ſame, but to ſhew what Miracle the Prophet had wrought. It is anſwered, That the Text itſelf is opponed, whence it is clear, that the Prophet uſeth an Argument *a majori*; *quaſi dicat, ne eos quidem occideres quos abduceret gladio tuo & arcu tuo*; *ergo multo minus alieno beneficio comparatos fas eſt occidere.* So it is underſtood by *Tremellius* commenting upon that Place, and *Diodati* in his Annotations upon the ſame. And therefore the Gloſs of the Reply, bearing that nothing is meant by the Prophet but to ſhew what Miracle he hath wrought, is abſurd, ſeeing there needed no Probation of that which was evident and undeniable; and is contrary to the expreſs Words of the Text, which containeth a Queſtion moved by the King of *Iſrael* unto *Eliſha*, whether he ſhould ſmite the *Syrians* or not; and a Negative Anſwer of the Prophet, that he ſhould not, fortified with an Argument by way of Enthymeme: *Capti in bello non ſunt occidendi*; *Ergo multo minus alieno beneficio & miraculo comparati.* Which ſhould be an ill Argument, if the Antecedent were only founded upon an evil and reproved Cuſtom: And the Prophet cannot be thought to uſe an ill Cuſtom, to enforce a good Concluſion; it being as much againſt Rules, both of Goodneſs and good Reaſoning, to uſe an Argument from that which is Evil, to prove that which is Good, as to do Ill that Good may come of it. And that it was not only the Cuſtom of the Kings of *Iſrael* to ſpare Captives, but an Univerſal and Antient Cuſtom of Nations, it is evident, not only from innumerable Paſſages, as well of the Civil Law, as of Hiſtory, but from the 14th of *Geneſis*, where it is clear, that theſe who were taken by *Chedorlaomer*, were taken Captives and carried away with *Lot*.

Where the Reply bears, That the ſaid Cuſtom is reproved in the Caſe of *Agag* and *Benhadad*. It is anſwered, that for the firſt, it is acknowledged by the Replier himſelf, that there was a great Diſparity betwixt the Caſe of *Agag*, and of theſe who have gotten Quarters, becauſe *Agag* was in that Condition, that he was incapable of Quarters, in regard God commanded *Saul* expreſly to go and ſmite *Amelek*, and deſtroy all that they had, and ſpare neither Man, Woman, Infant, Ox, or Sheep; ſo that this was an extraordinary Caſe of a Perſon by God's Command devoted to deſtruction, 1 *Kings* 15. As for the Caſe of *Benhadad*, it is clear from the Text, that he was appointed to Deſtruction by the Lord, for his Arrogancy and Blaſphemy againſt God: And the Word in the 42 ver. chap. xx. of the 1ſt of *Kings*, uſed by the Prophet when he told *Ahab* that he had let go a Man whom God had appointed to utter Deſtruction, *Anathemati devotum*, as it is rendered by *Tremellius*, evinceth that there was an extraordinary Warrant for deſtroying of *Benhadad*; becauſe that Word is only uſed in ſuch caſes, as when there was an extraordinary Command to deſtroy and devote *Jericho* and *Agag*; *nunc abi ut percutias* Amalechum *& Anathemati devoveas:* which is likewiſe more clear from the whole Context of 1 *Kings* chap xx. for after *Benhadad* was foil'd the firſt time by *Ahab*, a Prophet came to the King of *Iſrael*, and told him that the King of *Syria* would come up againſt him at the return of the Year, and adviſed him to mark and ſee what he ſhould do. And when the Prophet came thereafter to *Ahab*, after he had diſmiſs'd *Benhadad*, to convince him, did ſuppoſe the Caſe of a Man that had brought to him a Priſoner, and ſaid keep this Man, and that upon Condition, if by any means he ſhould be miſſing, his Life ſhould be for his Life. In which Caſe there was an expreſs Charge given to keep the Priſoner, and not to let him go: which muſt be underſtood likewiſe in the true Caſe of *Benhadad*, otherwiſe there ſhould not be a Parity between the Caſes; neither could *Ahab* have been convinced, but might have had an Evaſion and Pretext, that he had not got the like Charge, and that God's Will concerning the Deſtruction of *Benhadad* had not been intimated to him.

I humbly repreſent how hard it is that ſuch Arguments ſhould be brought from extraordinary Caſes of Blaſphemous Pagans, devoted and anathematized by God, and inforced upon People at ſuch times and places, where they whom it concerns cannot make Anſwer; whereas it may be evinced from diverſe Places of Scripture, what Moderation was uſed in Times of Civil Diſtraction, and that theſe who had been active, and leading on the other Side, were not only ſpared, but advanced: Witneſs the Civil War betwixt the *Iſraelites* and the *Benjamites*; in which, tho' the Cauſe was moſt unjuſt upon the *Benjamites*' part, and that they had provoked mightily the reſt of the Tribes, by reaſon of two great Overthrows they had given them; yet after the *Iſraelites* had got the better of them, their Revenge went no further, than to kill ſuch as they could overtake in the Battel: But as for them that eſcaped to the Rock *Rimmon*, they called peaceably to them, and notwithſtanding of their Oath, provided Wives for them, and made up again the Breach of that Tribe. The fair Quarters *Abner* and his Men had from *Joab* (tho' in flying he had kill'd *Aſahel)* is toucht before. Tho' *Adonijah* exalted himſelf againſt King *Solomon*, and uſurped the Kingdom, yet upon his Submiſſion he was ſpared and diſmiſſed: ſo was curſed *Shimei*. *Amaſa* Captain of *Abſalom*'s Hoſt, was received into Favour, and made Captain over *Judah*. Theſe and many more Places clearly evince, that Scripture is on our Side, and that not one Paſſage thereof can be wreſted againſt us.

Whereas it is reply'd, That Quarters could not be granted to me, becauſe I am excepted in the Propoſitions of Peace, and declared to be ſuch a Perſon as could expect no Pardon. It is anſwered, firſt, The Queſtion is not of Pardon, which is not craved, but of Quarters already granted for ſecuring my Life: And the ſaid Propoſitions of Peace, are not a poſitive Declarator of my Incapacity and Exception in caſe of a happy Peace, but only contains the Deſires and Propoſitions of the Eſtates to be made to his Majeſty, which may be altered upon a mutual condeſcending betwixt his Majeſty and them, before they be ſettled by an Act of Pacification; and the ſaid Exception is only to take effect againſt ſuch as ſhould be Proceſſed and Condemned, and therefore is to be underſtood without prejudice of their lawful Defences, and namely that of Quarters; ſeeing by no Act of Parliament, nor by the foreſaid Propoſitions, it is declared, that theſe who are excepted ſhould be incapable of Quarters, and of the Benefit of the Law of Nations. And that this was not the Intention of the Eſtates of either Kingdom, is clear by their Practice; for notwithſtanding of the ſaid Propoſitions contained in the ſaid Exception, ſome of theſe who are excepted, have been exchanged, as the Laird of *Drum* Younger with us, and Col. *Goreing* and others in *England*.

DEFENCES for my Lord *Ogilvie*, 10 *February*, 1645.

MY LORDS,

I Conceive that my Anſwer to the Dittay may be very ſhort, and that I need not enter in a ſubtile Diſpute of Law againſt it; the Subject is ſo tender and tickliſh, that I ſhall be loth to be put to the Queſtion, unleſs I be neceſſitate.

My Anſwer then at this time is, that I conceive, that by the Law of Nations and War, I cannot be brought to Anſwer a Dittay of Treaſon upon hazard of my Life and Eſtate, as long as I am in this Condition; becauſe I am a Priſoner of War, and was taken by the *Lancaſhire* Forces, with my Sword in my Hand, and upon Quarters and Aſſurance that my Life, and ſuch Stuff and other Things as I had about me ſhould be ſafe and unqueſtioned. War, albeit with its Noiſe it ſeem to cry down all other Laws, wants not its own neceſſary and inviolable Laws, without which it ſhould be rather a bloody and brutiſh Butchery, than a lawful War, which God himſelf is pleaſed to own, entitling himſelf the God of Hoſts and Battels. That the Law of Quarters amongſt all other *Jura Belli*, is the moſt neceſſary and equitable, it cannot be called in queſtion: the Iſſues of Life and of Death are in God's Hands, who is pleaſed to diſpenſe with that which is called the Fortune of War in ſo variable a way, that it may be juſtly ſaid, *Inter utrumque volat dubiis victoria pennis*; to the end, that neither Side ſhould refuſe to the other that Humanity and Favour which they may have occaſion poſſibly the next Day to deſire themſelves. And it is not to be conceived that Quarters conſiſt in the Favour only and Grant of the Giver, but as founded rather upon the Equity and Obligement of a mutual Paction, whereby the Receivers of Quarters redeem their own Safety, with the Safety of moe who would be in hazard upon the other Side; it being always to be preſumed, that Men being prodigal of themſelves, and deſpairing of their Life and Quarters, tho' in the end they may be overcome by Multitudes, will ſell their Lives at a dearer Rate, than thoſe who would live to enjoy the Victory would be content to have it. This Law, as in all other Wars, ſo more eſpecially is to be kept in Civil Diſſenſions, in regard the Ties and Intereſts both Parties have in others, plead both for excuſing thoſe who are taken, by reaſon of Intereſt they conceive they had to adhere to the Side which they followed, and likewiſe for Favour of thoſe who have taken their Friends, in reſpect of the Intereſt they have in their Priſoners. I may inſtance many Practicks in theſe late Troubles in *England*, but ſhall only remember one, becauſe it is famous and nottour. One Captain *Lilburn* was taken by ſome of his Majeſty's Forces; the Gentleman being both a Parliament-Man and a Commander, had been ſo active in both ways, that he wanted not powerful Enemies, who upon probable Grounds and Motives, moved his Majeſty to put him to a Trial for divers high Points of Treaſon. The Gentleman alledged the inviolable Privilege of a Priſoner of War, and the Law of Nations, and that he could not be put to anſwer any Charge, tho' never ſo juſt, until he were diſmiſſed. General *Ruthven*, and all other Soldiers of Fortune did interpoſe themſelves, and ſolicited that the Law of War ſhould not be violated. In end, Juſtice did prevail with his Majeſty's all other Reſpects, and the Gentleman was upon the ſaid Ground acquit. Upon theſe Grounds I conclude, that I am in the like Caſe, and cannot be holden to anſwer to this Dittay: And yet, leſt I ſhould ſeem to ſhadow myſelf only under the ſaid Privilege and Defence, and that my Actions may not appear ſtill to your Lordſhips ſo ugly and horrid as they look in my Dittay, being repreſented naked, and without the Veſture of the favourable Circumſtances, and probable Grounds and Motives, and the Sincerity of my Intentions, whereupon they proceeded without any thought of Treaſon or Hoſtility: I have joined with this Defence, a ſhort and true Relation of my Carriage in theſe late Troubles, for Information to your Lordſhips.

The Relation of James *Lord* Ogilvie *his Carriage in theſe late Troubles.*

WHatever the World may conceive of me and my Carriage in the firſt and late Troubles, my Conſcience bears me Witneſs, and I may appeal to the knowledge of all thoſe who have had the Occaſion to know me inwardly, how free I have ever been of Diſaffection either to the Purity of Religion eſtabliſh'd here, or to my Native Country; and that I never countenanced nor complied with any thing which was conceived to be a Corruption neither in Church or State, but was one of the firſt who petitioned for Redreſs of the ſamen during the firſt Troubles, tho' ſome of our Houſes ſuffered the Extremity of War and Hoſtility: It cannot be inſtructed, that I appeared in any hoſtile way, or did any Act againſt my Country. After the Pacification of theſe Troubles, the Rebellion of *Ireland* having fallen out, I reſolved to take hold of that Occaſion, to expreſs to the World my conſtant Zeal for Religion and my Country. And to that purpoſe there having paſt ſome Diſcourſe betwixt General *Leſley*, and me, concerning the Expedition for *Ireland*, which I conceived to imply an Invitation to engage in that Service; I ſent therefore a Gentleman of my own Name, to ſhow him, that I ſhould be content to ſerve in that War, upon ſuch Terms as others of my Quality were to have. But having found, that the General had not abſolute Power to diſpoſe of Places, and to prefer Officers; and not preſuming to have the like way and favour with others who had a Vote in the diſpoſing of them, I retired and lived quietly at home, without any meddling, until the Combuſtions in *England* broke out, and came to ſuch height, that they were like to involve this Kingdom, and to occaſion a Rupture betwixt his Majeſty and us. Then I began to bethink myſelf what my Carriage ſhould be: and in end I thought it beſt to keep myſelf free, and to convoy myſelf out of his Majeſty's Dominions, until it ſhould pleaſe God to put an end to theſe unhappy Differences. Upon this Reſolution I went to *England* intending thence to go to *France*; but having gone to take leave of his Majeſty, I was commanded to ſtay and wait upon him. Being his Majeſty's Subject, and commanded to wait upon his Royal Perſon, at ſuch a time, when he was in diſtreſs and hazard, I neither did, nor can conceive how I could diſobey, without rubbing upon myſelf the Imputation both of Diſloyalty and Baſeneſs. This Country at that Time had not entered in Covenant with the Parliament of *England:* I know not any Law obliging *Scots*-Men his Majeſty's Native Subjects, truſted by his Majeſty in Places of Reſpect and Eminence about his Perſon, wherein they may be uſeful to their Country, to deſert his Majeſty's Perſon and their Places, upon any occaſion of Rupture betwixt his Majeſty and his Subjects of *England*. I conceive then, that his Majeſty's Command did oblige me as well as others to wait upon his Perſon. The Article of the Treaty, which I am charg'd to have contraveen'd (tho' I profeſs I was altogether ignorant of it, holding it no ſhame for one of my way to be unacquainted with ſome particular Laws) appears to me, having looked upon it upon this occaſion, not to mean or include the Caſe of perſonal Attendance, and Service of private Subjects, who in a private and perſonal way, adhere to his Majeſty in the Time of

Troubles and Queſtion with his People of *England*, as I did: For I went to *England* without Forces, yea without my ordinary Train, and accompanied only with one Servant. During my being in the South, I had no Charge but to wait upon his Majeſty; I neither commanded Forces, nor was inroll'd in any Regiment, or under the Command of any.

This was my Carriage in the South, until my Maſter commanded me with *Montroſe* and all our Countrymen who were about him, to go homeward. The Marquis of *Newcaſtle* being then in the Fields with an Army for his Majeſty, I could not have paſſed without ſeeing of him; my ſtay with him was ſo ſhort, that I neither had, nor could have had any Charge or Employment under him. I do not deny but I came to this Country, but I profeſs it was by his Majeſty's expreſs Warrant and Command, and without any ſiniſter Intention againſt my Country and Countrymen. I came to *Dumfries* without any purpoſe of Hoſtility, but only to accommodate myſelf: and I believe none can complain of any Injury done at that time by me. Finding that the Country was diſpleaſed, I returned immediately, without doing harm to any. After my return I was acceſſary to neither of theſe Exploits libelled in the Dittay, of taking of *Morpeth* and the *Sheills*; neither was I preſent at either of theſe Places when they were taken: but I am able to make good, that I was at *Newcaſtle* at Six or Seven a-Clock at Night, that Day the Caſtle of *Morpeth* was taken, it being taken at One or Two o-Clock in the Afternoon: And having heard at *Newcaſtle* that it was taken, and being ſollicitous for my Countrymen, that they ſhould not have been well treated by the *Engliſh*, who had been irritate by them, in regard they had loſt ſome Men of Quality at the Place, I went of purpoſe at Seven a-Clock at Night from *Newcaſtle*, to procure favour to them; and I am confident, that theſe whom I found there will not deny, that they received ſuch Tokens of my Favour as they ſtood in need of, and as I at that time was able to give. I neither had, nor could have had any Imployment under Colonel *Slavering*, being a Gentleman beneath my own Quality.

When it was my Fortune to be taken, it was not in any Service or hoſtile Intention, but being upon my way to his Majeſty, with ſuch a ſmall number of People as appeared afterwards not to be ſufficient for a Convoy, I was ſurprized and forced to beſtir myſelf for my juſt Defence, and ſafety of my Life, wherein it pleaſed God ſo to aſſiſt me, that theſe who were at the taking of me, were content to offer and give me Quarters; whereupon I ſuffered myſelf to be taken, and doubt not but that I may expect, that the Law of Nations and War, which is obſerved as ſacred and inviolable, when all other Laws are ſilent *inter arma*, ſhall not be broken in my behalf.

This is the true Relation of my Carriage in theſe troubleſome Times; for my Carriage before I ſhould be ſparing to ſpeak of it myſelf, if my after Actions were not painted with ſo foul and ugly Colours. To my knowledge, before theſe Times, it cannot be condeſcended that I have offended any by any ſcandalous or injurious Act. And I am confident, that with God's Aſſiſtance I might have regulate ſo the whole Courſe of my Life to the end, that I ſhould not have ſeemed to have fail'd to any, much leſs in my Duty either to my Prince or Country, if the Times had not fallen out ſo irregular, that I could not witneſs my reſpect to either, without ſeeming to fail to the other. It being then my Misfortune to have fallen in ſuch hard Times, having ſo much Intereſt on both Sides, I have not been ſuffered to have been an idle Spectator; I followed the Light of my Conſcience, which bindeth even when it is miſtaken, as Divines hold. I believe none will ſuſpect me to have been a Contriver, Plotter or Fomenter of this unnatural War, and am aſſured, that if from this Relation it may appear, that I have been in any wiſe an Actor, there was never one more harmleſs. None of my Countrymen may charge me with any Act of Inſolency, Wrong or Prejudice to them; and I doubt not but ſome will bear me witneſs, that I have ſhown them favour. Tho' I conceived, that my adhering to my Prince in his diſtreſs by his ſpecial Command, was incumbent to me by my Oath of Allegiance, and in Duty, Conſcience and Honour; yet if any thing may be thought to have eſcaped me, being a young Man, and not acquainted with Subtilties and Laws, in a Buſineſs of ſo tender a Nature, which hath both in the Diſpute of the Queſtion in the general, and in this particular Caſe, divided ſo many Lawyers, Stateſmen, Divines, and others, in their Opinions, and hath ſet a-Work their Tongues, Pens and Swords, to maintain the ſame, I may ſay with far better reaſon than an old Stateſman and Lawyer did in the like Caſe of Civil Diſſenſions; *Erat obſcuritas, erat certamen inter clariſſimos duces: multi dubitabant quod optimum eſſet, & ſi aliquâ culpâ tenemur erroris humani a ſcelere certi liberi ſumus.*

DEFENCES for *Ogilvie*.

IT is anſwered, That he cannot be called in queſtion of Life and Fortune, and forced to anſwer at this time to this Dittay; becauſe he is Priſoner of War taken upon Quarters, and expreſs Capitulation with his Takers for his Safety; and by the Law and received Cuſtoms of all Nations, where War is not turned in a downright Butchery, there be *jura Belli* held ſacred and inviolable: Whereof a main one is *captivis parcendum, & ſicut reſiſtenti violentia redditur, ita captivo miſericordia debetur*, which are, *Auguſtin*'s Words repeated in *C.* 3. 23, 4, 1. *Danda enim eſt ad minimum vita his qui vitam hoſtibus & capientibus reliquerunt.* This was the Law of *Lycurgus*, of the *Romans*, and other Warlike Nations, as is clear from Hiſtory and Writers *de jure Belli*. It is founded not only upon common Equity, but upon the ſpecial Equity of an expreſs Paction, where any Capitulation is made; and where there is no expreſs Capitulation, it is founded upon a tacite and preſumed Paction, *nam qui hoſtem non interficit, ſed capit, videtur velle eum vivum habere: & capto eſt jus ex tacita pollicitatione ne poſſit poſtea interfici, & qui ſe dedidit cum hoſte paciſci de vita videtur*: eſpecially where Captives have rendred themſelves in Arms, *qui pugnando potuerunt non capi, aut non ſine ſanguine.*

Scripture itſelf confirmeth this Law and Practice: For the *Syrians* being ſtriken blind, and brought Captives by *Eliſha*, to the King of *Iſrael* at *Samaria*, he enquires at *Eliſha*, whether he ſhould ſmite them or not? He anſwers *negative*, ſaying, *Would thou ſmite thoſe whom thou haſt taken with thy Sword and Bow?*

This Law thus confirmed, is moſt obſervable in a Civil War, betwixt a Prince profeſſing nothing but the Maintenance of his juſt Power, without prejudice of Religion, and his People's Liberties, to whom adheres a Part of his Subjects: and his People on the other ſide profeſſing Loyalty to his Majeſty, Maintenance and Reformation of Religion, betwixt whom there is a Concurrence of ſo many Relations and Intereſts publick and private, as not only Quarters, but Exchange of Priſoners, both flowing from one Fountain, ſhould neceſſarily be obſerved. This is the Caſe of our unnatural War: Priſoners have been exchanged: And it ſhould be a Stain to the Kirk and Kingdom, if Quarters ſhould not be inviolably kept. The Conſequence alſo may prove dangerous, the Fortune of War being ambulatory; what is now the Defender's Caſe, may poſſibly be the Condition of others who appear ſecure for the preſent.

The Hiſtory of Wars betwixt the *Swedes* and *Ruſſians* ſheweth, That theſe Nations who at firſt have been ſo full of Animoſity as to refuſe Quarters, finding in the Progreſs ſo great Inconveniences to follow, have been forced to acknowledge the Neceſſity.

And therefore the Defender upon Quarters, having rendered himſelf, cannot now be proceſſed upon Life and Fortune; but before any Procedure whatſoever, he ought to be diſmiſſed and convoyed to a Place of Safety.

ANSWERS to the Lord *Ogilvie* his Defences.

THE firſt Defence founded upon the Courſe of Martial Law, in giving Quarters and Conditions to Parties taken, and keeping of the ſamen, can have no Place for freeing of my Lord *Ogilvie* from anſwering to the Crimes contained in his Dittay. 1. Becauſe the Crimes whereupon he is challenged are theſe which were not only committed by him before his Apprehending, but alſo for which he was cited to compear before the Parliament, long before his Apprehending, and from Trial whereof he did withdraw himſelf by flying to *England*; wherein no Accident occurring to him occaſioned by his own Miſdemeanour can furniſh to him any Shadow of Excuſe. 2. The Benefit of Quarters founded upon Martial Law, is only conſiderable, when the ſamen are granted in *ipſo procinctu*, and by thoſe having Power, neither of which my Lord has, nor can alledge; but by the contrary in his Defences, he grants that he was not in any Service, but upon his way to his Majeſty. Likeas, they who took him found about him certain Inſtructions from the Earl of *Montroſe* to his Majeſty, whereof the Copies were ſent to the Commitee of Eſtates. 3. By the Martial Law, the Quarters alledged given, cannot be further extended, than to the Freedom from all Challenges within that Kingdom, within which the Quarters were granted: And my Lord being taken in *England*, might have had ſome colour (having cleared and verified the Quarters made to him) to have craved the Benefit of the Martial Law, which either he has not craved, or if crav'd, has been judged to be unjuſt; becauſe the Eſtates of the Kingdom where he was taken have tranſmitted him to the Eſtates of this Kingdom whereof he is a Subject.

Item. As to the ſecond Part of my Lord's Defence, which is anent his Carriage, oppones the Dittay and Probation thereof.

19 *February*, 1645.

This Day about half Hour to Ten in the Forenoon, their Replies given in by the Procurators of Eſtates for eliding of the Defences given in by the late Lord *Ogilvie*, are delivered to him about Ten of the Clock before Noon, and ordains him to give in his Duplies, together with all other Defences he has, either in the principal Cauſe, or againſt the Probation, againſt *Friday* at two a-Clock in the Afternoon.

REASONS *why the Defenders cannot be urged to give in any other Defences, till that of Quarters be Diſcuſſed.*

FIRST, the Defence proponed is Inconſiſtent with other Defences, becauſe the Defence is, that the Defender is not obliged to anſwer at all to a Dittay, ſo long as he is in this Condition, for the Reaſons adduced in the Defence; and therefore he cannot be urged to give in other Defences. For albeit Defences *in cauſa* may be proponed together, yet a Defence of this Nature, which is not an Exception *in meritis cauſæ*, but is excluſive of Proceſs, & *quæ impedit litis ingreſſum*, cannot conſiſt with other Defences *in cauſæ*, becauſe the proponing of other Defences would be a tacite paſſing from the ſame; and the Defender is in the like Caſe, as if being purſued before the Juſtice, he would alledge to a Remiſſion; in which Caſe, he could not be urged in Juſtice or Form of Proceſs, to give in other Defences before the ſaid Defences were diſcuſſed.

2. This Defence is ſo material, that if it be found relevant, as it ought to be, the Defender will poſſibly uſe no other Defences at all; and he is ſo confident of the Relevancy of it, that he has not thought upon, nor deſired his Advocates to think upon his other Defences *in Cauſa*.

3. It is not uſual before any Judicatory to cauſe the Defender give in all his Defences at firſt, eſpecially where a material Defence eluſory of the Inſtance is proponed, which before giving in of any other Defences ſhould be anſwered and diſcuſſed.

ANSWERS *to the Reaſons given in by* James Ogilvie, William Murray, *Sir* Robert Spotiſwood, *and* Nathaniel Gordon, *why they cannot be urged to give in any other Defences, till that Defence anent Quarters be diſcuſſed.*

TO the firſt Reaſon, where it bears, that the Defence of Quarters is excluſive of Proceſs, & *impedit litis ingreſſum*. It is anſwered, That the Defence of Quarters is not excluſive of Proceſs, *nec impedit litis ingreſſum*, becauſe albeit it were ſuſtained to the Defenders, that theſe who are taken in War, and get the Benefit of Quarters, cannot be killed or ſlain; yet they who are taken *in bello* (albeit Quarters were granted to be lawful, which is denyed *in noſtro caſu*) are ſtill *Captivi*; and being Captives, the Procurators of the Eſtates, in Name of the Publick, may crave Proceſs againſt the Captives, *ut Judex procedat ad ſententiam*, that it may be clear to the World that the Captives are guilty of ſuch and ſuch Crimes; which Guilt is neither pardoned, nor taken away by the giving of Quarters (albeit it were granted that Quarters were lawful *in hoc caſu*, as it is not, as ſhall be cleared in the diſcuſſing of the Defence founded upon Quarters), but the giving of Quarters *impedit tantummodo Executionem Sententiæ, eamque partialem duntaxat, quatenus ea eſt extendenda ad vitam*; but impedes not the Criminal Purſuit itſelf, whereby it is craved to be found that the Delinquents have committed ſuch and ſuch Crimes.

And where the foreſaid firſt Reaſon bears, That the Defence of Quarters cannot conſiſt with the other Defences *in Cauſa*, becauſe the proponing of other Defences ſhould be a tacit paſſing from the ſame. It is anſwered, the Reaſon of the foreſaid Inconſiſtency is not relevant; for albeit the proponing of other Defences before the Defence founded upon Quarters might ſeem to the Defenders to prejudge the Defence of Quarters, as they conceive the Defence of Quarters to be *contra litis ingreſſum* (which it is not, for the Anſwer above-written); yet proponing of the reſt of the peremptory Defences *ſimul & ſemel* with the Defence of Quarters, the Defence of Quarters preceding cannot be a paſſing from that Defence which is proponed *primo loco & per expreſſum*; but to eſchew Cavillation, the Defenders Procurators know very well, that they may propone the reſt of the Peremptors with this Caution (adhering to the Defence of Quarters, and may proteſt that the proponing of the reſt ſhall not prejudge them of the Defence of Quarters), like as the Procurators of Eſtates declare, that the proponing of the reſt of the Defences ſhall not prejudge their Defence of Quarters, but the ſame ſhall receive its own Anſwer with the reſt.

To the laſt Part of the firſt Reaſon founded upon the *ſimile* of a Remiſſion. It is anſwered, That the ſame cannot be reſpected, 1. Becauſe an Alledgeance upon a Remiſſion was never alledged, but where it was inſtantly verified by Production of the Remiſſion. 2. A Remiſſion *perimit totam inſtantiam*, for it frees the Defender from all Sentence, or Execution, of the Crime laid to his Charge: And it is truly *contra litis ingreſſum*, becauſe it diſcharges the Judge to proceed. But the Defence of Quarters is as above written, *nullum proceſſum partem impedit*, but is only effective, when the Sentence of the Proceſs is to be put to Execution.

To the ſecond Reaſon, bearing, That if the Defence of Quarters be ſuſtain'd to the Defenders as relevant, whereof they are confident, that poſſibly they will uſe no other Defences at all. It is anſwered, The Procurators of Eſtates are not to make anſwer to any thing that the Defenders mind poſſibly to do; but this anſwer they make, That this ſame may be alledged in all other peremptory Defences: For if any peremptory Defence be ſuſtained relevant and proven, the Defender needs propone no other Defences; which is abſurd, unleſs they will omit the proponing of them upon their own Peril, ſeeing it has ever been the Cuſtom of all Commiſſions from the Parliament, that all the Defences are proponed together, as has been in uſe to be proponed before the Juſtice.

To the third and laſt Reaſon, oppones the Cuſtom of the Juſtice Court, and of all preceding Commiſſions flowing from the Parliament for trying of Delinquents. For before the Juſtice Court, the Juſtice uſually urges the Pannal's Procurators to propone all the Defences, unleſs ſometimes the King's Advocat, for his own behoof, and in favours of the Purſuer, will make a Reply to a Peremptor, before he hear the reſt proponed: and before the Commiſſions of Parliament for trying of Delinquents, it has been always the Cuſtom to propone all the Defences together. And where the ſaid third Reaſon bears, that a material Defence eluſory of the Inſtance, ought to be diſcuſſed before the Defenders be urged to propone any further Defences. It is anſwered, 1. That the Defence of Quarters is not eluſory of the Proceſs, or any Part thereof. 2. All total Exceptions are eluſory of the Inſtance. And therefore, in no Caſe in the Defenders Judgment, can the Defenders be urged to propone their peremptory Defences *ſimul & ſemel: quod eſt abſurdum.*

9th December, 1645.

Sent at half One of the Clock.

DUPLIES *for* Ogilvie, William Murray, *Sir* Robert Spotiſwood, *and* Nathaniel Gordon.

TO the Anſwer to the firſt Alledgeance, it is duplyed; That the Defence founded upon Quarters, not only impedes the Execution of the Sentence, but elides the very Propoſition of the Libel, and impedes the Sentence itſelf, at the leaſt in ſo far as the Propoſition of the Libel carries, that whoſoever are Art and Part of the Crimes libelled, incur the pain of Treaſon, and Fore-faulture of Life: Which is expreſly libelled in the Propoſition of their Libel. And the Life being the greateſt of all Pains, a Defence alledged for Safety thereof, and eluſory of that part of the Propoſition and Concluſion foreſaid againſt the ſamen, ſhould firſt, and *per ſe* be diſcuſſed: Eſpecially in regard that the Defenders are very loth to entangle themſelves in a Diſpute with the Eſtates concerning the Relevancy of the Libel, wherein many tender Points may occur to be agitate, and it ſhould tend to an unneceſſary protracting of them, if the Defenders ſhould be forced to give in all their Defences; which the Defenders Procurators have not as yet thought on, being confident that the Defence upon Quarters will be found relevant, and carry that whereof the Defenders ſhould be moſt careful, *viz.* Safety of their Life. And it is known, that before the Juſtice, and other inferior Judicatories, Defences are moſt frequently proponed and diſcuſſed in the ſame order. And it is time, after this material Defence ſhall be diſcuſſed, then to urge the Defenders to give in all their Defences. Likeas, in the former Proceſs purſued againſt *Ogilvie*, there being one of the ſame nature given in by him; there paſt in that Proceſs, Replies, Duplies, Triplies, and Quadruplies, before he was urged to give in any further Defences.

Secundo, Whereas it is alledged, That in all Commiſſions from the Parliament, it has been the Cuſtom to propone all Defences together, juſt as before the Juſtice General. The Defender denies any ſuch Cuſtom; but by the contrary Defences have ſeverally, and without Cumulation, been proponed and diſcuſſed, as in *Ochiltry*'s Proceſs, *Toſchock*'s, *Meldrum*'s, and many others.

The ſame Duply the Defenders repeat againſt the remanent Members of the Reply: And humbly repreſents to the Honourable Lords of the Committee the Expediency of diſcuſſing of this Defence *primo loco*, ſeeing the diſcuſſing thereof in their favours (which they expect) will ſhorten the Proceſs, and make them ready to give all poſſible Content to the Eſtates, and no wiſe to vex them with many more Defences, or tedious Diſpute.

The Report from the Commiſſioners for the Proceſs to the Parliament againſt Sir Robert Spotiſwood.

AT *Sanct-Andrews* the eighth Day of *January* One thouſand ſix hundreth and fourty-ſix Years, the Lords and others Commiſſioners under written, appointed by the Eſtates of Parliament for the Proceſs, they are to ſay, *William* Earl *Mariſhal*, *William* Earl of *Glencairn*, *John* Earl of *Caſſils*, *John* Earl of *Weymes*, *Robert* Lord *Burghly*, *James* Lord *Coupar*, Sir *Archibald Johnſton* of *Wariſton*, one of the Lords of Seſſion, Sir *William Cochran* of *Collduon*, Mr. *George Dundaſs* of *Maner*, Sir *Thomas Ruthven* of *Frieland*, Sir *John Weyms* of *Bogie*, *James Mackdougal* of *Garthland*, *John Kennedy* Burges of *Air*, *George Gairden* Burges of *Bruntiſland*, Mr. *Robert Cunningham* Burges of *Kinghorne*, Mr. *Robert Barclay* Burges of *Irwing*, *William Glendinnin* Burges of *Kirkudbright*, Mr. *James Campbel* Burges of *Dumbarton*, and Mr. *Alexander Colvil* of *Blair*, one of his Majeſty's Juſtice Deputes, not as Ordinary Judge in the Office of Juſticiary, but as one of the Commiſſioners delegate by the ſaids Eſtates of Parliament with the remanent Commiſſioners foreſaid, *Anent* the Dittay given in by Mr. *Roger Mowat*, Mr. *James Baird*, and *Thomas Nicolſon*, Procurators for the Eſtates of this Kingdom to Sir *Robert Spotiſwood*, *Makand Mentioun*, &c. *as in the Dittay it ſelf is more fully contain'd.* The ſaid Mr. *Roger Mowat*, Mr. *James Baird*, and Mr. *Thomas Nicolſon* Procurators for the ſaids Eſtates, *Compearand* perſonally, who for inſtructing of the Points of the ſaid Dittay produced the foreſaid Commiſſion granted by the King's Majeſty to the ſaid *James Graham*, making and conſtituting him Lieutenant Governor and Captain General of all the Forces raiſed or to be raiſed within this Kingdom; and giving him Power and Authority to raiſe and levy Forces within this Kingdom, and to lead and conduct them againſt the Forces raiſed and levied by Authority of the Eſtates of Parliament of this Kingdom, as the ſamen of the Date, Tenor and Contents foreſaid, ſigneted, docqueted and ſubſcribed by the ſaid Sir *Robert*, at more length bears. And likewiſe produced the foreſaid Proclamation for holding of Parliaments within this Kingdom, together with the foreſaid Commiſſion granted by his Majeſty to the ſaid *James Graham* to be Commiſſioner for his Majeſty for holding of the ſaid Parliament, as the ſamen of the Tenor and Contents foreſaid, docqueted and ſubſcribed by the ſaid Sir *Robert*, alſo at more length bears. And in like manner likewiſe produced the foreſaid miſſive Letter written by the ſaid Sir *Robert Spotiſwood* during his being with the ſaid *James Graham*, to ſome of the Noblemen about the King's Perſon in *England*, as the ſamen of the Date, Tenor and Contents foreſaid, ſubſcribed by the ſaid Sir *Robert*, likewiſe at more length bears. And the ſaid Sir *Robert Spotiſwood* Defender *Compearand* Perſonally, who acknowledged Judicially the Signeting of the foreſaid firſt Commiſſion, and the Docqueting and Subſcription thereof; the Docqueting and Subſcriving of the foreſaid Proclamation, and ſecond Commiſſion to the ſaid *James Graham* for holding of the Parliament; and the foreſaid miſſive Letter and Subſcription thereof, to be all the ſaid

Sir *Robert*'s own proper Hand-write; whereupon the ſaids Procurators of Eſtates aſked Inſtruments. *Thereafter* the Rights, Reaſons and Allegations, together with the Alledgeances, Replies and Duplies given in by the ſaid Parties *hinc inde*, with the hail Writs foreſaid, and other Probation deduced by the ſaids Procurators of Eſtates, being at length heard, ſeen and conſider'd by the ſaids Commiſſioners, and they being therewith ripely adviſed, the ſaids Commiſſioners according to the Power and Authority given to them by the ſaids Eſtates of Parliament, makes their Report as follows, *viz.* They find the ſaid Dittay founded upon the foreſaid Act of Parliament made in *May* 1584. anent the impugning the Dignity and Authority of the Eſtates of Parliament, ſeeking or procuring the Innovation or Diminution of the Power of the ſamen, being ſubſum'd upon, and qualified in manner contain'd in the ſaid Dittay, relevant to infer againſt the ſaid Defender any arbitrary Cenſure or Puniſhment the ſaids Eſtates of Parliament ſhall think expedient. And in the like manner find the ſaid Dittay founded upon the Act of Parliament above-written made in *June* 1644. anent the taking up of Arms againſt the Kingdom and Eſtates of the Country, relevant to infer the Concluſion contain'd in the ſaid Act, notwithſtanding of the hail Defences and Duplies proponed for the part of the ſaid Sir *Robert* in the contrary. And repels the Defence founded upon Quarters proponed by the ſaid Sir *Robert*, as the ſamen is proponed by him againſt the ſaid Dittay, to ſtay and impede the foreſaids Commiſſioners to proceed to diſcuſs the Relevancy and Probation of the ſaid Dittay. But the ſaids Commiſſioners remits and refers the ſaids Defences given in by the ſaid Sir *Robert* or *James Ogilvie*, to which the ſaid Sir *Robert* adheres, and which he repeats founded upon Quarters, to be diſcuſſed and decided by the honourable Eſtates of Parliament before the pronouncing of any Sentence of Condemnation to follow here-upon. And finds that Member of the Aſſumption of the ſaid Dittay, bearing Sir *Robert* has docqueted and ſubſcribed with his Hand, ſigneted with the Signet of the Office of Secretary, the foreſaid Commiſſion granted to the ſaid *James Graham* upon the firſt of *June* 1645, for raiſing and levying of Forces within this Kingdom, leading and commanding them againſt the Forces raiſed and levyed by Authority of the Eſtates of Parliament, and ſiklike, bearing that the ſaid Sir *Robert Spotiſwood* has docqueted and ſubſcribed with his Hand the foreſaid Commiſſion granted by his Majeſty to *James Graham*, to be Commiſſioner for his Majeſty for holding the ſaid pretended Parliament, ſufficiently proven againſt the ſaid Sir *Robert*, to infer any arbitrary Cenſure or Puniſhment the foreſaids Eſtates of Parliament ſhall think fit. And in like manner find that Member of the ſaid Aſſumption of the foreſaid Dittay, bearing that the ſaid Sir *Robert* has joined himſelf with the ſaid *James Graham* and his rebellious Army, and his being with him at Acts of Hoſtility committed by him in the Month of *September* laſt, at the Battel of *Philiphaugh*, being taken in the Battel, and his Sword drawn in his Hand; and ſo having taken up Arms againſt the Kingdom and Eſtates of the Country, ſufficiently proven againſt the ſaid Sir *Robert*, to infer the Pain and Puniſhment of Treaſon, and that therethorow he is puniſhable by Forefaulture of Life, Lands and Goods, or any other Cenſure the Parliament ſhall pleaſe to inflict, the Defence of Quarters being firſt diſcuſt as aforeſaid. *Sic ſubſcribitur,*

Caſſilis I. P. D. Com.

13*th January*, 1646.

Read in Audience of the Parliament, and remitted to the ſeveral Bodies.

THE Eſtates of Parliament having heard the whole Diſpute contain'd in the Alledgeance, Reply and Duply, above and aback written, founded upon the Exception of Quarters, proponed for Sir *Robert Spotiſwood*, *Nathaniel Gordon*, *William Murray*, and Mr. *Andrew Guthrie*, and after full reading of the ſamen hail Diſpute in plain Parliament, and after full Debate there, the ſaids Eſtates repel the Alledgeance and Duply contained in this Paper, and in the other Papers produced, in reſpect of the Reply propon'd for eliding of the Alledgeance; whereupon Mr. *Thomas Nicolſon*, one of the Procurators for the Eſtates, aſked Inſtruments. *Sic ſubſcribitur,*

Crawfurd Lindſay, I. P. D. Parl.

16 *January*, 1646.

THE Report above written produced from the Commiſſion for the Proceſs, againſt Sir *Robert Spotiſwood*, together with the Interlocutor of Parliament given this Day, repelling the Defence and Duply propon'd by him, founded upon Quarters, in reſpect of the Reply proponed for eliding of the ſame Defence, being read, heard, conſidered and adviſed by the Eſtates of Parliament; they approve the ſame Report and Interlocutor of Parliament foreſaid, and find and declare that the ſaid Sir *Robert Spotiſwood* has incurred the Capital Puniſhment of Death, in reſpect the Dittay founded upon the Act of Parliament in *May* 1584, is found relevant and proven againſt him by the foreſaid Report. And als find and declare, That the ſaid Sir *Robert Spotiſwood* has incurred the Pain and Puniſhment of Treaſon, and Forefaulture of his Life, Lands and Goods, in reſpect the Dittay founded upon the Act of Parliament made in *June* 1644, anent the taking up of Arms againſt the Kingdom and Eſtates of this Country, is alſo found relevant and proven againſt him by the Report above ſpecified. And therefore the Eſtates declare him a Traitor to this Kingdom and Eſtates thereof, and forefault him in Life, Lands and Goods, to be applyed to the uſe of the Publick; and ordain his Arms to be riven, and delete out of the Book of Arms, and himſelf to be execute to the Death by ſtriking of his Head from his Shoulders at the Mercat Croſs of St. *Andrews*, upon *Tueſday* next the twentieth Day of *January* inſtant, at twelve a-Clock that Day, and ordain the Magiſtrats of St. *Andrews* to ſee the ſame done. *Sic ſubſcribitur,*

Crawfurd Lindſay, I. P. D. Par.

The Procurators of the States preſented to the Commiſſioners the Form and Directory for proving Sir Robert Spotiſwood's *Dittay.*

St. Andrews, 27 December 1645, *The Subſumption of Sir* Robert Spotiſwood's *Dittay, in the ſeveral Members and Aggravations thereof libelled, is proven as after follows.*

THE Gracious Favour mentioned in his Dittay granted by the Eſtates of Parliament in *Anno* 1641, is contained in the 33 Act of King *Charles* his ſecond Parliament dated the 16 of *November* 1641.

The Nomination of the Earl of *Lanerk* to be Secretary by the King's Majeſty and Parliament is proven by the Act of King *Charles* his ſecond Parliament in *Anno* 1642.

The King's Majeſty's Declaration anent the Defender is in the Act of King *Charles* his Parliament in *Anno* 1641.

The Defender his Docqueting and Signeting of the two Commiſſions, and of the Proclamation mentioned in the Defender his Dittay, are proven by the ſaids two Commiſſions and Proclamation produced.

The Defender his Joining with *James Graham* and his Army is proven by his own Declaration of the ſecond of *January* 1646.

The Writing of the Letter by the Defender of the date the tenth of *September* 1645. is proven by the Production of the Letter.

DOUBLE *of the King's Majeſty his Commiſſion to the Marquiſs of* Montroſe, *to be Lieutenant-Governour, and Genéral of all his Majeſty's Forces in* Scotland.

CHARLES R.

CHARLES by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To our Right Truſty and Right entirely Beloved Couſin *James* Marquis of *Montroſe*, greeting. Whereas divers traitorous and ſeditious Perſons of our Kingdom of *Scotland*, have levied War againſt us, and to the manifeſt Fore-faulture of their Allegiance, and the Breach of the Act of Pacification, lately made between the two Kingdoms, have invaded our Kingdom of *England*, and poſſeſs'd themſelves in divers places therein, to the great Diſturbance of our Peace, and the Deſtruction and Spoil of our People: And yet further, if no courſe be taken by us to prevent that, intend to make a new Invaſion upon this our Kingdom, and bring in Forces for the Aſſiſtance of the Rebels here. Know ye therefore, that we repoſing eſpecial Truſt and Confidence in your approved Wiſdom, Courage, Fidelity and great Ability, whereof you have given hitherto moſt extraordinary and undeniable Proof, do by theſe Preſents name, conſtitute, ordain and authorize you the ſaid *James* Marquis of *Montroſe* to be our Lieutenant Governor, and Captain General of all our Forces raiſed, or to be raiſed in our Kingdom of *Scotland*, and of, and over all others brought, or to be brought thither out of our Kingdom of *England* and *Ireland*, or from any part whatſoever. And we hereby give you Power and Authority to raiſe and levy Forces meet and apt for the Wars within all the Parts of our ſaid Kingdom of *Scotland*, and to command and enjoin the Sheriff Lieutenants, Magiſtrats of Cities and Towns, and all others having Power and Authority under us, within every ſeveral County of our ſaid Kingdom, to ſend, or cauſe to be ſent unto you ſuch Number of our ſaid Subjects apt and meet for the War, to ſuch Place, or Places, and at ſuch Time as you ſhall think expedient. And we do further by theſe Preſents, give you full Power and Authority to put in readineſs the Perſons ſo by you raiſed, or to be raiſed, levied, or aſſembled, ſent, conducted, or brought unto you; and them, from time to time, to arm, lead and conduct againſt all and ſingular Enemies, Rebels and Traitors, and every of their Adherents attempting any thing againſt us, our Crown and Dignity, within any part of the ſaid Kingdom; and the ſaids Enemies, Rebels and Traitors, to invade, purſue, repreſs, and in caſe of Oppoſition or Reſiſtance, to ſlay, kill, and put to Execution of Death, by all ways and means, according to your good Diſcretion: And to do, fulfil and execute all and ſingular other Things, which ſhall be requiſite for the Levying, Conducting and Government of the ſaid Forces, particularly to make, conſtitute and ordain Laws, Ordinances and Proclamations from time to time, as the Caſe ſhall require, for the good Government and Order of all the Forces that are, or ſhall be under your Command; and the ſame alſo, and every one of them to cauſe to be duly proclaimed, performed and executed. And likewiſe to puniſh all Mutinies, Tumults, Rapines, Murders, and all other Crimes and Miſdemeanours of any Perſon under your Command in your Army, according to the Courſe and Cuſtom of the Wars and the Laws of the Land. As alſo for us, and in our Name, as you in your Diſcretion ſhall think fit, to ſave ſuch as you pleaſe of theſe Traitors, Rebels, and Offenders as ſhall be apprehended or brought into Priſon, and make tender of our Royal Grace and Pardon to ſuch of them as ſhall ſubmit to us, and deſire to receive our Mercy. And further, we do give unto you full Power and Authority, for the better Execution of this our Commiſſion, to appoint and aſſign all Commanders and Officers neceſſary and requiſite for the Government and Command of our ſaids Forces, and to command all Cities, Towns, Caſtles and Forts within our ſaid Kingdom of *Scotland* to place Governors and Commanders within the ſame, and to remove, diſplace or continue ſuch as are in any of them already, according as you ſhall think meet for the Good of our Service, and Safety of that our Kingdom. And our further Will and Pleaſure is, and we do by theſe Preſents give unto you full Power and Authority, not only to repreſs and ſubdue ſuch as are in Arms againſt us within our ſaid Kingdom of *Scotland*, but alſo to advance your Forces into ſuch parts of our Kingdom of *England*, or any other of our Dominions as are infeſted and oppreſſed by any of our *Scotiſh* Subjects already brought, or hereafter to be brought in for aſſiſting the Rebels of this Kingdom, and there to purſue and beat out of ſuch Towns, Caſtles and Forts, as they have got Poſſeſſion of, without any part of our ſaid Kingdom of *England*, or other our Dominions, to recover the ſame for our uſe, and to relieve and free our *Engliſh* Subjects, and others, from the heavy Yoke that by that means lieth upon them. And becauſe of the ample Teſtimony you have given us of your ſingular Wiſdom and Fidelity in the ordering and diſpoſing of our great and weighty Affairs hitherto, to the end you may reward and encourage ſuch as have given, or ſhall give Aſſiſtance unto you towards the Advancement of our Service; We do hereby give unto you full Power and Authority from time to time to confer the Title, Degree and Honour of Knighthood upon ſuch Perſons, either Natives or others imployed under your Charge and Command, whom you in your Diſcretion ſhall conceive fit to receive the ſame; and whatſoever you ſhall do herein, according to the true Intent and Meaning of theſe Preſents, we do for us, our Heirs and Succeſſors, ratify and confirm upon the great Truſt and Confidence which we repoſe in you, that ye will make ſuch uſe of this Power given to you as may beſt conduce to the Advancement of our Service and Honour. Wherefore we will and command you our ſaid Lieutenant-Governor, with all Diligence duly to execute the Premiſes with effect. And whatſoever you ſhall do by vertue of this our Commiſſion, and according to the Tenor and Effect of the ſame, touching the Execution of the Premiſſes, or any part thereof, you ſhall be for the ſame diſcharged, by theſe Preſents in that behalf againſt us, our Heirs and Succeſſors. And therefore we will and command all and ſingular our Subjects within our ſaid Kingdom of *Scotland*, of whatſomever Degree and Quality, whether Noblemen, Gentlemen, Burgeſſes, Magiſtrates in the Country or Towns, Privy-Counſellors, Officers of State Militant, Commanders and Soldiers, to whom it ſhall appertain, that they and every of them ſhall be from time to time attendant, aiding, aſſiſting and helping to you, and at the Commandment of you as aforeſaid in the due Execution hereof, and that they diligently and faithfully perform and execute ſuch Commands as you ſhall from time to time give them for our Service, as they and every of them tender our Diſpleaſure, and will anſwer the contrary at their utmoſt Perils. And theſe Preſents ſhall have Continuance during our Pleaſure, and ever while they be expreſly revoked by us. Given under our Sign Manual, and Privy Signit: At our Court at *Hereford* the Twenty-fifth of *June* 1645, and of our Reign the One-and-twentieth.

May it pleaſe your Majeſty,

THIS is a Double of the former Commiſſion granted by your Majeſty to the Marquiſs of *Montroſe*, to be Lieutenant-Governor and General of all your Majeſty's Forces in *Scotland:*

Robert Spotiſwood.

Follows the King's Majeſty his Proclamation for calling a Parliament.

CHARLES R.

C*HARLES* by the Grace of God, of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, *&c.* *To our Lovits*, Lyon King of Arms, Heralds, Purſevants, Meſſengers and Officers at Arms, our Sheriffs in that part, conjunctly and ſeverally greeting. Whereas by the ſeventh Act in the firſt Seſſion of our late Parliament in that our Kingdom, we with Advice of our Eſtates there, did ſtatute and ordain, that in every three Years, once at leaſt, a Parliament ſhould be kept within that our Kingdom, in ſuch a convenient Place and Time as we with Advice aforeſaid ſhould at the cloſe of every Parliament determine and appoint; likeas by the laſt Act of our ſaid late Parliament, it was appointed, that the next Triennial Parliament ſhould meet and conveen at *Edinburgh* upon the firſt *Tueſday* of *June* laſt 1644. Which Date, in regard of the great Diſtempers both of this and that Kingdom, we could not keep at that time, neither in our own Perſon nor by our Commiſſioner. But now amidſt the many and weighty Affairs we have in hand, not laying aſide the Care of that our antient and native Kingdom, we have thought good not to fruſtrate any longer the Expectation and Deſires that our good Subjects there may have of ſuch a Parliament; and that the rather, leſt any of them ſhould be abuſed in thinking, that we do or ever intend to acknowledge for lawful the Meeting begun at *Edinburgh* the firſt *Tueſday* of *June* laſt, and continued ſince under the Name of a Parliament; which howſoever the appointing of it to conveen by us at that Day and Place, might have been a ſufficient Warrant to them for their firſt Meeting; yet to continue the ſame in abſence of us, or ſome one at leaſt to repreſent our Royal Perſon amongſt them, and by themſelves, without our concurring Authority, to make pretended Laws and Ordinances, is ſuch a Preſumption as we are reſolved never to endure. For theſe therefore and other Cauſes us moving, but chiefly out of the tender Affection we carry to that our native Kingdom, the preſent diſtracted Eſtate whereof we much pity, and think it cannot better be remedied than by the Wiſdom and Authority of a lawful and free Parliament, by whoſe Counſel and Advice we will be govern'd in what may conduce to the perfect ſettling of Peace and Tranquility there. We will and require you and every one of you conjunctly and ſeverally to paſs to the Mercat-Croſs of our Town of   and there by open Reading of this our Proclamation, ſummond and warn all and ſundry Dukes, Marquiſes, Earls, Viſcounts and Lords within that our Kingdom, to give their perſonal Appearance within the   of our ſaid Town of   the   Day of   next, where and when we intend to hold our High-Court of Parliament by ourſelf or our Commiſſioner to be appointed by us for that effect; as alſo that ye make Intimation of and Warning to the Sheriffs and Freeholders of every Shire within that our Kingdom, and to the Magiſtrates of all our Burroughs Royal within the ſame, having Place and Voice in Parliaments to elect and choiſe Commiſſioners to be ſent from their ſeveral Shires and Burroughs reſpective, that may give their Opinion and Counſel in ſuch Things as ſhall be propoſed in the ſaid Parliament, and concur with our Nobility aforeſaid, to make ſuch Acts and Statutes as may conduce moſt to the Peace and Welfare of that Kingdom, and ſhall be approv'd and ratify'd by us or our Commiſſioner aforeſaid in our Name: Likeas we will and command you to intimate publickly to all our Lieges of whatſoever Quality and Condition, that may have any Suits, Complaints or Grievances to be repreſented to us in Parliament, that they reſort for that effect to our ſaid Town of   at the Day aforeſaid, and have their Recourſe no where elſe within that our Kingdom (eſpecially to the pretended Parliament kept by the Rebels there at *Edinburgh*), as they would not have us to eſteem of them as Perſons diſaffected to our Royal Perſon and Government. Furthermore, it is our Pleaſure, That this being done, you paſs immediately to the Mercat-Croſſes of all the Head-boroughs within every ſeveral Shire of that our Kingdom, (or at leaſt to ſo many of them as are preſently under our Obedience) and publiſh this our Proclamation; provided always, that the Publication thereof at the Mercat-Croſs of our ſaid Town of   allenarly ſhall be a ſufficient Intimation to all our Lieges to repair thither; and that ſuch of our Nobility and Commiſſioners of Shires and Burroughs as ſhall compear and attend upon us or our Commiſſioner at the Day and Place appointed hereby, ſhall have Power with the Conſent and Approbation of us or our Commiſſioner foreſaid, to make Laws and Acts of Parliament, that ſhall bind all our Subjects of that Kingdom in the ſame manner that any preceding Acts of Parliament, either in our Time or our Predeceſſors, have done: And that you report this duly execute and indorſed Day and Place above written, as you and every one of you will anſwer upon your Perils; whereanent theſe Preſents ſhall be a ſufficient Warrant. Given under our Royal Hand and Signet at

May it pleaſe your Majeſty,

This is a Proclamation for calling of a Parliament to meet in the Town of   upon the   Day of   next.

Robert Spotiſwood.

Follows the King's Majeſty his Commiſſion to James *Marquiſs of* Montroſe *to be Commiſſioner to the foreſaid Parliament.*

CHARLES R.

C*HARLES* by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To our right truſty and right entirely beloved Couſin, *James* Marquiſs of *Montroſe*, Lieutenant Governor of our Kingdom of *Scotland*, greeting. Whereas for the ſettling of the preſent Diſtractions within that our Kingdom, we have thought fit to call a Parliament, which is to meet and begin the   Day of   next within our Town of   And in regard of the great and weighty Affairs we are taken up with here at this time, we not being able to be preſent in our own Perſon at that Meeting; therefore we repoſing a ſpecial Truſt and Confidence in your approved Wiſdom and Fidelity, do by theſe Preſents, Name, Conſtitute and Ordain you our Commiſſioner at the ſaid Parliament, authorizing you at the Day and Place abovementioned for us and in our Name to meet and conveen with ſuch of our Nobility and Commiſſioners of Shires and Burroughs as ſhall give their Appearance for holding of our High Court of Parliament in our ſaid Town of   There to adviſe and conſult with our ſaid Nobility and others, of all ſuch things as may tend to the Peace and Welfare of that our Kingdom; and in our Name to propone unto them ſuch things as you ſhall think expedient to be enacted in our ſaid Parliament, which may conduce to the Good of our Service and happy State of our ſaid Kingdom: Giving you hereby full Power and Authority for us and in our Name to approve and ratify all ſuch Acts and Statutes as ſhall be agreed upon by you and them, and to give them the Strength of Laws to bind and oblige all and whatſoever our Subjects of that Kingdom; with Power alſo to you to adjourn and continue the ſaid Parliament from time to time, or to diſſolve the ſame as you ſhall find it meet and expedient; and generally to do all and every thing that any Commiſſioner from us heretofore hath had Power and Authority to do. Likeas alſo we give you full Power and Authority in abſence of our Chancellor, to appoint a Vice-Chancellor to ſupply his Place, and to do and perform ſuch things as any Chancellor heretofore in preceding Parliaments have been in uſe of: As alſo in abſence of the Clerk Regiſter and other neceſſary Members of Parliament, to appoint ſuch as you ſhall think fit to fill their Places and exerce their Charges during the Sitting of the ſaid Parliament. And furthermore, we Will and Ordain you to make publick Intimation to all our Lieges within that our Kingdom of all ſuch Acts, Statutes and Ordinances as ſhall be enacted and concluded in the ſaid Parliament; and generally to uſe all Solemnities requiſite for giving of them the Strength and Power of Laws, which may bind all our Subjects of that Kingdom, in the ſame manner that any preceding

Act of Parliament in our time or any of our Predeceſſors have done. Given under our Royal Hand and Signet.

May it pleaſe your Majeſty,
This is a Warrant for the Marquis of *Montroſe*, to be your Majeſty's Commiſſioner in this next Parliament, giving him Power to appoint a Vice-Chancellor in caſe of the Chancellor's Abſence, and other Officers during the Sitting of the ſaid Parliament, in caſe they that are now in place do abſent themſelves.

Robert Spotiſwood.

Sir Robert Spotiſwood's *Declaration from St.* Andrews, *2d* January 1646.

In Preſence of the Laird of Bogie *and Mr.* Robert Barclay, *two of the Commiſſioners for the Proceſs.*

SIR *Robert Spotiſwood* being examined and interrogative when he went into *James Graham*'s Army, declares he went in to him at *Bothwel* upon the firſt Day of *September* laſt by paſt, and went along with the ſaid *James Graham* and his Army all the way, till he came to *Philiphaugh*, and being in *Selkirk* the time of the Allarm, he followed down to the *Haugh* after *James Graham* had drawn down all his Men to the *Haugh*; and when the Deponer was come down, he found the Armies ready to join, and before he could come thro' the *Haugh* to the other ſide where the Baggage ſtood, *James Graham*'s Army was put to flight, and the Deponer ſeeing them flee, reſolved to flee alſo, and was thereafter taken by the Laird of *Silvertonhill*, and ſome of his Accomplices, holding his Sword in his Hand. *Robert Spotiſwood, Ja. Weems* of *Bogie, Robert Barclay.*

For clearing the Generality of that part of my Depoſition, bearing that I was taken with my Sword in my hand, the Manner of it was this: By the time that I came from the Town of *Selkirk* down the *Philiphaugh*, the Fight was begun (wherein I was never engaged) and the Flight taken, in the which I was carry'd along with the Throng, having nothing but a Cane in my Hand. But being upon a borrowed Nag, that was not able to take me off, and being purſued cloſe by ſome Troopers with their drawn Swords, ſeeing no means to get free of them, I then drew my Sword to keep them off, if poſſible I might, until I had obtained Quarters of them; which I did, and in that poſture was taken. *Robert Spotiſwood.*

Sir Robert Spotiſwood's *Letter to the Laird of* Bogie *and Mr.* Robert Barclay, *from St.* Andrew's *Caſtle,* 4 January 1646.

Right Worſhipful,

HAVING bethought myſelf of my Depoſition laſt Day before you, left I might be prejudged by the Generality thereof, in regard of my Anſwer made to your Queſtion, That I was taken with my Sword in my Hand; I humbly deſire that this Specification of my ſaid Depoſition may be admitted at the time of the adviſing thereof, to wit, That as I have deponed already I was not ingaged in the Fight, neither ever drew Sword till after the Flight begun; in the which I being carry'd away with the reſt, and my Nag not being able to take me off; when I ſaw ſundry Troopers coming upon me with their drawn Swords, then I drew mine, to keep them off, if I could, until I had obtained Quarters, in which Poſture I was taken. This being the Truth, I hope, to clear my Carriage in that Place the better, your Worſhips will allow me the Favour to let me eik this to my former Depoſition, *re adhuc integra*, before the concluding of my Proceſs. In Expectation whereof I reſt your Worſhips very humble Servant,

Robert Spotiſwood.

Directed thus: For the Right Worſhipful the Laird of Bogie *and Mr.* Bobert Barclay.

Sir Robert Spotiſwood's *Letter to the Lord* Digby.

MY LORD,

WE are now arrived *ad columnas Herculis*, to *Tweed-ſide*, diſperſed all the King's Enemies within this Kingdom to ſeveral Places, ſome to *Ireland*, moſt of them to *Berwick*, and had no open Enemy more to deal with, if you had kept *David Leſly* there, and not ſuffered him to come in here, to make head againſt us of new. It is thought ſtrange here, that at leaſt you have ſent no Party after him, which we expected: altho' he ſhould not come at all. You little imagine the Difficulties my Lord Marquiſs hath here to wreſtle with; the overcoming of the Enemy is the leaſt of them, he hath more to do with his own ſeeming Friends: Since I came to him (which was but within theſe ten Days, after much Toil and Hazard) I have ſeen much of it. He was forced to diſmiſs his *Highlanders* for a Seaſon, who would needs return home to look to their own Affairs. When they were gone, *Aboyn* took a Caprice, and had away with him the greateſt ſtrength he had of Horſe: Notwithſtanding whereof he reſolved to follow his work, and clear this part of the Kingdom (that was only reſting) of the Rebels that had fled to *Berwick*, and kept a buſtling here. Beſides, he was invited hereunto by the Earls of *Roxburgh* and *Home*, who when he was within a dozen Miles of them, have rendred their Houſes and themſelves to *David Leſly*, and are carried in as Priſoners to *Berwick*. *Traquair* hath been with him, and promiſed more nor he hath yet performed. All theſe were great Diſheartnings to any other but to him, whom nothing of this kind can amate. With the ſmall Forces he has preſently with him he is reſolved to purſue *David Leſly*, and not ſuffer him to grow ſtronger. If you would perform that which you lately promiſed, both this Kingdom and the North of *England* might be ſoon reduced, and conſiderable Aſſiſtance ſent from hence to his Majeſty; however, nothing will be wanting on our parts here: theſe that are together are both Loyal and Reſolute, only a little Encouragement from you (as much to let it be ſeen that they are not neglected, as for any thing elſe) would crown the Work ſpeedily. This is all I have for the preſent, but that I am your Lordſhip's moſt Faithful Servant,

Robert Spotiſwood.

Dated, Near to Kelſo, September 10. 1645.

THESE are the Evidences whereupon the Sentence *Condemnator* is founded, in pronouncing of which there was much Diviſion in the Court; and tho' many liked not Sir *Robert*'s Party, yet they lov'd his Perſon, which made him many Friends, even among the Covenanters, in ſo much, that after the Sentence was read, ſome of the Nobility ſpoke in his behalf, and intreated the Houſe to conſider the Quality and Parts of that excellent Gentleman, and moſt juſt Judge, whom they had condemned, and begged earneſtly his Life might be ſpar'd: but an eminent Knowledge and Eſteem, which in other Caſes might be a Motive to ſave a Criminal, was one Cauſe of taking away his Life. For theſe Gentlemen who ſpoke were told, That the Authority of the then eſtabliſhed Government was not ſecure, while Sir *Robert Spotiſwood* was ſpared. Whereupon theſe Noblemen who preſided in the Meeting of the Eſtates at *Glaſgow*, and in the Parliament at *St. Andrews*, when they ſign'd the reſpective Sentences, openly declared to the reſt of the Members, That they did ſign as Preſes, and in obedience to the Command of the Eſtates, but not as their particular Judgment.

The Day before his Death, he wrote a Letter to the Marquiſs of *Montroſe*, telling, 'That he was condemn'd to die for being faithful to the King, and becauſe he had ſhewn an inviolable Reſpect to his Lordſhip's Pardon. That whatever the Eſtates might pretend, he believed his taking part with his Lordſhip, was the only Motive which made them determine his Deſtruction, and he hoped by his Death he would contribute more to his Majeſty's Service, than he could have done, had it pleas'd the Sovereign Providence to have prolong'd his Life. He intreated his Lordſhip to notice one thing he found neceſſary for the King's Service, which was, to continue his Gentleneſs and Moderation of Conduct, and not to imitate the barbarous Inhumanity of their Enemies, who gave his Lordſhip but too great Cauſe to follow their Example. And as a mark that his Services were not diſagreeable to his Lordſhip, he conjur'd him to take under his Protection his poor Orphans, and the afflicted Family of his Brother Sir *John Spotiſwood* of *Dairſey*.'

The Day of Sir *Robert Spotiſwood*'s Execution being come, the People were ſurprized with Aſtoniſhment, when they ſee appear upon the Scaffold, a Perſon whom in former Time they had with Love and Admiration ſeen preſide in the Supreme Judicature of the Nation, with great Sufficiency, and much Honour. He appeared with the ſame Gravity and Majeſty which did ever ſhine in his Countenance; and as he was about to ſpeak to the People, a Miniſter of the Place, knowing that the laſt Words of this great Man would make Impreſſion on the Minds of all the Spectators, cauſed the Provoſt of the Town to impoſe on him ſilence. But Sir *Robert* foreſeeing this Treatment, had put in Writing what he had propoſed to ſpeak to the People; ſo that finding himſelf interrupted, he threw among the Multitude the following Paper:

YE will expect ſomething from me of the Cauſe for which I am brought hither at this time to ſuffer in this kind; which I am bound to do for clearing the Integrity of my own Proceedings, vindicating his Majeſty's juſt and pious Intentions, and withal to vindicate you that are miſled in Ignorance, and made to believe that you are tied in Conſcience to ſet forward this unnatural Rebellion, maſked under the Covert and Pretext of propagating Religion, and maintaining of the Publick Liberties. You have perceived by the Fact that is gone before, *viz.* carrying Arms, *&c.* that I ſtand here adjudged to die by this pretended Parliament, as a Traitor to the Eſtates, and an Enemy to my Native Country. This is a Treaſon unheard of before in this Kingdom, againſt the Eſtates, a Thing of a late Creation, which I believe there be ſome would have erected in Oppoſition to the juſt and lawful Authority of the King, under which we and our Predeceſſors have been ſo many hunders of Years governed. To come to my treaſonable Demeanour (as they eſteem it), the main one is, That I did docquet and bring down a Commiſſion of Lieutenantry from his Majeſty, to the Lord Marquiſs of *Montroſe*, with a Proclamation for indicting a Parliament by the King's Authority, wherein the ſaid Lord Marquiſs was to be Commiſſioner. Not to excuſe myſelf upon the Neceſſity laid upon me to obey his Majeſty's Command in a Buſineſs of that Nature, in regard of the Charge I had about him, I cannot ſo far betray my own Conſcience, as to keep up from you my Judgment of the thing itſelf, ſeeing it may tend to the juſtifying of the King's part, and your better Information; for lack whereof, I know many are entangled in this Rebellion unwittingly: And who knoweth, but God in his merciful Providence hath brought us hither, to be Inſtruments of freeing you from the manifold Deluſions that are made uſe of to enſnare you. I ſay then, it was juſt and neceſſary to his Majeſty to grant ſuch Commiſſions, and by Conſequence an Act of Duty in me to perform what he was pleaſed to Command me. It is known well enough what Contentment his Majeſty gave to this Kingdom at his laſt being here, both in the Affairs of Church and Policy; notwithſtanding whereof the World ſeeth what meeting he hath gotten from us. When the Rebellion burſt forth in *England*, all that he deſired of us, was only to ſtand neutral, and not to meddle between him and his Subjects there: Of which moderate deſire of his little reckoning was made; but on the contrary, at the requeſt of theſe Rebels, by the Power of their Faction amongſt us, an Army was raiſed and ſent to *England*, to aſſiſt them againſt our own native King. His Majeſty being reduced to this Extremity, what expedient could he find ſo fair and eaſy, as to make uſe of the Help of ſuch of his Loyal Subjects here, as he knew had ſuch an unparallel'd Diſloyalty in Horror and Deteſtation? Amongſt whom that matchleſs Mirror of all true Worth and Nobility, the Lord Marquiſs of *Montroſe* having offered himſelf, it pleaſed his Majeſty to give him a ſubaltern Commiſſion at firſt; which he having execute with ſuch unheard of Succeſs, that his Memory ſhall be had in Honour for it in all Ages; his Majeſty for the better furthering of his own Service, and to countenance and encourage him the more in it, gave him an abſolute and independent one thereafter, which is That I deliver'd into his Hands by his Majeſty's Command. Herewithal his Majeſty pitying the Miſery of this poor Kingdom, occaſioned by the rebellious Stubbornneſs of a few factious Spirits, thought fit to give Power to the ſaid Lord Marquiſs to call a Parliament in his Majeſty's Name, to try if by that Means a Remedy might be found againſt the preſent Evils, and to have all his Subjects of this Kingdom reduced by one Means or other under his Obedience. In all this I ſee not what can be juſtly charged upon his Majeſty, or upon me as his Servant, who have done nothing againſt any authorized Law of the Kingdom, but have ſerved him faithfully, unto whom by Truſt and natural Allegiance I am ſo much bound.

Whereas I am declared an Enemy to my native Country, God be ſo propitious to me, as my Thoughts towards it have been always publick, and tending to the Good and Honour thereof! I do profeſs, ſince the firſt time I had the Honour of that Noble Marquiſs his Acquaintance, I have been a Favourer of his Deſigns, knowing them to be both loyal and honourable: Beſide that I knew his Affection towards his Country to be eminent in this eſpecially, that he did ever ſhow himſelf paſſionate to vindicate the Honour of this Kingdom, which ſuffereth every where, by this ſtrange Combination of theirs with the Rebels of another Kingdom againſt their own Prince; wherein I concurred in Judgment with him, and thought there was no other way to do it, but by ſetting up a Party of true and loyal-hearted *Scots*-Men for his Majeſty, whereby it might be ſeen that it is not a national Defection, but only ſtirred up by a Faction therein, who for their own Ends have diſhonoured their native Kingdom, and diſturbed the Peace thereof. In enterprizing and proſecuting of which heroical Deſign, God hath ſo favoured that Noble Lord, that he hath righted our Country in the Opinion of all the World, and diſcovered where the Rottenneſs lieth.

Thus far I am content to be accounted a Traitor, in their Opinion that have condemned me, being fully aſſured that God the righteous Judge of all, who knoweth the Uprightneſs and Integrity of my Intentions, will impute no fault to me in this kind; ſince to my Knowledge I have carried myſelf according to the Direction of his Word, and the Practice of all good Chriſtians before theſe miſerable Times we are fallen into. My Exhortation therefore (which coming from one at the Point I am at, will, I hope, have ſome weight) ſhall be this unto you; That you will break off your Sins by Repentance, and above all, free yourſelf of this Maſter Sin of Rebellion that reigneth in this Land: whereunto moſt part are either forced, or drawn unawares, chiefly at the Inſtigation of thoſe who ſhould direct you in the way of Truth. It cannot be but a great Judgment upon a Land, when God's ſingular Mercies towards it are ſo little valued. He hath not given us a King in his Wrath, but one for Piety, Bounty, and all Virtues both Chriſtian and Moral, may be a Pattern to all Princes beſides. How thankful we are to God for ſo great a Bleſſing, our Reſpect towards him manifeſteth. Yet I fear there is a greater Judgment than this upon it, which occaſioneth all the Miſchiefs that afflict this poor Land, ſuch as was ſent upon *Ahab*: God hath put a lying Spirit in the Mouths of the moſt part of your Prophets, who inſtead of the Doctrine of Salvation, labour to draw your Hearts unto the Condemnation of *Core*. God Almighty look upon this poor miſerable Church and Kingdom, and relieve you out of the intolerable Servitude you lie under, which I do heartily wiſh for in your Behalf! So let me have the Aſſiſtance of your Prayers, that God would be pleaſed to pardon all my Sins in Jeſus Chriſt, and gather my Soul with the Saints and Martyrs that are gone to their Reſt before. So I bid the World and you farewel.

Sir *Robert* was not diſturbed at the unmannerly Interruption he met with, when he was about to addreſs himſelf to the People; ſo that turning from them, he wholly beſtowed himſelf in Devotions and Prayers to Almighty God. The ſame Miniſter having aſked, if he would have him and the People to pray for the Salvation of his Soul, he made anſwer, That he deſired the Prayers of the People, but was not ſollicitous for his Prayers, which he believed were abominable unto God: for, (added he) of all the Plagues with which the offended Majeſty of God had ſcourged this Nation, this was much the greateſt (greater than the Sword, Fire or Peſtilence), that for the Sins of the People God had ſent a *a lying Spirit into the Mouths of the Prophets*. With which ſaying this Preacher finding himſelf touched, grew ſo extremely in Paſſion, that he could not forbear ſcandalous and contumelious Language againſt Sir *Robert*'s Father, who had been long dead, and againſt himſelf who was now a dying: Which this mild Gentleman took no notice of, having his Mind fixed upon higher Matters. At laſt with an undaunted Air he advances towards the Inſtrument of his Execution, and ſhewing no Alteration either in Voice or Countenance, he laid down his Neck to the fatal Stroak, and uttered theſe his laſt Words: *Merciful Jeſu, gather my Soul unto thy Saints and Martyrs, who have run before me in this Race.*

XLIV. *The Trial of* CHARLES STUART * *King of* England, *before the High-Court of Juſtice, for* High-Treaſon, January 20--27, 1648. 24 Car. I. *Licenſed by* Gilbert Mabbot.

ON *Saturday*, being the 20th Day of *January*, 1648. the Lord Preſident of the High Court of Juſtice, with near fourſcore of the Members of the ſaid Court, having ſixteen Gentlemen with Partizans, and a Sword, and a Mace, with their and other Officers of the ſaid Court, marching before them, came to the Place ordered to be prepared for their ſitting at the Weſt-end of the great Hall at *Weſtminſter*; where the Lord Preſident in a Crimſon-Velvet Chair, fixed in the midſt of the Court, placed himſelf, having a Deſk with a Crimſon-Velvet Cuſhion before him; the reſt of the Members placing themſelves on each ſide of him upon ſeveral Seats, or Benches, prepared and hung with Scarlet for that Purpoſe; and the Partizans dividing themſelves on each ſide of the Court before them.

The Court being thus ſat, and Silence made, the Great Gate of the ſaid Hall was ſet open, to the end that all Perſons, without Exception, deſirous to ſee or hear, might come into it. Upon which the Hall was preſently filled, and Silence again ordered.

This done, Colonel *Thomlinſon*, who had the Charge of the Priſoner, was commanded to bring him to the Court; who within a Quarter of an Hour's Space brought him, attended with about twenty Officers with Partizans, marching before him, there being other Gentlemen, to whoſe Care and Cuſtody he was likewiſe committed, marching in his Rear.

Being thus brought up within the Face of the Court, the Serjeant at Arms, with his Mace, receives and conducts him ſtrait to the Bar, having a Crimſon-Velvet Chair ſet before him. After a ſtern looking upon the Court, and the People in the Galleries on each ſide of him, he places himſelf, not at all moving his Hat, or otherwiſe ſhewing the leaſt Reſpect to the Court; but preſently riſes up again, and turns about, looking downwards upon the Guards placed on the left ſide, and on the Multitude of Spectators on the right ſide of the ſaid great Hall. After Silence made among the People, the Act of Parliament for the trying of *Charles Stuart*, King of *England*, was read over by the Clerk of the Court, who ſat on one ſide of a Table covered with a rich *Turkey*-Carpet, and placed at the Feet of the ſaid Lord-Preſident; upon which Table was alſo laid the Sword and Mace.

After reading the ſaid Act, the ſeveral Names of the Commiſſioners were called over, every one who was preſent, being eighty, as aforeſaid, riſing up, and anſwering to his Call.

Having again placed himſelf in his Chair, with his Face towards the Court, Silence being again ordered, the Lord Preſident ſtood up, and ſaid:

Ld. Preſident. *Charles Stuart*, King of *England*, the Commons of *England* aſſembled in Parliament being deeply ſenſible of the Calamities that have been brought upon this Nation (which is fixed upon you as the principal Author of it), have reſolved to make Inquiſition for Blood; and according to that Debt and Duty they owe to Juſtice, to God, the Kingdom, and themſelves, and according to the Fundamental Power that reſts in themſelves, they have reſolved to bring you to Trial and Judgment; and for that purpoſe have conſtituted this High Court of Juſtice, before which you are brought.

This ſaid, Mr. *Cook*, Sollicitor for the Commonwealth (ſtanding within a Bar on the Right Hand of the Priſoner) offered to ſpeak: but the King having a Staff in his Hand, held it up, and laid it upon the ſaid Mr. *Cook*'s Shoulder two or three times, bidding him hold. Nevertheleſs, the Lord Preſident ordering him to go on, he ſaid:

Mr. *Cook*. My Lord, I am commanded to charge *Charles Stuart*, King of *England*, in the Name of the Commons of *England*, with Treaſon and High Miſdemeanours; I deſire the ſaid Charge may be read.

The ſaid Charge being delivered to the Clerk of the Court, the Lord Preſident ordered it ſhould be read; but the King bid him hold. Nevertheleſs, being commanded by the Lord Preſident to read it, the Clerk begun, and the Priſoner ſat down again in his Chair, looking ſometimes on the High Court, ſometimes up to the Galleries; and having riſen again, and turned about to behold the Guards and Spectators, ſat down, looking very ſternly, and with a Countenance not at all moved, till theſe Words, *viz.* Charles Stuart *to be a Tyrant and Traitor*, &c. were read; at which he laughed, as he ſat in the Face of the Court.

The Charge being read, the Lord Preſident replied:

Lord Preſident. Sir, You have now heard your Charge, containing ſuch Matter as appears in it; you find, that in the Cloſe of it, it is prayed to

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* Clar. Hiſt. *Vol.* 3. *p.* 195—199. Ruſh. Col. *Vol.* 7. *p.* 1400.

the Court, in the behalf of the Commons of *England*, that you anſwer to your Charge. The Court expects your Anſwer.

King. I would know by what Power I am called hither; I was not long ago in the *Iſle of Wight*; how I came there, is a longer Story than I think it fit at this preſent time for me to ſpeak of; but there I enter'd into a Treaty with both Houſes of Parliament, with as much public Faith as it's poſſible to be had of any People in the World. I treated there with a number of honourable Lords and Gentlemen, and treated honeſtly and uprightly; I cannot ſay but they did very nobly with me, we were upon the concluſion of the Treaty. Now I would know by what Authority, I mean lawful; there are many unlawful Authorities in the world, Thieves and Robbers by the Highways; but I would know by what Authority I was brought from thence, and carried from place to place, and I know not what: and when I know what lawful Authority, I ſhall anſwer. Remember I am your King, your lawful King, and what Sins you bring upon your Heads, and the Judgment of God upon this Land; think well upon it, I ſay, think well upon it, before you go further from one Sin to a greater: therefore let me know by what lawful Authority I am ſeated here, and I ſhall not be unwilling to anſwer. In the mean time, I ſhall not betray my Truſt; I have a Truſt committed to me by God, by old and lawful Deſcent; I will not betray it, to anſwer to a new unlawful Authority: therefore reſolve me that, and you ſhall hear more of me.

Ld. Preſident. If you had been pleaſed to have obſerved what was hinted to you by the Court, at your firſt coming hither, you would have known by what Authority; which Authority requires you, in the name of the People of *England*, of which you are elected King, to anſwer them.

King. No, Sir, I deny that.

Ld. Preſident. If you acknowledge not the Authority of the Court, they muſt proceed.

King. I do tell them ſo; *England* was never an Elective Kingdom, but an Hereditary Kingdom for near theſe Thouſand Years; therefore let me know by what Authority I am called hither: I do ſtand more for the Liberty of my People, than any here that come to be my pretended Judges; and therefore let me know by what lawful Authority I am ſeated here, and I will anſwer it; otherwiſe I will not anſwer it.

Ld. Preſident. Sir, how really you have managed your Truſt, is known: your way of Anſwer is to interrogate the Court, which beſeems not you in this condition. You have been told of it twice or thrice.

King. Here is a Gentleman, Lieutenant Colonel *Cobbet*; aſk him, if he did not bring me from the *Iſle of Wight* by force. I do not come here as ſubmitting to the Court: I will ſtand as much for the Privilege of the Houſe of Commons, rightly underſtood, as any Man here whatſoever. I ſee no Houſe of Lords here that may conſtitute a Parliament; and the King too ſhould have been. Is this the bringing of the King to his Parliament? Is this the bringing an end to the Treaty in the publick Faith of the World? Let me ſee a legal Authority warranted by the Word of God the Scriptures, or warranted by the Conſtitutions of the Kingdom, and I will anſwer.

Ld. Preſident. Sir, You have propounded a Queſtion, and have been anſwered. Seeing you will not anſwer, the Court will conſider how to proceed: in the mean time, thoſe that brought you hither, are to take charge of you back again. The Court deſires to know, whether this be all the anſwer you will give, or no.

King. Sir, I deſire that you would give me, and all the World, Satiſfaction in this: let me tell you, it is not a ſlight thing you are about. I am ſworn to keep the Peace, by that Duty I owe to God and my Country, and I will do it to the laſt Breath of my Body; and therefore ye ſhall do well to ſatisfy firſt God, and then the Country, by what Authority you do it: if you do it by an uſurped Authority, you cannot anſwer. There is a God in Heaven, that will call you, and all that give you Power, to account. Satisfy me in that, and I will anſwer; otherwiſe I betray my Truſt, and the Liberties of the People: and therefore think of that, and then I ſhall be willing. For I do avow, that it is as great a Sin to withſtand lawful Authority, as it is to ſubmit to a tyrannical, or any other ways unlawful Authority; and therefore ſatisfy me that, and you ſhall receive my Anſwer.

Ld. Preſident. The Court expects you ſhould give them a final Anſwer; their Purpoſe is to adjourn to *Monday* next; if you do not ſatisfy yourſelf, tho' we do tell you our Authority, we are ſatisfied with our Authority, and it is upon God's Authority and the Kingdom's; and that Peace you ſpeak of will be kept in the doing of Juſtice, and that's our preſent Work.

King. For anſwer, let me tell you, you have ſhewn no lawful Authority to ſatisfy any reaſonable Man.

Ld. Preſident. That is, in your apprehenſion; we are ſatisfied that are your Judges.

King. 'Tis not my Apprehenſion, nor yours neither, that ought to decide it.

Ld. Preſident. The Court hath heard you, and you are to be diſpoſed of as they have commanded.

The Court adjourns to the Painted-Chamber, on *Monday* at Ten of the Clock in the Forenoon, and thence hither.

It is to be obſerved, that as the Charge was reading againſt the King, the Head of his Staff fell off, which he wonder'd at; and ſeeing none to take it up, he ſtoops for it himſelf.

As the King went away, facing the Court, he ſaid, I do not fear that (meaning the Sword). The People in the Hall, as he went down the Stairs, cry'd out, ſome, *God ſave the King*, and moſt for *Juſtice*.

At the High Court of Juſtice ſitting in Weſtminſter-Hall, Monday, Jan. 22, 1648.

OYes made; Silence commanded; the Court call'd, and anſwer'd to their Names.

Silence commanded upon pain of Impriſonment, and the Captain of the Guard to apprehend all ſuch as make Diſturbance.

Upon the King's coming in, a ſhout was made.

Command given by the Court to the Captain of the Guard, to fetch and take into his Cuſtody thoſe who make any Diſturbance.

Mr. Sollicitor. May it pleaſe your Lordſhip, my Lord Preſident; I did at the laſt Court in the Behalf of the Commons of *England*, exhibit and give in to this Court a Charge of High-Treaſon, and other high Crimes, againſt the Priſoner at the Bar; whereof I do accuſe him in the name of the People of *England*: and the Charge was read unto him, and his Anſwer required. My Lord, He was not then pleaſed to give an Anſwer, but inſtead of anſwering, did there diſpute the Authority of this high Court. My humble Motion to this high Court in behalf of the Kingdom of *England* is, That the Priſoner may be directed to make a poſitive Anſwer, either by way of Confeſſion, or Negation; which if he ſhall refuſe to do, that the Matter of the Charge may be taken *pro confeſſo*, and the Court may proceed according to Juſtice.

Ld. Preſident. Sir, You may remember at the laſt Court you were told the Occaſion of your being brought hither, and you heard a Charge read againſt you, containing a Charge of High-Treaſon and other high Crimes againſt this Realm of *England*: you heard likewiſe, that it was prayed in the Behalf of the People, that you ſhould give an Anſwer to that Charge, that thereupon ſuch Proceedings might be had, as ſhould be agreeable to Juſtice. You were then pleaſed to make ſome Scruples concerning the Authority of this Court, and knew not by what Authority you were brought hither; you did divers times propound your Queſtions, and were as often anſwer'd, That it was by Authority of the Commons of *England* aſſembled in Parliament, that did think fit to call you to account for thoſe high and capital Miſdemeanours wherewith you were then charged. Since that the Court hath taken into Conſideration what you then ſaid; they are fully ſatisfied with their own Authority, and they hold it fit you ſhould ſtand ſatisfied with it too; and they do require it, that you do give a poſitive and particular Anſwer to this Charge that is exhibited againſt you: they do expect you ſhould either confeſs or deny it; if you deny, it is offer'd in the Behalf of the Kingdom to be made good againſt you: their Authority they do avow to the whole World, that the whole Kingdom are to reſt ſatisfied in, and you are to reſt ſatisfied with it. And therefore you are to loſe no more Time, but to give a poſitive Anſwer thereunto.

King. When I was here laſt, 'tis very true, I made that Queſtion; and truly if it were only my own particular Caſe, I would have ſatisfied myſelf with the Proteſtation I made the laſt time I was here againſt the Legality of this Court, and that a King cannot be try'd by any ſuperior Juriſdiction on Earth: but it is not my Caſe alone, it is the Freedom and the Liberty of the People of *England*; and do you pretend what you will, I ſtand more for their Liberties. For if Power without Law may make Laws, may alter the fundamental Laws of the Kingdom, I do not know what Subject he is in *England*, that can be ſure of his Life, or any thing that he calls his own: therefore when that I came here, I did expect particular Reaſons to know by what Law, what Authority you did proceed againſt me here. And therefore I am a little to ſeek what to ſay to you in this particular, becauſe the Affirmative is to be proved, the Negative often is very hard to do: but ſince I cannot perſuade you to do it, I ſhall tell you my Reaſons as ſhort as I can.

My Reaſons why in Conſcience and the Duty I owe to God firſt, and my People next, for the Preſervation of their Lives, Liberties, and Eſtates, I conceive I cannot anſwer this, till I be ſatisfied of the Legality of it.

All Proceedings againſt any Man whatſoever—

Ld. Preſident. Sir, I muſt interrupt you, which I would not do, but that what you do is not agreeable to the Proceedings of any Court of Juſtice: You are about to enter into Argument, and diſpute concerning the Authority of this Court, before whom you appear as a Priſoner, and are charged as an high Delinquent; if you take upon you to diſpute the Authority of the Court, we may not do it, nor will any Court give way unto it: you are to ſubmit unto it, you are to give a punctual and direct Anſwer, whether you will anſwer your Charge or no, and what your Anſwer is.

King. Sir, By your favour, I do not know the Forms of Law; I do know Law and Reaſon, tho' I am no Lawyer profeſs'd; but I know as much Law as any Gentleman in *England*; and therefore (under favour) I do plead for the Liberties of the People of *England* more than you do: And therefore if I ſhould impoſe a Belief upon any Man, without Reaſons given for it, it were unreaſonable; but I muſt tell you, that that Reaſon that I have, as thus informed, I cannot yield unto it.

Ld. Preſident. Sir, I muſt interrupt you, you may not be permitted: you ſpeak of Law and Reaſon; it is fit there ſhould be Law and Reaſon, and there is both againſt you. Sir, the Vote of the Commons of *England* aſſembled in Parliament, it is the Reaſon of the Kingdom, and they are theſe that have given to that Law, according to which you ſhould have ruled and reigned. Sir, you are not to diſpute our Authority, you are told it again by the Court. Sir, it will be taken notice of, that you ſtand in contempt of the Court, and your Contempt will be recorded accordingly.

King. I do not know how a King can be a Delinquent; but by any Law that ever I heard of, all Men (Delinquents, or what you will), let me tell you, they may put in Demurrers againſt any Proceeding as legal: and I do demand that, and demand to be heard with my Reaſons; if you deny that, you deny Reaſon.

Ld. Preſident. Sir, you have offer'd ſomething to the Court; I ſhall ſpeak ſomething unto you, the Senſe of the Court. Sir, neither you nor any Man are permitted to diſpute that Point; you are concluded, you may not demur to the Juriſdiction of the Court: if you do, I muſt let you know, that they over-rule your Demurrer; they ſit here by the Authority of the Commons of *England*, and all your Predeceſſors and you are reſponſible to them.

King. I deny that; ſhew me one Precedent.

Ld. Preſident. Sir, you ought not to interrupt while the Court is ſpeaking to you. This Point is not to be debated by you, neither will the Court permit you to do it; if you offer it by way of Demurrer to the Juriſdiction of the Court, they have conſider'd of their Juriſdiction, they do affirm their own Juriſdiction.

King. I ſay, Sir, by your favour, that the Commons of *England* was never a Court of Judicature; I would know how they came to be ſo.

Ld. Preſident. Sir, you are not to be permitted to go on in that Speech and theſe Diſcourſes.

Then the Clerk of the Court read as followeth:

Charles Stuart, *King of* England, *You have been accuſed on Behalf of the People of* England *of High-Treaſon, and other high Crimes; the Court have determined that you ought to anſwer the ſame.*

King. I will anſwer the ſame ſo ſoon as I know by what Authority you do this.

Ld. Preſident. If this be all that you will ſay, then, Gentlemen, you that brought the Priſoner hither, take Charge of him back again.

King. I do require that I may give in my Reaſons why I do not anſwer, and give me time for that.

Ld. Preſident. Sir, 'tis not for Priſoners to require.

King. Priſoners! Sir, I am not an ordinary Priſoner.

Ld. Preſident. The Court hath conſidered of their Juriſdiction, and they have already affirmed their Juriſdiction; if you will not anſwer, we ſhall give Order to record your Default.

King. You never heard my Reaſons yet.

Ld. Preſident. Sir, your Reaſons are not to be heard againſt the higheſt Juriſdiction.

King. Shew me that Juriſdiction where Reaſon is not to be heard.

Ld. Preſident. Sir, we ſhew it you here, the Commons of *England*; and the next time you are brought, you will know more of the Pleaſure of the Court; and, it may be, their final Determination.

King. Shew me where ever the Houſe of Commons was a Court of Judicature of that Kind.

Ld. Preſident. Serjeant, take away the Priſoner.

King. Well, Sir, remember that the King is not ſuffered to give in his Reaſons for the Liberty and Freedom of all his Subjects.

Ld. Preſident. Sir, you are not to have Liberty to uſe this Language: How great a Friend you have been to the Laws and Liberties of the People, let all *England* and the World judge.

King. Sir, under Favour, it was the Liberty, Freedom, and Laws of the Subject, that ever I took—defended myſelf with Arms; I never took up Arms againſt the People, but for the Laws.

Ld. Preſident. The Command of the Court muſt be obeyed; no Anſwer will be given to the Charge.

King. Well, Sir!

And ſo he was guarded forth to Sir *Robert Cotton*'s Houſe.

Then the Court adjourned to the Painted Chamber, on *Tueſday* at Twelve a-Clock, and from thence they intend to adjourn to *Weſtminſter-Hall*; at which time all Perſons concerned are to give their Attendance.

At the High Court of Juſtice ſitting in Weſtminſter-Hall, *Tueſday* Jan. 23. 1648.

O Yes made, Silence commanded, the Court called, ſeventy-three Perſons preſent.

The King comes in with his Guard, looks with an auſtere Countenance upon the Court, and ſits down.

The ſecond O Yes made, and Silence commanded.

Mr. Cook, *Sollicitor-General.* May it pleaſe your Lordſhip, my Lord Preſident; this is now the third time, that by the great Grace and Favour of this High Court, the Priſoner hath been brought to the Bar before any Iſſue joined in the Cauſe. My Lord, I did at the firſt Court exhibit a Charge againſt him, containing the higheſt Treaſon that ever was wrought upon the Theatre of *England*; That a King of *England*, truſted to keep the Law, that had taken an Oath ſo to do, that had Tribute paid him for that End, ſhould be guilty of a wicked Deſign to ſubvert and deſtroy our Laws, and introduce an Arbitrary and Tyrannical Government, in Defiance of the Parliament and their Authority, ſet up his Standard for War againſt his Parliament and People: And I did humbly pray, in the Behalf of the People of *England*, that he might ſpeedily be required to make an Anſwer to the Charge.

But, my Lord, inſtead of making any Anſwer, he did then diſpute the Authority of this High Court. Your Lordſhip was pleaſed to give him a further Day to conſider, and to put in his Anſwer; which Day being Yeſterday, I did humbly move, that he might be required to give a direct and poſitive Anſwer, either by denying or confeſſion of it: But, my Lord, he was then pleaſed for to demur to the Juriſdiction of the Court; which the Court did then over-rule, and commanded him to give a direct and poſitive Anſwer. My Lord, Beſides this great Delay of Juſtice, I ſhall now humbly move your Lordſhip for ſpeedy Judgment againſt him. My Lord, I might preſs your Lordſhip upon the whole, that according to the known Rules of the Law of the Land, That if a Priſoner ſhall ſtand as contumacious in Contempt, and ſhall not put in an iſſuable Plea, Guilty or Not Guilty of the Charge given againſt him, whereby he may come to a fair Trial; that, as by an implicit Confeſſion, it may be taken *pro confeſſo*, as it hath been done to thoſe who have deſerved more Favour than the Priſoner at the Bar has done. But beſides, my Lord, I ſhall humbly preſs your Lordſhip upon the whole Fact. The Houſe of Commons, the Supreme Authority and Juriſdiction of the Kingdom, they have declared, That it is notorious, that the Matter of the Charge is true, as it is in Truth, my Lord, as clear as Cryſtal, and as the Sun that ſhines at Noon-day: which if your Lordſhip and the Court be not ſatisfied in, I have notwithſtanding, on the People of *England*'s Behalf, ſeveral Witneſſes to produce. And therefore I do humbly pray, and yet I muſt confeſs it is not ſo much I, as the innocent Blood that hath been ſhed, the Cry whereof is very great for Juſtice and Judgment; and therefore I do humbly pray, that ſpeedy Judgment be pronounced againſt the Priſoner at the Bar.

Ld. Preſident. Sir, you have heard what is moved by the Counſel on the Behalf of the Kingdom againſt you. Sir, you may well remember, and if you do not, the Court cannot forget what dilatory Dealings the Court hath found at your Hands. You were pleaſed to propound ſome Queſtions, you have had our Reſolution upon them. You were told over and over again, That the Court did affirm their own Juriſdiction; that it was not for you, nor any other Man, to diſpute the Juriſdiction of the ſupreme and higheſt Authority of *England*, from which there is no Appeal, and touching which there muſt be no Diſpute: Yet you did perſiſt in ſuch Carriage, as you gave no manner of Obedience, nor did you acknowledge any Authority in them, nor the High Court that conſtituted this Court of Juſtice.

Sir, I muſt let you know from the Court, that they are very ſenſible of theſe Delays of your's, and that they ought not, being thus authorized by the ſupreme Court of *England*, to be thus trifled withal; and that they might in Juſtice, if they pleaſed, and according to the Rules of Juſtice, take Advantage of theſe Delays, and proceed to pronounce Judgment againſt you: Yet nevertheleſs they are pleaſed to give Direction, and on their Behalfs I do require you, that you make a poſitive Anſwer unto this Charge that is againſt you, Sir, in plain Terms, for Juſtice knows no Reſpect of Perſons; you are to give your poſitive and final Anſwer in plain *Engliſh*, whether you be guilty or not guilty of theſe Treaſons laid to your Charge.

The King, after a little Pauſe, ſaid,

King. When I was here Yeſterday, I did deſire to ſpeak for the Liberties of the People of *England*; I was interrupted; I deſire to know yet whether I may ſpeak freely or not.

Ld. Preſident. Sir, You have had the Reſolution of the Court upon the like Queſtion the laſt Day, and you were told, that having ſuch a Charge of ſo high a Nature againſt you, and your Work was, that you ought to acknowledge the Juriſdiction of the Court, and to anſwer to your Charge. Sir, if you anſwer to your Charge, which the Court gives you Leave now to do, though they might have taken the Advantage of your Contempt; yet if you be able to anſwer to your Charge, when you have once anſwered, you ſhall be heard at large, make the beſt Defence you can. But, Sir, I muſt let you know from the Court, as their Commands, that you are not to be permitted to iſſue out into any other Diſcourſes, till ſuch time as you have given a poſitive Anſwer concerning the Matter that is charged upon you.

King. For the Charge, I value it not a Ruſh; it is the Liberty of the People of *England* that I ſtand for. For me to acknowledge a new Court that I never heard of before, I that am your King, that ſhould be an Example to all the People of *England* for to uphold Juſtice, to maintain the old Laws; indeed I do not know how to do it. You ſpoke very well the firſt Day that I came here (on *Saturday*) of the Obligations that I had laid upon me by God, to the Maintenance of the Liberties of my People; the ſame Obligation you ſpake of, I do acknowledge to God that I owe to him, and to my People, to defend as much as in me lies the antient Laws of the Kingdom: Therefore until that I may know that this is not againſt the fundamental Laws of the Kingdom, by your Favour I can put in no particular* Charge. If you will give me time, I will ſhew you my Reaſons why I cannot do it, and this—

Here, being interrupted, he ſaid,

By your Favour, you ought not to interrupt me: How I came here, I know not; there's no Law for it to make your King your Priſoner. I was in a Treaty upon the publick Faith of the Kingdom, that was the known—two Houſes of Parliament that was the Repreſentative of the Kingdom; and when that I had almoſt made an End of the Treaty, then I was hurried away, and brought hither: And therefore——

Here the Lord Preſident ſaid, Sir, you muſt know the Pleaſure of the Court.

King. By your Favour, Sir.

Ld. Preſident. Nay, Sir, by your Favour, you may not be permitted to fall into thoſe Diſcourſes; you appear as a Delinquent, you have not acknowledged the Authority of the Court, the Court craves it not of you: But once more they command you to give your poſitive Anſwer.—Clerk, Do your Duty.

King. Duty, Sir!

The Clerk reads.

Charles Stuart, *King of* England, *you are accuſed in the Behalf of the Commons of* England *of divers Crimes and Treaſons, which Charge hath been read unto you; the Court now requires you to give your poſitive and final Anſwer, by way of Confeſſion or Denial of the Charge.*

King. Sir, I ſay again to you, ſo that I might give Satisfaction to the People of *England* of the Clearneſs of my Proceeding, not by way of Anſwer, not in this way, but to ſatiſfy them that I have done nothing againſt that Truſt that hath been committed to me, I would do it: But to acknowledge a new Court, againſt their Privileges, to alter the fundamental Laws of the Kingdom—Sir, you muſt excuſe me.

Ld. Preſident. Sir, this is the third time that you have publickly diſown'd this Court, and put an Affront upon it: How far you have preſerved the Privileges of the People, your Actions have ſpoke it; but truly, Sir, Mens Intentions ought to be known by their Actions; you have written your Meaning in bloody Characters throughout the whole Kingdom. But, Sir, you underſtand the Pleaſure of the Court.———Clerk, Record the Default.———And, Gentlemen, you that took Charge of the Priſoner, take him back again.

King. I will only ſay this one Word more to you: If it were only my own Particular, I would not ſay any more, nor interrupt you.

Ld. Preſident. Sir, you have heard the Pleaſure of the Court, and you are (notwithſtanding you will not underſtand it) to find that you are before a Court of Juſtice.

Then the King went forth with his Guard, and Proclamation was made, That all Perſons which had then appeared, and had further to do at the Court, might depart into the Painted Chamber; to which Place the Court did forthwith adjourn, and intended to meet in *Weſtminſter-Hall* by Ten of the Clock next morning.

Cryer. God bleſs the Kingdom of *England!*

Wedneſday, January 24*th*, 1648.

THIS Day it was expected the High Court of Juſtice would have met in *Weſtminſter-Hall*, about Ten of the Clock; but at the Time appointed one of the Uſhers, by Direction of the Court (then ſitting in the Painted-Chamber), gave Notice to the People there aſſembled, That in regard the Court was then upon the Examination of Witneſſes, in Relation to preſent Affairs, in the Painted-Chamber, they could not ſit there; but all Perſons appointed to be there, were to appear upon further Summons.

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* *This is as the King expreſſed it; but I ſuppoſe he meant Anſwer.*

The Proceedings of the High Court of Juſtice ſitting in Weſtminſter-Hall, *on* Saturday *the 27th of* January 1648.

O Yes made; Silence commanded; the Court called: Serjeant *Bradſhaw* Lord Preſident (in a Scarlet Robe), with Sixty-eight other Members of the Court.

As the King comes in, a Cry made in the Hall for Execution, Juſtice, Execution.

King. I ſhall deſire a Word to be heard a little, and I hope I ſhall give no Occaſion of Interruption.

Ld. Preſident. You may anſwer in your time, hear the Court firſt.

King. If it pleaſe you, Sir, I deſire to be heard, and I ſhall not give any Occaſion of Interruption, and it is only in a Word: a ſudden Judgment--

Ld. Preſident. Sir, you ſhall be heard in due time, but you are to hear the Court firſt.

King. Sir, I deſire—it will be in order to what I believe the Court will ſay; and therefore, Sir, an haſty Judgment is not ſo ſoon recalled.

Ld. Preſident. Sir, you ſhall be heard before the Judgment be given, and in the mean time you may forbear.

King. Well, Sir, ſhall I be heard before the Judgment be given?

Ld. Preſident. Gentlemen, it is well known to all, or moſt of you here preſent, that the Priſoner at the Bar hath been ſeveral times convened and brought before the Court to make anſwer to a Charge of Treaſon, and other high Crimes exhibited againſt him in the Name of the People of * *England*; to which Charge being required to anſwer, he hath been ſo far from obeying the Commands of the Court by ſubmitting to their Juſtice, as he began to take upon him to offer Reaſoning and Debate unto the Authority of the Court, and of the higheſt Court that conſtituted them to try and judge him: but being over-ruled in that, and required to make his Anſwer, he was ſtill pleaſed to continue contumacious, and to refuſe to ſubmit or anſwer. Hereupon the Court, that they may not be wanting to themſelves, to the Truſt repoſed in them, nor that any Man's Wilfulneſs prevent Juſtice, they have thought fit to take the Matter into their Conſideration; they have conſidered of the Charge, they have conſidered of the Contumacy, and of that Confeſſion, which in Law doth ariſe upon that Contumacy: They have likewiſe conſider'd of the Notoriety of the Fact charg'd upon this Priſoner, and upon the whole Matter they are reſolved, and have agreed upon a Sentence to be now pronounc'd againſt this Priſoner: But in reſpect he doth deſire to be heard, before the Sentence be read and pronounc'd, the Court hath reſolved that they will hear him. Yet, Sir, thus much I muſt tell you before-hand, which you have been minded of at other Courts, that if that you have to ſay be to offer any Debate concerning Juriſdiction, you are not to be heard in it; you have offered it formerly, and you have indeed ſtruck at the Root, that is, the Power and Supreme Authority of the Commons of *England*, which this Court will not admit a Debate of; and which indeed is an irrational Thing in them to do, being a Court that acts upon Authority derived from them, that they ſhould preſume to judge upon their Superior, from whom there is no Appeal. But, Sir, if you have any thing to ſay in defence of yourſelf concerning the Matter charged, the Court hath given me in command to let you know they will hear you.

* *Here a malignant Lady* (*Lady* Fairfax) *interrupted the Court, ſaying,* Not half the People; *but ſhe was ſoon ſilenced.*

King. Since that I ſee that you will not hear any thing of Debate concerning that which I confeſs I thought moſt material for the Peace of the Kingdom, and for the Liberty of the Subject, I ſhall wave it; I ſhall ſpeak nothing to it, but only I muſt tell you, that this many a-day all things have been taken away from me, but That that I call more dear to me than my Life, which is my Conſcience and my Honour: And if I had reſpect to my Life more than the Peace of the Kingdom, the Liberty of the Subject, certainly I ſhould have made a particular Defence for myſelf; for by that at leaſtwiſe I might have delayed an ugly Sentence, which I believe will paſs upon me. Therefore certainly, Sir, as a Man that hath ſome Underſtanding, ſome Knowledge of the World, if that my true Zeal to my Country had not over-borne the Care that I have of my own Preſervation, I ſhould have gone another way to work than that I have done. Now, Sir, I conceive, that an haſty Sentence once paſs'd, may ſooner be repented than recalled; and truly, the ſelf-ſame Deſire that I have for the Peace of the Kingdom, and the Liberty of the Subject, more than my own Particular, does make me now at laſt deſire, that having ſomething for to ſay that concerns both, I deſire before Sentence be given, that I may be heard in the Painted-Chamber before the Lords and Commons. This Delay cannot be prejudicial to you, whatſoever I ſay; if that I ſay no Reaſon, thoſe that hear me muſt be Judges; I cannot be Judge of that, which I have: if it be Reaſon, and really for the Welfare of the Kingdom, and the Liberty of the Subject, I am ſure on't, very well 'tis worth the hearing; therefore I do conjure you, as you love that which you pretend, I hope it's real, the Liberty of the Subject, the Peace of the Kingdom, that you will grant me the hearing, before any Sentence be paſt. I only deſire this, that you will take this into your Conſideration, it may be you have not heard of it before-hand; if you will, I'll retire, and you may think of it: but if I cannot get this Liberty, I do here proteſt, that ſo fair Shews of Liberty and Peace are pure Shews, and not otherwiſe, ſince you will not hear your King.

Ld. Preſident. Sir, you have now ſpoken.

King. Yes, Sir.

Ld. Preſident. And this that you have ſaid is a further declining of the Juriſdiction of this Court, which was the thing wherein you were limited before.

King. Pray excuſe me, Sir, for my Interruption, becauſe you miſtake me; it is not a declining of it, you do judge me before you hear me ſpeak: I ſay it will not, I do not decline it, tho' I cannot acknowledge the Juriſdiction of the Court; yet, Sir, in this give me leave to ſay, I would do it, tho' I do not by this acknowledge it, I do proteſt it is not the declining of it, ſince I ſay, if that I do ſay any thing, but that which is for the Peace of the Kingdom, and the Liberty of the Subject, then the Shame is mine. Now I deſire that you will take this into your Conſideration; if you will, I'll withdraw.

Ld. Preſident. Sir, this is not altogether new that you have moved unto us, not altogether new to us, tho' it is the firſt time in Perſon you have offered it to the Court. Sir, you ſay you do not decline the Juriſdiction of the Court.

King. Not in this that I have ſaid.

Ld. Preſident. I underſtand you well, Sir; but nevertheleſs, that which you have offered ſeems to be contrary to that Saying of yours: for the Court are ready to give a Sentence: It is not as you ſay, That they will not hear your King; for they have been ready to hear you, they have patiently waited your Pleaſure for three Courts together, to hear what you would ſay to the People's Charge againſt you, to which you have not vouchſafed to give any Anſwer at all. Sir, this tends to a further Delay; truly, Sir, ſuch Delays as theſe, neither may the Kingdom nor Juſtice well bear; you have had three ſeveral Days to have offered in this kind what you would have pleaſed. This Court is founded upon that Authority of the Commons of *England*, in whom reſts the ſupreme Juriſdiction; that which you now tender, is to have another Juriſdiction, and a co-ordinate Juriſdiction. I know very well you expreſs yourſelf, Sir, that notwithſtanding that you would offer to the Lords and Commons in the Painted-Chamber, yet nevertheleſs you would proceed on here, I did hear you ſay ſo. But, Sir, that you would offer there, whatever it is, it muſt needs be in delay of the Juſtice here; ſo as if this Court be reſolved, and prepared for the Sentence, this that you offer they are not bound in juſtice to grant: But, Sir, according to what you ſeem to deſire, and becauſe you ſhall know the further Pleaſure of the Court upon that which you have moved, the Court will withdraw for a time.

King. Shall I withdraw?

Ld. Preſident. Sir, you ſhall know the Pleaſure of the Court preſently. The Court withdraws for half an Hour into the Court of Wards.

Serjeant at Arms. The Court gives Command, that the Priſoner be withdrawn; and they give Order for his Return again.

The Court withdraws for half an Hour, and returns.

Ld. Preſident. Serjeant at Arms, ſend for your Priſoner.

Sir, you were pleaſed to make a Motion here to the Court to offer a Deſire of yours, touching the propounding of ſomewhat to the Lords in the Painted-Chamber, for the Peace of the Kingdom: Sir, you did, in effect, receive an Anſwer before the Court adjourned; truly, Sir, their Withdrawing and Adjournment was *pro formâ tantùm*; for it did not ſeem to them that there was any Difficulty in the thing: they have conſidered of what you have moved, and have conſidered of their own Authority, which is founded, as hath been often ſaid, upon the ſupreme Authority of the Commons of *England* aſſembled in Parliament: The Court acts according to their Commiſſion. Sir, the Return I have to you from the Court, is this: That they have been too much delayed by you already, and this that you now offer hath occaſioned ſome little further Delay; and they are Judges appointed by the higheſt Judges; and Judges are no more to delay, than they are to deny Juſtice: they are good Words in the great old Charter of *England*; *Nulli negabimus, nulli vendemus, nulli differemus Juſtitiam.* There muſt be no Delay; but the truth is, Sir, and ſo every Man here obſerves it, that you have much delayed them in your Contempt and Default, for which they might long ſince have proceeded to Judgment againſt you; and notwithſtanding what you have offered, they are reſolved to proceed to Puniſhment, and to Judgment, and that is their unanimous Reſolution.

King. Sir, I know it is in vain for me to diſpute, I am no Sceptick for to deny the Power that you have; I know that you have Power enough: Sir, I confeſs, I think it would have been for the Kingdom's Peace, if you would have taken the pains for to have ſhewn the Lawfulneſs of your Power; for this Delay that I have deſired, I confeſs it is a Delay, but it is a Delay very important for the Peace of the Kingdom; for it is not my Perſon that I look on alone, it is the Kingdom's Welfare, and the Kingdom's Peace; it is an old Sentence, That we ſhould think long, before we reſolve of great Matters. Therefore, Sir, I do ſay again, that I do put at your doors all the Inconveniency of an haſty Sentence. I confeſs I have been here now, I think, this Week; this Day eight days was the Day I came here firſt, but a little Delay of a Day or two further may give Peace; whereas an haſty Judgment may bring on that Trouble and perpetual Inconveniency to the Kingdom, that the Child that is unborn may repent it: and therefore again, out of the Duty I owe to God, and to my Country, I do deſire that I may be heard by the Lords and Commons in the Painted-Chamber, or any other Chamber that you will appoint me.

Ld. Preſident. Sir, you have been already anſwered to what you even now moved, being the ſame you moved before, ſince the Reſolution and the Judgment of the Court in it: and the Court now requires to know whether you have any more to ſay for yourſelf than you have ſaid, before they proceed to Sentence?

King. I ſay this, Sir, That if you will hear me, if you will give but this Delay, I doubt not but I ſhall give ſome Satisfaction to you all here, and to my People after that; and therefore I do require you, as you will anſwer it at the dreadful Day of Judgment, that you will conſider it once again.

Ld. Preſident. Sir, I have received Direction from the Court.

King. Well, Sir.

Ld. Preſident. If this muſt be re-enforced, or any thing of this nature, your Anſwer muſt be the ſame; and they will proceed to Sentence, if you have nothing more to ſay.

King. Sir, I have nothing more to ſay, but I ſhall deſire, that this may be entered what I have ſaid.

Ld. Preſident. The Court then, Sir, hath ſomething elſe to ſay to you; which, altho' I know it will be very unacceptable, yet notwithſtanding they are willing, and are reſolved to diſcharge their Duty.

Sir, You ſpeak very well of a precious Thing, which you call Peace: And it had been much to be wiſhed that God had put it into your Heart, that you had as effectulaly and really endeavoured and ſtudied the Peace of the Kingdom, as now in Words you ſeem to pretend: But, as you were told the other Day, Actions muſt expound Intentions; yet Actions have been clean contrary. And truly, Sir, it doth appear plainly enough to them, that you have gone upon very erroneous Principles: The Kingdom hath felt it to their Smart; and it will be no Eaſe to you to think of it: For, Sir, you have held yourſelf, and let fall ſuch Language, as if you had been no way ſubject to the Law, or that the Law had not been your Superior. Sir, the Court is very ſenſible of it, and I hope ſo are all the underſtanding People of *England*, that the Law is your Superior; that you ought to have ruled according to the Law; you ought to have done ſo. Sir, I know very well your pretence hath been that you have done ſo; but, Sir, the Difference hath been who ſhall be the Expoſitors of this Law: Sir, whether you and your Party, out of Courts of Juſtice, ſhall take upon them to expound Law, or the Courts of Juſtice, who are the Expounders? nay, the Sovereign and the High Court of Juſtice, the Parliament of *England*, that are not only the higheſt Expounders, but the ſole Makers of the Law? Sir, for you to ſet yourſelf with your ſingle Judgment, and thoſe that adhere unto you, to ſet yourſelf againſt the higheſt Court of Juſtice, that is not Law. Sir, as the Law is your Superior, ſo truly, Sir, there is ſomething that is ſuperior to the Law, and that is indeed the Parent or Author of the Law, and that is the People of *England:* For, Sir, as they are thoſe that at the firſt (as other Countries have done) did chuſe to themſelves this Form of Government even for Juſtice Sake, that Juſtice might be adminiſter'd, that Peace might be preſerved; ſo, Sir, they gave Laws to their Governors, according to which they ſhould govern: and if thoſe Laws ſhould have proved inconvenient or prejudicial to the Publick, they had a Power in them, and reſerved to themſelves, to alter as they ſhall ſee Cauſe. Sir, it is very true what ſome of your ſide have ſaid, *Rex non habet parem in regno*, ſay they: This Court will ſay the ſame, while King, that you have not your Peer in ſome Senſe, for you are *major ſingulis*; but they will aver again that you are *minor univerſis.* And the ſame Author tells you, that *non debet eſſe major eo in regno ſuo in exhibitione juris, minimus autem eſſe debet in judicio ſuſcipiendo.*

Bract. de leg. lib. 1. c. 8.

This we know to be Law, *Rex habet ſuperiorem, Deum & Legem, etiam & Curiam*; ſo ſays the ſame Author. And truly, Sir, he makes bold to go a little further, *Debent ei ponere frænum:* They ought to bridle him. And, Sir, we know very well the Stories of old: Thoſe Wars that were called the Barons War, when the Nobility of the Land did ſtand out for the Liberty and Property of the Subject, and would not ſuffer the Kings, that did invade, to play the Tyrants freer, but called them to account for it; we know that Truth, that they did *frænum ponere.* But, Sir, if they do forbear to do their Duty now, and are not ſo mindful of their own Honour and the Kingdom's Good as the Barons of *England* of old were, certainly the Commons of *England* will not be unmindful of what is for their Preſervation, and for their Safety; *Juſtitiæ fruendi cauſa Reges conſtituti ſunt.* This we learn: The End of having Kings, or any other Governors, it's for the enjoying of Juſtice; that's the End. Now, Sir, if ſo be the King will go contrary to that End, or any other Governor will go contrary to the End of his Government; Sir, he muſt underſtand that he is but an Officer in Truſt, and he ought to diſcharge that Truſt; and they are to take Order for the Animadverſion and Puniſhment of ſuch an offending Governor.

This is not Law of Yeſterday, Sir, (ſince the Time of the Diviſion betwixt you and your People) but it is Law of old. And we know very well the Authors and the Authorities that do tell us what the Law was in that Point upon the Election of Kings, upon the Oath that they took unto their People: And if they did not obſerve it, there were thoſe Things called Parliaments; the Parliaments were they that were to adjudge (the very Words of the Author) the Plaints and Wrongs done of the King and the Queen, or their Children; ſuch Wrongs eſpecially, when the People could have no where elſe any Remedy. Sir, that hath been the People of *England*'s Caſe: They could not have their Remedy elſewhere but in Parliament.

Sir, Parliaments were ordained for that Purpoſe, to redreſs the Grievances of the People; that was their main End. And truly, Sir, if ſo be that the Kings of *England* had been rightly mindful of themſelves, they were never more in Majeſty and State than in the Parliament: But how forgetful ſome have been, Stories have told us: We have a miſerable, a lamentable, a ſad Experience of it. Sir, by the old Laws of *England*, I ſpeak theſe Things the rather to you, becauſe you were pleaſed to let fall the other Day, You thought you had as much Knowledge in the Law as moſt Gentlemen in *England:* It is very well, Sir. And truly, Sir, it is very fit for the Gentlemen of *England* to underſtand that Law under which they muſt live, and by which they muſt be governed. And then, Sir, the Scripture ſays, *They that know their Maſter's Will and do it not:* What follows? The Law is your Maſter, the Acts of Parliament.

The Parliaments were to be kept antiently, we find in our old Author, twice in the Year, that the Subject upon any Occaſion might have a ready Remedy and Redreſs for his Grievance. Afterwards, by ſeveral Acts of Parliament in the Days of your Predeceſſor *Edward* the Third, they ſhould have been once a Year. Sir, what the Intermiſſion of Parliaments hath been in your Time, it is very well known, and the ſad Conſequences of it; and what in the Interim inſtead of theſe Parliaments hath been by you by an high and arbitrary Hand introduced upon the People, that likewiſe hath been too well known and felt. But when God by his Providence had ſo far brought it about, that you could no longer decline the calling of a Parliament, Sir, yet it will appear what your Ends were againſt the antient and your native Kingdom of *Scotland:* The Parliament of *England* not ſerving your Ends againſt them, you were pleaſed to diſſolve it. Another great Neceſſity occaſioned the calling of this Parliament; and what your Deſigns, and Plots, and Endeavours all along have been, for the cruſhing and confounding of this Parliament, hath been very notorious to the whole Kingdom. And truly, Sir, in that you did ſtrike at all; that had been a ſure way to have brought about That that this Charge lays upon you, your Intention to ſubvert the Fundamental Laws of the Land: For the great Bulwark of the Liberties of the People is the Parliament of *England*; and to ſubvert and root up that, which your Aim hath been to do, certainly at one Blow you had confounded the Liberties and the Property of *England.*

Truly, Sir, it makes me call to mind; I cannot forbear to expreſs it; for, Sir, we muſt deal plainly with you, according to the Merits of your Cauſe; ſo is our Commiſſion: It makes me call to mind (theſe Proceedings of yours) That that we read of a great *Roman* Emperor, by the way let us call him a great *Roman* Tyrant, *Caligula*, that wiſhed that the People of *Rome* had had but one Neck, that at one Blow he might cut it off. And your Proceedings have been ſomewhat like to this: For the Body of the People of *England* hath been (and where elſe) repreſented but in the Parliament; and could you have but confounded that, you had at one Blow cut off the Neck of *England.* But God hath reſerved better Things for us, and hath pleaſed for to confound your Deſigns, and to break your Forces, and to bring your Perſon into Cuſtody, that you might be reſponſible to Juſtice.

Sir, we know very well that it is a Queſtion much on your ſide preſs'd, By what Precedent we ſhall proceed? Truly, Sir, for Precedents, I ſhall not upon theſe occaſions inſtitute any long Diſcourſe; but it is no new Thing to cite Precedents almoſt of all Nations, where the People (when Power hath been in their hands) have made bold to call their Kings to account; and where the Change of Government hath been upon occaſion of the Tyranny and Miſgovernment of thoſe that have been placed over them. I will not ſpend Time to mention either *France*, or *Spain*, or the Empire, or other Countries; Volumes may be written of it. But truly, Sir, that of the Kingdom of *Arragon*, I ſhall think ſome of us have thought upon it, where they have the Juſtice of *Arragon*, that is, a Man, *tanquam in medio poſitus*, betwixt the King of *Spain* and the People of the Country; that if Wrong be done by the King, he that is the King of *Arragon*, the Juſtice, hath Power to reform the Wrong; and he is acknowledged to be the King's Superior, and is the grand Preſerver of their Privileges, and hath proſecuted Kings upon their Miſcarriages.

Sir, what the Tribunes of *Rome* were heretofore, and what the *Ephori* were to the *Lacedemonian* State, we know that is the Parliament of *England* to the *Engliſh* State: And tho' *Rome* ſeemed to loſe its Liberty when once the Emperors were; yet you ſhall find ſome famous Acts of Juſtice even done by the Senate of *Rome*; that great Tyrant of his Time, *Nero*, condemned and judged by the Senate. But truly, Sir, to you I ſhould not need to mention theſe foreign Examples and Stories: If you look but over *Tweed*, we find enough in your native Kingdom of *Scotland:* If we look to your firſt King *Fergus*, that your Stories make mention of, he was an elective King: He died, and left two Sons, both in their Minority; the Kingdom made choice of their Uncle, his Brother, to govern in the Minority. Afterwards, the elder Brother giving ſmall Hopes to the People that he would rule or govern well, ſeeking to ſupplant that good Uncle of his that governed them juſtly, they ſet the elder aſide, and took to the younger. Sir, if I ſhould come to what your Stories make mention of; you know very well you are the Hundred and Ninth King of *Scotland:* For not to mention ſo many Kings as that Kingdom, according to their Power and Privilege, have made bold to deal withal, ſome to baniſh, and ſome to impriſon, and ſome to put to death, it would be too long; and as one of your own Authors ſays, it would be too long to recite the manifold Examples that your own Stories make mention of. *Reges, &c.* (ſay they) we do create; we created Kings at firſt: *Leges, &c.* we impoſed Laws upon them. And as they are choſen by the Suffrages of the People at the firſt; ſo upon juſt occaſion, by the ſame Suffrages they may be taken down again. And we will be bold to ſay, that no Kingdom hath yielded more plentiful Experience than that your native Kingdom of *Scotland* hath done, concerning the Depoſition and the Puniſhment of their offending and tranſgreſſing Kings, *&c.*

It is not far to go for an Example near you: Your Grandmother ſet aſide, and your Father, an Infant, crowned. And the State did it here in *England:* Here hath not been a want of ſome Examples. They have made bold (the Parliament and the People of *England)* to call their Kings to account: there are frequent Examples of it in the *Saxons* Time, the Time before the Conqueſt. Since the Conqueſt there want not ſome Precedents neither; King *Edward* the Second, King *Richard* the Second, were dealt with ſo by the Parliament, as they were depoſed and deprived. And truly, Sir, whoever ſhall look into their Stories, they ſhall not find the Articles that are charged upon them, to come near to that Height and Capitalneſs of Crimes that are laid to your Charge; nothing near.

Sir, you were pleaſed to ſay the other Day wherein they diſſent; and I did not contradict it. But take all together, Sir; If you were as the Charge ſpeaks, and no otherwiſe, admitted King of *England:* but for that you were pleaſed then to alledge, how that almoſt for a Thouſand Years theſe Things have been, Stories will tell you, if you go no higher than the Time of the Conqueſt; if you do come down ſince the Conqueſt, you are the Twenty-fourth King from *William* called the Conqueror, you ſhall find one half of them to come merely from the State, and not merely upon the Point of Deſcent. It were eaſy to be inſtanced to you; but Time muſt not be loſt that way. And truly, Sir, what a grave and learned Judge ſaid in his Time, and well known to you, and is ſince printed for Poſterity, That altho' there was ſuch a Thing as a Deſcent many times, yet the Kings of *England* ever held the greateſt Aſſurance of their Titles, when it was declared by Parliament. And, Sir, your Oath, the Manner of your Coronation, doth ſhew plainly, that the Kings of *England*, altho' it's true, by the Law the next Perſon in Blood is deſigned; yet if there were juſt Cauſe to refuſe him, the People of *England* might do it. For there is a Contract and a Bargain made between the King and his People, and your Oath is taken: And certainly, Sir, the Bond is reciprocal; for as you are the Liege Lord, ſo they Liege Subjects. And we know very well, that hath been ſo much ſpoken of, *Ligeantia eſt duplex.* This we know now, the one Tie, the one Bond, is the Bond of Protection that is due from the Sovereign; the other is the Bond of Subjection that is due from the Subject. Sir, if this Bond be once broken, farewell Sovereignty! *Subjectio trahit, &c.*

Theſe Things may not be denied, Sir: I ſpeak it rather, and I pray God it may work upon your Heart, that you may be ſenſible of your Miſcarriages. For whether you have been, as by your Office you ought to be, a Protector of *England*, or the Deſtroyer of *England*, let all *England* judge, or all the World, that hath look'd upon it. Sir, tho' you have it by Inheritance in the way that is ſpoken of, yet it muſt not be denied that your

Office was an Office of Truſt, and indeed an Office of the higheſt Truſt lodged in any ſingle Perſon: For as you were the Grand Adminiſtrator of Juſtice, and others were, as your Delegates, to ſee it done throughout your Realms; if your greateſt Office were to do Juſtice, and preſerve your People from Wrong, and inſtead of doing that, you will be the great Wrong-doer yourſelf; if inſtead of being a Conſervator of the Peace, you will be the grand Diſturber of the Peace; ſurely this is contrary to your Office, contrary to your Truſt. Now, Sir, if it be an Office of Inheritance, as you ſpeak of, your Title by Deſcent, let all Men know that great Offices are ſeizable and forfeitable, as if you had it but for a Year, and for your Life. Therefore, Sir, it will concern you to take into your ſerious Conſideration your great Miſcarriages in this kind.

Truly, Sir, I ſhall not particularize the many Miſcarriages of your Reign whatſoever, they are famouſly known: It had been happy for the Kingdom, and happy for you too, if it had not been ſo much known, and ſo much felt, as the Story of your Miſcarriages muſt needs be, and hath been already.

Sir, That which we are now upon, by the Command of the higheſt Court, hath been and is to try and judge you for theſe great Offences of yours. Sir, the Charge hath called you *Tyrant*, a *Traitor*, a *Murderer*, and a *publick Enemy* to the Commonwealth of *England*. Sir, it had been well if that any of all theſe Terms might rightly and juſtly have been ſpared, if any one of them at all.

King. Ha!

Ld. Preſident. Truly, Sir, We have been told, *Rex eſt dum bene regit, Tyrannus qui Populum opprimit:* And if ſo be that be the Definition of a *Tyrant*, then ſee how you come ſhort of it in your Actions, whether the higheſt *Tyrant*, by that way of arbitrary Government, and that you have ſought for to introduce, and that you have ſought to put, you were putting upon the People? Whether that was not as high an Act of *Tyranny* as any of your Predeceſſors were guilty of, nay, many Degrees beyond it?

Sir, the Term *Traitor* cannot be ſpared. We ſhall eaſily agree it muſt denote and ſuppoſe a Breach of Truſt; and it muſt ſuppoſe it to be done to a Superior. And therefore, Sir, as the People of *England* might have incurred that reſpecting you, if they had been truly guilty of it, as to the Definition of Law; ſo on the other Side, when you did break your Truſt to the Kingdom, you did break your Truſt to your Superior: For the Kingdom is that for which you were truſted. And therefore, Sir, for this Breach of Truſt when you are called to account, you are called to account by your Superiors. *Minimus ad majorem in judicium vocat*. And, Sir, the People of *England* cannot be ſo far wanting to themſelves, God having dealt ſo miraculouſly and glorioully for them; but that having Power in their Hands, and their great Enemy, they muſt proceed to do Juſtice to themſelves and to you: For, Sir, the Court could heartily deſire, that you would lay your Hand upon your Heart, and conſider what you have done amiſs, that you would endeavour to make your Peace with God. Truly, Sir, theſe are your *High-Crimes*, *Tyranny* and *Treaſon*.

There is a third Thing too, if thoſe had not been, and that is *Murder*, which is laid to your Charge. All the *bloody Murders*, which have been committed ſince this Time that the Diviſion was betwixt you and your People, muſt be laid to your Charge, which have been acted or committed in theſe late Wars. Sir, it is an heinous and crying Sin: And truly, Sir, if any Man will aſk us what Puniſhment is due to a *Murderer*, let God's Law, let Man's Law ſpeak. Sir, I will preſume that you are ſo well read in Scripture, as to know what God himſelf hath ſaid concerning the ſhedding of Man's Blood: *Gen*. ix. *Numb*. xxxv. will tell you what the Puniſhment is: And which this Court, in behalf of the whole Kingdom, are ſenſible of, of that innocent Blood that has been ſhed, whereby indeed the Land ſtands ſtill defiled with that Blood; and, as the Text hath it, it can no way be cleanſed but with the ſhedding of the Blood of him that ſhed this Blood. Sir, we know no Diſpenſation from this Blood in that Commandment, *Thou ſhalt do no Murder:* We do not know but that it extends to Kings as well as to the meaneſt Peaſants, the meaneſt of the People; the Command is univerſal. Sir, God's Law forbids it; Man's Law forbids it: Nor do we know that there is any manner of Exception, not even in Man's Laws, for the Puniſhment of Murder in you. 'Tis true, that in the Caſe of Kings every private Hand was not to put forth itſelf to this Work, for their Reformation and Puniſhment: But, Sir, the People repreſented having Power in their Hands, had there been but one wilful Act of Murder by you committed, had Power to have convened you, and to have puniſhed you for it.

But then, Sir, the Weight that lies upon you in all thoſe reſpects that have been ſpoken, by reaſon of your *Tyranny*, *Treaſon*, *Breach of Truſt*, and the *Murders* that have been committed; ſurely, Sir, it muſt drive you into a ſad Conſideration concerning your eternal Condition. As I ſaid at firſt, I know it cannot be pleaſing to you to hear any ſuch Things as theſe are mentioned unto you from this Court, for ſo we do call ourſelves, and juſtify ourſelves to be a Court, and a high Court of Juſtice, authorized by the higheſt and ſolemneſt Court of the Kingdom, as we have often ſaid: And altho' you do yet endeavour what you may to diſcourt us, yet we do take Knowledge of ourſelves to be ſuch a Court as can adminiſter Juſtice to you; and we are bound, Sir, in Duty to do it. Sir, all I ſhall ſay before the reading of your Sentence, it is but this: The Court does heartily deſire that you will ſeriouſly think of thoſe Evils that you ſtand guilty of. Sir, you ſaid well to us the other Day, you wiſhed us to have God before our Eyes. Truly, Sir, I hope all of us have ſo: That God, who we know is a King of Kings, and Lord of Lords; that God with whom there is no reſpect of Perſons; that God, who is the Avenger of innocent Blood: We have that God before us; that God, who does beſtow a Curſe upon them that with-hold their Hands from ſhedding of Blood, which is in the caſe of guilty Malefactors, and that do deſerve Death: That God we have before our Eyes. And were it not that the Conſcience of our Duty hath called us unto this Place, and this Imployment, Sir, you ſhould have had no Appearance of a Court here. But, Sir, we muſt prefer the Diſcharge of our Duty unto God, and unto the Kingdom, before any other Reſpect whatſoever. And altho' at this Time many of us, if not all of us, are ſeverely threaten'd by ſome of your Party, what they intend to do, Sir, we do here declare, That we ſhall not decline or forbear the doing of our Duty in the Adminiſtration of Juſtice, even to you, according to the Merit of your Offence, altho' God ſhould permit thoſe Men to effect all that bloody Deſign in hand againſt us. Sir, we will ſay, and we will declare it, as thoſe Children in the fiery Furnace, that would not worſhip the golden Image that *Nebuchadnezzar* had ſet up, *That their God was able to deliver them from that Danger that they were near unto:* But yet if he would not do it, yet notwithſtanding that they would not fall down and worſhip the Image. We ſhall thus apply it: That tho' we ſhould not be delivered from thoſe bloody Hands and Hearts that conſpire the Overthrow of the Kingdom in general, of us in particular, for acting in this great Work of Juſtice, tho' we ſhould periſh in the Work, yet by God's Grace, and by God's Strength, we will go on with it. And this is all our Reſolutions. Sir, I ſay for yourſelf, we do heartily wiſh and deſire that God would be pleaſed to give you a Senſe of your Sins, that you would ſee wherein you have done amiſs, that you may cry unto him, that God would deliver you from Blood-guiltineſs. A good King was once guilty of that particular Thing, and was clear otherwiſe, ſaving in the matter of *Uriah*. Truly, Sir, the Story tells us that he was a repentant King; and it ſignifies enough, that he had died for it, but that God was pleaſed to accept of him, and to give him his Pardon, *Thou ſhalt not die, but the Child ſhall die: Thou haſt given Cauſe to the Enemies of God to blaſpheme*.

King. I would deſire only one Word before you give Sentence; and that is, that you would hear me concerning thoſe great Imputations that you have laid to my Charge.

Ld. Preſident. Sir, You muſt give me now leave to go on; for I am not far from your Sentence, and your Time is now paſt.

King. But I ſhall deſire you will hear me a few Words to you: For truly, whatever Sentence you will put upon me in reſpect of thoſe heavy Imputations, that I ſee by your Speech you have put upon me; Sir, It is very true, that——

Ld. Preſident. Sir, I muſt put you in mind: Truly, Sir, I would not willingly, at this time eſpecially, interrupt you in any thing you have to ſay, that is proper for us to admit of; but, Sir, you have not owned us as a Court, and you look upon us as a ſort of People met together; and we know what Language we receive from your Party.

King. I know nothing of that.

Ld. Preſident. You diſavow us as a Court; and therefore for you to addreſs yourſelf to us, not acknowledging us as a Court to judge of what you ſay, it is not to be permitted. And the truth is, all along, from the firſt time you were pleaſed to diſavow and diſown us, the Court needed not to have heard you one Word: For unleſs they be acknowledged a Court, and ingaged, it is not proper for you to ſpeak. Sir, we have given you too much Liberty already, and admitted of too much Delay, and we may not admit of any farther. Were it proper for us to do it, we ſhould hear you freely; and we ſhould not have declined to hear you at large, what you could have ſaid or proved on your behalf, whether for totally excuſing, or for in part excuſing thoſe great and heinous Charges, that in whole or in part are laid upon you. But, Sir, I ſhall trouble you no longer; your Sins are of ſo large a Dimenſion, that if you do but ſeriouſly think of them, they will drive you to a ſad Conſideration of it, and they may improve in you a ſad and ſerious Repentance: And that the Court doth heartily wiſh that you may be ſo penitent for what you have done amiſs, that God may have Mercy, at leaſtwiſe, upon your better Part: Truly, Sir, for the other, it is our Parts and Duties to do that, which the Law preſcribes. We are not here *jus dare*, but *jus dicere*. We cannot be unmindful of what the Scripture tells us. *For to acquit the Guilty is of equal Abomination, as to condemn the Innocent:* We may not acquit the Guilty. What Sentence the Law affirms to a *Traitor*, *Tyrant*, a *Murderer*, and a *publick Enemy* to the Country, that Sentence you are now to hear read unto you; and that is the Sentence of the Court.

The Lord Preſident commands the Sentence to be read; make an *O yes*, and command Silence while the Sentence is read.

O yes made: Silence commanded.

The Clerk read the Sentence, which was drawn up in Parchment:

W*Hereas the Commons of* England *in Parliament had appointed them an High Court of Juſtice, for the Trying of* Charles Stuart, *King of* England, *before whom he had been three times convened; and at the firſt time a Charge of High-Treaſon, and other Crimes and Miſdemeanours, was read in the behalf of the Kingdom of* England, *&c.*

Here the Clerk read the Charge.

Which Charge being read unto him, as aforeſaid, he the ſaid Charles Stuart *was required to give his Anſwer: But he refuſed ſo to do*; and ſo expreſs'd the ſeveral Paſſages at his Trial in refuſing to anſwer.

For all which Treaſons and Crimes this Court doth adjudge, That the ſaid Charles Stuart, *as a* Tyrant, Traitor, Murderer, *and* a publick Enemy, *ſhall be put to Death, by the ſevering his Head from his Body.*

After the Sentence read, the Lord Preſident ſaid,

This Sentence now read and publiſhed, is the Act, Sentence, Judgment, and Reſolution of the whole Court.

Here the Court ſtood up, as aſſenting to what the Preſident ſaid.

King. Will you hear me a Word, Sir?

Ld. Preſident. Sir, you are not to be heard after the Sentence.

King. No, Sir?

Ld. Preſident. No, Sir; by your favour, Sir. Guard, withdraw your Priſoner.

King. I may ſpeak after the Sentence——

By your Favour, Sir, I may ſpeak after the Sentence ever.

By your Favour, (Hold!) the Sentence, Sir——

I ſay, Sir, I do———

I am not ſuffered for to ſpeak: Expect what Juſtice other People will have.

O Yes: All manner of Perſons that have any thing elſe to do, are to depart at this time, and to give their Attendance in the *Painted-Chamber*; to which Place this Court doth forthwith adjourn itſelf.

Then the Court roſe, and the King went with his Guard to Sir *Robert Cotton*'s, and from thence to *Whitehall*.

The

The Speech Cook *deſign'd to have delivered, if the King had pleaded.*

May it pleaſe your Lordſhip,

MY Lord Preſident, and this High Court, erected for the moſt Comprehenſive, Impartial, and Glorious Piece of Juſtice, that ever was acted and executed upon the Theatre of *England*, for the trying and judging of *Charles Stuart*, whom God in his Wrath gave to be a King to this Nation, and will, I truſt, in great Love, for his notorious Prevarications and Blood-guiltineſs, take him away from us: He that hath been the Original of all Injuſtice, and the principal Author of more Miſchiefs to the Free-born People of this Nation, than the beſt Arithmetician can well enumerate, ſtands now to give an account of his Stewardſhip, and to receive the Good of Juſtice, for all the Evil of his Injuſtice and Cruelty. Had he ten thouſand Lives, they could not all ſatisfy for the numerous, horrid, and barbarous Maſſacres of Myriads and Legions of innocent Perſons, which by his Commands, Commiſſions, and Procurements, (or at leaſt all the World muſt needs ſay, which he might have prevented; and he that ſuffers any Man to be kill'd, when he may ſave his Life without danger of his own, is a Murderer) have been cruelly ſlain, and inhumanly murdered, in this renowned *Albion: Anglia* hath been made an *Akeldama*, and her younger Siſter *Ireland* a Land of Ire and Miſery. And yet this hard-hearted Man, as he went out of the Court down the Stairs, *Jan.* 22. ſaid (as ſome of his Guard told me and others), That he was not troubled for any of the Blood that hath been ſhed, but for the Blood of one Man (peradventure he meant *Strafford).* He was no more affected with a Liſt that was brought into *Oxford* of five or ſix thouſand ſlain at *Edgehill*, than to read one of *Ben. Jonſon*'s Tragedies. You Gentlemen Royaliſts that fought for him, if ye had loſt your Lives for his ſake, you ſee he would have no more pitied you, by his own Confeſſion, than you do a poor Worm: and yet what Heart but would cleave, if it were a Rock; melt, if it were Ice; break, if it were a Flint; or diſſolve, if it were a Diamond; to conſider that ſo much precious Proteſtant Blood ſhould be ſhed in theſe three Kingdoms, ſo many gallant, valiant Men of all Sorts and Conditions to be ſacrificed and loſe their Lives, and many of them to die ſo deſperately in regard of their eternal Conditions; and all this merely and only for the ſatisfying and fulfilling of one Man's ſinful Luſt and wicked Will? A good Shepherd is he that lays down his Life, or ventures it to ſave the Sheep; but for one to be ſo proudly wedded to his own Conceits, as ſo maliciouſly to oppoſe his private Opinion againſt the publick Judgment and Reaſon of State, and to make head againſt the Parliament, who acknowledged him to be Head thereof, ſo far as to give him the Honour of the Royal Aſſent, in ſettling the Militia and Safety of the People: I ſay, for a Proteſtant Prince, ſo beloved at home, and feared abroad, that in Love and by gentle Means might have had any Thing from the Parliament; for him to occaſion the ſhedding of ſo much Blood for a pretended Prerogative, as hereafter will appear, nothing in effect but to fix and perpetuate an abſolute Tyranny; I can ſay no leſs, *But, O* Lucifer, *from whence art thou fallen?* and what Hereticks are they in Politicks, that would have had ſuch a Man to live! Much more, that think his Actions to have merited Love and Praiſe from Heaven and Earth. But now to diſſect the Charge.

I. That the Kings of *England* are truſted with a limited Power to govern by Law, the whole Stream and Current of legal Authorities run ſo limpid and clear, that I ſhould but weary thoſe that know it already, and trouble thoſe that need not know the particular Caſes; for it is one of the Fundamentals of Law, That the King is not above the Law, but the Law above the King. I could eaſily deraign it from 1 *Edw.* III. to the Juriſdiction of Courts, That the King has no more Power or Authority, than what by Law is concredited and committed to him: but the moſt famous Authority is *Forteſcue*, Chancellor to *Henry* VI. (and therefore undoubtedly would not clip his Maſter's Prerogative) who moſt judiciouſly takes a Difference between a Government wholly Regal and Seignoral, as in *Turkey*, *Ruſſia*, *France*, *Spain*, *&c.* and a Government Politick and Mix'd, where the Law keeps the Beam even between Sovereignty and Subjection, as in *England*, *Denmark*, *Sweden*, and *Poland.* The firſt, where the Edict of a Prince makes the Law reſemble an impetuous Inundation of the Waters, whereby the Corn and Hay, and other Fruits of the Earth are ſpoiled, as when it is Midwinter at Midſummer; the latter is like a ſweet ſmooth Stream, running by the pleaſant Fields and Meadows. That by the Law of *England* the King ought not to impoſe any Thing upon the People, or take any Thing away from them to the value of a Farthing, but by common Conſent in Parliaments or National Meetings; and that the People of common Right, and by ſeveral Statutes, ought to have Parliaments yearly, or oftener if need be, for the Redreſs of publick Grievances, and for the enacting of good and wholeſome Laws, and repealing of old Statutes of *Oneri* which are prejudicial to the Nation: And that the King hath not by Law ſo much Power as a Juſtice of Peace, to commit any Man to Priſon for any Offence whatſoever, becauſe all ſuch Matters were committed to proper Courts and Officers of Juſtice: And if the King by his verbal Command ſend for any Perſon to come before him, if the Party refuſed to attend, and the Meſſenger endeavouring to force him, they fell to blows; if the Meſſenger killed the Party ſent for, this by the Law is Murder in him; but if he killed the Meſſenger, this was juſtifiable in him, being in his own Defence, ſo as to ſue forth a Pardon of courſe: Theſe, and many other Caſes of like nature, are ſo clear and well known, that I will not preſume to multiply Particulars.

That the King took an Oath at his Coronation to preſerve the Peace of the Nation, to do Juſtice to all, and to keep and obſerve the Laws which the People have, himſelf confeſſes: And it was charged upon the late Archbiſhop, that he emaſculated the Oath, and left out very material Words; *Which the People ſhall chuſe:* which certainly he durſt not have done, without the King's ſpecial Command. And it ſeems to me no light Preſumption, that from that very Day he had a Deſign to alter and ſubvert the fundamental Laws, and to introduce an Arbitrary and Tyrannical Government. But tho' there had been no Oath, yet by ſpecial Office and Duty of his Place every King of *England* is obliged to act for the People's Good: for all Power, as it is originally in the People (he muſt needs be extreme ignorant, malicious, or a Self-deſtroyer, that ſhall deny it), ſo it is given forth for their Preſervation, nothing for their Deſtruction. For a King to rule by Luſt, and not by Law, is a Creature that was never of God's making, not of God's Approbation, but his Permiſſion: and tho' ſuch Men are ſaid to be Gods on Earth, 'tis in no other Senſe than the Devil is called the God of this World. It ſeems that one Paſſage which the King would have offered to the Court, (which was not permitted him to diſpute the Supreme Authority in the Nation; and ſtanding mute, the Charge being for High-Treaſon, it is a Conviction in Law) was, That 1 *Sam.* viii. is a Copy of the King's Commiſſion, by virtue whereof, he as King might rule and govern as he liſt; that he might take the People's Sons, and appoint them for himſelf, for his Chariots, and to be his Horſemen, and take their Daughters to be his Confectionaries, and take their Fields, and Vineyards, and Olive-yards, even the beſt of them, and their goodlieſt Young-men, and their Aſſes, and give them to his Officers, and to his Servants; which indeed is a Copy and Pattern of an abſolute Tyrant and abſolute Slaves, where the People have no more than the Tyrant will afford them. The Holy Spirit in that Chapter does not inſinuate what a good King ought to do, but what a wicked King would preſume to do. Beſides, *Saul* and *David* had extraordinary Calling, but all juſt Power is now derived from and conferred by the People: yet in the Caſe of *Saul* it is obſervable, That the People, out of pride to be like other Nations, deſired a King, and ſuch a King as the Heathens had, which were all Tyrants: for they that know any thing in Hiſtory, know that the firſt four Monarchs were all Tyrants at firſt, till they gained the People's Conſent. *Nimrod* the great Hunter was *Ninus* that built *Nineveh*, the firſt Tyrant and Conqueror that had no Title; and ſo were all Kingdoms, which are not Elective, till the People's ſubſequent Conſent; and tho' it be by Deſcent, yet 'tis a Continuation of a Conqueſt; till the People conſent and voluntarily ſubmit to a Government, they are but Slaves, and in reaſon they may free themſelves if they can. In *France* the King begins his Reign from the Day of his Coronation: The Archbiſhop aſks the People, if he ſhall be King; the twelve Peers, or ſome that perſonate them, ſay, Yes: They girt the Sword about him, then he ſwears to defend the Laws. And is any thing more natural than to keep an Oath? And tho' virtuous Kings have prevailed with the People to make their Crowns Hereditary, yet the Coronation ſhews the Shell that the Kernel hath been in. *Samuel* was a good Judge, and there was nothing could be objected againſt him, therefore God was diſpleaſed at their inordinate Deſire of a King; and it ſeems to me, that the Lord declares his diſlike of all ſuch Kings as the Heathens were, that is, Kings with an unlimited Power, that are not tied to Laws; for he gave them a King in his Wrath; therein dealing with them as the wiſe Phyſician with the diſtempered and impatient Patient, who deſiring to drink Wine, tells him the Danger of Inflammation; yet Wine he will have, and the Phyſician conſidering a little Wine will do but little hurt, rather than his Patient by fretting ſhould take greater hurt, preſcribes a little White-wine: wherein the Phyſician doth not approve his drinking of Wine, but of two Evils chuſeth the leaſt. The Jews would have a King for Majeſty and Splendor, like the Heathens: God permits this, he approves it not: it ſeems to me, that the Lord renounces the very Genus of ſuch Kings as are there mentioned, and the old Word *Conning* (by contraction *King*) does not ſignify Power or Force to do what he will, but a knowing, wiſe, diſcreet Man, that opens the People's Eyes, and does not lead them by the Noſes, but governs them with Wiſdom and Diſcretion for their own Good. Therefore, Gentlemen-Royaliſts, be not ſo mad as to miſconſtrue either the Oaths of Allegiance or Supremacy, or any League or Covenant, that any Man ſhould ſwear to give any one leave to cut his Throat: The true meaning is, that the King of *England* was Supreme in this Land, in oppoſition to the Pope, or any other Prince or Potentate, as the Words of the Oath do import, *That no foreign State, Prince, or Potentate*, &c. In caſe of any foreign Invaſion, the King was by Law to be Generaliſſimo, to command the People for their own Safety; and ſo it was expounded by the Parliament in 13 *Eliz.* which for ſome Reaſon of State was not permitted to be printed with the Statutes. Beſides, God told thoſe Kings whom he had formerly anointed, what their Duty was; not to exalt themſelves overmuch above their Brethren, to delight themſelves in the Law of God: Out of which I infer, that the *Turks*, *Tartars*, *Muſcovites*, *French*, *Spaniards*, and all People that live at the beck and nod of Tyrannical Men, may and ought to free themſelves from that Tyranny, if, and when, they can; for ſuch Tyrants that ſo domineer with a Rod of Iron, do not govern by God's permiſſive Hand of Approbation or Benediction, but by the permiſſive Hand of his Providence, ſuffering them to ſcourge the People, for Ends beſt known to himſelf, until he open a way for the People to work out their own Enfranchiſements.

1ſt Book of Ord. fol.

But before I ſpeak of the War, it will be neceſſary for the Satisfaction of rational Men, to open and prove the King's wicked Deſign, wherewith he ſtands charged. Now, that he had from the beginning of his Reign ſuch a Deſign and Endeavour ſo to tear up the Foundations of Government, that Law ſhould be no Protection to any Man's Perſon or Eſtate, will clearly appear by what follows.

1. By his not taking the Oath ſo fully as his Predeceſſors did, that ſo when the Parliament ſhould tender good Laws to him for the Royal Aſſent, he might readily anſwer that he was not by Oath obliged to confirm or corroborate the ſame.

2. By his diſhonourable and perfidious Dealing with the People at his Coronation, when he ſet forth a Proclamation, That in regard of the Infection then ſpread thro' the Kingdom, he promiſed to diſpenſe with thoſe Knights, that by an old Statute were to attend at the Coronation, who were thereby required not to attend; but did notwithſtanding within a few Months after take advantage of their abſence, and raiſed a vaſt Sum of

Money out of their Eſtates at the Council-Table: where they pleading the ſaid Proclamation for their Juſtification, they were anſwered that the Law of the Land was above any Proclamation; like that Tyrant, that when he could not by Law execute a Virgin, commanded her to be defloured, and then put to death.

3. By his altering the Patents and Commiſſions to the Judges, which having heretofore had their Places granted to them ſo long as they ſhould behave themſelves well therein, he made them but during Pleaſure; that if ſo the Judges ſhould not declare the Law to be as he would have it, he might with a wet Finger remove them, and put in ſuch as ſhould not only ſay, but ſwear, if need were, That the Law was as the King would have it. For when a Man ſhall give five or ten thouſand Pounds for a Judge's Place, during the King's Pleaſure, and he ſhall the next Day ſend to him to know his Opinion of a Difference in Law between the King and Subject; and it ſhall be intimated unto him, That if he do not deliver his Opinion for the King, he is likely to be removed out of his Place the next Day: which if ſo, he knows not how to live, but muſt rot in a Priſon for the Money which he borrowed to buy his Place; as was well known to be ſome of their Caſes, who under-hand and cloſely bought great Places, to elude the Danger of the Statute; whether this was not too heavy a Temptation for the Shoulders of moſt Men to bear, is no hard Matter to determine. So as upon the matter, that very Act of his made the King at the leaſt a potential Tyrant; for when that ſhall be Law which a King ſhall declare himſelf, or which ſhall be declared by thoſe whom he chuſes, this brings the People to the very next Step to Slavery.

But that which doth irrefragably prove the Deſign, was his reſtleſs Deſire to deſtroy Parliaments, or to make them uſeleſs: And for that, who knows not but that there were three or four National Meetings in Parliament in the firſt four Years of his Reign, which were called for Supply, to bring Money into his Coffers, in Point of Subſidies, rather than for any Benefit to the People, as may appear by the few good Laws that were then made? But that which is moſt memorable, is the untimely diſſolving of the Parliament in 4 *Car.* when Sir *John Elliot* and others (who managed a Conference with the Houſe of Peers concerning the Duke of *Buckingham*, who, amongſt other things, was charged concerning the Death of King *James*) were committed cloſe Priſoners to the *Tower*, where he loſt his Life by cruel Indurance; which I may not paſs over without a ſpecial Animadverſion: For ſure there is no *Turk* or Heathen but will ſay, that if he were any way guilty of his Father's Death, let him die for it.

I would not willingly be ſo injurious to the honeſt Reader, as to make him buy that again which he hath formerly met with in the Parliament's Declaration or elſewhere; in ſuch a Caſe a marginal Reference may be ſufficient. Nor would I herein be ſo preſumptuous as to prevent any thing that happily may be intended in any Declaration for more general Satisfaction; but humbly to offer a Student's Mite, which ſatisfies myſelf, with Submiſſion to better Judgments.

How the King firſt came to the Crown, God and his own Conſcience beſt knew. It was well known and obſerved at Court, that a little before he was a profeſſed Enemy to the Duke of *Buckingham*; but inſtantly upon the Death of King *James*, took him into ſuch ſpecial Protection, Grace and Favour, that upon the Matter he divided the Kingdom with him. And when the Earl of *Briſtol* had exhibited a Charge againſt the ſaid Duke, the 13th Article whereof concerned the Death of King *James*, he inſtantly diſſolved that Parliament, that ſo he might protect the Duke from the Juſtice thereof, and would never ſuffer any legal Enquiry to be made for his Father's Death. The Rabbins obſerve, that That which ſtuck moſt with *Abraham* about God's Command to ſacrifice *Iſaac*, was this; *Can I not be obedient, unleſs I be unnatural? What will the Heathen ſay, when they hear I have killed my only Son?* What will an *Indian* ſay to this Caſe? A King hath all Power in his Hand to do Juſtice: There is one accuſed upon ſtrong Preſumptions, at the leaſt, for poiſoning that King's Father; the King protects him from Juſtice: whether do you believe that himſelf had any Hand in his Father's Death? Had the Duke been accuſed for the Death of a Beggar, he ought not to have protected him from a judicial Trial. We know that by Law 'tis no leſs than Miſpriſion of Treaſon to conceal a Treaſon: and to conceal a Murder, ſtrongly implies a Guilt thereof, and makes him a kind of Acceſſary to the Fact. He that hath no Nature to do Juſtice to his own Father, could it ever be expected that he ſhould do Juſtice to others? Was he fit to continue a Father to the People, who was without natural Affection to his own Father? Will he love a Kingdom, that ſhewed no Love to himſelf, unleſs it was, that he durſt not ſuffer Inquiſition to be made for it? But I leave it as a Riddle, which at the Day of Judgment will be expounded and unriddled; for ſome Sins will not be made manifeſt till that Day, with this only, That had he made the Law of God his Delight, and ſtudied therein Night and Day, as God commanded his Kings to do; or had he but ſtudied Scripture half ſo much as *Ben. Johnſon* or *Shakeſpear*, he might have learnt, That
2 Kings xii. 20. when *Amazia* was ſettled in the Kingdom, he ſuddenly did
and xiv. 1, 5. Juſtice upon thoſe Servants which had killed his Father *Joaſh*: he did not by any pretended Prerogative excuſe or protect them, but delivered them up into the Hands of that Juſtice which the Horridneſs of the Fact did undoubtedly demerit.

That Parliament (4 *Car.*) proving ſo abortive, the King ſets forth a Proclamation, That none ſhould preſume to move him to
27 Mar. 5 Car. call Parliaments, for he knew how to raiſe Monies enough without the Help of Parliaments; therefore in twelve Years refuſeth to call any. In which Interval and Intermiſſion, how he had oppreſſed the People by Incroachments and Uſurpations upon their Liberties and Properties; and what vaſt Sums of Money he had forcibly exacted and exhauſted by illegal Patents and Monopolies of all Sorts, I refer the Reader to that moſt judicious and full *Declaration of the State of the Kingdom*, publiſhed in the Beginning of this Parliament. That Judgment of Ship-Money did, upon the Matter, formalize the People abſolute Slaves, and him an abſolute Tyrant: For if the King may take from the People, in Caſe of Neceſſity, and himſelf ſhall be Judge of that Neceſſity, then cannot any Man ſay that he is worth 6*d.* for if the King ſay that he hath need of that 6*d.* then by Law he muſt have it. I mean that great *Nimrod*, that would have made all *England* a Foreſt; and the People, which the Biſhop calls his Sheep, to be his Veniſon to be hunted at his Pleaſure.

Nor does the common Objection, *That the Judges and evil Counſellors, and not the King, ought to be reſponſible for ſuch Mal-Adminiſtrations, Injuſtice and Oppreſſion*, bear the Weight of a Feather in the Balance of right Reaſon. For, 1ſt, Who made ſuch wicked and corrupt Judges? Were they not his own Creatures? And ought not every Man to be accountable for the Works of his own Hands? He that does not hinder the doing of Evil, if it lies in his Power to prevent it, is guilty of it as a Commander thereof. He that ſuffered thoſe black Stars to inflict ſuch barbarous Cruelties, and unheard-of Puniſhments, as Brandings, Slitting of Noſes, *&c.* upon honeſt Men, to the Diſhonour of the Proteſtant Religion, and Diſgrace of the Image of God ſhining in the Face of Man, he well deſerved to have been ſo ſerved. But, 2dly, he had the Benefit of thoſe illegal Fines and Judgments. I agree, that if a Judge ſhall oppreſs *I. S.* for the Benefit of *I. D.* the King ought not to anſwer for this, but the Judge, unleſs he protect the Judge againſt the Complaint of *I. S.* and in that Caſe he makes himſelf guilty of it. But when an unjuſt Judgment is given againſt *I. S.* for the King's Benefit, and the Fine to come immediately into his Coffers; he that receives the Money muſt needs be preſumed to conſent to the Judgment. But, 3dly, mark a *Machiavel*-Policy; *Call no Parliaments to queſtion the Injuſtice and Corruption of Judges for the People's Relief; and make your own Judges, and let that be the Law that they declare; whether it be reaſonable or unreaſonable, it is no matter.*

But then how came it to paſs that we had any more Parliaments? Had we not a gracious King to call a Parliament when there was ſo much need of it, and to paſs ſo many gracious Acts to put down the *Star-Chamber*, &c.? Nothing leſs; it was not any voluntary free Act of Grace, not the leaſt Ingredient or Tincture of Love or good Affection to the People, that called the ſhort Parliament in 40, but to ſerve his own Turn againſt the *Scots*, whom he then had deſigned to enſlave; and thoſe ſeven Acts of Grace which the King paſs'd, were no more than his Duty to do, nor half ſo much, but giving the People a Taſte of their own Griſts; and he diſſents with them about the Militia, which commanded all the reſt: he never intended thereby any more Good and Security to the People, than he that ſtealing the Gooſe leaves the Feathers behind him. But to anſwer the Queſtion, thus it was:

The King being wholly given up to be led by the Counſels of a Jeſuited Party, who endeavoured to throw a Bone of Diſſention among us, that they might caſt in their Net into our troubled Waters, and catch more Fiſh: For St. *Peter*'s See perſuaded the King to ſet up a new Form of Prayer in *Scotland*, and laid the Bait ſo cunningly, that whether they ſaw it or not, they were undone: If they ſaw the Myſtery of Iniquity couched in it, they would reſiſt, and ſo merit Puniſhment for rebelling; if they ſwallowed it, it would make way for worſe. Well, they ſaw the Poiſon, and refuſed to taſte it. The King makes War, and many that loved Honour and Wealth more than God, aſſiſted him; down he went with an Army, but his Treaſure waſted in a ſhort Time: fight they would not, for fear of an After-reckoning. Some Commanders propound, that they ſhould make their Demands; and the King grants all, comes back to *London*, and burns the Pacification, ſaying, it was counterfeit: They reaſſume their Forces, he raiſes a ſecond War againſt them, and was neceſſitated to call a Parliament, offering to lay down Ship-Money for twelve Subſidies. They refuſe; the King in high Diſpleaſure breaks off the Parliament, and in a Declaration commands them not to think of any more Parliaments, for he would never call another.

There was a King of *Egypt* that cruelly oppreſs'd the People; they poor Slaves complaining to one another, he feared a Riſing, and commanded that none ſhould complain upon Pain of cruel Death. Spies being abroad, they often met, but durſt not ſpeak, but parted with Tears in their Eyes; which declared that they had more to utter, but durſt not: This ſtruck him to greater Fears, he commanded that none ſhould look upon one another's Eyes at parting; therefore their Griefs being too great to be ſmothered, they fetch'd a deep Sigh when they parted, which moved them ſo much to compaſſionate one another's Wrongs, that they ran in and killed the Tyrant. The long hatching *Iriſh* Treaſon was now ripe, and therefore it was neceſſary that *England* and *Scotland* ſhould be in Combuſtion, leſt we might help the *Iriſh* Proteſtants. Well, the *Scots* get *Newcaſtle*; he knew they would truſt him no more, he had ſo often broke with them, therefore no Hopes to get them out by a Treaty. Many Lords and the City petition for a Parliament; the King was at ſuch a Neceſſity, that yield he muſt to that which he moſt abhorred, God had brought him to ſuch a Strait. He that a few Months before aſſumed the Power of God, commanding Men not to think of Parliaments, to reſtrain the free Thoughts of the Heart of Man, was conſtrained to call one, which they knew he would break off when the *Scots* were ſent home; therefore got a Confirmation of it, that he ſhould not diſſolve it without the Conſent of both Houſes, of which he had no Hopes, or by Force, which he ſuddenly attempted; and the *Engliſh* Army in the North, was to have come up to confound the Parliament and this rebellious and diſloyal City, as the King called it; and for their Pains was promiſed thirty thouſand Pounds and the Plunder, as by the Examinations of Colonel *Goring*, *Legg*, &c. doth moſt fully appear.

And here by the way, I cannot but commend the City-Malignants; he calls them Rebels, they call him a gracious King: He, by his Proclamation at *Oxford*, prohibits all Commerce and Intercourſe of Trade between this populous City (the Life and Intereſt whereof conſiſts in Trade, without which many Thouſands cannot ſubſiſt) and other Parts of the Kingdom: ſtill they do Good againſt Evil, and petitioning him ſo often to cut their Throats, are troubled at nothing ſo much as that they are not reduced to that former and a worſe Bondage than when there was a
Lord Warden made in the City, and the King ſent for as Darlingrub.
much of their Eſtates as he pleaſed. But ſurely the *Oxfordſhire* Men are more to be commended; for when the King had commanded by
his Proclamation, that what Corn, Hay, and other Proviſion 15 April, 20 Car.
in the County of *Oxford*, could not be fetch'd into the ſaid City for his Garriſon, ſhould be conſumed and deſtroy'd by Fire, for fear

it ſhould fall into the hands of the Parliament's Friends; (a Cruelty not to be parallel'd by any Infidel, Heathen, or Pagan King; nor to be precedented amongſt the moſt avowed and profeſſed Enemies, much leſs from a King to his Subjects) they reſolved never to truſt him any more.

But the great Queſtion will be, What hath been the true Ground and Occaſion of the War? Which unleſs I clear, and put it out of queſtion, as the Charge imports, I ſhall fall ſhort of what I chiefly aim at, *viz. That the King ſet up his Standard of War, for the Advancement and Upholding of his perſonal Intereſt, Power, and pretended Prerogative, againſt the publick Intereſt of Common Right, Peace and Safety:* and thus I prove it.

1. He fought for the *Militia* by Sea and Land, to have it at his abſolute Diſpoſe, and to juſtify and maintain his illegal Commiſſions of Array; and this he pretended was his Birthright by the Law of *England:* which if it were ſo, then might he by the ſame Reaſon command all the Money in the Kingdom; for he that carries the Sword, will command the Purſe.

2. The next thing that he pretended to fight for, was his Power to call Parliaments when he pleaſed, and diſſolve them when he liſt; if they will ſerve his turn, then they may ſit by a Law to inſlave the People; ſo that the People had better chuſe all the Courtiers and King's Favourites at firſt, than to trouble themſelves with ludibrious Elections, to aſſemble the Freeholders together, to their great Labour and Expence both of Time and Coin; and thoſe which are choſen Knights and Burgeſſes, to make great Preparations, to take long Journies to *London* themſelves and their Attendants, to ſee the Kings and Lords in their Parliament-Robes ride in State to the Houſe, and with *Domitian*, to catch Flies. And no ſooner ſhall there be any Breathings, or a Spirit of Juſtice ſtirring and diſcover'd in the Houſe of Commons, but the King ſends the Black-Rod, and diſſolves the Parliament, and ſends them back again as wiſe as they were before, but not with ſo much Money in their Purſes, to tell Stories to the Freeholders of the Bravery of the King and Lords.

3. Well, but if this be too groſs, and that the People begin to murmur and clamour for another Parliament, then there goes out another Summons, and they meet, and ſit for ſome time, but to as much purpoſe as before; for when the Commons have preſented any Bill for Redreſs of a publick Grievance, then the King hath ſeveral Games to play to make all fruitleſs: As, firſt, his own negative Voice, that if Lords and Commons are both agreed, then he will adviſe; which (I know not by what ſtrange Doctrine) hath been of late conſtrued to be a plain Denial: tho' under favour, at the firſt it was no more but to allow him two or three Days time to conſider of the Equity of the Law; in which time if he could not convince them of the Injuſtice of it, then ought he by his Oath and by Law to conſent to it.

4. But if by this means the King had contracted hard Thoughts from the People, and that not only the Commons, but many of the Lords, that have the ſame noble Blood running in their Veins, as thoſe *Engliſh* Barons, whoſe Swords were the chief Inſtruments that purchaſed *Magna Charta*; then, that the King might be ſure to put ſome others between him and the People's Hatred, the next Prerogative that he pretended to have, was to be the ſole Judge of Chivalry, to have the ſole Power of conferring Honours, to make as many Lords as he pleaſed, that ſo he might be ſure to have two againſt one, if the Houſe of Commons (by reaſon of the Multitude of Burgeſſes, which he likewiſe pretended a Power to make as many Borough-Towns and Corporations as he pleaſed) were not pack'd alſo. And this is that glorious Privilege of the *Engliſh* Parliaments, ſo much admired for juſt nothing: For if this pretended Prerogative might ſtand for Law, as was challenged by his Adherents, never was there a purer Cheat put upon any People, nor a more ready way to enſlave them, than by Privilege of Parliament; being juſt ſuch a Mockery of the People, as that Mock-Parliament at *Oxford* was, where the King's Conſent muſt be the Figure, and the Repreſentative ſtand for a Cypher.

5. But then out of Parliament the People are made to believe, that the King hath committed all Juſtice to the Judges, and diſtributed the Execution thereof into ſeveral Courts; and that the King cannot ſo much as impriſon a Man, or impoſe any thing upon, nor take any thing away from the People, as by Law he ought not to do: But now ſee what Prerogative he challenges.

1. If the King have a mind to have any publick-ſpirited Man removed out of the way, this Man is killed, the Murderer known; a Letter comes to the Judge, and it may be, it ſhall be found but Manſlaughter; if it be found Murder, the Man is condemned, but the King grants him a Pardon, which the Judges will allow, if the Word *Murder* be in it: But becauſe it is too groſs to pardon Murder, therefore the King ſhall grant him a Leaſe of his Life for ſeven Years, and then renew it (like a Biſhop's Leaſe), as he did to Major *Prichard*, who was lately juſticed; who being a Servant to the Earl of *Lindſey*, murder'd a Gentleman in *Lincolnſhire*, and was condemned, and had a Leaſe of his Life from the King, as his own Friends have credibly told me.

2. For matter of Liberty: The King or any Courtier ſends a Man to Priſon; if the Judge ſet him at liberty, then put him out of his place; a Temptation too heavy for thoſe that love Money and Honour more than God, to bear: therefore any Judgment that is given between the King and a Subject, 'tis not worth a Ruſh: for what will not Money do?

Next, he challenges a Prerogative to enhance and debaſe Monies, which by Law was allowed him, ſo far as to balance Trade, and no further; that if Gold went high beyond Sea, it might not be cheap here, to have it all bought up and tranſported: but under colour of that, he challenges a Prerogative, That the King may by Proclamation make Leather current, or make a Sixpence go for Twenty Shillings, or Twenty Shillings for a Sixpence. Which not to mention any thing of the Project of Farthings or Braſs Money, he that challenges ſuch a Prerogative, is a potential Tyrant: For if he may make my Twelve-pence in my Pocket worth but Two-pence, what Property hath any Man in any thing that he enjoys?

Another Prerogative pretended was, That the King may avoid any Grant; and ſo may cozen and cheat any Man by a Law. The Ground whereof is, That the King's Grants ſhall be taken according to his Intention; which, in a ſober Senſe, I wiſh that all Men's Grants might be ſo conſtrued according to their Intentions, expreſs'd by Word or Writing: But by this means, it being hard to know what the King intended, his Grants have been like the Devil's Oracles, taken in any contrary Senſe for his own Advantage.

1 *Rep.* In the famous Caſe of *Altonwood* there is vouched the Lord *Lovel's* Caſe: That the King granted Lands to the Lord *Lovel*, and his Heirs Males, not for Service done, but for a valuable Conſideration of Money paid. The Patentee well hoped to have enjoyed the Land not only during his Life, but that his Heirs Males, at leaſt of his Body, ſhould have likewiſe enjoyed it: But the Judges finding, it ſeems, that the King was willing to keep the Money, and have his Land again, (for what other Reaſon, no mortal Man can fathom) reſolved that it was a void Grant, and that nothing paſſed to the Patentee. I might inſtance in many Caſes of like nature, throughout all the Reports. As one once made his boaſt, That he never made or paſt any Patent or Charter from the Crown, but he reſerved one ſtarting Hole or other, and knew how to avoid it; and ſo merely to cozen and defraud the poor Patentee. So that now put all theſe Prerogatives together, 1. The Militia by Sea and Land: 2. A Liberty to call Parliaments when he pleaſed; and to adjourn, prorogue, or diſſolve them at pleaſure: 3. A negative Voice, that the People cannot ſave themſelves without him, and muſt cut their own Throats, if commanded ſo to do: 4. The Nomination and Making of all the Judges, that upon peril of the Loſs of their Places muſt declare the Law to be as he pleaſes: 5. A Power to confer Honours upon whom, and how he pleaſes; a covetous baſe Wretch for five or ten thouſand Pounds to be courted, who deſerves to be carted: 6. To pardon Murderers, whom the Lord ſays ſhall not be pardoned: 7. To ſet a Value and Price of Monies as he pleaſes; that if he be to pay ten thouſand Pounds, he may make Leather by his Proclamation to be current that day, or five Shillings to paſs for twenty Shillings; and if to receive ſo much, twenty Shillings to paſs for five Shillings: And laſtly, a legal Theft to avoid his own Grants: I may boldly throw the Gantlet, and challenge all the *Machiavels* in the World to invent ſuch an exquiſite Platform of Tyrannical Domination, and ſuch a perfect Tyranny, without Maim or Blemiſh, as this is, and that by a Law, which is worſt of all. But the truth is, theſe are no legal Prerogatives, but Uſurpations, Incroachments, and Invaſions upon the People's Rights and Liberties: And this eaſily effected, without any great Depth of Policy; for 'tis but being ſure to call no Parliaments, or make them uſeleſs, and make the Judges Places profitable, and place Avarice upon the Bench, and no doubt but the Law ſhall ſound as the King would have it. But let me thus far ſatisfy the ingenuous Reader, That all the Judges in *England* cannot make one Caſe to be Law that is not Reaſon, no more than they can prove a Hair to be white that is black; which if they ſhould ſo declare or adjudge, it is a mere Nullity: For Law muſt be Reaſon adjudged, where Reaſon is the *Genus*; and the Judgment in ſome Court makes the *Differentiæ*. And I never found that the fair Hand of the Common Law of *England* ever reached out any Prerogative to the King above the meaneſt Man, but in three Caſes; 1. In Matters of Honour and Preeminence to his Perſon; and in Matters of Intereſt: That he ſhould have Mines Royal of Gold and Silver, in whoſe Land ſoever they were diſcover'd; and Fiſhes Royal, as Sturgeons and Whales, in whoſe Streams or Water ſoever they were taken, which very rarely happen'd: or to have Tythes out of a Pariſh that no body elſe could challenge: For ſays the Law, *The moſt noble Perſons are to have the moſt noble Things.* 2. To have his Patents freed from Deceit, that he be not over-reached or cozened in his Contracts, being imployed about the great and arduous Affairs of the Kingdom. 3. His Rights to be freed from Incurſion of Time, not to be bound up by any Statute of Nonclaim: For indeed Poſſeſſion is a vain Plea, when the Matter of Right is in queſtion; for Right can never die: And ſome ſuch honourable Privileges of mending his Plea, or ſuing in what Court he will; and ſome ſuch Prerogatives, of a middle indifferent Nature, that could not be prejudicial to the People. But that the Law of *England* ſhould give the King any ſuch vaſt, immenſe, precipitating Power, or any ſuch God-like State, That he ought not to be accountable for wicked Actions, or Male-Adminiſtrations and Miſgovernment, as he hath challenged and averred in his Anſwer to the Petition of Right, or any ſuch Principles of Tyranny; which are as inconſiſtent with the People's Liberties and Safety as the Ark and *Dagon*, Light and Darkneſs, in an extenſive degree; is a moſt vain and irrational Thing to imagine. And yet that was the Ground of the War, as himſelf often declared; and that would not have half contented him, if he had come in by the Sword. But ſome rational Men object, How can it be Murder, ſay they, for the King to raiſe Forces againſt the Parliament, ſince there is no other way of determining Differences between the King and his Subjects, but by the Sword? For the Law is no competent Judge between two ſupreme Powers; and then if it be only a contending for each other's Right, where is the Malice that makes the killing of a Man Murder? Take the Anſwer thus: Firſt, How is it poſſible to imagine two ſupreme Powers in one Nation, no more than two Suns in one Firmament? If the King be ſupreme, the Parliament muſt be ſubordinate: If they ſupreme, then he ſubordinate. But then it is alledged, That the King challenged a Power only co-ordinate, that the Parliament could do nothing without him, nor he without them. Under favour, two Powers co-ordinate is as abſurd as the other: For tho' in quiet Times the Commons have waited upon the King, and allowed him a negative Voice in Matters of leſs Concernment, where Delay could not prove dangerous to the People; yet when the Commons ſhall vote that the Kingdom is in danger, unleſs the Militia be ſo and ſo ſettled; now if he will not agree to it, they are bound in Duty to do it themſelves. And 'tis impoſſible to imagine that ever any Man ſhould have the Conſent of the People to be their King upon other Conditions (without which no Man ever had Right to wear the Diadem): For Conqueſt makes a Title amongſt Wolves and Bears, but not amongſt Men.

When the firſt Agreement was concerning the Power of Parliaments, if the King ſhould have ſaid, Gentlemen, are you content to allow me any negative Voice, that if you vote the Kingdom to be in danger, unleſs ſuch an Act paſs, if I refuſe to aſſent, ſhall nothing be done in that Caſe? Surely no rational Man but would have anſwered, May it pleaſe your Majeſty, we ſhall uſe all dutiful Means to procure your Royal Aſſent: But if you ſtill refuſe, we muſt not ſit ſtill, and ſee ourſelves ruin'd: we muſt and will ſave ourſelves, whether you will or no. And will any Man ſay that the King's

Power is diminiſhed, becauſe he cannot hurt the People? Or that a Man is leſs in Health that hath many Phyſicians to attend him? God is omnipotent, that cannot ſin; and all Power is for the People's Good: But a Prince may not ſay That is for the People's Good, which they ſee and feel to be for their Hurt. And as for the Malice, the Law implies that; as when a Thief ſets upon a Man to rob him, he hath no ſpite to the Man, but Love to the Money: But it is an implied Malice, that he will kill the People unleſs they will be Slaves.

Q. *But by what Law is the King condemned?*

Reſp. By the Fundamental Law of this Kingdom, by the general Law of all Nations, and the unanimous Conſent of all rational Men in the World, written in every Man's Heart with the Pen of a Diamond in Capital Letters, and a Character ſo legible, that he that runs may read, *viz.* That when any Man is intruſted with the Sword for the Protection and Preſervation of the People, if this Man ſhall employ it to their Deſtruction, which was put into his Hand for their Safety, by the Law of that Land he becomes an Enemy to that People, and deſerves the moſt exemplary and ſevere Puniſhment that can be invented. And this is the firſt neceſſary Fundamental Law of every Kingdom, which by intrinſical Rules of Government muſt preſerve itſelf. And this Law needed not be expreſs'd, That if a King become a Tyrant, he ſhall die for it; 'tis ſo naturally implied. We do not uſe to make Laws which are for the Preſervation of Nature; that a Man ſhould eat and drink, and buy himſelf Clothes, and enjoy other natural Comforts: No Kingdom ever made any Laws for it. And as we are to defend ourſelves naturally, without any written Law, from Hunger and Cold, ſo from outward Violence. Therefore, if a King would deſtroy a People, 'tis abſurd and ridiculous to aſk by what Law he is to die. And this Law of Nature is the Law of God, written in the fleſhly Tables of Men's Hearts; that, like the elder Siſter, hath a prerogative Right of Power before any poſitive Law whatſoever: And this Law of Nature is an undubitable Legiſlative Authority of itſelf, that hath a ſuſpenſive Power over all human Laws. If any Man ſhall by expreſs Covenant, under Hand and Seal, give Power to another Man to kill him, this is a void Contract, being deſtructive to Humanity. And by the Law of *England* any Act or Agreement againſt the Laws of God or Nature is a mere Nullity: For as Man hath no hand in the making of the Laws of God or Nature, no more hath he power to mar or alter them. If the Pilot of a Ship be drunk, and running upon a Rock; if the Paſſengers cannot otherwiſe prevent it, they may throw him into the Sea to cool him. And this Queſtion hath received Reſolution this Parliament. When the Militia of an Army is committed to a General, 'tis not with any expreſs Condition, that he ſhall not turn the Mouths of his Cannons againſt his own Soldiers; for that is ſo naturally and neceſſarily implied, that it's needleſs to be expreſs'd: Inſomuch, as if he did attempt or command ſuch a Thing againſt the Nature of his Truſt and Place, it did *ipſo facto* eſtate the Army in a Right of Diſobedience; unleſs any Man be ſo groſly ignorant, to think that Obedience binds Men to cut their own Throats, or their Companions. Nor is this any Secret of the Law which hath lain hid from the beginning, and now brought out to bring him to Juſtice; but that which is connatural with every Man, and innate in his Judgment and Reaſon, and is as antient as the firſt King, and an epidemical binding Law in all Nations in the World: For when many Families agree, for the Preſervation of Human Society, to inveſt any King or Governor with Power and Authority; upon the acceptance thereof, there is a mutual Truſt and Confidence between them, that the King ſhall improve his Power for their Good, and make it his Work to procure their Safeties, and they to provide for his Honour; which is done to the Commonwealth in him, as the Sword and Enſigns of Honour, carry'd before the Lord Mayor, are for the Honour of the City. Now, as when any one of this People ſhall compaſs the Death of the Governor, ruling well, this is a Treaſon puniſhable with Death, for the Wrong done to the Community, and *Anathema* be to ſuch a Man; ſo when he or they that are truſted to fight the People's Battles, and to procure their Welfare, ſhall prevaricate, and act to the enſlaving or deſtroying of the People, who are his Liege Lords, and all Governors are but the People's Creatures, and the Work of their Hands, to be accountable as their Stewards, (and is it not ſenſeleſs for the Veſſel to aſk the Potter by what Law he calls it to account?) this is High-Treaſon with a Witneſs, and far more tranſcendent than in the former Caſe; becauſe the King was paid for his Service, and the Dignity of the Perſon does increaſe the Offence. For a great Man of noble Education and Knowledge to betray ſo great a Truſt, and abuſe ſo much Love as the Parliament ſhewed to the King, by petitioning him as good Subjects, praying him as good Chriſtians, adviſing him as good Counſellors, and treating with him as the great Council of the Kingdom, with ſuch infinite Care and Tenderneſs of his Honour (a Courſe which God's People did not take with *Rehoboam*; they never petitioned him, but adviſed him; he refuſed their Counſel, and hearkened to young Counſellors, and they cry, *To thy Tents, O Iſrael*; and make quick and ſhort Work of it); after all this, and much more Longanimity and Patience (which God exerciſes towards Man to bring him to Repentance) from the Lord to the Servant, for him not only to ſet up a Standard of War, in defiance of his dread Sovereign the People (for ſo they truely were in Nature, tho' Names have befooled us), but to perſiſt ſo many Years in ſuch cruel Perſecutions; who with the Word of his Mouth might have made a Peace: If ever there were ſo ſuperlative a Treaſon, let the *Indians* judge. And whoſoever ſhall break and violate ſuch a Truſt and Confidence, *Anathema Maranatha* be unto them.

Com. E. Leiceſter's Caſe.

Q. *But why was there not a written Law to make it Treaſon for the King to deſtroy the People, as well as for a Man to compaſs the King's Death?*

Reſp. Becauſe our Anceſtors did never imagine, that any King of *England* would have been ſo deſperately mad, as to levy a War againſt the Parliament and People; as in the common Inſtance of Parricide, the *Romans* made no Law againſt him that ſhould kill his Father, thinking no Child would be ſo unnatural to be the Death of him who was the Author of his Life: But when a Child came to be accuſed for Murder, there was a more cruel Puniſhment inflicted, than for other Homicides; for he was thrown into the Sea in a great Leather Barrel, with a Dog, a Jackanapes, a Cock, and a Viper, ſignificant Companions for him, to be deprived of all the Elements, as in my *Poor Man's Caſe, fol.* 10. Nor was there any Law made againſt Parents who ſhould kill their Children; yet if any Man was ſo unnatural, he had an exemplary Puniſhment.

Obj. *But is it not a Maxim in Law, That the King can do no Wrong?*

Reſp. For any Man to ſay ſo, is Blaſphemy againſt the great God of Truth and Love: For only God cannot err; becauſe what he wills is right, becauſe he wills it. And 'tis a ſad thing to conſider how learned Men, for unworthy Ends, ſhould uſe ſuch Art to ſubdue the People, by Tranſportation of their Senſes, as to make them believe that the Law is, That the King can do no Wrong.

Firſt, for Law; I do aver it with Confidence, but in all Humility, that there is no ſuch Caſe to be found in Law, That if the King rob, or murder, or commit ſuch horrid Extravagancies, that it is no Wrong. Indeed the Caſe is put in *Hen.* VII. by a Chief Judge, That *if the King kill a Man, 'tis no Felony, to make him ſuffer Death*; that is, to be meant in ordinary Courts of Juſtice. But there is no doubt but the Parliament might try the King, or appoint others to judge him for it. We find Caſes in Law, that the King hath been ſued even in Civil Actions.

In 43 *Edw.* III. 22. it is reſolved, That all manner of Actions did lie againſt the King, as againſt any Lord; and 24 *Edw.* III. 23. *Wilby* a learned Judge ſaid, That there was a Writ *Præcipe Henrico Regi Angliæ.*

Indeed *Ed.* I. did make an Act of State, That Men ſhould ſue to him by Petition; but this was not agreed unto in Parliament: *Thelwal. tit. Roye. Digeſt of Writs,* 71. But after, when Judges Places grew great, the Judges and Biteſheeps began to ſing Lullaby, and ſpeak *Placentia* to the King, that *my Lord the King is an Angel of Light:* now Angels are not reſponſible to Men, but God, therefore not Kings; and the Judges, they begin to make the King a God, and ſay, That by Law his Stile is *Sacred Majeſty*, tho' he ſwears every hour; and *Gracious Majeſty*, tho' gracious Men be the chief Objects of his Hatred; and that the King hath an Omnipotence and an Omnipreſence.

But I am ſure there is no Caſe in Law, That if the King levy a War againſt the Parliament and People, that it is not Treaſon. Poſſibly that Caſe in *Hen.* VII. may prove, That if the King ſhould in his paſſion kill a Man, this ſhall not be Felony to take away the King's Life; for the Inconveniency may be greater to the People, by putting a King to death for one Offence and Miſcarriage, than the Execution of Juſtice upon him can advantage them. But what's this to a levying of War againſt a Parliament? Never any Judge was ſo devoid of Underſtanding, that he denied that to be Treaſon. But ſuppoſe a Judge that held his Place at the King's pleaſure did ſo, I am ſure never any Parliament ſaid ſo. But what if there had in dark Times of Popery been an Act made, That the King might murder, raviſh, burn, and perpetrate all Miſchiefs, and play Reaks with impunity; will any Man that hath but Wit enough to meaſure an Ell of Cloth, or to tell Twenty ſay, That this is an Obligation for Men to ſtand ſtill, and ſuffer a Monſter to cut their Throats, and grant Commiſſion to rob at *Shuters-Hill*; as ſuch and no better are all legal Thefts and Oppreſſions? The Doctor ſays, That a Statute againſt giving an Alms to a poor Man is void: He is no Student, I mean, was never bound Prentice to Reaſon, that ſays, A King cannot commit Treaſon againſt the People.

Obj. *But are there not Negative Words in the Statute of* 25 Edw. III. *That nothing elſe ſhall be conſtrued to be Treaſon but what is there expreſs'd?*

Reſp. That Statute was intended for the People's Safety, that the King's Judges ſhould not make Traytors by the dozens, to gratify the King or Courtiers; but it was never meant, to give liberty to the King to deſtroy the People: and tho' it be ſaid, that the King and Parliament only may declare Treaſon, yet no doubt if the King will neglect his Duty, it may be ſo declared without him; for when many are obliged to do any Service, if ſome of them fail, the reſt muſt do it.

Obj. *But is there any Precedent, that ever any Man was put to death that did not offend againſt ſome written Law? For where there is no Law, there is no Tranſgreſſion.*

Reſ. 'Tis very true, where there is neither Law of God, nor Nature, nor poſitive Law, there can be no Tranſgreſſion; and therefore that Scripture is much abuſed, to apply it only to Laws poſitive. For,

1. *Ad ea quæ frequentius, &c.* 'Tis out of the Sphere of all earthly Law-givers to comprehend and expreſs all particular Caſes that may poſſibly happen, but ſuch as are of moſt frequent concurrence; Particulars being different, like the ſeveral Faces of Men different from one another, elſe Laws would be too tedious: and as Particulars occur, rational Men will reduce them to general Reaſons of State, ſo as every thing may be adjudged for the Good of the Community.

2. The Law of *England* is *Lex non Scripta*, and we have a Direction in the Epiſtle to the 3 *Rep.* That when our Law-Books are ſilent, we muſt repair to the Law of Nature and Reaſon. *Hollingſhed* and other Hiſtorians tell us, That in 20 *H.* VIII. the Lord *Hungerford* was executed for Buggery, for which there was then no poſitive Law to make it Felony: and before any Statute againſt Witchcraft, many Witches have been hanged in *England*, becauſe it is Death by God's Law. If any *Italian* Mountebank ſhould come over hither, and give any Man Poiſon that ſhould lie in his Body above a Year and a Day, and then kill him, as it is reported they can give a Man Poiſon that ſhall conſume the Body in three Years: will any make ſcruple or queſtion to hang up ſuch a Raſcal? At *Naples*, the great Treaſurer of Corn being intruſted with many thouſand Quarters at three ſhillings the Buſhel, for the common Good, finding an Opportunity to ſell it for five Shillings the Buſhel to foreign Merchants, enriched himſelf exceedingly thereby; and Corn growing ſuddenly dear, the Council call'd him to account for it, who proffer'd to allow three Shillings for it, as it was deliver'd into his cuſtody, and hoped thereby to eſcape: but for ſo great a Breach of Truſt, nothing would content the People but to have him hang'd; and tho' there was no poſitive Law for it, to make it Treaſon, yet it was reſolved by the beſt Politicians, that it was Treaſon to break ſo great a Truſt by the Fundamental Conſtitution of the Kingdom, and that for ſo great an Offence he ought to die, that durſt preſume to inrich himſelf by that which might endanger the Lives of ſo many Citizens; for as Society is ſo natural, ſo Governors muſt of neceſſity and in all reaſon provide for the Preſervation and Suſtenance of the meaneſt Member, he that is but as the little Toe of the Body Politick.

But concerning *Ireland*, where there were no leſs than 150,000 Men, Women, and Children, moſt barbarouſly and ſatanically murdered in the firſt four Months of the Rebellion, as appeared by ſubſtantial Proofs, at the *King*'s-*Bench*, at the Trial of *Macguire*; if the King had a Hand, or but a Little-Finger in that Maſſacre, every Man will ſay, Let him die the Death: But how ſhall we be aſſured of that? How can we know the Tree better than by its Fruits? For my own Particular, I have ſpent many ſerious Thoughts about it, and I deſire in doubtful Caſes to give Charity the upper Hand; but I cannot in my Conſcience acquit him of it. Many ſtrong Preſumptions, and ſeveral Oaths of honeſt Men, that have ſeen the King's Commiſſion for it, cannot but amount to a clear Proof. If I meet a Man running down Stairs with a bloody Sword in his Hand, and find a Man ſtabbed in the Chamber; though I did not ſee this Man run into the Body by that Man which I met, yet if I were of the Jury, I durſt not but find him guilty of the Murder; and I cannot but admire that any Man ſhould deny that for him, which he durſt never deny for himſelf. How often was that monſtrous Rebellion laid in his Diſh! and yet he durſt never abſolutely deny it. Never was Bear ſo unwillingly brought to the Stake, as he was to declare againſt the Rebels; and when he did once call them Rebels, he would ſuffer but forty Copies to be printed, and thoſe to be ſent to him ſealed: And he hath ſince above forty times called them his Subjects, and his good Subjects; and ſent to *Ormond* to give ſpecial Thanks to ſome of theſe Rebels, as *Muſkerry* and *Plunket* (which I am confident, by what I ſee of his Height of Spirit and undaunted Reſolution at his Trial and ſince, acting the laſt Part anſwerable to the former Part of his Life; he would rather have loſt his Life, than to have ſent Thanks to two ſuch incarnate Devils, if he had not been as guilty as themſelves). Queſtionleſs if the King had not been guilty of that Blood, he would have made a thouſand Declarations againſt theſe Blood-hounds and Hell-hounds, that are not to be named but with Fire and Brimſtone, and have ſent to all Princes in the World for Aſſiſtance againſt ſuch accurſed Devils in the Shape of Men: But he durſt not offend thoſe Fiends and Firebrands; for if he had, I verily believe they would ſoon have produced his Commiſſion under his Hand and Seal of *Scotland* at *Edinburgh*, 1641, a Copy whereof is in the Parliament's Hands, atteſted by Oath, diſperſed by Copies in *Ireland*, which cauſed the general Rebellion.

Obj. *He did not give Commiſſion to kill the* Engliſh, *but to take their Forts, Caſtles, Towns, and Arms, and come over and help him.*

Reſp. And is it like all this could be effected without the Slaughter of the poor *Engliſh*? Did the King ever call them Rebels, but in forty Proclamations wrung out of him by Force, by the Parliament's Importunity? Murdering the Proteſtants was ſo acceptable to him! And with this Limitation, That none ſhould be publiſhed without his further Directions, as appears under *Nicols*'s Hand, now in the Parliament's Cuſtody. But the *Scots* were proclaimed Rebels before they had killed a Man, or had an Army, and a Prayer againſt them enjoined in all Churches; but no ſuch Matter againſt the *Iriſh*.

Well, when the Rebels were worſted in *Ireland*, the King makes War here to protect them, which but for his fair Words had been prevented; often calling God to witneſs, he would as ſoon raiſe War on his own Children: And Men from Popiſh Principles aſſiſt him. Well! we fought in jeſt, and were kept between winning and loſing: The King muſt not be too ſtrong, leſt he revenge himſelf; nor the Parliament too ſtrong, for the Commons would rule all; till *Naſeby* Fight, that then the King could keep no more Days of Thankſgiving ſo well as we, then he makes a Ceſſation in *Ireland*, and many *Iriſh* came over to help him: *Engliſh* came over with Papiſts, who had ſcarce wiped their Swords ſince they had killed their Wives and Children, and had their Eſtates.

But thus I argue: The Rebels knew that the King had proclaimed them Traitors, and forty Copies were printed; and the firſt Clauſe of an Oath enjoined by the General Council of Rebels, was, *To bear true Faith and Allegiance to King* Charles, *and by all Means to maintain his Royal Prerogative, againſt the Puritans in the Parliament of* England. Now, is any Man ſo weak in his Intellectuals, as to imagine, that if the Rebels had without the King's Command or Conſent murdered ſo many Proteſtants, and he thereupon had really proclaimed them Rebels, that they would after this have taken a new Oath to have maintained his Prerogative? No; thoſe bloody Devils had more Wit than to fight in jeſt. If the King had once in good Earneſt proclaimed them Rebels, they would have burnt their Scabbards, and would not have ſtiled themſelves the King's and Queen's Army, as they did. And truly, that which the King ſaid for himſelf, That he would have adventured himſelf to have gone in Perſon into *Ireland* to ſuppreſs that Rebellion, is but a poor Argument to inforce any Man's Belief, that he was not guilty of the Maſſacre: For it makes me rather think, that he had ſome Hopes to have returned at the Head of 20 or 30,000 Rebels to have deſtroyed this Nation. For when the Earl of *Leiceſter* was ſent by the Parliament to ſubdue the Rebels, did not the King hinder him from going? And were not the Clothes and Proviſions which were ſent by the Parliament for the Relief of the poor Proteſtants there, ſeized upon by his Command, and his Men of War; and ſold or exchanged for Arms and Ammunition to deſtroy this Parliament? And does not every Man know, That the Rebels in *Ireland* gave Letters of Mart for taking the Parliament's Ships, but freed the King's, as their very good Friends? And I have often heard it credibly reported, that the King ſhould ſay, That nothing more troubled him, but that there was not as much Proteſtant Blood running in *England* and *Scotland*, as in *Ireland*. And when that horrid Rebellion begun to break forth, how did the Papiſts here triumph and boaſt, that they hoped ere long to ſee *London* Streets run down in Blood? And yet I do not think, that the King was a Papiſt, or that he deſigned to introduce the Pope's Supremacy in Spiritual Things into this Kingdom: But thus it was: A Jeſuitical Party at Court was too prevalent in his Counſels, and ſome mungrel Proteſtants, that leſs hated the Papiſts than the Puritans, by the Queen's Mediation joined all together to deſtroy the Puritans; hoping that the Papiſts and the *Laodicean* Proteſtants would agree well enough together. And laſtly, if it be ſaid, that if the King and the Rebels were never fallen out, what need had *Ormond* to make a Pacification or Peace with them by the King's Commiſſion under the Great Seal of *Ireland*? Truly there hath been ſo much Daubing, and ſo little Plain-dealing, that I wonder how there comes to be ſo many Beggars.

Concerning the betraying of *Rochel*, to the inſlaving of the Proteſtant Party in *France*, I confeſs I heard ſo much of it, and was ſo ſhamefully reproached for it in *Geneva*, and by the Proteſtant Miniſters in *France*, that I could believe no leſs than that the King was guilty of it. I have heard fearful Exclamations from the *French* Proteſtants againſt the King and the late Duke of *Buckingham*, for the betraying of *Rochel*. And ſome of the Miniſters told me ten Years ſince, That God would be revenged of the wicked King of *England* for betraying *Rochel*. And I have often heard *Deodati* ſay, concerning *Henry* IV. of *France*, That the Papiſts had his Body, but the Proteſtants had his Heart and Soul; but for the King of *England*, the Proteſtants had his Body, but the Papiſts had his Heart: Not that I think he did believe Tranſubſtantiation, but I verily believe, that he loved a Papiſt better than a Puritan.

The Duke of *Roan*, who was an honeſt gallant Man, and the King's Godfather, would often ſay, That all the Blood which was ſhed in *Dauphine* would be caſt upon the King of *England*'s Score. For thus it was: The King ſent a Letter to the *Rochellers* by Sir *William Beecher*, to aſſure them, That he would aſſiſt them to the uttermoſt againſt the *French* King, for the Liberty of their Religion; conditionally, That they would not make any Peace without him: And *Montague* was ſent into *Savoy*, and to the Duke of *Roan* to aſſure them from the King, That 30,000 Men ſhould be ſent out of *England*, to aſſiſt them againſt the *French* King, in three Fleets; one to land in the Iſle of *Rhee*, a ſecond in the River of *Bourdeaux*, and a third in *Normandy*. Whereupon the Duke of *Roan* being General for the Proteſtants, not ſuſpecting that the *French* durſt aſſault him in *Dauphine* (becauſe the King of *England* was ready to invade him as he had promiſed), drew out his Army upon Diſadvantage: Whereupon the *French* King employed all his Army into *Dauphine* againſt the Proteſtants, who were forced to retreat, and the Duke of *Roan* to fly to *Geneva*, and the Proteſtants to accept of Peace upon very hard Conditions, to ſtand barely at the King's Devotion for their Liberties, without any cautionary Towns of Aſſurance, as formerly they had; being ſuch a Peace as the Sheep make with the Wolves, when the Dogs are diſmiſſed. And the Proteſtants have ever ſince cryed out to this very Day, It is not the *French* King that did us wrong, for then we could have borne it; but it was the King of *England*, a profeſſed Proteſtant, that betrayed us. And when I have many times intreated *Deodati* and others to have a good Opinion of the King, he would anſwer me, That we are commanded to forgive our Enemies, but not to forgive our Friends.

There is a *French* Book printed about two Years ſince, called *Memoires du Monſieur de Roan*, where the King's horrid Perfidiouſneſs, and deep Diſſimulation, is very clearly unfolded and diſcovered. To inſtance but in ſome Particulars: The King having ſolemnly engaged to the *Rochellers*, that he would hazard all the Forces he had in his three Kingdoms, rather than they ſhould periſh; did, in order thereunto, to gain Credulity with them, ſend out eight Ships to Sea, commanded by Sir *John Pennington*, to aſſiſt the *Rochellers*, as was pretended, but nothing leſs intended; for *Pennington* aſſiſted the *French* King againſt the *Rochellers*, which made Sir *Ferdinando Gorge* to go away with the *Great Neptune*, in Deteſtation of ſo damnable a Plot: And the *Engliſh* Maſters and Owners of Ships refuſing to lend their Ships to deſtroy the *Rochellers*, whom with their Souls they deſired to relieve, *Pennington* in a mad Spite ſhot at them.

Soubiſe being Agent here in *England* for the *French* Proteſtants, acquainted the King how baſely *Pennington* had dealt, and that the *Engliſh* Ships had mowed down the *Rochel* Ships like Graſs, not only to the great Danger and Loſs of the *Rochellers*, but to the eternal Diſhonour of this Nation, Scandal of our Religion, and Diſadvantage of the general Affairs of all the Proteſtants in *Chriſtendom*. The King ſeems to be diſpleaſed, and ſays, What a Knave is this *Pennington*! But whether it was not feigned, let all the World judge. But the thing being ſo plain, ſaid *Soubiſe* to the King, Sir, why did the *Engliſh* Ships aſſiſt the *French* King, and thoſe that would not were ſhot at by your Admiral? The *French* Proteſtants are no Fools; how can I make them believe that you intend their Welfare? The King was much put to it for a ready Anſwer, but at laſt thus it was patched up; that the *French* King had a Deſign to be revenged of *Genoa* for ſome former Affront, and that the King lent him eight *Engliſh* Ships to be employed for *Genoa*; and that ſailing towards *Genoa*, they met with ſome of the *Rochellers* accidentally, and that the *Engliſh* did but look on, and could not help it, not having any Commiſſion to fight at that preſent: Wherein the *Rochellers* might and would have declined a Sea-fight, if they had not expected our Aſſiſtance. But ſtill the poor Proteſtants were willing rather to blame *Pennington* than the King; who in great ſeeming Zeal being Surety for the laſt Peace between the *French* King and his Proteſtant Subjects, ſends *Devick* to the Duke of *Roan*, to aſſure him, That if *Rochel* were not ſpeedily ſet at Liberty (which the *French* King had beſieged, contrary to his Agreement), he would employ his whole Strength, and in his own Perſon ſee it performed. Which being not done, then the King ſends the Duke of *Buckingham* to the Iſle of *Rhee*, and gives new Hopes of better Succeſs to *Soubiſe*; commanding the Admiral and Officers in the Fleet in *Soubiſe*'s hearing, to do nothing without his Advice. But when the Duke came to land at the Iſle of *Rhee*, many gallant *Engliſhmen* loſt their Lives, and the Duke brought back 300 Tons of Corn from the *Rochellers*, which he had borrowed of them, pretending a Neceſſity for the *Engliſhmen*, which was but feigned, knowing it was a City impregnable, ſo long as they had Proviſion within. I confeſs the *Rochellers* were not wiſe, to lend the Duke their Corn, conſidering how they had been dealt with. But what a baſe thing was it ſo to betray them, and to ſwear unto them, That they ſhould have Corn enough ſent from *England*, before they wanted it! And for a long time, God did miraculouſly ſend them in a new kind of Fiſh, which they never had before. But when the Duke came to Court, he made the honeſt *Engliſh* believe, that *Rochel* would ſuddenly be relieved, and that there was not the leaſt danger of the Loſs of it: but Secretary *Cook*, an honeſt underſtanding Gentleman, and the only Friend at Court to the *Rochellers*, labouring to improve his Power to ſend ſome Succour to *Rochel*, was ſuddenly ſent away from Court upon ſome ſleeveleſs Errand, or as ſome ſay to *Portſmouth*, under colour of providing Corn for *Rochel*: But the Duke ſoon after went thither, and ſaid, His Life upon it, *Rochel* is ſafe enough. And the next day, *Soubiſe* being at *Portſ-*

mouth, he preſs'd the Duke of *Buckingham* moſt importunately to ſend Relief to *Rochel* then or never. The Duke told him, that he had juſt then heard good News of the victualling of *Rochel*, which he was going to tell the King: which *Soubiſe* making doubt of, the Duke affirm'd it by an Oath; and having the Words in his Mouth, he was ſtabb'd by *Felton*, and inſtantly died. The poor *Rochellers* ſeeing themſelves ſo betray'd, exclaimed of the *Engliſh*, and were conſtrained thro' Famine to ſurrender the City; yet new aſſurances came from the King to the Duke of *Roan*, that he ſhould never be abandoned, and that he ſhould not be diſmayed nor aſtoniſhed for the Loſs of *Rochel*.

But *Soubiſe* ſpoke his mind freely at Court, that the *Engliſh* had betray'd *Rochel*, and that the Loſs of that City was the apparent Perdition and Loſs of thirty-two Places of Strength from the *French* Proteſtants in *Languedoc*, *Piedmont*, and *Dauphine:* therefore it was thought fit that he ſhould have a Fig given him to ſtop his Mouth. Well, not long after, two Capuchins were ſent into *England* to kill honeſt *Soubiſe*, and the one of them diſcovered the other. *Soubiſe* rewarded the Diſcoverer, and demanded Juſtice here againſt the other, who was a Priſoner; but by what means you may eaſily imagine, that aſſaſſinate Raſcal, inſtead of being whipt, or receiving ſome more ſevere Puniſhment, was releaſed, and ſent back into *France* with Money in his Purſe: and one of the Meſſengers that was ſent from *Rochel* to complain of thoſe abominable Treacheries, was taken here; and, as the Duke of *Roan* writes, was hanged for ſome pretended Felony or Treaſon: And much more to this purpoſe may be found in the Duke of *Roan*'s Memorials. But yet I know many wiſe, ſober Men do acquit the King from the Guilt of the Loſs of *Rochel*, and lay it upon the Duke, as if it were but a Loſs of his Reputation. They ſay the Duke of *Buckingham* agitated his Affairs neither for Religion, nor the Honour of his Maſter; but only to ſatisfy his Paſſion in certain fooliſh Vows which he made in *France*, enter'd upon a War: and that the Buſineſs miſcarried thro' Ignorance, and for want of Underſtanding to manage ſo difficult a Negotiation, he being unfit to be an Admiral or a General.

I confeſs that for many years I was of that Opinion, and thought that the King was ſeduced by evil Counſel; and ſome thought that *Buckingham* and others ruled him as a Child, and durſt do what they liſt: But certainly he was too politic and ſubtle a Man to be ſwayed by any thing but his own Judgment. Since *Naſeby* Letters, I ever thought him Principal in all Tranſactions of State, and the wiſeſt about him but Acceſſaries: He never acted by any implicit Faith in State-matters: the proudeſt of them all durſt never croſs him in any Deſign, when he had once reſolved upon it. Is any Man ſo ſoft-brained to think that the Duke of *Pennington* durſt betray *Rochel* without his Command? Would not he have hanged them up at their Return, if they had wilfully tranſgreſſed his Commands? A thouſand ſuch Excuſes made for him, are but like *Iriſh* Quagmires that have no ſolid Ground or Foundation in Reaſon: He was well known to be a great Student in his younger Days, that his Father would ſay, He muſt make him a Biſhop. He had more Learning and Dexterity in State-Affairs undoubtedly, than all the Kings in Chriſtendom: If he had had Grace anſwerable to his ſtrong Parts, he had been another *Solomon:* but his Wit and Knowledge proved like a Sword in a Mad-man's Hand; he was a Stranger to the Work of Grace and the Spirit of God: and all thoſe *Meanders* in State, his ſerpentine Turnings and Windings, have but brought him to Shame and Confuſion. But I am fully ſatisfied none of his Counſel durſt ever adviſe him to any thing, but what they knew before he reſolved to have done; and that they durſt as well take a Bear by the Tooth, as do, or conſent to the doing of any thing, but what they knew would pleaſe him; they did but hew and ſquare the Timber, he was the Maſter-builder that gave the Form to every Architecture: and being ſo able and judicious to diſcern of every Man's Merits, never think that the Duke of *Pennington*, or any Judge or Officer, did ever any thing for his Advantage without his Command, againſt Law or Honour.

Upon all which Premiſes, may it pleaſe your Lordſhip, I do humbly demand and pray the Juſtice of this High Court; and yet not I, but the innocent Blood that hath been ſhed in theſe three Kingdoms, demands Juſtice againſt him: This Blood is vocal, and cries aloud, and yet ſpeaks no better, but much louder than the Blood of *Abel*; for what Proportion hath the Blood of that righteous Man to the Blood of ſo many Thouſand? If King *Ahab* and Queen *Jezabel*, for the Blood of one righteous *Naboth*, (who would not ſell his Inheritance for the full Value) were juſtly put to death; what Puniſhment doth he deſerve, that is guilty of the Blood of Thouſands, and fought for a pretended Prerogative, that he might have any Man's Eſtate that he liked, without paying for it? This Blood hath long cried, How long, Parliament, how long, Army, will ye forbear to avenge our Blood? Will ye not do Juſtice upon the capital Author of all Injuſtice? When will ye take the proud Lion by the Beard, that defies you with imperious Exultations? What's the Houſe of Commons? What's the Army? As *Pharaoh* ſaid, *Who is the Lord? And who is* Moſes? I am not accountable to any Power on Earth; thoſe that were murdered at *Brentford*, knock'd on the Head in the Water, and thoſe honeſt Souls that were killed in cold Blood at *Bolton* and *Leverpool* in *Lancaſhire*, at *Bartomly* in *Cheſhire*, and many other Places, their Blood cries night and day for Juſtice againſt him; their Wives and their Children cry, Juſtice upon the Murderer, or elſe give us our Fathers and Huſbands again: Nay, ſhould the People be ſilent, the very Stones and Timber of the Houſes would cry for Juſtice againſt him. But, my Lord, before I pray Judgment, I humbly crave Leave to ſpeak to two Particulars: 1. Concerning the Priſoner. When I conſider what he was, and how many Prayers have been made for him, tho' I know that all the World cannot reſtore him nor ſave his Life, becauſe God will not forgive his temporal Puniſhment; yet if God in him will be pleaſed to add one Example more to the Church of his unchangeable Love to his Elect in Chriſt, not knowing but that he may belong to the Election of Grace; I am troubled in my Spirit, in regard of his eternal Condition, for fear that he ſhould depart this Life without Love and Reconciliation to all thoſe Saints whom he hath ſcorned under the notion of Preſbyterians, Anabaptiſts, Independents and Sectaries. It cannot be denied, but that he hath ſpent all his Days in unmeaſurable Pride; that during his whole Reign he hath deported himſelf as a God, been depended upon, and ador'd as God; that he hath challenged and aſſumed an Omnipotent Power, an earthly Omnipotence, that with the Breath of his Mouth hath diſſolved Parliaments; his *Non placet* hath made all the Counſels of that Supreme Court to become Abortives. *Non curo* hath been his Motto, who inſtead of being honoured as good Kings ought to be, and no more, hath been idolized and adored, as our good God only ought to be. A Man that hath ſhot all his Arrows againſt the Upright in the Land, hated Chriſt in his Members, ſwallowed down Unrighteouſneſs, as the Ox drinks Water; eſteemed the needy as his Foot-ſtool, cruſh'd honeſt public-ſpirited Men, and griev'd when he could not afflict the Honeſt more than he did; counted it the beſt Art and Policy to ſuppreſs the Righteous, and to give way to his Courtiers ſo to gripe, grind, oppreſs and over-reach the free People of the Land, that he might do what he liſt (the Remembrance whereof would pierce his Soul, if he knew the Preciousneſs of it); but all Sins to an infinite Mercy are equally pardonable: therefore my Prayer for this poor Wretch ſhall be, That God would ſo give him Repentance to Life, that he may believe in that Chriſt, whom he hath impriſoned, perſecuted, and murdered in the Saints; That he which hath lived a Tyrant, and hated nothing ſo much as Holineſs, may die a Convert, and in Love to the Saints in *England*; that ſo the Tears of the Oppreſſed and the Afflicted may not be as ſo many fiery ſtinging Serpents, cauſing an eternal Deſpairing, continual Horror to this miſerable Man, when all Tyrants ſhall be aſtoniſh'd, and innocent Blood will affright more than twelve Legions of Devils. All the Hurt that I wiſh to him, is, That he may look the Saints in the Face with Comfort; for the Saints muſt judge the World: And however it may be, he or his Adherents may think it a brave *Roman* Spirit, not to repent of any thing, nor expreſs any Sorrow for any Sin, tho' never ſo horrid, taking more care and fear not to change their Countenance upon the Scaffold, than what ſhall become of them after Death; yet I beſeech your Lordſhip, that I may tell him and all the Malignants now living, but this: *Charles Stuart*, unleſs you depart this Life in Love and Reconciliation to all thoſe Saints and godly Men, whom you have either ignorantly or maliciouſly oppos'd, mock'd, and perſecuted, and ſtill ſcorn and jeer at, as Heretics and Sectaries, there is no more Hopes for you ever to ſee God in Comfort, than for me to touch the Heavens with my Finger, or with a Word to annihilate this great Building, or for the Devil to be ſaved; which he might be, if he could love a Saint as ſuch. No, Sir; it will be too late for you to ſay to thoſe Saints, whom you have defied, Give me ſome of your Holineſs, that I may behold God's angry Countenance: You can expect no Anſwer, but Go buy, Sir, of thoſe Soul-huckſters, your Biſhops, which fed you with Chaff and Poiſon; and now you muſt feed upon Fire and Brimſtone to all Eternity.

2. Concerning myſelf, I bear no more Malice to the Man's Perſon, than I do to my dear Father; but I hate that curſed Principle of Tyranny, that has ſo long lodged and harboured within him, which has turned our Waters of Law into Blood. And therefore, upon that malignant Principle, I hope this High-Court (which is an Habitation of Juſtice, and a Royal Palace of Principles of Freedom) will do ſpeedy Juſtice; That this Lion which has devoured ſo many Sheep, may not only be removed out of the way, but that this Iron Scepter, which has been lifted to break this poor Nation in pieces like a Potter's Veſſel, may be wreſted out of the Hands of Tyrants: That my honourable Clients (for whom I am an unworthy Advocate) the People of *England*, may not only taſte, but drink abundantly of thoſe ſweet Waters of that Well of Liberty, which this renowned Army hath digg'd with their Swords, which was ſtopp'd by the *Philiſtines*, the fierce *Jew*, and uncircumciſed *Canaanite*; the Hopes whereof made me readily hearken to the Call to this Service, as if it had been immediately from Heaven, being fully ſatisfied that the Priſoner was long ſince condemned to die by God's Law (which being more noble and antient than any Law of Man, if there had been a Statute that he ſhould not die, yet he ought to be put to Death notwithſtanding); and that this High Court was but to pronounce the Sentence and Judgment written againſt him. And though I might have been ſufficiently diſcouraged, in reſpect that my Reaſon is far leſs than others of my Profeſſion; yet conſidering that there are but two things deſireable, to make a dumb Man eloquent; namely a good Cauſe, and good Judges; the firſt whereof procures the Juſtice of Heaven, and the ſecond Juſtice upon Earth: and thinking that happily God might make uſe of one mean Man at the Bar, amongſt other Learned Counſel, that more of his mind might appear in it (for many times the leſs there is of Man, the more God's Glory does appear; and hitherto very much of the Mind of God hath appeared in this Action), I went as cheerfully about it as to a Wedding. And that the Glory of this Adminiſtration may be wholly given to God, I deſire to obſerve, to the Praiſe of his great Name, the Work of God upon my own Spirit in his gracious Aſſiſtance and Preſence with me, as a Return of Prayer, and Fruit of Faith; believing that God never calls to the acting of any thing ſo pleaſing to him, as this moſt excellent Court of Juſtice is, but he is preſent with the Honourable Judges, and thoſe that wait upon them. I have been ſometimes of Counſel againſt Felons and Priſoners, but I never moved the Court to proceed to Judgment againſt any Felon, or to keep any Man in Priſon, but I trembled at it in my Thoughts, as thinking it would be eaſier to give an Account of Mercy and Indulgence, than of any thing that might look like Rigour: but now my Spirits are quite of another temper, and I hope it is Meat and Drink to good Men, to have Juſtice done; and Recreation to think what Benefit this Nation will receive by it.

And now, my Lord, I muſt, as the truth is, conclude him guilty of more tranſcendent Treaſons, and enormous Crimes, than all the Kings in this part of the World have ever been. And as he that would picture *Venus*, muſt take the Eyes of one, the Cheeks of another beautiful Woman, and ſo other Parts, to make a complete Beauty; ſo to delineate an abſolute Tyrant, the Cruelty of *Richard* the Third, and all the Subtlety, Treachery, deep Diſſimulation, abominable Projects and diſhonourable Shifts that ever were ſeparately in any that ſwayed the *Engliſh* Scepter, conſpired together to make their Habitation in this whited Wall. Therefore I humbly pray, That as he has made himſelf a

Precedent in committing ſuch horrid Acts, which former Kings and Ages knew not, and have been afraid to think of, That your Lordſhip and this High-Court, out of your ſublime Wiſdoms, and for Juſtice-Sake, would make him an Example for other Kingdoms for the time to come, that the Kings of the Earth may hear and fear, and do no more ſo wickedly; that he, which would not be a Pattern of Virtue, and Example of Juſtice in his Life, may be a Precedent of Juſtice to others by his Death.

The Journal of the High-Court of Juſtice, for the Trial of King CHARLES I. *as it was read in the Houſe of Commons, and atteſted under the Hand of* Phelps, *Clerk to that Court*; *with Additions by* J. Nalſon, *LL. D.*

An Act of the Commons of *England*, aſſembled in Parliament, for erecting of a High Court of Juſtice, for the Trying and Judging of *Charles Stuart* King of *England*.

W*HEREAS it is notorious, That* Charles Stuart, *the now King of* England, *not content with thoſe many Encroachments which his Predeceſſors had made upon the People in their Rights and Freedoms, hath had a wicked Deſign totally to ſubvert the Antient and Fundamental Laws and Liberties of this Nation, and in their Place to introduce an Arbitrary and Tyrannical Government; and that beſides all other evil Ways and Means to bring this Deſign to paſs, he hath proſecuted it with Fire and Sword, levied and maintained a cruel War in the Land, againſt the Parliament and Kingdom, whereby the Country hath been miſerably waſted, the publick Treaſure exhauſted, Trade decayed, thouſands of People murdered, and infinite other Miſchiefs committed: For all which high and treaſonable Offences, the ſaid* Charles Stuart *might long ſince juſtly have been brought to exemplary and condign Puniſhment. Whereas alſo, the Parliament well hoping that the Reſtraint and Impriſonment of his Perſon, after it had pleaſed God to deliver him into their Hands, would have quieted the Diſtempers of the Kingdom, did forbear to proceed judicially againſt him; but found by ſad Experience, that ſuch their Remiſſneſs ſerved only to encourage him and his Complices in the Continuance of their evil Practices, and in raiſing of new Commotions, Rebellions and Invaſions: For Prevention therefore of the like or greater Inconveniences, and to the end no Chief Officer or Magiſtrate whatſoever may hereafter preſume traitorouſly and maliciouſly to imagine or contrive the Enſlaving or Deſtroying of the* Engliſh *Nation, and to expect Impunity for ſo doing: Be it ordained, and enacted by the Commons in Parliament, and it is hereby ordained and enacted by Authority thereof, That* Thomas *Lord* Fairfax; Oliver Cromwell, Henry Ireton, *Eſquires*; *Sir* Hardreſs Waller, *Knight*; Philip Skippon, Valentine Wauton, Thomas Harriſon, Edward Whaley, Thomas Pride, Iſaac Ewer, Richard Ingoldſby, Henry Mildmay, *Eſquires*; Sir Thomas Honywood, Thomas *Lord* Grey *of* Grooby, Philip *Lord* Liſle, William *Lord* Mounſon; *Sir* John Danvers, *Sir* Thomas Maleverer, *Baronet*; *Sir* John Bourchier, *Sir* James Harrington, *Sir* William Allanſon, *Sir* Henry Mildmay, *Sir* Thomas Wroth, *Knights*; *Sir* William Maſham, *Sir* John Barrington, *Sir* William Brereton, *Baronets*; Robert Wallop, William Heveningham, *Eſquires*; Iſaac Pennington, Thomas Atkins, Rowland Wilſon, *Alderman of the City of* London; *Sir* Peter Wentworth, *Knight of the* Bath; Henry Martin, William Purefoy, Godfrey Boſvile, John Trenchard, Herbert Morley, John Berkſtead, Matthew Thomlinſon, John Blackiſtone, Gilbert Millington, *Eſquires*; *Sir* William Conſtable, *Baronet*; Edmund Ludlow, John Lambert, John Hutchinſon, *Eſquires*; *Sir* Authur Hazlerig, *Sir* Michael Liveſey, *Baronets*; Richard Salwey, Humphry Salwey, Robert Tichbourn, Owen Roe, Robert Manwaring, Robert Lilbourn, Adrian Scroop, Richard Dean, John Okey, Robert Overton, John Huſon, John Deſborough, William Goff, Robert Duckenfield, Cornelius Holland, John [a] Carey, *Eſquires*; *Sir* William Armyn, *Baronet*; John Jones, *Eſq*; Miles Corbet, Francis Allen, Thomas Liſter, Benjamin Weſton, Peregrine Pelham, John Gourdon, *Eſquires*; Francis Thorp, *Serjeant at Law*; John Nutt, Thomas Challoner, Algernon Sidney, John Anlaby, John More, Richard Darley, William Say, John [b] Aldred, John Fagg, James Nelthrop, *Eſquires*; *Sir* William Roberts, *Knight*; Francis Laſſels, Alexander Rigby, Henry Smith, Edmond Wild, James Challoner, Joſias Berners, Dennis Bond, Humphry Edwards, Gregory Clement, John Fry, Thomas Wogan, *Eſquires*; *Sir* Gregory Norton, *Baronet*; John Bradſhaw, *Serjeant at Law*; Edmond Harvey, John Dove, John Ven, *Eſquires*; John Fowks, *Alderman of the City of* London; Thomas Scot, *Eſq*; Thomas Andrews, *Alderman of the City of* London; William Cawley, Abram Burrell, Anthony Stapely, Roger Gratwick, John Downs, Thomas Horton, Thomas Hammond, George Fenwick, *Eſquires*; Robert Nicholas, *Serjeant at Law*; Robert Reynolds, John Liſle, Nicholas Love, Vincent Potter, *Eſquires*; *Sir* Gilbert Pickering, *Bart.* John Weaver, Roger Hill, John Lenthall, *Eſquires*; *Sir* Edward Bainton; John Corbet, Thomas Blunt, Thomas Boon, Auguſtine Garland, Auguſtine Skinner, John Dixwell, George Fleetwood, Simon Meyne, James Temple, Peter Temple, Daniel Blagrave, *Eſquires*; *Sir* Peter Temple, *Knt. and Bart.* Thomas Wayte, John Brown, John Lowrey, *Eſquires*; *ſhall be, and are hereby appointed and required to be Commiſſioners and Judges for the Hearing, Trying and Adjudging of the ſaid* Charles Stuart. *And the ſaid Commiſſioners, or any twenty, or more of them, ſhall be and are hereby authorized and conſtituted an High Court of Juſtice, to meet and ſit at ſuch convenient Time and Place as by the ſaid Commiſſioners, or the major Part of twenty, or more of them, under their Hands and Seals, ſhall be appointed and notified by publick Proclamation at the Great-Hall or Palace-Yard at* Weſtminſter; *and to adjourn from time to time, and from place to place, as the ſaid High-Court, or major Part thereof meeting ſhall hold fit; and to take Order for the charging of him the ſaid* Charles Stuart *with the Crimes and Treaſons above-mentioned, and for the receiving of his perſonal Anſwer thereunto; and for the Examination of Witneſſes upon Oath, which the Court hath hereby Authority to adminiſter, or otherwiſe, and taking any other Evidence concerning the ſame, and thereupon: or in default of ſuch Anſwer, to proceed to final Sentence, according to Juſtice and the Merit of the Cauſe; and ſuch final Sentence to execute, or cauſe to be executed, ſpeedily and impartially. And the ſaid Court is hereby authorized and required to appoint and direct all ſuch Officers, Attendants, and other Circumſtances, as they, or the major Part of them, ſhall in any ſort judge neceſſary or uſeful for the orderly and good managing of the Premiſes. And* Thomas *Lord* Fairfax, *the General, and all Officers and Soldiers under his Command, and all Officers of Juſtice, and other well-affected Perſons, are hereby authorized and required to be aiding and aſſiſting unto the ſaid Court in the due Execution of the Truſt hereby committed. Provided, That this Act, and the Authority hereby granted, do continue in force for the Space of one Month, from the making hereof, and no longer.*

Hen. Scobell, *Cler. Parl. Dom. Com.*

[a] *This ought to be* Carew.

[b] Alured.

In purſuance of which ſaid Act, the Houſe of Commons ordered as followeth, *viz.*

Die Sabbati, 6 Jan. 1648.

ORdered by the Commons aſſembled in Parliament, That the Commiſſioners nominated in the Act, for erecting of an High Court of Juſtice for the trying and judging of *Charles Stuart*, King of *England*, do meet on *Monday* next, at Two of the Clock in the Afternoon, in the *Painted Chamber.*

By Virtue of which ſaid recited Act, and of the ſaid Order grounded thereupon, the Commiſſioners whoſe Names are here under-written, met on *Monday* the ſaid 8th Day of *January*, 1648, in the ſaid *Painted Chamber*, at *Weſtminſter*; where the ſaid Act was openly read, and the Court called.

Commiſſioners preſent.

Thomas Lord *Fairfax.*
Oliver Cromwell Eſq;
Henry Ireton Eſq;
Sir *Hardreſs Waller.*
Valentine Wauton.
Edward Whaley.
Thomas Pride.
Iſaac Ewers.
Sir *Gregory Norton* Bar.
Peter Temple Eſq;
John Ven Eſq;
Thomas Challoner Eſq;
Henry Marten Eſq;
John Berkſtead Eſq;
Gilbert Millington Eſq;
Richard Deane Eſq;
Cornelius Holland Eſq;
John Jones Eſq;
John Alured Eſq;
Henry Smith Eſq;
John Liſle Eſq;
James Temple Eſq;
Adrian Scroope Eſq;
Edmund Ludlow Eſq;
John Huſon Eſq;
Thomas Harriſon Eſq;
Nicholas Love Eſq;
Tho. Ld. *Grey* of *Grooby.*
Sir *John Danvers.*
Sir *Tho. Maleverer* Bar.
Sir *John Bourchier.*
Sir *Henry Mildmay.*
James Challoner Eſq;
Gregory Clement Eſq;
John Fry Eſq;
Auguſtine Garland Eſq;
Daniel Blagrave Eſq;
Robert Tichbourne Eſq;
Will. Heveningham Eſq;
William Purefoy Eſq;
John Blackiſtone Eſq;
William Lord *Mounſon.*
John Okey Eſq;
John Carew Eſq;
Peregrine Pelham Eſq;
Francis Laſſells Eſq;
John Downes Eſq;
John Brown Eſq;
John Hutchinſon Eſq;
Miles Corbet Eſq;
Humphrey Edwards Eſq;
Edmond Harvey Eſq;
William Goff Eſq;

The Commiſſioners of the Court being, as aforeſaid, met, and informing themſelves of the Tenor of their Commiſſion, they accordingly appoint the ſaid Court to be holden in the ſame Place on *Wedneſday* the 10th of the ſaid Month of *January*; and ordered Proclamation thereof to be made in the great Hall at *Weſtminſter* by *Edward Dendy*, Serjeant at Arms; authorizing him thereunto by Precept, under their Hands and Seals, in theſe Words following, *viz.*

BY Virtue of an Act of the Commons of *England*, aſſembled in Parliament, for erecting of an High Court of Juſtice for the trying and judging of *Charles Stuart*, King of *England*, we, whoſe Names are hereunder written, (being Commiſſioners, amongſt others nominated in the ſaid Act) do hereby appoint, That the High Court of Juſtice, mentioned in the ſaid Act, ſhall be holden in the *Painted Chamber*, in the Palace of *Weſtminſter*, on *Wedneſday* the 10th Day of this Inſtant *January*, by One of the Clock in the Afternoon. And this we do appoint to be notified by publick proclaiming hereof in the great Hall at *Weſtminſter* To-morrow, being the 9th Day of this Inſtant *January*, betwixt the Hours of Nine and Eleven in the Forenoon. In Teſtimony whereof, we have hereunto ſet our Hands and Seals this 8th Day of *January*, *Anno Domini* 1648.

We the Commiſſioners, whoſe Names are hereunto ſubſcribed, do hereby authorize and appoint *Edward Dendy*, Serjeant at Arms, to cauſe this to be proclaimed, according to the Tenor thereof, and to make due Return of the ſame, with this Precept, to the ſaid Court, at the Time and Place above-mentioned.

Sealed and ſubſcribed by

William Monſon.
Tho. Grey.
Oliver Cromwell.
Gregory Norton.
Henry Ireton.
H. Edwards.
John Hutchinſon.
Har. Waller.
William Conſtable.
John Liſle.
Henry Marten.
Valentine Wauton.
John Blackiſtone.
Gilbert Millington.
Adrian Scroope.
James Temple.
James Challoner.
Thomas Harriſon.
John Jones.
John Huſon.
Peregr. Pelham.
Edmond Ludlow.
John Berkſtead.
Peter Temple.
Edw. Whaley.
John Okey.
Rob. Tichbourn.
Thomas Pride.
Henry Smith.
Thomas Maleverer.
Thomas Challoner.
John Fry.
John Bourchier.
John Carew.
Aug. Garland.
Richard Deane.
Daniel Blagrave.

Which ſaid Precept is thus returned on the Backſide, *viz.* I have cauſed due Proclamation to be made hereof, according to the Tenor of the Precept within written. *E. Dendy*, Serjeant at Arms.

And in Order to the more regular and due Proceedings of the ſaid Court, they nominate Officers; and accordingly choſe Mr. *Aſke*, Dr. *Doriſlaus* *, Mr. *Steel*, and Mr. *Cook*, Counſel, to attend the ſaid Court; Mr. *Greaves* and Mr. *John Phelps* Clerks; to whom Notice thereof was ordered to be given.

Mr. *Edward Walford*, Mr. *John Powell*, Mr. *John King*, Mr. *Phineas Payne*, *and* Mr. *Hull*, are choſen Meſſengers to attend this Court.

January 9. 1648. according to the Precept of the 8th Inſtant, Serjeant *Dendy* made Proclamation for the Sitting of the ſaid Court in the Manner following, *viz.*

About Ten of the Clock of the ſame Day the ſaid Serjeant, being attended with ſix Trumpets, and a Guard of two Troops of Horſe, himſelf with them on Horſeback, bearing his Mace, rideth into the Middle of *Weſtminſter-Hall* (the Court of *Chancery* then ſitting at a General Seal), where, after the ſaid Trumpets ſounding (the Drums then likewiſe beating in the *Palace-Yard)*, he cauſed the ſaid Precept to be openly read: which being done, the Houſe of Commons, at the ſame time ſitting, order as followeth:

Die Martis, 9 Jan. 1648.

ORdered by the Commons aſſembled in Parliament, That the ſame Proclamation that was made this Morning in *Weſtminſter-Hall*, touching the Trial of the King, be made at the *Old Exchange* and at *Cheapſide* forthwith, and in the ſame manner; and that Serjeant *Dendy*, the Serjeant at Arms, do proclaim the ſame accordingly; and that the Guard that lieth in *Paul*'s do ſee the ſame done.

In purſuance whereof, Serjeant *Dendy*, about Twelve of the Clock of the ſame Day, accompanied with ten Trumpets, and two Troops of Horſe, drawn out for that purpoſe in *Paul*'s *Church-yard*, himſelf mounted, bearing his Mace, march'd from thence unto the *Old Exchange*, *London*; where after the Trumpets had ſounded, he made Proclamation as he had done before in *Weſtminſter-Hall*: and from thence immediately march'd to *Cheapſide*, making the like Proclamation there alſo in manner as aforeſaid. During all which time all the Streets were throng'd with Spectators, without the leaſt Violence, Injury, or Affront, publickly done or offered.

Mercurii, 10 Jan. 1648. *Painted Chamber.*

Commiſſioners preſent.

Oliver Cromwell Eſq;
Henry Ireton Eſq;
Sir *Hardreſs Waller* Knt.
Valentine Wauton Eſq;
Edward Whaley Eſq;
Thomas Harriſon Eſq;
Thomas Pride Eſq;
Sir *Tho. Maleverer* Bar.
James Challoner.
Sir *John Danvers.*
John Fry.
Sir *Gregory Norton.*
Auguſtine Garland.
Peter Temple.
Daniel Blagrave.
John Ven.
Henry Marten.
William Purefoy.
John Blackiſtone.
Gilbert Millington.
Edmond Ludlow.
John Hutchinſon.
John Corbet.
Robert Tichbourne Eſq;
Owen Roe Eſq;
John Deane Eſq;
John Huſon Eſq;
Cornelius Holland Eſq;
John Carew Eſq;
Thomas Liſter Eſq;
Sir *Henry Mildmay* Knt.
Thomas Challoner Eſq;
Peregrine Pelham Eſq;
John Moor Eſq;
William Say Eſq;
Francis Laſſels Eſq;
Henry Smith Eſq;
Thomas Scot Eſq;
Nicholas Love Eſq;
Vincent Potter Eſq;
Adrian Scroope Eſq;
John Dixwell Eſq;
John Liſle Eſq;
John Okey Eſq;
John Berkſtead Eſq;

The Court being ſat in the ſaid Place aforeſaid, began to take into Conſideration the Manner and Order that they intended to obſerve at the King's Trial, and appointed two Uſhers of the Court, *viz.* Mr. *Edward Walford* and Mr. *Vowel*; and Mr. *Litchman* was choſen a Meſſenger to the Court.

John Bradſhaw, Serjeant at Law, a Commiſſioner of this Court, was then choſen Preſident of the ſaid Court; who being abſent, Mr. *Say*, one of the Commiſſioners then preſent, was appointed Preſident *pro tempore*, and until the ſaid Serjeant *Bradſhaw* ſhould attend the ſaid Service. The ſaid Mr. *Say* accordingly took his Place, and gave the Thanks of this Court to Mr. *Garland*, one of the Commiſſioners of this Court, for his great Pains by him formerly taken about the Buſineſs of this Court.

The Court were informed of the great and important Imployment that at preſent lay upon Mr. *Greaves*, in the behalf of the Commonwealth, from which he cannot be ſpared, without Prejudice to the Publick; and it was therefore moved in his behalf, that he might be excuſed from attending the Service of one of the Clerks of the ſaid Court; which the Court admitted as a ſufficient Excuſe: And thereupon Mr. *Andrew Broughton* was named and appointed one of the Clerks of this Court, with *John Phelps*. The ſaid *John Phelps* being then ſent for by a Meſſenger of the Court, and accordingly making his Appearance, was commanded to attend the ſaid Service; who attended the ſame accordingly. And a Meſſenger of the Court was ſent to ſummon the ſaid Mr. *Broughton*.

Mr. *Aſke*, Mr. *Steel*, Dr. *Doriſlaus*, and Mr. *Cook*, are appointed Counſel in the behalf of the Commonwealth, to prepare and proſecute the Charge againſt the King, according to the Act of the Commons aſſembled in Parliament in that behalf; and, in particular, the Court did appoint Mr. *Steel* Attorney, and Mr. *Cook* Sollicitor, to take care thereof. And the Act for conſtituting the ſaid Court was ordered to be tranſcribed, and delivered to the ſaid Counſel; which was done accordingly.

Mr. *Love*, Mr. *Liſle*, Mr. *Millington*, Mr. *Garland*, Mr. *Marten*, Mr. *Tho. Challoner*, *Sir John Danvers*, and Sir *Henry Mildmay*, or any Two of them, are appointed a Committee, to conſider of all Circumſtances in matter of Order or Method for the carrying on and managing the King's Trial; and for that purpoſe to adviſe with the Counſel aſſigned to prove the Charge againſt the King, and to make Report therein the next Sitting: And the Care of the Buſineſs is particularly recommended to Mr. *Love*.

Edward Dendy, Serjeant at Arms, made return of the Precept of the 8th Inſtant, for proclaiming the Sitting of the Court; which was received: The ſaid Serjeant *Dendy* having proclaimed the ſame by the Sound of Trumpet in *Weſtminſter-Hall*, as alſo at the *Old Exchange*, and in *Cheapſide*.

Edward Dendy, Serjeant at Arms, is appointed Serjeant at Arms to attend the ſaid Court: Mr. *John King* is appointed Cryer of the ſaid Court.

The Court having thus made Preparations for the ſaid Trial (during all which Time they ſat private), the Doors are now opened for all Parties, that had any thing to do there, to give their Attendance.

Three Proclamations being made by the Cryer, the Act for conſtituting the ſaid Court was openly read, and the Court called: The Commiſſioners preſent were as before named.

The Commiſſioners that were abſent were ordered to be ſummoned to attend the ſaid Service; and Summons were iſſued forth accordingly.

The Court adjourned itſelf till *Friday*, *Jan.* 12. at Two of the Clock in the Afternoon, to the ſame Place.

Jan. 12. 1648.

AT which Time the Commiſſioners preſent were as after named.

Die Veneris, 12 Jan. 1648. *Painted-Chamber.*

Commiſſioners preſent.

Oliver Cromwell Eſq;
Sir *John Danvers.*
Thomas Hammond Eſq;
Peregrine Pelham Eſq;
Herbert Morley Eſq;
James Temple Eſq;
William Say Eſq;
John Huſon Eſq;
Sir *John Bourchier* Kt.
John Bradſhaw Serj. at Law.
Gilbert Millington Eſq;
John Moor Eſq;
John Brown Eſq;
John Fry Eſq;
Sir *Hardreſs Waller* Kt.
Adrian Scroope Eſq;
Thomas Challoner Eſq;
Thomas Pride Eſq;
John Liſle Eſq;
Owen Roe Eſq;
Thomas Scot Eſq;
John Jones Eſq;
John Carew Eſq;
John Fagg Eſq;
Henry Marten Eſq;
John Blackiſtone Eſq;
John Dove Eſq;
Henry Smith Eſq;
John Ven Eſq;
John Downs Eſq;
Nicholas Love Eſq;
Thomas Harriſon Eſq;
John Berkſtead Eſq;
With divers more.

Serjeant *Bradſhaw* upon ſpecial Summons attended this Court, being one of the Commiſſioners thereof. And being, according to former Order, called to take his Place of Preſident of the ſaid Court, made an earneſt Apology for himſelf to be excuſed; but therein not prevailing, in obedience to the Commands and Deſires of this Court, he ſubmitted to their Order, and took place accordingly. And thereupon the ſaid Court ordered concerning him as followeth, *viz. That* John Bradſhaw, *Serjeant at Law, who is appointed Preſident of this Court, ſhould be called by the Name, and have the Title of* Lord Preſident, *and that as well without as within the ſaid Court, during the Commiſſion and Sitting of the ſaid Court.* Againſt which Title, he preſſed much to be heard to offer his Exceptions; but was therein over-ruled by the Court.

Mr. *Andrew Broughton* attended according to former Order: And it was thereupon again ordered, That *Andrew Broughton* and *John Phelps*, Gent. be, and they are hereby conſtituted Clerks of the ſaid Court, and enjoined to give their Attendance from time to time accordingly.

ORdered, That the Counſel aſſigned, or ſuch as they or any of them ſhall appoint, ſhall have Power to ſearch for all Records and Writings concerning the King's Trial, and to take into their Cuſtody, or order the producing of all ſuch Records and Papers, or Copies thereof, by any Clerk, or other Perſon whatſoever, at or before the ſaid Trial, as they ſhall judge requiſite; the ſaid Counſel giving a Note under their Hands of their Receipt of all ſuch Original Books and Papers, which they ſhall ſo take into their Cuſtody. And that the ſaid Counſel ſhall have Power to ſend for ſuch Perſon or Perſons at or before the ſaid Trial, and to appoint, by Writing under their Hands, their Attendance for the Service of the State in this Buſineſs, as they ſhall think requiſite, requiring all Perſons concerned to yield Obedience thereunto at their Perils.

Sir *Hardreſs Waller* Knight, and Col. *Harriſon*, are ordered to deſire the Lord General from time to time to appoint ſufficient Guards, to attend and guard the ſaid Court during their Sitting.

ORdered, That Col. *Tichbourne*, Col. *Roe*, Mr. *Blackiſtone*, and Mr. *Fry*, Members of this Court, ſhall and do make Preparations for the Trial of the King, *That it may be performed in a Solemn Manner*: And that they take care for other neceſſary Proviſions and Accommodations in and about that Trial; and are to appoint and command ſuch Workmen in and to their Aſſiſtance, as they ſhall think fit.

Mr. *Love* reporteth from the Committee appointed *Jan.* 10. inſtant, to conſider of the Circumſtances in Matters of Order for Trial of the King: And it is thereupon ordered, That in managing the Proceedings in open Court, at the Time of the King's Trial, none of the Court do ſpeak but the Preſident and Counſel: and in caſe of any Difficulty ariſing to any one, that he ſpeak not to the Matter openly, but deſire the Preſident that the Court may pleaſe to adviſe. By which Order it is not intended that any of the Commiſſioners be debarred, at the Examination of any Witneſs, to move the Lord Preſident to propound ſuch Queſtion to the Witneſs, as ſhall be thought meet for the better diſquiſition and finding out of the Truth.

Ordered, That there ſhall be a Marſhal to attend this Court, if there be Cauſe.

Ordered, That the Lord Preſident and Counſel do manage the Trial againſt the King, according to Inſtructions to be given them by the Court; and that the Committee for conſidering of all Circumſtances for the managing of the King's Trial, do conſider of Rules and Inſtructions in that behalf; and are to conſult with the Counſel, and addreſs themſelves to the Lord Preſident for Advice in the Premiſes.

Ordered, That the Counſel do bring in the Charge againſt the King on *Monday* next.

The Committee for conſidering of the Circumſtances of Order for the King's Trial, together with Sir *Hardreſs Waller*, Col. *Whaley*, Mr.

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* *He was afterwards ſent by the new Commonwealth as their Agent to the States of* Holland, *but the ſame Night that he arrived at the* Hague, *was barbarouſly aſſaſſinated, as he was at Supper, by ſix* Scotchmen *in the Train of the Marquiſs of* Montroſe.

Scot, Col. *Tichbourne*, Col. *Harriſon*, Lieut. Gen. *Cromwell*, and Col. *Deane*, are appointed to conſider of the Place for trying the King, and make Report To-morrow in the Afternoon; and are to meet To-morrow Morning in the Inner-Court of Wards, at Nine of the Clock: And who elſe of the Court pleaſe may be there.

The Court adjourned itſelf till the Morrow in the Afternoon, at Two of the Clock.

Sabbati, 13 Jan. 1648.

PRoclamation being made, and all Parties concerned required to give Attendance, the Court is called openly.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Oliver Cromwell Eſq;
Henry Ireton Eſq;
Sir *Hardreſs Waller* Knt.
Edward Whaley Eſq;
Thomas Pride Eſq;
Iſaac Ewer Eſq;
Sir *John Danvers.*
Sir *Gregory Norton.*
William Purefoy Eſq;
John Blackiſtone Eſq;
Gilbert Millington Eſq;
Sir *Will. Conſtable* Bar.
John Hutchinſon Eſq;
William Goffe Eſq;
Cornelius Holland Eſq;
John Carew Eſq;
Thomas Challoner Eſq;
Algernon Sidney Eſq;
William Say Eſq;
John Fagg Eſq;
Francis Laſſels Eſq;
Valentine Wauton Eſq;
Henry Smith Eſq;
Humphrey Edwards Eſq;
John Fry Eſq;
Sir *Tho. Maleverer* Bar.
Will. Heveningham Eſq;
John Dove Eſq;
John Venn Eſq;
Thomas Scot Eſq;
John Downs Eſq;
Adrian Scroope Eſq;
John Liſle Eſq;
Auguſtine Garland Eſq;
John Dixwell Eſq;
Daniel Blagrave Eſq;
John Brown Eſq;

The Court being to make further Preparations for the King's Trial, ſit private. The Serjeant at Arms is authorized to employ ſuch other Meſſengers as ſhall be needful for the Service of the Court, giving in their Names to the Clerks of this Court.

Ordered, That the Serjeant at Arms do ſearch and ſecure the Vaults under the *Painted Chamber*, taking ſuch Aſſiſtance therein from the Soldiery as ſhall be needful.

Mr. *Garland* reporteth from the Committee for conſidering of the Place for the King's Trial: And the Court thereupon ordered, That the ſaid Trial of the King ſhall be in *Weſtminſter-Hall*; That the Place for the King's Trial ſhall be where the Courts of *King*'s-*Bench* and *Chancery* ſit in *Weſtminſter-Hall*; and that the Partitions between the ſaid Two Courts be therefore taken down; and that the Committee for making Preparations for the King's Trial are to take care thereof accordingly.

The Court adjourned itſelf till *Monday* at Two of the Clock in the Afternoon to this Place.

Lunæ, 15 Jan. 1648.

THREE Proclamations are made, and all Parties concerned are required to give Attendance.

The Court is called openly.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

John Deane Eſq;
John Berkſtead Eſq;
Iſaac Ewer Eſq;
Robert Lilbourn Eſq;
Thomas Hammond Eſq;
Edward Whaley Eſq;
Thomas Pride Eſq;
Thomas Lord *Grey* of *Grooby.*
William Ld. *Mounſon.*
Sir *John Danvers.*
Sir *John Maleverer* Bar.
Sir *Thomas Wroth.*
Robert Wallop Eſq;
Henry Marten Eſq;
William Purefoy Eſq;
Gilbert Millington Eſq;
Edmond Ludlow Eſq;
John Hutchinſon Eſq;
Adrian Scroope Eſq;
John Okey Eſq;
John Huſon Eſq;
Peregrine Pelham Eſq;
Thomas Challoner Eſq;
John Moor Eſq;
John Alured Eſq;
Henry Smith Eſq;
James Challoner Eſq;
Humphrey Edwards Eſq;
Vincent Potter Eſq;
Auguſtine Garland Eſq;
James Temple Eſq;
Daniel Blagrave Eſq;
John Blackiſtone Eſq;
Oliver Cromwell Eſq;
Robert Tichbourne Eſq;
John Jones Eſq;
John Downes Eſq;
Sir *Hardreſs Waller.*
Thomas Horton Eſq;
Henry Ireton Eſq;
Algernon Sidney Eſq;
Peter Temple Eſq;
Nicholas Love Eſq;
Valentine Wauton Eſq;
John Liſle Eſq;
John Venn Eſq;
Cornelius Holland Eſq;
Thomas Scot Eſq;
Sir *William Conſtable* Bar.
Herbert Morley Eſq;
Miles Corbet Eſq;
John Fry Eſq;
William Goff Eſq;
John Fagg Eſq;
John Carew Eſq;
Sir *Henry Mildmay.*
Sir *Gregory Norton* Bar.

Fifty-eight Commiſſioners preſent.

Here the Court ſit private.

The Counſel attended, and preſented to the Court the Draught of a Charge againſt the King. Which being read, the Court appointed Commiſſary-General *Ireton*, Mr. *Millington*, Mr. *Marten*, Col. *Harvey*, Mr. *Challoner*, Col. *Harriſon*, Mr. *Miles Corbet*, Mr. *Scot*, Mr. *Love*, Mr. *Liſle*, Mr. *Say*, or any Three of them, to be a Committee; to whom the Counſel might reſort, for their further Advice concerning any thing of Difficulty in relation to the Charge againſt the King: Who were likewiſe with the Counſel to compare the Charge againſt him with the Evidence, and to take care for the preparing and fitting the Charge for the Court's more clear Proceedings in the Buſineſſes; as likewiſe to adviſe of ſuch general Rules as are fit for the expediting the Buſineſs of the ſaid Court, and to meet the Morrow-morning at Eight of the Clock in the *Queen*'s-*Court*.

Col. *Ludlow*, Col. *Purefoy*, Col. *Hutchinſon*, Col. *Scroope*, Col. *Deane*, Col. *Whalley*, Col. *Huſon*, Col. *Pride*, Sir *Hardreſs Waller*, Sir *William Conſtable*, together with the Committee for making Preparations for the King's Trial, or any Three of them, are appointed a Committee to conſider of the Manner of bringing the King to the Court at his Trial, and of the Place where he ſhall be kept, and lodge at, during his ſaid Trial; and to take Conſideration of the ſecure Sitting of the ſaid Court, and placing the Guards that ſhall attend it, and are to meet To-morrow Morning, at Eight of the Clock, in the Inner *Star-Chamber*.

The Court taking notice of the Nearneſs of *Hilary* Term, and Neceſſity they apprehended of adjourning it in regard of the King's Trial, thereupon were of Opinion, That it is fit that a Fortnight of the ſaid Term be adjourned: And Mr. *Liſle* is deſired to move the Houſe therein.

Three Proclamations.

The Court adjourned itſelf till *Wedneſday* next, at eight in the Morning.

Mercurii, 17 Jan. 1648.

THREE Proclamations are made, and all Parties concerned are required to give Attendance.

The Court is called.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Oliver Cromwell Eſq;
Edward Whalley Eſq;
Tho. Ld. *Grey* of *Grooby.*
Sir *John Danvers.*
Sir *John Maleverer* Bar.
Sir *Hardreſs Waller.*
John Blackiſtone Eſq;
John Berkſtead Eſq;
Sir *William Conſtable.*
John Hutchinſon.
Robert Tichbourne.
Owen Roe.
Adrian Scroope.
Richard Deane.
John Okey.
John Huſon.
Auguſtine Garland.
Simon Meyne.
Peter Temple.
John Brown.
Thomas Scot.
Thomas Liſter.
John Jones.
Vincent Potter.
Daniel Blagrave.
William Say.
Nicholas Love.
Robert Lilbourn.
William Goff.
John Carew.
Thomas Pride.
Francis Allen.
Peregrine Pelham.
John Moor.
Francis Laſſels.
Henry Smith.
James Challoner.
Humphrey Edwards.
John Fry.
Sir *Gregory Norton.*
John Venn.
William Cawley.
Thomas Horton.
Thomas Hammond.
Iſaac Ewers.
Cornelius Holland.
Sir *John Bourchier.*
Edmond Ludlow.
Edmond Harvey.
Edmond Wild.
Thomas Heath.
William Heveningham.
Henry Marten.
William Purefoy.
John Liſle.

Fifty-ſix Commiſſioners preſent.

Ordered, That the Commiſſioners of this Court, who have not hitherto appeared, be ſummoned by Warrants under the Hands of the Clerks of this Court, to give their perſonal Attendance at this Court, to perform the Service to which they are, by Act of the Commons of *England* aſſembled in Parliament, appointed and required.

Ordered, That the Serjeant at Arms attending this Court, or his Deputy, do forthwith ſummon all the aforeſaid Commiſſioners making Default, who reſide or dwell within twenty Miles of *London.*

Particular Warrants to every one of them were accordingly iſſued forth for their Attendance.

Upon Report made by Col. *Hutchinſon* from the Committee to conſider of the Manner of bringing the King to Trial, *&c.* the Court order as followeth, *viz.*

Ordered, That Sir *Robert Cotton*'s Houſe be the Place where the King ſhall lodge during his Trial.

That the Chamber in Sir *Robert Cotton*'s Houſe, next the Study there, ſhall be the King's Bed-Chamber.

That the great Chamber, before the ſaid Lodging-Chamber, be for the King's Dining-Room; and that a Guard, conſiſting of thirty Officers, and other choice Men, do always attend the King, who are to attend him at his Lodging above Stairs; and that two of the ſaid Thirty do always attend in his Bed-Chamber.

That a Place for a Court of Guard, for 200 Foot-Soldiers, be built in Sir *Robert Cotton*'s Garden, near the Water-ſide.

That ten Companies of Foot be conſtantly upon the Guards, for ſecuring Sir *Robert Cotton*'s Houſe; and thoſe Companies to be quartered in the Court of *Requeſts*, the *Painted-Chamber*, and other neceſſary Places thereabouts.

That the Paſſage that cometh out of the Old Palace into *Weſtminſter-Hall* be made up at the Entrance of the ſaid Paſſage, next the ſaid Guard.

That the Top of the Stairs at the Court of *Wards* Door have a Croſs-Bar made to it.

That the King be brought out of Sir *Robert Cotton*'s Houſe to his Trial the lower way into *Weſtminſter-Hall*, and ſo brought to the Bar in the Face of the Court, attended by the aboveſaid Guard above Stairs.

That two Rails, of above forty Foot Diſtance from the Place where this Court ſhall ſit in *Weſtminſter-Hall*, be made croſs the ſaid Hall: For the effectual and ſubſtantial doing whereof, this Court do refer it to the Care of the Committee appointed to conſider of the Manner of bringing the King to Trial; who are likewiſe to take Care for raiſing the Floor in ſuch Part of the Hall as they ſhall think fit for placing of the Guards. And that a Rail, or Rails, from the Court down to the Hall-Gate, be made, in ſuch Manner as they ſhall think fit, on the *Common Pleas* Side, to keep the People from the Soldiers.

That there be Guards ſet upon the Leads, and other Places that have Windows to look into the Hall.

That the General be deſired from time to time to ſend and appoint convenient Guards of Horſe, for the convenient ſitting of the Court.

That twenty Officers, or other Gentlemen, do attend upon the Lord Preſident from time to time, to and from this Court, thro' *Weſtminſter-hall.*

That the Officers of the Ordnance do ſend unto this Court two hundred Halberts, or Partizans, lying within the *Tower* of *London*, for the arming of the Guards that are to attend this Court.

That at the time of the Trial of the King, the Commiſſioners do, before their ſitting in the Court, meet in the *Exchequer-Chamber*, and do from thence come up to the Hall into the Court.

That all Back-doors from the Houſe called *Hell* be ſtopped up during the King's Trial.

That Lodgings be prepared for the Lord Preſident at Sir *Abraham Williams*'s Houſe, in the New *Palace-Yard*, during the Sitting of this Court: and that all Proviſions and Neceſſaries be provided for his Lordſhip.

That Sir *Henry Mildmay*, Mr. *Holland*, and Mr. *Edwards*, do take Care for providing all Proviſions and Neceſſaries for the King, during his Trial.

That Sir *Henry Mildmay*, Mr. *Holland*, and Mr. *Edwards*, do likewiſe take Care for all Neceſſaries for the Lord Preſident.

Ordered, That the Committee for conſidering of the Manner of bringing the King to Trial, do conſider what Habits the Officers of this Court ſhall have; who are to adviſe with ſome Heralds at Arms therein, and concerning the ordering of the ſaid Officers.

That a Sword be carried before the Lord Preſident at the Trial of the King.

That *John Humphreys*, Eſq; do bear the Sword before the Lord Preſident.

That a Mace, or Maces, together with a Sword, be likewiſe carry'd before the Lord Preſident.

This Court doth adjourn itſelf to Three of the Clock in the Afternoon.

Jan. 17. 1648. *Poſt Meridiem.*

THREE Proclamations. The Court is cleared of Strangers; and they ſit private.

The Charge againſt the King is preſented by the Counſel, and ordered to be recommitted to the Committee appointed for Advice with the Counſel concerning the Charge aginſt the King, who are to contract the ſame, and fit it for the Court's proceeding thereupon, according to the Act of Parliament in that behalf. And the ſame Committee are likewiſe to take care for the King's coming to *Weſtminſter* to Trial, at ſuch Time as to them ſhall ſeem meet; and Lieutenant-General *Cromwell* is added to the ſaid Committee. And the Counſel are to attend this Court with the ſaid Charge To-morrow at Two of the Clock in the Afternoon. And thereupon

Ordered, That the Committee for conſidering of the Manner of bringing the King to Trial do meet To-morrow Morning, at Eight of the Clock, in the *Exchequer-Chamber*.

The Court adjourned itſelf till the Morrow at Two of the Clock in the Afternoon, to the ſame Place.

Jovis, 18 Jan. 1648.

THREE Proclamations made.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Oliver Cromwell.
Edward Whalley.
Tho. Ld. *Grey* of *Grooby.*
Sir *John Danvers.*
Sir *Tho. Maleverer*, Bar.
Sir *Hardreſs Waller.*
John Berkſtead.
John Blackiſtone.
Sir *William Conſtable.*
John Hutchinſon.
Robert Tichbourne.
Cornelius Holland.
John Moor.
Richard Deane.
John Okey.
Thomas Hammond.
John Carew.
William Ld. *Mounſon.*
John Huſon.
Thomas Pride.
William Cawley.
Henry Smith.
Peter Temple.
Thomas Wogan.
George Fleetwood.
Francis Laſſels.
Adrian Scroope.
Peregrine Pelham.
John Fry.
Sir *Gregory Norton.*
Humphrey Edwards.
John Venn.
William Purefoy.
Simon Meyne.
John Brown.
Herbert Morley.

Here the Court ſit private.

Col. *Tichbourne*, one of the Commiſſioners of this Court, informeth the Court, That he was with Mr. *Steel*, Attorney of this Court, and found him in his Bed very ſick; and by reaſon thereof not like, as yet, to attend the Service of this Court, according to former Order. And deſired him, the ſaid Colonel, to ſignify, That he, the ſaid Mr. *Steel*, no way declineth the Service of the ſaid Court, out of any Diſaffection to it; but profeſſeth himſelf to be ſo clear in the Buſineſs, that if it ſhould pleaſe God to reſtore him, he ſhould manifeſt his good Affection to the ſaid Cauſe; and that it is an Addition to his Affliction, that he cannot attend this Court, to do that Service that they have expected from him, and as he deſires to perform.

The Court adjourned itſelf till To-morrow Two of the Clock in the Afternoon.

Veneris, 19 Jan. 1648.

THREE Proclamations. The Court called openly.

The Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident.

Henry Ireton.
Sir *Hardreſs Waller* Knt.
Thomas Harriſon.
Edward Whalley.
Iſaac Ewers.
William Lord *Mounſon.*
Sir *John Danvers.*
Sir *Tho. Maleverer*, Bar.
Sir *John Bourchier* Knt.
William Heveningham.
William Purefoy.
John Berkſtead.
John Blackiſtone.
Gilbert Millington.
John Hutchinſon.
Sir *Michael Liveſey* Knt.
Robert Tichbourne.
Owen Rowe.
Robert Lilbourne.
Adrian Scroope.
Richard Deane.
John Huſon.
Cornelius Holland.
John Jones.
Peregrine Pelham.
Thomas Challoner.
Algernon Sidney.
William Say.
Francis Laſſells.
Henry Smith.
Humphrey Edwards.
John Fry.
Sir *Gregory Norton* Bar.
John Dove.
Thomas Scot.
William Cawley.
Thomas Horton.
John Liſle.
Nicholas Love.
Vincent Potter.
John Dixwell.
Simon Meyne.
Peter Temple.
John Brown.
John Okey.
William Goffe.
John Carew.

Here the Court ſat private.

Col. *Hutchinſon* reporteth from the Committee appointed to conſider of the Habits of the Officers; and it is thereupon

Ordered, That three Gowns be provided for three Uſhers, and three Clokes for three Meſſengers of this Court.

Mr. *Millingon* reported from the Committee for Advice with the Counſel concerning the Charge againſt the King, that the Counſel have perfected the Charge, and are ready to preſent it. He likewiſe reporteth the Draught of an Order, whereby the Charge may, by the Command of this Court, be exhibited, together with a Form of Words, the Effect whereof the Committee think fit to be pronounced by him that this Court ſhall appoint ſo to exhibit the ſaid Charge: which ſaid Order and Form of Words the Court have with ſome Alterations agreed unto as followeth:

It is ordered, That Mr. Attorney, and in his abſence Mr. Sollicitor, do, in the behalf of the People of *England*, exhibit and bring into this Court a Charge of High-Treaſon, and other High Crimes, againſt *Charles Stuart* King of *England*, and charge him thereupon in the behalf aforeſaid.

The Form of Words are as followeth:

My Lord,

ACCORDING to an Order of this high Court to me directed for that purpoſe, I do in the Name and on the Behalf of the People of England, *exhibit and bring into this Court a Charge of High-Treaſon, and other High Crimes, whereof I do accuſe* Charles Stuart, *King of* England, *here preſent. And I do, in the Name and on the Behalf aforeſaid, deſire the ſaid Charge may be received accordingly, and due Proceedings had thereupon.*

The Counſel likewiſe, according to Mr. *Millington*'s Report, preſent a Draught of the Charge againſt the King; which was read the firſt, and ſecond, and third time, and referred back to the ſaid Counſel, to make ſome ſmall Amendments as to the Form thereof.

Ordered, That Commiſſary-General *Ireton*, Col. *Whalley*, Col. *Harriſon*, Sir *Hardreſs Waller*, or any Two of them, do appoint the Thirty Perſons that are by Order of the 17th Inſtant to attend the King, and the Twenty that are to attend the Lord Preſident.

Ordered, That the Serjeant at Arms do ſecure Mr. *Squibb*'s Gallery by ſuch Ways and Means as he ſhall conceive meet.

The Court adjourned itſelf till Nine of the Clock To-morrow Morning.

Sabbati, 20 Jan. 1648.

THREE Proclamations, and Attendance commanded.

Ordered, That Sir *Henry Mildmay* be deſired to deliver unto *John Humphreys*, Eſq; the Sword of State in his cuſtody; which ſaid Sword the ſaid Mr. *Humphreys* is to bear before the Lord Preſident of this Court.

The Court being ſat as aforeſaid, before they engaged in further Buſineſs, the Serjeant at Arms of the Houſe of Commons came thither, and acquainted the Court, that the Houſe wanted their Members that were of that Court; the Court thereupon adjourned till Twelve of the Clock the ſame Day.

The Court accordingly met at Twelve of the Clock. Three Proclamations made.

Painted Chamber, 20 Jan. 1648.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Tho. Ld. *Grey* of *Grooby.*
Henry Marten.
Oliver Cromwell.
Henry Ireton.
Auguſtine Garland.
Thomas Challoner.
Nicholas Love.
William Cawley.
John Venn.
William Purefoy.
John Berkſtead.
James Challoner.
Peter Temple.
Thomas Harriſon.
Robert Tichbourne.
John Hutchinſon.
Sir *Gregory Norton.*
Sir *Tho. Maleverer* Bar.
Daniel Blagrave.
Owen Roe.
Thomas Wogan.
William Say.
Francis Laſſels.
John Jones.
Sir *John Bourchier.*
John Carew.
John Downes.
John Fry.
Sir *Michael Liveſey.*
Sir *John Danvers.*
Mr. *Millington.*
Sir *Hardreſs Waller.*
John Blackiſtone.
John Huſon.
Humphrey Edwards.
Iſaac Pennington, Ald. of *London.*
John Brown.
Edward Whalley.
John Okey.
Thomas Pride.
Adrian Scroope.
Valentine Wauton.
Thomas Hammond.
James Temple.
Peregrine Pelham.
Thomas Liſter.
Edmund Ludlow.
Simon Meyne.
Thomas Scot.
Edmond Harvey.
William Lord *Mounſon.*
Henry Smith.
Sir *William Conſtable.*
Iſaac Ewers.
Sir *Henry Mildmay.*
Anthony Stapely.

Here the Court ſat private.

Ordered, That the Form and Method of the Court's proceeding unto, and in the reading of the Commiſſion by which they ſit, ſending for, and bringing in the Priſoner to the Bar, acquainting him in brief with the Cauſe of his bringing thither, receiving and reading the Charge, and demanding what the Priſoner ſays thereto, be referred to the Diſcretion of the Lord Preſident: as alſo, That in caſe the Priſoner ſhall in Language or Carriage towards the Court be inſolent, outrageous, or contemptuous, that it be left to the Lord Preſident to reprehend him thereof, and admoniſh him of his Duty, or to command the taking away of the Priſoner; and if he ſee cauſe, to withdraw or adjourn the Court. But as to the Priſoner's putting off his Hat, the Court will not inſiſt upon it for this Day; and that if the King deſire time to anſwer, the Lord Preſident is to give him time.

Ordered, upon the Lord Preſident's Deſire and Motion, That Mr. *Liſle* and Mr. *Say*, Commiſſioners of this Court, be Aſſiſtants to the Lord Preſident; and for that purpoſe, it is ordered, That they ſit near the Lord Preſident in Court.

Mr. Sollicitor preſented the Charge againſt the King ingroſſed in Parchment; which was read, and being by Mr. Sollicitor ſigned, was returned to him to be exhibited againſt the King, in his preſence in open Court. And thereupon the Court adjourned itſelf forthwith to the Great Hall in *Weſtminſter*.

The Manner of the Trial of Charles Stuart, *King of* England.

ON *Saturday*, being the 20th Day of *January*, 1648. the Lord Preſident of the High Court of Juſtice, his two Aſſiſtants, and the reſt of the Commiſſioners of the ſaid Court, according to the Adjournment of the ſaid Court from the *Painted Chamber*, came to the Bench, or Place prepared for their Sitting, at the Weſt End of the Great Hall at *Weſtminſter*; divers Officers of the ſaid Court, one-and-twenty Gentlemen with Partizans, and a

Sword and Mace, marching before them up into the Court, where the Lord Preſident in a crimſon Velvet Chair fixed in the midſt of the Court, placed himſelf, having a Deſk with a crimſon Velvet Cuſhion before him: the reſt of the Members placing themſelves on each ſide of him, upon ſeveral Seats or Benches prepared, and hung with Scarlet for that purpoſe. The Lord Preſident's two Aſſiſtants ſitting next of each ſide of him, and the two Clerks of the Court placed at a Table ſomewhat lower, and cover'd with a *Turkey* Carpet; upon which Table was alſo laid the Sword and Mace, the ſaid Guard of Partizans dividing themſelves on each ſide of the Court before them.

Three Proclamations are made, for all Perſons that were adjourned over thither, to draw near.

The Court being thus ſat, and Silence enjoin'd, the great Gate of the Hall was ſet open, to the intent that all Perſons (without exception) deſirous to ſee or hear, might come unto it: upon which the Hall was preſently filled, and Silence again ordered and proclaimed.

After Silence proclaimed as aforeſaid, the Act of the Commons of *England* aſſembled in Parliament, for erecting a High Court of Juſtice for trying and judging of *Charles Stuart* King of *England*, was openly read by one of the Clerks of the Court.

The Act being read, the Court was called, every Commiſſioner preſent thereupon riſing to his Name.

Weſtminſter-Hall, Jan. 20. 1648.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident.

Oliver Cromwell.
Henry Ireton.
Sir *Hardreſs Waller.*
Valentine Wauton.
Thomas Harriſon.
Edward Whalley.
Thomas Pride.
Iſaac Ewer.
Tho. Ld. *Grey of Grooby.*
William Lord *Mounſon.*
Sir *John Danvers.*
Sir *Tho. Maleverer* Bar.
Sir *John Bourchier* Kt.
Iſaac Pennington, Alderman *of London.*
Henry Martin.
William Purefoy.
John Berkſtead.
John Blackiſtone.
Gilbert Millington.
Sir *William Conſtable* Bar.
Edmond Ludlow.
John Hutchinſon.
Sir *Michael Liveſey* Bar.
Robert Tichbourne.
Owen Roe.
Robert Lilbourne.
Adrian Scroope.
Thomas Horton.
Thomas Hammond.
John Liſle.
Nicholas Love.
Vincent Potter.
Auguſtine Garland.
Richard Deane.
John Okey.
John Huſon.
William Goffe.
Cornelius Holland.
John Carew.
John Jones.
Thomas Liſter.
Peregrine Pelham.
Francis Allen.
Thomas Challoner.
John Moore.
William Say.
John Allured.
Francis Laſſels.
Henry Smith.
James Challoner.
Humphry Edwards.
Gregory Clement.
John Fry.
Sir *Gregory Norton* Bar.
Edmond Harvey.
John Venn.
Thomas Scot.
William Cawley.
Anthony Stapeley.
John Downs.
John Dixwell.
Simeon Meyne.
James Temple.
Peter Temple.
Daniel Blagrave.
John Brown.

This done, the Court command the Serjeant at Arms to ſend for the Priſoner: and thereupon Col. *Tomlinſon*, who had the Charge of the Priſoner, within a quarter of an hour's ſpace brought him, attended by Col. *Hacker*, and two-and-thirty Officers with Partizans, guarding him to the Court, his own Servants immediately attending him.

Being thus brought up in the face of the Court, the Serjeant at Arms with his Mace receives him, and conducts him ſtrait to the Bar, having a crimſon Velvet Chair ſet before him. After a ſtern looking upon the Court, and the People in the Galleries on each ſide of him, he places himſelf in the Chair, not at all moving his Hat, or otherwiſe ſhewing the leaſt Reſpect to the Court; but preſently riſeth up again, and turns about, looking downwards upon the Guards placed on the left ſide, and on the Multitude of Spectators on the right ſide of the ſaid great Hall: the Guard that attended him, in the mean time dividing themſelves on each ſide of the Court, and his own Servants following him to the Bar, ſtand on the left hand of the Priſoner.

The Priſoner having again placed himſelf in his Chair, with his Face towards the Court, and Silence being again ordered and proclaimed, the Lord Preſident in the name of the Court addreſſed himſelf to the Priſoner, acquainting him, That the Commons of *England* aſſembled in Parliament being deeply ſenſible of the Evils and Calamities that had been brought upon this Nation, and of the innocent Blood that had been ſpilt in it, which was fixed upon him as the principal Author of it, had reſolved to make Inquiſition for this Blood; and according to the Debt they did owe to God, to Juſtice, the Kingdom, and themſelves, and according to that Fundamental Power that reſted, and Truſt repoſed in them by the People, other Means failing thro' his Default, had reſolved to bring him to Trial and Judgment; and had therefore conſtituted that Court of Juſtice, before which he was then brought, where he was to hear his Charge, upon which the Court would proceed according to Juſtice.

Hereupon Mr. *Cook*, Sollicitor for the Commonwealth, ſtanding within a Bar, with the reſt of the Counſel for the Commonwealth, on the right hand of the Priſoner, offered to ſpeak; but the Priſoner having a Staff in his hand, held it up, and ſoftly laid it upon the ſaid Mr. *Cook*'s Shoulder two or three times, bidding him hold. Neverthelefs, the Lord Preſident ordering him to go on, Mr. *Cook* did, according to the Order of the Court to him directed, in the name and on the behalf of the People of *England*, exhibit a Charge of High-Treaſon, and other High Crimes, and did therewith accuſe the ſaid *Charles Stuart* King of *England*; praying in the name and on the behalf aforeſaid, that the Charge might be accordingly received and read, and due Proceedings had thereupon. And accordingly preferr'd a Charge in writing, which being received by the Court, and delivered to the Clerk of the Court, the Lord Preſident, in the name of the Court, order'd it ſhould be read.

But the King interrupting the reading of it, the Court notwithſtanding commanded the Clerk to read it; acquainting the Priſoner, that if he had any thing to ſay after, the Court would hear him: whereupon the Clerk read the Charge, the Tenour whereof is as followeth: *viz.*

A Charge of High-Treaſon, and other High Crimes exhibited to the High Court of Juſtice by John Cook *Eſq; Sollicitor-General, appointed by the ſaid Court, for and on the behalf of the People of* England, *againſt* Charles Stuart *King of* England.

‘THAT he the ſaid *Charles Stuart* being admitted King of *England*, and therein truſted with a limited Power to govern by and according to the Laws of the Land, and not otherwiſe; and by his Truſt, Oath and Office, being obliged to uſe the Power committed to him, for the Good and Benefit of the People, and for the Preſervation of their Rights and Liberties: yet neverthelefs, out of wicked Deſign to erect and uphold in himſelf an Unlimited and Tyrannical Power to rule according to his Will, and to overthrow the Rights and Liberties of the People; yea, to take away and make void the Foundations thereof and of all Redreſs and Remedy of Miſgovernment, which by the Fundamental Conſtitutions of this Kingdom were reſerved on the People's behalf, in the Right and Power of frequent and ſucceſſive Parliaments or National Meetings in Council; he the ſaid *Charles Stuart*, for accompliſhment of ſuch his Deſigns, and for the protecting of himſelf and his Adherents in his and their wicked Practices, to the ſame ends, hath traitorouſly and maliciouſly levied War againſt the preſent Parliament, and the People therein repreſented. Particularly, upon or about the thirtieth Day of *June*, in the Year of our Lord 1642, at *Beverly* in the County of *York*; and upon or about the thirtieth Day of *July* in the Year aforeſaid, in the County of the City of *York*; and upon or about the four-and-twentieth Day of *Auguſt* in the ſame Year, at the County of the Town of *Nottingham*, where and when he ſet up his Standard of War; and alſo on or about the twenty-third Day of *October*, in the ſame Year, at *Edge-hill* and *Keynton-field*, in the County of *Warwick*; and upon or about the thirtieth Day of *November* in the ſame Year, at *Brentford* in the County of *Middleſex*; and upon or about the thirtieth Day of *Auguſt*, in the Year of our Lord 1643, at *Caverſham-Bridge* near *Reading*, in the County of *Berks*; and upon or about the thirtieth Day of *October* in the Year laſt mentioned, at or near the City of *Gloceſter*; and upon or about the thirtieth Day of *November* in the Year laſt mentioned at *Newbury* in the County of *Berks*; and upon or about the thirty-firſt Day of *July*, in the Year of our Lord 1644, at *Cropredy-Bridge* in the County of *Oxon*; and upon or about the thirtieth Day of *September* in the laſt Year mentioned, at *Bodmyn* and other Places near adjacent in the County of *Cornwall*; and upon or about the thirtieth Day of *November* in the Year laſt mentioned, at *Newbury* aforeſaid; and upon or about the eighth Day of *June*, in the Year of our Lord 1645, at the Town of *Leiceſter*; and alſo upon the fourteenth Day of the ſame Month in the ſame Year, at *Naſeby-Field* in the County of *Northampton*: At which ſeveral Times and Places, or moſt of them, and at many other Places in this Land, at ſeveral other Times within the Years afore-mentioned, and in the Year 1646, he the ſaid *Charles Stuart* hath cauſed and procured many Thouſands of the free People of this Nation to be ſlain; and by Diviſions, Parties, and Inſurrections within this Land, by Invaſions from foreign Parts, endeavoured and procured by him, and by many other evil Ways and Means, he the ſaid *Charles Stuart* hath not only maintained and carried on the ſaid War both by Land and Sea, during the Years before mentioned, but alſo hath renewed or cauſed to be renewed the ſaid War againſt the Parliament and good People of this Nation, in this preſent Year 1648, in the Counties of *Kent*, *Eſſex*, *Surrey*, *Suſſex*, *Middleſex*, and many other Places of *England* and *Wales*; and alſo by Sea. And particularly, he the ſaid *Charles Stuart* hath for that purpoſe given Commiſſion to his Son the Prince, and others; whereby, beſides Multitudes of other Perſons, many ſuch as were by the Parliament intruſted and employ'd for the Safety of the Nation, (being by him or his Agents corrupted to the betraying of their Truſt, and revolting from the Parliament) have had Entertainment and Commiſſion for the continuing and renewing of War and Hoſtility againſt the ſaid Parliament and People as aforeſaid. By which cruel and unnatural Wars by him the ſaid *Charles Stuart* levied, continued and renewed as aforeſaid, much innocent Blood of the free People of this Nation hath been ſpilt, many Families have been undone, the publick Treaſury waſted and exhauſted, Trade obſtructed and miſerably decay'd, vaſt Expence and Damage to the Nation incurred, and many parts of this Land ſpoiled, ſome of them even to Deſolation. And for further Proſecution of his ſaid evil Deſigns, he the ſaid *Charles Stuart* doth ſtill continue his Commiſſions to the ſaid Prince and other Rebels and Revolters both *Engliſh* and Foreigners, and to the Earl of *Ormond*, and to the *Iriſh* Rebels and Revolters aſſociated with him; from whom further Invaſions upon this Land are threatned, upon the procurement and on the behalf of the ſaid *Charles Stuart*.

‘All which wicked Deſigns, Wars and evil Practices of him the ſaid *Charles Stuart*, have been and are carried on for the advancement and upholding of a perſonal Intereſt of Will and Power, and pretended Prerogative to himſelf and his Family, againſt the publick Intereſt, common Right, Liberty, Juſtice and Peace of the People of this Nation, by and for whom he was intruſted as aforeſaid.

‘By all which it appeareth, that he the ſaid *Charles Stuart* hath been, and is the Occaſioner, Author, and Continuer of the ſaid unnatural, cruel and bloody Wars, and therein Guilty of all the Treaſons, Murders, Rapines, Burnings, Spoils, Deſolations, Damages and Miſchiefs to this Nation acted and committed in the ſaid Wars, or occaſioned thereby.

‘And the ſaid *John Cook* by Proteſtation ſaving, on the behalf of the ſaid People of *England*, the Liberty of exhibiting at any time hereafter any other Charge againſt the ſaid *Charles Stuart*, and alſo of replying to the Anſwers which the ſaid *Charles Stuart* ſhall make to the Premiſes, or any of them, or any other Charge that ſhall be ſo exhibited; doth for the ſaid Treaſons and Crimes, on the behalf of the ſaid People of *England*, impeach the ſaid *Charles Stuart*, as a Tyrant, Traitor, Murderer, and a publick and implacable Enemy to the Commonweath of *England*;

‘ and pray that the ſaid *Charles Stuart*, King of *England*, may be put to ‘ anſwer all and every the Premiſes; and that ſuch Proceedings, Exami‘nations, Trials, Sentences and Judgments may be thereupon had, as ‘ ſhall be agreeable to Juſtice. Subſcribed, *John Cook.*’

The Priſoner, while the Charge was reading, ſat down in his Chair, looking ſometimes on the High-Court, and ſometimes on the Galleries; and roſe again, and turned about to behold the Guard and Spectators, and after ſat down, looking very ſternly, and with a Countenance not at all moved, till theſe Words, *viz.* Charles Stuart *to be a Tyrant*, *Traitor*, &c. were read; at which he laughed, as he ſat, in the face of the Court.

The Charge being read, the Lord Preſident, in the name of the Court, demanded the Priſoner's Anſwer thereto.

But the Priſoner declining that, fell into a Diſcourſe of the late Treaty in the Iſle of *Wight*, and demanded, by what lawful Authority he was brought from the Iſle thither? upbraiding the Court with the many unlawful Authorities in the World, inſtancing in Robbers and Takers of Purſes; pleading his Kingſhip, and thereby a Truſt committed to him by God by Deſcent, which he ſhould betray, together with the Liberties of the People, in caſe he ſhould anſwer to an unlawful Power, which he charged the Court to be, and that they were raiſed by an Uſurped Power: and affirmed, that he ſtood more for the Liberties of the People, than any of the Judges there ſitting: and again demanded, by what Authority he was brought thither?

To which it was replied by the Court, That had he been pleaſed to have obſerved what was declared to him by the Court at his firſt coming, and the Charge which he had heard read unto him, he might have informed himſelf by what Authority he was brought before them; namely, by the Authority of the Commons of *England* aſſembled in Parliament, on the behalf of the People of *England:* and did therefore again ſeveral times adviſe him to conſider of a better Anſwer: which he refuſed to do, but perſiſted in his Contumacy. Whereupon the Court at length told him, That they did expect from him a poſitive Anſwer to the Charge; affirming their Authority, and giving him to underſtand, that they were upon God's and the Kingdom's Errand, and that the Peace ſtood for would be better had and kept when Juſtice was done, and that was their preſent Work: and adviſed him ſeriouſly to conſider what he had to do at his next Appearance; which was declared ſhould be upon *Monday* following, and ſo remanded him to his former Cuſtody.

The Priſoner all the Time having kept on his Hat, departed, without ſhewing any the leaſt Reſpect to the Court: but going out of the Bar, ſaid *He did not fear that Bill*; pointing to the Table where the Sword and Charge lay.

The Priſoner being withdrawn, three Proclamations were made, and the Court adjourned itſelf to the *Painted Chamber* on *Monday* Morning then next at Nine of the Clock; declaring, that from thence they intended to adjourn to the ſame place again.

[*But that the Reader may have the intire Relation of this deplorable Tragedy, I have from the moſt Authentick Prints inſerted at large the interlocutory Paſſages between the King and* Bradſhaw, *of which Mr.* Phelps *in his Journal gives only a ſuccinct Account*; *which take as follows.*]

His Majeſty with his wonted Patience heard all theſe Slanders and Reproaches, ſitting in the Chair, and looking ſometimes on the pretended Court, ſometimes up to the Galleries; and riſing again, turned about to behold the Guards and Spectators: then he ſat down, with a majeſtick and unmoved Countenance, and ſometimes ſmiling, eſpecially at thoſe Words, *Tyrant*, *Traitor*, and the like.

Alſo the ſilver Head of his Staff happened to fall off, at which he wondered; and ſeeing none to take it up, he ſtooped for it himſelf.

The Charge being read, *Bradſhaw* began:

Sir, You have now heard your Charge read, containing ſuch Matters as appear in it; you find, that in the Cloſe of it, it is prayed to the Court, in the behalf of the Commons of *England*, that you anſwer to your Charge. The Court expects your Anſwer.

King I would know by what Power I am called hither; I was not long ago in the Iſle of *Wight*; how I came there, is a longer Story than I think is fit at this time for me to ſpeak of; but there I entered into a Treaty with both Houſes of Parliament, with as much publick Faith as it's poſſible to be had of any People in the World. I treated there with a number of honourable Lords and Gentlemen, and treated honeſtly and uprightly; I cannot ſay but they did very nobly with me, we were upon a concluſion of the Treaty. Now I would know by what Authority, I mean lawful; there are many unlawful Authorities in the World, Thieves and Robbers by the Highways; but I would know by what Authority I was brought from thence, and carried from place to place, and I know not what: and when I know by what lawful Authority, I ſhall anſwer. Remember I am your King, your lawful King, and what Sins you bring upon your Heads, and the Judgment of God upon this Land; think well upon it, I ſay, think well upon it, before you go further from one Sin to a greater: therefore let me know by what lawful Authority I am ſeated here, and I ſhall not be unwilling to anſwer. In the mean time I ſhall not betray my Truſt; I have a Truſt committed to me by God, by old and lawful Deſcent, I will not betray it, to anſwer to a new unlawful Authority: therefore reſolve me that, and you ſhall hear more of me.

Bradſhaw. If you had been pleaſed to have obſerved what was hinted to you by the Court, at your firſt coming hither, you would have known by what Authority; which Authority requires you, in the Name of the People of *England*, of which you are elected King, to anſwer.

King. No, Sir, I deny that.

Bradſhaw. If you acknowledge not the Authority of the Court, they muſt proceed.

King. I do tell them ſo, *England* was never an Elective Kingdom, but an Hereditary Kingdom for near theſe thouſand Years; therefore let me know by what Authority I am called hither: I do ſtand more for the Liberty of my People than any here that come to be my pretended Judges; and therefore let me know by what lawful Authority I am ſeated here, and I will anſwer it, otherwiſe I will not anſwer it.

Bradſhaw. Sir, How well you have managed your Truſt, is known: your way of Anſwer is to interrogate the Court, which beſeems not you in this Condition. You have been told of it twice or thrice.

King. Here is a Gentleman, Lieutenant-Colonel *Cobbet*; aſk him, if he did not bring me from the Iſle of *Wight* by force. I do not come here as ſubmitting to the Court: I will ſtand as much for the Privilege of the Houſe of Commons, rightly underſtood, as any Man here whatſoever. I ſee no Houſe of Lords here, that may conſtitute a Parliament; and the King too ſhould have been. Is this the bringing of the King to his Parliament? Is this the bringing an end to the Treaty in the publick Faith of the World? Let me ſee a legal Authority warranted by the Word of God the Scriptures, or warranted by the Conſtitutions of the Kingdom, and I will anſwer.

Bradſhaw. Sir, You have propounded a Queſtion, and have been anſwered. Seeing you will not anſwer, the Court will conſider how to proceed: in the mean time, thoſe that brought you hither, are to take charge of you back again. The Court deſires to know, whether this be all the Anſwer you will give, or no.

King. Sir, I deſire that you would give me, and all the World, Satisfaction in this: let me tell you, it is not a ſlight thing you are about. I am ſworn to keep the Peace, by that Duty I owe to God and my Country, and I will do it to the laſt Breath of my Body; and therefore you ſhall do well to ſatisfy firſt God, and then the Country, by what Authority you do it: if you do it by an uſurped Authority, you cannot anſwer it. There is a God in Heaven, that will call you, and all that give you Power, to account. Satisfy me in that, and I will anſwer; otherwiſe I betray my Truſt, and the Liberties of the People: and therefore think of that, and then I ſhall be willing. For I do avow, that it is as great a Sin to withſtand lawful Authority, as it is to ſubmit to a tyrannical or any other ways unlawful Authority: and therefore ſatisfy God and me, and all the World in that, and you ſhall receive my Anſwer. I am not afraid of that Bill.

Bradſhaw. The Court expects you ſhould give them a final Anſwer, their Purpoſe is to adjourn to *Monday* next: if you do not ſatisfy yourſelf, tho' we do tell you our Authority; we are ſatisfied with our Authority, and it is upon God's Authority and the Kingdom's, and that Peace you ſpeak of will be kept in the doing of Juſtice, and that's our preſent Work.

King. For anſwer, let me tell you, you have ſhewn no lawful Authority to ſatisfy any reaſonable Man.

Bradſhaw. That is in your Apprehenſion; we are ſatisfied that are your Judges.

King. 'Tis not my Apprehenſion, nor yours neither, that ought to decide it.

Bradſhaw. The Court hath heard you, and you are to be diſpoſed of as they have commanded.

So commanding the Guard to take him away, his Majeſty only replied, *Well, Sir!*

And at his going down, pointing with his Staff toward the (*) Sword, he ſaid, *I do not fear that.*

As he went down the Stairs, the People in the Hall cry'd out, *God ſave the King!* notwithſtanding ſome were ſet there by the Faction to lead the Clamour for Juſtice. [*Nalſon.*]

Painted Chamber, 22 Jan. 1648.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

William Say.
John Downs.
Edward Whalley.
Francis Allen.
Sir *Tho. Maleverer* Bar.
Valentine Wauton.
Peter Temple.
John Fry.
Thomas Scot.
Henry Smith.
Thomas Pride.
Auguſtine Garland.
John Venn.
Sir *John Bourchier.*
William Purefoy.
Sir *William Conſtable* Bar.
Iſaac Pennington, Alderman *of London.*
Thomas Harriſon.
Edmond Harvey.
John Hutchinſon.
Oliver Cromwell.
Tho. Ld. *Grey of Grooby*,
Sir *Gregory Norton* Bar.
Robert Wallop.
James Temple.
Owen Roe.
Richard Deane.
William Goffe.
Francis Laſſels.
Edmond Ludlow.
William Cawley.
Gilbert Millington.
Sir *Hardreſs Waller.*
Anthony Stapeley.
John Jones.
Nicholas Love.
John Carew.
Tho. Andrews Alderman of *London.*
Iſaac Ewer.
John Huſon.
Cornelius Holland.
Humphrey Edwards.
Vincent Potter.
John Okey.
John Blackiſtone.
Thomas Hammond.
Daniel Blagrave.
William Heveningham.
Sir *Michael Liveſey.*
John Berkſtead.
Peregrine Pelham.
John Downes.
Adrian Scroope.
John Dixwell.
John Moore.
Robert Tichbourne.
James Challoner.
Gregory Clement.
William Lord *Mounſon.*
Henry Martin.
Thomas Challoner.

Sixty-two Commiſſioners preſent.

Here the Court ſit private.

Ordered, that the Committee for nominating the Officers of this Court, together with the Committee for nominating the Guards, do conſider of an Allowance for Diet of the Officers, and what other Satisfaction they ſhall have for their Service.

Col. *Harvey* informed the Court, That he was deſired to ſignify unto this Court, in the behalf of Mr. *John Corbet*, Member of this Court, that his Abſence is not from any Diſaffection to the Proceedings of this Court, but in regard of other eſpecial Employment that he hath in the Service of the State.

Here the Court conſidered of the King's Carriage on the *Saturday* before, and of all that had then paſſed on the Court's behalf, and approved thereof, as agreeing to their Senſe and Directions. And perceiving what the King aimed at, *viz.* to bring in queſtion (if he could) the Juriſdiction of the Court, and the Authority whereby they ſat; and conſidering that he had not in the interim acknowledged them in any ſort to be a Court, or in any Judicial Capacity to determine of his Demand and Plea, and that thro' their ſides he intended to wound (if he might be permitted) the Supreme Authority of the Commons of *England*, in their Repreſentative, the Commons aſſembled in Parliament;

(*) *It is* Bill *in* Phelps'*s Journal: which* Bill *was the* Charge, *and lay near the Sword of State.*

liament; after Advice with their Counſel learned in both Laws, and mature Deliberation had of the Matter,

Reſolved, That the Priſoner ſhould not be ſuffered to bring theſe things in queſtion which he aimed at, touching that Higheſt Juriſdiction; whereof they might not make themſelves Judges, and from which there was no Appeal. And therefore order and direct, *viz.*

Ordered, That in caſe the King ſhall again offer to fall into that Diſcourſe, the Lord Preſident do let him know, That the Court have taken into conſideration his Demands of the laſt Day, and that he ought to reſt ſatisfied with this Anſwer, *That the Commons of* England *aſſembled in Parliament have conſtituted this Court, whoſe Power may not, nor ſhould be permitted to be diſputed by him, and that they were reſolved he ſhould anſwer his Charge.*

That in caſe he ſhall refuſe to anſwer, or acknowledge the Court, the Lord Preſident do let him know, that the Court will take it as a Contumacy, and that it ſhall ſo be recorded.

That in caſe he ſhall offer to anſwer with a *Saving*, notwithſtanding of his pretended Prerogative, that the Lord Preſident do in the name of the Court refuſe his Proteſt, and require his poſitive Anſwer to the Charge.

That in caſe the King ſhall demand a Copy of the Charge, that he ſhall then declare his Intention to anſwer; and that declaring ſuch his Intention, a Copy be granted unto him.

That in caſe the King ſhall ſtill perſiſt in his Contempt, the Lord Preſident do give command to the Clerk to demand of the King in the name of the Court, in theſe Words following, *viz.*

Charles Stuart, *King of* England, *you are accuſed in behalf of the People of* England *of divers High Crimes and Treaſons, which Charge hath been read unto you; the Court requires you to give a poſitive Anſwer, whether you confeſs or deny the Charge; having determined, that you ought to anſwer the ſame.*

Ordered, That the Commiſſioners ſhall be called in open Court, at the Court's ſitting in the Hall, and that the Names of ſuch as appear ſhall be recorded.

Hereupon the Court forthwith adjourned itſelf into *Weſtminſter-Hall.*

Weſtminſter-Hall, 22 Jan. 1648. *poſt Merid.*

The Commiſſioners coming from the *Painted-Chamber*, take their Place in the publick Court in *Weſtminſter-Hall*, as on *Saturday* before; and being ſat, and the Hall-Door ſet open, three Proclamations were made for all Perſons that were adjourned over to this time, to give their Attendance, and for all Perſons to keep ſilence, upon pain of Impriſonment: The Court is thereupon called.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

William Say.
John Liſle.
Oliver Cromwell.
Henry Ireton.
Sir *Hardreſs Waller.*
Valentine Wauton.
Thomas Harriſon.
Edward Whalley.
Thomas Pride.
Iſaac Ewers.
Tho. Ld. *Grey* of *Grooby.*
William Ld. *Mounſon.*
Sir *John Danvers.*
Sir *Tho. Maleverer* Bar.
Sir *John Bourchier* Knt.
Edmond Ludlow.
John Huſon.
William Goffe.
Cornelius Holland.
John Carew.
Robert Lilbourne.
John Jones.
Francis Allen.
Peregrine Pelham.
Thomas Challoner.
John Moore.
John Allured.
Francis Laſſels.
Henry Smith.
James Challoner.
Gregory Clement.
John Fry.
Thomas Wogan.
Peter Temple.
Robert Wallop.
William Heveningham.
Iſaac Pennington Ald. of *London.*
Henry Martin.
William Purefoy.
John Berkſtead.
William Tomlinſon.
John Blackiſtone.
Gilbert Millington.
Sir *William Conſtable* Bar.
Sir *Michael Liveſey* Bar.
Robert Tichbourne.
Owen Roe.
Adrian Scroope.
John Deane.
John Okey.
John Hutchinſon.
Sir *Gregory Norton* Bar.
Edmond Harvey.
John Venn.
Thomas Scot.
Tho Andrews Ald. of *Lon.*
William Cawley.
Anthony Stapeley.
John Downs.
Thomas Horton.
Thomas Hammond.
Nicholas Love.
Vincent Potter.
Sir *Gilbert Pickering* Bar.
Auguſtine Garland.
John Dixwell.
James Temple.
Daniel Blagrave.
Humphry Edwards.

Seventy Commiſſioners preſent.

The Court being called, the Serjeant is commanded to fetch his Priſoner.

The King is again brought Priſoner to the Bar, as on *Saturday* before: Proclamation is made for Silence, whilſt Pleas of the Commonwealth were in hand; and Order given to the Captain of the Guard to take into his Cuſtody ſuch as ſhould diſturb the Court.

Mr. Sollicitor moved the Court, that the Priſoner might give a poſitive Anſwer to his Charge, or otherwiſe that the Court would take the Matter of it *pro confeſſo*, and proceed thereupon according to Juſtice. Which being preſſed by the Court upon the Priſoner, and their Judgment again made known unto him, That he was to anſwer his Charge, otherwiſe his Contumacy would be recorded:

The Priſoner, That notwithſtanding, ſtill inſiſted upon his former Plea, and that the Court had no Power, nor the Commons of *England*, who had conſtituted it, to proceed againſt him. Upon which the Clerk of the Court, by command, and according to former Order, required his Anſwer in the Form preſcribed: and the Priſoner ſtill refuſing to ſubmit thereto, his Default and Contempt were again recorded, the Priſoner remanded, and the Court adjourned itſelf to the next Day, being *Tueſday*, at Twelve of the Clock, to the *Painted-Chamber*; withal giving notice, That from thence they intended to adjourn to this Place again.

[*Sunday* having been ſpent in Faſting and ſeditious Preaching, according to the Mode of theſe impious Hypocrites, who uſed to preface Rebellion and Murder with the Appearance of Religion, the illuſtrious Sufferer was (as is before in *Phelps*'s Journal related) placed before the infamous Tribunal, where their mercenary Solicitor *Cook* opened the Tragick Scene thus, diſplaying his Talents of Impudence and Treaſon. *Nalſon.*

Cook. May it pleaſe your Lordſhip, my Lord Preſident; I did at the laſt Court, in the behalf of the Commons of *England*, exhibit and give into this Court a Charge of High-Treaſon, and other High Crimes againſt the Priſoner at the Bar; whereof I do accuſe him in the name of the People of *England*: and the Charge was read unto him, and his Anſwer required. My Lord, he was not pleaſed to give an Anſwer, but inſtead of anſwering, did there diſpute the Authority of this high Court. My humble Motion to this high Court in the behalf of the Kingdom of *England*, is, That the Priſoner may be directed to make a poſitive Anſwer either by way of Confeſſion or Negation; which if he ſhall refuſe to do, that then the Matter of Charge may be taken *pro confeſſo*, and the Court may proceed according to Juſtice.

Bradſhaw. Sir, you may remember at the laſt Court you were told the Occaſion of your being brought hither, and you heard a Charge read againſt you, containing a Charge of High-Treaſon and other high Crimes againſt this Realm of *England*: you heard likewiſe, that it was prayed in the behalf of the People, that you ſhould give an Anſwer to that Charge, that thereupon ſuch Proceedings might be had as ſhould be agreeable to Juſtice. You were then pleaſed to make ſome Scruples concerning the Authority of this Court, and knew not by what Authority you are brought hither: you did divers times propound your Queſtions, and were as often anſwer'd, That it was by Authority of the Commons of *England* aſſembled in Parliament, that did think fit to call you to account for thoſe high and capital Miſdemeanours wherewith you were then charged. Since that, the Court hath taken into conſideration what you then ſaid; they are fully ſatisfied with their own Authority, and they hold it fit you ſhould ſtand ſatisfied with it too; and they do require it, that you do give a poſitive and particular Anſwer to this Charge that is exhibited againſt you: they do expect you ſhould either confeſs or deny it; if you deny, it is offer'd in the behalf of the Kingdom to be made good againſt you: their Authority they do avow to the whole World, that the whole Kingdom are to reſt ſatisfied in, and you are to reſt ſatisfied with it. And therefore you are to loſe no more time, but to give a poſitive Anſwer thereunto.

King. When I was here laſt, 'tis very true, I made that Queſtion; and if it were only my own particular Caſe, I would have ſatisfied myſelf with the Proteſtation I made the laſt time I was here againſt the Legality of this Court, and that a King cannot be try'd by any ſuperior Juriſdiction on Earth: but it is not my Caſe alone, it is the Freedom and the Liberty of the People of *England*; and do you pretend what you will, I ſtand more for their Liberties. For if Power without Law may make Laws, may alter the fundamental Laws of the Kingdom, I do not know what Subject he is in *England* that can be ſure of his Life, or any thing that he calls his own: therefore when that I came here, I did expect particular Reaſons to know by what Law, what Authority you did proceed againſt me here. And therefore I am a little to ſeek what to ſay to you in this particular, becauſe the Affirmative is to be proved, the Negative often is very hard to do: But ſince I cannot perſuade you to do it, I ſhall tell you my Reaſons as ſhort as I can.

My Reaſons why in Conſcience and the Duty I owe to God firſt, and my People next, for the Preſervation of their Lives, Liberties and Eſtates, I conceive I cannot anſwer this, till I be ſatisfied of the Legality of it.

All Proceedings againſt any Man whatſoever----

Bradſhaw. Sir, I muſt interrupt you, which I would not do, but that what you do is not agreeable to the Proceedings of any Court of Juſtice: You are about to enter into Argument, and diſpute concerning the Authority of this Court, before whom you appear as a Priſoner, and are charged as an high Delinquent; if you take upon you to diſpute the Authority of the Court, we may not do it, nor will any Court give way unto it: you are to ſubmit unto it; you are to give a punctual and direct Anſwer, whether you will anſwer your Charge or no, and what your Anſwer is.

King. Sir, By your favour, I do not know the Forms of Law; I do know Law and Reaſon, tho' I am no Lawyer profeſs'd, but I know as much Law as any Gentleman in *England*: and therefore (under favour) I do plead for the Liberties of the People of *England* more than you do: And therefore if I ſhould impoſe a Belief upon any Man, without Reaſons given for it, it were unreaſonable; but I muſt tell you, that by that Reaſon that I have, as thus informed, I cannot yield unto it.

Bradſhaw. Sir, I muſt interrupt you, you may not be permitted: you ſpeak of Law and Reaſon, it is fit there ſhould be Law and Reaſon, and there is both againſt you. Sir, the Vote of the Commons of *England* aſſembled in Parliament, it is the Reaſon of the Kingdom, and they are theſe too that have given that Law, according to which you ſhould have ruled and reign'd. Sir, you are not to diſpute our Authority, you are told it again by the Court. Sir, it will be taken notice of, that you ſtand in contempt of the Court, and your Contempt will be recorded accordingly.

King. I do not know how a King can be a Delinquent; but by any Law that ever I heard of, all Men (Delinquents, or what you will) let me tell you they may put in Demurrers againſt any Proceeding as legal: and I do demand that, and demand to be heard with my Reaſons; if you deny that, you deny Reaſon.

Bradſhaw. Sir, you have offer'd ſomething to the Court; I ſhall ſpeak ſomething unto you, the Senſe of the Court. Sir, neither you nor any Man are permitted to diſpute that Point; you are concluded, you may not demur to the Juriſdiction of the Court: if you do, I muſt let you know, that they over-rule your Demurrer; they ſit here by the Authority of the Commons of *England*, and all your Predeceſſors and you are reſponſible to them.

King. I deny that, ſhew me one Precedent.

Bradſhaw. Sir, you ought not to interrupt while the Court is ſpeaking to you. The Point is not to be debated by you, neither will the Court permit you to do it; if you offer it by way of Demurrer to the Juriſdiction of the Court, they have conſidered of their Juriſdiction, they do affirm their own Juriſdicton.

King. I ſay, Sir, by your favour, that the Commons of *England* was never a Court of Judicature; I would know how they came to be ſo.

Bradſhaw. Sir, you are not to be permitted to go on in that Speech and theſe Diſcourſes.

Then the Clerk of the Court read,

Charles Stuart, *King of* England, *You have been accuſed on the behalf of the People of* England *of High-Treaſon, and other High Crimes; the Court have determined that you ought to anſwer the ſame.*

King. I will anſwer the ſame, ſo ſoon as I know by what Authority you do this.

Bradſhaw. If this be all that you will ſay, then, Gentlemen, you that brought the Priſoner hither, take charge of him back again.

King. I do require that I may give in my Reaſons why I do not anſwer, and give me time for that.

Bradſhaw. Sir, 'tis not for Priſoners to require.

King. Priſoners! Sir, I am not an ordinary Priſoner.

Bradſhaw. The Court hath conſidered of their Juriſdiction, and they have already affirmed their Juriſdiction; if you will not anſwer, we will give order to record your Default.

King. You never heard my Reaſon yet.

Bradſhaw. Sir, your Reaſons are not to be heard againſt the higheſt Juriſdiction.

King. Shew me that Juriſdiction where Reaſon is not to be heard.

Bradſhaw. Sir, we ſhew it you here, the Commons of *England*; and the next time you are brought, you will know more of the Pleaſure of the Court; and it may be, their final Determination.

King. Shew me where ever the Houſe of Commons was a Court of Judicature of that kind.

Bradſhaw. Serjeant, take away the Priſoner.

King. Well, Sir, remember that the King is not ſuffer'd to give in his Reaſons for the Liberty and Freedom of all his Subjects.

Bradſhaw. Sir, you are not to have liberty to uſe this Language: How great a Friend you have been to the Laws and Liberties of the People, let all *England* and the World judge.

King. Sir, under favour, it was the Liberty, Freedom, and Laws of the Subject, that ever I took———defended myſelf with Arms; I never took up Arms againſt the People, but for the Laws.

Bradſhaw. The Command of the Court muſt be obey'd; no Anſwer will be given to the Charge.

King. Well, Sir!

Then *Bradſhaw* ordered the Default to be recorded, and the Contempt of the Court; and that no Anſwer would be given to the Charge.

The King was guarded forth to Sir *Robert Cotton*'s Houſe.

The Court adjourned to the *Painted Chamber* on *Tueſday* at twelve of the clock, and from thence they intend to adjourn to *Weſtminſter-Hall*; at which times all Perſons concerned are to give their Attendance.

[His Majeſty not being ſuffered to deliver his Reaſons againſt the Juriſdiction of their pretended Court, by word of Mouth, thought fit to leave them in Writing to the more impartial Judgment of Poſterity, as followeth:

‘ HAVING already made my Proteſtations, not only againſt the Illegality of this pretended Court, but alſo, *That no earthly Power can juſtly call Me* (who am your King) *in queſtion, as a Delinquent*; I would not any more open my Mouth upon this Occaſion, more than to refer myſelf to what I have ſpoken, were I in this caſe alone concerned: But the Duty I owe to God in the Preſervation of the true Liberty of my People, will not ſuffer me at this time to be ſilent. For how can any free-born Subject of *England* call Life, or any thing he poſſeſſeth, his own, if Power without Right daily make new, and abrogate the old Fundamental Ways of the Land, which I now take to be the preſent Caſe? Wherefore, when I came hither, I expected that you would have endeavoured to have ſatisfied me concerning theſe Grounds which hinder me to anſwer to your pretended Impeachment: But ſince I ſee that nothing I can ſay will move you to it (tho' *Negatives* are not ſo naturally proved as *Affirmatives*), yet I will ſhew you the Reaſon why I am confident you cannot judge me, nor indeed the meaneſt Man in *England*: For I will not (like you), without ſhewing a Reaſon, ſeek to impoſe a Belief upon my Subjects.

Hereabout I was ſtopp'd, and not ſuffered to ſpeak any more concerning Reaſons.

‘ There is no Proceeding juſt againſt any Man, but what is warranted either by God's Laws, or the municipal Laws of the Country where he lives. Now I am moſt confident, this Day's Proceeding cannot be warranted by God's Law; for, on the contrary, the Authority of Obedience unto Kings is clearly warranted, and ſtrictly commanded both in the Old and New Teſtament; which if denied, I am ready inſtantly to prove.

‘ And for the Queſtion now in hand, there it is ſaid, That *where the Word of a King is, there is Power*; *and who may ſay unto him, What doſt thou?* Eccl. viii. 4. Then for the Law of this Land, I am no leſs confident, that no learned Lawyer will affirm, That *an Impeachment can lie againſt the King, they all going in his Name*: And one of their Maxims is, That *the King can do no wrong*. Beſides, the Law upon which you ground your Proceedings, muſt be either old or new; if old, ſhew it; if new, tell what Authority, warranted by the Fundamental Laws of the Land, hath made it, and when. But how the Houſe of Commons can erect a Court of Judicature, which was never one itſelf, (as is well known to all Lawyers) I leave to God and the World to judge. And it were full as ſtrange, that they ſhould pretend to make Laws without King or Lords Houſe, to any that have heard ſpeak of the Laws of *England*.

‘ And admitting, but not granting, That the People of *England*'s Commiſſion could grant your *pretended Power*, I ſee nothing you can ſhew for that; for certainly you never aſked the Queſtion of the *tenth Man* in the Kingdom: and in this way you manifeſtly wrong even the *pooreſt Ploughman*, if you demand not his free Conſent; nor can you pretend any Colour for this your *pretended Commiſſion*, without the Conſent at leaſt of the major Part of every Man in *England*, of whatſoever Quality or Condition, which I am ſure you never went about to ſeek; ſo far are you from having it. Thus you ſee that I ſpeak not for my own Right alone, as I am your *King*, but alſo for the true Liberty of all *my Subjects*; which conſiſts not in the *Power of Government*, but in *living under ſuch Laws, ſuch a Government*, as may give themſelves the beſt Aſſurance of their Lives, and Property of their Goods. Nor in this muſt or do I forget the *Privileges* of both Houſes of Parliament, which this Day's Proceedings do not only violate, but likewiſe occaſion the greateſt Breach of their publick Faith, that (I believe) ever was heard of: with which I am far from charging the two Houſes: for all *pretended Crimes* laid againſt me bear date long before this Treaty at *Newport*, in which I have concluded as much as in me lay, and hopefully expecting the Houſes Agreement thereunto, I was ſuddenly ſurprized and hurried from thence as a Priſoner: upon which Account I am againſt my Will brought hither; where ſince I am come, I cannot but, to my power, defend the antient Laws and Liberties of this Kingdom, together with my own juſt Right. Then, for any thing I can ſee, the Higher Houſe is totally excluded. And for the Houſe of Commons, it is too well known that the major Part of them are detained or deterred from ſitting; ſo as, if I had no other, this were ſufficient for me to proteſt againſt the Lawfulneſs of your pretended Court. Beſides all this, the Peace of the Kingdom is not the leaſt in my Thoughts; and what hopes of Settlement is there, ſo long as Power reigns without Rule or Law, changing the whole Frame of that Government, under which this Kingdom hath flouriſhed for many hundred Years? (Nor will I ſay what will fall out, in caſe this lawleſs unjuſt Proceeding againſt me do go on.) And believe it, the Commons of *England* will not thank you for this Change; for they will remember how happy they have been of late Years under the Reign of Queen *Elizabeth*, the King my Father, and my Self, until the beginning of theſe unhappy Troubles, and will have cauſe to doubt that they ſhall never be ſo happy under any new. And by this time it will be too ſenſibly evident, that the Arms I took up, were only to defend the Fundamental Laws of this Kingdom, againſt thoſe who have ſuppoſed my Power hath totally changed the antient Government.

‘ Thus having ſhewed you briefly the Reaſons why I cannot ſubmit to your pretended Authority, without violating the Truſt which I have from God for the Welfare and Liberty of my People; I expect from you either clear Reaſons to convince my Judgment, ſhewing me that I am in an Error, (and then I will truly anſwer) or that you will withdraw your Proceedings.'

This I intended to ſpeak in Weſtminſter-Hall *on Monday*, January *the 22d*; *but, againſt Reaſon, was hindred to ſhew my Reaſons.*]

Martis, 23 Jan. 1648. *Painted Chamber.*

THREE Proclamations are made, and all Parties concerned required to give their attendance.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

John Liſle.
William Say.
Sir *James Harrington* Kt.
Francis Allen.
Henry Martin.
Thomas Scot.
Sir *Hardreſs Waller.*
Edmond Whalley.
John Venn.
Richard Deane.
John Huſon.
Tho. Ld. *Grey* of *Grooby.*
William Purefoy.
Daniel Blagrave.
Iſaac Pennington Ald. of *London.*
Thomas Harriſon.
Adrian Scroope.
Robert Lilbourne.
Sir *Gregory Norton.*
Cornelius Holland.
William Cawley.
Auguſtine Garland.
Nicholas Love.
Thomas Hammond.
John Moore.
Edmond Harvey.
Thomas Pride.
Henry Smith.
Thomas Challoner.
Miles Corbet.
John Okey.
Sir *William Conſtable* Bar.
Gilbert Millington.
Humphrey Edwards.
Anthony Stapeley.
Robert Tichbourne.
Sir *John Danvers.*
Simon Meyne.
Vincent Potter.
Oliver Cromwell.
Edmond Ludlow.
John Blackiſtone.
Sir *Henry Mildmay.*
John Hutchinſon.
Peter Temple.
Henry Ireton.
Sir *Michael Liveſey* Bar.
John Jones.
James Temple.
Iſaac Ewers.
Sir *John Bourchier.*
John Fry.
Sir *Tho. Maleverer* Bar.
Gregory Clement.
John Carew.
Thomas Andrews Ald. of *London.*
John Dixwell.
Sir *Gilbert Pickering* Bar.
William Heveningham.
Valentine Wauton.
John Downes.
Owen Roe.

Sixty-three Commiſſioners preſent.

Here the Court ſat private.

And taking into Conſideration the Proceeding of the laſt Court the laſt Day, fully approved of what in their behalf had been then ſaid and done; and likewiſe taking into Conſideration the Demeanour of the King at the ſaid Court, have notwithſtanding reſolved to try him once more, whether he will own the Court; and to that purpoſe

Ordered, That the Lord Preſident do acquaint the King, in caſe he ſhall continue contumacious, that he is to expect no further time; and that the Lord Preſident do therefore in the Name of the Court require his poſitive and final Anſwer; and if he ſhall ſtill perſiſt in his Obſtinacy, that the Lord Preſident give command to the Clerk to read as followeth, *viz.*

Charles Stuart, *King of* England, *you are accuſed on the behalf of the People of* England *of divers high Crimes and Treaſons, which Charge hath been read unto you*; *the Court now requires you to give your final and poſitive Anſwer, by way of Confeſſion or Denial of the Charge.*

Nevertheleſs, if the King ſhould ſubmit to anſwer, and deſire a Copy of his Charge, that it be granted him by the Lord Preſident; notwithſtanding giving him to know, That the Court might in Juſtice forthwith proceed to Judgment for his former Contumacy and Failure to Anſwer; and that he be required to give his Anſwer to the ſaid Charge the next day at One of the Clock in the Afternoon. Whereupon the Court adjourned to *Weſtminſter-Hall* forthwith.

Weſtminſter-Hall, 23 Jan. 1648. *poſt Merid.*

THREE Proclamations being made, and Attendance and Silence commanded, as formerly, the Court is thereupon called.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Oliver Cromwell.
Henry Ireton
Sir *Hardreſs Waller.*
Valentine Wauton.
Thomas Harriſon.
Edward Whalley.

Thomas Pride.
Iſaac Ewers.
Henry Martin.
William Purefoy.
John Berkſtead.
John Blackiſtone.
Gilbert Millington.
Sir *William Conſtable*, Bar.
Edmond Ludlow.
John Hutchinſon.
Sir *Michael Liveſey*, Bar.
Robert Tichbourne.
Owen Roe.
Robert Lilbourne.
Adrian Scroope.
Richard Deane.
John Okey.
John Huſon.
William Goffe.
Cornelius Holland.
John Carew.
John Jones.

Miles Corbet.
Francis Allen.
Peregrine Pelham.
Thomas Challoner.
John Moor.
William Say.
John Dixwell.
Sir *Henry Mildmay*, Knt.
Tho. Ld. *Grey* of *Grooby.*
William Lord *Mounſon.*
Sir *John Danvers.*
Sir *Tho. Maleverer*, Bar.
Sir *John Bourchier*, Knt.
Sir *James Harrington*, Kt.
Robert Wallop.
William Heveningham.
Iſaac Pennington, Alderman of *London.*
John Allured.
Henry Smith.
James Temple.
Peter Temple.

Daniel Blagrave.
Humphrey Edwards.
Gregory Clement.
John Fry.
Thomas Wogan.
Sir *Gregory Norton*, Bar.
Edmond Harvey.
John Venn.
Thomas Scot.
Thomas Andrews, Ald. of *London.*
William Cawley.
Anthony Stapely.
John Downs.
Thomas Horton.
Thomas Hammond.
John Liſle.
Nicholas Love.
Vincent Potter.
Sir *Gilbert Pickering*, Bar.
Auguſtine Garland.
Simon Meyne.

Seventy-one Commiſſioners preſent.

The Court being called, the Serjeant is required to ſend for the Priſoner, who was accordingly brought to the Bar, where he took his Seat as formerly. Proclamation is thereupon made for Silence, while the Pleas of the Commonwealth are in Hand, and the Captain of the Guard commanded by Proclamation to take into Cuſtody all that ſhall diſturb the Proceedings of the Court.

Mr. Sollicitor *Cook* addreſſing himſelf to the Court, repeated the former Delays and Contempts of the Priſoner, ſo as that no more needed on his Part, but to demand Judgment; yet offered, notwithſtanding the Notoriety of the Facts charged, mentioned in the Common Act appointing the Trial, to prove the Truth of the ſame by Witneſſes, if thereto required: and therefore pray'd, and yet (he ſaid) not ſo much he, as the innocent Blood that had been ſhed, the Cry whereof was very great, that a ſpeedy Sentence and Judgment might be pronounced againſt the Priſoner at the Bar according to Juſtice.

Hereupon the Court putting the Priſoner in mind of former Proceedings, and that altho' by the Rules of Juſtice, if advantage were taken of his paſt Contempts, nothing would remain but to pronounce Judgment againſt him, they had nevertheleſs determined to give him leave to anſwer his Charge; which, as was told him in plain Terms, (for Juſtice knew no Reſpect of Perſons) was to plead *Guilty* or *Not Guilty* thereto.

To which he made Anſwer as formerly, That he would not acknowledge the Juriſdiction of the Court, and that it was againſt the Fundamental Laws of the Kingdom; that there was no Law to make a King a Priſoner; that he had done nothing againſt his Truſt; and iſſued out into ſuch-like Diſcourſes.

Upon which the Court's Reſolution was again remember'd to him, and he told, That he had now the third time publickly diſowned and affronted the Court; That how good a Preſerver he had been of the Fundamental Laws and Freedoms of the People, his Actions had ſpoken; That Men's Intentions were uſed to be ſhewed by their Actions, and that he had written his Meaning in bloody Characters throughout the Kingdom; and that he ſhould find at laſt, tho' at preſent he would not underſtand it, that he was before a Court of Juſtice.

Hereupon, in the manner appointed, the Clerk in the Name of the Court demanding the Priſoner's Anſwer to his Charge, and the ſame refuſed, the Default was recorded, the Priſoner remanded, and the Court adjourned to the *Painted Chamber.*

Painted Chamber.

The Court, according to their former Adjournment from *Weſtminſter-Hall*, come together from thence into the *Painted Chamber*, where they ſat privately, and ordered as followeth:

Ordered, That no Commiſſioner ought, or ſhall depart from the Court, without the ſpecial Leave of the ſaid Court.

This Court took into Conſideration the managing of the Buſineſs of the Court this Day in the Hall, and the King's Refuſal to anſwer, notwithſtanding he had been three ſeveral times demanded and required thereunto; and have thereupon fully approved of what on the Court's Part had then paſſed; and reſolved,

That notwithſtanding the ſaid Contumacy of the King, and Refuſal to plead, which in Law amounts to a ſtanding mute, and tacit Confeſſion of the Charge; and notwithſtanding the Notoriety of the Fact charged, the Court would nevertheleſs however examine Witneſſes, for the further and clearer Satisfaction of their own Judgments and Conſciences; the Manner of whoſe Examination was referred to further Conſideration the next Sitting, and Warrants were accordingly iſſued forth for ſummoning of Witneſſes.

Mr. *Peters* moveth the Court as a Meſſenger from the King, *viz.* That the King deſires he might ſpeak with his Chaplains that came unto him privately: but the Houſe of Commons having taken that into their Conſideration, the Court conceived it not proper for them to intermeddle therein.

The Court adjourned itſelf till Nine of the Clock To-morrow Morning, to this Place.

[*What paſſed in the Hall more at large than is related by* Phelps *in this Day's Tranſactions, ſee in the following Diſcourſe.*

The King being brought in by the Guard, looks with a majeſtick Countenance upon his pretended Judges, and ſits down.

After the ſecond *O Yes*, and Silence commanded, *Cook* began more inſolently:

Cook. May it pleaſe your Lordſhip, my Lord Preſident; This is now the third Time, that, by the great Grace and Favour of this High Court, the Priſoner hath been brought to the Bar, before any Iſſue joined in the Cauſe. My Lord, I did at the firſt Court exhibit a Charge againſt him, containing the higheſt Treaſon that ever was wrought upon the Theatre of *England*: That a King of *England* truſted to keep the Law, that had taken an Oath ſo to do, that had Tribute paid him for that end, ſhould be guilty of a wicked deſign to ſubvert and deſtroy our Laws, and introduce an Arbitrary and Tyrannical Government, in the defiance of the Parliament and their Authority, ſet up his Standard for War againſt the Parliament and People: and I did humbly pray, in the behalf of the People of *England*, that he might ſpeedily be required to make an Anſwer to the Charge.

But, my Lord, inſtead of making any Anſwer, he did then diſpute the Authority of this High Court. Your Lordſhip was pleaſed to give him a further Day to conſider, and to put in his Anſwer; which Day being Yeſterday, I did humbly move, that he might be required to give a direct and poſitive Anſwer either by denying or confeſſion of it: but, my Lord, he was then pleaſed for to demur to the Juriſdiction of the Court; which the Court did then over-rule, and command him to give a direct and poſitive Anſwer. My Lord, Beſides this great delay of Juſtice, I ſhall now humbly move your Lordſhip for ſpeedy Judgment againſt him. My Lord, I might preſs your Lordſhip upon the whole, that according to the known Rules of the Law of the Land, That if a Priſoner ſhall ſtand as contumacious in contempt, and ſhall not put in an iſſuable Plea, Guilty or not Guilty of the Charge given againſt him, whereby he may come to a fair Trial; that, as by an implicit Confeſſion, it may be taken *pro confeſſo*, as it hath been done to thoſe who have deſerved more Favour than the Priſoner at the Bar has done. But beſides, my Lord, I ſhall humbly preſs your Lordſhip upon the whole Fact. The Houſe of Commons, the Supreme Authority and Juriſdiction of the Kingdom, they have declared, That it is notorious, that the Matter of the Charge is true, as it is in truth, my Lord, as clear as Cryſtal, and as the Sun that ſhines at Noon-day: which if your Lordſhip and the Court be not ſatisfied in, I have notwithſtanding, on the People of *England*'s behalf, ſeveral Witneſſes to produce. And therefore I do humbly pray, (and yet I muſt confeſs it is not ſo much I, as the innocent Blood that hath been ſhed, the Cry whereof is very great for Juſtice and Judgment; and therefore I do humbly pray) that ſpeedy Judgment be pronounced againſt the Priſoner at the Bar.

Bradſhaw went on in the ſame ſtrain:

Sir, You have heard what is moved by the Counſel on the behalf of the Kingdom againſt you. Sir, You may well remember, and if you do not, the Court cannot forget what dilatory Dealings the Court hath found at your Hands. You were pleaſed to propound ſome Queſtions; you have had our Reſolution upon them. You were told over and over again, That the Court did affirm their own Juriſdiction; that it was not for you, nor any other Man, to diſpute the Juriſdiction of the ſupreme and higheſt Authority of *England*, from which there is no Appeal, and touching which there muſt be no Diſpute: yet you did perſiſt in ſuch Carriage, as you gave no manner of Obedience, nor did you acknowledge any Authority in them, nor the High Court that conſtituted this Court of Juſtice.

Sir, I muſt let you know from the Court, that they are very ſenſible of theſe Delays of yours, and that they ought not, being thus authorized by the Supreme Court of *England*, to be thus trifled withal; and that they might in Juſtice, if they pleaſed, and according to the Rules of Juſtice, take advantage of theſe Delays, and proceed to pronounce Judgment againſt you: yet nevertheleſs they are pleaſed to give direction, and on their behalfs I do require you, that you make a poſitive Anſwer unto this Charge that is againſt you, Sir, in plain Terms (for Juſtice knows no Reſpect of Perſons); you are to give your poſitive and final Anſwer in plain *Engliſh*, whether you be guilty or not guilty of theſe Treaſons laid to your Charge.

The King, after a little Pauſe, ſaid,

When I was here yeſterday, I did deſire to ſpeak for the Liberties of the People of *England*; I was interrupted: I deſire to know yet, whether I may ſpeak freely or not.

Bradſhaw. Sir, you have had the Reſolution of the Court upon the like Queſtion the laſt Day, and you were told, that having ſuch a Charge of ſo high a Nature againſt you, your Work was, that you ought to acknowledge the Juriſdiction of the Court, and to anſwer to your Charge. Sir, If you anſwer to your Charge, which the Court gives you leave now to do, tho' they might have taken the advantage of your Contempt; yet if you be able to anſwer to your Charge, when you have once anſwered, you ſhall be heard at large, make the beſt Defence you can. But, Sir, I muſt let you know from the Court, as their Commands, that you are not to be permitted to iſſue out into any other Diſcourſes, till ſuch time as you have given a poſitive Anſwer concerning the Matter that is charged upon you.

King. For the Charge, I value it not a ruſh; it is the Liberty of the People of *England* that I ſtand for. For me to acknowledge a new Court that I never heard of before, I that am your King, that ſhould be an Example to all the People of *England* for to uphold Juſtice, to maintain the old Laws; indeed I know not how to do it. You ſpoke very well the firſt Day that I came here, (on *Saturday*) of the Obligations that I had laid upon me by God, to the maintenance of the Liberties of my People: the ſame Obligation you ſpake of, I do acknowledge to God that I owe to him and to my People, to defend as much as in me lies the antient Laws of the Kingdom. Therefore, until that I may know that this is not againſt the Fundamental Laws of the Kingdom, by your favour I can put in no particular Anſwer. If you will give me time, I will ſhew you my Reaſons why I cannot do it, and this—

Here being interrupted, he ſaid,

By your favour, you ought not to interrupt me: how I came here I know not; there is no Law for it to make your King your Priſoner. I was in a Treaty upon the public Faith of the Kingdom, that was the known——two Houſes of Parliament that was the Repreſentative of the Kingdom; and when I had almoſt made an end of the Treaty, then I was hurried away, and brought hither: and therefore—

Bradſhaw. Sir, you muſt know the Pleaſure of the Court.

King. By your favour, Sir.

Bradſhaw. Nay, Sir, by your favour, you may not be permitted to fall into thoſe Diſcourſes; you appear as a Delinquent, you have not acknowledged the Authority of the Court, the Court craves it not of you; but once more they command you to give your poſitive Anſwer——Clerk, Do your Duty.

King. Duty, Sir!

The Clerk reads :

Charles Stuart, *King of* England, *you are accuſed in the Behalf of the Commons of* England, *of divers High Crimes and Treaſons ; which Charge hath been read unto you : The Court now requires you to give your poſitive and final Anſwer, by way of Confeſſion or Denial of the Charge.*

King. Sir, I ſay again to you, ſo that I might give Satisfaction to the People of *England* of the Clearneſs of my Proceeding, not by way of Anſwer, not in this way, but to ſatisfy them that I have done nothing againſt that Truſt that hath been committed to me, I would do it: But to acknowledge a new Court, againſt their Privileges, to alter the fundamental Laws of the Kingdom, Sir, you muſt excuſe me.

Bradſhaw. Sir, this is the third time that you have publickly diſowned this Court, and put an Affront upon it : How far you have preſerved the Privileges of the People, your Actions have ſpoke it; but truly, Sir, Men's Intentions ought to be known by their Actions ; you have written your Meaning in bloody Characters throughout the whole Kingdom. But, Sir, you underſtand the Pleaſure of the Court.——Clerk, record the Default. ——And, Gentlemen, you that took Charge of the Priſoner, take him back again.

King. I will only ſay this one Word more to you ; if it were only my own Particular, I would not ſay any more, nor interrupt you.

Bradſhaw. Sir, you have heard the Pleaſure of the Court, and you are (notwithſtanding you will not underſtand it) to find that you are before a Court of Juſtice.

Then the King went forth with the Guard ; and Proclamation was made, That all Perſons which had then appeared, and had further to do at the Court, might depart into the *Painted-Chamber* ; to which Place the Court did forthwith adjourn, and intended to meet at *Weſtminſter-Hall* by Ten of the Clock next Morning.

Cryer. God bleſs the Kingdom of *England !*]

Mercurii, 24 *Jan.* 1648. *Painted-Chamber.*

THREE Proclamations made.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident.

Sir *Tho. Maleverer* Bar.
Thomas Scot.
Edward Whalley.
John Carew.
Edmond Harvey.
Owen Roe.
John Blackiſtone.
William Purefoy.
Henry Smith.
John Fry.
Francis Laſſels.
Daniel Blagrave.
Anthony Stapely.
Sir *Gregory Norton* Bar.
William Cawley.
Robert Tichbourne.
Henry Marten.
Oliver Cromwell.
Sir *John Danvers.*
John Moor.
Richard Deane.
Vincent Potter.
Thomas Horton.
Cornelius Holland.
John Berkſtead.
Tho. Ld. *Grey* of *Grooby.*
John Huſon.
John Okey.
Gilbert Millington.
John Jones.
William Goffe.
Sir *John Bourchier.*
Iſaac Pennington, Alderman of *London.*
Simon Meyne.
Adrian Scroope.
John Dixwell.
Iſaac Ewers.
John Alured.
Peter Temple.
Peregrine Pelham.
Edmond Ludlow.
John Hutchinſon.
Thomas Pride.
William Heveningham.
Sir *William Conſtable.*
Francis Allen.

The Court took into Conſideration the Manner how the Witneſſes ſhould be examined ; and in regard the King hath not pleaded to Iſſue, and that this Examination was *ex abundanti* only, for the further Satisfaction of themſelves :

Reſolved, That the Witneſſes ſhall be examined to the Charge againſt the King, in the *Painted-Chamber*, before the Court there.

Ordered, That Mr. *Millington* and Mr. *Tho. Challoner* do forthwith repair unto *John Brown* Eſq; Clerk of the Houſe of Peers, for ſuch Papers as are in his Cuſtody, which are conducible for the Buſineſs and Service of this Court ; and the ſaid Mr. *Brown* is required to ſend the ſaid Papers hither accordingly.

Witneſſes produced and ſworn in Court, to give Evidence to the Charge againſt the King.

Henry Hartford.
Edward Roberts.
William Braynes.
Robert Lacy.
Robert Loades.
Samuel Morgan.
James Williams.
Michael Potts.
Giles Gryce.
William Arnop.
John Vinſon.
George Seely.
Tho. Ives.
James Croſby.
Tho. Rawlins.
Richard Blomfield.
John Thomas.
Samuel Lawſon.
John Pyneger.
George Cornewall.
Tho. Whittington.
William Jones.
Humphrey Browne.
Arthur Young.
David Evans.
Diogenes Edwards.
Robert Williams.
John Bennet.
Samuel Burden.

Col. *Horton*, Col. *Deane*, Col. *Okey*, Col. *Huſon*, Col. *Roe*, Col. *Tichbourne*, Col. *Whalley*, Col. *Thomlinſon*, Col. *Goffe*, Col. *Ewers*, Col. *Scroope*, Mr. *Love*, Mr. *Scot*, Mr. *Tho. Challoner*, Mr. *Millington*, and Sir *John Danvers*, or any three of them, are a Committee appointed to take the Examination of the ſaid Witneſſes now ſworn, whom the Clerks are to attend for that Purpoſe.

The Court granted their Summons for ſummoning further Witneſſes, and adjourned itſelf till the Morrow at Nine of the Clock in the Morning, to this Place.

Jovis, 25 Jan. 1648. *Painted Chamber.*

The Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Richard Deane.
Sir *Hardreſs Waller.*
John Moor.
Peregrine Pelham.
John Huſon.
John Berkſtead.
Edward Whalley.
John Okey.
Edmond Harvey.
Adrian Scroope.
Henry Smith.
Thomas Scot.
William Cawley.
Gilbert Millington.
Thomas Challoner.
John Carew.
Sir *John Bourchier*, Kt.
Sir *Tho. Maleverer*, Bar.
Francis Allen.
Thomas Harriſon.
John Jones.
John Alured.
John Brown.
Iſaac Ewers.
Robert Tichbourne.
Auguſtine Garland.
Francis Laſſels.
John Dixwell.
Sir *Michael Liveſey*, Bar.
John Venn.
Edmond Wild.
With divers others.

Here the Court ſat private.

The Court ordered, That the Marſhal-Gen. of this Army, or his Deputy, do bring forthwith Mr. *Holder* Priſoner at *Whitehall*, to the End that he may teſtify his Knowledge of all ſuch Matters as ſhall be propounded unto him concerning the Charge againſt the King.

Ordered, That the Dean's Houſe in *Weſtminſter-Abbey* be provided and furniſhed for the Lodging of the Lord Preſident and his Servants, Guards and Attendants ; and a Committee are appointed to take Care hereof accordingly.

Mr. *Henry Gouge* and Mr. *William Cuthbert*, Witneſſes produced to the Charge againſt the King, were ſworn and examined.

The Witneſſes ſworn in open Court, and after examined by the Committee appointed for that Purpoſe the 24th Inſtant, were now in open Court called, and their reſpective Depoſitions were read to them ; who did avow their ſaid ſeveral Depoſitions, and affirm what was ſo read unto them reſpectively was true, upon the Oaths they had taken.

The Court being informed, that Major *Fox*, being of the Guard attending the Lord Preſident, is arreſted, and committed to the Keeper of *Ludgate :*

Ordered, That the ſaid Keeper do forthwith bring the ſaid Major before this Court, and attend this Court in Perſon himſelf.

Mr. *Holder* being brought before this Court according to the Order of this Day, and his Oath tendered unto him, to give Evidence to ſuch Matters as ſhould be propounded unto him concerning the Charge againſt the King ; the ſaid Mr. *Holder* deſired to be ſpared from giving Evidence againſt the King.

Whereupon the Commiſſioners finding him already a Priſoner, and perceiving that the Queſtions intended to be aſked him, tended to accuſe himſelf, thought fit to wave his Examination, and remanded him (and accordingly did ſo) to the Priſon from whence he was brought.

The Depoſitions taken *ut ſupra*, are as followeth, *viz.*

Jan. 25. 1648.

William Cuthbert of *Patrington* * in *Holderneſs*, Gent. aged 42 Years, or thereabouts, ſworn and examined, ſaith, That he, this Deponent, living at *Hull-Bridge* near *Beverly*, in *July* 1642, did then hear that Forces were raiſed, about three thouſand Foot, for the King's Guard under Sir *Robert Strickland.*

* Holderneſs *is in the County of* York.

And this Deponent further ſaith, That about the ſecond of *July* 1642, he ſaw a Troop of Horſe come to *Beverly*, being the Lord's-Day, about Four or Five of the Clock in the Afternoon, called the Prince's Troop ; Mr. *James Nelthorp* being then Major of the ſaid Town.

And this Deponent further ſaith, That he did ſee that Afternoon the ſaid Troop march from *Beverly* aforeſaid into *Holderneſs*, where they received Ammunition brought up by the River *Humber* unto them.

And this Deponent further ſaith, That the ſame Night, being *Sunday*, there came about three Hundred Foot-Soldiers (ſaid to be Sir *Robert Strickland*'s Regiment), under the Command of Lieutenant-Col. *Duncombe*, and called the King's Guard, unto this Deponent's Houſe, called *Hull-Bridge*, near *Beverly*, about Midnight, and broke open, entered and poſſeſſed themſelves of the ſaid Houſe ; and that the Earl of *Newport*, the Earl of *Carnarvan*, and divers others came that Night thither to the ſaid Forces : And that the ſame Night (as this Deponent was then informed) Sir *Tho. Gower*, then High Sheriff of the ſaid County, came thither, and left there a Warrant for ſtaying all Proviſions from going to *Hull* to Sir *John Hotham* ; which ſaid Warrant was then delivered to this Deponent, being Conſtable, by Lieut. Col. *Duncombe.*

And this Deponent further ſaith, That he was by the ſaid Forces put out of his Houſe, and did with his Family go to *Beverly* ; and that after that, *viz.* the *Thurſday* following, to this Deponent's beſt Remembrance, he did ſee the King come to *Beverly*, to the Lady *Gee*'s Houſe there ; where he, this Deponent, did often ſee the King, with Prince *Charles* and the Duke of *York :* And that the Trained Bands were then raiſed in *Holderneſs* ; who were raiſed (as was generally reported) by the King's Command.

And this Deponent further ſaith, That the Night after the ſaid Forces had, as aforeſaid, poſſeſſed themſelves of this Deponent's Houſe, Col. *Legard*'s Houſe was plundered by them, being upon a *Monday* ; which aforeſaid Entry of this Deponent's Houſe, was the firſt * Act of Hoſtility that was committed in thoſe Parts.

* *Sir* John Hotham'*s keeping* Hull *as a Garriſon againſt the King, which was before this, was, it ſeems, no Act of Hoſtility, in this perjur'd Villain's account.* Nalſ.

And this Deponent further ſaith, That after the ſaid Sir *Robert Strickland*'s ſaid Company was gone from *Hull-Bridge*, having continued there about ten Days, there then came to the ſaid Houſe Col. *Wivel*, with about ſeven hundred Foot Soldiers, who then took up his Quarters at *Hull-Bridge* aforeſaid. And this Deponent further ſaith, That the Warrant he now produceth to this Court, is the ſame original Warrant aforeſaid ſpoken of.

And this Deponent further ſaith, That the General's Name of the ſaid Forces that were there, and raiſed as aforeſaid, was the Earl of *Lindſey* ; and that this Deponent was brought before him the ſaid General, in the Name of the King's Lord General, for holding Intelligence with Sir *John Hotham*, then Governor of *Hull* ; and becauſe it was then informed to the ſaid General, that he this Deponent had Proviſions of Corn to ſend over unto *Ireland*, which he this Deponent was forbidden by the ſaid General to ſend unto *Ireland*, or any Place elſe, without his or the King's Direction or Warrant firſt had in that Behalf.

The aforeſaid Warrant, mentioned in the Depoſition of the ſaid *William Cuthbert*, is as followeth :

‘ IT is his Majeſty's Command, that you do not ſuffer any Victuals or ‘ Proviſion, of what ſort ſoever, to be carried into the Town of *Hull*, ‘ without his Majeſty's ſpecial Licence firſt obtained. And of this you ‘ are not to fail at your Peril.’

Dated at Beverley, 3 Julij, 1642.

Tho. Gower, Vi. Co.

To all Head-Conſtables and Conſtables in the Eaſt-Riding *of the County of* York, *and to all other his Majeſty's Loyal Subjects.*

John Bennet of *Harwood*, in the County of *York*, Glover, ſworn and examined, ſaith, That he being a Soldier under the King's Command, the firſt Day that the King's Standard was ſet up at *Nottingham*, which was about the middle of Summer laſt was ſix Years, he this Examinant did work at *Nottingham*; and that he did ſee the King within the Caſtle of *Nottingham*, within two or three days after the ſaid Standard was ſo ſet up; and that the ſaid Standard did fly the ſame day that the King was in the ſaid Caſtle, as aforeſaid: and this Deponent did hear that the King was at *Nottingham* the ſame day that the ſaid Standard was ſet up, and before.

And this Deponent further ſaith, That he this Deponent, and the Regiment of which he then was, had their Colours then given them; and Sir *William Penyman* being the Colonel of the ſaid Regiment, the ſaid Sir *William Penyman* was preſent with his ſaid Regiment at that Time.

And this Deponent further ſaith, That there was then there the Earl of *Lindſey*'s Regiment, who had then their Colours given them, and that the ſaid Earl of *Lindſey* was then alſo proclaimed there the King's General; and that it was proclaimed then there likewiſe in the King's Name, at the Head of every Regiment, that the ſaid Forces ſhould fight againſt all that came to oppoſe the King, or any of his Followers; and in particular againſt the Earl of *Eſſex*, the Lord *Brooke*, and divers others: and that they the ſaid Earl of *Eſſex*, the Lord *Brooke*, and divers others, were then proclaimed Traytors; and that the ſame Proclamations were printed, and diſperſed by the Officers of the Regiments throughout every Regiment.

And this Deponent further ſaith, That the ſaid Standard was advanced upon the higheſt Tower of *Nottingham*-Caſtle; and that he this Deponent did ſee the King often in *Nottingham* at that Time that the ſaid Forces continued at *Nottingham* as aforeſaid, they continuing there for the ſpace of one Month; and that the Drums for raiſing Volunteers to fight under the King's Command, were then beaten all the ſaid County over, and divers other Forces were raiſed there.

And this Deponent further ſaith, That he did take up Arms under the King's Command as aforeſaid, for fear of being plundered; Sir *William Penyman* giving out that it were a good Deed to fire the ſaid Town, becauſe they would not go forth in the King's Service: and that this Deponent's Father did thereupon command him this Deponent to take up Arms as aforeſaid, and that divers others (as they did confeſs) did then alſo take up Arms for the King, for fear of being plundered.

And this Deponent further ſaith, That in or about the Month of *October*, 1642, he did ſee the King at *Edge-Hill* in *Warwickſhire*; where he ſitting on horſeback while his Army was drawn up before him[*], did ſpeak to the Colonel of every Regiment that paſſed by him, that he would have them ſpeak to their Soldiers to encourage them to ſtand it, and to fight againſt the Lord of *Eſſex*, the Lord *Brooke*, Sir *William Waller*, and Sir *William Balfour*.

[*] *How is it poſſible this Fellow could ſwear the King ſpoke this to every Colonel, ſeeing it was as they paſſed by? and when his Colonel was paſſed by, he could hear no more.* Nalſ.

And this Deponent ſaith, That he did ſee many ſlain at the Fight at *Edge-Hill*, and that afterwards he did ſee a Liſt brought in unto *Oxford*, of the men which were ſlain in that Fight; by which it was reported, that there were ſlain 6559 Men.

And this Deponent further ſaith, Afterwards, in or about the Month of *November* 1642, he did ſee the King in the head of his Army at *Hounſlow-Heath* in *Middleſex*, Prince *Rupert* then ſtanding by him. And he this Deponent did then hear the King encourage ſeveral Regiments of *Welſhmen* (then being in the Field) which had run away at *Edge-Hill*, ſaying unto them, that he did hope they would regain their Honour at *Brentford*, which they had loſt at *Edge-Hill*.

William Brayne of *Wixhall* in the County of *Salop*, Gent. being ſworn and examined, depoſeth, That about *Auguſt* in the Year 1642, this Deponent ſaw the King at *Nottingham*, while the Standard was ſet up, and the Flag flying; and that he this Deponent much about the ſame Time marched with the King's Army from *Nottingham* to *Derby*, the King himſelf being then in the Army: And about *September* the ſaid Year, he this Deponent was put upon his Trial at *Shrewſbury* as a Spy, before Sir *Robert Heath*, and other Commiſſioners of *Oyer* and *Terminer*, the King then being in Perſon in *Shrewſbury*.

Henry Hertford of *Stratford upon Avon* in *Warwickſhire*, ſworn and examined, depoſeth, That about Corn-Harveſt in the Year 1642, this Deponent ſaw the King in *Nottingham-Caſtle*, while the Standard was ſet upon one of the Towers of the ſaid Caſtle, and the Flag flying.

And he further ſaith and depoſeth, That he this Deponent ſaw the King the ſame Year about the Month of *November* in *Brentford* Town on Horſeback, with a great many Commanders about him, on a *Sunday* Morning, when on the *Saturday* Night before there were a great many of the Parliament's Forces ſlain by the King's Forces in the ſaid Town.

Robert Lacy of the Town and County of *Nottingham*, Painter, ſworn and examined, depoſeth, That he this Deponent, in Summer-time in the Year 1642, by Order from my Lord *Beaumont*, did paint the Standard-Pole which was ſet up on the Top of the old Tower of *Nottingham Caſtle*. And he further ſaith, That he ſaw the King in the Town of *Nottingham* divers Times while the Standard was up there, and the Flag flying; and the King did lie at the Houſe of my Lord of *Clare* in *Nottingham* Town, and that he this Deponent did then and there ſee the King many times.

Edward Roberts of *Biſhops-Caſtle* in the County of *Salop*, Ironmonger, ſworn and examined, ſaith and depoſeth, That he this Deponent ſaw the King in *Nottingham* Town while the Standard was ſet upon the High-Tower in *Nottingham-Caſtle*.

And he further ſaith, That he ſaw the King at the Head of the Army at *Shrewſbury*, upon the March towards *Edge-Hill*, and that he likewiſe ſaw the King in the Rear of his Army in *Keynton-Field*; and likewiſe ſaw the King upon the *Sunday* Morning at *Brentford*, after the Fight upon the *Saturday* next before, in the ſaid Town.

Robert Loads of *Cottam* in *Nottinghamſhire*, Tiler, ſworn and examined, ſaith, That he this Deponent about *October* in the Year 1642, ſaw the King in the Rear of his Army in *Keynton-Field* upon a *Sunday*, where he ſaw many ſlain on both Sides.

And he further ſaith, That he ſaw the King in *Cornwall* in his Army, near the Houſe of my Lord *Mohun*, about *Leſtwithiel*, about Corn-Harveſt 1644.

Samuel Morgan of *Wellington* in *Com. Salop*, Felt-maker, ſworn and examined, depoſeth, That he this Deponent upon a *Sunday* Morning in *Keynton-Field* ſaw the King upon the Top of *Edge-Hill*, in the Head of the Army, ſome two hours before the Fight, which happened after *Michaelmas* on a *Sunday* the Year 1642. And he this Deponent ſaw many Men killed on both Sides in the ſame Time and Place.

And he further ſaith, That in the Year 1644, he this Deponent ſaw the King in his Army near *Cropredy-Bridge*, where he ſaw the King light off his Horſe, and draw up the Body of his Army in Perſon himſelf.

James Williams of Roſs in *Herefordſhire*, Shoemaker, ſworn and examined, depoſeth, That he this Deponent, about *October*, the Year 1642, ſaw the King in *Keynton-Field*, below the Hill in the Field, with his Sword drawn in his Hand; at which Time and Place there was a great Fight, and many killed on both Sides.

And he further depoſeth, That he ſaw the King at *Brentford* on a *Sunday* in the Forenoon, in *November* the Year aforeſaid, while the King's Army was in the ſaid Town, and round about it.

John Pyneger of the Pariſh of *Hainer* in the County of *Derby*, Yeoman, aged 37 Years or thereabout, ſworn and examined, ſaith, That about *Auguſt* 1642, he the Deponent ſaw the King's Standard flying upon one of the Towers of *Nottingham-Caſtle*; and that upon the ſame Day he ſaw the King in *Thurland-Houſe*, being the Earl of *Clare*'s Houſe in *Nottingham*, in the Company of Prince *Rupert*, Sir *John Digby*, and other Perſons, both Noblemen and others; and that the King had at the ſame Time in the ſaid Town, a Train of Artillery, and the ſaid Town was then full of the King's Soldiers.

Samuel Lawſon of *Nottingham*, Maltſter, aged thirty Years, or thereabouts, ſworn and examined, ſaith, That about *Auguſt* 1642, he this Deponent ſaw the King's Standard brought forth of *Nottingham-Caſtle*, borne upon divers Gentlemens Shoulders, who (as the Report was) were Noblemen; and he ſaw the ſame by them carried to the Hill cloſe adjoining to the Caſtle, with a Herald before it, and there the ſaid Standard was erected with great Shoutings, Acclamations, and Sound of Drums and Trumpets; and that when the ſaid Standard was ſo erected, there was a Proclamation made: and that he this Deponent ſaw the King preſent at the erecting thereof. And this Deponent further ſaith, That the ſaid Town was then full of the King's Soldiers, of which ſome quartered in this Deponent's Houſe; and that when the King with his ſaid Forces went from the ſaid Town, the Inhabitants of the ſaid Town were forced to pay a great Sum of Money to the King's Army, being threatned, that in caſe they ſhould refuſe to pay it, the ſaid Town ſhould be plundered.

Arthur Young, Citizen and Barber-Chirurgeon of *London*, being aged twenty-nine Years, or thereabouts, ſworn and examined, ſaith, That he this Deponent was preſent at the Fight at *Edge-Hill*, between the King's Army and the Parliament's, in *October* 1642, and he did then ſee the King's Standard advanced, and flying in his Army in the ſaid Fight. And that he this Deponent did then take the King's ſaid Standard in that Battle from the King's Forces, which was afterwards taken from him by one *Middleton*, who was afterwards made a Colonel.

Thomas Whittington of the Town and County of *Nottingham*, Shoemaker, aged twenty-two years, ſworn and examined, ſaith, That he this Deponent ſaw the King in the Town of *Nottingham* the ſame Day that his Standard was firſt ſet up in *Nottingham-Caſtle*, being about the Beginning of *Auguſt* 1642, and that the King then went from his Lodgings at *Thurland-Houſe* towards the ſaid Caſtle; and that he this Deponent ſaw him ſeveral Times, about that Time, in *Nottingham*, there being divers Soldiers at that Time in the ſaid Town, who were called by the Name of *the King's Soldiers*.

And this Deponent further ſaith, That he ſaw the King's Standard flying upon the Old Tower in the ſaid Caſtle.

John Thomas of *Llangollen*, in the County of *Denbigh*, Huſbandman, aged twenty-five Years, or thereabouts, ſworn and examined, ſaith, That he ſaw the King at *Brentford* in the County of *Middleſex*, on a *Saturday* Night at Twelve of the Clock, ſoon after *Edge-Hill* Fight, attended with Horſe and Foot Soldiers, the King being then on horſeback, with his Sword by his Side; and this Deponent then heard the King ſay to the ſaid Soldiers, as he was riding through the ſaid Town, Gentlemen, you loſt your Honour at *Edge-Hill*, I hope you will regain it again here; or Words to that Effect.

And this Deponent further ſaith, That there were ſome Skirmiſhes between the King's Army and the Parliament's Army, at the ſame Time, both before and after the King ſpake the ſaid Words; and that many Men were ſlain on both Sides.

Richard Blomfield, Citizen and Weaver of *London*, aged thirty-five Years, or thereabouts, ſworn and examined, ſaith, That at the Defeat of the Earl of *Eſſex*'s Army in *Cornwall*, he this Deponent was there, it being at the latter End of the Month of *Auguſt*, or Beginning of *September* 1644, at which Time, he this Deponent ſaw the King at the Head of his Army, near *Foy*, on horſeback: And further he ſaith, That he did then ſee divers of the Lord of *Eſſex*'s Soldiers plundered, contrary to Articles then lately made, near the Perſon of the King.

William Jones of *Uſke* in the County of *Monmouth*, Huſbandman, aged twenty-two Years, or thereabout, ſworn and examined, ſaith, That he this Deponent did ſee the King within two Miles of *Naſeby-Field*, the King then coming fromwards *Harborough*, marching in the Head of his Army, towards *Naſeby-Field* where the Fight was; and that he this Deponent did then ſee the King ride up to the Regiment which was Col. *St. George*'s, and there the Deponent did hear the King aſk the Regiment, *Whether they were willing to fight for him?* To which the Soldiers made an Acclamation, crying, *All, All.*

And this Deponent further ſaith, That he ſaw the King in *Leiceſter* with his Forces, the ſame Day that the King's Forces had taken it from the Parliament's Forces.

And this Deponent further ſaith, That he ſaw the King in his Army that beſieged *Glouceſter*, at the Time of the ſaid Siege.

Humphrey Browne of *Whitſondine* in the County of *Rutland*, Huſbandman, aged twenty-two Years or thereabouts, ſworn and examined, ſaith, That at ſuch Time as the Town of *Leiceſter* was taken by the King's Forces, being in or about *June*, 1645, *Newark-Fort* in *Leiceſter* aforeſaid was ſurrendered to the King's Forces, upon Compoſition, that neither Clothes nor Money ſhould be taken away from any of the Soldiers of that Fort, which had ſo ſurrendered, nor any Violence offered to them; and that as ſoon as the ſaid Fort was upon ſuch Compoſition ſo ſurrendered as aforeſaid, the King's Soldiers, contrary to the Articles, fell upon the Soldiers of the ſaid Fort, ſtripp'd, cut and wounded many of them: whereupon one of the King's Officers rebuking ſome of thoſe that did ſo abuſe the ſaid Parliament's Soldiers, this Deponent did then hear the King reply, *I do not care if they cut them three times more, for they are mine Enemies*, or Words to that Effect: And that the King was then on horſeback, in bright Armour, in the ſaid Town of *Leiceſter*.

David Evans of *Abergenny* in the County of *Monmouth*, Smith, aged about twenty-three Years, ſworn and examined, ſaith, That about half an Hour before the Fight at *Naſeby*, about Midſummer in *June* 1645, he ſaw the King marching up to the Battle in the Head of his Army, being about half a Mile from the Place where the ſaid Battle was fought.

Diogenes Edwards of *Carſton*, in the County of *Salop*, Butcher, aged twenty-one, or thereabouts, ſworn and examined, ſaith, That in *June* 1645, he this Deponent ſaw the King in the Head of his Army an Hour and a half before the Fight in *Naſeby-Field*, marching up to the Battle, being then a Mile and a half from the ſaid Field: And this Deponent ſaith, that he did afterwards the ſame Day ſee many ſlain at the ſaid Battle.

Gyles Gryce of *Wellington*, in *Shropſhire*, Gent. ſworn and examined, depoſeth, That he this Deponent ſaw the King in the Head of his Army at *Cropredy-Bridge*, with his Sword drawn in his Hand that Day when the Fight was againſt Sir *William Waller*, on a *Friday*, as this Deponent remembreth, in the Year 1644, about the Month of *July*. And he further ſaith,

That he ſaw the King in the ſame Summer in *Cornwall*, in the Head of his Army, about *Leſtwithiel*, at ſuch Time as the Earl of *Eſſex* was there with his Army. And he further ſaith,

That he alſo ſaw the King in the Head of his Army at the ſecond Fight near *Newbury*. And farther ſaith,

That he ſaw the King in the Front of the Army in *Naſeby-Field*, having Back and Breaſt on. And he further ſaith,

That he ſaw the King at the Head of the Army, at what time the Town of *Leiceſter* was ſtormed, and ſaw the King ride into the Town of *Leiceſter*, after the Town was taken; and he ſaw a great many Men killed on both Sides at *Leiceſter*, and many Houſes plundered.

John Vinſon of *Damorham*, in the County of *Wilts*, Gent. ſworn and examined, ſaith, That he did ſee the King at the firſt *Newbury* Fight, about the Month of *September* 1643, in the Head of his Army, where this Deponent did ſee many ſlain on both Sides. This Deponent alſo ſaith,

That he did ſee the King at the ſecond Battle at *Newbury*, about the Month of *November* 1644, where the King was at the Head of his Army in complete Armour, with his Sword drawn; and this Deponent did then ſee the King lead up Col. *Tho. Howard*'s Regiment of Horſe, and did hear him make a Speech to the Soldiers, in the Head of that Regiment, to this effect; that is to ſay, *That the ſaid Regiment ſhould ſtand to him that Day, for that his Crown lay upon the Point of the Sword; and if he loſt that Day, he loſt his Honour and his Crown for ever.* And that this Deponent did ſee many ſlain on both Sides at that Battle. This Deponent further ſaith,

That he did ſee the King in the Battle at *Naſeby-Field* in *Northamptonſhire*, on or about the Month of *June* 1645, where the King was then completely armed with Back, Breaſt and Helmet, and had his Sword drawn, where the King himſelf, after his Party was routed, did rally up the Horſe, and cauſed them to ſtand; and at that Time this Deponent did ſee many ſlain on both Sides.

George Seeley of *London*, Cordwainer, ſworn and examined, ſaith, That he did ſee the King at the Head of a Brigade of Horſe, at the Siege of *Glouceſter*, and did alſo ſee the King at the firſt Fight at *Newbury*, about the Month of *September* 1643, where the King was at the Head of a Regiment of Horſe, and that there were many ſlain at that Fight on both Sides. This Deponent alſo ſaith,

That he did ſee the King at the ſecond Fight at *Newbury*, which was about *November* 1644, where the King was in the middle of his Army.

John Moore of the City of *Cork* in *Ireland*, Gent. ſworn and examined, ſaith, That at the laſt Fight at *Newbury*, about the Month of *November* 1644, he this Deponent did ſee the King in the middle of the Horſe, with his Sword drawn; and that he did ſee abundance of Men at that Fight ſlain upon the Ground on both Sides. This Deponent alſo ſaith,

That he did ſee the King ride into *Leiceſter* before a Party of Horſe the ſame Day that *Leiceſter* was taken by the King's Forces, which was about the Month of *June* 1645.

This Deponent further ſaith, That he did ſee the King, before the Fight at *Leiceſter*, at *Cropredy-Bridge*, in the midſt of a Regiment of Horſe; and that he did ſee many ſlain at the ſame Time, when the King was in the Fight at *Cropredy-Bridge*.

And laſtly, this Deponent ſaith, That he did ſee the King at the Head of a Regiment of Horſe at *Naſeby* Fight, about the Month of *June* 1645, where he did ſee abundance of Men cut, ſhot, and ſlain.

Thomas Ives of *Boyſet*, in the County of *Northampton*, Huſbandman, ſworn and examined, ſaith, That he did ſee the King in his Army at the firſt Fight in *Newbury* in *Berkſhire*, in the Month of *September* 1643, and that he did ſee many ſlain at that Fight; he this Deponent and others, with a Party of Horſe, being commanded to face the Parliament's Forces, whilſt the Foot did fetch off the Dead.

He ſaith alſo, That he did ſee the King advance with his Army to the Fight at *Naſeby* Field in *Northamptonſhire*, about *June* 1645, and that he did again at that Fight ſee the King come off with a Party of Horſe after that his Army was routed in the Field; and that there were many Men ſlain on both Parts, at that Battle at *Naſeby*.

Thomas Rawlins of *Hanſlop*, in the County of *Bucks*, Gent. ſworn and examined, ſaith, That he did ſee the King near *Foy* in *Cornwall*, in or about the Month of *July* 1644, at the Head of a Party of Horſe; and this Deponent did ſee ſome Soldiers plunder after the Articles of Agreement made between the King's Army and the Parliament's Forces; which Soldiers were ſo plundered by the King's Party not far diſtant from the Perſon of the King.

Thomas Read of *Maidſtone*, in the County of *Kent*, Gent. ſworn and examined, ſaith, That preſently after the laying down of Arms in *Cornwall*, between *Leſtwithiel* and *Foy*, in or about the latter End of the Month of *Auguſt*, or the Beginning of *September* 1644, he this Deponent did ſee the King in the Head of a Guard of Horſe.

James Croſby of *Dublin* in *Ireland*, Barber, ſworn and examined, ſaith, That at the firſt Fight at *Newbury*, about the Time of Barley-Harveſt 1643, he this Deponent did ſee the King riding from *Newbury-Town*, accompanied with divers Lords and Gentlemen, towards the Place where his Forces were then fighting with the Parliament's Army.

Samuel Burden of *Lyneham*, in the County of *Wilts*, Gent. ſworn and examined, ſaith, That he this Deponent was at *Nottingham* in or about the Month of *Auguſt* 1642, at which Time he ſaw a Flag flying upon the Tower of *Nottingham-Caſtle*; and that the next Day afterwards he did ſee the King at *Nottingham*, when the ſaid Flag was ſtill flying; which Flag this Deponent then heard was the King's Standard.

He ſaith alſo, That he did afterwards ſee the King at *Cropredy-Bridge* in the Head of his Army, in a Fallow-Field there; and did ſee the King in purſuit of Sir *William Waller*'s Army, being then routed, which was about the Month of *July* 1644. and at that Time this Deponent did ſee many People ſlain upon the Ground.

And further this Deponent ſaith, That in or about the Month of *November* 1644, he did ſee the King at the laſt Fight at *Newbury*, riding up and down the Field from Regiment to Regiment, whilſt his Army was there fighting with the Parliament's Forces; and this Deponent did ſee many Men ſlain at that Battle, on both Sides.

Michael Potts of *Sharpereton*, in the County of *Northumberland*, Vintner, ſworn and examined, depoſeth, That he this Deponent ſaw the King in the Head of the Army in the Fields about a Mile and a half from *Newbury-Town*, upon the Heath, the Day before the Fight was, it being about Harveſt-tide in the Year 1643.

And he further ſaith, That he ſaw the King on the Day after, when the Fight was, ſtanding near a great Piece of Ordnance in the Fields.

And he further ſaith, That he ſaw the King in the ſecond *Newbury* Fight in the Head of his Army, being after or about *Michaelmas* 1644.

And he further ſaith, That he ſaw a great many Men ſlain at both the ſaid Battles.

And he further ſaith, That he ſaw the King in the Head of his Army near *Cropredy-Bridge* in the Year 1644.

And he further ſaith, That he ſaw the King in the Head of his Army in *Cornwall*, near *Leſtwithiel*, while the Earl of *Eſſex* lay there with his Forces about the middle of Harveſt 1644.

George Cornwall of *Aſton*, in the County of *Hereford*, Ferry-man, aged fifty Years, or thereabouts, ſworn and examined, ſaith, That he, this Deponent, did ſee the King near *Cropredy-Bridge*, about the Time of mowing of Corn 1644, in the Van of the Army there, and that he drew up his Army upon a Hill, and faced the Parliament's Army; and that there was thereupon a Skirmiſh between the King's and the Parliament's Army, where he this Deponent ſaw divers Perſons ſlain on both Sides.

The Examination of Henry Gooche *of* Grays-Inn, *in the County of* Middleſex, *Gent. ſworn and examined.*

This Deponent ſaith, That upon or about the thirtieth Day of *September* laſt, he, this Deponent, was in the Iſle of *Wight*, and had Acceſs unto and Diſcourſe with the King, by the Means of the Lord Marquiſs of *Hertford* and Commiſſary *Morgan*: where this Deponent told the King, That his Majeſty had many Friends; and that ſince his Majeſty was pleaſed to juſtify the Parliament's firſt taking up Arms, the moſt of the *Preſbyterian* Party, both Soldiers and others, would ſtick cloſe to him. To which the King anſwered thus, That he would have all his old Friends know, that though for the preſent he was contented to give the Parliament Leave to call their own War what they pleaſed, yet that he neither did at that Time, nor ever ſhould decline the Juſtice of his own Cauſe.

And this Deponent told the King, That his Buſineſs was much retarded, and that neither Col. *Thomas*, nor any other, could proceed to Action, through want of Commiſſion.

The King anſwered, That he being upon a Treaty, would not diſhonour himſelf; but that if he, this Deponent, would take the Pains to go over to the Prince, his Son, (who had full Authority from him) he the ſaid Deponent, or any for him, ſhould receive whatſoever Commiſſions ſhould be deſired; and to that Purpoſe he would appoint the Marquiſs of *Hertford* to write to his Son in his Name: and was pleaſed to expreſs much Joy and Affection, that his good Subjects would engage themſelves for his Reſtoration.

Robert Williams of the Pariſh of *St. Martin's*, in the County of *Cornwall*, Huſbandman, aged twenty-three Years, or thereabouts, ſworn and examined, ſaith, That he, this Deponent, did ſee the King marching in the Head of his Army about *September* 1644, a Mile from *Leſtwithiel* in *Cornwall*, in Armour, with a ſhort Coat over it unbuttoned.

And this Deponent further ſaith, That he ſaw him after that in *St. Auſtell Downs*, drawing up his Army.

And this Deponent ſaith, He did after that ſee the King in the Head of his Army near *Foy*, and that the Earl of *Eſſex* and his Army did then lie within one Mile and a Half of the King's Army.

The Witneſſes being examined as aforeſaid, the Court adjourned for an Hour.

25 Jan. 1648. *poſt Merid.*

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Daniel Blagrave.
John Okey.
Henry Marten.
John Carew.
Thomas Horton.
Sir *Michael Liveſey*, Bar.
Owen Roe.
Sir *John Bourchier*, Kt.
Thomas Scot.
John Moore.
Oliver Cromwell.
William Goffe.
Richard Deane.
Cornelius Holland.
Thomas Harriſon.
Robert Lilbourne.
John Downes.
Edmond Ludlow.
Peregrine Pelham.
Sir *Henry Mildmay.*
John Jones.
Valentine Wauton.
Sir *Gregory Norton*, Bar.
Sir *Tho. Maleverer*, Bar.
Adrian Scroope.
Henry Smith.
Anthony Stapeley.
John Huſon.
Sir *William Conſtable*, Bar.
John Berkſtead.
Sir *John Danvers.*
Edward Whalley.
Thomas Waite.
William Purefoy.
Thomas Pride.
John Fry.
John Blackiſtone.
Sir *Hardreſs Waller* Knt.
John Venn.
Robert Tichbourne.
Humphrey Edwards.
Peter Temple.
Vincent Potter.
William Cawley.
Iſaac Ewers.

Richard Price of *London*, Scrivener, was produced a Witneſs to the Charge againſt the King; who being ſworn and examined, ſaith,

That upon Occaſion of ſome tampering by the King's Agents with the *Independents* in and about *London*, to draw them from the Parliament's Cauſe to the King's Party; and this being diſcover'd by ſome of thoſe ſo tamper'd with, unto ſundry Members of the Committee of Safety, who directed a carrying on of a ſeeming Compliance with the King; he, this Deponent, did travel to *Oxford* in *January* 1643. having a Safe-Conduct under the King's Hand and Seal, which he this Deponent knoweth to be ſo; for that the King did own it when he was told that this Deponent was the Man that came to *Oxon* with that Safe-Conduct.

And this Deponent alſo ſaith, That after ſundry Meetings between him and the Earl of *Briſtol*, about the drawing of the *Independents* unto the King's Cauſe againſt the Parliament, the Subſtance of the Diſcourſe at which Meetings, the ſaid Earl told this Deponent, was communicated to the King; he, this Deponent, was by the ſaid Earl brought to the King to confer further about that Buſineſs; where the King declared, That he was very ſenſible that the *Independents* had been the moſt active Men in the Kingdom for the Parliament againſt him: And thereupon perſuaded this Deponent to uſe all means to expedite their turning to him and his Cauſe. And for their better Encouragement, the King promiſed in the Word of a King, That if they, the *Independents*, would turn to him, and be active for him againſt the Parliament, as they had been active for them againſt him, then he would grant them whatſoever Freedom they would deſire. And the King did then refer this Deponent unto the Earl of *Briſtol*, for the further proſecuting of the ſaid Buſineſs.

And the ſaid Earl thereupon (this Deponent being withdrawn from the King) did declare unto this Deponent, and willed him to impart the ſame unto the *Independents* for their better Encouragement, That the King's Affairs proſpered well in *Ireland*; That the *Iriſh* Subjects had given the Rebels (meaning the Parliament's Forces) a great Defeat; That the King had ſent the Lord *Byron* with a ſmall Party towards *Cheſhire*, and that he was greatly multiply'd, and had a conſiderable Army, and was then before *Namptwich*, and would be ſtrengthen'd with more Soldiers out of *Ireland*, which were come and expected daily. And when this Deponent was to depart out of *Oxford*, four Safe-Conducts with Blanks in them, for the inſerting of what Names this Deponent pleaſed, were deliver'd to him, under the King's Hand and Seal. And one *Ogle* was ſent out of *Oxon* with this Deponent, to treat about the delivering up of *Ailſbury* to the King, it being then a Garriſon for the Parliament, and at the ſame time *Oxford* was a Garriſon for the King.

Several Papers and Letters of the King's, under his own Hand, and of his own Writing, and other Papers are produced, and read in open Court.

Mr. *Thomas Challoner* alſo reporteth ſeveral Papers and Letters of the King's Writing, and under the King's own Hand.

After which the Court ſat private.

The Court taking into Conſideration the whole Matter in Charge againſt the King, paſſed theſe *Votes* following, as preparatory to the Sentence againſt the King, but ordered that they ſhould not be binding finally to conclude the Court, *viz.*

Reſolved, upon the whole Matter, That this Court will proceed to Sentence of Condemnation againſt *Charles Stuart*, King of *England*.

Reſolved, *&c.* That the Condemnation of the King ſhall be for a Tyrant, Traytor, and Murderer.

That the Condemnation of the King ſhall be likewiſe for being a publick Enemy to the Commonwealth of *England*.

That this Condemnation ſhall extend to Death.

Memorandum, *The laſt fore-mentioned Commiſſioners were preſent at theſe Votes.*

The Court being then moved concerning the Depoſition and Deprivation of the King before, and in order to that part of his Sentence which concerned his Execution, thought fit to defer the Conſideration thereof to ſome other time; and order'd the Draught of a Sentence grounded upon the ſaid Votes, to be accordingly prepared by Mr. *Scot*, Mr. *Marten*, Col. *Harriſon*, Mr. *Liſle*, Mr. *Say*, Commiſſary Gen. *Ireton* and Mr. *Love*, or any three of them, with a Blank for the Manner of his Death.

Ordered, That the Members of this Court, who are in or about *London*, and are not now preſent, be ſummoned to attend the Service of this Court to-morrow at One of the Clock in the Afternoon: for whom Summons were iſſued forth accordingly.

The Court adjourned itſelf till the Morrow at One of the Clock in the Afternoon.

Veneris, 26 Jan. 1648. *poſt Merid.*
Painted Chamber.

THREE Proclamations. The Court called.

The Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Oliver Cromwell.
Henry Ireton.
Sir *Hardreſs Waller.*
Valentine Wauton.
Thomas Harriſon.
Edw. Whalley.
Thomas Pride.
Iſaac Ewers.
Tho. Ld. *Grey* of *Grooby.*
Sir *John Danvers.*
Sir *Henry Mildmay* Knt.
William Heveningham.
Henry Marten.
William Purefoy.
John Blackiſtone.
Gilbert Millington.
Sir *William Conſtable* Bar.
Edmond Ludlow.
John Hutchinſon.
Sir *Michael Liveſey* Bar.
Robert Tichbourne.
Owen Rowe.
Adrian Scroope.
John Dixwell.
Simon Meyne.
Peter Temple.
Thomas Waite.
Cornelius Holland.
Thomas Scot.
Francis Allen.
Richard Deane.
John Okey.
John Huſon.
John Carew.
John Jones.
Miles Corbet.
William Goffe.
Peregrine Pelham.
John Moore.
William Lord *Mounſon.*
Humphrey Edwards.
Thomas Wogan.
Sir *Gregory Norton*, Bar.
John Dove.
John Venn.
William Cawley.
Anthony Stapeley.
John Downes.
Thomas Horton.
Thomas Hammond.
John Liſle.
Nicholas Love.
Auguſtine Garland.
George Fleetwood.
James Temple.
Daniel Blagrave.
John Browne.
Henry Smith.
John Berkſtead.
Sir *Tho. Maleverer* Bar.
Vincent Potter.

Sixty-two Commiſſioners preſent.

Here the Court ſat private.

The Draught of a Sentence againſt the King is, according to the Votes of the 25th Inſtant, prepared; and after ſeveral Readings, Debates, and Amendments, by the Court thereupon,

Reſolved, *&c.* That this Court do agree to the Sentence now read.

That the ſaid Sentence ſhall be ingroſſed.

That the King be brought to *Weſtminſter* to-morrow to receive his Sentence.

The Court adjourned itſelf till the morrow at Ten of the Clock in the Morning to this Place; the Court giving notice, That they then intended to adjourn from thence to *Weſtminſter-Hall.*

Sabbati, 27 Jan. 1648. *Painted Chamber.*

THREE Proclamations being made, the Court is thereupon called.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident.

Oliver Cromwell.
Henry Ireton.
Sir *Hardreſs Waller.*
Valentine Wauton.
Thomas Harriſon.
Edward Whalley.
Thomas Pride.
Iſaac Ewers.
Tho. Ld. *Grey* of *Grooby.*
Sir *John Danvers.*
Sir *Tho. Maleverer* Bar.
Sir *John Bourchier*, Kt.
William Heveningham.
Henry Marten.
William Purefoy.
John Berkſtead.
Matthew Tomlinſon.
John Blackiſtone.
Gilbert Millington.
Sir *William Conſtable* Bar.
Edmond Ludlow.
John Hutchinſon.
Sir *Michael Liveſey* Bar.
Robert Tichbourne.
Owen Rowe.
Robert Lilbourne.
Adrian Scroope.
Richard Deane.
John Okey.
Auguſtine Garland.
George Fleetwood.
James Temple.
Daniel Blagrave.
John Brown.
John Huſon.
William Goffe.
Cornelius Holland.
John Carew.
John Jones.
Miles Corbet.
Francis Allen.
Peregrine Pelham.
Thomas Challoner.
John Moore.
William Say.
John Alured.
Henry Smith.
Humphrey Edwards.
Gregory Clement.
Thomas Wogan.
Sir *Gregory Norton* Bar.
Edmond Harvey.
John Venn.
Thomas Scot.
Thomas Andrews, Ald. of London.
William Cawley.
Anthony Stapeley.
John Downes.
Thomas Horton.
Thomas Hammond.
John Liſle.
Nicholas Love.
Vincent Potter.
John Dixwell.
Simon Meyne.
Peter Temple.
Thomas Waite.

The Sentence agreed on, and ordered by this Court the 26th Inſtant to be ingroſſed, being accordingly ingroſſed, was read.

Reſolved, that the Sentence now read, ſhall be the Sentence of this Court for the Condemnation of the King, which ſhall be read and publiſhed in *Weſtminſter-Hall* this Day.

The Court hereupon conſidered of certain Inſtructions for the Lord Preſident, to manage the Buſineſs of this Day in *Weſtminſter-Hall*; and order'd,

That the Lord Preſident do manage what Diſcourſe ſhall happen between him and the King, according to his Diſcretion, with the Advice of his two Aſſiſtants: and that in caſe the King ſhall ſtill perſiſt in excepting againſt the Court's Juriſdiction, to let him know that the Court do ſtill affirm their Juriſdiction.

That in caſe the King ſhall ſubmit to the Juriſdiction of the Court, and pray a Copy of the Charge, that then the Court do withdraw and adviſe.

That in caſe the King ſhall move any thing elſe worth the Court's Conſideration, the Lord Preſident, upon Advice of his ſaid Aſſiſtants, do give order for the Court's withdrawing to adviſe.

That in caſe the King ſhall not ſubmit to anſwer, and there happen no ſuch Cauſe of withdrawing, that then the Lord Preſident do command the Sentence to be read; but that the Lord Preſident ſhould hear the King ſay what he would before the Sentence, and not after.

And thereupon it being further moved, Whether the Lord Preſident ſhould uſe any Diſcourſe or Speeches to the King, as in the caſe of other Priſoners to be condemned was uſual before the publiſhing of the Sentence, received general Directions to do therein as he ſhould ſee cauſe, and to preſs what he ſhould conceive moſt ſeaſonable and ſuitable to the Occaſion. And it was further directed, That after the Reading of the Sentence, the Lord Preſident ſhould declare, That the ſame was the Sentence, Judgment and Reſolution of the whole Court, and that the Commiſſioners ſhould thereupon ſignify their Conſent by ſtanding up.

The Court forthwith adjourned itſelf to *Weſtminſter-Hall.*

Weſtminſter-Hall, 27 Jan. 1648. *poſt Merid.*

THE Lord Preſident and the reſt of the Commiſſioners come together from the *Painted-Chamber* to *Weſtminſter-Hall,* according to their Adjournment, and take their Seats there, as formerly; and three Proclamations being made for Attendance and Silence, the Court is called.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

John Liſle.
William Say.
Oliver Cromwell.
Henry Ireton.
Sir *Hardreſs Waller* Knt.
Sir *John Bourchier* Kt.
William Heveningham.
Iſaac Pennington Ald. of *London.*
Henry Marten.
William Purefoy.
John Berkſtead.
Matthew Tomlinſon.
John Blackiſtone.
Gilbert Millington.
Sir *William Conſtable* Bar.
Edmond Ludlow.
John Hutchinſon.
Sir *Michael Liveſey* Bar.
Robert Tichbourne.
Owen Roe.
Robert Lilbourne.
Adrian Scroope.
Richard Deane.
John Okey.
John Huſon.
William Goffe.
Cornelius Holland.
John Carew.
John Jones.
Miles Corbet.
Francis Allen.
Peregrine Pelham.
Daniel Blagrave.
Valentine Wauton.
Thomas Harriſon.
Edward Whalley.
Thomas Pride.
Iſaac Ewers.
Tho. Ld. *Grey* of *Grooby.*
Sir *John Danvers.*
Sir *Tho. Maleverer* Bar.
John Moore.
John Alured.
Henry Smith.
Humphrey Edwards.
Gregory Clement.
Thomas Wogan.
Sir *Gregory Norton* Bar.
Edmond Harvey.
John Venn.
Thomas Scot.
Thomas Andrews Ald. of *London.*
William Cawley.
Anthony Stapeley.
John Downs.
Thomas Horton.
Thomas Hammond.
Nicholas Love.
Vincent Potter.
Auguſtine Garland.
John Dixwell.
George Fleetwood.
Simon Meyne.
James Temple.
Peter Temple.
Thomas Waite.

Sixty-ſeven Commiſſioners preſent.

The Priſoner is brought to the Bar, and Proclamation is again (as formerly) made for Silence; and the Captain of the Guard ordered to take into his Cuſtody all ſuch as ſhould diſturb the Court.

The Preſident ſtood up with an Intention of Addreſs to the People, and not to the Priſoner, who had ſo often declined the Juriſdiction of the Court; which the Priſoner obſerving, moved he might be heard before Judgment given. Whereof he received Aſſurance from the Court, and that he ſhould be heard after he had heard them firſt.

Whereupon the Court proceeded, and remember'd the great Aſſembly then preſent of what had formerly paſſed betwixt the Court and the Priſoner; the Charge againſt him in the Name of the People of *England* exhibited to them, being a Court conſtituted by the ſupreme Authority of *England*; his Refuſal three ſeveral Days and Times to own them as a Court, or to anſwer to the Matter of his Charge; his thrice recorded Contumacy, and other his Contempts and Defaults in the precedent Courts. Upon which the Court then declared, That they might not be wanting to themſelves, or to the Truſt repoſed in them; and that no Man's Wilfulneſs ought to ſerve him to prevent Juſtice; and that they had therefore thought fit to take the Subſtance of what had paſſed into their ſerious Conſideration, to wit, the Charge and the Priſoner's Contumacy, and the Confeſſion which in the Law doth ariſe upon that Contumacy, the Notoriety of the Fact charged, and other the Circumſtances material in the Cauſe: And upon the whole matter, had reſolved and agreed upon a Sentence then ready to be pronounced againſt the Priſoner. But that in regard of his Deſire to be further heard, they were ready to hear him as to any thing material, which he would offer to their Conſideration before the Sentence given, relating to the Defence of himſelf, concerning the Matter charged; and did then ſignify ſo much to the Priſoner: Who made uſe of that Leave given only to proteſt his Reſpects to the Peace of the Kingdom, and Liberty of the Subject, and to ſay, That the ſame made him at laſt to deſire, that having ſomewhat to ſay that concerned both, he might before the Sentence given be heard in the *Painted-Chamber* before the Lords and Commons; ſaying, It was fit to be heard, if it were Reaſon which he ſhould offer, whereof they were Judges. And preſſing that Point much, he was forthwith anſwered by the Court, and told,

That that which he moved was a Declining of the Juriſdiction of the Court, whereof he had Caution frequently given him.

That it tended to further Delay, of which he had been too much guilty.

That the Court being founded (as often had been ſaid) upon the Authority of the Commons of *England,* in whom reſted the ſupreme Juriſdiction, the Motion tended to ſet up another, or a co-ordinate Juriſdiction, in Derogation of the Power whereby the Court ſat, and to the manifeſt Delay of their Juſtice; in which regard, he was told, they might forthwith proceed to Sentence: Yet for his further Satisfaction of the entire Pleaſure and Judgment of the Court upon what he had then ſaid, he was told, and accordingly it was declared, That the Court would withdraw half an Hour.

The Priſoner by command being withdrawn, the Court make their Receſs into the Room called the *Court of Wards,* conſidered of the Priſoner's Motion, and gave the Preſident Direction to declare their Diſſent thereto, and to proceed to the Sentence.

The Court being again ſet, and the Priſoner returned, was, according to their Direction, informed, That he had in effect received his Anſwer before the Court withdrew; and that their Judgment was (as to his Motion) the ſame to him before declared, That the Court acted, and were Judges appointed by the higheſt Authority; and that Judges were not to delay, no more than to deny Juſtice: That they were good Words in the great old Charter of *England, Nulli negabimus, nulli vendemus, nulli differemus Juſtitiam vel Rectum:* That their Duty called upon them to avoid further Delays, and to proceed to Judgment; which was their unanimous Reſolution.

Unto which the Priſoner replied, and inſiſted upon his former Deſires, confeſſing a Delay; but that it was important for the Peace of the Kingdom: and therefore preſſed again with much Earneſtneſs to be heard before the Lords and Commons.

In anſwer whereto, he was told by the Court, That they had before fully conſidered of his Propoſal, and muſt give him the ſame Anſwer to his renewed Deſires; and that they were ready to proceed to Sentence, if he had nothing more to ſay.

Whereunto he ſubjoined, He had no more to ſay; but deſired that might be enter'd which he had ſaid.

Hereupon, after ſome Diſcourſe uſed by the Preſident, for vindicating the Parliament's Juſtice, explaining the Nature of the Crimes of which the Priſoner ſtood charged, and for which he was to be condemned; and by way of Exhortation to the Priſoner to a ſerious Repentance for his High Tranſgreſſions againſt God and the People, and to prepare for his eternal Condition:

The Sentence formerly agreed upon, and put down in Parchment-writing, *O Yes* being firſt made for Silence, was, by the Court's Command, ſolemnly pronounced and given. The Tenor whereof followeth:

‘ WHEREAS the Commons of *England,* aſſembled in Parliament,
‘ have by their late Act, entitled, *An Act of the Commons of* Eng-
‘ land, *aſſembled in Parliament, for erecting of an High Court of Juſtice for*
‘ *the Trying and Judging of* Charles Stuart, *King of* England, authorized
‘ and conſtituted us an High Court of Juſtice for the Trying and Judging
‘ of the ſaid *Charles Stuart,* for the Crimes and Treaſons in the ſaid Act
‘ mentioned: By virtue whereof the ſaid *Charles Stuart* hath been three
‘ ſeveral times convented before this High Court; where the firſt Day,
‘ being *Saturday* the 20th of *Jan.* inſtant, in purſuance of the ſaid Act,
‘ a Charge of High-Treaſon, and other High Crimes, was, in the behalf of
‘ the People of *England,* exhibited againſt him, and read openly unto him;
‘ wherein he was charged, That he the ſaid *Charles Stuart,* being admitted
‘ King of *England,* and therein truſted with a limited Power to govern by
‘ and according to the Law of the Land, and not otherwiſe; and by his
‘ Truſt, Oath, and Office, being obliged to uſe the Power committed to him,
‘ for the Good and Benefit of the People, and for the Preſervation of their
‘ Rights and Liberties; yet neverthelefs, out of a wicked Deſign to erect and
‘ uphold in himſelf an Unlimited and Tyrannical Power to rule according
‘ to his Will, and to overthrow the Rights and Liberties of the People,
‘ and to take away and make void the Foundations thereof, and of all Re-
‘ dreſs and Remedy of Miſgovernment, which by the Fundamental Con-
‘ ſtitutions of this Kingdom were reſerved on the People's behalf, in the
‘ Right and Power of frequent and ſucceſſive Parliaments, or national
‘ Meetings in Council; he the ſaid *Charles Stuart,* for accompliſhment
‘ of ſuch his Deſigns, and for the Protecting of himſelf and his Adhe-
‘ rents in his and their wicked Practices, to the ſame End, hath traito-
‘ rouſly and maliciouſly levied War againſt the preſent Parliament, and
‘ People therein repreſented, as with the Circumſtances of Time and
‘ Place is in the ſaid Charge more particularly ſet forth: And that he
‘ hath thereby cauſed and procured many Thouſands of the free People of
‘ this Nation to be ſlain; and by Diviſions, Parties, and Inſurrections
‘ within this Land, by Invaſions from foreign Parts, endeavoured and pro-
‘ cured by him, and by many other evil Ways and Means, he, the ſaid
‘ *Charles Stuart,* hath not only maintained and carried on the ſaid War
‘ both by Sea and Land, but alſo hath renewed, or cauſed to be renewed,
‘ the ſaid War againſt the Parliament and good People of this Nation
‘ in this preſent Year 1648. in ſeveral Counties and Places in this
‘ Kingdom, in the Charge ſpecified; and that he hath for that purpoſe
‘ given his Commiſſion to his Son the Prince, and others, whereby,
‘ beſides Multitudes of other Perſons, many, ſuch as were by the Par-
‘ liament intruſted and imployed for the Safety of this Nation, being
‘ by him or his Agents corrupted, to the betraying of their Truſt, and
‘ revolting from the Parliament, have had Entertainment and Commiſ-
‘ ſion for the continuing and renewing of the War and Hoſtility againſt

the ſaid Parliament and People: And that by the ſaid cruel and unnatural War ſo levied, continued and renewed, much innocent Blood of the free People of this Nation hath been ſpilt, many Families undone, the publick Treaſure waſted, Trade obſtructed and miſerably decayed, vaſt Expence and Damage to the Nation incurred, and many Parts of the Land ſpoiled, ſome of them even to Deſolation: And that he ſtill continues his Commiſſion to his ſaid Son, and other Rebels and Revolters, both *Engliſh* and Foreigners, and to the Earl of *Ormond*, and to the *Iriſh* Rebels and Revolters aſſociated with him, from whom further Invaſions upon this Land are threaten'd by his Procurement, and on his behalf: And that all the ſaid wicked Deſigns, Wars and evil Practices, of him, the ſaid *Charles Stuart*, were ſtill carried on for the Advancement and Upholding of the Perſonal Intereſt of Will, Power, and pretended Prerogative to himſelf and his Family, againſt the publick Intereſt, common Right, Liberty, Juſtice, and Peace of the People of this Nation: And that he thereby hath been, and is the Occaſioner, Author, and Contriver of the ſaid unnatural, cruel, and bloody Wars, and therein guilty of all the Treaſons, Murders, Rapines, Burnings, Spoils, Deſolations, Damage, and Miſchief to this Nation, acted and committed in the ſaid Wars, or occaſioned thereby. Whereupon the Proceedings and Judgment of this Court were prayed againſt him as a Tyrant, Traytor, and Murderer, and publick Enemy to the Common-wealth, as by the ſaid Charge more fully appeareth. To which Charge, being read unto him as aforeſaid, he the ſaid *Charles Stuart* was required to give his Anſwer; but he refuſed ſo to do. And upon *Monday* the 22d Day of *Jan.* inſtant, being again brought before this Court, and there required to anſwer directly to the ſaid Charge, he ſtill refuſed ſo to do: Whereupon his Default and Contumacy was entered. And the next Day, being the third time brought before the Court, Judgment was then prayed againſt him on the behalf of the People of *England* for his Contumacy, and for the Matters contained againſt him in the ſaid Charge, as taking the ſame for confeſt, in regard of his refuſing to anſwer thereto: Yet notwithſtanding, this Court (not willing to take Advantage of his Contempt) did once more require him to anſwer to the ſaid Charge; but he again refuſed ſo to do. Upon which his ſeveral Defaults, this Court might juſtly have proceeded to Judgment againſt him, both for his Contumacy and the Matters of the Charge, taking the ſame for confeſt, as aforeſaid.

‘ Yet neverthelefs this Court, for their own clearer Information, and further Satisfaction, thought fit to examine Witneſſes upon Oath, and take Notice of other Evidences touching the Matters contained in the ſaid Charge, which accordingly they have done.

‘ Now therefore upon ſerious and mature Deliberation of the Premiſes, and Conſideration had of the Notoriety of the Matters of Fact charged upon him, as aforeſaid, this Court is in Judgment and Conſcience ſatisfied that he the ſaid *Charles Stuart* is guilty of levying War againſt the ſaid Parliament and People, and maintaining and continuing the ſame; for which in the ſaid Charge he ſtands accuſed, and by the general Courſe of his Government, Counſels, and Practices, before and ſince this Parliament began (which have been and are notorious and publick, and the Effects whereof remain abundantly upon Record), this Court is fully ſatisfied in their Judgments and Conſciences that he hath been and is guilty of the wicked Deſigns and Endeavours in the ſaid Charge ſet forth; and that the ſaid War hath been levied, maintained, and continued by him, as aforeſaid, in Proſecution and for Accompliſhment of the ſaid Deſigns: And that he hath been and is the Occaſioner, Author, and Continuer of the ſaid unnatural, cruel, and bloody Wars, and therein guilty of High-Treaſon, and of the Murders, Rapines, Burnings, Spoils, Deſolations, Damages, and Miſchief to this Nation, acted and committed in the ſaid War, and occaſioned thereby. For all which Treaſons and Crimes this Court doth adjudge, That he the ſaid *Charles Stuart*, as a Tyrant, Traytor, Murderer, and publick Enemy to the good People of this Nation, ſhall be put to death by the ſevering his Head from his Body.’

This Sentence being read, the Preſident ſpake as followeth.

‘ The Sentence now read and publiſhed, is the Act, Sentence, Judgment and Reſolution of the whole Court.’

Whereupon the whole Court ſtood up, and owned it.

The Priſoner being withdrawn, the Court adjourned itſelf forthwith into the *Painted Chamber*.

The Court being ſat in the *Painted Chamber*, according to Adjournment from *Weſtminſter-Hall*, aforeſaid:

Painted Chamber.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord-Preſident.

John Liſle.
William Say.
Oliver Cromwell.
Henry Ireton.
Sir *Hardreſs Waller.*
Thomas Waite.
Thomas Harriſon.
Edward Whalley.
Thomas Pride.
Iſaac Ewers.
Tho. Ld. *Grey* of *Grooby.*
Sir *John Danvers.*
Sir *Tho. Maleverer* Bar.
Sir *John Bourchier* Kt.
William Heveningham.
Iſaac Pennington Ald. of *London.*
John Downes.
Henry Marten.
John Berkſtead.
Matthew Tomlinſon.
Gilbert Millington.
John Blackiſtone.
Sir *William Conſtable* Bar.
John Hutchinſon.
Sir *Michael Liveſey* Bar.
John Dixwell.
James Temple.
Thomas Andrews Ald. of *London*
Anthony Stapeley.
Thomas Hammond.
Peter Temple.
Edmond Ludlow.
Robert Tichbourne.
Nicholas Love.
Owen Roe.
Robert Lilbourne.
Adrian Scroope.
Richard Deane.
John Okey.
Simon Meyne.
John Huſon.
William Goffe.
Cornelius Holland.
John Carew.
John Jones.
Miles Corbet.
Francis Allen.
Peregrine Pelham.
Thomas Challoner.
John Moore.
John Alured.
Henry Smith.
Humphrey Edwards.
Gregory Clement.
Thomas Wogan.
Sir *Gregory Norton* Bar.
John Venn.
Thomas Scot.
Edmond Harvey.
William Cawley.
Thomas Horton.
Auguſtine Garland.
Daniel Blagrave.

Sixty-four Commiſſioners preſent.

Sir *Hardreſs Waller*, Colonel *Harriſon*, Commiſſary-General *Ireton*, Colonel *Deane*, and Colonel *Okey*, are appointed to conſider of the Time and Place for the Execution of the Sentence againſt the King.

And then the Court adjourned itſelf till *Monday* Morning at Eight of the Clock to this Place.

[The more full Account of this Day's Action, take as follows:

THE King being come in, in his wonted Poſture, with his Hat on, ſome of the Soldiers began to call for *Juſtice*, *Juſtice*, and *Execution.* But Silence being commanded, his Majeſty began:

I deſire a Word to be heard a little, and I hope I ſhall give no Occaſion of Interruption.

Bradſhaw anſwered, You may anſwer in your time, hear the Court firſt.

His Majeſty replied, If it pleaſe you, Sir, I deſire to be heard, and I ſhall not give any Occaſion of Interruption, and it is only in a Word: A ſudden Judgment——

Bradſhaw. Sir, you ſhall be heard in due time, but you are to hear the Court firſt.

King. Sir, I deſire, it will be in order to what I believe the Court will ſay; and therefore, Sir, an haſty Judgment is not ſo ſoon recalled.

Bradſhaw. Sir, you ſhall be heard before the Judgment be given, and in the mean time you may forbear.

King. Well, Sir, ſhall I be heard before the Judgment be given?

Bradſhaw. Gentlemen, it is well known to all, or moſt of you here preſent, that the Priſoner at the Bar hath been ſeveral times convened and brought before this Court to make anſwer to a Charge of Treaſon, and other high Crimes exhibited againſt him in the Name of the People of * *England*; to which Charge being required to anſwer, he hath been ſo far from obeying the Commands of the Court by ſubmitting to their Juſtice, as he began to take upon him to offer Reaſoning and Debate unto the Authority of the Court, and of the higheſt Court that conſtituted them to try and judge him: but being over-ruled in that, and required to make his Anſwer, he was ſtill pleaſed to continue contumacious, and to refuſe to ſubmit or anſwer. Hereupon the Court, that they might not be wanting to themſelves, to the Truſt repoſed in them, nor that any Man's Wilfulneſs prevent Juſtice, they have thought fit to take the Matter into their Conſideration; they have conſidered of the Charge, they have conſidered of the Contumacy, and of that Confeſſion, which in Law doth ariſe upon that Contumacy: They have likewiſe conſider'd of the Notoriety of the Fact charg'd upon this Priſoner, and upon the whole Matter they are reſolved, and are agreed upon a Sentence to be pronounc'd againſt this Priſoner: But in reſpect he doth deſire to be heard, before the Sentence be read and pronounc'd, the Court hath reſolved that they will hear him. Yet, Sir, thus much I muſt tell you before-hand, which you have been minded of at other Courts, that if that which you have to ſay, be to offer any Debate concerning the Juriſdiction, you are not to be heard in it; you have offered it formerly, and you ſtruck at the Root, that is, the Power and Supreme Authority of the Commons of *England*, which this Court will not admit a Debate of; and which indeed is an irrational Thing in them to do, being a Court that acts upon Authority derived from them. But, Sir, if you have any thing to ſay in defence of yourſelf concerning the Matter charged, the Court hath given me in command to let you know they will hear you.

* *Here a Lady interpos'd, ſaying,* Not half the People; *but was ſilenced with Threats.*

King. Since I ſee that you will not hear any thing of Debate concerning that which I confeſs I thought moſt material for the Peace of the Kingdom, and for the Liberty of the Subject, I ſhall wave it; I ſhall ſpeak nothing to it; but only I muſt tell you, That this many a-day all things have been taken away from me, but that that I call more dear to me than my Life, which is my Conſcience and my Honour: And if I had a reſpect to my Life more than the Peace of the Kingdom and the Liberty of the Subject, certainly I ſhould have made a particular Defence for myſelf; for by that at leaſtwiſe I might have delayed an ugly Sentence, which I believe will paſs upon me. Therefore, certainly, Sir, as a Man that hath ſome Underſtanding, ſome Knowledge of the World, if that my true Zeal to my Country had not over-borne the Care that I have for my own Preſervation, I ſhould have gone another way to work than that I have done. Now, Sir, I conceive, that an haſty Sentence once paſs'd, may ſooner be repented of than recalled; and truly, the ſelf-ſame Deſire that I have for the Peace of the Kingdom, and the Liberty of the Subject, more than my own particular Ends, makes me now at laſt deſire, that I have ſomething * to ſay that concerns both, before Sentence be given, that I may be heard in the *Painted Chamber* before the Lords and Commons. This Delay cannot be prejudicial to you, whatſoever I ſay; if that I ſay no Reaſon, thoſe that hear me muſt be Judges; I cannot be Judge of that that I have: if it be Reaſon, and really for the Welfare of the Kingdom, and the Liberty of the Subject, I am ſure on't, 'tis very well worth the hearing; therefore I do conjure you, as you love That that you pretend, I hope it's real, the Liberty of the Subject, the Peace of the Kingdom, that you will grant me this hearing before any Sentence be paſt. I only deſire this, that you will take this into your Conſideration, it may be you have not heard of it before-hand; if you will, I'll retire, and you may think of it: but if I cannot get this

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* *Some have thought this was a Propoſal of renouncing the Crown in favour of his eldeſt Son.*

Liberty, I do proteſt, that theſe fair Shews of Liberty and Peace are pure Shews, and that you will not hear your King.

Bradſhaw. Sir, you have now ſpoken.

King. Yes, Sir.

Bradſhaw. And this that you have ſaid is a further declining of the Juriſdiction of this Court, which was the thing wherein you were limited before.

King. Pray excuſe me, Sir, for my Interruption, becauſe you miſtake me; it is not a Declining of it, you do judge me before you hear me ſpeak: I ſay it will not, I do not decline it, tho' I cannot acknowledge the Juriſdiction of the Court; yet, Sir, in this give me leave to ſay, I would do it, tho' I did not acknowledge it: in this I do proteſt it is not the Declining of it, ſince I ſay, if that I do ſay any thing, but That that is for the Peace of the Kingdom, and the Liberty of the Subject, then the Shame is mine. Now I deſire that you will take this into your Conſideration; if you will, I'll withdraw.

Bradſhaw. Sir, this is not altogether new that you have moved to us, not altogether new to us, tho' the firſt time in perſon you have offered it to the Court. Sir, you ſay you do not decline the Juriſdiction of the Court.

King. Not in this that I have ſaid.

Bradſhaw. I underſtand you well, Sir, but nevertheleſs that which you have offered, ſeems to be contrary to that Saying of yours; for the Court are ready to give a Sentence: It is not as you ſay, That they will not hear their King; for they have been ready to hear you, they have patiently waited your Pleaſure for three Courts together, to hear what you would ſay to the People's Charge againſt you, to which you have not vouchſafed to give any Anſwer at all. Sir, this tends to a further Delay; truly, Sir, ſuch Delays as theſe, neither may the Kingdom nor Juſtice well bear; you have had three ſeveral Days to have offered in this kind what you would have pleaſed. This Court is founded upon that Authority of the Commons of *England*, in whom reſts the ſupreme Juriſdiction; that which you now tender, is to have another Juriſdiction, and a co-ordinate Juriſdiction. I know very well you expreſs yourſelf, Sir, that notwithſtanding That you would offer to the Lords and Commons in the *Painted-Chamber*, yet nevertheleſs you would proceed on here, I did hear you ſay ſo. But, Sir, That you would offer there, whatever it is, muſt needs be in delay of the Juſtice here; ſo as if this Court be reſolved, and prepared for the Sentence, this that you offer they are not bound to grant. But, Sir, according to that you ſeem to deſire, and becauſe you ſhall know the further Pleaſure of the Court upon that which you have moved, the Court will withdraw for a time.

[This he did to prevent the Diſturbance of their Scene by one of their own Members, Col. *John Downes*, who could not ſtifle the Reluctance of his Conſcience, when he ſaw his Majeſty preſs ſo earneſtly for a ſhort Hearing: But declaring himſelf unſatisfied, forced them to yield to the King's Requeſt. *Nalſon.*]

King. Shall I withdraw?

Bradſhaw. Sir, you ſhall know the Pleaſure of the Court preſently.

The Court withdraws for half an Hour into the Court of Wards.

Serjeant at Arms, The Court gives Command, that the Priſoner be withdrawn; and they give order for his Return again.

[Then withdrawing into the Chamber of the *Court of Wards*, their Buſineſs was not to conſider of his Majeſty's Deſire, but to chide *Downes*, and with Reproaches and Threats to harden him to go thro' the Remainder of their Villany with them. *Nalſon.*]

Which done, they return: and being ſat, *Bradſhaw* commanded;

Serjeant at Arms, Send for your Priſoner.

Who being come, *Bradſhaw* proceeded:

Sir, you were pleaſed to make a motion here to the Court to offer a Deſire of yours, touching the propounding of ſomewhat to the Lords and Commons in the *Painted-Chamber*, for the Peace of the Kingdom: Sir, you did, in effect, receive an Anſwer before the Court adjourned; truly, Sir, their Withdrawing and Adjournment was *pro formâ tantùm*; for it did not ſeem to them that there was any Difficulty in the thing: they have conſidered of what you have moved, and have conſidered of their own Authority, which is founded, as hath been often ſaid, upon the ſupreme Authority of the Commons of *England*, aſſembled in Parliament: The Court acts according to their Commiſſion. Sir, the Return I have to you from the Court, is this: That they have been too much delayed by you already, and this that you now offer, hath occaſioned ſome little further Delay; and they are Judges appointed by the higheſt Authority; and Judges are no more to delay, than they are to deny Juſtice: they are good Words in the great old Charter of *England*; *Nulli negabimus, nulli vendemus, nulli differemus Juſtitiam.* There muſt be no Delay; but the Truth is, Sir, and ſo every Man here obſerves it, that you have much delayed them in your Contempt and Default, for which they might long ſince have proceeded to Judgment againſt you; and notwithſtanding what you have offered, they are reſolved to proceed to Puniſhment, and to Judgment, and that is their unanimous Reſolution.

King. Sir, I know it is in vain for me to diſpute, I am no Sceptick for to deny the Power that you have; I know that you have Power enough: Sir, I muſt confeſs, I think it would have been for the Kingdom's Peace, if you would have taken the pains to have ſhewn the Lawfulneſs of your Power; for this Delay that I have deſired, I confeſs it is a Delay, but it is a Delay very important for the Peace of the Kingdom: for it is not my Perſon that I look at alone, it is the Kingdom's Welfare, and the Kingdom's Peace; it is an old Sentence, That we ſhould think on long before we reſolve of great Matters ſuddenly. Therefore, Sir, I do ſay again, that I do put at your Doors all the Inconveniency of a haſty Sentence. I confeſs I have been here now, I think, this Week; this Day eight Days was the Day I came here firſt, but a little Delay of a Day or two farther may give Peace; whereas a haſty Judgment may bring on that Trouble and perpetual Inconveniency to the Kingdom, that the Child that is unborn may repent it: and therefore again, out of the Duty I owe to God and to my Country, I do deſire that I may be heard by the Lords and Commons in the *Painted-Chamber*, or any other Chamber that you will appoint me.

Bradſhaw. Sir, you have been already anſwered to what you even now moved, being the ſame you moved before, ſince the Reſolution and the Judgment of the Court in it: and the Court now requires to know whether you have any more to ſay for yourſelf, than you have ſaid, before they proceed to Sentence.

King. I ſay this, Sir, That if you hear me, if you will give me but this Delay, I doubt not but I ſhall give ſome Satisfaction to you all here, and to my People after that; and therefore I do require you, as you will anſwer it at the dreadful Day of Judgment, that you will conſider it once again.

Bradſhaw. Sir, I have received Direction from the Court.

King. Well, Sir.

Bradſhaw. If this muſt be re-enforced, or any thing of this Nature, your Anſwer muſt be the ſame; and they will proceed to Sentence, if you have nothing more to ſay.

King. Sir, I have nothing more to ſay, but I ſhall deſire, that this may be entered what I have ſaid.

Bradſhaw. The Court then, Sir, hath ſomething to ſay unto you; which, altho' I know it will be very unacceptable, yet notwithſtanding they are willing, and are reſolved to diſcharge their Duty.

[Then *Bradſhaw* went on in a long Harangue, endeavouring to juſtify their Proceedings, miſapplying Law and Hiſtory, and raking up and wreſting whatſoever he thought fit for his Purpoſe, alledging the Examples of former Treaſons and Rebellions, both at Home and Abroad, as authentick Proofs; and concluding, That the King was a Tyrant, Traitor, Murderer, and publick Enemy to the Commonwealth of *England*.

His Majeſty, having with his wonted Patience heard all theſe Reproaches, anſwered. *Nalſon.*]

King. I would deſire only one Word before you give Sentence; and that is, That you would hear me concerning thoſe great Imputations that you have laid to my Charge.

Bradſhaw Sir, You muſt give me now leave to go on; for I am not far from your Sentence, and your Time is now paſt.

King. But I ſhall deſire you will hear me a few Words to you: For truly, whatever Sentence you will put upon me in Reſpect of thoſe heavy Imputations, that I ſee by your Speech you have put upon me; Sir, It is very true, that------

Bradſhaw. Sir, I muſt put you in mind: Truly, Sir, I would not willingly, at this time eſpecially, interrupt you in any thing you have to ſay, that is proper for us to admit of; but, Sir, you have not owned us as a Court, and you look upon us as a Sort of People met together; and we know what Language we receive from your Party.

King. I know nothing of that.

Bradſhaw. You diſavow us as a Court; and therefore for you to addreſs yourſelf to us, not to acknowledge us as a Court to judge of what you ſay, it is not to be permitted. And the Truth is, all along, from the firſt time you were pleaſed to diſavow and diſown us, the Court needed not to have heard you one Word: For unleſs they be acknowledged a Court, and ingaged, it is not proper for you to ſpeak. Sir, we have given you too much Liberty already, and admitted of too much Delay, and we may not admit of any farther. Were it proper for us to do, we ſhould hear you freely, and we ſhould not have declined to have heard you at large, what you could have ſaid or proved on your Behalf, whether for totally excuſing, or for in part excuſing thoſe great and heinous Charges that in whole or in part are laid upon you. But, Sir, I ſhall trouble you no longer; your Sins are of ſo large a Dimenſion, that if you do but ſeriouſly think of them, they will drive you to a ſad Conſideration, and they may improve in you a ſad and ſerious Repentance: And that the Court doth heartily wiſh that you may be ſo penitent for what you have done amiſs, that God may have Mercy, at leaſt wiſe, upon your better Part: Truly, Sir, for the other, it is our Parts and Duties to do that which the Law preſcribes. We are here not *jus dare*, but *jus dicere*. We cannot be unmindful of what the Scripture tells us, *For to acquit the Guilty is of equal Abomination, as to condemn the Innocent:* We may not acquit the Guilty. What Sentence the Law affirms to a Traitor, Tyrant, a Murderer, and a publick Enemy to the Country, that Sentence you are now to hear read unto you; and that is the Sentence of the Court.

Make an *O-yes*, and command Silence while the Sentence is read.

Which done, the Clerk read the Sentence, drawn up in Parchment:

W*Hereas the Commons of* England *in Parliament had appointed them an High Court of Juſtice, for the Trial of* Charles Stuart, *King of* England, *before whom he had been three times convened; and at the firſt time a Charge of High-Treaſon, and other Crimes and Miſdemeanours, was read in the behalf of the Kingdom of* England, *&c.*

Here the Charge was repeated.

Which Charge being read unto him, as aforeſaid, he the ſaid *Charles Stuart* was required to give his Anſwer; but he refuſed ſo to do: Expreſſing the ſeveral Paſſages of his refuſing, in the former Proceedings.

For all which Treaſons and Crimes this Court doth adjudge, That he the ſaid Charles Stuart, *as a* Tyrant, Traitor, Murderer, *and* a publick Enemy, *ſhall be put to Death, by the ſevering of his Head from his Body.*

Which being read, *Bradſhaw* added;

The Sentence now read and publiſhed is the Act, Sentence, Judgment, and Reſolution of the whole Court.

To which they all expreſſed their Aſſent by ſtanding up, as was before agreed and ordered.

His Majeſty then ſaid, Will you hear me a Word, Sir?

Bradſhaw. Sir, you are not to be heard after the Sentence.

King. No, Sir?

Bradſhaw. No, Sir; by your Favour, Sir. Guard, withdraw your Priſoner.

King. I may ſpeak after Sentence, by your Favour, Sir: I may ſpeak after Sentence, ever.

By your Favour (Hold!), the Sentence, Sir—I ſay, Sir, I do—— .. I am not ſuffered to ſpeak: Expect what Juſtice other People will have.]

[His Majeſty being taken away by the Guard, as he paſſed down the Stairs, the inſolent Soldiers ſcoffed at him, caſting the Smoke of their Tobacco (a Thing very diſtaſteful unto him) in his Face, and throwing their Pipes in his Way; and one more inſolent than the reſt, ſpitting in his Face, his Majeſty, according to his wonted heroic Patience, took no more Notice of ſo ſtrange and barbarous an Indignity, than to wipe it off with his Handkerchief.

As he paſſed along, hearing the Rabble of Soldiers crying out, *Juſtice! Juſtice!* he ſaid, *Poor Souls, for a Piece of Money they would do ſo for their Commanders.*

Being brought firſt to Sir *Robert Cotton*'s, and thence to *Whitehall*, the Soldiers continued their brutiſh Carriage toward him, abuſing all that ſeemed to ſhew any Reſpect, or any Pity to him; not ſuffering him to reſt in his Chamber, but thruſting in, and ſmoking their Tobacco, and diſturbing his Privacy.

But through all theſe Trials (unuſual to Princes) he paſſed with ſuch a calm and even Temper, that he let fall nothing unbeſeeming his former Majeſty and Magnanimity.

In the Evening, a Member of the Army acquainted the Committee with his Majeſty's Deſire, *That ſeeing they had paſſed a Sentence of Death upon him, and his Time might be nigh, he might ſee his Children; and Dr.* Juxon, *Biſhop of* London, *might be admitted to aſſiſt him in his private Devotions, and receiving the Sacrament.* Both which at length were granted.

And the next Day, being *Sunday*, he was attended by the Guard to *St. James*'s; where the Biſhop preached before him upon theſe Words, *In the Day when God ſhall judge the Secrets of all Men by Jeſus Chriſt according to my Goſpel.* Nalſon.]

Lunæ, 29 Jan. 1648. *Painted Chamber.*

THREE Proclamations made. The Court is called.

Commiſſioners preſent.

John Bradſhaw, Serjeant at Law, Lord Preſident of this Court.

Oliver Cromwell.
Henry Ireton,
Sir *Hardreſs Waller*, Kt.
Valentine Wauton.
Thomas Harriſon.
Edward Whalley.
Thomas Pride.
Iſaac Ewers.
Richard Ingoldſby.
Tho. Ld. *Grey* of *Grooby.*
Sir *John Bourchier* Knt.
Henry Marten.
William Purefoy.
John Berkſtead.
John Blackiſtone.
Gilbert Millington.
Sir *William Conſtable* Bar.
Edmond Ludlow.
John Hutchinſon.
Sir *Michael Liveſey* Bar.
James Temple.
John Dixwell.
Peter Temple.
Robert Tichbourne.
Owen Roe.
Adrian Scroope.
Richard Deane.
John Okey.
John Huſon.
William Goffe.
John Jones.
Francis Allen.
Peregrine Pelham.
John Anlaby.
William Say.
Henry Smith.
Humphrey Edwards.
John Venn.
Thomas Scot.
William Cawley.
Thomas Horton.
John Liſle.
Nicholas Love.
Vincent Potter.
Auguſtine Garland.
Simon Meyne.
Daniel Blagrave.

Forty-eight Commiſſioners preſent.

Upon Report made from the Committee for conſidering the Time and Place of the executing of the Judgment againſt the King, that the ſaid Committee have reſolved, That the open Street before *Whitehall* is a fit Place, and that the ſaid Committee conceive it fit that the King be there executed the Morrow, the King having already Notice thereof: The Court approved thereof, and ordered a Warrant to be drawn for that Purpoſe. Which ſaid Warrant was accordingly drawn and agreed unto, and ordered to be engroſſed; which was done, and ſigned and ſealed accordingly, as followeth, *viz.*

At the High Court of Juſtice for the Trying and Judging of Charles Stuart, *King of* England, *Jan.* 29. 1648.

‘WHereas *Charles Stuart*, King of *England*, is and ſtandeth convicted, attainted and condemned of High-Treaſon, and other High Crimes; and Sentence upon *Saturday* laſt was pronounced againſt him by this Court, to be put to Death, by the ſevering of his Head from his Body, of which Sentence Execution yet remaineth to be done: Theſe are therefore to will and require you to ſee the ſaid Sentence executed in the open Street before *Whitehall*, upon the Morrow, being the Thirtieth Day of this inſtant Month of *January*, between the Hours of Ten in the Morning, and Five in the Afternoon of the ſame Day, with full Effect: And for ſo doing, this ſhall be your ſufficient Warrant. And theſe are to require all Officers, Soldiers and others, the good People of this Nation of *England*, to be aſſiſting unto you in this Service.’

Given under our Hands and Seals.

To Col. Francis Hacker, *Col.* Hunks, *and Lieutenant-Col.*
Phray, *and to every of them.*

Sealed and ſubſcribed by

John Bradſhaw.
Tho. Grey.
Oliver Cromwell.
Edw. Whalley.
Michael Liveſey.
John Okey.
John Danvers.
John Bourchier.
Henry Ireton.
Thomas Maleverer.
John Blackiſtone.
John Hutchinſon.
William Goffe.
Thomas Pride.
Peter Temple.
Thomas Harriſon.
John Huſon.
Henry Smith.
Peregrine Pelham.
Simon Meyne.
Thomas Horton.
John Jones.
John Moor.
Hardreſs Waller.
Gilbert Millington.
George Fleetwood.
John Alured.
Robert Lilbourne.
William Say.
Anthony Stapelay.
Richard Deane.
Robert Tichbourne.
Humphrey Edwards.
Daniel Blagrave.
Owen Rowe.
William Purefoy.
Adrian Scroope.
James Temple.
Auguſtine Garland.
Edmond Ludlow.
Henry Marten.
Vincent Potter.
William Conſtable.
Richard Ingoldſby.
William Cawley.
John Berkſtead.
Iſaac Ewers.
John Dixwell.
Valentine Wauton.
Gregory Norton.
Thomas Challoner.
Thomas Wogan.
John Ven.
Gregory Clement.
John Downes.
Thomas Waite.
Thomas Scot.
John Carew.
Miles Corbet.

It was ordered, that the Officers of the Ordnance within the *Tower of London*, or any other Officer or Officers of the Store within the ſaid *Tower*, in whoſe Hands or Cuſtody the bright Execution-Ax for the executing Malefactors is, do forthwith deliver unto *Edward Dendy* Eſq; Serjeant at Arms attending this Court, or his Deputy or Deputies, the ſaid Ax. And for their or either of their ſo doing, this ſhall be their Warrant.

To Col. John White, *or any other Officer within the*
Tower *of* London, *whom it concerneth.*

The Court adjourned till To-morrow Morning at Nine of the Clock.

Martis, 30 Jan. 1648.

Painted-Chamber.

Commiſſioners meet.

Ordered, That Mr. *Marſhall*, Mr. *Nye*, Mr. *Caryl*, Mr. *Salway*, and Mr. *Dell*, be deſired to attend the King, to adminiſter to him thoſe Spiritual Helps as ſhould be ſuitable to his preſent Condition. And Lieutenant-Colonel *Goffe* is deſired forthwith to repair unto them for that Purpoſe.

Who did ſo, but after informed the Court, That the King being acquainted therewith, refuſed to confer with them; expreſſing, that he would not be troubled with them.

Ordered, That the Scaffold upon which the King is to be executed, be covered with Black.

THE Biſhop of *London* read Divine Service before his Majeſty; and the 27th of *St. Matthew*, the Hiſtory of our Saviour's Paſſion, being appointed by the Church for that Day, he gave the Biſhop Thanks for his ſeaſonable Choice of the Leſſon; but the Biſhop acquainting him that it was the Service of the Day, it comforted him exceedingly; then he proceeded to receive the Holy Sacrament. His Devotions being ended, he was brought from *St. James*'s to *Whitehall*, by a Regiment of Foot, beſides his private Guard of *Partiſans*; the Biſhop of *London* on the one Hand, and Colonel *Tomlinſon*, who had the Charge of him, on the other, bare-headed. The Guards marching a ſlow Pace, the King bid them go faſter, ſaying, that he now went before them to ſtrive for an heavenly Crown. Being come to the End of the Park, he went up the Stairs leading to the Long-Gallery in *Whitehall*, where formerly he uſed to lodge, and there finding an unexpected Delay, the Scaffold being not ready, he paſt moſt of the Time in Prayer. About twelve a-Clock (his Majeſty having eat a Bit of Bread, and drank a Glaſs of Claret), Colonel *Hacker*, with other Officers and Soldiers, brought the King, with the Biſhop, and Colonel *Tomlinſon*, through the Banqueting-houſe to the Scaffold. A ſtrong Guard of ſeveral Regiments of Horſe and Foot were planted on all Sides, which hindered the near Approach of the People, and the King from being heard, and therefore he chiefly directed his Speech to the Biſhop and Colonel *Tomlinſon*, as follows:

I Shall be very little heard of any Body elſe; I ſhall therefore ſpeak a Word to you here: Indeed, I could hold my Peace very well, if I did not think that holding my Peace would make ſome Men think that I did ſubmit to the Guilt, as well as the Puniſhment: But I think it is my Duty to God and my Country to clear myſelf, both as an honeſt Man, a good King, and a good Chriſtian. I ſhall begin firſt with my Innocency; in Troth, I think it not very needful to inſiſt long upon this; for all the World knows that I did never begin a War with the two Houſes of Parliament; and I call God to Witneſs, to whom I muſt ſhortly make an Account, that I did never intend to encroach upon their Privileges; they began upon me. It is the Militia they began upon; they confeſſed the Militia was mine, but they thought fit to have it from me: And, to be ſhort, if any Body will look to the *Dates of Commiſſions*, of their Commiſſions and mine, and likewiſe to the Declarations, he will ſee clearly that they began theſe Troubles, not I. So that as for the Guilt of theſe enormous Crimes that are laid againſt me, I hope in God that God will clear me of. I will not, I am in Charity, and God forbid I ſhould lay it upon the two Houſes of Parliament; there is no Neceſſity of either: I hope they are free of this Guilt; for I believe, that ill Inſtruments between them and me have been the Cauſe of all this Bloodſhed; ſo that as I find myſelf clear of this, I hope, and pray God that they may too: Yet, for all this, God forbid I ſhould be ſo ill a Chriſtian, as not to ſay God's Judgments are juſt upon me! Many times he doth pay Juſtice by an unjuſt Sentence, that is ordinary. I will only ſay this, that an unjuſt Sentence that I ſuffered to take Effect, is puniſhed now by an unjuſt Sentence upon me: So far I have ſaid to ſhew you that I am an innocent Man.

Now, to ſhew you that I am a good Chriſtian, I hope there is a good Man [*pointing to Biſhop* Juxon] that will bear me Witneſs, that I have forgiven all the World, and even thoſe in particular that have been the chief Cauſes of my Death; who they are, God knows; I do not deſire to know: I pray God forgive them. But this is not all, my Charity muſt go further; I wiſh that they may repent. For, indeed, they have committed a great Sin in that particular. I pray God, with St. *Stephen*, that it be not laid to their Charge; nay, not only ſo, but that they may take the right way to the Peace of the Kingdom; for my Charity commands me not only to forgive particular Men, but to endeavour, to the laſt Gaſp, the Peace of the Kingdom. So, Sirs, I do wiſh, with all my Soul *(I hope there are ſome here that will carry it farther)*, and endeavour the Peace of the Kingdom. Now, Sirs, I muſt ſhew you both how you are out of the Way, and will put you in the Way. Firſt, you are out of the Way; for certainly all the Ways you ever had yet, as I could find by any thing, is in the way of Conqueſt; certainly this is an ill Way; for Conqueſt, Sirs, in my Opinion, is never juſt, except there be a good and juſt Cauſe, either for Matter of Wrong, or a juſt Title; and then if you go beyond the firſt Quarrel, that makes that unjuſt at the End that was juſt at firſt; if there be only Matter of Conqueſt, then it is a great Robbery, as a Pirate ſaid to *Alexander*, that he was a great Robber, he was but a petty Robber. And ſo, Sirs, I think the Way you are in is much out of the Way. Now, Sirs, to put you in the Way, believe it, you ſhall never go right, nor God will never proſper you, until you give God his Due, the King his Due (that is, my Succeſſor), and the People their Due: I am as much for them as any of you. You muſt give God his Due, by regulating rightly his Church (according to the Scripture), which is now out of Order; to ſet you in a way particularly now, I cannot; but only this, *A National Synod freely called, freely debated among themſelves, muſt ſettle this* when every Opinion is freely heard. For the King [*Then turning to a Gentleman that touch'd the Ax*, he ſaid, *Hurt not the Ax, that may hurt me.*]—Indeed I will not—— the Laws of the Land will clearly inſtruct you for that; therefore becauſe it concerns my own Particular, I ſhall only give you a touch of it. For the People, truly I deſire their Liberty and Freedom as much as any body whatſoever; but I muſt tell you, that their Liberty and Freedom conſiſt in having Government, thoſe Laws by which their Lives and their Goods may be moſt their own. It is not their having a Share in the Government—that is nothing appertaining to them: A Subject and a Sovereign are clean different things; and therefore until you do that, I mean, that you put the People in that Liberty, as I ſay, certainly they will never enjoy themſelves.

Sirs, it was for this that now I am come here. If I would have given way to an Arbitrary Way, to have all Laws changed according to the Power of the Sword, I needed not to have come here; and therefore I tell you (and I pray God it be not laid to your Charge), that I am the Martyr of the People. In Troth, Sirs, I ſhall not hold you much longer: I will only ſay this to you, That I could have deſired a little time longer, becauſe I would have a little better digeſted this I have ſaid, and therefore I hope you will excuſe me; I have deliver'd my Conſcience, I pray God you take thoſe Courſes that are the beſt for the Good of the Kingdom and your own Salvation.

Biſhop. Tho' your Majeſty's Affections may be very well known as to Religion; yet it may be expected that you ſhould ſay ſomething thereof for the World's Satisfaction.

King. I thank you heartily, my Lord, for that I had almoſt forgotten it. In Troth, Sirs, my Conſcience in Religion, I think, is very well known to all the World; and therefore I declare before you all, that I die a Chriſtian, according to the Profeſſion of the Church of *England*, as I found it left me by my Father; and this honeſt Man I think will witneſs it.

Then turning to the Officers, he ſaid, Sirs, excuſe me for this ſame: I have a good Cauſe, and I have a gracious God, I will ſay no more.

Then to Colonel *Hacker*, he ſaid, Take care that they do not put me to Pain: And, Sir, this and it pleaſe you———

But a Gentleman coming near the Ax, the King ſaid, Take heed of the Ax, pray take heed of the Ax.

Then ſpeaking unto the Executioner, he ſaid, I ſhall ſay but very ſhort Prayers, and when I thruſt out my Hands——

Then he called to the Biſhop for his Night-Cap, and having put it on, he ſaid to the Executioner, *Does my Hair trouble you?* who deſired him to put it all under his Cap, which the King did accordingly, by the Help of the Executioner and the Biſhop. Then turning to Dr. *Juxon*, he ſaid, *I have a good Cauſe, and a gracious God on my Side.*

Biſhop. There is but one Stage more, this Stage is turbulent and troubleſome, it is a ſhort one; but you may conſider it will ſoon carry you a very great way, it will carry you from Earth to Heaven; and there you will find a great deal of cordial Joy and Comfort.

King. I go from a corruptible to an incorruptible Crown, where no Diſturbance can be, no Diſturbance in the World.

Biſhop. You are exchanged from a Temporary to an Eternal Crown, a good Exchange.

Then the King ſaid to the Executioner, *Is my Hair well?* and took off his Cloke and his George, giving his George to the Biſhop, ſaying, *Remember.* Then he put off his Doublet, and being in his Waiſtcoat, he put on his Cloke again; then looking upon the Block, he ſaid to the Executioner, *You muſt ſet it faſt.*

Executioner. It is faſt, Sir.

King. When I put out my Hands this way (ſtretching them out), then ——After that, having ſaid two or three Words to himſelf, as he ſtood with his Hands and Eyes lift up, immediately ſtooping down, he laid his Neck upon the Block *. And then the Executioner again putting his Hair under his Cap, the King thinking he had been going to ſtrike ſaid, *Stay for the Sign.*

Executioner. Yes, I will, an't pleaſe your Majeſty.---After a little Pauſe, the King ſtretching forth his Hands, the Executioner at one Blow ſever'd his Head from his Body, and held it up and ſhew'd it to the People, ſaying, *Behold the Head of a Traitor.* At the Inſtant when the Blow was given, there was a diſmal Univerſal Groan among the People; and as ſoon as the Execution was over, one Troop of Horſe march'd immediately from *Charing-Croſs* to *King-ſtreet*, and another from *King-ſtreet* to *Charing-Croſs*, on purpoſe to diſperſe and ſcatter the People. The Corpſe was put into a Coffin, and the Biſhop and Mr. *Herbert* went with it to the Back-ſtairs to have it embalmed; after embalming, his Head was ſewed on, and the Corpſe was wrapt in Lead, and the Coffin cover'd with a Velvet Pall, and then remov'd to *St. James*'s. Mr. *Herbert* then made Application to ſuch as were in Power, that it might be interr'd in *Henry* VII's Chapel; but 'twas denied, for that his Burying there would attract infinite Numbers of all Sorts thither; which, as the Times then were, was judged unſafe and inconvenient. Mr. *Herbert* acquainting the Biſhop with this, they then reſolv'd to bury the King's Body in the Royal Chapel of *St. George*, within the Caſtle of *Windſor*, both in regard that his Majeſty was Sovereign of the moſt noble Order of the Garter, and that ſeveral Kings had been there interred; namely, King *Henry* VI. *Edward* IV. and *Henry* VIII. upon which Conſideration, the Committee of Parliament was addreſs'd to the ſecond time, who, after ſome Deliberation, gave Orders, bearing date *February* 6, 1648, authorizing Mr. *Herbert* and Mr. *Anthony Mildmay* to bury the King's Body there. Accordingly the Corpſe was carried thither from *St. James*'s, *Feb.* 7. in a Hearſe cover'd with black Velvet, drawn by ſix Horſes cover'd with black Cloth, and attended by about a dozen Gentlemen.

The King's Statue was afterwards taken down from the *Royal Exchange* in *London*, where it was ſet up again by the City in the Year 1682. to curry Favour with King *Charles* II. when their Charter was threatened.

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* *The Powers which then ruled, apprehending that the King would not ſubmit his Head to the Block, had prepared Hooks and Staples to bring him down to it by Violence; but he patiently ſubmitting, they had no need of them.*

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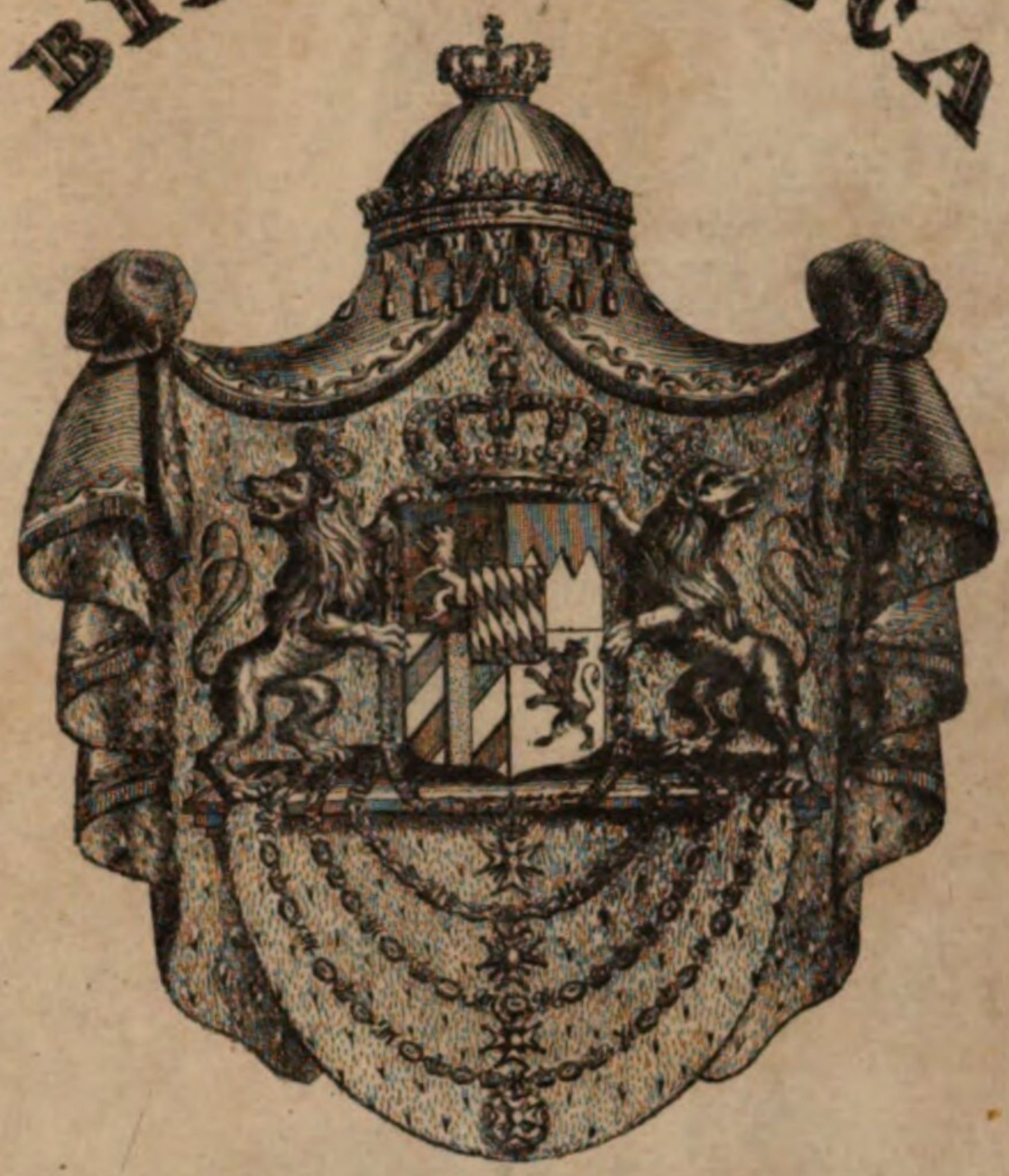

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